

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

E. One employer that receives insurance through a multiple employer trust, to be selected by the Maine Chamber of Commerce and Industry;

F. One small business employer, to be selected by the Maine Merchants Association;

G. One representative of labor, to be selected by the Maine AFL-CIO;

H. One representative of commercial health insurers, to be selected by the Health Insurance Association of America;

I. One representative of nonprofit hospital or medical service organizations, to be selected by Blue Cross and Blue Shield of Maine;

K. One independent insurance agent with experience selling health insurance, to be selected jointly by the Independent Insurance Agents Association of Maine, the Professional Insurance Agents of New England and the Maine Association of Life Underwriters; and

L. One member of the Special Select Commission on Access to Health Care, to be selected by the members of that commission.

Organizations that are required to select members for the task force shall submit their selections to the superintendent as soon as possible after passage of this Act. The superintendent shall appoint those persons to the task force and shall convene the first meeting of the task force as soon as possible after receiving the selections from the organizations.

2. Members of the task force are not entitled to compensation, except that, if authorized by the Legislative Council, legislative members of the task force may receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for expenses.

3. The issues to be addressed by the task force include, but are not limited to:

A. Rights of continuity for individual health insurance policyholders;

B. Limits on preexisting condition exclusions, riders, medical underwriting, and waiting periods;

C. Pooling, reinsurance and community rating for small business group and individual policies for spreading the costs of high-risk individuals who are provided continuous coverage;

D. Exclusions by industry or occupation; and

E. The economic impact of the proposed changes, including actuarial projections that account for reserve policies, costs of underwriting, administra-

tion, legal costs, marketing costs such as advertising and sales commissions, investment income and profit margins by product line, company and by industry.

4. The Bureau of Insurance shall provide staff assistance to facilitate the work of the task force and the collection of appropriate and necessary data from insurers and to draft any recommended legislation of the task force.

5. The task force shall submit any recommendations for legislation to the First Regular Session of the 115th Legislature and to the Office of the Executive Director of the Legislative Council by December 1, 1990.

See title page for effective date.

CHAPTER 868

H.P. 1691 - L.D. 2341

An Act to Enhance the Ability of the State to Respond to Oil Spills

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

Whereas, Maine's ability to respond to a catastrophic oil spill needs to be reviewed; and

Whereas, this Act sets up a mechanism to accomplish that review; 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. 38 MRSA §546, sub-§4, ¶E, as amended by PL 1989, c. 546, §9, is further amended to read:

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds, including periodic, unannounced drills to determine the adequacy of response plans and the preparedness of the response teams;

Sec. 2. 38 MRSA §546-A is enacted to read:

§546-A. Clean-up plans; review and revision

The commissioner shall annually review and make recommendations to revise plans developed under section 546, subsection 4, paragraph E.

Sec. 3. 38 MRSA §550, as repealed and replaced by PL 1977, c. 375, §9, is amended to read:

§550. Enforcement; penalties

Any person who causes or is responsible for a discharge in violation of section 543 ~~shall~~ is not be subject to any fines or civil penalties if ~~such that~~ person promptly reports and removes such discharge in accordance with the rules, regulations and orders of the board.:

1. Report and remove. Reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner; and

2. Reimburse. Reimburses the department for any disbursement made from the fund in connection with the discharge pursuant to section 551, subsection 5, paragraph B within 30 days of demand.

Sec. 4. 38 MRSA §551, sub-§4, ¶A, as amended by PL 1989, c. 500, §2, is further amended to read:

A. License fees ~~shall be~~ are determined on the basis of ~~3¢~~ 4¢ per barrel of unrefined crude oil and all other refined oil, petroleum products and their by-products, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and ~~shall~~ must be paid monthly by the licensee on the basis of records certified to the ~~department~~ commissioner. License fees ~~shall~~ must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund.

Sec. 5. 38 MRSA §551, sub-§4, ¶D, as amended by PL 1989, c. 500, §3, is further amended to read:

D. Any person who is required to register with the ~~department~~ commissioner pursuant to section 545-B and who first transports oil in Maine shall pay fees, ~~which shall be~~ that are determined on the basis of ~~3¢~~ 4¢ per barrel for all refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the registrant during the period of registration. Fees ~~shall~~ must be paid monthly by the registrant on the basis of records certified to the ~~department~~ commissioner. Fees ~~shall~~ must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. The registrant shall make available to the ~~department~~ commissioner and ~~its~~ the commissioner's authorized representatives all documents relating to the oil transported by the registrant during the period of registration. This paragraph ~~shall~~ does not apply to waste oil ~~which~~ is transported into Maine in any motor vehicle ~~which~~ that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and ~~which~~ is subject to fees established under section 1319-I.

Sec. 6. 38 MRSA §551, sub-§5, ¶G, as amended by PL 1985, c. 496, Pt. A, §13, is further amended to read:

G. Payments to Treasurer of State pursuant to subsection 4, paragraph B; ~~and~~

Sec. 7. 38 MRSA §551, sub-§5, ¶H, as enacted by PL 1981, c. 356, §1, is amended to read:

H. Sums, up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 555 for payment of costs for studies of the environmental impacts of discharges prohibited by section 543 ~~which~~ that may have adverse economic effects and ~~which~~ occur subsequent to such an allocation, when ~~such~~ those studies are ~~deemed~~ determined necessary by the commissioner; and

Sec. 8. 38 MRSA §551, sub-§5, ¶I is enacted to read:

I. Payment of costs for the collection of overdue reimbursements.

Sec. 9. 38 MRSA §551, sub-§6, as amended by PL 1985, c. 746, §22, is repealed and the following enacted in its place:

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. The commissioner shall seek recovery for the use of the fund all disbursements from the fund, for the following purposes including overdrafts and interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D, E, H and I in connection with a prohibited discharge; and

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd-party claims in excess of \$15,000, except to the extent that the costs are covered by payments received under any federal program.

Requests for reimbursement to the fund if not paid within 30 days of demand must be turned over to the Attorney General for collection. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

Sec. 10. Report. The Commissioner of Environmental Protection shall report on the status of current plans developed under the Maine Revised Statutes, Title 38, section 546, subsection 4, paragraph E, to the Joint Standing Committee on Energy and Natural Resources and the Office of the Executive Director of the Legislative Council by January 15, 1991. In addition, the commissioner shall report on the purchase of any oil clean-up equipment and the locations of that equipment made possible by the temporary increase in the transfer fees pursuant to Title 38, section 551, subsection 4.

Sec. 11. Commission established; membership. The Commission to Study Maine's Oil Spill Clean-up Preparedness is established and is composed of the following 15 members:

1. One Senator appointed by the President of the Senate;
2. One member of the House of Representatives appointed by the Speaker of the House of Representatives;
3. Three members representing the marine fisheries interest, including the lobster industry, aquaculture industry and sardine industry, appointed jointly by the President of the Senate and the Speaker of the House of Representatives;
4. Two members representing the general public appointed jointly by the President of the Senate and the Speaker of the House of Representatives;
5. The Commissioner of Environmental Protection or the commissioner's designee;
6. Two members representing the petroleum industry appointed by the Governor;
7. One member familiar with oil spill technology appointed by the Governor;
8. One naval architect appointed by the Governor;
9. One member with expertise in coastal geology appointed by the Governor;
10. One member with expertise in fisheries biology appointed by the Governor; and
11. One member with expertise in coastal wildlife habitat appointed by the Governor.

Sec. 12. Appointments; meetings. All appointments must be made no later than 30 days after the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council when the appointments have been made. The first meeting must be held by June 15, 1990, and must be called by the Chair of the Legislative Council. The commission shall select a legislative member as chair.

Sec. 13. Duties. The commission shall hold a public hearing and meet as needed to study Maine's oil spill clean-up preparedness. Specifically, the commission shall review and make recommendations on:

1. Maine's regulatory and statutory framework for preventing, planning for and responding to oil spills in the marine environment;
2. The financial adequacy of the Maine Coastal and Inland Surface Oil Clean-up Fund to address the potential risks and liabilities for cleaning up spills and the adequacy of the fund to compensate 3rd parties;
3. Technical and planning strategies to prevent oil spills; and
4. The State's response capacity for a worst case scenario at major vessel traffic areas and vessel facilities along the Maine coast. This evaluation must include: an assessment of probable locations for oil spills; a description of a worst case scenario at each site; the equipment and resources available to deal with a potential disaster; and recommendations for changes to any contingency plans, equipment and resources necessary to take corrective action.

Sec. 14. Report. The commission shall submit its report and recommendations, together with any recommended legislation, to the Joint Standing Committee on Energy and Natural Resources and the Office of the Executive Director of the Legislative Council by November 1, 1990.

Sec. 15. Staff assistance. The commission may request staff assistance from the Legislative Council.

Sec. 16. Reimbursement. The legislative and public members of the commission are entitled to legislative per diem and expenses for the days of attendance at commission meetings upon request from the Executive Director of the Legislative Council. The Executive Director of the Legislative Council shall administer the commission's budget.

Sec. 17. Consultants. The commission may hire consultants to provide needed expertise to evaluate and plan for Maine's oil spill clean-up preparedness.

Sec. 18. Allocation. The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out the purposes of this Act.

1989-90 1990-91

PART A

LEGISLATURE

Commission to Study Maine's Oil Spill Clean-up Preparedness

Personal Services	\$770	\$3,850
All Other	89,380	6,000

Provides funds for the per diem, travel, consultants and related expenses of the Commission to Study Maine's Oil Spill Clean-up Preparedness. Any unexpended funds lapse to the Maine Coastal and Inland Surface Oil Clean-up Fund upon completion of the study.

LEGISLATURE
TOTAL

\$90,150	\$9,850
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ENVIRONMENTAL PROTECTION,
DEPARTMENT OF

Maine Coastal and Inland Surface Oil Clean-up Fund

Capital Expenditures	\$40,000	\$320,000
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Provides funds for a replacement containment boom budgeted in fiscal year 1990-91 and needed in fiscal year 1989-90 and other necessary capital equipment.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TOTAL

\$40,000	\$320,000
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TOTAL ALLOCATIONS	\$130,150	\$329,850
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Sec. 19. Effective date; repeal. Sections 4 and 5 of this Act take effect August 1, 1990, and are repealed February 1, 1991.

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

Effective April 19, 1990, unless otherwise indicated.

CHAPTER 869

H.P. 1705 - L.D. 2354

An Act to Correct Errors and Facilitate Implementation of the Solid Waste Laws

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

Sec. A-1. 32 MRSA §1868, sub-§1, as amended by PL 1989, c. 585, Pt. D, §§8 and 11, is further amended to read:

1. Flip tops. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener, except that nothing in this subsection prohibits the sale of a container, the only detachable part of which is a piece of adhesive-backed tape;

Sec. A-2. 38 MRSA §342, sub-§6, as amended by PL 1983, c. 536, is repealed.

Sec. A-3. 38 MRSA §1303-C, sub-§1-A is enacted to read:

1-A. Biomedical waste. "Biomedical waste" means waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible human host could result in disease or that may contain cytotoxic chemicals used in medical treatment.

Sec. A-4. 38 MRSA §1303-C, sub-§7, ¶E, as enacted by PL 1989, c. 585, Pt. E, §4, is amended to read:

E. The person generating the solid waste disposed of at the facility, except that the facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average that is not generated by the owner. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel derived from municipal solid waste is not exempt from this subsection solely by operation of this paragraph.

Sec. A-5. 38 MRSA §1303-C, sub-§§24, 25, 29, 30, 31, 34 and 40, as enacted by PL 1989, c. 585, Pt. E, §4, are amended to read:

24. Regional association. "Regional association" means 2 or more municipalities that have formed a relationship to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible. The relationship must be formed by one or more of the following methods: a refuse disposal district under chapter 17 or a public waste disposal corporation under section 1304-B or that have entered into a joint exercise of powers agreement under Title 30-A, chapter 115, in order to manage the solid waste generated within the participating municipalities and for which those municipalities are responsible.

A. Creation of a refuse disposal district under chapter 17;

B. Creation of a nonprofit corporation that consists exclusively of municipalities and is organized under Title 13, chapter 81 or Title 13-B, for the purpose, among other permissible purposes, of owning, con-