

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

for in this section, following oral request and warning given by the commissioner or his representative regarding the contents of this section, shall be guilty of a separate civil violation under section 957; provided that oral request and warning by the commissioner or his representative shall substitute for a first violation warning under section 957, subsection 1, and any continued refusal or interference shall be subject to the civil penalties as provided in section 957, subsection 2.

Sec. 3. 7 MRSA §957, sub-§2-A is enacted to read:

2-A. No violation. There shall be no violation of section 952 or 953 where the lot of potatoes involved has been segregated and conspicuously marked with a sign stating that the potatoes are known to be out of grade or that the potatoes are awaiting state inspection under section 1036; provided that no such potatoes may be moved without consent of the department, except for purposes of repacking or regrading; and provided further that the department has been notified of the location and quantity of the potatoes involved. Any potatoes segregated under this subsection must be inspected by the department prior to shipment.

Effective July 16, 1986.

CHAPTER 656

S.P. 897 - L.D. 2257

AN ACT to Amend the Requirements for Personal Service in an Action for a Guardianship or Conservatorship.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, changes in the Probate Code, enacted during the First Regular Session of the 112th Legislature, became effective on January 1, 1986; and

Whereas, these changes include provisions requiring, in actions for conservatorships and guardian-

ships, personal notice of the action to be served on relatives and friends of the person to be protected; and

Whereas, the expense and difficulty of this personal service was not appreciated when the requirements were enacted; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 18-A MRSA §5-309, sub-§(b), as amended by PL 1985, c. 440, §§4 and 13, is repealed and the following enacted in its place:

(b) Notice shall be served personally on the ward or the allegedly incapacitated person at least 14 days before the date of the hearing. Waiver of notice by the ward or the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by his counsel or by his guardian ad litem or in an interview with the visitor. Representation of the ward or the allegedly incapacitated person by a guardian ad litem is not mandatory. The court may order that the petition and hearing notice be served by the visitor.

Sec. 2. 18-A MRSA §5-309, sub-§(c), as enacted by PL 1985, c. 440, §§5 and 13, is repealed and the following enacted in its place:

(c) Notice to the spouse, adult children and parents required by subsection (a) shall be served by certified mail, with restricted delivery and return receipt requested, at least 14 days before the date of the hearing.

If the certified mail to the spouse is not delivered and the spouse can be found within the State, notice shall be served personally on the spouse.

If the certified mail to the spouse is not delivered, the spouse cannot be found within the State and the certified mail is not delivered to any adult chil-

dren, notice shall be served personally on an adult child who can be found within the State.

If the certified mail to the spouse and adult children is not delivered, the spouse and all adult children cannot be found within the State and the certified mail is not delivered to any parent, notice shall be served personally on a parent who can be found within the State.

If no spouse, adult child or parent is served by certified mail or personally, notice to the closest adult relative required by subsection (a) shall be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult relative is not delivered and the adult relative can be found within the State, notice shall be served personally on the adult relative. If no adult relative is served by certified mail or personally, notice to an adult friend required by subsection (a) shall be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult friend is not delivered and the adult friend can be found within the State, notice shall be served personally on the adult friend.

Notice required by subsection (a) to any person serving as a guardian, conservator or who has a person's care and custody shall be served by certified mail, with restricted delivery and return receipt requested.

Except as otherwise provided in this section, notice shall be given as prescribed by court rule under section 1-401.

Sec. 3. 18-A MRSA §5-405, sub-§(a), as amended by PL 1985, c. 440, §§7 and 13, is repealed and the following enacted in its place:

(a) On a petition for appointment of a conservator or other protective order or on a petition under section 5-416, the person to be protected or the protected person must be served personally with notice of the proceeding at least 14 days before the date of the hearing. Waiver by the person to be protected or the protected person is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an inter-

view with the visitor. The court may order that the petition and hearing notice be served by the visitor.

Sec. 4. 18-A MRSA §5-405, sub-§(a-1) is enacted to read:

(a-1) The spouse and all adult children of the person to be protected or the protected person or, if none, the person's parents or closest adult relative or, if none, a friend must be given notice of the proceeding. Notice under this subsection shall be served by certified mail, restricted delivery and return receipt requested, at least 14 days before the date of the hearing.

If the certified mail to the spouse is not delivered and the spouse can be found within the State, notice shall be served personally on the spouse.

If the certified mail to the spouse is not delivered, the spouse cannot be found within the State and the certified mail is not delivered to any adult children, notice shall be served personally on an adult child who can be found within the State.

If notice is served on the person's parents or closest adult relative and the certified mail is not delivered, notice shall be served personally on a parent or the adult relative if a parent or adult relative can be found within the State.

If notice is served on the person's friend and the certified mail is not delivered, notice shall be served personally on the friend if the friend can be found within the State.

Except as otherwise provided in this subsection and subsection (a), notice shall be given as prescribed by court rule under section 1-401.

Sec. 5. 18-A MRSA §5-405, subsection (b), as enacted by PL 1979, c. 540, §1, is amended to read:

(b) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in ~~subsection~~ subsections (a) and (a-1), notice shall be given as prescribed by court rule under section 1-401.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 11, 1986.

CHAPTER 657

S.P. 899 - L.D. 2259

AN ACT to Assist Consumers in Obtaining
Redress for Violation of their Rights
by Regulated Utilities.

Be it enacted by the People of the State of Maine as follows:

35 MRSA §314, 4th ¶, as enacted by PL 1983, c. 683, §2, is amended to read:

If the commission finds that a public utility has willfully or recklessly violated any substantive rule promulgated by the commission pursuant to the authority granted in this section, the commission may bring a complaint against the public utility before the Administrative Court as provided in Title 5, section 10051, subsection 4, except that the jurisdiction in the Administrative Court shall not include the issuance, renewal, denial or revocation of a license of a public utility. The Administrative Court may impose fines in accordance with Title 4, section 1156. Upon a finding by the Administrative Court of a property loss suffered by a customer causally related to the violation by the public utility as provided in this paragraph, the court may order the public utility to compensate the customer for the actual loss, less any setoff for a balance found to be due the utility by the customer for unpaid utility service. That loss may not include consequential damages. No action for damages resulting from a termination which was in willful or reckless violation of the commission's rules may be commenced until at least 60 days after notice of a claim setting forth the nature of the termination and the damages suffered has been provided to the utility. That notice shall be provided to the utility in writing within 30 days of the alleged termination.

Effective July 16, 1986.
