

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

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J.S. McCarthy Company
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1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

Sec. 1. 17 MRSA §2805, sub-§1, ¶B, as enacted by PL 1981, c. 472, is amended to read:

B. "Farm operation" means a condition or activity which that occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, noise, odors, dust, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, composting of material produced by the farm or to be used at least in part on the farm, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners and pesticides and the employment and use of labor.

See title page for effective date.

CHAPTER 88

H.P. 317 - L.D. 405

An Act to Prohibit the Use of Electronic Calling Devices While Hunting Moose

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

Sec. 1. 12 MRSA §7464, sub-§8-C is enacted to read:

8-C. Illegal hunting methods. A person is guilty of using illegal hunting methods if that person uses electronic calling devices while hunting moose.

See title page for effective date.

CHAPTER 89

H.P. 448 - L.D. 574

An Act Allowing Animal Welfare Personnel of the Department of Agriculture, Food and Rural Resources to Enforce Laws Prohibiting the Sale of Certain Fish and Wildlife

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

Sec. 1. 7 MRSA §3936, as amended by PL 1991, c. 779, §33, is further amended to read:

§3936. Inspection and quarantine

1. Inspection and quarantine. The commissioner, a state humane agent, a veterinarian employed by the State or a licensed veterinarian at the direction of the commissioner may, at any reasonable time, enter any kennel, boarding kennel, breeding kennel or pet shop,

except any building used for human habitation recognized as not subject to search warrant, and make examinations and conduct any recognized tests for the existence of any contagious or infectious diseases or conditions. The commissioner may inspect kennels, boarding kennels, breeding kennels and pet shops in accordance with the sanitation and health rules established by the department and for compliance with laws and rules, including licensing and permitting requirements, of the Department of Inland Fisheries and Wildlife pertaining to wildlife importation and possession. A veterinarian employed by the State or any licensed veterinarian may quarantine the kennel, boarding kennel, breeding kennel or pet shop, in person or by registered mail, and the quarantine must be maintained as long as the department determines necessary. The decision and order for this quarantine is not considered licensing or an adjudicatory proceeding as defined by the Maine Administrative Procedure Act. The commissioner shall promptly notify the Department of Inland Fisheries and Wildlife of any violations.

2. Suspension of license. The Administrative Court, upon complaint of the commissioner or the Attorney General or the Commissioner of Inland Fisheries and Wildlife, may revoke or suspend a kennel, boarding kennel, breeding kennel or pet shop license if a person maintaining the kennel, boarding kennel, breeding kennel or pet shop violates any quarantine or maintains animals contrary to the rules adopted by the department or fails to keep records required by the department or violates any provision of the laws or rules of the Department of Inland Fisheries and Wildlife pertaining to wildlife importation and possession.

See title page for effective date.

CHAPTER 90

H.P. 459 - L.D. 585

An Act to Further Clarify Appellate Procedures under the Public Sector Labor Laws

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

Sec. 1. 26 MRSA §968, sub-§4, as amended by PL 1991, c. 143, §1, is further amended to read:

4. Review of representative proceedings. Any party aggrieved by any ruling or determination of the executive director, or the executive director's designee, under sections 966 and 967 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board.

Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing having first caused 7 days notice in writing of the time and place of ~~such the~~ hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. These hearings must be conducted in the manner provided in subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing the board shall make a written decision that must include findings of fact and either affirm or modify the ruling or determination of the executive director and specify the reasons for that action. A copy of that decision must be mailed to the labor organization or bargaining agent or its attorney or other designated representative and the public employer. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in the manner accordance with the standards specified in section 972, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

Sec. 2. 26 MRSA §968, sub-§5, ¶F, as amended by PL 1991, c. 143, §2, is further amended to read:

F. Either party may seek a review by the Superior Court of Kennebec County or of the county in which the prohibited practice is alleged to have occurred of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it ~~deems determines~~ just and proper; ~~provided~~ except that the board's decision is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, ~~that which~~ must be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the findings of the board on questions of

fact are final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

Sec. 3. 26 MRSA §972, first ¶, as amended by PL 1991, c. 143, §3, is further amended to read:

Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. For interest arbitrations, the review must be sought in accordance with the Maine Rules of Civil Procedure, Rule ~~80C~~ 80B.

Sec. 4. 26 MRSA §979-G, as amended by PL 1991, c. 143, §4, is further amended to read:

§979-G. Rule-making procedure and review of proceedings

1. Rule-making procedure. Proceedings conducted under this chapter ~~shall be~~ are subject to the rules and procedures of the board promulgated under section 968, subsection 3.

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 979-E and 979-F may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall, within a reasonable time, hold a hearing, having first caused 7 days' notice in writing of the time and place of such hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. ~~Such~~ The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in the manner accordance with the standards specified in section 972, provided if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

Sec. 5. 26 MRSA §979-H, sub-§7, as amended by PL 1991, c. 143, §5, is further amended to read:

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with ~~Rule 80C~~ of the Maine Rules of Civil Procedure, Rule 80C, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certi-

fied mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it ~~deems~~ determines just and proper; provided except that the board's decision or order is not stayed; except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, ~~that which~~ must be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact ~~are~~ is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

Sec. 6. 26 MRSA §1028, sub-§2, as amended by PL 1991, c. 143, §6, is further amended to read:

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 1024 and 1025 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall within a reasonable time, hold a hearing, having first caused 7 days' notice, in writing, of the time and place of ~~such~~ the hearings to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. ~~Such~~ The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in the manner accordance with the standards specified in section 972, provided if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

Sec. 7. 26 MRSA §1029, sub-§7, as amended by PL 1991, c. 143, §7, is further amended to read:

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided the complaint is filed

within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any ~~part~~ party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it ~~deems~~ determines just and proper; provided except that the board's decision or order is not stayed; except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, ~~that which~~ must be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified, or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact ~~are~~ is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under subsection 6.

Sec. 8. 26 MRSA §1288, sub-§2, as amended by PL 1991, c. 143, §8, is further amended to read:

2. Review of representation proceedings. Any person aggrieved by any ruling or determination of the executive director under sections 1286 and 1287 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall, within a reasonable time, hold a hearing, having first caused 7 days' notice in writing of the time and place of that hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in the manner accordance with the standards specified in section 1292, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

Sec. 9. 26 MRSA §1289, sub-§7, as amended by PL 1991, c. 143, §9, is further amended to read:

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a

complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided that the complaint must be filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it ~~deems~~ determines just and proper; provided except that the board's decision or order is not stayed; except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health, safety or welfare or interference with the exercise of the judicial power. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, ~~that~~ which must be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact ~~must be~~ is final unless shown to be clearly erroneous. Any appeal to the Law Court must be expedited in the same manner as an appeal from an interlocutory order under section 6.

Sec. 10. 26 MRSA §1292, sub-§1, as amended by PL 1991, c. 143, §10, is further amended to read:

1. Review by Superior Court. Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. For interest arbitrations, the review must be sought in accordance with the Maine Rules of Civil Procedure, Rule ~~80C~~ 80B.

See title page for effective date.

CHAPTER 91

H.P. 575 - L.D. 780

An Act to Clarify Certain Statutes Relating to the Public Utilities Commission

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

Sec. 1. 35-A MRSA §2305, first ¶, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

Every electric utility may construct and maintain its lines in, upon, along, over, across and under the roads and streets in any municipality in which it is authorized

to supply electricity ~~or both~~, subject to the conditions and restrictions provided in this chapter and chapter 25.

Sec. 2. 35-A MRSA §3132, sub-§11, as enacted by PL 1987, c. 387, §2, is repealed.

Sec. 3. 35-A MRSA §3132, sub-§§11-A and 11-B are enacted to read:

11-A. Amendments, extensions and renewals of contracts originally subject to commission approval. This section applies to any amendment, extension or renewal of any contract between the utility and other parties with an ownership interest, governing the terms of their participation in the construction of a generation or transmission facility subject to this section, if the original contract was subject to approval by the commission. The commission may waive the approval requirements of this section with respect to a particular amendment, extension or renewal or a group of amendments, extensions or renewals upon request under subsection 1. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver and procedures for the expeditious processing of requests in certain circumstances.

11-B. Amendments, extensions and renewals of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section, but when the original contract was not subject to approval by the commission, the utility shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

Sec. 4. 35-A MRSA §3133, sub-§10, as amended by PL 1987, c. 769, Pt. A, §§138 and 139, is repealed.

Sec. 5. 35-A MRSA §3133, sub-§§10-A and 10-B are enacted to read:

10-A. Renewal of contracts for purchase or conversion originally subject to commission approval. This section applies to any amendment, extension or renewal of any contract between the utility and other parties governing the terms of their participation in a purchase or conversion subject to this section, if the original contract was subject to approval by the commission. The commission may waive the approval requirements of this section with respect to a particular amendment, extension or renewal or a group of amendments, extensions or renewals upon request by the utility. The commission may also waive the 2-month notice required in subsection 2. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule