

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

All orders of the board or the commissioner may be enforced by the Attorney General. If any order of the board or the commissioner is not complied with within the time period specified, the board or the commissioner, respectively, shall immediately notify the Attorney General of this fact.

§347-C. Right of inspection and entry

Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, take samples and conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection.

See title page for effective date.

CHAPTER 312

H.P. 667 - L.D. 909

An Act to Amend the Underground Oil and Hazardous Substance Storage Tank Installer Laws

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

Whereas, there are over 8,000 underground storage tanks that must be removed by October 1989; and

Whereas, a significant portion of these tanks store gasoline; and

Whereas, certified underground storage tank installers and underground gasoline tank removers are needed to help private citizens meet removal requirements; 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. 32 MRSA §10002, sub-§§3-B, 5-C and 5-D are enacted to read:

3-B. Gasoline. "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

5-C. Underground gasoline storage tank. "Underground gasoline storage tank" means a tank or container,

10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include tanks or containers that are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

5-D. Underground gasoline storage tank remover. "Underground gasoline storage tank remover" means a person certified under this chapter to remove underground gasoline storage tanks.

Sec. 2. 32 MRSA §10004, sub-§2, as amended by PL 1987, c. 410, §5, is further amended to read:

2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil or underground hazardous substance storage tank installation and removal and underground gasoline storage tank removal.

Sec. 3. 32 MRSA §10006, sub-§1, as amended by PL 1987, c. 410, §7, is further amended to read:

1. Certification required. No person may practice, or ~~hold himself out as authorized~~ profess to practice, as an underground oil or underground hazardous substance storage tank installer or underground gasoline storage tank remover in this State or use the words "underground oil storage tank ~~installer~~ or installer," "underground hazardous substance storage tank ~~installer~~ installer," "underground gasoline storage tank ~~remover~~ remover" or other words or letters to indicate that the person using the words or letters is a certified underground oil or underground hazardous substance storage tank installer practitioner or underground gasoline storage tank remover practitioner unless he that person is certified in accordance with this chapter.

Sec. 4. 32 MRSA §10006, sub-§§3 and 4 are enacted to read:

3. Proper underground oil storage tank installer certification class required. No person may install or advertise to install underground oil storage tanks unless the person has the appropriate class of certification in accordance with this subsection.

A. A Class 1 underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed underground oil storage tanks.

B. A Class 2 underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed, heavy oil storage or impressed-current cathodically-protected tanks.

C. A Class 3 underground storage tank installer may only install or remove underground oil storage tanks for the storage of #2 heating oil. Class 3 installers are not certified to install or remove field-constructed, heavy oil storage or impressed-current cathodically-protected tanks.

D. Currently certified underground oil storage tank installers shall be certified as Class 2 installers until they demonstrate to the satisfaction of the board one of the following: training and experience commensurate with a Class 1 certification; completion of additional board-approved training in the areas of cathodic protection and heavy oil storage tank installations; or passage of the Class 1 written final examination.

E. Certified underground oil storage tank installers may upgrade their certification by demonstrating to the satisfaction of the board training and experience comparable to completion of the appropriate apprenticeship requirements and passage of the written final examination in that class.

4. Proper underground gasoline storage tank remover certification class required. No person may remove or advertise to remove an underground gasoline storage tank unless the person is certified in accordance with this chapter.

Sec. 5. 32 MRSA §10009, as amended by PL 1987, c. 410, §9, is repealed.

Sec. 6. 32 MRSA §10010, first ¶, as amended by PL 1987, c. 410, §10, is further amended to read:

An applicant applying for certification as an underground oil storage tank installer or an underground hazardous substance tank installer or an underground gasoline storage tank remover shall file a written application provided by the board, showing to the satisfaction of the board that ~~he~~ that person meets the following requirements.

Sec. 7. 32 MRSA §10010, sub-§3, ¶A, as amended by PL 1987, c. 410, §11, is repealed and the following enacted in its place:

A. Passage of an initial written or oral examination based on laws outlined in and any rules promulgated under Title 38, chapter 3, subchapter II-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks;

Sec. 8. 32 MRSA §10010, sub-§3, ¶B, as enacted by PL 1985, c. 496, Pt. A, §2, is repealed and the following enacted in its place:

B. Successful completion of an apprenticeship in accordance with this section and under the direct supervision of an underground oil storage tank installer certified in the class for which the applicant is applying; and

Sec. 9. 32 MRSA §10010, sub-§3, ¶C is enacted to read:

C. Passage of a final written or oral examination specific to the class for which the applicant is applying that is based on the laws outlined in and any rules promulgated under Title 38, chapter 3, subchapter II-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks.

Sec. 10. 32 MRSA §10010, sub-§§3-A and 5 are enacted to read:

3-A. Apprenticeship requirements for new underground oil storage tank installers. An applicant for certification as an underground oil storage tank installer must meet the following apprenticeship requirements before being certified.

A. To be eligible to take the final examination for a Class 1 certification, the applicant must provide documentation of completion of at least 12 underground oil storage tank installations, of which 6 shall be marketing and distribution systems or other motor fuel storage tanks and 6 shall be heavy oil tank installations. At least 2 of these qualifying installations shall be impressed-current tanks.

B. To be eligible to take the final examination for a Class 2 certification, the applicant must provide documentation of completion of 6 marketing and distribution or other motor fuel storage tank installations.

C. To be eligible to take the final examination for a Class 3 certification, the applicant must provide documentation of completion of 6 heating oil installations.

D. The board shall adopt rules to administer this section and to provide a variance to the apprenticeship requirements of this subsection if the applicant can satisfactorily demonstrate training and experience comparable to completion of an apprenticeship.

5. Education and examination for certification of underground gasoline storage tank removers. An applicant for certification as an underground gasoline storage tank remover must meet the following requirements before being certified:

A. Passage of initial written or oral examination based on Title 38, chapter 3, subchapter II-B, and any rules promulgated by the Board of Environmental Protection concerning the removal of underground gasoline storage tanks; and

B. Completion of a successful removal of an underground gasoline storage tank under the supervision of a designated representative of the Department of Environmental Protection.

Sec. 11. 32 MRSA §10010-A, as amended by PL 1987, c. 410, §13, is further amended to read:

§10010-A. Certification requirements regarding the on-site installation of an underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection

To provide for the completion of the on-site installation of an underground ~~oil or underground~~ hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection, the Board of Underground Storage Tank Installers may issue a provisional certificate valid for no more than 6 months after issuance to tank installers who have successfully completed the examination requirements pursuant to section 10010.

When the board determines that reasonable extenuating circumstances prevent the administration or completion of an on-site installation within the 6-month provisional certification period, it may grant one renewal of a provisional certificate for a specific limited time not to exceed 3 months.

The board shall establish a written set of criteria to be used as a checklist by the representative of the Department of Environmental Protection designated to supervise the on-site installation or removal to ensure that each installation or removal is evaluated consistently and equitably.

Sec. 12. 32 MRSA §10011, sub-§2, as amended by PL 1987, c. 410, §14, is further amended to read:

2. Content. The written examination shall test the applicant's knowledge of the skills and knowledge relating to storage tank installation or removal and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve ~~an examination~~ examinations required by this chapter for underground oil storage tank installers ~~and~~ , underground hazardous substance storage tank installers and underground gasoline storage tank removers and establish standards for an acceptable performance.

Sec. 13. 32 MRSA §10012, sub-§2, as amended by PL 1987, c. 410, §15, is further amended to read:

2. Disposal of fees. All fees received by the board related to underground oil storage tank installers or underground gasoline storage tank removers shall be paid to the Treasurer of State to be deposited into the Ground Water Oil Clean-up Fund and used for the purpose of carrying out all applicable provisions of this chapter. All fees received by the board related to underground hazardous substance storage tank installers shall be paid to the Treasurer of State to be deposited into the Hazardous Waste Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees in the respective accounts shall not lapse but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Sec. 14. 32 MRSA §10014, sub-§2, as amended by PL 1987, c. 410, §16, is further amended to read:

2. Inactive status. Upon request, the board shall grant inactive status to a certified ~~person~~ persons who ~~does~~ do not practice or present ~~himself~~ themselves as an underground oil tank ~~installer or an installers~~, underground hazardous substance storage tank ~~installer~~ installers or underground gasoline storage tank removers and ~~maintains~~ maintain any continuing competency requirements established by the board.

Sec. 15. 32 MRSA §10015, sub-§2, as amended by PL 1987, c. 410, §17, is further amended to read:

2. Disciplinary action; grounds. The board may modify, reclassify, suspend or revoke a certificate pursuant to Title 5, section 10004. The board may refuse to issue or renew a certificate or the Administrative Court may suspend, revoke or refuse to renew a certificate of any certified person. The following shall be grounds for an action to modify, reclassify, suspend, revoke or refuse to issue or renew a certificate:

A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued;

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation or removal, underground hazardous substance storage tank installation or removal, or underground gasoline storage tank removal or violation of any standard of professional behavior which has been established by the board;

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or

D. Any violation of this chapter or any rule adopted by the board.

Sec. 16. 38 MRSA §562, sub-§§6-A and 12-A are enacted to read:

6-A. Gasoline. "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

12-A. Underground gasoline storage tank. "Underground gasoline storage tank" means a single tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include multiple tanks or containers or tanks or containers that are situated upon or above the

surface of a floor and in such a manner that they may be readily inspected.

Sec. 17. 38 MRSA §564, sub-§1, ¶B, as amended by PL 1987, c. 402, Pt. A, §200, is further amended to read:

B. All new and replacement facilities shall be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and shall be registered with the department prior to installation pursuant to section 563. Underground gasoline storage tanks may be removed by an underground gasoline storage tank remover who has been properly certified pursuant to Title 32, chapter 104-A.

Sec. 18. 38 MRSA §565, sub-§1, ¶B, as amended by PL 1987, c. 402, Pt. A, §201, is further amended to read:

B. All new and replacement facilities shall be installed by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and shall be registered with the department prior to installation pursuant to section 563. Underground gasoline storage tanks may be removed by an underground gasoline storage tank remover who has been properly certified pursuant to Title 32, chapter 104-A.

Sec. 19. 38 MRSA §566-A, sub-§5, enacted by PL 1987, c. 491, §14, is amended as to read:

5. **Qualified personnel.** All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal shall be removed under the direction of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A, or of professional firefighting personnel, except for underground gasoline storage tanks removed pursuant to subsection 6. The certified installer need not be present at the site at the time of the tank's or facility's removal.

Sec. 20. 38 MRSA §566-A, sub-§6 is enacted to read:

6. **Underground gasoline storage tanks.** Underground gasoline storage tanks may be removed under the direction of an underground gasoline storage tank remover certified pursuant to Title 32, chapter 104-A, if the following conditions are met:

A. All underground gasoline storage tanks at a site are removed at the same time; and

B. No underground gasoline storage tanks are installed at the site for at least 6 months following that removal.

Sec. 21. 38 MRSA §567, as amended by PL 1987, c. 402, Pt. A, §202, is further amended to read:

§567. Certification of underground tank installers

No person may install an underground oil storage facility or tank after May 1, 1986, without first having been certified by the Board of Underground Oil Storage Tank Installers, pursuant to Title 32, chapter 104-A. ~~Prior to December 31, 1986, when the board determines that reasonable extenuating circumstances prevent the administration or completion of a certification test by May 1, 1986, Underground gasoline storage tanks may be removed by underground gasoline storage tank removers certified by the Board of Underground Oil Storage Tank Installers, pursuant to Title 32, sections 10009 and 10010, it may issue a provisional certificate valid until December 31, 1986~~ chapter 104-A.

Notwithstanding section 570, tank installers and removers shall be liable to other than the State as follows: With the exception of prohibited discharges resulting from an installer's or remover's negligence, the liability of certified installers and removers shall be limited to damages resulting from prohibited discharges discovered within the 12-month period immediately following the installation or removal of the underground tank or facility. To insure its continued relevance, this provision shall be reviewed by June 30, 1991, by the joint standing committee of the Legislature having jurisdiction over energy and natural resources.

Sec. 22. Application. Applicants for certification as underground storage tank installers who have successfully completed the initial examination for installers as of the effective date of this Act shall be subject to the certification provisions in effect on the date on which they passed the examination.

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

Effective June 15, 1989.

CHAPTER 313

H.P. 709 - L.D. 970

An Act Regarding Political Party Enrollment

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

Sec. 1. 21-A MRSA §121, sub-§2, as enacted by PL 1985, c. 161, is amended to read:

2. **Political party not a qualification.** The registrar shall ~~not inquire~~ be impartial as to the political party of the applicant in determining ~~his~~ the applicant's voting qualifications.

Sec. 2. 21-A MRSA §141, as enacted by PL 1985, c. 161, §6, is amended to read:

§141. Enrollment

When a person registers, the registrar shall ask ~~him~~ whether ~~he~~ or not the person wishes to enroll in a political