

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

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
1995

§5013. Notice regarding policies that are not Medicare supplement policies

Any individual accident and sickness insurance policy or group insurance certificate, including the contract of a nonprofit hospital and medical service or health care plan issued for delivery in this State to persons eligible for Medicare ~~by reason of age~~, must notify insureds that the policy or certificate is not a Medicare supplement policy or certificate. The notice must be either printed on or attached to the first page of the outline of coverage delivered to insureds; or, if no outline of coverage is delivered, to the first page of the policy or certificate. The notice must be in no less than 12-point type and must contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company. If you have a Medicare supplement policy or major medical policy, this coverage may be more than you need. For information call the Bureau of Insurance at (toll-free phone number)."

This section does not apply to a Medicare supplement policy; a policy issued pursuant to a contract under the Federal Social Security Act, 42 United States Code, Section 1395, et seq., Section ~~1833 or~~ 1876; a disability income policy; ~~a single premium nonrenewable policy~~; or a policy identified in section 5001-A, subsection 2.

Sec. 9. 24-A MRSA §5014 is enacted to read:

§5014. Additional penalties

1. Penalties. In addition to any other applicable penalties for violations of this Title or Title 24, the superintendent may order issuers violating any provision of this chapter or any rule adopted pursuant to this chapter to:

A. Comply with the provisions of this chapter; or

B. Cease marketing any Medicare supplement policy or certificate in this State that is directly or indirectly related to a violation.

2. Election of penalty options. The superintendent may exercise any of the penalty options provided by this section, in combination or in sequence, as the superintendent considers appropriate.

Sec. 10. 24-A MRSA §6305, sub-§2, as enacted by PL 1989, c. 931, §5, is amended to read:

2. Final evaluation of savings. The final evaluation of the savings in professional liability

insurance claims and claim settlement costs to insurers must be determined by the superintendent ~~in 1995 as part of the report filed on or before December 1, 2000 under Title 24, section 2978, subsection 2.~~ Insurers shall continue to assess policyholders after ~~1995~~ 2000 based on the final determination, but the total assessment may not be more than \$500,000 per year.

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

Effective March 26, 1996.

CHAPTER 571

S.P. 335 - L.D. 916

An Act to Improve the Function of the Maine Health Security Act

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

Sec. 1. 24 MRSA §2853, sub-§4, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

4. Filing of records; time for hearing; extensions. Within 20 days of entry of appearance, the person or persons accused shall contact the claimant's counsel and by agreement shall designate a timetable for filing all the relevant medical and provider records necessary to a determination of the panel and for completing discovery. If the parties are unable to agree on a timetable within 60 days of the entry of appearance, the claimant shall notify the ~~chairman~~ chair of the panel. The ~~chairman~~ chair shall then establish a timetable for the filing of all relevant records and reasonable discovery, which ~~shall~~ must be filed at least 30 days before any hearing date. The hearing ~~shall~~ may not be later than ~~420 days~~ 6 months from the service of the notice of claim upon the clerk, except when the time period has been extended by the panel chair in accordance with this subchapter.

See title page for effective date.

CHAPTER 572

S.P. 528 - L.D. 1445

An Act to Limit the Liability of Property Owners in Cases of Nonnegligent Lead Poisoning

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

Whereas, the current cap on damages resulting from lead poisoning will be repealed on April 15, 1996 if no action is taken by the Legislature; and

Whereas, there will be no cap on damages resulting from lead poisoning if the Legislature does not take emergency action; and

Whereas, the continuation of a cap will help ensure the availability of insurance for property owners; 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. 22 MRSA §1324-A, sub-§§3 and 4, as enacted by PL 1995, c. 453, §17, are amended to read:

3. Limitation on award. In actions for damages, the claim for and award of damages for all losses, except expenses for medical care and treatment, including devices and aids, may not exceed ~~\$750,000~~ \$600,000 except for the following claims:

A. Claims against lead abatement professionals licensed under this chapter;

B. Claims against an individual who rents or sells property to anyone with children, has knowledge of the presence of an environmental lead hazard in a dwelling or dwelling unit and deliberately fails to disclose to the prospective tenant or buyer the presence of lead paint; and

C. Claims against an individual who receives written notification of the presence of an environmental lead hazard or of a child-poisoning incident and who fails or refuses to take corrective measures, including interim controls, within a 60-day period from the date of notification.

4. Repeal. This section is repealed ~~April 15, 1996~~ October 1, 1999.

Sec. 2. Task force established. The Task Force on Lead Poisoning Liability and Insurance, referred to in this Act as the "task force," is established to make recommendations to ensure the availability of insurance coverage for property owners and assist property owners in reducing environmental lead hazards.

1. Membership. The task force consists of the following 13 members:

A. The Superintendent of Insurance or the superintendent's designee, who shall serve as chair;

B. A representative of the Department of Human Services familiar with lead paint issues, designated by the Commissioner of Human Services;

C. Two Legislators, one appointed by the President of the Senate and one appointed by the Speaker of the House; and

D. Nine public members appointed by the Governor. The public members must have a demonstrated expertise or interest in lead-poisoning prevention and represent one of each of the following categories:

- (1) Multifamily property owners;
- (2) Community groups;
- (3) Insurance agents;
- (4) Insurance companies;
- (5) Lead abatement and inspection professionals;
- (6) Parents of lead-poisoned children;
- (7) Attorneys representing lead-poisoned children;
- (8) Local government health officials; and
- (9) Lending institutions or banks.

2. Appointments. All appointments must be made no later than 60 days following the effective date of this Act. The appointing authorities shall notify the Superintendent of Insurance upon making their appointments. When the appointment of all members is complete, the superintendent shall call the first meeting of the task force no later than September 15, 1996.

3. Meetings. The task force shall meet on at least a quarterly basis until its final report is submitted on November 1, 1998.

4. Study subject. The task force shall study the availability of insurance that provides coverage for lead poisoning to property owners in this State. In conducting its work, the task force shall study the following issues:

A. The availability of insurance coverage for property owners in both the admitted market and the surplus lines market;

B. The effect the current liability cap has had on the availability of insurance;

C. The appropriateness of continuing with a liability cap in light of the interests of the families of lead-poisoned children, the property owners and the State;

D. The feasibility of mechanisms to financially assist property owners in abating environmental lead, such as tax credits, loan funds, grants or other approaches; and

E. Other viable methods to encourage and fund lead-poisoning prevention programs throughout the State.

5. Staff assistance. The Bureau of Insurance shall provide clerical and technical assistance to the task force.

6. Compensation. Members of the task force serve without compensation and are not entitled to reimbursement for expenses.

7. Report. The task force shall submit its final report and any recommended legislation or other specific proposals to the joint standing committees of the Legislature having jurisdiction over judiciary and human resource matters and to the Executive Director of the Legislative Council by November 1, 1998. The Bureau of Insurance shall assist in preparing any legislation recommended by the task force.

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

Effective March 28, 1996.

CHAPTER 573

H.P. 1178 - L.D. 1610

An Act to Enhance Used Oil Recycling Capabilities

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

Sec. 1. 38 MRSA §1303-C, sub-§§2-A and 2-B are enacted to read:

2-A. Class I liquid. "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.

2-B. Class II liquid. "Class II liquid" means any liquid having a flash point at or above 100° Fahrenheit and below 140° Fahrenheit.

Sec. 2. 38 MRSA §1303-C, sub-§§39-B and 39-C are enacted to read:

39-B. Used oil. "Used oil" means waste oil, as defined in subsection 42.

39-C. Used oil collection center. "Used oil collection center" means a site or facility where used oil is accepted from the public and collected or stored in an aboveground tank for recycling.

Sec. 3. 38 MRSA §1319-G, sub-§3 is enacted to read:

3. Waiver of reimbursement for registered used oil collection centers. Upon petition of the owner or operator of a registered used oil collection center, the commissioner may waive the right to reimbursement to the fund of costs incurred in the removal or abatement of up to 660 gallons of hazardous waste from that collection center if the commissioner finds that:

A. The registered used oil collection center is in compliance with the requirements contained in section 1319-Y and any rules adopted pursuant to section 1319-O, subsection 2, paragraph B;

B. The owner or operator of the registered used oil collection center:

(1) Did not mix the oil with hazardous waste; and

(2) Did not knowingly accept hazardous waste or oil mixed with hazardous waste; and

C. The commissioner has not granted any previous waivers of reimbursement for costs incurred in the removal or abatement of hazardous waste from the same registered used oil collection center pursuant to this subsection during the previous 12 months.

Notwithstanding this subsection, the commissioner may not grant waivers of reimbursement to the fund pursuant to this subsection that total more than \$10,000 in any one fiscal year.

Sec. 4. 38 MRSA §1319-O, sub-§2, ¶A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §261, is further amended to read:

A. The board may adopt rules relating to the transportation, collection and storage of waste oil by waste oil dealers to protect public health, safety and welfare and the environment. The rules may include, without limitation, rules requiring licenses for waste oil dealers and the location of waste oil storage sites that are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the department to transport or handle hazardous waste is not required to obtain