

# MAINE STATE LEGISLATURE

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

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

**FIRST REGULAR SESSION**  
**December 7, 1994 to June 30, 1995**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

**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**  
**1995**

license to pack sardines, kippers, steaks or other canned herring products are subject to suspension by the Administrative Court in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and ~~his~~ the packer's certificate shall be is suspended by the State Tax Assessor until the penalties and related tax are paid in full.

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

Effective June 26, 1995.

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## CHAPTER 308

S.P. 533 - L.D. 1471

### **An Act to Protect the Rights of Children Who Have Been Victims of Sexual Abuse**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

**Sec. 1.** 17-A MRSA §254-A is enacted to read:

**§254-A. Written notification not to pursue charges for sexual abuse of a minor**

A prosecutor who elects not to commence a juvenile or criminal proceeding for an alleged violation of section 254 shall, at the request of a parent, surrogate parent or guardian of the alleged victim, inform that person in writing of the reason for not commencing the proceeding.

See title page for effective date.

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## CHAPTER 309

S.P. 294 - L.D. 792

### **An Act to Reduce Government and Consolidate the Regulation of Banks and Credit Unions**

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

**Sec. 1.** 2 MRSA §6, sub-§2, as repealed and replaced by PL 1993, c. 349, §1, is amended to read:

**2. Range 90.** The salaries of the following state officials and employees are within salary range 90:

Superintendent of Banking;

~~Bureau of Consumer Credit Protection Superintendent;~~

State Tax Assessor;

Superintendent of Insurance;

Associate Commissioner for Programs, Department of Mental Health and Mental Retardation;

Associate Commissioner of Administration, Department of Mental Health and Mental Retardation;

Associate Commissioner for Institutional Management;

Executive Director, Maine Waste Management Agency; and

Deputy Commissioner, Department of Administrative and Financial Services.

**Sec. 2.** 2 MRSA §6, sub-§4, as amended by PL 1991, c. 780, Pt. Y, §4, is further amended to read:

**4. Range 88.** The salaries of the following state officials and employees are within salary range 88:

Director ~~of the~~ Bureau of Parks and Recreation;

Director, Bureau of Public Lands;

Director, Bureau of Employee Relations;

Director, Bureau of Air Quality Control;

Director, Bureau of Land Quality Control;

Director, Bureau of Water Quality Control;

Director, Bureau of Oil and Hazardous Materials Control;

Director, Bureau of Administration;

Director, Office of Planning;

Director, Office of Waste Reduction and Recycling;

Director, Office of Siting and Disposal Operations; ~~and~~

Executive Director, Board of Environmental Protection; and

Director, Office of Consumer Credit Regulation.

**Sec. 3. 5 MRSA §934, sub-§1, ¶B**, as enacted by PL 1983, c. 729, §4, is repealed and the following enacted in its place:

B. Director, Office of Consumer Credit Regulation;

**Sec. 4. 5 MRSA §12004-I, sub-§28**, as enacted by PL 1987, c. 786, §5, is repealed.

**Sec. 5. 9-A MRSA §1-301, sub-§2**, as enacted by PL 1973, c. 762, §1, is amended to read:

2. "Administrator" means, except in cases in which a supervised financial organization is the creditor, the administrator designated in the Article, Article 6, on Administration VI, section 6-103. In cases in which a supervised financial organization is the creditor, "administrator" means the Superintendent of Banking.

**Sec. 6. 9-A MRSA §6-103**, as amended by PL 1989, c. 702, Pt. E, §5, is further amended to read:

#### **§6-103. Administration**

There is created and established the Bureau Office of Consumer Credit Protection Regulation, which is a division within the Department of Professional and Financial Regulation. The Superintendent Director of the Office of Consumer Credit Protection Regulation is the head of the Office of Consumer Credit Protection Regulation. As used in this Act, and except as provided in section 1-301, subsection 2, "administrator" means the superintendent Director of the Bureau Office of Consumer Credit Protection Regulation. The administrator is appointed by the Governor Commissioner of Professional and Financial Regulation and subject to review by the joint standing committee of the Legislature having jurisdiction over banking and insurance and to confirmation by the Legislature. The administrator is appointed for a term of 5 years that is coterminus with the term of the Governor, or until a successor is appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The administrator may be removed from office for cause by impeachment or by the Governor on the address of both branches of the Legislature by the commissioner and Title 5, section 931, subsection 2, does not apply. During the term of office the administrator shall may engage in no other business or profession.

**Sec. 7. 9-A MRSA §6-104, sub-§1, ¶G**, as corrected by RR 1993, c. 1, §20, is amended to read:

G. With the approval of the Commissioner of Professional and Financial Regulation, appoint any necessary hearing examiners, clerks and other employees and agents and fix their compensation, subject to the Civil Service Law; and

**Sec. 8. 9-A MRSA §6-104, sub-§1, ¶H**, as enacted by PL 1973, c. 762, §1, is amended to read:

H. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the administrator is a party; and

**Sec. 9. 9-A MRSA §6-104, sub-§1, ¶I** is enacted to read:

I. Convene meetings of individuals representing various segments of the public and the consumer credit industry to advise and consult with the administrator concerning the exercise of powers under this Act and to make recommendations to the administrator. The administrator may authorize reimbursement of reasonable expenses incurred in attending the meetings.

**Sec. 10. 9-A MRSA §6-104, sub-§6** is enacted to read:

6. Any rule, license, opinion, bulletin or advisory ruling issued by the Superintendent of Consumer Credit Protection remains applicable to supervised financial organizations after December 31, 1995 unless subsequently modified by the Superintendent of Banking. In addition, any rule, license, opinion, bulletin or advisory ruling issued by the Superintendent of Consumer Credit Protection with respect to all regulated entities other than supervised financial organizations remains in effect after December 31, 1995 as if issued by the Director of Consumer Credit Regulation.

**Sec. 11. 9-A MRSA §6-104-A**, as enacted by PL 1981, c. 501, §27, is amended to read:

#### **§6-104-A. Deputy superintendent**

**1. Deputy superintendent.** The superintendent may appoint a deputy superintendent subject to the applicable ~~Personnel Laws~~ personnel laws.

**2. Powers.** The superintendent may designate the deputy superintendent to perform the duties of the superintendent whenever the latter is absent from the State, whenever the deputy superintendent is directed to do so by the superintendent, whenever there is a vacancy in the office of the superintendent or whenever the superintendent is incapacitated by illness. In the event of a vacancy in the office of the

superintendent, ~~his~~ or the superintendent's incapacitating illness or absence from the State at a time when there is no deputy superintendent, the Commissioner of Business Professional and Financial Regulation may designate a special deputy superintendent to perform the duties of the superintendent for a period not to exceed 6 months.

This section is repealed October 1, 1996.

**Sec. 12. 9-A MRSA §6-105**, as amended by PL 1987, c. 129, §66, is further amended to read:

**§6-105. Administrative powers with respect to supervised financial organizations**

1. With respect to supervised financial organizations, all powers of the administrator under this Act ~~may must~~ be exercised by ~~him~~. ~~The powers of examination and investigation, section 6-106, and administrative enforcement, section 6-108, may also be exercised by the official or agency to whose supervision the organization is subject~~ the Superintendent of Banking.

~~2. If the administrator receives a complaint or other information concerning noncompliance with this Act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The administrator may obtain information about supervised financial organizations from the officials or agencies supervising them.~~

3. ~~The~~ An administrator, as defined in section 1-301, subsection 2, and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits; and take other official action, as they ~~deem~~ determine appropriate, if either of them otherwise is empowered to take the action.

4. In carrying out the responsibilities assigned under section 1-301, subsection 2, the Superintendent of Banking shall designate an employee within the Bureau of Banking and shall assign to that employee the responsibility of promoting the purposes and policies of the Maine Consumer Credit Code with respect to supervised financial organizations.

**Sec. 13. 9-A MRSA Art. VI, Part 3**, as amended, is repealed.

**Sec. 14. 9-B MRSA §111**, as enacted by PL 1975, c. 500, §1, is amended by adding at the end a new paragraph to read:

In addition, with respect to the Bureau of Banking's authority pursuant to Title 9-A, section

1-301, subsection 2, all financial institutions must be supervised in such a way as to protect consumers against unfair practices by financial institutions that provide consumer credit, to provide consumer education and to encourage the development of economically sound credit practices.

**Sec. 15. 9-B MRSA §121**, as enacted by PL 1975, c. 500, §1, is amended to read:

**§121. Bureau of Banking**

There is created under this Title a Bureau of Banking, which ~~shall have~~ has the responsibility of administering the provisions of this Title. In addition, in cases in which a financial institution is the creditor, the Bureau of Banking has the responsibility of administering the provisions of the Maine Consumer Credit Code pursuant to Title 9-A, section 1-301, subsection 2.

**Sec. 16. 9-B MRSA §211, sub-§3**, as enacted by PL 1975, c. 500, §1, is amended to read:

3. **Powers and duties.** The superintendent ~~shall have~~ has authority to organize the ~~Bureau~~ bureau in such a manner as ~~he deems~~ the superintendent considers necessary to carry out ~~his~~ the superintendent's responsibilities under this Title and, in cases in which a financial institution is the creditor, the superintendent's responsibilities under the Maine Consumer Credit Code pursuant to Title 9-A, section 1-301, subsection 2. Such organization ~~shall~~ must take into account ~~both~~ the need for examination and surveillance of individual institutions to ~~assure~~ ensure that each is financially sound and complies with state and applicable federal law and regulations; the need to protect consumers against unfair practices by financial institutions that provide consumer credit; the need for consumer education; the need to encourage the development of economically sound credit practices; and the need for promotion of reasonable and orderly competition among financial institutions and for promoting the provision of financial services consistent with the public interest.

**Sec. 17. 10 MRSA §1126, sub-§1**, as amended by PL 1985, c. 763, Pt. A, §73, is further amended to read:

1. **Certification.** A supervised lender or lessor, or any trade organization or association acting on behalf of supervised lenders or lessors, may submit any proposed form of agreement to the ~~Bureau~~ Office of Consumer Credit ~~Protection~~ Regulation or, in the case of forms of agreement from supervised financial organizations, the Bureau of Banking. Within 45 days, the ~~office~~ or bureau shall either certify the form as complying with the requirements of section 1124, or refuse to certify the form as complying, setting forth written reasons for its refusal. Failure by the

office or bureau to act under this section within 45 days ~~shall be~~ is considered a certification of the form's compliance. A certification of compliance under this section ~~shall be~~ is an absolute bar to any legal proceeding by the director or superintendent for failure to comply with the requirements of section 1124.

**Sec. 18. 10 MRSA §1312, sub-§1-A**, as amended by PL 1981, c. 501, §82, is further amended to read:

**1-A. Administrator.** "Administrator" means the Superintendent Director of the Bureau of Consumer Credit Protection Office of Consumer Credit Regulation.

**Sec. 19. 10 MRSA §1312, sub-§10-A** is enacted to read:

**10-A. Supervised financial organization.** "Supervised financial organization" means supervised financial organization as defined in Title 9-A, section 1-301, subsection 38.

**Sec. 20. 10 MRSA §1328-A** is enacted to read:

**§1328-A. Enforcement; financial institutions**

When a supervised financial organization is the user of a consumer report, the Superintendent of Banking has concurrent authority under section 1328 to examine and obtain compliance from the supervised financial organization. The administrator and the Superintendent of Banking shall cooperate in enforcing this chapter.

**Sec. 21. 32 MRSA §891**, as amended by PL 1989, c. 17, §§1 and 2, is further amended to read:

**§891. Sale of negotiable checks and money orders**

**1. Certificate required.** Financial institutions authorized to do business in this State, as defined in Title 9-B, section 131, subsection 2, may engage directly or indirectly in the business of selling, issuing or registering checks or money orders. No person other than ~~the foregoing shall~~ those financial institutions may engage in such business directly or indirectly without first obtaining a certificate from the superintendent Director of the Office of Consumer Credit Regulation, referred to in this section as the "director."

**2. Application.** Application for a certificate ~~shall must~~ be in writing, under oath and ~~shall be~~ in the form prescribed by the superintendent director. The application ~~shall must~~ state the name and address of the applicant; ~~and~~ the names and business addresses of ~~his the applicant's~~ agents authorized to receive money and transact such business on ~~his the applicant's~~

behalf, other than a financial institution authorized to do business in this State. Upon notice from the superintendent director, the applicant shall file with ~~him the director~~ the director a surety bond with such sureties as the ~~superintendent shall approve~~ director approves or ~~deposit deposits~~ with the Treasurer of State, cash or securities in a sum of not less than \$25,000 nor more than \$100,000 as the ~~superintendent shall deem~~ director determines to be necessary for the protection of the public. Any such bond or deposit ~~shall must~~ be held as security for the payment of checks or money orders sold by such person or ~~his the person's~~ agents, and the superintendent director may make such rules ~~and regulations~~ as may be necessary for the enforcement of this section, including an investigation relative to reputation and integrity, the cost of which investigation ~~shall must~~ be chargeable to ~~such that~~ that person.

**3. Termination of business; display of certificate.** Each person to whom a certificate to engage in such business has been issued shall promptly return for cancellation; the certificate issued to ~~him that person;~~ if he that person ceases to do business or the certificate of any agent of ~~his the person~~ whose authority has been revoked. If the certificate has become lost, destroyed or is otherwise unavailable, an affidavit to this effect ~~shall must~~ be submitted in lieu ~~thereof of the certificate.~~ A certificate ~~shall must~~ be issued for each agent at the time of ~~his the agent's~~ appointment and ~~he shall the agent may~~ not conduct any business without having the certificate prominently on display at ~~his the agent's~~ place of business.

**4. Temporary certificate.** Any person filing the maximum bond may issue to a new agent a temporary certificate in a form approved by the superintendent director. The temporary certificate ~~shall must~~ authorize the new agent to act until the superintendent director grants a certificate or refuses the certificate. The principal dealer, on or before the 15th day of the first month of each calendar quarter, shall file with the superintendent director a statement listing the names and business addresses, together with such other information as the superintendent director may require, of new agents appointed during the previous calendar quarter and pay the appropriate fee.

**5. Biennial fee.** The superintendent director shall establish, and modify from time to time, a fee of at least \$200, but not to exceed \$500, for the biennial certificate payable to the superintendent director and at least \$20, but not to exceed \$50, for each agent listed on or added to the certificate. These fees ~~shall must~~ be credited and used as provided in ~~Title 9-B, section 214~~ Title 9-A, section 6-203.

**6. Renewal of certificate.** Each certificate ~~shall expire expires~~ on December 31st in even-numbered

years. Prior to December 15th in the renewal year there shall ~~must~~ be paid to the ~~superintendent~~ director the fee provided in this section, for each certificate to a principal dealer or agent for the succeeding 2 years. The applicant shall file with the ~~superintendent~~ director substantiation of the renewal of continuance of the bond provided for in this section.

**7. Suspension or revocation of certificate.** The ~~superintendent~~ director may issue a certificate to engage in such business to any person who in ~~his~~ the ~~director's~~ judgment has complied with this section, but ~~he~~ the ~~director~~ may at any time suspend or revoke such certificate, after notice and hearing, for failure to comply with this section, or of any rule ~~or regulation~~ promulgated adopted by him, the director or for failure to pay any check or money order upon presentation for payment.

**8. Penalties.** Whoever violates any provision of this section or any rule ~~or regulation~~ established ~~hereunder shall be punished by~~ under this section is subject to a fine of not more than \$100 for each day during which such violation continues.

**9. Definitions.** ~~As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.~~

A. ~~"Superintendent" means the Superintendent of Banking.~~

**Sec. 22.** ~~32 MRSA §11002, sub-§9,~~ as enacted by PL 1985, c. 702, §2, is repealed and the following enacted in its place:

**9. Administrator.** "Administrator" means the Director of the Office of Consumer Credit Regulation.

**Sec. 23.** ~~32 MRSA §11002, sub-§10~~ is enacted to read:

**10. Supervised financial organization.** "Supervised financial organization" has the same meaning as defined in Title 9-A, section 1-301, subsection 38.

**Sec. 24.** ~~32 MRSA §11051-A~~ is enacted to read:

**§11051-A. Enforcement; financial institutions**

When a supervised financial organization is the creditor, the Superintendent of Banking has concurrent examination authority under section 11051. The administrator and the Superintendent of Banking shall cooperate in enforcing this chapter.

**Sec. 25. Transition.** The following provisions apply to the reassignment of the duties and responsibilities of the Bureau of Consumer Credit

Protection assigned under this Act to the Office of Consumer Credit Regulation.

1. The Office of Consumer Credit Regulation is the successor in every way to the powers, duties and functions transferred under this Act and formerly held by the Bureau of Consumer Credit Protection.

2. All rules, regulations and procedures of the Bureau of Consumer Credit Protection in effect on January 1, 1996 remain in effect until rescinded, revised or amended.

3. All contracts, agreements and compacts of the Bureau of Consumer Credit Protection in effect on January 1, 1996 remain in effect until they expire or are altered by the parties involved in the contracts, agreements or compacts.

4. Any positions authorized and allocated, subject to the personnel laws, to the Bureau of Consumer Credit Protection are transferred to the Office of Consumer Credit Regulation and may continue to be authorized.

5. All records, property and equipment previously belonging to or allocated for the use of the Bureau of Consumer Credit Protection become, on the effective date of this Act, the property of the Office of Consumer Credit Regulation.

**Sec. 26. Maine Revised Statutes amended; revision clause.** Wherever in the Maine Revised Statutes the words "Bureau of Consumer Credit Protection" appear or reference is made to those words, they are amended to read and mean "Office of Consumer Credit Regulation" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**Sec. 27. Maine Revised Statutes amended; revision clause.** Wherever in the Maine Revised Statutes the words "Superintendent of Consumer Credit Protection" appear or reference is made to those words, they are amended to read and mean "Director of Consumer Credit Regulation" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**Sec. 28. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1995-96	1996-97
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**PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF Bureau of Banking**

Positions - Other Count	(1.0)	(1.0)
Personal Services	\$11,800	\$53,700
All Other	18,900	55,000
Capital Expenditures	8,500	
<b>TOTAL</b>	<b>\$39,200</b>	<b>\$108,700</b>

Allocates funds to reflect the elimination of one vacant Bank Examiner position and the transfer of one Senior Consumer Credit Examiner position and one Consumer Credit Examiner position from the Bureau of Consumer Credit Protection and associated operating costs necessary for the Bureau of Banking to administer the Maine Consumer Credit Code for financial institutions.

**Bureau of Consumer Credit Protection**

Positions - Other Count	(-16.0)	(-16.0)
Personal Services	(438,630)	(741,264)
All Other	(50,000)	(182,487)
<b>TOTAL</b>	<b>(\$488,630)</b>	<b>(\$923,751)</b>

Transfers one Senior Consumer Credit Examiner position and one Consumer Credit Examiner position to the Bureau of Banking and deallocates funds to reflect the elimination of the remainder of the bureau as of January 1, 1996.

**Office of Consumer Credit Regulation**

Positions - Other Count	(11.0)	(11.0)
Personal Services	260,850	468,800
All Other	61,350	125,450
<b>TOTAL</b>	<b>\$322,200</b>	<b>\$594,250</b>

Allocates funds to establish the Office of Consumer Credit Regulation as of January 1, 1996 with one Director position, one Deputy Superintendent position, 2 Principal Examiner positions, 2 Senior Examiner positions, one

Consumer Outreach Specialist position, one Examiner position, one Administrative Secretary position, one Clerk Typist II position and one Clerk Typist III position and associated operating costs. The Deputy Superintendent position is eliminated as of October 1, 1996.

**DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

<b>TOTAL</b>	<b>(\$127,230)</b>	<b>(\$220,801)</b>
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**Sec. 29. Effective date.** This Act takes effect January 1, 1996.

Effective January 1, 1996.

**CHAPTER 310**

**H.P. 950 - L.D. 1339**

**An Act to Create Fair School Bus Driver Licensing**

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

**Sec. 1. 29-A MRSA §2303, sub-§1,** as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**1. Requirements.** The Except as provided in subsection 6, the Secretary of State may not issue a school bus operator endorsement unless the applicant:

- A. Holds a valid driver's license for operation of the class vehicle and has at least one year's experience as a licensed motor vehicle operator;
- B. Is at least 21 years of age and has held a driver's license for at least one year;
- C. Meets all training, physical, mental and moral requirements of the Commissioner of Education, as certified to the Secretary of State in writing;
- D. Is qualified as a driver under the motor carrier safety regulations of the Federal Highway Administration, if that person or that person's employer is subject to those regulations;
- E. Passes an examination of the person's ability to operate the specific vehicle that will be driven as a school bus or a vehicle of comparable type;