

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1262

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H.P. 948

House of Representatives, February 28, 2001

### **An Act to Properly Apply Jurisdiction of Chimney Regulation.**

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Reference to the Committee on Criminal Justice suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative BOWLES of Sanford.  
Cosponsored by Senator SHOREY of Washington and  
Representatives: CLOUGH of Scarborough, FOSTER of Gray, MacDOUGALL of North  
Berwick, McLAUGHLIN of Cape Elizabeth, MORRISON of Baileyville.

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

Sec. 1. 25 MRSA §2465, as amended by PL 1997, c. 728, §§31 and 32, is further amended to read:

**§2465. Adoption of regulations**

**1. Adoption of rules.** The Commissioner of Public Safety shall, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, adopt by reference the Rules and Regulations as found in the ~~then-current~~ 2000 edition of the National Fire Protection Association Code #211, "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances".

**2. Prohibitions.** A person may not for compensation construct or install any vent or solid fuel burning appliance unless constructed or installed 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--33.~~

**3. Enforcement.** ~~Subject-to-Title-32,--chapter-33,--the~~ The Commissioner of Public Safety or the commissioner's designees, ~~state-oil-and-solid-fuel-compliance-officers,~~ duly appointed fire chiefs or their designees, and municipal building inspectors and code enforcement officers may enforce the requirements of "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances"--and-Title-32,--section-2313-A. Appliances."

**4. Prior installation.** Any chimney, fireplace, vent or solid fuel burning appliance constructed or installed prior to the effective date of this section may be continued in use subject to the provisions of section 2432.

**5. Home rule.** ~~Subject-to-Title-32,--chapter-33,--any~~ Any municipality may adopt as ordinance requirements for the materials, installation or construction of chimneys, fireplaces, vents or solid fuel burning appliances that exceed the requirements of "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances."

**5-A. Safety information.** A new factory-built fireplace, fireplace stove or solid fuel burning room heater may not be sold in retail trade, unless the seller provides the buyer, on or before the sale, with an installation instruction manual or, in the case where such a manual is not available, with a publication of the Department of Economic and Community Development containing recommended clearances the same as those prescribed in

the National Fire Protection Association Code #211, The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances, as approved by the Commissioner of Public Safety.

**6. Penalty.** Any person who, for compensation, constructs or installs vents or solid fuel burning appliances in violation of the standards and who permits such violation to remain uncorrected after 30 days' notice from any official empowered to enforce this section is guilty of a civil violation and is subject to a forfeiture of not more than \$500 for each violation. The court may waive any penalty or cost against any violator upon satisfactory proof that the violation was corrected within 30 days of the issuance of a complaint. ~~Construction and installation of chimneys and fireplaces are governed by Title 32, chapter 33.~~

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

**7. Disclosures; penalties.** A chimney or fireplace installer must issue a disclosure to any consumer prior to the installation taking place. Disclosures must be in a format determined by the Commissioner of Public Safety and contain the information the commissioner considers necessary.

Any chimney or fireplace installer who fails to provide a disclosure to a consumer prior to the installation of a chimney or fireplace commits a civil violation for which a forfeiture of not less than \$500 may be adjudged.

**Sec. 2. 32 MRSA §2311, sub-§1,** as amended by PL 1999, c. 386, Pt. J, §1, is further amended to read:

**1. Accessory equipment.** "Accessory equipment" means equipment, materials and controls that are not integral parts of the oil or solid fuel burning unit but that are connected to the oil or solid fuel burning unit and have the potential to affect the safety of the oil or solid fuel burning equipment. "Accessory equipment" does not include chimneys or fireplaces.

**Sec. 3. 32 MRSA §2311, sub-§§4-B and 4-C,** as enacted by PL 1991, c. 198, §6, are repealed.

2           **Sec. 4. 32 MRSA §2311, sub-§6**, as amended by PL 1991, c. 198,  
§7, is further amended to read:

4           **6. Equipment installations.** "Equipment installations" means  
the installation, alteration or repair of oil and solid fuel  
6 burning equipment, ~~chimneys-and-fireplaces,--as-defined-in-this~~  
~~chapter,~~ including accessory equipment as relating only to the  
8 safety of the installation. Associated electrical equipment must  
be wired in compliance with the rules of the Electricians'  
10 Examining Board.

12           **Sec. 5. 32 MRSA §2313**, as amended by PL 1991, c. 198, §11, is  
further amended to read:

14           **§2313. Installations to conform to standards**

16           No installation of oil or solid fuel burning equipment or  
18 ~~chimneys-and-fireplaces~~ as defined in this chapter may be made in  
the State unless the installation complies with all standards and  
20 regulations adopted by the board. Whenever oil or solid fuel  
burning equipment, accessory equipment or installation thereof  
22 are is separately contracted, the master burner technician in  
charge of installation is responsible for ascertaining total  
24 conformance to the standards. Whenever any state oil and solid  
fuel compliance officer finds a person installing or assisting ~~in~~  
26 an with the installation of oil or solid fuel ~~burner-installation~~  
burning equipment, the person shall, on request of the compliance  
28 officer, provide evidence of being properly licensed when  
required by this chapter and, if unable to provide the evidence,  
30 shall furnish the compliance officer with that person's full name  
and address and, if applicable, the full name and address of the  
32 master in charge.

34           **Sec. 6. 32 MRSA §2313-A**, as corrected by RR 1991, c. 1, §46,  
is repealed.

36           **Sec. 7. 32 MRSA §2314**, as enacted by PL 1979, c. 569, §4, is  
38 amended to read:

40           **§2314. Municipal licenses not required; municipal permits**

42           No municipality, provisions in charters to the contrary,  
shall may require oil or solid fuel burner technicians to be  
44 municipally licensed, but ~~no~~ a municipality shall may not issue a  
permit for an oil or solid fuel ~~burner~~ burning equipment  
46 installation unless satisfied that the person applying for the  
permit complies with the requirements of this chapter.

48           **Sec. 8. 32 MRSA §2315, sub-§1**, as amended by PL 1999, c. 657,  
50 §15, is further amended to read:

2           **1. Inspection.** State oil and solid fuel compliance  
4 officers, upon written complaint of any owner, lessee or tenant  
6 of a building, state fire inspector, fire chief, fire department  
8 inspector, personnel of a transmission and distribution utility  
10 or local electrical inspector, or whenever they consider it  
12 necessary, for purposes of examination of ~~the burner,--chimney--or~~  
14 ~~fireplace--installation~~ oil and solid fuel burning equipment  
16 installations, may at all reasonable hours enter into and upon  
18 all buildings or premises within their jurisdiction and inspect  
20 the buildings or premises. The inspectors may enter any building  
22 only with the permission of the person having control of the  
24 building or, after hearing, upon order of the court. Whenever  
26 any such compliance officer finds any ~~burner,--chimney--or~~  
28 ~~fireplace~~ oil and solid fuel burning equipment installation in  
any building or structure that does not comply with the  
requirements of this chapter, that officer shall order the  
~~burner,--chimney--or--fireplace~~ oil and solid fuel burning equipment  
to be removed or remedied, and the order must forthwith be  
complied with by the owner or occupant of that building or  
structure or the installer of the equipment. If the compliance  
officer finds an installation,--~~which~~ that falls under the  
compliance officer's jurisdiction in any building or structure  
that creates a danger to other property or to the public, the  
compliance officer may forbid the use of the building or  
structure by serving a written order upon the owner and the  
occupant, if any, to vacate within a reasonable period of time to  
be stated in the order.

30           **Sec. 9. 32 MRSA §2315, sub-§5**, as enacted by PL 1999, c. 386,  
32 Pt. J, §8, is amended to read:

34           **5. Powers of oil and solid fuel compliance officers.** Oil  
36 and solid fuel compliance officers have powers throughout the  
38 several counties of the State, similar to those of sheriffs in  
40 their respective counties, relating to enforcement of this  
42 chapter and rules adopted under this chapter. These powers are  
44 limited to the issuing of citations, the serving of summonses,  
46 the conducting of investigations, the ordering of corrections of  
violations and the issuance of orders to vacate a building or  
structure in accordance with this chapter. State oil and solid  
fuel compliance officers may review the ~~burner,--chimney--or~~  
~~fireplace~~ oil and solid fuel burning equipment installation  
records of any person licensed under this chapter or any person  
performing oil and solid fuel burning equipment installations as  
authorized under this chapter.

48           **Sec. 10. 32 MRSA §2316**, as amended by PL 1991, c. 198, §14,  
50 is further amended to read:

**§2316. Failure to comply with order of compliance officer**

2 If the owner, or occupant of any building or an installer  
neglects or refuses, without justification, for more than 10 days  
4 to comply with any order of an oil or solid fuel burner  
compliance officer concerning oil or solid fuel burner, ~~chimney~~  
6 ~~or fireplace burning equipment~~ installations as provided by this  
chapter, that person commits a civil violation for which a  
8 forfeiture of not less than \$100 for each day's neglect may be  
adjudged.

10  
12 **Sec. 11. 32 MRSA §2317, first ¶**, as amended by PL 1999, c. 386,  
Pt. J, §9, is further amended to read:

14 Any person, firm or corporation who makes an oil or solid  
fuel burner burning equipment installation without being licensed  
16 as provided by this chapter; any person, firm or corporation in  
the oil or solid fuel burner burning equipment installation  
18 business who employs an unlicensed person, unless the work is  
exempted under this chapter; or any person who procures any  
20 license as provided in this chapter wrongfully or by fraud is  
guilty of a Class E crime.

22  
24 **Sec. 12. 32 MRSA §2351, 2nd ¶**, as amended by PL 1999, c. 386,  
Pt. J, §10, is further amended to read:

26 Three of the appointive members must be oil burner  
technicians who are active in the trade. One of the members must  
28 have at least 5 years' experience and the other 2 members must  
have at least 10 years' experience as oil burner technicians.  
30 Nominees for appointment of the oil burner technician members may  
be recommended to the Governor by the Maine Oil Dealers  
32 Association. One of the appointive members must be a  
representative of the solid fuel burning industry, one must be a  
34 representative of the public and one must be a manufacturer,  
importer or wholesaler or a designee of a manufacturer, importer  
36 or wholesaler of equipment for burning oil and solid fuel,  
~~prefabricated fireplaces and chimneys~~ or accessory equipment.

38  
40 **Sec. 13. 32 MRSA §2401**, as amended by PL 1979, c. 569, §12,  
is repealed and the following enacted in its place:

42 **§2401. License required**

44 Except as provided in this chapter, installation or  
servicing of oil and solid fuel burning equipment may be made  
46 only by a person licensed by the board.

48 **Sec. 14. 32 MRSA §2401-A, sub-§1**, as enacted by PL 1979, c.  
569, §13, is amended to read:

1. **Electricians.** Any electrician duly licensed under chapter 17 insofar as the installation of electrical equipment or the performance of any electrical work involved in the installation of oil or solid fuel ~~burners~~ burning equipment is concerned;

**Sec. 15. 32 MRSA §2401-A, sub-§4,** as amended by PL 1995, c. 560, Pt. H, §13 and affected by §17, is further amended to read:

**4. Engineers and operators.** A person holding an engineer's license issued under, section 15109, or working under the general supervision of one so licensed while performing oil or solid fuel ~~burner~~ burning equipment repair and maintenance as is necessary in the steam or heating plant where that person is employed, if that work is performed in compliance with section 2313, or a person employed by companies under the jurisdiction of the Public Utilities Commission or the United States Nuclear Regulatory Commission whose facilities are subject to inspection under Title 26, chapter 5, subchapter II, Article 4;

**Sec. 16. 32 MRSA §2401-A, sub-§6,** as amended by PL 1999, c. 386, Pt. J, §13, is further amended to read:

**6. Personal abode.** Nothing in this chapter prevents a person from making an oil or solid fuel ~~burner~~ burning equipment installation in a single family residence occupied or to be occupied by that person as that person's bona fide personal abode, ~~provided-that~~ as long as the installation conforms with board laws and rules.

**Sec. 17. 32 MRSA §2402-A,** as enacted by PL 1999, c. 386, Pt. J, §16, is amended to read:

#### **§2402-A. Rules**

The board may adopt reasonable rules for the issuance of various types and classes of licenses to cover oil and solid fuel ~~burner~~ burning equipment installations and to set forth standards and rules for product approval. A license may cover one or more types of installations. The board may further adopt reasonable rules concerning the term and type of experience required by candidates for examination.

### **SUMMARY**

This bill removes the Oil and Solid Fuel Board from responsibility for chimney regulation in the State and clarifies that the Commissioner of Public Safety or the commissioner's designee has the responsibility for enforcing chimney regulation.