

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 1-452

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1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

The salaries of the other subordinate officials and employees of that commission, other than those of the general counsel, the secretary, the director of finance and the director of engineering technical analysis, shall be subject to the Personnel Law. The commissioners and all employees shall receive actual expenses when traveling on official business.

Effective September 23, 1983.

CHAPTER 345

S.P. 395 - L.D. 1195

AN ACT to Revise the Statutes relating to
Radiation Control.

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

- Sec. 1. 10 MRSA §51 is repealed.
- Sec. 2. 10 MRSA §52, as amended by PL 1981, c. 439, §§1 to 4, is reallocated to 38 MRSA §1402.
- Sec. 3. 10 MRSA §§53 and 54 are repealed.
- Sec. 4. 10 MRSA §103, as amended by PL 1981, c. 109, §§1 and 2, is repealed.
- Sec. 5. 10 MRSA §104 is repealed.
- Sec. 6. 10 MRSA §105, as enacted by PL 1979, c. 684, §3, is repealed.
- Sec. 7. 10 MRSA §151 is repealed.
- Sec. 8. 10 MRSA §151-A, as enacted by PL 1981, c. 439, §5, is repealed.
- Sec. 9. 10 MRSA §152, as repealed and replaced by PL 1981, c. 439, §6, is repealed.
- Sec. 10. 10 MRSA §153, as amended by PL 1981, c. 439, §7, is repealed.
- Sec. 11. 10 MRSA §§201, 202 and 203 are repealed.
- Sec. 12. 10 MRSA §§251 to 256, as enacted by PL 1977, c. 355, are reallocated to 35 MRSA §§3371 to 3376.

Sec. 13. 22 MRSA c. 160 is enacted to read:

CHAPTER 160

RADIATION PROTECTION ACT

§671. Declaration of policy

It is the policy of this State in furtherance of its responsibility to protect the public health, safety and the environment:

1. Compatible regulatory program. To institute and maintain a regulatory program for sources of ionizing and nonionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the Federal Government; an integrated effective system of regulation within the State and a system consonant insofar as possible with those of other states;

2. Safe use of sources. To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public; and

3. State authority. Nothing in this Act may be construed to limit the authority of the State to regulate radioactive materials, or the facilities in which they are used or stored, to the fullest extent consistent with federal law.

§672. Purpose

It is the purpose of this Act to effectuate the policies set forth in section 671 by providing for:

1. Public health and safety. A program of effective regulation of sources of radiation for the protection of the public health and safety;

2. Orderly regulatory program. A program to promote an orderly regulatory pattern within the State, among the states and between the Federal Government and the State, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation so that duplication of regulation may be minimized;

3. Assumption of responsibilities. A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source and special nuclear materials and radiation-generating equipment; and

4. Use of sources. A program to permit utilization of sources of radiation consistent with the health and safety of the public.

§673. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.

1. By-product material. "By-product material" means:

A. Any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

B. The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

2. Civil penalty. "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but does not include criminal penalties.

3. Closure or site closure. "Closure or site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site following termination of licensed operation.

4. Decommissioning. "Decommissioning" means the series of activities undertaken beginning at the time of closing of a nuclear power plant to ensure that the final disposition of the site or any radioactive components or material, but not including spent fuel, associated with the plant is accomplished safely in compliance with all applicable state and federal laws. Decommissioning includes activities undertaken to prepare a nuclear power plant for final disposition, to monitor and maintain it after closing and to effect final disposition of any radioactive components of the nuclear power plant.

5. Disposal of low-level radioactive waste. "Disposal of low-level radioactive waste" means the isolation of low-level waste from the biosphere inhabited by people and their food chains.

6. High-level radioactive waste. "High-level radioactive waste" means the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from that liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the United States Nuclear Regulatory Commission, consistent with existing law, determines by rule to require permanent isolation.

7. License. "License" means a license, issued to a named person upon application filed pursuant to the regulations promulgated pursuant to this Act, to use, manufacture, produce, transfer, receive, acquire or possess quantities of, or devices or equipment utilizing, radioactive material.

8. Low-level radioactive waste. "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or byproduct material as defined in the United States Code, Title 42, Section 2014(e)(2), the Atomic Energy Act of 1954, section 11e(2); and the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste.

9. Radiation. "Radiation" means ionizing radiation and nonionizing radiation.

A. "Ionizing radiation" means gamma rays and x rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles; but not sound or radio waves, or visible, infrared or ultraviolet light.

B. "Nonionizing radiation" means any electromagnetic radiation, other than ionizing electromagnetic radiation, and any sonic, ultrasonic or infrasonic wave.

10. Radiation generating equipment. "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation, except those which emit radiation, only from radioactive material.

11. Radioactive material. "Radioactive material" means any material which emits ionizing radiation spontaneously. It includes accelerator-produced, by-product, naturally occurring, source and special nuclear materials.

12. Registration. "Registration" means regis-

tration with the department in accordance with rules adopted pursuant to this Act.

13. Source material. "Source material" means:

A. Uranium or thorium, or any combination thereof, in any physical or chemical form; or

B. Ores which contain by weight 1/20th of 1%, 0.05%, or more of uranium, thorium or any combination thereof. Source material does not include special nuclear material.

14. Source material mill tailings. "Source material mill tailings" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by those solution extraction processes.

15. Source material milling. "Source material milling" means any processing of ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material mill tailings.

16. Sources of radiation. "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

17. Special nuclear material. "Special nuclear material" means:

A. Plutonium, uranium 233 and uranium enriched in the isotope 233 or in the isotope 235, but does not include source material; or

B. Any material artificially enriched by any of the material listed in paragraph A, but does not include source material.

18. Spent nuclear fuel. "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

19. Transuranic waste. "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than 5 years, in excess of 10 nanocuries per gram.

§674. State Radiation Control Agency

1. Designated. The Department of Human Services, in this chapter referred to as the "department," is designated as the State Radiation Control Agency.

2. Commissioner. The Commissioner of Human Services shall be referred to as the "commissioner," who shall perform the functions vested in the department pursuant to this Act.

3. Employees. In accordance with the laws of this State, the department may employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this Act.

4. Authority. The department shall, for the protection of the public health and safety:

A. Develop programs for the evaluation and control of hazards associated with use of sources of radiation;

B. Develop programs with due regard for compatibility with federal programs for regulation of by-product, source and special nuclear materials;

C. Develop programs with due regard for consistency with federal programs for regulation of radiation generating equipment;

D. Formulate, adopt, promulgate and repeal codes and rules, which may provide for licensing or registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the Federal Government;

Promulgate such rules in addition to the rule specified in this paragraph as are appropriate to carry out the purposes of this Act, including, but not limited to, rules concerning acquisition, ownership, possession and use of radioactive materials or devices or equipment utilizing radioactive material.

E. Issue such orders or modifications thereof as may be necessary in connection with proceedings under section 677;

F. Advise, consult and cooperate with other agencies of the State, Federal Government, other

states and interstate agencies, political subdivisions and other organizations concerned with control of sources of radiation;

G. May accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

H. Encourage, participate in, or conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation; and

I. Collect and disseminate information relating to control of sources of radiation, including:

(1) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(2) Maintenance of a file of registrants possessing sources of radiation requiring registration under this Act and any administrative or judicial action pertaining thereto; and

(3) Maintenance of a file of all of the department's rules relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

5. Coordination. The commissioner shall serve as the coordinator of radiation activities among the Bureau of Civil Emergency Preparedness, Department of Public Safety and Department of Environmental Protection. The commissioner shall:

A. Consult with and review regulations and procedures of the agencies and federal law to assure consistency and to prevent unnecessary duplication, inconsistencies or gaps in regulatory requirements; and

B. Review, prior to promulgation, the proposed rules of all agencies of the State relating to use of control of radiation, to assure that these rules are consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and rules of other agencies of the State. The review shall be completed within 15 days.

If the commissioner determines that proposed rules

are inconsistent with rules of other agencies of the State or federal law, he shall consult with the agencies involved in an effort to resolve these inconsistencies. In the event no inconsistency is reported within 15 days, the proposed rules shall be presumed consistent for the purposes of this subsection. Upon notification by the commissioner that the inconsistency has not been resolved, the Governor may find that the proposed rules or parts thereof are inconsistent with rules of other agencies of the State or the Federal Government and may issue or order to that effect, in which event the proposed rules or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules to achieve consistency with the proposed rules.

6. Information. The several agencies of the State shall keep the commissioner fully and currently informed as to their activities relating to regulation of sources of radiation.

7. Report. The commissioner shall report prior to January 31, 1984, to the joint standing committee of the Legislature having jurisdiction over natural resources on the need for regulation of nonionizing radiation.

§675. Advisory Committee on Radiation

1. Appointment. The Governor may appoint an Advisory Committee on Radiation consisting of 5 members with training and experience in the various fields in which sources of radiation are used. Members of the committee shall serve at the discretion of the commissioner and receive no salary for services, but may be reimbursed for actual expenses incurred in connection with attendance at committee meetings or for authorized business of the committee.

2. Duties. The committee, if appointed, shall make recommendations to the commissioner and furnish such advice as may be requested by the department on matters relating to the regulation of sources of radiation.

§676. Coordination and liaison with federal agencies

The following agencies shall serve as liaison with federal agencies and coordinate administration of the issues indicated.

1. Health and safety. The Department of Human Services shall coordinate monitoring of radiation and health and safety in medical and industrial use of

radiation, and shall serve as liaison with the United States Food and Drug Administration and the United States Nuclear Regulatory Commission, except as specified in subsection 4.

2. Emergency procedures. Bureau of Civil Emergency Preparedness shall coordinate off-site emergency procedures for nuclear facilities, and shall serve as liaison with the federal agencies with jurisdiction over defense activities and emergency response management.

3. Transportation. The Department of Public Safety shall coordinate transportation of radioactive materials.

4. Radioactive waste. The Department of Environmental Protection shall coordinate management of and shall serve as liaison with the United States Nuclear Regulatory Commission for high-level and low-level radioactive wastes.

5. Geology. The Maine Geological Survey shall provide technical assistance for waste management.

6. Energy. The Office of Energy Resources shall serve as liaison with the United States Department of Energy.

7. Environment. The Department of Environmental Protection shall serve as liaison with the United States Environmental Protection Agency.

§677. Licensing and registration of sources of radiation

1. Radioactive material, devices or equipment. The department shall provide by rule for licensing of radioactive material or devices or equipment, including nuclear power plants, utilizing those materials. That rule shall provide for amendment, suspension or revocation of licenses.

2. Other sources. The department may require registration or licensing of other sources of radiation.

3. Exemptions. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of these sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

4. Recognition of other licenses. Rules promulgated pursuant to this Act may provide for recognition of other state or federal licenses as the department may deem desirable, subject to such registration requirements as the department may prescribe.

5. Federal license or permit required. No person may manufacture, construct, produce, transfer, acquire or possess any special nuclear material, source material, by-product material, production facility or utilization facility, or act as an operator of a production or utilization facility wholly within this State, unless he has first obtained a license or permit for the activity in which he proposes to engage from the United States Nuclear Regulatory Commission if, pursuant to federal law, the commission requires a license or permit to be obtained by persons proposing to engage in activities of the same type over which it has jurisdiction.

§678. Source material processing and related material

State regulation of source material processing shall be subject to the primary jurisdiction of the Department of Environmental Protection, as specified in Title 38.

§679. Low-level radioactive waste disposal

State regulation of low-level radioactive waste disposal shall be subject to the primary jurisdiction of the Department of Environmental Protection, as specified in Title 38.

§680. Radiation user fees

1. Nuclear power plants. The annual registration fee for operating nuclear power plants is \$59,200 per year.

2. Radiation protection services. The department shall prescribe and collect such fees as may be established by regulation for radiation protection services provided under this Act. Services for which fees may be established include, but are not limited to:

A. Registration of radiation generating equipment and other sources of radiation;

B. Issuance, amendment and renewal of licenses for radioactive materials;

C. Inspections of registrants or licensees; and

D. Environmental surveillance activities to assess the radiological impact of activities conducted by licensees.

3. Fees. In determining rates of these fees, the department shall, as an objective, obtain sufficient funds therefrom to reimburse the State for the direct and indirect costs of the radiation protection services specified in subsection 2. The department shall take into account any special arrangements between the State and a registrant, licensee, another state or a federal agency whereby the cost of the service is otherwise partially or fully recovered.

4. Report. The department shall report annually, before January 31st, to the joint standing committee of the Legislature having jurisdiction over natural resources on the fee schedule established and the justification for those fees.

5. Exemptions. The department may, upon application by an interested person, or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this paragraph may include activities, such as, but not limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

6. Penalties. When a registrant or licensee fails to pay the applicable fee, the department may take action in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

7. Permanent fund. All fees shall be paid to the Treasurer of State to be maintained in a permanent fund and used by the Department of Human Services for carrying out the provisions of this Act.

§681. Surety requirements

§682. Inspections

1. Authorized. The department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this Act and the rules issued thereunder, except that entry into areas under the jurisdiction of the Federal Government or its duly designated representative.

2. Equipment inspection. The department shall promulgate rules requiring periodic inspection, cer-

tification and calibration of equipment, capable of emitting ionizing radiation, by certified technicians. The rules shall not provide for inspection, certification and calibration more frequently than annually.

3. Technician certification. The department shall promulgate rules providing for the qualifications and certification of technicians to inspect, certify and calibrate equipment capable of emitting ionizing radiation. The rules shall also provide for the standardization of calibration equipment, inspection and calibration methodology and reporting procedures. The department may grant, modify or refuse to issue a certification in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375 subchapter V. The Administrative Court shall have exclusive jurisdiction to suspend or revoke a certification of any person found guilty of noncompliance with the rules pertaining to inspection, certification and reporting procedures or misrepresentation of inspection findings.

4. Failure to comply. Persons failing to have their equipment inspected, certified and calibrated, as required in subsection 2, shall be subject to the penalties of section 690-A.

§683. Records

The department may require by rule, or order, the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this Act as may be necessary to effectuate the purposes of this Act. These records shall be made available for inspection by, or copies thereof shall be submitted to, the department.

§684. Federal - State agreements

1. General agreements and contracts. The Governor, on behalf of this State, may enter into agreements with the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, Section 274b, as amended, providing for discontinuance of certain of the commission's licensing and related regulatory authority with respect to by-product, source and special nuclear materials and the assumption of regulatory authority therefor by this State.

2. Limited agreements. The Governor, on behalf of this State, may enter into an agreement with the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, Section 274i, as amended, other federal government agencies, where

authorized by law, or other states or interstate agencies, whereby this State will perform on a cooperative basis inspections or other functions relating to control of sources of radiation.

3. Contracts with federal agencies. The Governor may, subject to the conditions of Title 5, section 1669 and any other provision of law, execute contracts with appropriate federal officers or agencies relating to radiation hazards.

§685. Training programs

The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this Act, and may make the personnel available for participation in any program or programs of the Federal Government, other states or interstate agencies in furtherance of the purposes of this Act.

§686. Conflicting laws

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies other than the Department of Human Services relating to by-product, source and special nuclear materials shall not be superseded by this Act, provided that the ordinances or regulations are and continue to be consistent with this Act, amendments thereto and rules thereunder.

§687. Administrative procedure and judicial review

Administrative procedure and judicial review shall be in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

§688. Injunction proceedings; impounding

1. Injunctions. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, or any rule or order issued thereunder, and at the request of the department, the Attorney General may make application to the Superior Court for an order enjoining those acts or practices, or for an order directing compliance, and, upon a showing by the department that the person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order may be granted.

2. Impounding. In accordance with all applica-

ble statutes and regulations, the department may, in the event of an emergency, impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this Act or any rules issued under this Act.

§689. Prohibited uses

Except for consumer products, it is unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own or possess any source of radiation, unless licensed by or registered with the department in conformance with rules, if any, promulgated in accordance with this Act. Notwithstanding this paragraph, licensing or registration of specific consumer products may be required by the department by rule in specified circumstances.

§690. Penalties

1. Criminal penalties. Any person who willfully violates any of the provisions of this Act, or rules or orders of the department in effect pursuant to this Act, is guilty of a Class D crime.

Any person who willfully violates any term, condition or limitation of any license or registration certificate issued under this Act, or commits any violation for which a license or registration certificate may be revoked under rules issued pursuant to this Act, shall be guilty of a Class D crime.

2. Civil penalties. Any person who violates any licensing or registration provision of this Act or any rule or order issued under this Act, or any term, condition or limitation of any license or registration certificate issued under this Act, or any person who commits any violation for which a license or registration certificate may be revoked, suspended or modified under rules issued pursuant to this Act may be subject to a civil penalty not to exceed \$1,000 for each violation or \$10,000 for any egregious violation. If any violation is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

On the request of the department, the Attorney General may institute a civil action to collect a penalty imposed pursuant to this subsection.

All moneys collected from civil penalties shall be paid to the Treasurer of State for deposit in the

General Fund. Moneys collected from civil penalties shall not be used for normal operating expenses of the department, except as appropriations made from the General Fund in the normal budgetary process.

Sec. 14. Effective date; transition. This Act shall take effect on January 1, 1984. Existing regulations shall remain in effect until new regulations are promulgated under this Act.

Effective January 1, 1984.

CHAPTER 346

H.P. 876 - L.D. 1130

AN ACT to Amend the Standard Valuation Law for Life Insurance and Annuities and the Standard Nonforfeiture Law for Life Insurance.

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

Sec. 1. 24-A MRSA §951, as enacted by PL 1969, c. 132, §1, is amended to read:

§951. Short title

Sections 951 to 957 958-A shall be known as the "Standard Valuation Law."

Sec. 2. 24-A MRSA §953, sub-§§2 and 3, as amended by PL 1979, c. 453, §§2, 3 and 4, are further amended to read:

2. This subsection applies only to policies and contracts issued on and after January 1, 1948, or such the earlier date after July 21, 1945, as shall have been elected by an insurer as the date on and after which it would comply with the Standard Nonforfeiture Law.

Except as otherwise provided in subsection 3 and section 953-A, the minimum standard for the valuation of all such those policies and contracts shall be the commissioners reserve valuation method defined in section 954, 3 1/2% interest, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after December 31, 1975, 4% interest, and the following tables, or in the case of such these policies and contracts, other than annuity and pure endowment contracts, issued on