

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
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PUBLIC LAWS

OF THE

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AS PASSED AT THE
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1989

before the time of the hearing. At the hearing, the court shall hear evidence relating to:

- (1) The emotional development, maturity, intellect and understanding of the minor;
- (2) The nature, possible consequences and alternatives to the abortion; and
- (3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The court shall conduct the hearing in private with only the minor, interested parties as determined by the court and necessary court officers or personnel present. The record of the hearing is not a public record.

D. In the decree, the court shall for good cause:

- (1) Grant the petition for majority rights for the sole purpose of consenting to the abortion;
- (2) Find the abortion to be in the best interest of the minor and give judicial consent to the abortion, setting forth the grounds for the finding; or
- (3) Deny the petition only if the court finds that the minor is not mature enough to make her own decision and that the abortion is not in her best interest.

E. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner.

F. The minor may appeal an order issued in accordance with this section to the Superior Court. The notice of appeal shall be filed within 24 hours from the date of issuance of the order. Any record on appeal shall be completed and the appeal shall be perfected within 5 days from the filing of notice to appeal. The Supreme Judicial Court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

7. Abortion performed against the minor's will. No abortion may be performed on any minor against her will, except that an abortion may be performed against the will of

a minor pursuant to a court order described in subsection 6 that the abortion is necessary to preserve the life of the minor.

8. Violation; penalties. Any person who knowingly performs or aids in the performance of an abortion in violation of this section commits a Class D crime. Any attending physician or counselor who knowingly fails to perform any action required by this section commits a civil violation for which a forfeiture of not more than \$1,000 may be adjudged for each violation.

9. Nonseverability. In the event that any portion of this section is held invalid, it is the intent of the Legislature that this entire section shall be invalid.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
JUDICIAL DEPARTMENT		
Indigent Defense		
All Other	\$19,069	\$25,425
Provides funds for additional requests for court appointed counsel.		

See title page for effective date.

CHAPTER 574

H.P. 1144 - L.D. 1587

An Act to Establish Greater Communication in the Rule-making Process and to Provide Better Standards for the Adoption of Rules

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

Sec. 1. 5 MRSA §8002, sub-§9, 1A, as amended by PL 1979, c. 425, §3, is further amended to read:

A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency. ~~All rules promulgated after July 1, 1979, shall, to the maximum extent feasible, as determined by the affected agency, use plain and clear English, which can be readily understood by the public.~~

Sec. 2. 5 MRSA §8051-A is enacted to read:

§8051-A. Appointment of liaison

The commissioner or director of each state agency shall designate a person to serve as a liaison between the agency and the general public, the Legislature, the Secretary of State and the office of the Attorney General with respect to rulemaking. The liaison shall serve as a representative of the agency with respect to providing information about agency rules. The liaison shall be responsible for implementing the procedural provisions of this subchapter.

Sec. 3. 5 MRSA §8052, sub-§5, as amended by PL 1985, c. 680, §1, is repealed and the following enacted in its place:

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

A. If the same or similar comments or concerns about a specific issue are expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment that accurately reflects the meaning and intent of these comments and concerns to be addressed by the agency.

B. A rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule. The agency shall maintain a file for each rule adopted that shall include, in addition to other documents required by this Act, testimony, comments and information relevant to the rule and considered by the agency in connection with the formulation, proposal or adoption of a rule. If an agency determines that a rule which it intends to adopt will be substantially different from the proposed rule, it shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph. Notice of the request for comments shall be published by the Secretary of State in the same manner as notice for proposed or adopted rules.

Sec. 4. 5 MRSA §8052, sub-§5-A is enacted to read:

5-A. Impact on small business. In adopting rules, the agencies shall seek to reduce any economic burdens through flexible or simplified reporting requirements and

may seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses. The agency may consider clarification, consolidation, or simplification of compliance or reporting requirements. For the purposes of this subsection, "small business" means businesses that have 20 or fewer employees and gross annual sales not exceeding \$2,500,000.

Sec. 5. 5 MRSA §8053-A, as amended by PL 1987, c. 402, Pt. A, §§60 and 61, is repealed and the following enacted in its place:

§8053-A. Notice to legislative committees

1. Proposed rules. At the time of giving notice of rulemaking under section 8053 or within 10 days following the adoption of an emergency rule, the agency shall provide to the Legislature, in accordance with subsection 3, a fact sheet providing the information as described in section 8057-A, subsection 1.

A. If an agency determines that a rule which it intends to adopt will be substantially different from the proposed rule, it shall provide the Legislature with a revised fact sheet with the information defined in section 8057-A, subsection 1, as it relates to the substantially different rule. The revised fact sheet shall be provided to the Legislature in accordance with subsection 3.

2. Regulatory agenda. The agency shall provide copies of its agency regulatory agenda, as provided in section 8060, to the Legislature at the time that the agenda is issued.

3. Submission of materials to the Legislature. When an agency, pursuant to subsection 1 or 2, provides materials to the Legislature, it shall provide them to the Executive Director of the Legislative Council, who shall refer the materials to the appropriate committee or committees of the Legislature for review. The agency shall provide sufficient copies of the materials for each member of the appropriate committee or committees.

4. Adopted rules. When an agency adopts rules, it shall provide a copy of the adopted rules, the statement required by section 8052, subsection 5, and the checklist required by section 8056-A to the Secretary of State who shall compile the adopted rules by agency.

Sec. 6. 5 MRSA §8056-A is enacted to read:

§8056-A. Technical assistance; annual report

1. Checklist. The Secretary of State shall establish and implement a checklist that shall be completed by agencies and attached to proposed and adopted rules filed with the Secretary of State after December 31, 1989. The checklist shall include the timing of filing and notices as well as other procedural requirements of this subchapter.

2. Technical assistance. The Secretary of State shall develop drafting instructions for use by agencies that pro-

pose rules under this subchapter. In addition, the Secretary of State shall provide assistance to any agency regarding the form for drafting of rules and supporting materials and the other requirements of this subchapter.

3. Report. The Secretary of State shall report to the Governor and the joint standing committee of the Legislature having jurisdiction over state and local government prior to February 1st of each year with respect to rule-making activities for the prior year. The report shall include statistical information on agency rule-making activities, agency experience with procedural requirements of this subchapter, and recommendations for improvements to the rule-making process. In preparing the report, the Secretary of State shall solicit comments from agencies and their legal counsels, the Director of Legislative Oversight and the public on this subchapter and recommended improvements.

Sec. 7. 5 MRSA §8057-A is enacted to read:

§8057-A. Preparation and adoption of rules

In preparing and adopting rules, each agency shall strive to the greatest possible extent to follow the procedure defined in this section.

1. Preparation of rules. At the time that an agency is preparing a rule, the agency shall consider the goals and objectives for which the rule is being proposed, possible alternatives to achieve the goals and objectives and the estimated impact of the rule. The agency's estimation of the impact of the rule shall be based on the information available to the agency and any analyses conducted by the agency or at the request of the agency. The agency shall establish a fact sheet that provides the citation of the statutory authority of the rule. In addition, the agency, to the best of its ability, shall also include in the fact sheet the following:

- A. The principal reasons for the rule;
- B. A comprehensive but concise description of the rule that accurately reflects the purpose and operation of the rule;
- C. An estimate of the fiscal impact of the rule; and
- D. An analysis of the rule, including a description of how the agency considers whether the rule would impose an economic burden on small business as described in section 8052, subsection 5-A.

2. Additional information for existing rules. For existing rules having an estimated fiscal impact greater than \$1,000,000, the fact sheet shall also include the following:

- A. A description of the economic impact of the rule including effects that cannot be quantified in monetary terms;
- B. A description and examples of individuals, major interest groups and types of businesses that will be affected by the rule and how they will be affected; and

C. A description of the benefits of the rule including those that cannot be quantified.

3. Public comment period. During the public comment period and prior to adoption of any rule, the agency shall strive to obtain and evaluate relevant information from the public and other information reasonably available to the agency with respect to relevant provisions in subsection 1.

4. Adoption of rules. At the time of adoption of any rule, the agency shall file with the Secretary of State the information developed by the agency pursuant to subsections 1 and 2.

Sec. 8. 5 MRSA §§8060 to 8062 are enacted to read:

§8060. Regulatory agenda

Each agency with the authority to adopt rules shall issue to the appropriate joint standing committee or committees of the Legislature and to the Secretary of State an agency regulatory agenda as provided in this section.

1. Contents of agenda. Each agency regulatory agenda to the maximum possible extent shall contain the following information:

- A. A list of rules that the agency expects to propose prior to the next regulatory agenda due date;
- B. The statutory or other basis for adoption of the rule;
- C. The purpose of the rule;
- D. The contemplated schedule for adoption of the rule;
- E. An identification and listing of potentially benefited and regulated parties; and
- F. A list of all emergency rules adopted since the previous regulatory agenda due date.

2. Due date. A regulatory agenda must be issued prior to 100 days after adjournment of each regular session of the Legislature.

3. Legislative copies. The agency shall provide copies of the agency regulatory agenda to the Legislature as provided in section 8053-A.

4. Availability. An agency which issues an agency regulatory agenda shall provide copies to interested persons.

5. Legislative review of agency regulatory agendas. Each regulatory agenda shall be reviewed by the appropriate joint standing committee of the Legislature at a meeting called for the purpose. The committee may review more than one agenda at a meeting.

6. Application. Nothing in this section or section 8053-A may be construed to prohibit agencies from adopting emergency rules or rules that have not been listed or included in the regulatory agenda pursuant to this section.

§8061. Style

All rules and any other materials required by this subchapter to be provided to the public or to the Legislature shall, to the maximum extent feasible, use plain and clear English, which can readily be understood by the general public. The use of technical language shall be avoided to the greatest possible extent.

§8062. Performance standards

When legislation authorizing any regulated activity requires that certain criteria be met in order that any license, permit, authorization or certification to undertake the regulated activity be granted and when an agency determines that performance standards will assist regulated parties in complying with the criteria, the standards shall be developed during the rule-making process and incorporated into adopted rules when performance standards are equally effective in meeting applicable statutory criteria.

Sec. 9. 5 MRSA §11112, first ¶, as amended by PL 1985, c. 737, Pt. B, §15, is further amended to read:

Any group of 100 or more registered voters, who have a substantial interest in a rule, or any person who may be directly, substantially and adversely affected by the application of a rule, may file an application for review with the executive director. With respect to any application or petition for review pursuant to this section, the petition or application shall be verified and certified in the same manner provided in Title 21-A, section 354, subsection 7, paragraphs A and C. The applicant shall state with specificity on a form prepared by the director, the following:

Sec. 10. Commission on Codification of Rules.

1. There is established the Commission on Codification of Rules to consist of 13 members as follows:

A. The President of the Senate shall appoint 2 Senators, one from the Joint Standing Committee on Judiciary and one from the Joint Standing Committee on State and Local Government. The Speaker of the House of Representatives shall appoint 3 members of the House of Representatives, one from each of the following joint standing committees of the Legislature: the Joint Standing Committee on Appropriations and Financial Affairs; the Joint Standing Committee on Judiciary; and the Joint Standing Committee on State and Local Government.

B. A representative of the Administrative Law Section of the Maine Bar Association who shall be appointed by the Governor;

C. The Governor shall appoint 3 persons. One person shall represent the Governor's office and 2

persons shall represent that part of the private sector with experience in the use of rules and the rule-making process;

D. The Secretary of State, or the secretary's designee;

E. The Attorney General's designee, who must be knowledgeable of the Maine Administrative Procedure Act, Title 5, chapter 375;

F. The State Law Librarian, ex officio; and

G. The Director of Legislative Oversight, ex officio.

2. The President of the Senate and the Speaker of the House of Representatives shall jointly appoint the chair from among the legislative members.

3. All members of the commission shall be appointed within the 90-day period following the adjournment of the First Regular Session of the 114th Legislature. The first meeting of the commission shall be held no later than October 1, 1989.

4. The commission shall investigate various alternative codifications of rules and the cost of each alternative. In undertaking this investigation the commission shall consider:

A. The various types of formats that may be used;

B. The various types of indexes for a code of rules, particularly subject matter indexes;

C. Capital equipment required;

D. Personnel required and the type of expertise needed to undertake a codification;

E. The processes of codification to include contracting all or some of the tasks of codification with the private sector;

F. The distribution of a code of rules to include prices to be charged to public agencies; and

G. The establishment of and access to rules data base.

5. The commission shall report its findings and its recommendation for a code of rules to the Joint Standing Committee on State and Local Government no later than March 15, 1990.

6. The legislative members shall be compensated at the legislative per diem rate including expenses for meetings held when the Legislature is not in session. All other members shall receive expense reimbursement only.

7. The Legislative Council shall provide for the staffing of the commission.

A. Prior to the first meeting of the commission, the staff shall obtain necessary background information and materials for the commission.

Sec. 11. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
LEGISLATURE		
Commission on Codification of Rules		
Personal Services	\$1,375	
All Other	4,300	
Provides funds for the per diem, travel and related expenses of the Commission on Codification of Rules		
LEGISLATURE		
TOTAL	<u>\$5,675</u>	
SECRETARY OF STATE, DEPARTMENT OF		
Administration - Secretary of State		
Positions	(.5)	(.5)
Personal Services	\$7,340	\$10,112
All Other	563	750
Capital Expenditures	590	
Provides funds for a part-time Clerk Typist II position and related expenses associated with rule-making activities.		
DEPARTMENT OF THE SECRETARY OF STATE		
TOTAL	<u>\$8,493</u>	<u>\$10,862</u>
APPROPRIATION		
TOTAL	<u>\$14,168</u>	<u>\$10,862</u>

See title page for effective date.

CHAPTER 575

H.P. 675 - L.D. 924

An Act to Clarify the Method of Obtaining Incapacity Benefits Under the Workers' Compensation Act

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

39 MRSA §55-B, as enacted by PL 1987, c. 559, Pt. B, §30, is amended by inserting at the end a new paragraph to read:

For purposes of determining an injured employee's degree of incapacity under this section, the commission shall consider the availability of work that the employee is able to perform in and around the employee's community and the employee's ability to obtain such work considering the ef-

fects of the employee's work-related injury. If no such work is available in and around the employee's community or if the employee is unable to obtain such work in and around the employee's community due to the effects of a work-related injury, the employee's degree of incapacity under this section is 100%.

See title page for effective date.

CHAPTER 576

H.P. 1185 - L.D. 1640

An Act to Provide Funding for and to Amend Laws Governing the Maine Human Services Council

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

Whereas, proposed amendments affecting the Maine Human Services Council will affect its current administration and operations; and

Whereas, these amendments will improve the effectiveness and efficiency of the Maine Human Services Council; 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. 5 MRSA c. 19 is enacted to read:

CHAPTER 19

MAINE HUMAN DEVELOPMENT COMMISSION

§461. Commission established

The Maine Human Development Commission shall be within State Government as established by section 12004-J, subsection 3. It shall conduct activities to encourage, enhance and support the human development of adults, children and families. The commission shall be an independent commission, separate and distinct from any other organizational unit of State Government.

§462. Membership

1. Membership; qualifications. The commission shall consist of no more than 17 members, who, excepting members representing the Legislature, shall be appointed by the Governor. To be qualified to serve, members shall have education, training, experience, knowledge, expertise and interest in human development. Members shall be residents of different geographical areas of the State, who reflect