

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

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

be submitted to the Office of the Executive Director of the Legislative Council.

Sec. 36. Brochure. When the Real Estate Commission reprints the brochure entitled "Buyer-Seller Information," it shall include in the brochure a revised section addressing the dangers of lead poisoning. In preparing the revised section, the Real Estate Commission shall consult with the Director of the Bureau of Health, Department of Human Services.

Sec. 37. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1992-93

HUMAN SERVICES, DEPARTMENT OF

Health - Bureau of

Positions - Other Count	(1.0)
Personal Services	\$31,955
All Other	17,500
Capital Expenditures	83,000

Provides for the allocation of funds for one Environmental Specialist II position, general operating expenses and testing equipment to implement the inspection and licensure provisions related to lead poisoning control.

DEPARTMENT OF HUMAN SERVICES
TOTAL \$132,455

See title page for effective date.

CHAPTER 811

S.P. 919 - L.D. 2358

An Act Concerning Liability for Uncontrolled Hazardous Substance Sites

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

Whereas, municipalities and regulated lending institutions should not be held liable for uncontrolled hazardous substance sites beyond certain limits if their involvement with the property has been minimal; 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 §1362, sub-§§1-A, 1-B and 1-C are enacted to read:

1-A. Federal banking or lending agency. "Federal banking or lending agency" means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a federal reserve bank, a federal home loan bank, the United States Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Small Business Administration, the Farmers' Home Administration, the Rural Electrification Administration or the RECOLL Management Corporation.

1-B. Lender. "Lender" means a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, a financial institution that is acting through a service corporation pursuant to Title 9-B, section 445, subsection 5 or any federal or state banking or lending agency that provides loans, guarantees or other financial assistance. For the purpose of this subsection and section 1367-A the phrase "acting through" includes the assignment or transfer of an interest in real property acquired in satisfaction of a debt.

1-C. Political subdivision. "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119, or quasi-municipal corporation or special purpose district, including, but not limited to, any water district or sanitary district.

Sec. 2. 38 MRSA §1362, sub-§2, ¶D, as enacted by PL 1983, c. 569, §1, is amended to read:

D. Any person who accepted a hazardous substance for transport, provided that the substance arrived at the uncontrolled site. After April 1, 1992, any person who accepts a hazardous substance for transport and delivers that substance to a licensed hazardous waste storage or disposal facility according to the manifest signed by the generator is not a responsible party.

Sec. 3. 38 MRSA §1362, sub-§2-A is enacted to read:

2-A. State banking or lending agency. "State banking or lending agency" means any state agency that provides loans, guarantees or other financial assistance, including the Finance Authority of Maine, the Department

of Economic and Community Development and the Maine State Housing Authority.

Sec. 4. 38 MRSA §§1367-A and 1367-B are enacted to read:

§1367-A. Limited exemption from liability for financial institutions and federal and state banking or lending agencies

1. Limited exemption from liability. Liability under section 1367 does not apply to any lender who, without participating in the actual management of an uncontrolled hazardous substance site, holds a security interest or acquires ownership primarily to protect a security interest in the uncontrolled site. The exemption from liability provided under this subsection does not apply to a lender that has caused, contributed to or exacerbated a release or threatened release of a hazardous substance on or from the uncontrolled site. A financial institution acting through a service corporation pursuant to Title 9-B, section 445, subsection 5 is liable for any release or threatened release of a hazardous substance on or from an uncontrolled site that the service corporation has caused, contributed to or exacerbated.

2. Reimbursement for department expenses. Notwithstanding the exemption from liability provided in subsection 1, any lender that has or had a security interest in property that encompasses an uncontrolled hazardous substance site and acquires or has acquired ownership of that property to protect its security interest is liable for all costs incurred by the department pursuant to this chapter during the period in which the lender had ownership of or a security interest in the property, up to the amount of proceeds from the sale or disposition of the property minus the out-of-pocket costs of the sale or disposition.

§1367-B. Limited exemption from liability for state or local governmental entities

1. Limited exemption from liability. Liability under section 1367 does not apply to the State or any political subdivision that acquired ownership or control of an uncontrolled hazardous substance site through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply to the State or any political subdivision that has caused, contributed to or exacerbated a release or threatened release of a hazardous substance on or from the uncontrolled site.

2. Reimbursement for department expenses. Notwithstanding the exemption from liability provided in

subsection 1, the State or any political subdivision that acquires or has acquired ownership of property that encompasses an uncontrolled hazardous substance site pursuant to any of the proceedings referred to in subsection 1 is liable for any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the property minus the out-of-pocket costs of the sale or disposition.

Sec. 5. 38 MRSA §1371, sub-§2, ¶A, as enacted by PL 1987, c. 540, is amended to read:

A. Any lien filed pursuant to this section on real estate ~~which that~~ encompasses an uncontrolled hazardous substance site ~~shall have~~ has precedence over all encumbrances on the real estate, including liens of the State or any political subdivision, recorded after the effective date of this section July 7, 1987. The term; "real estate" in this paragraph includes all real estate of a responsible party ~~which that~~ has been included in the property description of the affected real estate within the 3-year period preceding the date of filing of the lien or on or after the effective date of this section July 7, 1987, whichever period is shorter.

Sec. 6. 38 MRSA §1371, sub-§5, as enacted by PL 1987, c. 540, is amended to read:

5. Limitation. This section does not apply to a unit of real estate ~~which that~~ consists primarily of real estate used or under construction as single or multi-family housing at the time the lien is recorded or to property owned by a ~~municipality~~ political subdivision except for the real estate that encompasses an uncontrolled hazardous substance site and that is owned by a political subdivision.

Sec. 7. Application. Notwithstanding the provisions of the Maine Revised Statutes, Title 1, section 302, and except for that part amending Title 38, section 1362, subsection 2, this Act applies to every action or proceeding pending on or commenced after the date of approval of the Act.

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

Effective April 6, 1992, unless otherwise indicated.

CHAPTER 812

H.P. 1654 - L.D. 2321

An Act to Enact Article 4-A of the Uniform Commercial Code