

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1987

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION  
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ONE HUNDRED AND THIRTEENTH LEGISLATURE  
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which the cooperative is barred from collecting under paragraph A;

C. Discriminate against any Maine market dealer making payments in accordance with section 3153, subsection 2, paragraph C, in the marketing of its members' milk based in whole or in part on the extent to which the dealer's producers have joined or refused to join the cooperative; or

D. Collect or attempt to collect all or any part of an over-order premium from a Maine market dealer prior to determination of its eligibility or during any period for which its eligible status has been revoked by the commissioner.

2. Civil penalties. Each violation of this section is punishable by a civil penalty not to exceed \$2,000 for a first violation and \$5,000 for each subsequent violation, which penalties may be collected by the commissioner in a civil action. All penalties collected by the commissioner shall be paid to the Treasurer of State for deposit into the General Fund.

3. Injunctive relief. The Superior Court shall have jurisdiction upon complaint filed by the commissioner to restrain or enjoin any person from committing any act prohibited by subsection 1 or from violating any order or decision issued by the commissioner pursuant to subsection 4. The commissioner shall not be required to post a bond when applying for an injunction under this subsection.

4. Administrative enforcement. When the commissioner, after such investigation as he deems appropriate, believes that a violation of this section has occurred, he may order the eligible marketing cooperative to cease that violation. In lieu of, or in addition to, such an order and notwithstanding Title 4, section 1151, subsection 2 and Title 5, section 10051, subsection 1, the commissioner may also revoke the eligible status of the cooperative for purposes of this chapter for a period not to exceed one year for a first violation, 2 years for a 2nd violation and permanently for a 3rd or subsequent violation. Before issuing such an order or revoking a cooperative's eligibility, the commissioner shall afford the cooperative an opportunity for a hearing. Any person aggrieved by a final order or decision issued under this subsection may obtain judicial review in Superior Court by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C. In responding to such a petition, the commissioner may seek enforcement of his order or decision, including civil penalties for any violation found and the court, if it upholds the order or decision, may order its enforcement, including civil penalties.

Nothing in this section is intended to require that the commissioner take administrative enforcement action prior to seeking judicial relief for any violation of this section or is intended to limit the commissioner's ability to bring an independent action to enforce any decision

or order issued by him, including civil penalties for any violation found by him.

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

Effective June 26, 1987.

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## CHAPTER 448

H.P. 1286 — L.D. 1762

### AN ACT to Ensure Safe Abatement of Asbestos Hazards.

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

Whereas, the identification and correction of asbestos-related problems in public and private buildings are a matter of significant concern as a public health hazard; and

Whereas, the State is undertaking a major asbestos identification and removal program financed with bonds approved in public referendum; and

Whereas, it is critical to the safe and effective conduct of asbestos identification, encapsulation, removal, handling and disposal activities that trained and qualified personnel from the public and private sectors be employed; 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.** 5 MRSA §282, sub-§5 is amended to read:

5. Other powers and duties. To exercise such other powers and perform such other duties as may be designated by statute law;

**Sec. 1-A.** 5 MRSA §282, sub-§6, as enacted by PL 1983, c. 553, §1, is amended to read:

6. Supervise. To supervise and direct the administration of the State Claims Board; and

**Sec. 1-B.** 5 MRSA §1877, sub-§9 is enacted to read:

9. Asbestos abatement. The commission shall authorize the expenditure of funds for the abatement of asbestos-related hazards in buildings used by the courts of the State.

Sec. 1-C. 38 MRSA c. 12-A is enacted to read:

CHAPTER 12-A

ASBESTOS

§1271. Findings and purpose

The Legislature finds that the presence of friable and potentially friable asbestos in public and private buildings is a public health hazard; that State Government and local government agencies are conducting major abatement programs; that it is critical to the safe conduct of asbestos identification, encapsulation, removal, handling and disposal activities that trained and qualified personnel from the public and private sectors be employed; and that work practice standards for asbestos abatement activities must be established and enforced to ensure protection of the public health.

The purpose of this chapter is to provide a flexible means by which the State, acting through the Department of Environmental Protection, may ensure that those engaged in the management and abatement of asbestos-containing materials are properly trained, supervised and directed to protect the public health.

§1272. Definitions

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

1. Asbestos. "Asbestos" means a group of naturally occurring minerals that separate into fibers of high tensile strength and are resistant to heat, wear and chemicals, including, but not limited to, chrysotile, amosite, crocidolite, actinolite, tremolite and anthophyllite and any of these minerals that have been chemically treated or altered.

2. Asbestos abatement activity. "Asbestos abatement activity" means activity involving the removal, renovation, enclosure, repair, encapsulation, handling, transportation or disposal of friable asbestos-containing materials in an amount greater than 10 square feet or 10 linear feet.

3. Asbestos abatement contractor. "Asbestos abatement contractor" means a business entity that engages in, or intends to engage in, asbestos abatement activities as a business service on property which it does not own and that employs or involves one or more asbestos abatement project supervisors, design consultants or evaluation specialists for asbestos abatement activities.

4. Asbestos abatement design consultant. "Asbestos abatement design consultant" means a person engaged in preparing and supervising the implementation of facility plans for the removal or abatement of asbestos. These activities include, but are not limited to, the performance of air quality and bulk sampling;

advising building owners, contractors and project supervisors on health impacts of asbestos abatement activities; and supervising the conduct of training courses. This category of specialists includes, but is not limited to, engineers, architects, health professionals, industrial hygienists, private consultants or other individuals involved in asbestos risk assessment or regulatory activities.

5. Asbestos abatement project supervisor. "Asbestos abatement project supervisor" means a person with responsibility for the supervision of asbestos abatement activities. Those persons include, but are not limited to, abatement project supervisors employed by contractors, employees of governmental or public entities who coordinate or directly supervise asbestos abatement activities performed by public schools, governmental or other public employees in a school district, governmental or other public buildings and project supervisors employed as consultants to monitor and direct abatement contractors.

6. Asbestos abatement worker. "Asbestos abatement worker" means an employee of an asbestos abatement contractor engaged in asbestos abatement activity under the supervision of an asbestos abatement project supervisor.

7. Asbestos — containing material. "Asbestos — containing material" means any material containing asbestos in quantities equal to or greater than 1% by weight.

8. Asbestos evaluation specialist. "Asbestos evaluation specialist" means a person responsible for:

A. Applying existing rules and standards at a specific location to determine the health hazards associated with the presence of friable asbestos-containing materials; or

B. Establishing or monitoring procedures during asbestos abatement activities in order to protect public health from the hazards associated with exposure to asbestos.

9. Business entity. "Business entity" means a partnership, firm, association, corporation, sole proprietorship or other business concern.

10. Certificate. "Certificate" means a document issued by the Department of Environmental Protection affirming that an individual has successfully completed the training and other requirements set forth in this chapter to qualify as an asbestos project manager, an asbestos evaluation specialist or asbestos abatement specialist, whether held by an individual, business or public entity.

11. Commissioner. "Commissioner," unless otherwise specified, means the Commissioner of Environmental Protection.

12. Employee. "Employee" means every person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit, to engage in any employment.

13. Friable. "Friable" means materials which may be crumbled or pulverized, when dry, by hand pressure. These materials include materials located behind barrier systems and materials which have been rendered friable through manipulation.

14. In-house asbestos abatement unit. "In-house asbestos abatement unit" means the unit of a business or public entity that engages in, or intends to engage in, asbestos abatement activities solely within the confines of property which is owned or leased by the entity and that employs one or more asbestos abatement project supervisors for asbestos abatement activities.

15. License. "License" means a document issued by the Department of Environmental Protection to a business entity or public entity affirming that the entity has met the requirements set forth in this chapter to engage in asbestos abatement activities as an asbestos abatement contractor.

16. Person. "Person" means any individual, business entity, governmental body or other public or private entity.

17. Public entity. "Public entity" means the State, any of its political subdivisions or any agency or instrumentality of either.

#### §1273. Prohibitions

Unless otherwise provided in this section:

1. License or certificate required. No person may engage in any asbestos abatement activities in the State, unless licensed or certified pursuant to this chapter; and

2. Notification required. No person may engage in any planned asbestos abatement project that involves more than 100 linear feet of pipe covered or coated with asbestos-containing material or more than 100 square feet of asbestos-containing material unless notification is given the commissioner in writing at least 10 working days before beginning any on-site work that has the potential to release asbestos fibers.

3. In-house abatement units. Abatement activities undertaken by an in-house abatement unit are exempted from the provisions of this section provided that:

A. All such activities are supervised by a person certified under provisions of section 1274, subsection 4; and

B. Notification is given the commissioner in writing for abatement projects involving more than 160 square feet and 260 linear feet.

4. Exemption. Asbestos abatement activities undertaken in residential buildings of 4 dwelling units or less shall be exempt from the requirements of this section. Asbestos abatement activities related to disposal undertaken at licensed asbestos disposal sites are exempt from the requirements of this section.

#### §1274. Licensing and certification

The commissioner shall develop a program which establishes criteria and procedures for the licensing or certification of the following.

1. Asbestos abatement contractor. To qualify for a license, an applicant shall show evidence satisfactory to the commissioner that:

A. Each employee or agent within its employ who will come in contact with asbestos or will be responsible for an asbestos abatement project:

(1) Is familiar with all applicable state and federal standards for asbestos abatement projects; and

(2) Has successfully completed a course of instruction for his particular category, which has been certified pursuant to section 1275, and is capable of complying with all applicable standards of the State, the United States Environmental Protection Agency and the United States Occupational Safety and Health Administration;

B. It has access to at least one asbestos disposal site approved by the Department of Environmental Protection that is sufficient for the deposit of all asbestos waste that it will generate during the term of the license;

C. It possesses a work program that prevents the contamination or recontamination of the environment and protects the public health from the hazards of exposure to asbestos;

D. It possesses evidence of certification under subsection 4 of each individual employee or agent who will be responsible for other employees who may come in contact with friable asbestos-containing materials;

E. It possesses evidence of certification of all other employees as required by subsection 5; and

F. It possesses a worker protection and medical monitoring program consistent with requirements established by the Maine Board of Occupational Safety and Health Protection if the contractor is a public entity and a worker protection program consistent with the requirements of the United States Occupational Safety and Health Administration if the contractor is a business entity.

2. Asbestos abatement design. All designs or plans for asbestos abatement shall be developed by an asbestos abatement design consultant.

A. To qualify for receipt of certification, an applicant shall show evidence satisfactory to the commissioner that that applicant has:

- (1) Fulfilled the requirements for certification as an asbestos abatement project supervisor set forth in subsection 4;
- (2) A minimum of 2 years of experience in the design and implementation of asbestos management and removal projects; and
- (3) Successfully completed an examination administered by the commissioner for this category.

B. All modifications to facilities or structures and to their component systems, which may occur in conjunction with an asbestos abatement project shall be designed in accordance with applicable state and municipal building codes.

3. Asbestos evaluation specialist. All evaluations of public health hazards associated with the presence of friable asbestos materials to determine the need for an asbestos abatement project and to ensure that a completed project meets prescribed standards shall be conducted by an asbestos evaluation specialist certified pursuant to the requirements of this section.

A. To qualify for certification, an applicant shall show evidence satisfactory to the commissioner that:

- (1) The applicant has passed a course or program approved by the commissioner which assures competence in proper air sampling techniques and a full understanding of the characteristics and hazards of friable asbestos; and
- (2) The applicant has fulfilled the requirements for certification as an asbestos abatement project supervisor set forth in subsection 4.

4. Asbestos abatement project supervisors. All persons supervising the conduct of asbestos abatement activities shall be certified as asbestos project supervisors. To qualify for receipt of certification, an applicant shall show evidence satisfactory to the commissioner that:

A. The applicant has satisfactorily completed a training course certified by the commissioner as appropriate for a person supervising asbestos abatement workers in the conduct of an asbestos abatement activity; and

B. The applicant has participated in or observed at least one asbestos abatement project in addition to the training required in this subsection.

5. Asbestos abatement worker. All employees engaged in asbestos abatement activities and not otherwise certified under this chapter shall be certified as asbestos

abatement workers. To qualify for certification, an applicant shall show evidence satisfactory to the commissioner that he has completed a training course certified by the commissioner as appropriate for the safe and proper removal, encapsulation or handling of asbestos. The commissioner shall provide for interim certification for a period not to exceed 30 days upon completion of a worker orientation program approved by the commissioner.

#### §1275. Certification of training courses

The commissioner, after consultation with the Commissioner of Administration and the Commissioner of Labor, shall develop rules establishing criteria and procedures for the certification of training courses and examinations which shall ensure the qualifications of applicants for certification as required in this chapter. These rules shall be promulgated by the Department of Environmental Protection in accordance with Title 5, chapter 375, subchapter II.

1. Course requirements. To qualify for certification, a training course shall contain a combination of class instruction, practical application and public health procedures of a length and content which, to the satisfaction of the commissioner, shall ensure adequate training for the level and type of responsibility for each named certification category.

2. Instructors. All courses certified under this section shall be conducted by instructors whose training and experience is determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. All courses shall be designed and conducted under the guidance of an asbestos abatement design consultant.

#### §1276. Reciprocity agreement

The commissioner may develop reciprocity agreements with other states when the states have established licensing and certification requirements that are at least as stringent as those set forth in this chapter.

#### §1277. Support services

The Department of Administration shall provide supporting services to the Department of Environmental Protection for the implementation of this chapter, including:

1. Training records. Maintenance of training records for employees of public and private entities intending to undertake asbestos abatement activities in the State;

2. Evaluation of applications. Assistance in the evaluation of applications for licensing or certification for compliance with this chapter and subsequent rules, upon request of the commissioner;

3. Evaluation of training programs. Evaluation, development and management of training programs which are appropriate for applicants attempting to comply with the provisions of this chapter and subsequent rules; and

4. Maintenance of project records. Maintenance of records of asbestos abatement projects conducted or supervised by the Department of Administration, the contractors and employees involved in the projects and any citations or violations of law that may have occurred in completing these projects.

#### §1278. Fees

1. Fees established. The following fees are established for each license and certification category to be paid annually. The fees shall be paid upon application to the commissioner and deposited in the Maine Environmental Protection Fund.

A. The fees are:

- (1) Asbestos abatement contractor: \$250;
- (2) Asbestos abatement design consultant: \$50;
- (3) Asbestos evaluation specialist: \$50;
- (4) Asbestos project supervisor: \$50; and
- (5) Asbestos abatement worker: \$25.

B. A business or public entity may pay the certification fee and receive certificates for one or more positions in each category on an annual basis. Employees filling the certified positions at any time during the one-year period shall be qualified under terms of this chapter and, if qualified, shall receive written evidence of certification. The business or public entity shall notify the commissioner within 5 working days of any changes of the persons holding its certified positions and shall provide all information requested by the commissioner to show that new employees meet the requirements for certification pursuant to this chapter.

C. A person applying for certification under more than one category shall pay only the fee for the highest category.

2. Notification fees. Notification of a planned asbestos abatement project pursuant to section 1273, subsections 2 and 3, shall be accompanied by a notification fee, unless such activity occurs in private residential buildings of 4 dwelling units or less.

A. The fees are:

- (1) Projects involving more than 160 square feet or 260 linear feet, but less than 1,000 square feet or 5,000 linear feet: \$100; and
- (2) Projects involving more than 1,000 square feet or 5,000 linear feet: \$200.

#### §1279. Renewal

Each license or certificate issued under this chapter shall expire one year after the date of issue. Licensees or certificate holders may apply to the Department of Environmental Protection for the renewal of a license or certificate. No renewal may be granted if the application is received more than 2 years following expiration of the previously issued license or certificate.

To qualify for renewal of a license or certificate, the applicant shall submit:

1. Fee. The appropriate fee as prescribed in section 1278;
2. Training. Evidence of completion of any continuing education or training that may be required by rules promulgated by the commissioner; and

3. Disclosure. A signed statement disclosing any violations of asbestos abatement standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous year, that fact shall be stated. The disclosure shall include evidence that all penalties and fees assessed to the applicant are paid in full.

#### §1280. Standard of acceptable work practice

The Board of Environmental Protection shall promulgate rules, subject to Title 5, chapter 375, subchapter II, which establish criteria and procedures of acceptable work practices for licensees and certificate holders engaged in the following asbestos hazard abatement activities.

1. Removal; encapsulation; enclosure. For any asbestos project that involves more than 100 linear feet of pipe covered or coated with asbestos-containing material or 100 square feet of asbestos-containing material used to cover or coat any duct, boiler, tank, reactor, turbine, structure, structural member or structural component, the commissioner shall consider the following:

- A. Proper work practices for the removal of asbestos-containing materials;
- B. Proper work practices for the encapsulation of asbestos-containing materials;
- C. Proper work practices for enclosure of asbestos-containing materials;
- D. Proper work practices for the demolition of a structure or position of a structure which contains structural members or components of or covered by asbestos-containing materials;
- E. Proper work practices for the storage, transport and disposal of asbestos-containing materials; and



F. Administrative penalties and cessation of operations to ensure compliance with this subsection.

2. Other activities. For any asbestos project not subject to the specific considerations of subsection 1, reasonable precautions to prevent the release of asbestos to the environment shall be made. At a minimum, the following precautions shall be considered:

A. Construction of adequate barriers to contain asbestos fibers released within the work area;

B. Wetting of all asbestos-containing material prior to removal and during collection;

C. Use of high efficiency particulate air vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;

D. Containing waste in appropriately labeled impermeable containers; and

E. Proper storage, transfer and disposal to an approved landfill facility in a manner that does not release fibers into the air.

#### §1281. Emergency provisions

In an emergency that results from a sudden, unexpected event that is not a planned asbestos abatement project, the commissioner may waive the requirements for a license or certificate. For the purposes of this section, emergency includes operations necessitated by non-routine failures of equipment or by actions of fire and emergency medical personnel pursuant to duties within their official capacities. Any person who performs an asbestos abatement activity, which activity would normally require notification pursuant to section 1273, subsections 2 and 3, under emergency conditions, shall notify the commissioner by phone within one working day and in writing within 3 days after performance of that activity.

#### §1282. Standards of conduct

The Board of Environmental Protection shall promulgate rules which establish standards of acceptable professional conduct for licensees and certificate holders engaged in asbestos abatement activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate.

#### §1283. Interim procedures

In developing a program to implement this chapter, the commissioner shall provide for interim licensing and certification procedures to ensure a transition period of not less than 180 days before the application of the requirements established in this chapter.

#### §1284. Assistance from other departments

The Commissioner of Administration, the Commissioner of Labor and the Commissioner of Human Services shall assist the Commissioner of Environmental Protection in the enforcement of the licensing and certification requirements of this chapter.

**Sec. 2. Allocation.** The following funds are allocated from the Maine Environmental Protection Fund to carry out the purposes of this Act.

	1988-89	1989-90
<u>ENVIRONMENTAL PROTECTION,</u>		
<u>DEPARTMENT OF</u>		
Maine Environmental Protection Fund		
Positions	(5)	(5)
Personal Services	\$108,518	\$117,595
All Other	34,032	34,032
Capital Expenditures	30,450	
Total	<u>\$173,000</u>	<u>\$151,627</u>

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

Effective June 26, 1987.

## CHAPTER 449

H.P. 1358 — L.D. 1860

### AN ACT to Amend the Uniform Commercial Code Regarding Tribal Government.

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

Whereas, there is a critical need for the Maine Indian tribes to be able to grant security interest in the property to lenders in order to obtain credit for enterprises owned by the tribes; and

Whereas, current law must be clarified to make clear that tribal governments, like other borrowers, can grant security interests in tribal property; and

Whereas, an immediate change in Article 9 of the Maine Uniform Commercial Code enabling tribal governments to grant security interests is necessary, so that they may obtain credit and continue the operation of enterprises owned by the tribes; 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,