

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**

**January 5, 1994 to April 14, 1994**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 14, 1994**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1993**

officer enjoys while performing duties within the police officer's appointing municipality.

See title page for effective date.

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## CHAPTER 595

S.P. 466 - L.D. 1458

### An Act to Clarify the Role and Purpose of the Maine State Retirement System

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

**Whereas,** the Maine State Retirement System was created as a trust and a service organization to receive employment-based contributions to be invested for the purpose of providing retirement, disability and death benefits to state employees, teachers and employees of participating local districts; and

**Whereas,** the type and level of these benefits and the criteria and conditions of eligibility for benefits are determined by the Legislature, or in the case of participating local districts by the governing body of each district, and not by the Maine State Retirement System or its board of trustees; and

**Whereas,** the board of trustees and the Maine State Retirement System are responsible as fiduciaries for the trust funds and as administrators for the management of the system's funds and for the equitable and efficient administration of the benefit programs created by the Legislature, including the provision of adequate information and assistance to State Government, to school administrative units and to participating local districts and for the provision of adequate information and counseling to individual members; and

**Whereas,** the Maine State Retirement System is increasingly put into the position of deciding and enforcing decisions related to benefit type and level and eligibility for benefits and related recordkeeping and reporting, a position that is incompatible with the system's role as a service organization, its fiduciary role, and its administrative responsibilities, including particularly its responsibilities to inform, educate and assist members and the entities for whom they work; 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 preserva-

tion of the public peace, health and safety; now, therefore,

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

**Sec. 1. 4 MRSA §1353, sub-§2,** as amended by PL 1991, c. 887, §2, is further amended to read:

**2. Amount.** Until July 1, 1994 ~~1996~~, the amount of a disability retirement allowance is 59% of the member's average final compensation. Any member entitled to this benefit who was serving as a judge on November 30, 1984 may elect to have that member's disability benefits calculated in accordance with chapter 29, instead of this subsection. A member who is serving as a judge on October 16, 1992 may elect to be covered under the disability benefit plan applicable to the judge as that plan is amended to meet the requirements of the federal Older Workers Benefit Protection Act. The election must be made by the same procedure provided in Title 5, section 17941 for state employees.

**Sec. 2. 4 MRSA §1358, sub-§1, ¶C,** as amended by PL 1993, c. 410, Pt. L, §8-A, is further amended to read:

C. Adjustments under this section must be applied to the allowances of all retirees who have been retired for at least 12 months before the adjustment takes effect, except that a member who has less than 10 years of creditable service on July 1, 1993 may not receive a cost-of-living adjustment until at least 12 months after reaching normal retirement age. Beneficiaries of deceased retirees and members are eligible for the adjustment provided in this section at the same time the deceased retiree or member would have been eligible. A member who is eligible to retire as of June 30, 1993 and who actually retires effective no later than July 1, 1994 is eligible for the cost-of-living adjustment if that member has been retired for at least 6 months before the date that the adjustment becomes payable.

**Sec. 3. 5 MRSA §17001, sub-§13, ¶C,** as repealed and replaced by PL 1993, c. 410, Pt. L, §13, is amended to read:

C. Earnable ~~Notwithstanding the other provisions of this subsection, for the purposes of determining average final compensation, earnable~~ compensation does not include any increase that exceeds the prior year's earnable compensation by more than 5% or that results in a total increase of more than 10% during the 3-year period used in the calculation of average final compensation unless the cost of the additional actuarial liability arising from the excess in-

crease is paid by the employer as provided in section 17154. Any payment made under paragraph B, subparagraph (1) must be included in determining the amount of increase in the year in which the payment is made. This paragraph does not apply to excess increases resulting from compensation paid prior to July 1, 1993, from compensation paid in accordance with an individual employment contract or collective bargaining agreement executed prior to July 1, 1993 for the initial term of that contract or agreement or from other action by the governing body of the school administrative unit in effect on July 1, 1993. In addition, this paragraph does not apply to increases in compensation for state employees received during fiscal ~~years~~ year 1993-94 and fiscal year 1994-95. In all circumstances in which this paragraph does not apply, the provisions of this paragraph that were in effect prior to June 30, 1993 apply.

**Sec. 4. 5 MRSA §17103, sub-§9, ¶B,** as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. ~~The~~ When determined necessary by the retirement system or directed by the legislative committee or a member of that committee, the report shall also on each amendment must include a separate evaluation of each amendment by the actuary.

**Sec. 5. 5 MRSA §17154, sub-§9,** as enacted by PL 1991, c. 857, §1, is amended to read:

**9. Improper application of statutes.** Notwithstanding the other provisions of this section, additional actuarial and administrative costs resulting from omissions or misrepresentations by an employer as to a member's earnings, service or service credits or from improper application of retirement system statutes or rules regarding earnings, service or service credits must be charged to and paid by the employer that omitted information, provided misinformation or improperly applied the statutes or rules, unless the omission, misrepresentation or improper application results from erroneous information provided by the retirement system. The employer is liable for amounts not recovered from the retiree and for costs incurred by the retirement system in resolving problems caused by the employer's actions and in addition may be subject to administrative fees, penalties and interest under section 17105, subsection 5. For purposes of this subsection, "employer" means any department of State Government, school administrative unit or participating local district.

**Sec. 6. 5 MRSA §17806, sub-§3,** as amended by PL 1993, c. 410, Pt. L, §31, is further amended to read:

**3. Eligibility.** Cost-of-living adjustments under this section must be applied to the retirement benefits of all retirees who have been retired for at least 12 months before the date that the adjustment becomes payable, except that a member who has less than 10 years of creditable service on July 1, 1993 may not receive a cost-of-living adjustment until at least 12 months after reaching normal retirement age. Beneficiaries of deceased retirees and members are eligible for the cost-of-living adjustment at the same time the deceased retiree or member would have become eligible. A member who is eligible to retire as of June 30, 1993 and who actually retires effective no later than July 1, 1994 is eligible for the cost-of-living adjustment if that member has been retired for at least 6 months before the date that the adjustment becomes payable.

**Sec. 7. 5 MRSA §17905,** as amended by PL 1991, c. 887, §5, is further amended to read:

**§17905. Computation of benefit**

Until July 1, ~~1994~~ 1996, when a member qualified under section 17904 retires, the member is entitled to receive a disability retirement benefit equal to 59% of the member's average final compensation.

**Sec. 8. 5 MRSA §17928,** as amended by PL 1991, c. 887, §8, is further amended to read:

**§17928. Computation of benefit**

Until July 1, ~~1994~~ 1996, when a member qualified under section 17924 retires, after approval for disability retirement by the executive director in accordance with section 17925, the member is entitled to receive a disability retirement benefit equal to 59% of that member's average final compensation.

**Sec. 9. 5 MRSA §18005, sub-§3** is enacted to read:

**3. Cost-of-living adjustments.** Benefits under this article are subject to adjustment as provided in section 17806.

**Sec. 10. 5 MRSA §18407, sub-§6,** as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

**6. Eligibility.** Cost-of-living adjustments under this section ~~shall~~ must be applied to the retirement benefits of all retirees who have been retired for at least 6 months before the date that the adjustment becomes payable. Beneficiaries of deceased retirees ~~shall be~~ and members are eligible for the cost-of-living adjustment at the same time the deceased retiree would have become eligible.

**Sec. 11. 5 MRSA §18505**, as amended by PL 1991, c. 887, §13, is further amended to read:

**§18505. Computation of benefit**

Until July 1, ~~1994~~ 1996, when a member qualified under section 18504 retires, the member is entitled to receive a disability retirement benefit equal to 59% of the member's average final compensation.

**Sec. 12. 5 MRSA §18528**, as amended by PL 1991, c. 887, §16, is further amended to read:

**§18528. Computation of benefit**

Until July 1, ~~1994~~ 1996, when a member qualified under section 18524 retires, after approval for disability retirement by the executive director in accordance with section 18525, the member is entitled to receive a disability retirement benefit equal to 59% of that member's average final compensation.

**Sec. 13. 5 MRSA §18542, sub-§§2 and 3**, as enacted by PL 1991, c. 887, §19, are amended to read:

**2. Ordinary disability allowance.** In the case of ordinary disability under such a plan, the disability retirement allowance must be calculated as provided under the plan except that until July 1, ~~1994~~ 1996 the amount of the retirement allowance may not exceed 59% of the member's average final compensation at the time of disability retirement; and

**3. Occupational disability allowance.** In the case of occupational disability under such a plan, the disability retirement allowance is, until July 1, ~~1994~~ 1996, equal to 59% of the member's average final compensation at the time of disability retirement.

**Sec. 14. 5 MRSA §18605, sub-§3** is enacted to read:

**3. Cost-of-living adjustments.** Benefits under this article are subject to adjustment as provided in section 17806.

**Sec. 15. Study and report.** The Maine State Retirement System shall study and analyze the experience of the disability plans amended to meet the requirements of the federal Older Workers Benefit Protection Act. The retirement system shall submit by January 15, 1996 a report to the Governor, the joint standing committee of the Legislature having jurisdiction over aging, retirement and veterans matters, the members of the Legislative Council and the Executive Director of the Legislative Council. The report must compare actual experience under the plans with actuarial assumptions regarding elections and costs of benefits under the new options elected. The report must also identify possible options for

compliance with the federal Older Workers Benefit Protection Act that protect benefits for employees without additional cost to the State and participating local districts.

**Sec. 16. Retroactivity.** That part of this Act that amends the Maine Revised Statutes, Title 5, section 17001, subsection 13, paragraph C applies retroactively to July 1, 1993.

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

Effective April 5, 1994

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**CHAPTER 596**

**H.P. 1322 - L.D. 1784**

**An Act to Amend the Laws Regarding Protective Custody**

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

**Sec. 1. 34-B MRSA §3862, sub-§1**, as enacted by PL 1983, c. 459, §7, is amended to read:

**1. Law enforcement officer's power.** If a law enforcement officer has reasonable grounds to believe, based upon ~~his personal observation~~ probable cause, that a person may be mentally ill and that due to ~~his~~ that condition he the person presents a threat of imminent and substantial physical harm to ~~himself~~ that person or to other persons, ~~he~~ the law enforcement officer:

A. May take the person into protective custody; and

B. If the officer does take the person into protective custody, shall deliver the person ~~forth-~~ with immediately for examination by an available licensed physician or licensed clinical psychologist, as provided in section 3863.

This subsection is repealed October 1, 1995.

**Sec. 2. 34-B MRSA §3862, sub-§1-A** is enacted to read:

**1-A. Law enforcement officer's power.** If a law enforcement officer has reasonable grounds to believe, based upon personal observation, that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons, the law enforcement officer: