

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
July 14, 1990

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

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

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;

(4) Handicapped parking spaces in adequate number, pursuant to section 4593, subsection 1, paragraph E; and

(5) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b).

4. Rules. The commission may adopt, alter, amend and repeal rules designed to make buildings under this section accessible to, functional for and safe for use by physically handicapped persons in accordance with subsection 3, and may adopt, alter, amend and repeal rules designed otherwise to enforce this section.

5. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans meet the standards of construction required by this section. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built.

6. Training, education and assistance. The commission and the Office of the State Fire Marshal shall, as necessary, develop information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, design professionals, code enforcers, building contractors and other interested parties.

7. Mandatory plan review; certification; inspection. Builders of the following newly constructed facilities must submit plans to the Office of the State Fire Marshal, which shall serve as the contractor for the commission for these purposes, to assure that the plans meet the standards of construction required by subsection 3:

- A. Restaurants;
- B. Motels, hotels and inns;
- C. State, municipal and county buildings; and
- D. Schools, elementary and secondary.

Fees for reviews shall be established by the Office of the State Fire Marshal.

No building permit may be issued by the municipal authority having jurisdiction to issue these permits unless the Office of the State Fire Marshal approves the plans and certifies that the facility covered by the mandatory plan review meets the standards of construction required by this section; if, however, no decision is rendered within

2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation that the plans meet the standards of construction.

If officials of the municipality in which the facility is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the certified plans. The municipal officials shall require that the facility be inspected for compliance with construction standards before the municipal officials permit the facility to be occupied.

8. Voluntary plan review. Builders of facilities not governed by subsection 7 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3. Fees for this review may be assessed by the Office of the State Fire Marshal.

9. Waivers; variance. If the commission determines in cases covered by mandatory plan review that compliance with this section and its rules is not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to physically handicapped persons, it may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

Requests for waivers or variances for buildings covered by mandatory plan review are heard by a representative of the commission and a designee of the Office of the State Fire Marshal. A decision must be provided in writing to the party requesting the waiver or variance.

10. Appeals. Commission decisions on requests for waivers or variances in cases covered by mandatory plan review are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the commission, or it may remand the proceeding to the commission for such further action as the court may direct.

11. Report. The commission shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by March 1992, regarding the effectiveness of efforts to provide technical assistance and compliance with the standards set forth in this section requiring accessibility by persons subject to this section. The commission shall submit a copy of the report to the Executive Director of the Legislative Council.

See title page for effective date.

CHAPTER 796

S.P. 761 - L.D. 1986

An Act Concerning Public Utilities