

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2000

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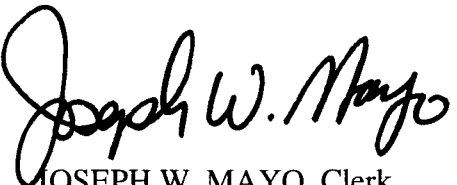
H.P. 1766

House of Representatives, January 11, 2000

**An Act to Enhance Public Safety By Updating the Laws Pertaining to  
Explosives and Flammable Liquids.**

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Submitted by the Department of Public Safety pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative McALEVEY of Waterboro.  
Cosponsored by Senators: DAVIS of Piscataquis, O'GARA of Cumberland.

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

2  
3       **Sec. 1. 17-A MRSA §1001, sub-§2, ¶B**, as enacted by PL 1975, c.  
4 499, §1, is amended to read:

6           B. "Regulations" means the rules, regulations, ordinances  
7 and bylaws issued by lawful authority pursuant to Title 25,  
8 section ~~2441~~ 2472.

10       **Sec. 2. 25 MRSA §2433** is repealed.

12       **Sec. 3. 25 MRSA §2440**, as repealed and replaced by PL 1979,  
13 c. 663, §154, is amended to read:

14       **§2440. Penalties; recovery and appropriation**

16           Penalties provided in sections 2432, ~~2433~~, 2436-A and 2439  
17 may be recovered by complaint, indictment or civil action, 1/2 to  
18 the municipality where the offense is committed and 1/2 to the  
19 State.

22       **Sec. 4. 25 MRSA §2441**, as amended by PL 1997, c. 727, Pt. C,  
23 §6, is repealed.

24       **Sec. 5. 25 MRSA §2443** is repealed.

26       **Sec. 6. 25 MRSA §2444**, as amended by PL 1997, c. 728, §23, is  
27 repealed.

30       **Sec. 7. 25 MRSA §2445**, as amended by PL 1971, c. 592, §35, is  
31 repealed.

32       **Sec. 8. 25 MRSA §2446**, as amended by PL 1985, c. 11, §1, is  
33 repealed.

36       **Sec. 9. 25 MRSA c. 318** is enacted to read:

38                               CHAPTER 318

40                               EXPLOSIVES AND FLAMMABLE LIQUIDS

42                               SUBCHAPTER I

44                               EXPLOSIVES

46       §2471. Definitions

48           As used in this subchapter, unless the context otherwise  
49 indicates, the following terms have the following meanings.

2           1. Commissioner. "Commissioner" means the Commissioner of  
Public Safety.

4           2. Explosive. "Explosive" means any chemical compound,  
mixture or device that is designed to function by explosion. The  
6           term includes, but is not limited to, dynamite, black powder,  
pellet powder, initiating explosives, detonators, safety fuses,  
8           squibs, detonating cords, igniter cords and igniters.

10          3. Magazine. "Magazine" means a specially constructed  
building or structure approved for the storage of explosive  
12          materials.

14          4. Permit. "Permit" means the nontransferable permission  
granted by the commissioner containing one or more of the  
16          following endorsements: use, storage and intrastate  
transportation of explosives.

18          5. Person. "Person" means any individual, partnership,  
20          corporation, combination of these entities or any other legal  
entity.

22          **§2472. Explosives; rules**

24          1. Rules. The commissioner shall adopt rules, which are  
26          routine technical rules pursuant to Title 5, chapter 375,  
subchapter II-A, necessary for the proper oversight of explosives  
28          and the enforcement of the provisions of this chapter.

30          2. Waivers. The commissioner may waive the requirements of  
any rule to cover any special circumstances.

32          3. Exceptions. This section does not apply to the  
34          following:

36                A. The possession, use, storage or intrastate  
transportation of 15 pounds or less of smokeless powder; or

38                B. The possession, use, storage or intrastate  
40                transportation of 1,000 or fewer primers.

42          **§2473. Permits; requirements**

44          A person may not possess, use, store or transport any  
46          explosives without having obtained a permit. To obtain a permit,  
a person must meet the following requirements:

48                1. Application. Complete an application form furnished by  
50                the commissioner;

2           2. Financial responsibility. Include proof in the  
3 application that the applicant maintains financial responsibility  
4 in the form of liability insurance or a surety bond as follows:

5           A. To obtain a permit with endorsements to possess, use or  
6 store such materials, a person must maintain financial  
7 responsibility in the form of liability insurance in an  
8 amount not less than \$500,000; and

9           B. To obtain a permit with an endorsement for intrastate  
10 transportation of explosives, a person must comply with the  
11 requirements of Title 25, section 2103-A or section 2110,  
12 as applicable;

13           3. Examination. Successfully pass a written examination  
14 administered by the Department of Public Safety;

15           4. Citizenship. Be a citizen or resident alien of the  
16 United States; and

17           5. Character. Demonstrate good moral character and not  
18 have been convicted of a crime punishable by a maximum term of  
19 imprisonment equal to or exceeding one year. The determination  
20 of good moral character must be made in writing, based upon  
21 evidence recorded by a governmental entity. The commissioner  
22 shall consider matters recorded within the previous 5 years,  
23 including, but not limited to, the following:

24           A. Records of incidents of abuse of family or household  
25 members by the applicant provided pursuant to Title 19-A,  
26 section 4012, subsection 1;

27           B. Records provided by the Department of Human Services  
28 regarding the failure of the applicant to meet child or  
29 family support obligations;

30           C. Records of 3 or more convictions of the applicant for  
31 Class D or E crimes;

32           D. Records of 3 or more civil violations by the applicant;  
33 and

34           E. Records that the applicant has engaged in recklessness  
35 or negligence that endangered the safety of others.

36           **§2474. Permit denial; suspension; revocation; grounds**

37           The commissioner may, after a hearing in conformance with  
38 applicable provisions of the Maine Administrative Procedure Act,

2 suspend or revoke a permit issued under this subchapter. The  
3 following are grounds for suspension or revocation of a permit:

4 1. Fraud or deceit. The practice of fraud or deceit in  
5 obtaining a permit under this subchapter or in the performance of  
6 services within the scope of the permit issued;

8 2. Conviction of certain crimes. Conviction of a crime  
9 that relates directly to the practice for which the person is  
10 permitted, or conviction of any crime for which incarceration for  
11 one year or more may be imposed;

12 3. Violation of subchapter or rule. Any violation of this  
13 subchapter or any rule adopted by the commissioner; and

16 4. Incompetence. Incompetence in the practice of storing,  
17 using or transporting explosives. A permittee is deemed  
18 incompetent in the practice if the permittee has:

20 A. Engaged in professional conduct that evidences a lack of  
21 ability or fitness to perform the duties for which the  
22 person is permitted; or

24 B. Engaged in professional conduct that evidences a lack of  
25 knowledge or an inability to apply appropriate principles or  
26 skills to carry out the practice for which the person is  
27 permitted.

28 **§2475. Suspension by commissioner**

30 1. Immediate suspension. If the commissioner has probable  
31 cause to believe that a person permitted under this section poses  
32 an immediate threat to the public because of gross negligence in  
33 the performance of duties associated with the permit, the  
34 commissioner shall immediately suspend that person's permit.

36 2. Suspension in effect during pendency. The suspension  
37 remains in effect until the entry of judgment unless it is  
38 determined by the court in which the criminal charge is pending  
39 that the commissioner did not have probable cause to require the  
40 permit to be suspended.

42 **§2476. Fees; permits; required inspections**

44 All fees received by the Department of Public Safety must be  
45 used for carrying out the purposes of this subchapter. Any  
46 balance of these fees does not lapse but must be carried forward  
47 as a continuing account to be expended for the same purposes in  
48 the following fiscal years.

50

2 1. Permit. A permit provides authorization to purchase,  
3 possess, store, transport and use explosives. A permit is valid  
4 for 3 years from date of issue. The fee for a permit is \$30.

6 2. Inspection of storage magazines and vehicles used to  
7 transport explosives. All storage magazines and vehicles used to  
8 transport explosives in intrastate commerce must be inspected  
9 prior to issuance of a permit. The cost of each inspection is  
10 \$30. Reinspection of storage magazines and vehicles used to  
11 transport explosives must be conducted upon renewal of a permit.

12 **§2477. Violations**

14 A person who violates a provision of this subchapter or a  
15 rule adopted pursuant to this subchapter commits a Class E crime.

18 **SUBCHAPTER II**

20 **FLAMMABLE LIQUIDS**

22 **§2481. Definitions**

24 As used in this subchapter, unless the context otherwise  
25 indicates, the following terms have the following meanings.

26 1. Aboveground flammable liquid storage facility.  
27 "Aboveground flammable liquid storage facility" means any  
28 aboveground storage tank or tanks containing flammable liquids,  
29 together with associated piping, transfer and dispensing  
30 facilities.

32 2. Commissioner. "Commissioner" means the Commissioner of  
33 Public Safety or the commissioner's designee.

34 3. Department. "Department" means the Department of Public  
35 Safety.

38 4. Flammable liquid. "Flammable liquid" means either a  
39 combustible liquid having a flash point at or above 100°  
40 Fahrenheit or any volatile liquid having a flash point below 100°  
41 Fahrenheit.

42 5. Permit. "Permit" means the nontransferable permission  
43 granted by the commissioner to install, construct or otherwise  
44 establish an aboveground flammable liquid storage facility.

45 6. Person. "Person" means any individual, combination of  
46 individuals, partnership, corporation or any other legal entity  
47 and any nonfederal governmental entity.

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2  
3 **§2482. Rules**

4 1. Rules. The commissioner shall adopt rules, which are  
5 routine technical rules pursuant to Title 5, chapter 375,  
6 subchapter II-A, for the storage, handling, dispensing and secure  
7 transportation of flammable liquids.

8 2. Exceptions. The following exceptions apply.

9  
10 A. This section does not apply to the storage in  
11 underground tanks of flammable liquids and other hazardous  
12 substances that are regulated by the Department of  
13 Environmental Protection under Title 38.

14  
15 B. This section does not apply to the storage of flammable  
16 substances that are regulated by the Department of  
17 Professional and Financial Regulation under Title 32.

18 **§2483. Permits; requirements; fees**

19  
20 A person may not install, construct or otherwise establish  
21 an aboveground flammable liquid storage facility without having  
22 obtained a permit from the commissioner in accordance with  
23 subsections 1 to 3.

24  
25 1. Application. Prior to the construction or installation  
26 of an aboveground flammable liquid storage facility, an  
27 application form furnished by the commissioner must be completed  
28 and submitted to the commissioner.

29  
30 2. Construction plans; technical specifications. A  
31 complete set of construction plans and technical specifications  
32 showing the layout of the aboveground flammable liquid storage  
33 facility must be submitted with the application to the  
34 commissioner.

35  
36 3. Fees. The cost of the permit and an inspection of the  
37 aboveground flammable liquid storage facility is \$15. All fees  
38 received by the department must be used for carrying out the  
39 purposes of this subchapter. Any balance of these fees does not  
40 lapse but must be carried forward as a continuing account to be  
41 expended for the same purposes in the following fiscal years.

42 **§2484. Violations**

43  
44 Any person who violates a provision of this subchapter or a  
45 rule adopted pursuant to this subchapter commits a civil  
46 violation for which a forfeiture of not less than \$100 or more  
47 than \$500 may be adjudged for each offense.



2           **Sec. 10. 38 MRSA §490-Z, sub-§14**, as enacted by PL 1995, c.  
700, §35, is amended by amending the first paragraph to read:

4           **14. Blasting.** The applicant must ensure that the blasting  
is conducted in accordance with Title 25, ~~section-2441~~ chapter  
6           318.

8           **Sec. 11. 38 MRSA §568-A, sub-§2, ¶C**, as enacted by PL 1995, c.  
361, §5, is amended to read:

10           C. Conditional deductibles for aboveground facilities and  
12           tanks are as follows.

14           (1) For aboveground tanks subject to the jurisdiction  
of the State Fire Marshal pursuant to 16-219 CMR,  
16           chapter 317, the deductibles are:

18                   (a) Five thousand dollars for failure to obtain a  
construction permit from the Office of the State  
20                   Fire Marshal, when required under Title 25,  
~~section-2441~~ chapter 318 and 16-219 CMR, chapter  
22                   317;

24                   (b) Five thousand dollars for failure to design  
and install piping in accordance with section  
26                   570-K and rules adopted by the department;

28                   (c) Five thousand dollars for failure to comply  
with an existing consent decree, court order or  
30                   outstanding deficiency statement regarding  
violations at the aboveground facility;

32                   (d) Five thousand dollars for failure to  
34                   implement a certified spill prevention control and  
countermeasure plan, if required;

36                   (e) Five thousand dollars for failure to install  
38                   any required spill control measures, such as dikes;

40                   (f) Five thousand dollars for failure to install  
any required overfill equipment;

42                   (g) Five thousand dollars if the tank is not  
44                   approved for aboveground use; and

46                   (h) Ten thousand dollars for failure to report  
48                   any leaks at the facility as required by law.

50           (2) For aboveground tanks subject to the jurisdiction  
of the Oil and Solid Fuel Board, the deductibles are:

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(a) One hundred and fifty dollars for failure to install the facility in accordance with rules adopted by the Oil and Solid Fuel Board and in effect at the time of installation;

(b) Two hundred and fifty dollars for failure to conform an upgraded facility to the requirements provided in rules of the Oil and Solid Fuel Board;

(c) Two hundred and fifty dollars for failure to make a good faith effort to properly maintain the facility; and

(d) Five hundred dollars for failure to notify the department of a spill.

**SUMMARY**

This bill amends the laws pertaining to explosives and flammable liquids in the following ways.

1. It corrects cross-references in the Maine Revised Statutes.

2. It repeals an outdated law pertaining to smoking in certain buildings and public places.

3. It repeals an outdated reference to obtaining a search warrant for explosives.

4. It repeals an outdated law allowing a representative of the Commissioner of Public Safety to be reimbursed for mileage costs while escorting shipments of explosives over the road.

5. It repeals certain laws pertaining to gas-fueled appliances.

6. It repeals the laws pertaining to the regulation of explosives and flammable liquids and enacts new laws on this subject, including laws governing the procedure to obtain permits, qualifications for permittees, fees and penalties.