

# 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**

A. The propensity of an equine to behave in ways that may result in injury, harm or death to persons on or around the equine;

B. The unpredictability of an equine's reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals;

C. Certain hazards, such as surface or subsurface conditions;

D. Collisions with other equines or objects; and

E. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the equine or not acting within the participant's ability.

**2. Effective date.** This section takes effect January 1, 1996.

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

Effective April 8, 1994.

## CHAPTER 651

H.P. 1439 - L.D. 1965

### An Act to Facilitate Government Investment in Mutual Funds

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

**Sec. 1. 5 MRSA §135, first ¶,** as amended by PL 1993, c. 437, §1, is further amended to read:

The Treasurer of State may deposit the money, including trust funds of the State, in any of the banking institutions or trust companies or state or federal savings and loan associations or mutual savings banks organized under the laws of this State or in any national bank or banks or state or federal savings and loan associations located in the State, except as provided in chapter 161. Before making a deposit, the Treasurer of State must consider the rating of the banking institution, trust company, state or federal savings and loan association or mutual savings bank on its most recent assessment conducted pursuant to the federal Community Reinvestment Act, 12 United States Code, Section 2901. When there is excess money in the State Treasury that is not needed to meet current obligations, the Treasurer of State may invest, with the concurrence of the State Controller or the Commissioner of Administrative and Financial Services and with the consent of the Governor, those

amounts in bonds, notes, certificates of indebtedness or other obligations of the United States that mature not more than 24 months from the date of investment or in repurchase agreements secured by obligations of the United States that mature within the succeeding 24 months, prime commercial paper, tax-exempt obligations or banker's acceptances or shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. The Treasurer of State may participate in the securities loan market by loaning state-owned bonds, notes or certificates of indebtedness of the Federal Government, ~~provided that the~~ only if loans are fully collateralized by treasury bills or cash. The Treasurer of State shall seek competitive bids for investments except when, after a reasonable investigation, it appears that an investment of the desired maturity is procurable by the State from only one source. Interest earned on those investments of money must be credited to the respective funds, except that interest earned on investments of special revenue funds must be credited to the General Fund of the State. Effective November 1, 1991, interest earned on investments of the Highway Fund must be credited to the General Fund. Interest earned on funds of the Department of Inland Fisheries and Wildlife must be credited to the General Fund. Interest earned on funds of the Baxter State Park Authority must be credited to the Baxter State Park Fund. This section does not prevent the deposit for safekeeping or custodial care of the securities of the several funds of the State in banks or safe deposit companies in this State or any other state, nor the deposit of state funds required by the terms of custodial contracts or agreements negotiated in accordance with the laws of this State. All custodial contracts and agreements are subject to the approval of the Governor.

**Sec. 2. 5 MRSA §138, first ¶,** as amended by PL 1991, c. 780, Pt. Y, §10, is further amended to read:

The Treasurer of State, with the approval of the Commissioner of Administrative and Financial Services, the Superintendent of Banking and the Attorney General, shall invest all permanent funds held in trust by the State in such securities as are legal investments for savings banks under Title 9-B, except as provided in chapter 161. For purposes of this section, those investments include, without limitation, shares of an investment company registered under the federal Investment Company Act of 1940, whose

shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section does not apply to the fund of the Employees' Retirement System or the fund arising from the lands reserved for public uses.

**Sec. 3. 30-A MRSA §171**, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

**§171. Deposit or investment of county funds**

The treasurer, with the approval of the county commissioners, may deposit the money received for the use of the county in any of the banking institutions or trust companies or mutual savings banks organized under the laws of this State or in any national bank or banks located in the State. When, in the treasurer's judgment, there is money in the treasury ~~which~~ that is not needed to meet current obligations, the treasurer, with the advice and consent of the county commissioners, may invest any amount considered advisable in bonds, notes, certificates of indebtedness or other obligations of the United States which mature within one year from the date of investment or shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States.

**Sec. 4. 30-A MRSA §4741, sub-§6**, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

**6. Investment of funds.** To invest any funds held in reserves of sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control, including, without limitation, shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or

otherwise, of the United States; to redeem its bonds at the redemption price established for the bonds or to purchase its bonds at less than that redemption price, all bonds so redeemed or purchased to be canceled;

**Sec. 5. 35-A MRSA §3908, sub-§5-A** is enacted to read:

**5-A. Mutual funds.** In addition to and not in limitation of any power of the district, invest its funds, including reserve funds, sinking funds and trust funds, to the extent that any terms of the instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States;

**Sec. 6. 35-A MRSA §6309** is enacted to read:

**§6309. Mutual funds**

A water district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a water district to invest its funds.

**Sec. 7. 38 MRSA §1164** is enacted to read:

**§1164. Mutual funds**

A sanitary district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured

by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a sanitary district to invest its funds.

**Sec. 8. 38 MRSA §1255** is enacted to read:

**§1255. Mutual funds**

A sewer district may invest its funds, including sinking funds, reserve funds and trust funds, to the extent that the terms of any instrument creating the funds do not prohibit the investment, in shares of an investment company registered under the federal Investment Company Act of 1940, whose shares are registered under the United States Securities Act of 1933, only if the investments of the investment company are limited to obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States or repurchase agreements secured by obligations of the United States or any agency or instrumentality, corporate or otherwise, of the United States. This section is in addition to, and not in limitation of, any power of a sewer district to invest its funds.

See title page for effective date.

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**CHAPTER 652**

**H.P. 1441 - L.D. 1967**

**An Act to Amend the Probate Code to  
Provide Greater Due Process in  
Guardianship and  
Conservatorship Cases**

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

**Sec. 1. 18-A MRSA §5-303, sub-§§(b) and (c),** as enacted by PL 1985, c. 440, §§1 and 13, are amended to read:

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person ~~has counsel of his own choice, unless it is indicated on the petition that the allegedly incapacitated person will attend the hearing or unless it is demonstrated that the appointment will serve no useful purpose~~ is already represented, the court shall appoint one or more of the following: A visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the

court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment shall of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated shall must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit his a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

(c) If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that ~~he the person~~ will reside if the requested appointment is made ~~and~~. The visitor or guardian ad litem shall submit his a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if ~~he the person~~ wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of ~~his that person's~~ own choice, the visitor or guardian ad litem shall so indicate in ~~his the~~ written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon ~~his the person's~~ condition. ~~He The person alleged to be incapacitated~~ is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or ~~his the person's~~ counsel so requests.

**Sec. 2. 18-A MRSA §5-310,** as amended by PL 1983, c. 620, is repealed.

**Sec. 3. 18-A MRSA §5-310-A** is enacted to read:

**§5-310-A. Temporary guardians**

(a) When a person alleged to be incapacitated has no guardian and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a guardian or may enter an ex parte order appointing a temporary guardian to address the emergency. A petition for temporary guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guard-