

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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SECOND REGULAR SESSION
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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

DEPARTMENT OF HUMAN SERVICES	
TOTAL	\$33,885

TOTAL ALLOCATIONS	\$60,142
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See title page for effective date.

CHAPTER 815

S.P. 889 - L.D. 2282

An Act to Require Insurance Companies to Honor Assignment of Medical Benefits for Clients of the Department of Human Services

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

Sec. 1. 22 MRSA §14, sub-§2-H is enacted to read:

2-H. Honoring of assignments. The following provisions apply to claims for payment submitted by the department or a health care provider.

A. Whenever a participating health care provider or the department submits claims to an insurer, as defined in Title 24-A, section 4, or to a health maintenance organization on behalf of a Medicaid or Maine Health Program recipient for whom an assignment of rights has been received, or whose rights have been assigned by the operation of law, the insurer or health maintenance organization doing business in the State must respond within 60 days of receipt of a claim by forwarding payment or issuing a notice of denial directly to the submitter of the claim.

B. Whenever a nonparticipating health care provider or the department on behalf of a nonparticipating provider submits claims to an insurer, as defined in Title 24-A, section 4, or a health maintenance organization that operates through a series of participation agreements on behalf of a Medicaid or Maine Health Program recipient for whom an assignment of rights has been received or whose rights have been assigned by the operation of law, the insurer or health maintenance organization doing business in the State must respond within 60 days of receipt of a claim by forwarding payment, issuing a notice of denial or issuing a copy of the explanation of benefits directly to the submitter of the claim.

See title page for effective date.

CHAPTER 816

H.P. 1536 - L.D. 2169

An Act to Ensure that Funds Collected from Restitution are Deposited in Interest-bearing Accounts

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

Sec. 1. 17-A MRSA §1326, as amended by PL 1991, c. 90, is further amended to read:

§1326. Time and method of restitution

When restitution is authorized, the time and method of payment or of the performance of the services must be specified. Except when the offender is placed on probation, monetary compensation may be ordered paid to the office of the prosecuting attorney who is prosecuting the case or to the clerk of the court. If the offender is placed on probation, the compensation may be ordered paid to the Department of Corrections, Division of Probation and Parole. The state agency receiving the restitution shall deposit any money received in the account maintained by the State Treasurer for deposit of state agency funds, from which funds are daily transferred to an investment account and invested. Interest accrued on that money is the property of and accrues to the State for deposit in the General Fund. The agency receiving the restitution shall make the disbursement to the victim or other authorized claimant as soon as possible after the agency receives the money.

See title page for effective date.

CHAPTER 817

H.P. 1502 - L.D. 2114

An Act to Amend Certain Laws Pertaining to the Department of Environmental Protection's Bureau of Hazardous Materials and Solid Waste Control

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

Whereas, serious inequities exist between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund statutes as a result of emergency legislation effective April 1990, which preclude the Department of Environmental Protection from dealing equitably with claimants with respect to medical expenses, drinking water and other issues; and

Whereas, it is necessary that these inequities be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

Whereas, there is a need to facilitate reimbursements to the Maine Hazardous Waste Fund to ensure adequate resources for the operation of hazardous waste management and response programs; 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. 32 MRSA §10006, sub-§3, ¶A, as amended by PL 1989, c. 845, §6, is repealed.

Sec. 2. 32 MRSA §10006, sub-§3, ¶¶B and C, as enacted by PL 1989, c. 312, §4, are amended to read:

B. A Class 2 underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed, ~~heavy underground oil storage or tanks and impressed-current cathodically-protected~~ cathodically protected tanks.

C. A Class 3 underground storage tank installer may only install or remove underground oil storage tanks for the storage of #2 heating oil. Class 3 installers are not certified to install or remove field-constructed underground oil storage tanks, heavy oil storage or impressed-current ~~cathodically-protected~~ cathodically protected tanks.

Sec. 3. 32 MRSA §10006, sub-§3, ¶D, as amended by PL 1989, c. 845, §6, is repealed.

Sec. 4. 32 MRSA §10006, sub-§4, as enacted by PL 1989, c. 312, §4, is amended to read:

4. Proper underground gasoline storage tank remover certification class required. No person may remove or advertise to remove an underground gasoline storage tank unless the person is certified in accordance with this chapter ~~or for fire-fighting personnel, Title 38, section 566-A, subsection 5.~~

Sec. 5. 32 MRSA §10010, sub-§3-A, ¶A, as amended by PL 1989, c. 845, §8, is repealed.

Sec. 6. 32 MRSA §10010-C is enacted to read:
§10010-C. Examination of fire-fighting personnel

Fire-fighting personnel may apply to the board to be examined on their ability to supervise the removal of

underground oil storage tanks storing Class 1 liquids pursuant to Title 38, section 566-A, subsection 5. The board shall provide the commissioner with completed applications and examination results and may adopt rules to administer this section.

Sec. 7. 32 MRSA §10011, sub-§1, as amended by PL 1987, c. 410, §14, is further amended to read:

1. Requirement fees. Only a person satisfying the requirements of section 10010, subsections 1 and 2; may apply for examination in ~~such a~~ the manner as prescribed by the board prescribes. The application ~~shall~~ must be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the applicable examination specified in section 10010, subsection 3 ~~or~~ 4; ~~or~~ 5 may apply for reexamination upon payment of the prescribed fee.

Sec. 8. 38 MRSA §341-G, sub-§1, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

1. Transfer funds. The amount transferred from each fund must be proportional to that fund's contribution to the total special revenues received by the department under chapter 2, subchapter 2; ~~section sections 551; section 569, 569-A and 569-B;~~ and chapter 13, subchapter 4. Any funds received by the board from the General Fund must be credited towards the amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

Sec. 9. 38 MRSA §542, sub-§3-A is enacted to read:

3-A. Coastal waters. "Coastal waters" means all waters of the State within the rise and fall of the tide and within the marine limits of the jurisdiction of the State but does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.

Sec. 10. 38 MRSA §548, last ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §114, is further amended to read:

Any unexplained discharge of oil within state jurisdiction or discharge of oil occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal or cleanup of discharges, including the restoration of water supplies contaminated by discharges from interstate pipelines and other discharges prohibited by section 543, whether by the person ~~causing the discharge;~~ the person reporting the discharge, the commissioner or the commissioner's agents or contractors, must be paid in the first instance from the Maine Coastal and Inland Surface Oil Clean-up Fund and any reimbursements due that fund must be collected in accordance with section 551.

Sec. 11. 38 MRSA §551, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §117, is further amended to read:

2. Third-party damages. Any person, claiming to have suffered property damage or actual economic damages to real estate or personal property or, including, but not limited to, loss of income and medical expenses arising from physical bodily injury, directly or indirectly as a result of a discharge of oil; prohibited by section 543; including all discharges of oil from interstate pipelines, hereinafter in this subsection called the claimant, may apply within 6 12 months after the occurrence of such a discharge to coastal waters and for other surface discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to be have been suffered as a result of such that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The board commissioner may, upon petition and for good cause shown, waive the 6 months' time limitation for filing damage claims.

A. If ~~When~~ a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the 3rd-party damage claim process as an interested party. A responsible party shall provide written notification to the department of the responsible party's intent to join within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, the determination of the amount of the claim and award is binding in any subsequent action for reimbursement to the fund. If a claimant has not been compensated for 3rd-party damages by the responsible party and the claimant, the responsible party and the commissioner and the person causing the discharge can agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or in the case where when the person causing the discharge responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the discharger, if responsible party, and the claimant and the commissioner can agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same amount of the claim from the Maine Coastal and Inland Surface Oil Clean-up Fund.

B. If the claimant, the responsible party and the commissioner and the person causing the discharge can are not able to agree as to the amount of the damage claim, or in the case where the person caus-

ing the discharge if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the discharger, if responsible party, and the claimant and the commissioner can are not able to agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter is subject to subsection 3-A.

C. Third-party ~~Third-party~~ damage claims shall must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed are waived unless the damage or injury was not known at the time of the claim.

D. Damage claims arising under this subchapter shall be that are a result of a prohibited discharge to coastal waters are recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter for discharges to coastal waters are exclusive.

E. Awards from the fund on damage claims shall may not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with the responsible party or the responsible party's representatives or judgment of the federal courts a court of competent jurisdiction against the person causing or otherwise responsible for the discharge party to the extent these amounts are duplicative.

F. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties.

G. The remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive for damages that are not a result of prohibited discharges to coastal waters. A court awarding damages to a claimant as a result of a discharge of oil to surface waters prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative.

H. Payments from the fund for 3rd-party damage claims may not exceed \$200,000 per claimant except when the damages are a result of a discharge to coastal waters.

I. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real

estate associated with the loss of a water supply if the commissioner finds under section 548 that a public or private water supply is available and if that water supply best meets the criteria of that section and the property owner did not agree to be served by that public or private water supply.

J. A responsible party is not eligible for compensation under this subsection for costs, expenses or damages related to the specific discharge for which the responsible party is determined responsible.

K. Prior to forwarding a claim to the hearing examiner under subsection 3-A, the commissioner may require that the amount of the claim be finalized.

L. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim, such as legal fees or real estate appraisal fees.

Sec. 12. 38 MRSA §551, sub-§2-B is enacted to read:

2-B. Claimant contact. When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

Sec. 13. 38 MRSA §551, sub-§3, as amended by PL 1985, c. 496, Pt. A, §13, is repealed.

Sec. 14. 38 MRSA §551, sub-§3-A is enacted to read:

3-A. Determination of disputed 3rd-party damage claims. The commissioner shall establish a disputed claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner and any responsible party who has joined as an interested party.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant.

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner are informal and the rules of evidence applicable to judicial proceedings are not binding. The hearing

examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. The commissioner or a claimant seeking review of a hearing examiner's determination must file an appeal in the Superior Court within 30 days of the determination.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State.

Sec. 15. 38 MRSA §551, sub-§4, ¶B, as amended by PL 1985, c. 496, Pt. A, §13, is repealed.

Sec. 16. 38 MRSA §551, sub-§4, ¶E is enacted to read:

E. When the commissioner projects that the fund balance will reach \$6,000,000, the commissioner shall provide a 15-day notice that the per barrel fees assessed under this subsection will be suspended. The \$6,000,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. Following any suspension of fees assessed under this subsection, the commissioner shall provide a 15-day advance notice to licensees before fees are reimposed.

Sec. 17. 38 MRSA §551, sub-§5, ¶A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §121, is further amended to read:

A. Administrative expenses, personnel expenses and equipment costs of the commissioner related to the enforcement of this subchapter and any loans to the Ground Water Oil Clean-up Fund made pursuant to section 569 569-A or 569-B;

Sec. 18. 38 MRSA §551, sub-§5, ¶G, as amended by PL 1989, c. 868, §6, is repealed.

Sec. 19. 38 MRSA §551, as amended by PL 1991, c. 454, §§8 to 12 and affected by §14, is further amended by adding at the end a new paragraph to read:

For purposes of subsections 2 and 3-A, the term "responsible party" means any person discharging oil in the manner prohibited under section 543 or any person who is liable as a licensee to the extent provided in section 552, subsection 1.

Sec. 20. 38 MRSA §566-A, sub-§4, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §145, is further amended to read:

4. Commissioner role. If the owner of an underground oil storage facility or tank fails to properly abandon the facility or tank within a reasonable time period, the commissioner may undertake the abandonment. The commissioner shall collect any reimbursement due the Ground Water Oil Clean-up Fund in accordance with section ~~569~~ 569-A or 569-B.

Sec. 21. 38 MRSA §566-A, sub-§5, as amended by PL 1991, c. 88, §2, is further amended to read:

5. Qualified personnel. All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal must be removed under the direct, on-site supervision of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A, or of certified fire-fighting personnel, except for underground gasoline storage tanks removed pursuant to subsection 6. The Board of Underground Oil Storage Tank Installers may examine and upon passage of the examination the commissioner may certify fire-fighting personnel to supervise the removal of Class 1 underground oil storage facilities upon passage of the examination for an underground gasoline storage tank remover. Fire-fighting personnel may only supervise the removal of an underground facility or tank:

A. Within the municipality with which they are affiliated or within the jurisdiction that the municipality with which they are affiliated has a compact; and

B. If the fire-fighting personnel have written authorization from the municipality with which they are affiliated.

Sec. 22. 38 MRSA §568, sub-§1, as repealed and replaced by PL 1991, c. 66, Pt. A, §28, is amended to read:

1. Removal. Any person discharging or suffering a discharge of oil to ground water in the manner prohibited by section 543 and any responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3, or may undertake the removal of that discharge and retain agents and contractors for that purpose who shall operate under the direction of the commissioner. Any unexplained discharge of oil to ground water within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge, the commissioner or the commissioner's agents or contractors, may be paid in

the first instance from the Ground Water Oil Clean-up Fund, including any expenses incurred by the State under subsection 3, and any reimbursements due that fund must be collected in accordance with section ~~569~~ 569-A or 569-B.

Sec. 23. 38 MRSA §568-A, sub-§2, as amended by PL 1991, c. 494, §12, is further amended to read:

2. Deductibles. Applicants eligible for coverage by the fund under subsection 1 ~~must~~ shall pay the initial costs for expenses resulting from cleaning up and compensating eligible 3rd-party damages from a discharge prohibited under section 543 on a per occurrence basis according to the following schedule:

Number of facilities owned by facility owner	Costs paid by applicant
1	\$2,500
2 to 5	5,000
6 to 10	10,000
11 to 30	50,000
over 30	100,000

The commissioner shall pay any eligible additional costs up to \$1,000,000 associated with activities under section ~~569~~ 569-A, subsection 5 8, paragraphs B, D and ~~F J~~ resulting from a discharge from the fund. The commissioner may pay any costs eligible for coverage by the fund above \$1,000,000 from the fund but the commissioner shall recover these expenditures from the responsible party pursuant to section ~~569~~ 569-A.

Sec. 24. 38 MRSA §568-A, sub-§5, as enacted by PL 1989, c. 865, §15 and affected by §§24 and 25, is amended to read:

5. Uncompensated 3rd-party damage claims. If within 12 months of a claim, a person designated as a responsible party by the commissioner refuses to pay 3rd-party damage claims not covered by the fund, the commissioner may pay these claims from the fund pursuant to section ~~569~~ 569-A, subsection ~~2-A~~ 2 or section 569-B, subsection 2. Any amount ~~so~~ paid must be recovered from the responsible party pursuant to section ~~569~~ 569-A or 569-B.

Sec. 25. 38 MRSA §569, as amended by PL 1991, c. 433, §§4 to 6 and affected by §7 and amended by c. 439, §6 and c. 494, §§13 and 14, is repealed.

Sec. 26. 38 MRSA §§569-A and 569-B are enacted to read:

§569-A. Ground Water Oil Clean-up Fund

The Ground Water Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this

subchapter. The balance in the fund is limited to \$15,000,000. To this fund are credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements, assessments and other fees and charges related to this subchapter. To this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd-party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

The commissioner may authorize the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to carry out the provisions of subchapters II-A and II-B. All funds borrowed pursuant to this section must be repaid with interest to the fund of origin in as prompt a manner as revenues allow at a rate of interest determined by the Treasurer of State based on the average rate of interest earned on funds invested during the period of the loan.

Money in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest received on that investment must be credited to the fund.

A 3rd-party commercial risk pool account is established within the fund to pay 3rd-party damage claims for claims resulting from discharges from bare steel and noncathodically protected underground storage tanks used for commercial purposes up to \$100,000 per claimant including those costs in subsection 8, paragraphs D, E and F associated with those claims. The commissioner may retain consultants to administer these funds.

1. Research and development. The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil on ground waters of the State. These allocations must be made in accordance with section 570-A.

2. Third-party damages. Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the "claimant," may apply to the commissioner within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner

shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims. For claims made on discharges eligible for coverage by the 3rd-party commercial risk pool account, the commissioner shall pay the first \$100,000 per claimant out of the 3rd-party commercial risk pool account as long as funds are available. The commissioner shall pay any claims that exceed \$100,000 or available money in the 3rd-party commercial risk pool account from the fund.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the claims proceeding as an interested party. A responsible party shall provide written notification of intent to join to the department within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, any determination of the amount of the claim and award is binding in any subsequent action for reimbursements to the fund. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the fund.

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party in a timely manner or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 4.

C. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties.

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim.

E. Awards from the fund on damage claims may not include any amount the claimant has recovered on account of the same damage by way of settlement with the responsible party or the responsible party's representative or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge.

F. It is the intent of the Legislature that the remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive. A court awarding damages to a claimant as a result of a discharge of oil to ground water prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative.

G. Payments from the fund for 3rd-party damage claims may not exceed \$200,000 per claimant.

H. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 568, subsection 2 that a public or private water supply is available and best meets the criteria of that subsection and the property owner did not agree to be served by that public or private water supply.

I. A responsible party is not eligible for compensation under this subsection for costs, expenses or damages related to the specific discharge for which the responsible party is deemed responsible.

J. Prior to forwarding a claim to the hearing examiner under subsection 4, the commissioner may require that the amount of the claim be finalized.

K. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim such as legal fees or real estate appraisal fees.

3. Claimant contact. When the commissioner becomes aware of a claimant under subsection 2, the commissioner shall send a letter by certified mail to inform that person of the 3rd-party damage claims process under subsection 2. The letter must contain the name and telephone number of a contact person available to explain the claims procedure.

4. Determination of disputed 3rd-party damage claims. The commissioner shall establish a disputed claims processing capability within the department to hear

and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims. The parties to the hearing are the commissioner and the claimant.

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner are informal and the rules of evidence prevailing on judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State.

5. Funding. Funding for the Ground Water Oil Clean-up Fund is as follows.

A. Until January 1, 1994 and after January 1, 1998, a fee is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 10¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B who first transports oil into the State. The fee is not assessed on petroleum products that are exported from this State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I.

B. After January 1, 1994, the fees assessed in paragraph A increase to 48¢ per barrel of gasoline and 27¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel. The fee is not assessed on petroleum products that are exported from this State. The fees assessed on #6 fuel oil remain at 10¢ per barrel. This paragraph is repealed on January 1, 1998.

C. The owner or operator of an underground oil storage facility that stores motor fuel or is used in the marketing and distribution of oil shall pay an annual fee of \$130 per tank not constructed of fiberglass, cathodically protected steel or other non-corrosive material. These funds must be deposited in the 3rd-party commercial risk pool account. If the funds in the account are inadequate to pay the claims, costs and expenses for which payment from the account is authorized, the board may increase the per tank assessment up to \$500 per tank. Any shortfall in the account occurring after the maximum assessment has been levied must be paid out of the fund. Upon payment of the annual fee, the commissioner shall issue a certificate of coverage for the tank.

D. When the fund balance reaches \$15,000,000, the collection of fees under paragraphs A and B abates. When the commissioner projects that the fund balance will reach \$15,000,000, the commissioner must provide a 15-day advance notice of the abatement to persons assessed the fee under paragraphs A and B. The \$15,000,000 fund limit may be exceeded to accept transfer fees assessed or received after the 15-day notice has been issued. When the fund balance is reduced to \$12,500,000, the fees assessed under paragraphs A and B are reimposed. The commissioner shall provide a 15-day advance notice of the reimposition of those fees.

6. Allocation from Ground Water Oil Clean-up Fund. From the fees assessed in subsection 5, 6¢ per barrel of gasoline, refined petroleum products and their by-products, other than liquid asphalt, must be transferred by the department upon receipt as follows.

A. Sixty-two and one half percent of the 6¢ per barrel fee must be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund, and after \$3,000,000 has been transferred to the Maine State Housing Authority pursuant to paragraph B, 100% of the 6¢ per barrel fee must be transferred to the Finance Authority of Maine.

B. Thirty-seven and one half percent of the 6¢ per barrel fee must be transferred to the Maine State

Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned. After \$3,000,000 has been transferred, the Maine State Housing Authority does not receive a percentage of the 6¢ per barrel fee.

After an aggregate sum of \$10,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of \$3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to subsection 5 must be reduced by 6¢ per barrel.

7. Reimbursement for fees imposed on transfers out of State. Any person who prior to October 9, 1991 has paid a fee assessed pursuant to subsection 5, paragraph A on petroleum products that were exported from this State must be reimbursed by the department upon presentation of documentation of that payment and transfer.

8. Disbursements from fund. Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the administration and enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section. Administrative expenses, personnel expenses and equipment costs may not exceed \$1,734,000 per fiscal year;

B. All costs involved in the removal of a prohibited discharge, the abatement of pollution and the implementation of remedial measures, including restoration of water supplies, related to the discharge of oil to ground water covered by this subchapter not paid by a responsible party or an applicant for coverage by the fund;

C. Sums allocated to research and development in accordance with this section;

D. Payment of the 3rd-party damage claims awarded in accordance with this section that are not paid by the responsible party or applicant for coverage by the fund;

E. Payment of costs of hearings, independent hearing examiners and independent claims adjusters for 3rd-party damage claims;

F. Payment of costs of the administration of the 3rd-party commercial risk pool account;

G. Payment of costs of insurance by the State to extend or implement the benefits of the fund;

H. Sums up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 that may have adverse economic effects and that occur subsequent to the allocation, when the studies are considered necessary by the commissioner;

I. All costs associated with the Board of Underground Oil Storage Tank Installers; and

J. Payments to or on behalf of applicants eligible for coverage by the fund under section 568-A, subsection 1 for expenses above the deductible specified in section 568-A, subsection 2 incurred in commissioner-approved clean-up activities and specified in an agreement under section 568-A, subsection 4.

9. Reporting mechanism. If the potential liabilities of the fund exceed projected income for the fund, the commissioner shall notify the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters within 30 days of determining that a shortfall will occur and submit recommendations for revising coverage of the fund or generating the needed income.

10. Reimbursements to fund. The commissioner shall seek recovery for the use of the fund of all sums greater than \$1,000,000 per occurrence expended from the fund pursuant to subsection 8, paragraph J for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A, subsection 1 and all sums expended from the fund when no applicant was found by the commissioner to be eligible under section 568-A, subsection 1, including overdrafts, for the purposes described in subsection 8, paragraphs B, D, E, H and J or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain. If a request for reimbursement to the fund is not paid within 30 days of demand, the commissioner shall refer the request to the Attorney General or to a collection agency, agent or attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191 for collection.

11. Waiver of reimbursement. Upon petition of any responsible party, the board may, after hearing, waive

the right to reimbursement to the fund if it finds that the occurrence was the result of either of the following:

A. An act of war; or

B. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such a finding by the board, immediate credit must be entered for the party involved. The findings of the board are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

12. Extinguishing the 3rd-party commercial risk pool account. When all claims against the 3rd-party commercial risk pool account have been extinguished and, in the judgment of the commissioner, provision for payment of any potential 3rd-party claims against the account have been made, the commissioner shall refund any excess funds in the account to those persons who paid an annual fee into the account. The commissioner shall make refunds in the proportion that the owner's or operator's total contribution bears to the total contributions to the fund. Two years after notice to the operator's or owner's last address, unclaimed funds in the 3rd-party commercial risk pool account escheat to the State if the party has made no claim for refund.

When the State Auditor performs an annual postaudit of the Ground Water Oil Clean-up Fund, the auditor shall prepare a separate audit report of the 3rd-party commercial risk pool account. The report must be maintained by the commissioner and made available upon request to participants in the account.

13. Repeal date. This section is repealed on December 31, 1999.

§569-B. Ground Water Oil Clean-up Fund

The Ground Water Oil Clean-up Fund is established to be used by the department as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. To this fund are credited all registration fees, fees for late payment or failure to register, penalties, transfer fees, reimbursements and other fees and charges related to this subchapter. To this fund are charged any and all expenses of the department related to this subchapter, including administrative expenses, payment of 3rd-party damages covered by this subchapter, costs of removal of discharges of oil and costs of cleanup of discharges, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

The commissioner may authorize the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-

up Fund to carry out the provisions of subchapters II-A and II-B. All funds borrowed pursuant to this section must be repaid with interest to the fund of origin in as prompt a manner as revenues allow at a rate of interest determined by the Treasurer of State based on the average rate of interest earned on funds invested during the period of the loan.

Money in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this subchapter and not on loan to the Maine Coastal and Inland Surface Oil Clean-up Fund must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest received on that investment must be credited to the fund.

1. Research and development. The Legislature may allocate not more than \$100,000 per year of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on ground waters of the State. These allocations must be made in accordance with section 570-A.

2. Third-party damages. Any person claiming to have suffered actual damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the "claimant," may apply to the commissioner within 6 months after the occurrence or discovery of the discharge stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The board, upon petition and for good cause shown, may waive the 6-month limitation for filing damage claims.

A. If the claimant and the commissioner are able to agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Ground Water Oil Clean-up Fund.

B. If the claimant and the commissioner are not able to agree as to the amount of the damage claim, the commissioner shall forthwith transmit the claim for action to the department as provided in this subchapter.

C. A claimant shall take all reasonable measures to minimize damages suffered by the claimant as a result of a discharge of oil.

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are deemed waived.

E. Damage claims arising under this subchapter are recoverable only in the manner provided under this subchapter. It is the intent of the Legislature that the remedies provided for such damage claims in this subchapter are exclusive.

F. Awards from the fund on damage claims may not include any amount that the claimant has recovered on account of the same damage by way of settlement with or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge.

3. Determination of disputed 3rd-party damage claims. The commissioner shall establish a claims processing capability within the department to hear and determine claims filed under this subchapter that are not agreed upon by the claimant and the commissioner.

A. An independent hearing examiner appointed by the commissioner shall hear and determine any disputed 3rd-party damage claims.

B. To the extent practical, all claims arising from or related to a common discharge must be heard and determined by the same hearing examiner.

C. Hearings before the hearing examiner are informal and the rules of evidence prevailing on judicial proceedings are not binding. The hearing examiner may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues presented to the hearing examiner for determination.

D. Determinations made by the hearing examiner are final and those determinations may be subject to review by a Justice of the Superior Court, but only as to matters related to abuse of discretion by the hearing examiner. A claimant seeking review of a hearing examiner determination shall file an appeal in the Superior Court within 30 days of the determination.

E. The commissioner shall certify the amount of the damage award, if any, after determination by the hearing examiner and shall certify the name of the claimant to the Treasurer of State, unless the commissioner has determined that the claimant is a responsible party, in which case the commissioner shall withhold certification until all claims that the commissioner has against the responsible party with respect to the discharge have been satisfied.

4. Funding. A fee of 9¢ per barrel of gasoline and 8¢ per barrel of refined petroleum products and their by-products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, is assessed on the transfer of those products by oil

terminal facility licensees, as defined in section 542, subsection 7. These fees must be paid monthly by the oil terminal facility licensees on the basis of records certified to the commissioner and credited to the Ground Water Oil Clean-up Fund upon receipt by the department, except that the commissioner shall transfer the amount of these fees in excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by-products, other than gasoline and liquid asphalt, as follows.

A. Sixty-two and one half percent of the excess must be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.

B. Thirty-seven and one half percent of the excess must be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

After an aggregate sum of \$5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of \$3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to this subsection must be reduced by 6¢ per barrel.

5. Disbursements from fund. Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the department related to the enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Clean-up Fund made pursuant to this section;

B. All costs involved in the removal of a prohibited discharge, 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 to ground water covered by this subchapter;

C. Sums allocated to research and development in accordance with this section;

D. Payment of the 3rd-party damage claims awarded in accordance with this section;

E. Payment of costs of arbitration and arbitrators;

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund;

G. Sums up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 570-A for payment of costs for studies of the environmental impacts of discharges to ground water prohibited by section 543 that may have adverse economic effects and that occur subsequent to the allocation, when the studies are considered necessary by the commissioner; and

H. All costs associated with the Board of Underground Oil Storage Tank Installers.

6. Reimbursements to fund. The commissioner shall seek recovery for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the commissioner finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand must be turned over to the Attorney General for collection.

7. Waiver of reimbursement. Upon petition of any responsible party, the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

A. An act of war;

B. An act of government, either state, federal or municipal, except insofar as the act was pursuant to section 568; or

C. An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such a finding by the board, immediate credit must be entered for the party involved. The findings of the board are conclusive, as it is the legislative intent that the waiver provided in this subsection is a privilege conferred, not a right granted.

8. Effective date. This section takes effect December 31, 1999.

Sec. 27. 38 MRSA §570, first ¶, as repealed and replaced by PL 1987, c. 735, §72, is amended to read:

Because it is the intent of this subchapter to provide the means for rapid and effective cleanup and to minimize direct damages as well as indirect damages and the proliferation of 3rd-party claims, each responsible

party is jointly and severally liable for all disbursements made by the State pursuant to section 569 569-B, subsection 5, paragraphs B, D, E and G, or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure. The commissioner shall demand reimbursement of costs and payment of damages to be recovered under this section and payment ~~shall~~ must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 28. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as repealed and replaced by Public Law 1987, chapter 735, section 72, takes effect December 31, 1999.

Sec. 29. 38 MRSA §570, first ¶, as amended by PL 1989, c. 865, §17 and affected by §§24 and 25, is further amended to read:

Because it is the intent of this subchapter to provide the means for rapid and effective cleanup and to minimize direct damages as well as indirect damages and the proliferation of 3rd-party claims, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569 569-A, subsection 5 §, paragraphs B, D, E, ~~G~~ H and ~~F~~ I, or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, except for costs found by the commissioner to be eligible for coverage under the fund. The commissioner shall demand reimbursement of costs and payment of damages that are not eligible for coverage by the fund to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 30. Repeal. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as amended by Public Law 1989, chapter 865, section 17 and affected by sections 24 and 25, is repealed December 31, 1999.

Sec. 31. 38 MRSA §570-A, first ¶, as repealed and replaced by PL 1991, c. 66, Pt. A, §32, is amended to read:

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 569 569-A, subsection 5 §, paragraphs A, C, ~~F~~, ~~G~~ and ~~H~~ and I for each biennium. The budget must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569 569-A, subsection 5 §, paragraphs B, D, E, ~~E~~ F and ~~F~~ I may be made as authorized by the State Controller following approval by the commissioner.

Sec. 32. 38 MRSA §608-A, as repealed and replaced by PL 1991, c. 66, Pt. A, §34 and c. 499, §20, is repealed and the following enacted in its place:

§608-A. Soil decontamination

Any rotary drum mix asphalt plant may process up to 10,000 cubic yards of soil contaminated by gasoline or #2 fuel oil per year without an air emissions license pursuant to section 590. This limit may be exceeded with written authorization from the commissioner. The plant owner or operator shall notify the commissioner at least 24 hours prior to processing the contaminated soil and specify the contaminating fuel and quantity, origin of the soil and fuel and the disposition of the contaminated soil. The owner or operator shall maintain records of these activities for 6 years.

Sec. 33. 38 MRSA §1318-A, sub-§2, as amended by PL 1989, c. 317, §1, is further amended to read:

2. State and municipalities to recover for expenditures for removal. Any person who permits, causes or is responsible for a prohibited discharge shall reimburse the State and municipalities for all costs incurred, including personnel costs, in removing the discharge, including costs for ensuring public safety. Funds recovered under this section ~~shall~~ must be deposited to the account from which they were expended. Requests ~~from the State~~ for reimbursement, if not paid within 30 days of demand, ~~shall~~ may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191, or, for municipal cost, to the District Attorney for collection.

Sec. 34. 38 MRSA §1319-G, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §258, is further amended to read:

1. Recovery. The commissioner shall seek recovery to the use of the Maine Hazardous Waste Fund of all sums expended therefrom from the fund, including overdrafts, for disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B and C, including interest computed at 10% a year from the date

of expenditure, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain. Requests by the department for reimbursement must be referred to the Maine Hazardous Waste Fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191.

The commissioner may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

Sec. 35. Transition. Persons certified as Class 1 underground oil storage tank installers on the effective date of this Act are certified as Class 2 installers.

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

Effective April 6, 1992.

CHAPTER 818

H.P. 1645 - L.D. 2308

An Act to Establish the Motor Vehicle Emission Inspection Program

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

Sec. 1. 29 MRSA §2502, sub-§5 is enacted to read:

5. Emission inspection. After July 1, 1994, a motor vehicle required to be inspected pursuant to Title 38, chapter 28 and rules adopted pursuant to that chapter must have a valid certificate of inspection or waiver before a motor vehicle safety inspection may be conducted.

Sec. 2. 38 MRSA c. 28 is enacted to read:

CHAPTER 28

MOTOR VEHICLE EMISSION INSPECTION PROGRAM

§2401. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Certificate of compliance. “Certificate of compliance” means a written document with a serial number indicating that a motor vehicle complies with rules adopted pursuant to this chapter.

2. Certificate of waiver. “Certificate of waiver” means a written document with a serial number that indicates the requirement of compliance with rules adopted pursuant to this chapter has been waived for a motor vehicle under section 2403.

3. Convenient public access. “Convenient public access” means reasonable driving distance to a public emission inspection station and reasonable waiting time at a public emission inspection station to have vehicle emissions tested.

4. Fleet emission inspection station. “Fleet emission inspection station” means a facility for the inspection of motor vehicle fleets operated pursuant to a license issued under section 2405.

5. Low-emission adjustment. “Low-emission adjustment” means the repair or adjustment of basic emission-related components or systems such as spark plugs, air-cleaner filter, choke, engine idle speed and engine timing.

6. Motor vehicle. “Motor vehicle” has the same meaning as provided under Title 29, section 1, subsection 7.

7. Public emission inspection station. “Public emission inspection station” means a facility for motor vehicle inspection operated under contract with the department under section 2404.

§2402. Inspection requirement

1. Requirement. After July 1, 1994, each motor vehicle registered in any area designated by the Federal Government under 40 Code of Federal Regulations, Part 81 as nonattainment for ozone and classified as a moderate or more severe nonattainment area must be inspected biennially for air pollution emissions as provided in this chapter and have a valid certificate of compliance or waiver before a motor vehicle safety inspection, required under Title 29, section 2502, may be conducted.

2. Location of inspection. The inspection must take place at a public or fleet emission inspection station.

3. Inspection of certificate by law enforcement officer. When a law enforcement officer stops an operator or owner of a motor vehicle registered in this State for a moving violation, the officer shall request that the operator present the certificate of compliance or waiver if the motor vehicle is required to be inspected under this section.

A. If the operator does not have the certificate of compliance or waiver in or about the vehicle and fails to produce the certificate of compliance or waiver for a law enforcement officer, for a motor