

# 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**

pricing studies conducted in 1995 and 1996. The final report must include conclusions from the study.

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

Effective July 3, 1995.

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## CHAPTER 411

H.P. 1107 - L.D. 1555

### An Act to Amend the Emergency Planning and Community Right to Know Laws

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

**Sec. 1. 37-B MRSA §797, first ¶,** as amended by PL 1993, c. 355, §1, is further amended to read:

A person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory reporting form to the commission, ~~the Department of Environmental Protection,~~ the local emergency planning committee and the local fire department with jurisdiction over the facility. The inventory reporting form and fee must be submitted by March 1st annually for the previous calendar year, except that the inventory reporting form and fee may be submitted with the registration fee in the year of reporting if the reporting facility can project its inventory levels for the current year. Information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year is required on the form. These forms must state, at a minimum:

See title page for effective date.

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## CHAPTER 412

S.P. 515 - L.D. 1400

### An Act to Amend the Adoption Laws

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

**Whereas,** many adoptions have been unnecessarily delayed because of differing interpretations of the effect of Public Law 1993, chapter 686; and

**Whereas,** some adoptions will not be finalized until the meaning of the law is clarified through legislation; 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. 19 MRSA §1102, sub-§4,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**4. Birth parent; biological parent.** "Birth parent" or "biological parent" means a person who is the biological parent of a child.

A. "Birth father" means the male birth parent of a child.

B. "Birth mother" means the female birth parent of a child.

**Sec. 2. 19 MRSA §1102, sub-§8-A** is enacted to read:

**8-A. Parent.** "Parent" means the legal parent or the legal guardian when no legal parent exists.

**Sec. 3. 19 MRSA §1103, sub-§2,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**2. District Court.** The District Court has jurisdiction to conduct hearings pursuant to section ~~1104, subsection 4~~ 1115.

**Sec. 4. 19 MRSA §1104, sub-§2,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**2. Independent adoption.** If the adoptee is not placed by a licensed child placing agency or the department, the petition for adoption must be filed in the county where the adoptee resides, where the petitioners reside or where the consent has been filed.

**Sec. 5. 19 MRSA §1104, sub-§4,** as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed.

**Sec. 6. 19 MRSA §§1107 and 1108** are enacted to read:

#### §1107. Indian Child Welfare Act

The Indian Child Welfare Act, United States Code, Title 25, Section 1901 et seq. governs all

proceedings under this chapter that pertain to an Indian child as defined in that Act.

**§1108. Application of prior laws**

The laws in effect on July 31, 1994 apply to proceedings for which any of the following occurred before August 1, 1994:

- 1. Consent.** The filing of a consent;
- 2. Surrender and release.** The filing of a surrender and release;
- 3. Waiver of notice.** The filing of a waiver of notice by a father or putative father under former section 532-C;
- 4. Termination of parental rights.** The issuance of an order terminating parental rights; or
- 5. Adoption petition.** The filing of an adoption petition.

**Sec. 7. 19 MRSA §1111, sub-§2,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**2. Notification.** If the judge finds from the affidavit of the birth mother that the putative father's whereabouts are known, the judge shall order that notice of the mother's intent to consent to adoption or to execute a surrender and release, or the mother's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative father of the child. If the judge finds that the putative father's whereabouts are unknown, then the court shall order notice by publication in accordance with the Maine Rules of Civil Procedure. If the birth mother does not know or refuses to tell the court who the birth father is, the court may order publication in accordance with the Maine Rules of Civil Procedure in a newspaper of general circulation in the area where the petition is filed, where the birth mother became pregnant or where the putative father is most likely to be located. The notice must specify the names of the birth mother and the child.

**Sec. 8. 19 MRSA §1111, sub-§2-A** is enacted to read:

**2-A. Waiver of notice by putative father or legal father who is not the biological father.** A putative father or a legal father who is not the biological father may waive his right to notice in a document acknowledged before a notary public or a judge of probate. The document must indicate that the putative father or legal father understands the consequences of the waiver of notice. The legal father must attach to the waiver of notice document an affidavit stating that, although he is the legal father, he is not the biological father. The notary public may not

be an attorney who represents either the mother or any person who is likely to become the legal guardian, custodian or parent of the child.

**Sec. 9. 19 MRSA §1111, sub-§6,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**6. Notice.** Notice of the hearing must be given to the putative father, the birth mother, the attorney for the child and any other parties the judge determines appropriate. Notice need not be given to a putative father or a legal father who is not the biological father and who has waived his right to notice as provided in subsection 2-A.

**Sec. 10. 19 MRSA §1112, sub-§1,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**1. Surrender and release or consent to adopt.** With the approval of the judge of probate of any county within the State and after a determination by the judge that a surrender and release or a consent is in the best ~~interests~~ interest of all parties the child, the parents or surviving parent of a child may:

- A. Surrender and release all parental rights to the child and the custody and control of the child to a licensed child placing agency or the department to enable the licensed child placing agency or the department to have the child adopted by some suitable person; or
- B. Consent to have the child adopted by a specified petitioner.

The parents or surviving parent must execute the surrender and release or consent in the presence of the judge. The waiver of notice by the father or putative father is governed by section 1111, subsection 2-A.

**Sec. 11. 19 MRSA §1112, sub-§2,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**2. Conditions.** The court may approve a consent or a surrender and release only if the following conditions are met:

A. A licensed child placing agency or the department certifies to the court that counseling was provided or was offered and refused; . This requirement does not apply if:

- (1) One of the petitioners is a blood relative; or
- (2) The adoptee is an adult;

B. The court has, ~~at least 3 days prior to receiving the parent's signature,~~ explained the individ-

ual's parental rights and responsibilities ~~and~~, the effects of the consent or the surrender and release, that the individual has the right to revoke the consent or surrender and release within 3 days and the existence of the adoption registry and the services available under Title 22, section 2706-A; and

C. The court determines that the consent or the surrender and release has been duly executed and was given freely after the parent was informed of the parent's rights; and

D. At least 3 days have elapsed since the parents or parent executed the surrender and release or consent and the parents or parent did not withdraw or revoke the consent or surrender and release before the judge or, if the judge was not available, before the register.

**Sec. 12. 19 MRSA §1112, sub-§3**, as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed and the following enacted in its place:

**3. Records.** The consent or surrender and release must be executed in duplicate. One original consent or surrender and release must be filed in the Probate Court where the consent or the surrender and release is executed. The other original consent or the surrender and release must be filed in the Probate Court in which the petition is filed. The court in which the consent or surrender and release is executed shall provide an attested copy to each consenting or surrendering party and 2 attested copies to the transferee agency, attorney or adoptive parents. The copy given to the consenting or surrendering party must contain a statement explaining the importance of keeping the court informed of a current name and address.

**Sec. 13. 19 MRSA §1112, sub-§4**, as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**4. Validity.** ~~To be valid, a~~ A consent or a surrender and release executed in this State must be in accordance with this chapter is not valid until 3 days after it has been executed.

**Sec. 14. 19 MRSA §1112, sub-§8** is enacted to read:

**8. Reciprocity.** The court shall accept a consent or surrender and release by a court of comparable jurisdiction in another state if that court has complied with the requirements of that state. The court shall accept a waiver of notice by a putative father or a legal father who is not the biological father that was executed in another state and in compliance with that state's requirements.

**Sec. 15. 19 MRSA §1114, sub-§3, ¶A**, as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

A. The court ~~shall~~ may appoint a guardian ad litem for the child. The court shall pay reasonable costs and expenses for the guardian ad litem. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

**Sec. 16. 19 MRSA §1115, sub-§2**, as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**2. Determinations.** If the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a viable plan, the court shall attempt to notify the birth parents, who must be given an opportunity to present an acceptable plan for the child. If either or both parents are able and willing to assume physical custody of the child, then the court shall declare the consent or the surrender and release void.

If the birth parents are not notified or are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the birth parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, then the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

**Sec. 17. 19 MRSA §1122, sub-§2, ¶A**, as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed and the following enacted in its place:

A. A putative father or a legal father who is not the biological father:

(1) Who received notice and who failed to respond to the notice within the prescribed time period;

(2) Who waived his right to notice under section 1111, subsection 2-A; or

(3) Who failed to meet the standards of section 1111, subsection 8;

**Sec. 18. 19 MRSA §1123, sub-§1, ¶E**, as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed.

**Sec. 19. 19 MRSA §1124**, as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed.

**Sec. 20. 19 MRSA §1125, sub-§1**, as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**1. Adoption study; investigation.** Upon the filing of a petition for adoption of a minor child, ~~unless one of the petitioners is a blood relative of the child or the petitioners have received the child from the department or from a licensed child placing agency,~~ the court shall notify the department or a licensed child placing agency, which shall, ~~either through its own workers or through a licensed adoption agency,~~ investigate the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. The department or agency shall submit the report to the court. The court may order an adoption study, investigation and home study if one of the petitioners is a blood relative.

**Sec. 21. 19 MRSA §1127, sub-§1,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**1. Allowable payments.** ~~Only~~ Except when one of the petitioners is a blood relative or the adoptee is an adult, only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this chapter:

- A. The actual cost of legal services related to the consent or the surrender and release and to the adoption process;
- B. Prenatal and postnatal counseling expenses for the birth mother;
- C. Prenatal, birthing and other related medical expenses for the birth mother;
- D. Necessary transportation expenses to obtain the services listed in paragraphs A, B and C;
- E. Foster care expenses for the child;
- F. Necessary living expenses for the birth mother and the child; ~~and~~
- G. For the birth father, legal and counseling expenses related to the consent, the surrender and release and the adoption process; ~~and~~
- H. Fees to a licensed child placing agency providing services in connection with the pending adoption.

**Sec. 22. 19 MRSA §1127, sub-§2,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**2. Accounting.** Prior to the dispositional hearing pursuant to section 1129, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The

accounting report must be signed under penalty of perjury and must be submitted to the court on or before the final decree is granted. The accounting report must be itemized and show the services related to the adoption or to the placement of the adoptee for adoption that were received by the adoptee's parents, by the adoptee, or on behalf of the petitioner. The accounting must include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed adoption agency or other person or organization who received any funds or anything of value from the petitioner in connection with the adoption or the placement of the adoptee with the petitioner, or participated in any way in the handling of the funds, either directly or indirectly. This subsection does not apply when one of the petitioners is a blood relative or the adoptee is an adult.

**Sec. 23. 19 MRSA §1129, sub-§1, ¶C,** as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed.

**Sec. 24. 19 MRSA §1129, sub-§2, ¶B,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

B. The capacity and disposition of the adopting person or persons, the birth parent or birth parents or the putative father to educate and give the adoptee love, affection and guidance and to educate and create a milieu that fosters the religion, racial identity and culture of the adoptee to meet the needs of the adoptee, taking into account the adoptee's cultural, ethnic or racial background. An adoption may not be delayed or denied solely because the adoptive parent and the child do not share the same race, color or national origin; and

**Sec. 25. 19 MRSA §1129, sub-§3,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**3. Final decree.** The court shall enter its findings in a written decree that includes the new name of the adoptee ~~and any other name by which the adoptee has been known.~~ The final decree must further order that from the date of the decree the adoptee is the child of the petitioner and must be accorded the status set forth in section 1105. If the court determines that it is in the best interest of the child, the court may require that the names of the child and of the petitioners be kept confidential.

**Sec. 26. 19 MRSA §1129, sub-§4,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**4. Notice upon completion.** Upon ~~finalization~~ completion of an adoption proceeding, the birth parents who consented to an adoption or who executed

a surrender and release must be notified of the ~~finalization completion by certified regular mail, restricted delivery and return receipt requested,~~ at their last known address. When the birth parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given to the department and the department shall notify the birth parents of the ~~finalization completion by certified regular mail, restricted delivery and return receipt requested,~~ at their last known address. Actual receipt of the notice is not a precondition of ~~finalization completion~~ and does not affect the rights or responsibilities of adoptees or adoptive parents.

**Sec. 27. 19 MRSA §1130, sub-§3,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**3. Representation.** An attorney or guardian ad litem appointed to represent a party in an adoption proceeding in Probate Court continues to represent the interests of that ~~client party~~ in any appeal unless otherwise ordered by the court.

**Sec. 28. 19 MRSA §1131,** as enacted by PL 1993, c. 686, §5 and affected by §13, is amended to read:

**§1131. Records confidential**

~~All Notwithstanding any other provision of law, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are declared to be confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. The adoption records may be examined only upon authorization by the judge of the Probate Court. In any case where it is considered proper that an examination be authorized, the judge may in lieu of an examination, or in addition to an examination, grant authority to If a Probate Court Judge determines that examination of records pertaining to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the register of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure.~~

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18, the adopted child's descendants, adoptive parents or legal guardian on petition of the court.

**Sec. 29. 19 MRSA §1136, sub-§1,** as enacted by PL 1993, c. 686, §5 and affected by §13, is repealed and the following enacted in its place:

**1. Grounds.** A judge of probate may, on petition of 2 or more persons, after notice and hearing,

reverse and annul a decree of the Probate Court for the following reasons:

A. The court finds that the adoption was obtained as a result of fraud, duress or illegal procedures; or

B. Other good cause shown consistent with the best interest of the child.

**Sec. 30. 19 MRSA §1136, sub-§3** is enacted to read:

**3. Certificate of annulment.** After the Probate Court annuls a decree of adoption, the Register of Probate shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

**Sec. 31. Application.** This Act applies to adoption petitions filed on or after the effective date of this Act. The Probate Court shall apply either Public Law 1993, chapter 686 or this Act to adoptions for which any of the documents listed in the Maine Revised Statutes, Title 19, section 1108, were executed on or after August 1, 1994, but before the effective date of this Act, whichever Act reduces delay in the adoption process for that particular adoption, consistent with the best interest of the child.

**Sec. 32. Forms.** The Advisory Committee on Probate Rules shall adopt by rule a form that Maine Probate Courts will mail to a court of comparable jurisdiction in another jurisdiction to provide to parents executing consents or surrender and releases when the adoption is anticipated to be completed in the State. The form must provide an explanation of Maine adoption law and must provide a place for the parents to sign certifying that they received the form. The court in the other jurisdiction shall send a copy of the executed form to the Maine Probate Court.

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

Effective July 3, 1995.

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**CHAPTER 413**

**H.P. 576 - L.D. 781**

**An Act Protecting a Citizen's Right of Petition under the Constitution**

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

**Sec. 1. 14 MRSA §556** is enacted to read: