

# MAINE STATE LEGISLATURE

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

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

**FIRST REGULAR SESSION**  
**December 7, 1994 to June 30, 1995**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

**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**  
**1995**

that are required to be made in subparagraph (2), ~~divisions (a) and (b)~~ division (f). After November 30, 1992, this fund may not exceed \$2,000,000, except that once the fund reaches \$2,000,000, the fund may not exceed \$2,000,000 plus all subsequent initial assessments of new member self-insurers that are required to be made in subparagraph (2), ~~divisions (a) and (b)~~ division (f). The costs of administration by the association must be borne by the fund and the association is authorized to secure reinsurance and bonds and to otherwise invest the assets of the fund to effectuate the purpose of the association, subject to the approval of the Superintendent of Insurance.

(a) The association may purchase primary excess insurance from an insurer licensed in this State for the appropriate lines of authority to defray its exposure to loss occasioned by the default of one or more of its members. Any excess insurance so purchased must be limited to coverage of post-assessment liability of the association's members and the association shall fund any such purchase by levying a special assessment on its members for this purpose or by application of any unencumbered funds available that have not been raised by imposition of any preassessment or postassessment. The association may obtain from each member any information it may reasonably require in order to facilitate the securing of this primary excess insurance. The association shall establish reasonable safeguards designed to ensure that information so received is used only for this purpose and is not otherwise disclosed;

**Sec. 6. 39-A MRSA §404, sub-§7, ¶C** is enacted to read:

C. The Superintendent of Insurance shall notify the association of the existence and identity of each self-insurer that is a new member of the association within 30 days of the superintendent's determination of the self-insurer's membership.

**Sec. 7. Report required.** The Commissioner of Professional and Financial Regulation shall convene a study group of representatives from the Maine Self-Insurance Guarantee Association, the Bureau of Insurance and the Public Advocate. The group shall study the Maine Self-Insurance Guarantee

Fund, focusing on the financial position of the fund, the current level of assessments and whether or not the fund can meet the expenses for the payment of covered claims in the event of a self-insurer's insolvency. At least 2 weeks prior notice of group meetings must be given to the public. The group shall submit a report to the Joint Standing Committee on Banking and Insurance on or before January 1, 1996.

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

Effective June 30, 1995.

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## CHAPTER 399

### H.P. 1119 - L.D. 1563

#### **An Act to Address a Shortfall in the Ground Water Oil Clean-up Fund and Change the Financial Assistance Program for Owners of Underground Oil Storage Facilities**

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

**Whereas,** the Ground Water Oil Clean-up Fund is established to pay clean-up costs and damages associated with leaks and spills from oil storage facilities; and

**Whereas,** the Commissioner of Environmental Protection has determined that the potential liabilities of the fund will exceed projected fund income unless changes are made in fee collection and disbursement; 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. 10 MRSA §1023-D, sub-§2,** as amended by PL 1989, c. 543, §3, is further amended to read:

**2. Sources of money.** There ~~shall~~ must be paid into the fund the following:

A. All money appropriated for inclusion in the fund or appropriated to the authority for use in providing financial assistance to owners of un-

derground oil storage facilities or tanks, subject to any restrictions applicable to the appropriation;

B. Subject to any pledge, contract or other obligation, all interest, dividends or other pecuniary gains from investment of money of the fund;

C. Subject to any pledge, contract or other obligations, any money which the authority receives in repayment of advances from the fund; and

D. Any other money available to the authority and directed by the authority to be paid into the fund.

Without limiting the generality of any other power or authority given to or conferred upon the authority in anticipation of the appropriation or transfer of any money for inclusion in the fund, including but not limited to the assessment or transfer of fees under Title 38, section 569-A, subsection 6, the authority may borrow funds for application to the fund. All funds borrowed pursuant to this authorization, including interest on the borrowed funds, must be repaid from such fees or by other appropriation.

**Sec. 2. 38 MRSA §551, first ¶**, as amended by PL 1989, c. 500, §1, is further amended to read:

The Maine Coastal and Inland Surface 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 fund ~~shall be~~ is limited to \$6,000,000, the sum of which ~~shall include~~ includes all funds credited under this section ~~and any funds loaned to the Ground Water Oil Clean up Fund established pursuant to subchapter II-B.~~ The Department of Environmental Protection shall collect fees in accordance with subsection 4. To this fund ~~shall be~~ are credited all license fees, penalties, reimbursements and other fees and charges related to this subchapter, and to this fund ~~shall be~~ are charged any and all expenses of the department related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, restoration of water supplies and ~~3rd party~~ 3rd-party damages covered by this subchapter.

**Sec. 3. 38 MRSA §551, 2nd ¶**, as amended by PL 1985, c. 496, Pt. A, §13, is further amended to read:

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 Ground Water Oil Clean up Fund shall~~ must be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on that

investment ~~shall~~ must be credited to the Maine Coastal and Inland Surface Oil Clean-up Fund.

**Sec. 4. 38 MRSA §551, sub-§5, ¶A**, as amended by PL 1991, c. 817, §17, 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-A or 569-B;~~

**Sec. 5. 38 MRSA §561, 2nd ¶**, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §129, is further amended to read:

The Legislature intends by the enactment of this subchapter to exercise the police power of the State through the department by conferring upon the department the power to deal with the hazards and threats of danger and damage posed by the storage and handling of oil in underground facilities and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from these occurrences may be promptly made whole; to establish a fund to provide for the investigation, mitigation and removal of discharges or threats of discharge of oil from aboveground and underground storage facilities, including the restoration of contaminated water supplies; and to guarantee the prompt payment of reasonable damage claims resulting therefrom.

**Sec. 6. 38 MRSA §568-B, sub-§1**, as enacted by PL 1993, c. 363, §12 and affected by §21, is amended to read:

**1. Fund Insurance Review Board.** The Fund Insurance Review Board, as established by Title 5, section 12004-G, subsection 11-A, is created for the purposes of hearing and deciding appeals from insurance claims-related decisions of the commissioner as well as adopting rules and guidelines necessary to the furtherance of its duties and responsibilities under this subchapter. The review board consists of ~~8~~ 10 members appointed for 3-year terms as follows:

A. Three persons representing the petroleum industry, appointed by the Governor, one of whom is nominated by the Maine Oil Dealers Association, one of whom is nominated by the Maine Petroleum Association and one of whom is a retailer who owns fewer than 5 retail outlets, as defined in Title 10, section 1672, subsection 6, to be chosen by the Governor;

B. ~~Three~~ Five members of the public who are not employed in the petroleum industry and who

do not have a direct and substantial financial interest in the petroleum industry to be appointed by the Governor;

C. The commissioner or the commissioner's designee; and

D. The State Fire Marshal or the fire marshal's designee.

Members described in paragraphs A and B are entitled to reimbursement for direct expenses of attendance at meetings of the review board or the appeals panel.

**Sec. 7. 38 MRSA §568-B, sub-§2, ¶¶B and C,** as enacted by PL 1993, c. 363, §12 and affected by §21, are amended to read:

B. To adopt rules in accordance with Title 5, chapter 375, subchapter II establishing criteria for determining substantial compliance for aboveground oil storage facilities; ~~and~~

C. To contract with the Finance Authority of Maine for such assistance in fulfilling the board's duties as the board may require; ~~and~~

**Sec. 8. 38 MRSA §568-B, sub-§2, ¶D** is enacted to read:

D. To monitor income and disbursements from the Ground Water Oil Clean-up Fund under section 569-A and adjust fees pursuant to section 569-A, subsection 5, paragraph E, as required to avoid a shortfall in the fund.

**Sec. 9. 38 MRSA §569-A, first and 2nd ¶¶,** as enacted by PL 1991, c. 817, §26, are amended to read:

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~~ \$12,500,000. 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 from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1. The fund may be used only for the purposes specified in this subchapter and may not be diverted for any other use by the department, the Governor or the Legislature. Any person who proposes to enact or

amend a law to allow use of the fund for a purpose not specified in this subchapter must submit the proposal to the Legislative Council and to the joint standing committee of the Legislature having jurisdiction over natural resource matters at least 30 days prior to any vote or public hearing on the proposal. An appropriation or allocation of the fund for use other than that specified in this subchapter is not authorized unless the required submittals have been made in a timely manner and the Legislature has approved the proposal by a 2/3 vote of each body.

~~The commissioner may authorize the borrowing~~ 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 is not permitted after June 30, 1995.~~ All funds borrowed pursuant to this section prior to June 30, 1995 by the Ground Water Oil Clean-up Fund from the Maine Coastal and Inland Surface Oil Clean-up Fund must be repaid with interest to the fund of origin, in as prompt a manner as revenues allow and in no event more than 2 years after the date the funds were transferred, 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.

**Sec. 10. 38 MRSA §569-A, sub-§5, ¶D,** as amended by PL 1993, c. 553, §5 and affected by §8, is further amended to read:

D. When the fund balance reaches ~~\$15,000,000~~ \$12,500,000, the collection of fees under paragraph A abates. When the commissioner projects that the fund balance will reach ~~\$15,000,000~~ \$12,500,000, the commissioner must provide a 15-day advance notice of the abatement to persons assessed the fee under paragraph A. The ~~\$15,000,000~~ \$12,500,000 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~~ \$10,000,000, the fees assessed under paragraph A are reimposed. The commissioner shall provide a 15-day advance notice of the reimposition of those fees.

**Sec. 11. 38 MRSA §569-A, sub-§5, ¶E** is enacted to read:

E. If the fund balance is reduced to \$3,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under paragraph A by up to 10¢ per barrel for gasoline and up to 5¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section 8054 if necessary

to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to this paragraph terminates and the fees imposed under paragraph A apply when the fund balance reaches \$5,000,000.

**Sec. 12. 38 MRSA §569-A, sub-§6**, as repealed and replaced by PL 1993, c. 680, Pt. A, §36, is amended to read:

**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 and #6 fuel oil, must be transferred by the department upon receipt as follows to the Finance Authority of Maine until an aggregate amount of \$13,000,000 has been transferred. To avoid a shortfall in the fund, money may not be transferred pursuant to this subsection when the fund balance is \$3,000,000 or less.

~~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~~ \$13,000,000 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. For the purposes of this subsection, the transfers from the Underground Oil Storage Replacement Fund under Public Law 1993, chapter 6 and under unified appropriations and allocations for fiscal year 1993-94 and fiscal year 1994-95 are not included in calculating the amount transferred from the Ground Water Oil Clean-up Fund to the Underground Oil Storage Replacement Fund.~~

**Sec. 13. 38 MRSA §569-A, sub-§8, ¶A**, as amended by PL 1993, c. 355, §20, is further amended to read:

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 prior to June 30, 1995 pursuant to this section. Except for disbursements for capital costs related to paragraph B or C, administrative expenses, personnel expenses and equipment costs may not exceed \$1,734,000 per fiscal year;

**Sec. 14. 38 MRSA §569-A, sub-§8, ¶¶B and C**, as enacted by PL 1991, c. 817, §26, are amended to read:

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, whether from an aboveground or underground storage facility, 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, except that money may not be disbursed for this purpose when the fund balance is \$3,000,000 or less;

**Sec. 15. 38 MRSA §569-A, sub-§9**, as enacted by PL 1991, c. 817, §26, is amended to read:

**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~~ Fund Insurance Review Board within 30 days of determining that a shortfall will occur and submit recommendations for revising coverage of the fund or generating the needed income.

**Sec. 16. 38 MRSA §569-B, first ¶**, as enacted by PL 1991, c. 817, §26, is amended to read:

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 from aboveground and underground storage facilities, including, but not limited to, restoration of water supplies and any obligations of the State pursuant to Title 10, section 1024, subsection 1.

**Sec. 17. 38 MRSA §569-B, 2nd ¶**, as enacted by PL 1991, c. 817, §26, is repealed.

**Sec. 18. 38 MRSA §569-B, sub-§4**, as enacted by PL 1991, c. 817, §26, is amended to read:

**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 that are 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.

If the fund balance is reduced to \$3,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under this subsection by up to 10¢ per barrel for gasoline and up to 5¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section

8054 to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to board rules terminates and the original fees imposed by this subsection apply when the fund balance reaches \$5,000,000.

**Sec. 19. 38 MRSA §569-B, sub-§5, ¶¶B and C**, as enacted by PL 1991, c. 817, §26, are amended to read:

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~~ from an aboveground or underground storage facility;

C. Sums allocated to research and development in accordance with this section, except that money may not be disbursed for this purpose when the fund balance is \$3,000,000 or less;

**Sec. 20. 38 MRSA §570-H, sub-§2**, as amended by PL 1993, c. 363, §15 and affected by §21, is further amended to read:

**2. Adequacy of fund.** On or before February 15th of each year, ~~the commissioner with the cooperation of the~~ Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature with jurisdiction over energy and natural resources on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this section, the board may order an independent audit of disbursements from the fund.

**Sec. 21. Transition.** Notwithstanding the Maine Revised Statutes, Title 38, section 568-B, subsection 1, in order to establish staggered terms for members of the Fund Insurance Review Board, the first series of appointments or reappointments made to the Fund Insurance Review Board after the effective date of this section are made for the following terms. When the terms of current petroleum industry representatives expire in 1996, the persons appointed or reappointed to fill those positions have the following terms: the representative who is a retailer is appointed for a one-year term; the representative who is nominated by the Maine Oil Dealers Association is appointed for a 2-year term; and the representative who is nominated by the Maine Petroleum Association is appointed for a 3-year term. Representatives of those groups appointed after the initial appointments serve for 3-year terms.

When the terms of the current public members expire in 1996, the persons appointed or reappointed to fill those positions have the following terms: one public member is appointed for a one-year term; one public member is appointed for a 2-year term; and one public member is appointed for a 3-year term.

Of the 2 public members added to the board pursuant to this Act, one must be appointed to fill a term that expires October 31, 1997 and one for a term that expires October 31, 1998.

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

Effective June 30, 1995.

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**CHAPTER 400**

**S.P. 597 - L.D. 1584**

**An Act to Require Annual Reporting  
by the Board of Governors of the  
Maine Workers' Compensation  
Residual Market Pool**

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

**Sec. 1.** 24-A MRSA §2395, sub-§6 is enacted to read:

**6. Report required.** Beginning in 1996, the board shall file an annual report on or before June 1st to the Governor, the superintendent, the President of the Senate and the Speaker of the House of Representatives and the joint standing committee of the Legislature having jurisdiction over banking and insurance matters. The report must identify the following information:

- A. The pool's most recent audited financial statements;
- B. The total claims payments made by the pool in the preceding 12 months;
- C. The most recent actuarial report, including cash flow and deficit projections for the pool;
- D. A report of changes to the operations of the pool;
- E. A summary of the number of open claims and aggregate reserves for each policy year; and
- F. Any information required to be maintained by the pool pursuant to section 2393, subsection 2, paragraph E and section 2394, subsection 1.

**Sec. 2. Report by board of governors.** On or before March 1, 1996, the Board of Governors of the Maine Workers' Compensation Residual Market Pool shall file a report to the Governor, the Superintendent of Insurance, the President of the Senate, the Speaker of the House of Representatives and the Joint Standing Committee on Banking and Insurance. The report must include information on the cash status of the Maine Workers' Compensation Residual Market Pool and the receipt of revenue from major and minor insurers and employers, as defined in the Maine Revised Statutes, Title 24-A, section 2392, and the Maine Insurance Guaranty Association.

See title page for effective date.

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**CHAPTER 401**

**H.P. 292 - L.D. 396**

**An Act to Amend the Laws  
Governing Wrongful Death Caused  
by Truck Drivers**

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

**Sec. 1.** 29-A MRSA §558, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

**1. Violation.** A person commits a Class E crime if that person violates or knowingly permits a violation of this subchapter or a rule adopted pursuant to this subchapter. The violation is a Class C crime if:

- A. The violation is knowing or intentional;
- B. The violation in fact causes either death or serious bodily injury, as defined in Title 17-A, section 2, to a person whose health or safety is protected by the provision violated; and
- C. The death or injury is a reasonably foreseeable consequence of the violation.

See title page for effective date.

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**CHAPTER 402**

**H.P. 483 - L.D. 664**

**An Act Regarding the Functioning of  
the Department of Mental Health  
and Mental Retardation and Several  
Professional Regulatory Boards**