

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2358

S.P. 919

In Senate, February 20, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot
Cosponsored by Representative GWADOSKY of Fairfield and Senator KANY of Kennebec.

STATE OF MAINE

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

**An Act to Amend the Underground Oil Storage Facilities and Ground
Water Protection Laws and the Uncontrolled Hazardous Substance Sites
Laws.**



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

4 Sec. 1. 38 MRSA c. 3-A is enacted to read:

6 CHAPTER 3-A

8 LIMITED EXEMPTIONS FROM LIABILITY

10 §573. Limited exemption from liability for financial institutions
12 and federal or state banking or lending agencies

14 1. Definitions. As used in this chapter, unless the
16 context otherwise indicates, the following terms have the
18 following meanings.

20 A. "Facility" means a vessel as defined in section 542,
22 subsection 11, an underground oil storage facility as
24 defined in section 562-A, subsection 21 or a waste facility
26 as defined in section 1303-C, subsection 40.

28 B. "Indicia of ownership" means any interest in a facility
30 acquired either:

32 (1) For the purpose of securing payment of a loan or
34 indebtedness or the performance of an obligation; or

36 (2) In the course of protecting a security interest.

38 C. "Participating in the management of a facility" means
40 the actual, direct and continual or recurrent exercise of
42 managerial control by a person over the facility in which
44 that person holds a security interest. That managerial
46 control must materially divest the borrower, debtor or
48 obligor of that control.

50 (1) Actions taken by a person to foreclose, sell or
otherwise cause the transfer of the facility subject to
that person's security interest or to preserve and
protect the value of that facility or otherwise to
exercise rights of a security interest holder specified
in paragraph E; or to assist the borrower, debtor or
obligor in winding down its operations or activities
related to that facility is not participating in the
management of a facility within the meaning of this
chapter. Completion of an environmental inspection or
evaluation consistent with good commercial or customary
practice by or for the use of a security holder is
probative evidence that the security holder is acting
to preserve and protect the facility during the time
the security holder may have possession or control of
that facility.

2 D. "Person" has the same meaning as financial institution
4 as defined in Title 9-B, section 131, subsection 17 or any
6 federal or state banking or lending agency that provides
8 loans, discounts, guarantees or other financial assistance.

10 E. "Primarily to protect that person's security interest"
12 includes but is not limited to ownership interests acquired
14 as a consequence of exercising rights as a security interest
16 holder respecting a facility, when that exercise is
18 necessary or appropriate to protect the security interest,
20 to preserve the value of the collateral, to recover a loan
22 or indebtedness or to redress an obligation secured by that
24 interest. A person who holds indicia of ownership in a
26 facility and who acquires title or a right to title to that
28 property upon default under the security arrangement, or at
30 or in lieu of foreclosure, continues to hold that indicia of
32 ownership primarily to protect that person's security
34 interest, as long as that person diligently is proceeding to
36 sell or convey title or the right to title on commercially
38 reasonable terms at the earliest possible time while
40 preserving the property in the interim.

42 2. Liability. Except as provided in subsection 3,
44 liability under sections 552, 570, 1318-A, 1319-J, 1319-U, 1319-W
46 and 1367 does not apply to a person who, without participating in
48 the management of a facility, holds indicia of ownership
50 primarily to protect that person's security interest in the
52 facility.

54 3. Exception. A person who, in taking actions in paragraph
56 C, subparagraph 1 with respect to a facility, causes or
58 exacerbates a release or threatened release of oil is liable for
60 the cost of any response, to the extent that the release or
62 threatened release is attributable to that person's activities.

64 **§574. Limited exemption from liability for fiduciaries and**
66 **trustees**

68 1. Exemption. Liability under sections 552, 570, 1318-A,
70 1319-J, 1319-U, 1319-W and 1367 does not apply to a fiduciary or
72 trustee who acquires ownership or control of a facility without
74 having owned, operated or participated in the management of that
76 facility prior to assuming ownership or control as fiduciary or
78 trustee.

80 2. Exception. A fiduciary or trustee who willfully,
82 knowingly or recklessly causes or exacerbates a discharge,
84 disposal, release or threatened release of oil, waste oil,
86 or other petroleum product.

2 hazardous wastes or hazardous substance is liable for the cost of
3 response, to the extent that the release or threatened release is
4 attributable to the fiduciary's or trustee's activities.

5 3. Limitation. This subsection does not prevent claims
6 against the assets that constitute the estate held by the
7 fiduciary or trustee or the filing of actions against the
8 fiduciary or trustee in its representative capacity.

10 §575. Limited exemption from liability for state or local
11 governmental entities

12 1. Exemption. Liability under sections 552, 570, 1318-A,
13 1319-J, 1319-U, 1319-W and 1367 does not apply to the State or a
14 local government when ownership or control of the facility is
15 acquired involuntarily through bankruptcy, tax delinquency,
16 abandonment or other circumstances in which the State or local
17 government involuntarily acquires title by virtue of its function
18 as sovereign, including acquisition pursuant to Title 36, section
19 943.

20 2. Exception. This exemption does not apply to the State
21 or a local government that has caused or contributed to the
22 disposal, discharge, release or threatened release of oil, waste
23 oil, hazardous waste or a hazardous substance from the facility.
24 Under these circumstances the State or local government is
25 subject to the provisions of this Title in the same manner and to
26 the same extent, both procedurally and substantively, as any
27 nongovernmental entity.

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30 **STATEMENT OF FACT**

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34 This bill incorporates recent proposed federal regulation
changes into state law to protect lender security interests and
limit liability when facing environmental clean-up costs.