

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

Sec. 2. 35-A MRSA §§713 to 715 are enacted to read:

§713. Unregulated business ventures of utilities

A utility may not charge its ratepayers for costs attributable to unregulated business ventures undertaken by the utility or an affiliated interest. The commission shall allocate, between a utility's shareholders and ratepayers, costs for facilities, services or intangibles, including good will or use of a brand name, that are shared between regulated and unregulated business activities. The commission shall also attempt to ensure that the utility or the affiliated interest does not have an undue advantage in any competitive market as a result of its regulated status or its affiliation with a regulated utility.

Complaints by entities competing with a utility or an affiliated interest in an unregulated market, alleging that the utility or affiliated interest has an undue competitive advantage as a result of any relationship with the parent or affiliated regulated utility must be adjudicated by the commission. The commission shall render a decision on any complaint filed under this section within 9 months of the date of the filing. The commission may dismiss without hearing any complaint that it concludes is clearly intended to harass or delay, is frivolous or is clearly without merit.

A complaint filed under this section must specify, to the extent possible, the nature and extent of the alleged competitive advantage and the basis for the belief that a competitive advantage exists. The utility shall respond to the complaint within 10 days of receiving notice from the commission of the complaint. Within 10 days of receiving the utility's response, the commission shall determine whether the complaint is clearly intended to harass or delay, is frivolous or is clearly without merit.

For the purposes of this section, the term "affiliated interest" has the same meaning as in section 707, subsection 1, paragraph A.

§714. Notice to commission

Within 30 days of the commencement of operations by a utility of any business activity not regulated by the commission, the utility shall notify the commission of the existence of those operations.

§715. Rulemaking

The commission shall adopt rules that prescribe the allocation of costs for facilities, services or intangibles that are shared between regulated and unregulated activities of a utility or an affiliated interest as defined in section 707, subsection 1, paragraph A. Rules adopted pursuant to this section

are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 238

H.P. 602 - L.D. 827

An Act to Authorize Corporate Officers to Represent Their Corporation in Certain Civil Actions in District Court

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

Sec. 1. 4 MRSA §807, sub-§3, ¶J, as enacted by PL 1995, c. 599, §3, is amended to read:

J. For the purposes of defending a civil action filed against a corporation, an officer of the corporation if the corporation is organized in this State and has 2 5 or fewer shareholders.

See title page for effective date.

CHAPTER 239

S.P. 257 - L.D. 826

An Act to Amend the Adoption Laws Relating to Consent and Forms for Surrender and Release

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

Sec. 1. 18-A MRSA §9-104, sub-§(b), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(b) 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; ~~or where the petitioners reside or where the consent has been filed.~~

Sec. 2. 18-A MRSA §9-202, sub-§(a), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(a) 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 interest of the child, the parents or surviving parent of a child may at any time after the child's birth:

(1) 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 a suitable person; or

(2) Consent to have the child adopted by a specified petitioner.

The parents or the surviving parent must execute the surrender and release or the consent in the presence of the judge. The adoptee, if 14 years of age or older, must execute the consent in the presence of the judge. The waiver of notice by the legal father who is not the biological father or putative father is governed by section 9-201, subsection (c).

Sec. 3. 18-A MRSA §9-202, sub-§(c), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(c) ~~The consent or the surrender and release must be executed in duplicate. One~~ The 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 An attested copy of the consent or surrender and release must be filed in the Probate Court in which the petition is filed. The court in which the consent or the surrender and release is executed shall provide an attested copy to each consenting or surrendering party and 2 an attested copies copy to the transferee transferring agency, the adoptive parents' attorney or the 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. 4. 18-A MRSA §9-302, sub-§(a), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(a) Before an adoption is granted, written consent to the adoption must be given by:

(1) The adoptee, if the adoptee is 14 years of age or older;

(2) Each of the adoptee's living parents, except as provided in subsection (b);

(3) The person or agency having legal custody or guardianship of the child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a judge of probate, may be overruled by the judge. In order for the judge to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence,

that the person or agency acted unreasonably. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is on the petitioner, the person or agency should proceed if the person or agency has important facts necessary to the petitioner in presenting the petitioner's case. The judge shall consider the following:

(i) Whether the person or agency determined the needs and interests of the child;

(ii) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;

(iii) Whether the person or agency made the decision consistent with the facts;

(iv) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(v) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding consent; and

(4) A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent.

A petition for adoption must be pending before a consent is executed.

Sec. 5. 18-A MRSA §9-304, sub-§(a), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(a) Upon the filing of a petition for adoption of a minor child, ~~when a petitioner is not a blood relative of the child,~~ the court shall notify direct the department or a licensed child-placing agency, ~~which shall investigate to conduct a study and make a report to the court.~~ The study must include an investigation of 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 within 60 days. The court may order an adoption study, investigation and home study if a petitioner is a blood relative of the child.

(1) If the court has a report that provides sufficient, current information, the court may waive the requirement of a study and report.

(2) If the petitioner is a blood relative of the child, the court may waive the requirement of a study and report.

Sec. 6. Effective date. This Act takes effect October 1, 1997.

Effective October 1, 1997.

CHAPTER 240

S.P. 409 - L.D. 1330

An Act to Ensure Adequate Review of Maintenance Dredging

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

Sec. 1. 38 MRSA §480-E, sub-§§7 and 8 are enacted to read:

7. Individual permit; maintenance dredging. Notwithstanding section 344, subsection 7, an individual permit or consistency determination issued by the department pursuant to this article is required for maintenance dredging if the amount of material to be dredged exceeds 50,000 cubic yards.

Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining a permit for maintenance dredging under this subsection.

8. Permit by rule; maintenance dredging. Maintenance dredging may be performed with a permit by rule only if the applicant has been issued an individual permit for dredging in the same location within the last 10 years.

See title page for effective date.

CHAPTER 241

H.P. 508 - L.D. 699

An Act to Clarify the General Powers of Attorney

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

Sec. 1. 18-A MRSA §5-507 is enacted to read:

§5-507. Powers of attorney-in-fact

A power of attorney that contains language appointing the attorney-in-fact to care for, manage, control and handle all of the principal's business, financial, property and personal affairs in as full and complete a manner as the principal might do does not limit the generality of the powers of the attorney-in-fact by the inclusion in the power of attorney of a list of the specific powers granted to the attorney-in-fact. Nothing in this section may be construed to broaden or add to any powers specifically enumerated in a durable health care power of attorney, whether or not the durable health care power of attorney is incorporated within any other power of attorney.

See title page for effective date.

CHAPTER 242

H.P. 767 - L.D. 1044

An Act to Clarify Requirements Pertaining to the Maine Certificate of Need Act

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

Sec. 1. 22 MRSA §304-A, sub-§1-A is enacted to read:

1-A. Acquisition of control. Any acquisition of control of a health care facility under lease, management agreement or comparable arrangement or through donation that would have required review if the acquisition of control had been by purchase, except in emergencies when such acquisition of control is at the direction of the department;

Sec. 2. 22 MRSA §308, sub-§1-A is enacted to read:

1-A. Acquisition of control. The department shall waive the requirements of section 309, subsection 1, paragraphs C and D and conduct a simplified review process in accordance with this section for an acquisition of control of health care facilities pursuant to section 304-A, subsection 1-A, if the acquisition consists of a management agreement or similar arrangement and primarily involves day-to-day operation of the facility in its current form. The department shall complete its review of arrangements qualifying for simplified review within 45 days of the filing of a completed application.

Sec. 3. Report by department. No later than January 1, 1998 the Department of Human Services shall furnish a written report to the joint standing committee of the Legislature having jurisdic-