

# 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.

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**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**

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the investigation to assure consistency with the protocol and the commission's rules, and assessing both the scientific validity of the investigation and its effects upon patients. The advisory body must include a consumer representative, a practicing physician and a member of the Maine Medical Records Association.

D. The commission may not grant approval under this subsection if the proposed identification of or contact with patients or health care practitioners would violate any state or federal law or diminish the confidentiality of medical information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation.

Sec. 2. 22 MRSA §1692-B is enacted to read:

### §1692-B. Investigations

1. Access to reports and records. The Department of Human Services must be given access to all confidential reports and records filed by physicians, hospitals or other private or public sector organizations, with all departments, agencies, commissions or boards of the State for the purpose of conducting investigations or evaluating the completeness or quality of data submitted to the department's disease surveillance programs. The department shall follow the data confidentiality requirements of the departments, agencies, commissions or boards of the State providing this information.

Upon notification by the Department of Human Services, physicians or hospitals shall provide to the department any further information requested for the purpose of conducting investigations or evaluating the completeness or quality of data submitted to the department's disease surveillance programs.

2. Limited immunity. A physician, hospital, or employee of a physician or hospital is not liable for any civil damages as a result of the department's use of information gathered under this section. This immunity is limited to legitimate activities pursued in good faith under this section.

3. Adoption of rules. The department shall adopt rules governing the conditions under which and purposes for which the department may use identifying information under this section. The rules must ensure that:

A. Identifying information is used only to gain access to medical records and other medical information pertaining to an investigation designed to accomplish public health research of substantial public importance;

B. Medical information about an identified patient is not sought from any person without the consent of that patient except when the information sought

pertains solely to verification or comparison of health data that the department is otherwise authorized by law to collect and the department finds that confidentiality can be adequately protected without patient consent;

C. Those persons conducting the investigation do not disclose medical information about an identified patient to any other person except a health care practitioner responsible for treating the patient;

D. Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the investigation;

E. The protocol for any investigation is designed to preserve the confidentiality of all medical information that can be associated with identified patients, to specify the manner in which contact is made with patients, and to maintain public confidence in the protection of confidential information;

F. An advisory body, independent from the department, is established and charged with responsibility for approving the protocol of the investigation, overseeing the conduct of the investigation to assure consistency with the protocol and the department's rules, and assessing both the scientific validity of the investigation and its effects upon patients;

G. The department does not seek information under this section if the proposed identification of or contact with patients or health care practitioners would diminish the confidentiality of medical information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation; and

H. Whenever a physician or hospital furnishes patient information requested by the department in accordance with this section, the department reimburses the physician or hospital for the reasonable costs incurred in providing the information.

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

Effective April 17, 1990.

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## CHAPTER 845

H.P. 1729 - L.D. 2388

### An Act to Amend the State's Hazardous Materials and Underground 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**, confusion has resulted from using 2 separate classification lists as the basis for the collection of transportation fees for hazardous materials; and

**Whereas**, the Legislature, on May 11, 1989, directed the Board of Environmental Protection to adopt rules to regulate the handling and disposal of infectious and pathogenic waste as hazardous waste in order to protect the public health, safety, welfare and the environment; and

**Whereas**, the Legislature created a separate rule-making authority under the Maine Revised Statutes, Title 38, section 1319-O, subsection 3, for the handling and disposal of biomedical waste; and

**Whereas**, the Legislature directed the board to submit the rules to the Joint Standing Committee on Energy and Natural Resources for review on or before January 1, 1990; and

**Whereas**, the board adopted the rules on November 8, 1989, and the rules were submitted to the Legislature by January 1, 1990; and

**Whereas**, Public Law 1989, chapter 124, lists pathogenic and infectious waste as hazardous waste and, therefore, subjects their management to the requirements of the hazardous waste management rules rather than the biomedical waste management rules which take effect on February 1, 1990, unless superceding legislation is enacted; and

**Whereas**, regulation of pathogenic and infectious waste under the hazardous waste management rules is unnecessary and would impose a financial hardship on the generators of pathogenic and infectious waste; and

**Whereas**, this legislation is needed immediately to prevent a regulatory and statutory conflict; 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. 29 MRSA §246-B**, as amended by PL 1989, c. 546, §2, is repealed.

**Sec. 2. 29 MRSA §246-C**, as enacted by PL 1987, c. 750, §1, is repealed.

**Sec. 3. 29 MRSA §246-D** is enacted to read:

**§246-D. Hazardous materials transport licenses**

**I. Application.** Every person, firm or corporation transporting by motor vehicle materials required to be placarded in accordance with 49 Code of Federal Regu-

lations, Section 177.823, shall apply to the Secretary of State for a hazardous materials transport license for each vehicle.

**2. Exception.** This section does not apply to:

**A. Any motor vehicle owned or operated by the Federal Government or any political subdivision of the Federal Government;**

**B. Any properly registered agricultural motor vehicle used in a bona fide farming operation;**

**C. Any motor vehicle used during an emergency with the specific approval of a peace officer, fire chief, or designated official of the Department of Environmental Protection or the Department of Public Safety;**

**D. Any motor vehicle that has a valid license issued by the Department of Environmental Protection for the transportation of hazardous waste or waste oil pursuant to Title 38, section 1319-O; or**

**E. Any motor vehicle used exclusively to transport oil as defined in Title 38, section 542, subsection 6.**

**3. Form of application.** Application must be made on a form and in the manner prescribed by the Secretary of State and must include such information as the Secretary of State requires. The application must be accompanied by a fee of \$25 for each vehicle licensed. For applications made after December 31st, the license fee for the current year is reduced by 1/2.

**4. Issuance; display; expiration.** The Secretary of State shall issue a cab card of such size and design as the Secretary of State requires. The cab card must be completed by the licensee and carried in the vehicle. The cab card must be presented to any law enforcement officer upon demand. Cab cards expire annually on June 30th.

**5. Trip permits.** The Secretary of State may issue, by facsimile or other means, a trip permit in lieu of a license. The trip permit must identify a specific vehicle and is valid for 5 days. The fee for the 5-day trip permit is \$15.

**6. Apportionment of fees.** Fees collected by the Secretary of State under this section must be apportioned in the following manner:

**A. Sixty-five percent to the Maine Hazardous Waste Fund administered by the Department of Environmental Protection;**

**B. Fifteen percent to the Secretary of State for the costs of administering this section;**

**C. Ten percent to the Department of Public Safety for the costs related to motor vehicle inspection and enforcement of this section; and**

D. Ten percent to the State Emergency Response Commission for hazardous materials training of local and state officials.

7. Enforcement. Every state police officer or any member of the Department of Public Safety designated by the Commissioner of Public Safety shall enforce this section. A violation of this section is a Class E crime. Notwithstanding any other provision of the law, the minimum fine for violation of this section is \$250. Any owner or operator who causes or permits to be displayed a fictitious cab card, or causes or permits to be displayed a cab card issued for another motor vehicle, commits a Class D crime. All fines collected under this section accrue to the Maine Hazardous Waste Fund.

8. Rules. The Department of the Secretary of State and the Department of Public Safety may adopt rules necessary to administer and enforce this section.

9. Transition. Any hazardous materials transport license issued by the Secretary of State under former section 246-B remains in effect until the license expires.

**Sec. 4. 32 MRSA §10002, sub-§1-A** is enacted to read:

1-A. Class I liquid. "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.

**Sec. 5. 32 MRSA §10003, sub-§1**, as amended by PL 1987, c. 410, §4, is further amended to read:

**1. Establishment and membership.** There is established within the Department of Environmental Protection, the Board of Underground Storage Tank Installers. The board ~~shall consist~~ consists of 7 members appointed by the Governor as follows: ~~One one~~ one from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association or the Maine Petroleum Association; one underground oil or underground hazardous substance storage tank installer; one from either the Oil and Solid Fuel Board, the Plumber's Examining Board or the State Board of Certification for Geologists and Soil Scientists; one from the Maine Chamber of Commerce and Industry; one from the Maine Fire Chiefs Association; and ~~2 one public members member~~.

**Sec. 6. 32 MRSA §10006, sub-§3, ¶¶A and D**, as enacted by PL 1989, c. 312, §4, are amended to read:

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 and impressed-current cathodically protected tanks.

D. Currently certified underground oil storage tank installers ~~shall be~~ are 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.

**Sec. 7. 32 MRSA §10010, sub-§3, ¶A**, as repealed and replaced by PL 1989, c. 312, §7, is amended to read:

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, any regulations promulgated by the federal Environmental Protection Agency regarding the installation and removal of underground oil storage tanks and any technical concepts necessary to understand and implement those laws, rules or regulations;

**Sec. 8. 32 MRSA §10010, sub-§3-A, ¶A**, as enacted by PL 1989, c. 312, §10, is amended to read:

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 must~~ must be marketing and distribution systems or other motor fuel storage tanks and 6 ~~shall must~~ must be heavy oil tank installations. ~~At least 2 of these qualifying installations shall be impressed current tanks.~~

**Sec. 9. 32 MRSA §10010, sub-§4**, as enacted by PL 1987, c. 410, §12, is amended to read:

**4. Education and examination for certification of new underground hazardous substance storage tank installers.** An applicant must meet the following requirements:

A. ~~He shall have passed~~ The applicant must pass a written or oral examination based on Title 38, section 1364, subsection 2, ~~and~~ any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substance storage tank installation, any regulations promulgated by the federal Environmental Protection Agency regarding the installation of underground hazardous substance storage tanks and any technical concepts necessary to understand and implement that law or those rules or regulations; and

B. ~~He shall have completed~~ The applicant must complete successful installation of an underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection.

**Sec. 10. 32 MRSA §10010, sub-§5, ¶¶A and B**, as enacted by PL 1989, c. 312, §10, are amended to read:

A. Passage of an 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, any regulations promulgated by the federal Environmental Protection Agency regarding the removal of underground gasoline storage tanks and any technical concepts necessary to understand and implement that law and those rules or regulations; and

B. Completion of a successful removal of an underground gasoline oil storage tank used for the storage of motor fuel excluding Class I liquids under the supervision of a designated representative of the Department of Environmental Protection. The board may include in this requirement that the applicant successfully demonstrate knowledge relative to the use of equipment for monitoring gasoline vapors.

**Sec. 11. 32 MRSA §10010-A**, as amended by PL 1989, c. 312, §11, is further amended to read:

**§10010-A. Certification requirements regarding on-site installation of underground hazardous substance storage tank or removal of underground oil storage tank used for storage of motor fuel under supervision of designated representative of Department of Environmental Protection**

To provide for the completion of the on-site installation of an underground hazardous substance storage tank or removal of an underground oil storage tank used for the storage of motor fuel 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 and removers 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 or removal 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 §10015, sub-§2**, as amended by PL 1989, c. 312, §15, is further amended to read:

**2. Grounds for disciplinary action.** ~~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 that~~ 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. 13. 32 MRSA §10015, sub-§§2-A to 2-C** are enacted to read:

**2-A. Disciplinary action authority.** For each violation of applicable laws, rules or conditions of certification, the board may take one or more of the following actions:

A. Issue warnings, censures or reprimands to a certified person or applicant. Each warning, censure and reprimand issued must be based on violations of different applicable laws, rules, or conditions of certification or on separate instances of actionable conduct or activity;

B. Suspend a certificate for up to 90 days for each violation or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and, in total, may not exceed one year. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certified person's record;

C. Impose civil penalties of up to \$1,500 for each violation or each instance of actionable conduct or activity;

D. Impose conditions of probation upon an applicant or certified person. Probation may run for such time period as the board determines appropriate;

ate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder;

E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and

F. Refuse to issue or renew a certificate.

2-B. Consent agreements. The board may execute a consent agreement which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant, the board and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if in the Administrative Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

2-C. Surrender of certificate. The board may require surrender of certificates. In order for a certified person's surrender of a certificate to be effective, a surrender must first be accepted by vote of the board. The board may refuse to accept surrender of the certificate if the certified person is under investigation or is the subject of a pending complaint or proceeding unless a consent agreement is first entered into pursuant to this chapter.

**Sec. 14. 32 MRSA §10015, last ¶** is enacted to read:

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Administrative Court. Civil penalties accrue to the Ground Water Oil Clean-up Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter IV, and is subject to judicial review exclusively in the Administrative Court in accordance with Title 5, chapter 375, subchapter VII, substituting the term "Administrative Court" for "Superior Court," notwithstanding any other provision of law.

**Sec. 15. Effective date.** Sections 1, 2 and 3 of this Act take effect on July 1, 1990.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 17, 1990, unless otherwise indicated.

## CHAPTER 846

S.P. 884 - L.D. 2253

### An Act to Improve Oversight of the Financial Condition of Insurers

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

#### PART A

24-A MRSA §414, sub-§4 is enacted to read:

4. Insurance Regulatory Information System. Insurers required to file an annual statement must, as a condition to the issuance or continuance of a certificate of authority, provide the National Association of Insurance Commissioners with all information required for participation in the Insurance Regulatory Information System. Insurers shall provide written certification to the superintendent that they have complied with this subsection when they file their annual statements. This subsection does not apply to any insurer doing business under chapter 51.

#### PART B

**Sec. B-1. 24-A MRSA §1101, as amended by PL 1987, c. 399, §3, is further amended to read:**

**§1101. Scope of chapter**

Except as provided in section 1137, this chapter applies only to domestic insurers which that transact business other than as described in section 702, life insurance; section 703, annuity; or section 704, health insurance. If an insurer subject to this chapter also transacts life insurance, health insurance or an annuity business, that insurer shall, for accounting and financing purposes, establish and maintain distinct accounts dedicated exclusively to those kinds of insurance. The accounts must include reserves and surplus funds adequate to financially support the underwriting activity. All assets allocated to the conduct of life insurance, health insurance or annuity business are subject to chapter 13-A rather than this chapter. The books and records of an insurer writing these additional kinds of business must reflect the assets and operations relating to each underwriting activity in detail sufficient to demonstrate compliance with this chapter and chapter 13-A.

**Sec. B-2. 24-A MRSA §1106, first ¶, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:**