

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**

**January 5, 1994 to April 14, 1994**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 14, 1994**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1993**

requirements of this subsection. Any portion of the fee not so expended is to be returned to the insurance carriers.

**Sec. 2. Costs in the workers' compensation residual market mechanism 1992 proceeding before the Superintendent of Insurance.** In any remand, reopening or other proceeding held after the effective date of this section by the Superintendent of Insurance in the 1992 proceeding pursuant to the Maine Revised Statutes, former Title 24-A, section 2367 or Title 24-A, section 2386-A, the advisory organization shall reimburse the superintendent for the reasonable fees and expenses of independent consultants retained by the superintendent pursuant to Title 24-A, section 208 up to a maximum of \$50,000.

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

Effective April 7, 1994.

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## CHAPTER 621

H.P. 1328 - L.D. 1791

### An Act to Prevent Damage Claims against the State Due to the Installation of Drinking Water Wells in Areas of Possible Hazardous Substances and Oil Pollution

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

**Sec. 1. 38 MRSA §548**, as amended by PL 1991, c. 817, §10, is further amended by adding at the end the following:

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

**1. Delineated contaminated area.** The commissioner or any person responsible for the discharge of the oil is not obligated by this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as a result of the proximity of the area to:

A. A hazardous waste storage, treatment or disposal facility licensed by the department;

B. An uncontrolled hazardous substance site as defined in section 1362, subsection 3 and listed by the department;

C. An oil terminal facility as defined in section 542, subsection 7 licensed by the department;

D. A solid waste disposal facility as defined in section 1303-C, subsection 30 and licensed by the department; or

E. A closed or abandoned municipal solid waste landfill listed by the department; and

**2. Areas not delineated.** If the well is installed in an area other than one described in subsection 1, the obligation under this subchapter of the commissioner or any person responsible for the discharge of oil with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

For purposes of this section, "viable community public water system" means a community water system as defined in Title 22, section 2660-B that has not indicated an intent to imminently cease providing water to that location.

**Sec. 2. 38 MRSA §551, sub-§2, ¶I**, as enacted by PL 1991, c. 817, §11, is amended to read:

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. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548.

**Sec. 3. 38 MRSA §568, sub-§2-A** is enacted to read:

**2-A. Limitation on clean-up responsibility.** Notwithstanding subsections 1 and 2, if a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

A. Neither the commissioner nor the responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as described in section 548, subsection 1; and

B. The obligation under this subchapter of the commissioner or any responsible party with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

**Sec. 4. 38 MRSA §569-A, sub-§2, ¶H,** as enacted by PL 1991, c. 817, §26, is amended to read:

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. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for the expenses of treatment or replacement of the well if the well is installed in an area delineated as

contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548.

**Sec. 5. 38 MRSA §569-B, sub-§2, ¶G** is enacted to read:

G. 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. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for expenses incurred in treating or replacing the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548.

**Sec. 6. 38 MRSA §1310-F, sub-§2,** as amended by PL 1993, c. 355, §49, is further amended to read:

**2. Eligibility.** Any municipality that owns, rents or leases a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants. A municipality that has acted to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the adoption of a closure or remediation plan under this subchapter or that closed a landfill or

remediated environmental or public health hazards posed by a landfill, is also eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, as long as the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time. Costs incurred by closure or remediation actions taken after the adoption of a closure or remediation plan under this subchapter are eligible for reimbursement only if those actions conform to that plan. Grant payments may not be made to any municipality for any portion of payments to settle civil or criminal judgments against that municipality for damages or injuries caused by the landfill. In addition, for landfills in operation prior to January 1, 1993, grant payments may not be made to a municipality for remediation to mitigate any threat posed by that landfill to structures built, ~~or permitted by the municipality to be built~~ after January 1, 1994 by that municipality, the county in which that municipality is located, a school administrative unit as defined in Title 20-A, section 1, a quasi-municipal corporation as defined in Title 30-A, section 2351 or a special district as defined in Title 30-A, section 5704 that includes any portion of the municipality unless the commissioner determines that the municipality could not have reasonably anticipated these threats. Any interest paid by a municipality prior to reimbursement on a municipal bond issued to raise funds for remediation and closure activities during this period is a cost eligible for reimbursement under this section. The commissioner shall use at least 1/3 of the available funds for municipalities eligible for reimbursement of closure and remediation costs under this subsection until all those municipalities have been reimbursed. A landfill that is privately owned and privately operated is not eligible for reimbursement under this subchapter.

A. The commissioner may act to abate public health, safety and environmental threats at sites identified as uncontrolled hazardous substance sites under section 1362, subsection 3 or at federally declared Superfund sites. Notwithstanding any other provision of this article, the commissioner shall determine the amount of funds expended at ~~such~~ those sites.

B. The commissioner may enter into contracts with the Maine Municipal Bond Bank to manage bonds issued under this article, as long as the management fee structure does not allow dilution of the bond principal.

**Sec. 7. 38 MRSA §1364, sub-§5,** as amended by PL 1991, c. 312, §1, is further amended to read:

**5. Mitigation.** The commissioner may take whatever action necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed

by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances. When the necessary action includes the installation of a public water supply or the extension of mains of an existing water utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a water utility's system development charge, nor to provide works or water sources exceeding those required to abate the threats or hazards posed by the uncontrolled site. The department may pay the costs of operation, maintenance and depreciation of the works or water supply for a period not exceeding 20 years if funds are available from Other Special Revenue or proceeds from the sale of bonds. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance:

A. Neither the commissioner nor any responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and

B. The obligation of the commissioner or any responsible party under this subchapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

**Sec. 8. 38 MRSA §1367-C** is enacted to read:

**§1367-C. Limit on obligation to replace or treat water supply wells**

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance:

**1. Delineated contaminated area.** Neither the commissioner nor any responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and

**2. Areas not delineated.** The obligation of the commissioner or any responsible party under this subchapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well was installed in an area other than one described in subsection 1. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

For purposes of this section, "viable community public water system" has the same meaning as in section 548.

See title page for effective date.

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**CHAPTER 622**

**H.P. 1342 - L.D. 1809**

**An Act to Promote the Continued Use of Private Lands for Recreation**

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

**Sec. 1. 14 MRSA §159-A**, as amended by PL 1985, c. 762, §25, is further amended to read:

**§159-A. Limited liability for recreational or harvesting activities**

**1. Definitions.** As used in this section, unless the context indicates otherwise, the following terms shall have the following meanings.

A. "Premises" ~~shall mean~~ means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands.

B. "Recreational or harvesting activities" means recreational activities conducted ~~out of doors~~ out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, hiking, sight-seeing, ~~operation of operating~~ snow-traveling and all-terrain vehicles, skiing, hang-gliding, boating, sailing, canoeing, rafting ~~or~~, biking, picnicking, swimming or activities ~~that involve~~ involving the harvesting or gathering of forest products. It ~~shall include~~ includes entry, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial timber harvesting.

**2. Limited duty.** An owner, lessee, manager or occupant of premises ~~shall owe no~~ does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes.

**3. Permissive use.** An owner, lessee, manager or occupant who gives permission to another to pursue recreational or harvesting activities on the premises ~~shall~~ does not thereby:

A. Extend any assurance that the premises are safe for those purposes;

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or

C. Assume responsibility ~~for~~ or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

**4. Limitations on section.** This section ~~shall~~ does not limit the liability ~~which that~~ which that would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity;

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the ~~landowner by the State; or~~ following:

(1) The landowner or the landowner's agent by the State; or

(2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, provided that the premises are not used primarily for com-