

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

Whereas, the installation of such a system may be prohibitively expensive; 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:

38 MRSA §1364, sub-§5, as enacted by PL 1983, c. 569, §1, is amended to read:

5. Mitigation. The department may take whatever action is deemed necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances. When the necessary action includes the installation of a public water supply, the department may pay the costs of operation, maintenance and depreciation of the water supply for a period not exceeding 20 years if funds are available from Other Special Revenue or proceeds from the sale of bonds.

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

Effective April 6, 1990.

CHAPTER 793

S.P. 719 - L.D. 1894

An Act to Facilitate Enforcement of Penalties for Desecration of a Cemetery

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

Whereas, the current law regarding criminal trespass is difficult to enforce against persons who trespass in cemeteries at night; and

Whereas, trespassers in cemeteries, particularly in the summer months, have caused considerable damage to headstones, crypts and other property in cemeteries and emotional distress to those whose loved ones' graves have been desecrated; 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 legisla-

tion 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:

17-A MRSA §402, as amended by PL 1981, c. 317, §11, is further amended to read:

§402. Criminal trespass

1. A person is guilty of criminal trespass if, knowing that he that person is not licensed or privileged to do so, that person:

A. ~~He enters~~ Enters any dwelling place;

B. ~~He enters~~ Enters any structure that is locked or barred;

C. ~~He enters~~ Enters any place from which ~~he that~~ person may lawfully be excluded and ~~which that~~ is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders or ~~which that~~ is fenced or otherwise enclosed in a manner designed to exclude intruders;

D. ~~He remains~~ Remains in any place in defiance of a lawful order to leave, ~~which that~~ that was personally communicated to ~~him that person~~ that person by the owner or ~~other another~~ another authorized person; ~~or~~

E. ~~He enters~~ Enters any place in defiance of a lawful order not to enter, ~~which that~~ that was personally communicated to ~~him that person~~ that person by the owner or ~~other another~~ another authorized person; ~~or~~

F. Enters or remains in a cemetery or burial ground at any time between 1/2 hour after sunset and 1/2 hour before sunrise the following day, unless that person enters or remains during hours in which visitors are permitted to enter or remain by municipal ordinance or, in the case of a privately owned and operated cemetery, by posting.

2. Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, C, D ~~or~~ E, or F is a Class E crime.

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

Effective April 6, 1990.

CHAPTER 794

H.P. 1671 - L.D. 2313

An Act to Amend the State's Hazardous Waste Laws to Be Consistent with the Federal Hazardous and Solid Waste Laws

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

Sec. 1. 38 MRSA §352, sub-§4, as amended by PL 1989, c. 405, §1, is further amended by inserting after section 1304, paragraph H, the following:

1319-R, Post-closure licenses 2,000 500

Sec. 2. 38 MRSA §1303-C, sub-§15-A is enacted to read:

15-A. Hazardous waste incinerator. "Hazardous waste incinerator" means an enclosed device using controlled flame combustion to thermally break down hazardous waste.

Sec. 3. 38 MRSA §1310-B, sub-§1, as amended by PL 1987, c. 517, §24, is further amended to read:

1. **Public records.** Except as provided in subsections 2 and 3, information obtained by the department under this chapter ~~shall be~~ is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information under subchapter V.

Sec. 4. 38 MRSA §1319-O, sub-§1, ¶¶D and E, as enacted by PL 1987, c. 517, §28, are amended to read:

D. The board may adopt rules relating to the interim and final licensing and operation of waste facilities for hazardous waste, including, but not limited to:

- (1) Standards for the safe operation and maintenance of the waste facilities, including, but not limited to, record keeping, monitoring before and during operation of the facility and after its termination of use or closure, inspections and contingency plans to minimize potential damage from hazardous waste;
- (2) The training of personnel and the certification of supervisory personnel involved in the operation of the waste facilities;
- (3) The termination, closing and potential future uses of the waste facilities; ~~and~~
- (4) Rules equivalent to ~~rules~~ regulations of the United States Environmental Protection Agency ~~which that~~ provide for licensing or permitting by rule; and

(5) Corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this subchapter, regardless of the time waste was placed in the unit. For purposes of this paragraph, solid waste management unit includes any waste pile, landfill, surface impoundment or land treatment facility from which hazardous constituents might migrate, regardless of whether the unit was intended for the management of solid or hazardous wastes.

E. The board may adopt rules relating to evidence of financial capacity of hazardous waste facilities' owners or operators, and of those who transport hazardous waste, to protect public health, safety and welfare and the environment, including, but not limited to:

- (1) Liability insurance;
- (2) Bonding; and
- (3) Financial ability to comply with statutory and regulatory requirements or conditions.

Evidence of financial capacity required by the board may include one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In establishing the required evidence of financial capacity to further the purposes of this subchapter, the board may specify policy or other contractual terms, conditions or defenses that are necessary or that are unacceptable.

Sec. 5. 38 MRSA §1319-R, sub-§1, ¶¶ A to C, as enacted by PL 1987, c. 517, §28, are amended to read:

A. The board shall also find that:

- (1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;
- (2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter; ~~and~~
- (3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal; and
- (4) If corrective action required by section 1319-V can not be completed by an applicant prior to issuance of a license, the applicant has the financial capacity to undertake and complete the corrective action.

B. The board shall issue an interim license for a waste facility for hazardous waste or shall deem the facility to be so licensed if:

(1) The waste facility is in existence on April 1, 1980, or the waste facility is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under this subchapter;

(2) The owner or operator has within 60 days of first becoming subject to the license requirements of this subchapter:

(a) Notified the department of its location;

(b) Provided a detailed description of the operation of the facility;

(c) Identified the hazardous waste it handles; and

(d) Applied for a license to handle hazardous waste;

(3) The waste facility is not altered or operated except in accordance with the board's rules; ~~and~~

(4) ~~If the~~ The waste facility has a discharge or emission license under sections section 414 or 591, and the facility is operated in accordance with that license; and

(5) The facility was not previously denied a noninterim hazardous waste license or an interim license has not expired pursuant to paragraph C, subparagraphs (2) to (6).

C. Interim licenses ~~shall~~ expire on the earliest of the following dates:

(1) The date of the final administrative disposition of the application for a hazardous waste facility license;

(2) The date of a finding of the board that the disposition referred to in ~~subsection 1~~ has subparagraph (1) was not been made because of the applicant's failure to furnish information reasonably required or requested to process the application;

(3) The date of expiration of the license issued under section 414 or 591; ~~or~~

(4) The date on which the application for a noninterim hazardous waste facility license is due ~~and if~~ the person operating under the interim license has failed to apply for ~~the~~

~~hazardous waste facility that noninterim~~ license;

(5) For interim licenses issued prior to November 8, 1984, unless the owner or operator of the facility has filed a complete application with the commissioner before one of the following dates and that application demonstrates compliance with all applicable ground water and financial responsibility requirements:

(a) November 8, 1985, for a land disposal facility;

(b) November 8, 1986, for a hazardous waste incinerator;

(c) November 8, 1989, for any facility other than a land disposal facility or hazardous waste incinerator; or

(6) Twelve months after the facility first becomes subject to the permit requirements of this subchapter unless the owner or operator of the facility has filed a complete application with the commissioner before that date and that application demonstrates compliance with all applicable ground water and financial responsibility requirements.

Sec. 6. 38 MRSA §1319-R, sub-§6 is enacted to read:

6. Post-closure licenses. When the board determines that a facility under the jurisdiction of this subchapter does not have and will not be issued a license pursuant to this subchapter, the board may issue a license containing terms and conditions governing the post-closure requirements applicable to the facility, including, but not limited to, environmental monitoring and corrective action. The findings in subsection 1, paragraph A are not required for post-closure licenses.

Sec. 7. 38 MRSA §1319-S, sub-§5 is enacted to read:

5. Post-closure orders. Without restricting or limiting any other remedy, the department may issue a post-closure order and enforce its terms when the facility owner or operator has failed to submit a complete application for a post-closure license under section 1319-R, subsection 6, in a timely manner.

Sec. 8. 38 MRSA §§1319-V and 1319-W are enacted to read:

§1319-V. Corrective action

1. Requirement. The facility owner or operator shall undertake corrective action beyond the facility boundary or site to remove the danger to public health or the environment unless the facility owner or operator demonstrates to the satisfaction of the board that the owner or operator is unable to undertake the action and

despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. If the board makes these findings, the facility owner or operator is not relieved of responsibility to clean up a release that has migrated off the facility site. The board shall decide how to proceed on a case-by-case basis.

2. Compliance schedules. If corrective action can not be completed by an applicant prior to issuance of a license pursuant to this subchapter, the license must contain a schedule of compliance for corrective action.

§1319-W. Rights of action against financial guarantors

If the owner or operator of a facility permitted under this subchapter is in liquidation, reorganization or adjustment pursuant to the federal Bankruptcy Reform Act of 1978, Public Law 95-598, as amended, or when, with reasonable diligence, jurisdiction in any state court or any federal court can not be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial capacity must be provided under this subchapter may be asserted by the department directly against the guarantor providing evidence of financial capacity. For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial capacity for an owner or operator under this subchapter.

1. Rights of guarantor. In any action pursuant to this section, the guarantor is entitled to invoke all rights and defenses that would be available to the owner or operator if any action was brought against the owner or operator by the claimant and that would be available to the guarantor if an action was brought against the guarantor by the owner or operator.

2. Liability. The total liability of any guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial capacity to the board on behalf of the owner or operator under this subchapter. Nothing in this section may be construed to limit any other liability of a guarantor to its owner or operator as established by state or federal statutory, contractual or common law including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section may be construed to diminish the liability of any person under this subchapter or other applicable law.

See title page for effective date.

CHAPTER 795

S.P. 733 - L.D. 1932

An Act to Promote and Assist Barrier-free Construction in Places of Public Accommodation and Places of Employment

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

5 MRSA §4594-D is enacted to read:

§4594-D. Public accommodations and places of employment constructed, remodeled or enlarged after January 1, 1991

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits.

B. "Design professional" means an architect or professional engineer registered to practice under Title 32.

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986.

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1991, or when the estimated total costs for remodeling, enlarging or renovating an existing building exceed \$100,000, and the remodeling, enlarging or renovating is begun after January 1, 1991.

3. Application. Facilities subject to this section must meet the following standards.

A. Places of employment or public accommodation and additions to these places constructed on or after January 1, 1991, must meet the standards of construction.

B. Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed remodeling or renovation substantially affects that portion of the building normally accessible to the public, places of employment or public accommodation remodeled or renovated on or after January 1, 1991, must meet the following 5 parts of the standards of construction:

- (1) 4.3 accessible routes;
- (2) 4.13 doors;
- (3) 4.29.3 tactile warnings on doors to hazardous areas;