

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 674

H.P. 480

House of Representatives, February 19, 1991

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

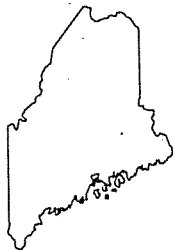
Presented by Representative LARRIVEE of Gorham.

Cosponsored by Representative NADEAU of Saco and Senator ESTY of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Regulate the Construction of Chimneys and Fireplaces.



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

2
4 Sec. 1. 5 MRSA §12004-A, sub-§46 is enacted to read:

6 46. Chimney and \$35/Day 32 MRSA §14010
7 Fireplace Construction
8 Board

10 Sec. 2. 25 MRSA §2354 is amended to read:

12 **§2354. Inspection of buildings being repaired**

14 The Subject to Title 32, chapter 125, the inspector of
16 buildings shall inspect all buildings while in process of being
18 repaired, and see that all reasonable safeguards are used against
20 the catching and spreading of fire and that the chimneys and
 flues are made safe. ~~He~~ The inspector may give such directions
 in writing to the owner as ~~he deems~~ necessary concerning such
 repairs, ~~so as~~ to render such the building safe from the catching
 and spreading of fire.

22 Sec. 3. 25 MRSA §2432, as amended by PL 1971, c. 592, §35, is
24 further amended to read:

26 **§2432. Removal or repair of defective stoves, boilers and the like**

28 On complaint of any citizen that a chimney, stove,
30 stovepipe, oven, furnace, boiler or appurtenance is defective,
32 out of repair or so placed in any building as to endanger it or
34 any other building, the Commissioner of Public Safety or
36 municipal officers of any town of not more than 2,000
 inhabitants, if satisfied that such complaint is well founded,
 shall give written notice to the owner or occupant of such
 building, and if he the owner or occupant unnecessarily neglects
 for 3 days to remove or repair the same effectually, he the owner
 or occupant forfeits not less than \$10 nor more than \$100.

38 Sec. 4. 25 MRSA §2465, sub-§§2, 3 and 5, as enacted by PL 1981,
40 c. 622, are amended to read:

42 2. **Prohibitions.** No person may, for compensation,
44 construct or install any chimney, ~~fireplace,~~ vent or solid fuel
46 burning appliance unless ~~so-constructed~~ constructed or installed
48 in accordance with the provisions of the National Fire Protection
 Association Code #211, "The Standards for Chimneys, Fireplaces,
 Vents and Solid Fuel Burning Appliances". Construction and
 installation of chimneys and fireplaces are governed by Title 32,
 chapter 125.

50 3. **Enforcement.** The Subject to Title 32, chapter 125, the
52 Fire Marshal or his the marshal's designees, Safety Compliance
 Officers of the Oil and Solid Fuel Board, duly appointed fire

2 chiefs or their designees, and municipal building inspectors and
4 code enforcement officers may enforce the requirements of "The
Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning
Appliances". ."

6 5. Home rule. Any Subject to Title 32, chapter 125, any
8 municipality may adopt as ordinance requirements for the
materials, installation or construction of chimneys, fireplaces,
10 vents or solid fuel burning appliances which exceed the
requirements of "The Standards for Chimneys, Fireplaces, Vents
and Solid Fuel Burning Appliances". ."

12 Sec. 5. 25 MRSA §2465, sub-§6, as amended by PL 1989, c. 501,
14 Pt. DD, §33, is further amended to read:

16 6. Penalty. Any person who, for compensation, constructs
or installs ~~chimneys, fireplaces,~~ vents or solid fuel burning
18 appliances in violation of the standards, and permits such
violation to remain uncorrected after 30 days' notice from any
20 official empowered to enforce this section, shall be considered
guilty of a civil violation and shall be subject to a forfeiture
22 of not more than \$500 for each violation. The court may waive
any penalty or cost against any violator upon satisfactory proof
24 that the violation was corrected within 30 days of the issuance
of a complaint. Construction and installation of chimneys and
26 fireplaces are governed by Title 32, chapter 125.

28 Any person who fails to provide a purchaser with an instruction
manual or the authorized publication of the Department of
30 Economic and Community Development, as described in subsection
5-A, commits a civil violation for which a forfeiture of not less
32 than \$200 nor more than \$500 for the first offense and not less
than \$500 nor more than \$800 for each subsequent offense shall
34 must be adjudged. In addition to the civil penalty provided in
this subsection, any violation of this chapter constitutes a
36 violation of Title 5, chapter 10.

38 Sec. 6. 32 MRSA c. 125 is enacted to read:

40 CHAPTER 125

42 CONSTRUCTION OF CHIMNEYS AND FIREPLACES

44 SUBCHAPTER I

46 GENERAL PROVISIONS

48 §14001. Definitions

50 As used in this chapter, unless the context otherwise
52 indicates, the following terms have the following meanings.

1. **Board.** "Board" means the Chimney and Fireplace Construction Board.

2. **Construct or construction.** "Construct" or "construction" means the construction, installation, alteration or repair of a fireplace or chimney.

3. **Fireplace.** "Fireplace" means hearth or any other related masonry part attached to a fireplace.

§14002. Chimney and fireplace construction to conform to standards

The construction of a chimney or fireplace may be made in the State only if the construction of the chimney or fireplace complies with the current National Fire Protection Association Standards and with all standards and rules adopted by the Chimney and Fireplace Construction Board established under this chapter.

§14003. Chimney and fireplace construction compliance officers; power to enter and inspect

State chimney and fireplace compliance officers, on written complaint of any owner, lessee or tenant of a building, state fire inspector, fire chief, fire department inspector or whenever they determine it necessary for purposes of examination of the construction of chimneys or fireplaces, may at all reasonable times enter into all buildings within their jurisdiction and inspect the buildings. The compliance officers may enter any building only with the permission of the person having control of the building or, after hearing, upon order of a court. When a compliance officer finds a chimney or fireplace constructed in a manner that does not comply with the requirements of this chapter, that officer shall order the defect to be remedied and the order must be complied with immediately by the owner or occupant of that building or the builder of the chimney or fireplace. The owner, occupant or builder may within 7 days appeal to the Chimney and Fireplace Construction Board which shall within 10 days review the order and file its decision. The owner, occupant or builder must comply with that decision within the time given by the board. In the event any person, firm or corporation fails to carry out any order of a compliance officer or of the board, a court may order appropriate injunctive relief. State chimney and fireplace construction compliance officers have the authority to review the chimney and fireplace construction records of any person licensed under this chapter.

§14004. Failure to comply with order of compliance officer

If the owner or occupant of any building or any person licensed under this chapter, without justification, neglects or refuses for more than 10 days to comply with any order of a

2 chimney and fireplace construction officer concerning chimney and
3 fireplace construction as provided by this chapter, that person
4 commits a civil violation for which a forfeiture of not less than
5 \$5 for each day's neglect may be adjudged.

6 **§14005. Violations; forfeiture; injunction**

8 **1. Violation.** A person commits a civil violation if that
9 person:

10 A. Constructs a chimney or fireplace without having first
11 obtained a license as provided by this chapter, unless
12 exempted by section 14020;

13 B. Employs an unlicensed person, unless the work is
14 exempted by section 14020;

15 C. Procures any license wrongfully or by fraud; or

16 D. Violates this chapter, rules promulgated under this
17 chapter or standards adopted by the board.

18 **2. Forfeiture.** A person who commits a civil violation
19 under subsection 1 is subject to a civil forfeiture of not less
20 than \$100 nor more than \$500.

21 **3. Injunction.** The State may bring an action in Superior
22 Court to enjoin any person from violating this chapter,
23 regardless of whether proceedings have been or may be instituted
24 in the Administrative Court or whether proceedings to impose a
25 civil forfeiture have been or may be instituted.

26 **SUBCHAPTER II**

27 **LICENSING BOARD**

28 **§14010. Appointment; vacancies; removal; compensation**

29 **1. Board established; membership.** The Chimney and
30 Fireplace Construction Board as established by Title 5, section
31 12004-A, consists of the Commissioner of Professional and
32 Financial Regulation or a representative appointed by the
33 commissioner, the Commissioner of Public Safety or a
34 representative appointed by the commissioner and 5 other members,
35 called in this chapter the "appointive members" who are appointed
36 by the Governor.

37 **2. Appointive members.** Three of the appointive members
38 must be persons who construct chimneys and fireplaces and must
39 have been active in the trade in this State for a period of at
40 least 5 years prior to their appointment. One of the appointive
41 members must be a representative of the building industry and one
42 of the appointive members must be a representative of the building industry and one

2 must be a representative of the public. The appointive members
3 are appointed for terms of 4 years, except that at least one
4 appointive member's term must expire in each calendar year and
5 appointment for terms of less than 4 years may be made in order
6 to comply with this limitation. Upon expiration of a member's
7 term, that member shall serve until a qualified successor is
8 appointed. The successor's term ends 4 years from the date of
9 that expiration. An appointive member may not be eligible to
10 serve more than 2 full consecutive terms. For this purpose only,
11 a period actually served that exceeds 1/2 of the 4-year term is a
12 full term.

13
14 3. Vacancies. Any vacancy in the board must be filled by
15 the appointment of a person with the same qualifications as the
16 board member being removed to hold office during the unexpired
17 term of that member.

18 4. Removal. Any member of the board may be removed from
19 office by the Governor for cause.

20
21 5. Compensation. The members of the board must be
22 compensated according to Title 5, chapter 379.

23 6. Officers. The board shall elect a chair and executive
24 secretary annually from among its members. The board may elect
25 other officers.

26
27 **§14011. Employees**

28
29 The Commissioner of Professional and Financial Regulation
30 with the advice and consent of the board may appoint employees as
31 necessary to carry out this chapter. Any persons so employed
32 must be employees of the Department of Professional and Financial
33 Regulation. Chimney and fireplace construction compliance
34 officers appointed under this section have the same powers as
35 county sheriffs in enforcing the provisions established,
36 standards adopted and rules promulgated under this chapter.

37 **§14012. Meetings; rules**

38
39
40 1. Meetings. The board shall meet at least once a year to
41 conduct business and elect officers. Additional meetings must be
42 held as necessary to conduct the business of the board and may be
43 convened at the call of the chair or a majority of the board
44 members. Four members of the board constitute a quorum for all
45 purposes.

46
47 2. Rules. The board may adopt standards and rules as
48 determined necessary pursuant to the Maine Administrative
49 Procedure Act. The board may provide for:

50
51 A. Holding examinations:

2 B. Reciprocity of licensing with similar boards of other
4 states that maintain standards equivalent to those provided
 under this chapter;

6 C. Fees and charges necessary for covering the costs
 incurred for issuing licenses; and

8 D. Carrying out this chapter.

10 §14013. Disposal of fees

12 The executive secretary shall pay to the Treasurer of State
14 all fees received by the board. The fees may be used by the
16 board to carry out this chapter. Any balance of the fees may not
18 lapse, but must be carried forward as a continuing account to be
 expended for the same purposes in the following fiscal years.

20 §14014. Investigation of complaints; suspension or revocation of
 licenses

22 1. Grounds for refusal. The board shall investigate all
24 complaints made and all cases of noncompliance with or violation
26 of this chapter. The board may suspend or revoke a license
28 issued under this chapter pursuant to Title 5, section 10004.
 The board may refuse to issue or renew a license, or the
 Administrative Court may suspend, revoke or refuse to renew the
 license of any licensee who is found guilty of:

30 A. The practice of fraud or deceit in obtaining a license;

32 B. Any gross negligence, incompetence or misconduct in the
34 performance of the work of constructing chimneys or
36 fireplaces. Continued failure to conform to standards or
 rules adopted by the board is prima facie evidence of gross
 negligence or incompetence; or

38 C. Any violation of this chapter.

40 2. Surrender of license. Any license suspended by the
42 board or suspended or revoked by the Administrative Court Judge
44 must be immediately surrendered to the board and held during any
 period of suspension or, if revoked, until reinstated as provided
 in this chapter.

46 3. Reinstatement. Any person whose license is suspended or
48 revoked for more than 90 days must meet all requirements
50 governing new applicants under this chapter as a condition of
52 reinstatement or return of that person's license. The board may
 in its discretion, giving due consideration to the protection of
 the public, waive examination if the period of suspension is less
 than 2 years or, in the case of revocation of license, the

2 applicant is eligible and has made application for reinstatement
3 of license within 2 years of the effective date of revocation.

4 **§14015. Records**

6 The board shall keep minutes of its meetings and records of
7 its actions.

8 **§14016. Reports**

10 No later than August 1st of each year, the board shall
11 submit to the Commissioner of Professional and Financial
12 Regulation an annual report of its operations and financial
13 position, together with comments and recommendations determined
14 essential by the board, for the immediately preceding fiscal year
15 ending June 30th.

16 **§14017. Hearings**

18 **1. Generally.** Hearings may be conducted by the board to
19 assist with investigations, to determine whether grounds exist
20 for suspension, revocation or denial of a license, or as
21 otherwise determined necessary to fulfill its responsibilities
22 under this chapter. The board may not refuse to renew a license
23 for any reason other than failure to pay a required fee, unless
24 it has afforded the licensee an opportunity for an adjudicatory
25 hearing. Hearings must be conducted in conformity with the Maine
26 Administrative Procedure Act, Title 5, chapter 375, subchapter
27 IV, to the extent applicable. The board may subpoena witnesses,
28 records and documents in any hearing it conducts.

29 **2. Adjudicatory hearing.** The board shall hold an
30 adjudicatory hearing at the written request of any person who is
31 denied a license without a hearing for any reason other than
32 failure to pay a required fee. The request for a hearing must be
33 received by the board within 30 days of the applicant's receipt
34 of written notice of the denial of the application, the reasons
35 for the denial and the right to request a hearing.

36 **SUBCHAPTER III**

37 **LICENSES**

38 **§14020. License required**

39 A person may not construct a chimney or fireplace, except as
40 provided in this chapter, unless that person is licensed by the
41 board. The licensing provisions of this chapter do not apply to
42 prevent a person from constructing a chimney or fireplace in a
43 single-family residence occupied or to be occupied by that person as
44 that person's home, providing the construction conforms to the
45 current National Fire Protection Association Standards.

2 §14021. Rules; fees; application; certificates

4 1. Rules. The board shall make reasonable rules for the
6 issuance of licenses for the construction of chimneys and
8 fireplaces. The board shall make reasonable rules concerning the
 term and type of experience required of candidates for
 examination.

10 2. Fees. An application fee and an examination fee may be
12 established by the board in amounts that are reasonable and
14 necessary for their respective purposes. Original and renewal
 license fees may be established by the board in amounts that are
 reasonable and necessary for their respective purposes.

16 3. Application. The board shall issue a license, upon
18 payment of the proper fees, to any person who applies for a
20 license and presents evidence that that person has the required
 experience for the license and has satisfactorily met the
 examination requirements of the board.

22 4. Certificate. All persons licensed by the board must be
24 issued a certificate of licensure that must be publicly displayed
26 at the principal place of business of the person licensed or, if
28 no such place of business exists, must be carried on the person
 and displayed at any time on request, as long as the person
 continues in the business as defined.

30 §14022. Examinations

32 Applicants for a chimney and fireplace construction license
34 shall present to the board a written application for examination
36 containing such information as the board may require accompanied
 by the prescribed fee. Examinations must be in whole or in part
 in writing, must be conducted by the board and must be of a
 thorough and practical nature.

38 Examinations may include questions on the standards of the
40 Chimney and Fireplace Construction Board and applicable National
42 Fire Protection Association Standards. Any person failing to
 pass that first examination may be reexamined at a time agreeable
 to the board upon payment of the examination fee.

44 §14023. Renewals

46 All licenses expire biennially on June 30th. The expiration
48 dates for licenses issued under this chapter may be established
50 at such other times as the Commissioner of Professional and
52 Financial Regulation may designate. The licenses may be renewed
 on a biennial basis without further examination upon payment of
 the proper fee. The board shall notify everyone registered under
 this chapter of the date of expiration of those persons' licenses

2 and the amount of fee required for renewal for a 2-year period.
3 The notice must be mailed to each person's last known address at
4 least 30 days in advance of the expiration date of that person's
5 license. A license may be renewed up to 90 days after the date
6 of expiration upon payment of a late fee of \$10 in addition to
7 the renewal fee. Any person who submits an application for
8 renewal more than 90 days after the license renewal date is
9 subject to all requirements governing new applicants under this
10 chapter, except that the board may in its discretion, giving due
11 consideration to the protection of the public, waive examination
12 if the renewal application is made within 2 years from the date
13 of expiration.

14

15

16 STATEMENT OF FACT

17 This bill establishes the Chimney and Fireplace Construction
18 Board modeled after the Oil and Solid Fuel Board established by
19 the Maine Revised Statutes, Title 32, chapter 33. The bill
20 provides for the appointment of 7 members to the board and
21 authorizes the Commissioner of Professional and Financial
22 Regulation to appoint employees to carry out the provisions of
23 the bill. The bill requires that people who construct chimneys
24 and fireplaces be licensed by the board. The bill gives the
25 board power to make rules for the issuance of licenses and to
26 suspend or revoke a license. The bill provides that chimney and
27 fireplace construction must meet the standards prescribed by the
28 board and that state compliance officers may enter and inspect
29 the construction of chimneys and fireplaces. The bill authorizes
30 forfeitures and injunctive relief. The bill also makes necessary
31 amendments to Title 25, chapter 317. The bill amends Title 5,
32 section 12004-A by adding a new subsection establishing the board
33 and authorizing payment to the members of the board.
34