

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

proposed revisions published in the Federal Register and currently under consideration by the federal Environmental Protection Agency to existing effluent limitation guidelines for the pulp and paper industry under the federal Clean Water Act, 33 United States Code, Sections 1311(b) and 1314(b) are equal to or more stringent in their cumulative effect than the requirements of this section.

A. If the commissioner makes this determination in the affirmative, kraft pulp mills licensed and in existence prior to July 1, 1989 must be in compliance with subsection 2, paragraph A or subsection 3 on or before July 1, 1998 unless the revisions adopted by the federal Environmental Protection Agency require earlier compliance.

B. If the commissioner makes no determination or the federal Environmental Protection Agency has not published any proposed effluent limitation guideline revisions for the pulp and paper industry by July 1, 1994 or the commissioner makes the determination in the negative, kraft pulp mills licensed and in existence prior to July 1, 1989 must be in compliance with subsection 2, paragraph A or subsection 3 on or before December 1, 1996.

Upon making the determination, the commissioner shall submit a written report to the joint standing committee of the Legislature having jurisdiction over natural resources matters that includes a written justification of the reasons for the determination.

4-B. Progress report. On or before March 31, 1993, the commissioner shall report in writing to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the actual level of performance of each kraft pulp mill in comparison with the standards under subsection 2, paragraph A or subsection 3. The commissioner may require a person holding a waste discharge license for a kraft pulp mill under section 413 to submit information as necessary to make the evaluation required under this subsection.

See title page for effective date.

CHAPTER 836

S.P. 844 - L.D. 2148

An Act to Establish the Petroleum Market Share Act

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

Sec. 1. 3 MRSA §927, sub-§2, ¶B, as amended by PL 1991, c. 376, §5, is further amended to read:

B. Independent agencies:

- (1) Maine Blueberry Commission;
- (2) Blueberry Advisory Committee;
- (3) Seed Potato Board;
- (4) Maine Milk Commission;
- (5) State Harness Racing Commission;
- (6) Maine Agricultural Bargaining Board;
- (7) State Board of Veterinary Medicine;
- (8) Maine Dairy and Nutrition Council;
- (9) Board of Pesticides Control;
- (10) Maine Dairy Promotions Board;
- (11) State Board of Property Tax Review;
- (12) Maine Technical College System;
- ~~(13) Maine Commission for Women;~~
- ~~(14) (13) Maine Human Rights Commission; and~~
- ~~(15) (14) Educational Leave Advisory Board; and~~
- (15) Petroleum Advisory Committee.

Sec. 2. 5 MRSA §12004-I, sub-§2-B is enacted to read:

2-B.	<u>Petroleum</u>	<u>For</u>	<u>10 MRSA</u>
<u>Business</u>	<u>Advisory</u>	<u>Legislative</u>	<u>§1678</u>
	<u>Committee</u>	<u>Members</u>	
		<u>\$25/Day and</u>	
		<u>Expenses</u>	

Sec. 3. 10 MRSA c. 308 is enacted to read:

CHAPTER 308

PETROLEUM MARKET SHARE ACT

§1671. Short title

This chapter may be known and cited as the "Petroleum Market Share Act."

§1672. Definitions

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

1. Affiliate. “Affiliate” means any person who controls, is controlled by or is under common control with any other person.

2. Control of retail outlet. “Control of retail outlet” means the power, whether or not exercised, to establish, fix or direct the retail price of home heating oil or motor fuel sold by a retail outlet, through ownership of stock in or assets used by the retail outlet or through contract, agency, consignment or otherwise, whether that power can be exercised directly or indirectly or through parent corporations, subsidiaries, related persons and entities or affiliates.

3. Home heating oil. “Home heating oil” means #2 fuel oil sold for heating residential, industrial or commercial space or water.

4. Motor fuel oil. “Motor fuel oil” means internal combustion fuel sold for use in motor vehicles as defined in Title 29, section 1, subsection 7.

5. Refiner. “Refiner” means any person who is engaged directly or indirectly or whose affiliate is engaged directly or indirectly in the refining of crude oil, including any person who is engaged directly or indirectly in the production of crude oil who contracts with another person to refine petroleum products for the purpose of resale.

6. Retail outlet. “Retail outlet” means a service station or filling station used in the sale of motor fuel in the State, a sales office servicing retail customers by soliciting or accepting orders for the purchase of home heating oil to end users for consumption in the State, or a bulk storage facility or depot used in the sale of home heating oil to end users for consumption in the State.

7. Retailer. “Retailer” means a person that sells motor fuel oil or home heating oil to an end user for consumption in the State.

8. Wholesaler. “Wholesaler” means a person that sells motor fuel oil or home heating oil for resale through retail outlets and retailers.

§1673. Reporting

1. Reporting by wholesaler. A wholesaler shall provide reports to the Department of the Attorney General in a manner, frequency, time and form specified by the Attorney General, but at no greater frequency than 4 times per year, setting forth the total gallons of home heating oil and motor fuel oil sold by the wholesaler to each retail outlet or retailer.

2. Reports by refiner. A refiner shall make the following reports.

A. Within 30 days of the effective date of this chapter, a refiner controlling retailers or retail outlets shall file with the Department of the Attorney General a list showing the business name and location of each retail outlet controlled by the refiner on the effective date of this chapter and specifying whether the retail outlet sells home heating oil, motor fuel oil or both.

B. Within 60 days of the effective date of this chapter, and every 60 days thereafter, a refiner shall file with the Department of the Attorney General a list showing any changes in the number and location of retail outlets controlled by the refiner during the preceding 60 days.

3. Repeal. This section is repealed October 1, 1994.

§1674. Investigation by Attorney General

The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers related to the Attorney General’s determination of the market shares held by retailers. A summons must be served in the same manner as a summons for a witness in a criminal case and all provisions of law related to that service apply to a summons issued under this section insofar as they are applicable. All investigations or hearings pursuant to this chapter must be held in Kennebec County or in another county as the Attorney General may designate. A Justice of the Superior Court may, by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers and the giving of testimony before the Attorney General in the same manner and to the same extent as before that court. Failure to obey such an order of the court is punishable by the court as a contempt of court.

§1675. Confidentiality

Information received by the Department of the Attorney General pursuant to sections 1673 and 1674 constitutes a confidential investigative record under Title 5, section 200-D.

§1676. Prohibitions of anticompetitive, unfair and deceptive trade practices

1. Geographic radius restrictions on new motor fuel outlets. A refiner controlling a retail outlet for the sale of motor fuel oil in a city, town or municipality may not secure control of additional retail outlets for the sale of motor fuel oil within a 2-mile radius of any of its existing retail outlets in that city, town or municipality unless, in the Attorney General’s sole discretion, the Attorney General concludes that the additional outlet will not decrease competition in the retail motor fuel oil market.

2. Deceptive sales practices. A retailer, wholesaler or refiner may not misrepresent the efficiency of an oil furnace or engage in a deceptive act or practice in connection with the sale of home heating oil, service or equipment.

3. Resale price-fixing. A refiner may not fix or maintain the price of motor fuel oil sold by a franchisee, as defined in section 1453, subsection 5.

4. Unfair trade practices. A retailer, wholesaler or refiner may not engage in any unfair methods of competition or unfair or deceptive trade practices, as defined by the Attorney General through rules issued under section 1682.

§1677. Report by Attorney General to Legislature

Annually by December 31st, the Attorney General shall make a report to the Legislature describing the concentration of retail outlets in the State or in sections of the State without disclosing the name of any particular retailer or retail outlet. The Attorney General shall include in the annual report a recommendation to the Legislature as to whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets.

§1678. Petroleum Advisory Committee

A Petroleum Advisory Committee, as established by Title 5, section 12004-I, subsection 2-B, is created for the purpose of assisting the Department of the Attorney General in formulating recommendations to the Legislature as required by section 1677. The committee consists of 7 members appointed for one-year terms, as follows.

1. Gubernatorial appointees. The Governor shall appoint 5 members as follows: one refiner, one wholesaler, one retailer, one member of the Maine Oil Dealers Association and one member of the Maine Petroleum Association from nominations by each of those associations.

2. President of Senate appointee. The President of the Senate shall appoint one Senator serving on the joint standing committee of the Legislature having jurisdiction over business legislation matters.

3. Speaker of the House of Representatives appointee. The Speaker of the House of Representatives shall appoint one member of the House of Representatives serving on the joint standing committee of the Legislature having jurisdiction over business legislation matters.

The Attorney General shall convene the first meeting of the Petroleum Advisory Committee. At the end of the first meeting, the committee shall appoint a chair from among its members. The committee shall consult

with and advise the Attorney General as to all matters relating to the marketing of petroleum products, including, but not limited to, whether changes need to be made in the reporting requirements set forth in section 1673 to reduce any burden on retailers caused by those reporting requirements.

Committee members are entitled to compensation in accordance with Title 5, section 12004-I, subsection 2-B.

§1679. Penalties and injunctive action

A person that violates this chapter is subject to a civil penalty not to exceed \$10,000. In any action initiated by the Attorney General seeking a civil penalty for violation of section 1676, each day that the refiner controls a retail outlet in violation of that section constitutes a separate violation. The Attorney General may initiate an action in Superior Court for injunctive and other equitable relief to enforce compliance with this chapter. In any action commenced by the Attorney General for violation of section 1676, the Superior Court may order the refiner to divest any retail outlet established or operated in violation of this chapter and may order the refiner to disgorge any gross revenues earned from sales or operations in violation of this chapter. In any action commenced by the Attorney General under this chapter for injunctive and other equitable relief or for civil penalties, the Attorney General, if on the prevailing side, must be awarded necessary and reasonable investigative costs, reasonable expert witness fees, reasonable attorneys' fees and court costs.

§1680. Private right of action

A retailer, wholesaler or refiner who is injured as a result of a violation of Title 5, section 207 or section 1676 may maintain a civil action in Superior Court against the violator for damages and equitable relief. In any action, the Superior Court shall enter a temporary, preliminary or permanent injunction to restrain further violations or threatened violations of section 1676, regardless of whether the complaining party has an adequate remedy in damages. If the complaining party prevails in any action, the party is entitled to an award of reasonable attorneys' fees and court costs, including expert witness fees.

§1681. Fees.

Annually by September 1st, a wholesaler shall pay to the Attorney General a fee for each 10,000 gallons of home heating oil and motor fuel oil sold to retail outlets or retailers during the previous 12-month period ending June 1st. The fee that must be paid by September 1, 1992 is 45¢ for each 10,000 gallons or portion thereof. The fee for each subsequent year is 40¢ for each 10,000 gallons or portion thereof. The fees must be deposited in a dedicated, nonlapsing account, known as the Petro-

leum Marketing Fund. The Attorney General shall administer the fund. This section is repealed October 1, 1994.

§1682. Rulemaking

The Attorney General may adopt rules necessary to implement this chapter.

Sec. 4. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1992-93

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General

Positions	(1.0)
Personal Services	\$36,489
All Other	12,100
Capital Expenditures	3,000

Provides for the allocation of funds for one Research Assistant position, compensation for legislative committee members and costs associated with implementing the provisions of the Petroleum Market Share Act.

DEPARTMENT OF THE ATTORNEY GENERAL	
TOTAL	\$51,589

See title page for effective date.

CHAPTER 837

H.P. 1748 - L.D. 2436

An Act Related to Periodic Justification of Departments and Agencies of State Government under the Maine Sunset Act

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

Whereas, certain obligations and expenses incident to the operation of departments and agencies will become due and payable on or immediately after July 1, 1992; and

Whereas, these provisions are intended to improve management, performance, organization, program deliv-

ery and fiscal accountability of agencies and independent agencies reviewed; and

Whereas, certain independent agencies will terminate unless continued by act of the Legislature prior to June 30, 1992; 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:

PART A

Sec. A-1. 1 MRSA §353, as amended by PL 1979, c. 663, §1, is further amended to read:

§353. Explanation of proposed amendments

~~The~~ With the assistance of the Secretary of State, the Attorney General shall prepare a brief explanatory statement which shall must fairly describe the intent and content of each constitutional resolution or statewide referendum that may be presented to the people and which ~~shall must~~ must include any information prepared under Title 5, section 152. In addition to the explanatory statement, ~~he the Secretary of State and the Attorney General~~ shall prepare an explanation of what a yes vote favors and a no vote opposes. ~~He The Secretary of State shall cause to have published~~ publish this explanatory statement in each daily newspaper of the State, ~~such statement to be published not more than 45 days and not less than 30 days prior to the voting and publish such statement in each daily newspaper of the State a 2nd time, not more than 10 and not less than 7 days prior to the voting. Such~~ The explanatory statement may be published in the English language in a foreign language newspaper.

Sec. A-2. 3 MRSA §924, sub-§2, ¶D-1, as enacted by PL 1991, c. 376, §3, is amended to read:

D-1. A list of state records that the agency is required to retain pursuant to Title 5, section 95, subsection 7; ~~and~~

Sec. A-3. 3 MRSA §924, sub-§2, ¶D-2 is enacted to read:

D-2. A list of agency programs in which gender inequity is identified and highlighted for consideration by the committee, a list of employees, by gender, showing job classification and salary range, and promotions and layoffs in the preceding year according to gender; and

Sec. A-4. 3 MRSA §927, sub-§3, as corrected by RR 1991, c. 1, §2, is amended to read: