

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**SECOND SPECIAL SESSION**

December 12, 1991 to January 7, 1992

**SECOND REGULAR SESSION**

January 8, 1992 to March 31, 1992

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TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1992

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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

**24-A MRSA §2808-A**, as amended by PL 1991, c. 353, is further amended to read:

**§2808-A. Rating practices in group health insurance**

**1. Groups with fewer than 25 members.** Except as provided in subsection 3, no insurer may increase charge group health insurance premium rates for ~~a group~~ groups with fewer than 25 insured members, excluding dependents, ~~on the basis of that vary based on~~ the claims experience of ~~that the~~ group.

**2. Subgroups; rate differentiation.** Except as provided in subsection 3, no insurer may increase charge group health insurance premium rates on a basis which that discriminates between different subgroups of a group according to the claims experience of the subgroup. The term "subgroup," as used in this section, refers to an employer with fewer than 25 insured employees within a multiple employer trust, or to any similar subdivision of a larger group covered by a single group health insurance policy or contract.

**3. Tiers of rates allowed.** Groups Except as provided in paragraph C, groups or subgroups subject to subsection 1 or 2 may be divided into 2 or more tiers for rating purposes based on the experience of the group or subgroup provided that the following conditions are satisfied.

A. The rates for the highest tier may not exceed the average rate for all tiers by more than 20%.

B. At the time of application, the insurer must provide to the prospective policyholder a prominent disclosure indicating that premium rates may change based on the claims experience of the group or subgroup. If the policyholder is a multiple employer trust, the policyholder must provide this disclosure to each employer at the time of application to the trust. For multiple employer trusts in existence on January 1, 1990, this disclosure procedure must be completed prior to the first subsequent renewal.

C. Exceptions to subsections 1 and 2 do not apply to policies executed, delivered, issued for delivery, continued or renewed on or after January 1, 1993.

**4. Applicability.** This section applies to all policies executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 1990. This section applies to any certificates delivered to residents of this State under a group health insurance policy described in section 2805-A, 2806 or 2808 and executed, continued or renewed on or after January 1, 1990. For

purposes of this section, all contracts ~~shall be~~ are deemed to ~~be~~ renewed no later than the next yearly anniversary of the contract date.

~~5. Sunset. Unless continued or modified by law, this section is repealed on October 1, 1992.~~

See title page for effective date.

## CHAPTER 697

H.P. 1552 - L.D. 2190

### An Act to Define Conflict of Interest for Probate Judges

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

**Sec. 1. 4 MRSA §307**, is amended by adding at the end a new paragraph to read:

A judge is considered to be interested in an estate or other probate proceeding, including adoptions, if the judge or a person with whom the judge practices law represents a party in the proceeding. When such representation begins, the judge shall transfer the matter as provided in this section, after which transfer the judge or the person with whom the judge practices law may continue such representation, except that, after a formal probate proceeding has been initiated before a judge, that judge is forever barred from assuming representation of a party in that same proceeding without regard to whether or not the proceeding has been transferred. A petition requesting a transfer and the petition related to the matter being transferred filed simultaneously are not considered formal probate proceedings for the purposes of this paragraph.

See title page for effective date.

## CHAPTER 698

H.P. 1532 - L.D. 2163

### An Act to Amend the State's Oil Spill Prevention and Response Provisions

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

**Sec. 1. 5 MRSA §12004-I, sub-§24-B** is enacted to read:

<b>24-B.</b>	<u>Oil Spill</u>	<u>Expenses and</u>	<u>38 MRSA</u>
<u>Environment:</u>	<u>Advisory</u>	<u>Legislative</u>	<u>§551-A</u>
<u>Natural</u>	<u>Committee</u>	<u>per diem</u>	
<u>Resources</u>			

**Sec. 2. 38 MRSA §86**, as amended by PL 1985, c. 389, §32, is further amended to read:

**§86. Vessels required to take pilot**

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, entering or departing from any port or harbor within the waters described in section 86-A shall take a pilot licensed under this chapter. ~~In case of refusal to take such pilot, the master, owner, agent or consignee of any such vessel shall pay the established pilot fee as if a pilot had been employed. Any master, owner, agent or consignee that fails to take a pilot licensed under this subchapter is subject to a civil penalty not to exceed \$5,000 per day, payable to the State. This penalty is recoverable in a civil action.~~

**Sec. 3. 38 MRSA §542, sub-§6-A** is enacted to read:

**6-A. Oil spill response activity.** “Oil spill response activity” means assistance in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil prohibited by section 543. The term includes lightering oil from a disabled or threatened vessel and other actions to prevent, contain, clean up, remove or dispose of prohibited oil discharges.

**Sec. 4. 38 MRSA §542, sub-§7**, as amended by PL 1977, c. 375, §3, is further amended to read:

**7. Oil terminal facility.** “Oil terminal facility” means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 500 barrels, nor any facility not engaged in the transfer of oil to or from waters of the State. A vessel shall be is considered an oil terminal facility only in the event of a ship-to-ship ship-to-ship transfer of oil, but only that vessel going to or coming from the place of ship-to-ship ship-to-ship transfer and a permanent or fixed oil terminal facility. The term does not include vessels engaged in oil spill response activities.

**Sec. 5. 38 MRSA §545, sub-§4**, as amended by PL 1977, c. 375, §7, is further amended to read:

**4. Certain vessels included.** Licenses issued to any fixed or permanent oil terminal facility shall ~~must~~ include vessels under the direction or control of such facility and used to transport oil, between such fixed or permanent facility and vessels within state waters. Any person operating or causing to be operated a vessel used to transport oil between a permanent or fixed oil terminal facility and vessels within state waters, which vessel

is not subject to the direction or control of that permanent oil terminal facility, shall obtain a license as required by this section. This subsection does not apply to vessels engaged in oil spill response activities.

**Sec. 6. 38 MRSA §546, sub-§6**, as enacted by PL 1991, c. 454, §4, is amended to read:

**6. Vessel response plans.** Every tank vessel, as defined under 56 United States Code, Section 2101, entering state waters shall ~~file with the department have~~ available for inspection by the commissioner or an agent of the commissioner a copy of any oil discharge response plan required to be submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484; or a statement that a plan is not required under federal law.

**Sec. 7. 38 MRSA §546-A, sub-§3, ¶B**, as enacted by PL 1991, c. 454, §5, is amended to read:

B. A clear definition of the roles of the department, the oil industry, oil spill response organizations and the United States Coast Guard in various circumstances, as well as the roles of other state agencies including the Maine Emergency Management Agency;

**Sec. 8. 38 MRSA §546-A, sub-§5**, as enacted by PL 1991, c. 454, §5, is amended to read:

**5. Revision.** ~~By April 30, 1992, the board shall adopt by rule a state marine oil spill contingency plan based upon the preliminary plan developed by the commissioner under subsection 4.~~ The commissioner shall at least annually review and make recommendations to revise the plan; and the board shall act on those recommendations by rulemaking notify all licensees and interested parties requesting to be notified of any substantial changes to the plan. Licensees and interested parties may request a public hearing on changes to the plan by submitting a written request to the commissioner signed by at least 5 persons.

**Sec. 9. 38 MRSA §546-B, sub-§2**, as enacted by PL 1991, c. 454, §6, is repealed.

**Sec. 10. 38 MRSA §551, sub-§5, ¶B**, as amended by PL 1991, c. 454, §11, is further amended to read:

B. All costs, including without limitation personnel undertaking oil spill response activities and equipment expenses, involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and their by-products covered by this subchapter, including all discharges from

interstate pipelines and other discharges prohibited by section 543;

**Sec. 11. 38 MRSA §551, sub-§5, ¶H,** as amended by PL 1989, c. 868, §7, is further amended to read:

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

**Sec. 12. 38 MRSA §551-A** is enacted to read:

**§551-A. Oil Spill Advisory Committee**

The Oil Spill Advisory Committee, as established in Title 5, section 12004-I, subsection 24-B, shall advise the department in carrying out the policies and purposes of this subchapter.

**1. Membership.** The Governor shall appoint the chair of the committee. The committee consists of the following 14 members:

A. Three members representing the marine fisheries interest, including the lobster industry, aquaculture industry and sardine industry, 2 appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

B. Three members representing the general public, one appointed by the President of the Senate and 2 appointed by the Speaker of the House of Representatives;

C. Two members representing the petroleum industry appointed by the Governor;

D. One member familiar with oil spill technology appointed by the Governor;

E. One naval architect appointed by the Governor;

F. One member with expertise in coastal geology appointed by the Governor;

G. One member with expertise in fisheries biology appointed by the Governor;

H. One member with expertise in coastal wildlife habitat appointed by the Governor; and

I. One member who is a licensed state pilot or a licensed merchant marine officer appointed by the Governor.

**2. Terms.** All members are appointed for staggered terms of 3 years. The Governor shall appoint 2 members for initial one-year terms, 3 members for initial 2-year terms and 3 members for initial 3-year terms. The President of the Senate shall appoint one member for an initial one-year term, one member for an initial 2-year term and one member for an initial 3-year term. The Speaker of the House of Representatives shall appoint one member for an initial one-year term, one member for an initial 2-year term and one member for an initial 3-year term. A vacancy must be filled by the same appointing authority that made the original appointment. No member may serve more than 2 consecutive 3-year terms.

**3. Compensation.** Members are entitled to compensation as specified in Title 5, section 12004-I, subsection 24-B.

**4. Quorum.** A quorum is 8 members of the committee. An affirmative vote of the majority of the members present is required for any action. Action may not be considered unless a quorum is present.

**5. Chair.** The Governor shall appoint a person to serve as chair of the committee.

**6. Meetings.** The committee meets at least 4 times per year unless the committee decides not to hold a meeting. The committee shall meet at any time at the call of the chair.

**7. Staff support.** The commissioner shall provide the committee with staff support.

**8. Duties.** The committee shall:

A. Track implementation of and regulations related to the Federal Oil Pollution Act of 1990 and recommend to the Legislature any statutory changes or to the board any regulatory changes that are appropriate. The committee shall review contingency plan requirements, opportunities and constraints of the federal Oil Spill Liability Trust Fund and oil spill prevention measures;

B. Monitor the adequacy of the federal Oil Spill Liability Trust Fund in light of information on the potential risks and costs of an oil spill and the State's exposure and liability under the fund;

C. Monitor the effects of the State's oil spill liability laws on oil spill prevention;

D. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommenda-

tions to the commissioner on how the fund should be allocated;

E. Review the commissioner's program for identifying areas sensitive to oil spills in the marine environment and the development of resource protection priorities;

F. Review and comment on the State's marine oil spill contingency plan;

G. Monitor oil spill planning and prevention activities by industry, oil spill response organizations and the United States Coast Guard;

H. Monitor the commissioner's assessment of adequate oil spill response equipment and vessels for the State;

I. Review the implementation of a plan for rehabilitation of wildlife resources including:

(1) Training programs and opportunities for volunteers and state and federal personnel; and

(2) Preliminary agreements or identification of treatment centers or facilities;

J. Monitor scientific, engineering and technical advances in oil spill response and prevention techniques and make recommendations on their use; and

K. Review and monitor issues for oil spill prevention and response and recommend to the Legislature any statutory changes or to the board any regulatory changes that are appropriate.

**Sec. 13. 38 MRSA §552, sub-§2**, as amended by PL 1985, c. 746, §23, is further amended to read:

**2. State need not plead or prove negligence.** Because it is the intent of this subchapter to provide the means for rapid and effective clean-up cleanup and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place ~~shall be~~ is liable to the State of ~~Maine~~ for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D ~~and~~, E, H ~~and~~ I, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it ~~shall~~ is not ~~be~~ necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge

or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge.

**Sec. 14. Review.** Before March 1, 1995, the Oil Spill Advisory Committee shall report on its activities to the joint standing committee of the Legislature having jurisdiction over natural resource matters, which shall review those activities and the need to continue the committee.

See title page for effective date.

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## CHAPTER 699

**H.P. 1462 - L.D. 2074**

### **An Act to Amend the Financial Responsibility Laws**

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

**Whereas**, denial of the right to operate or register a motor vehicle as a result of inability to pay a judgment debt imposes a hardship on many persons who need to work in order to pay the debt; and

**Whereas**, this Act permits judgment debtors to regain the right to operate and register motor vehicles by entering into and complying with installment payment agreements; 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. 14 MRSA §3125-A** is enacted to read:

**§3125-A. Debtor subject to loss or suspension of right to operate or register a motor vehicle**

A judgment debtor subject to suspension or loss of the right to operate or register a motor vehicle under Title 29, section 783, subsection 2, paragraph F may request a disclosure hearing on the issue of how to satisfy the judgment. The court may enter an order for an installment payment agreement in the manner agreed upon by the parties or a modified order in accord with the