

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

570, first paragraph, as amended by Public Law 1989, chapter 865, section 17 and affected by sections 24 and 25, is repealed December 31, ~~1999~~ 2005.

See title page for effective date.

CHAPTER 375

H.P. 1137 - L.D. 1593

An Act to Ensure Safe Abatement of Lead Hazards

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

Sec. 1. 22 MRSA §1315, sub-§3-D, as enacted by PL 1995, c. 453, §3, is amended to read:

3-D. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment and operation of management and resident education programs.

Sec. 2. 22 MRSA §1315, sub-§4-B, as enacted by PL 1991, c. 810, §7, is amended to read:

4-B. Lead abatement. "Lead abatement" means ~~the removal, renovation, enclosure, repair, encapsulation, handling, transportation or disposal of materials that contain lead~~ any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Lead abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures.

"Lead abatement" does not include renovation and remodeling as defined in Title 38, section 1291, subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

Sec. 3. 22 MRSA §1315, sub-§§4-C to 4-F, as enacted by PL 1991, c. 810, §7, are repealed.

Sec. 4. 22 MRSA §1315, sub-§4-G is enacted to read:

4-G. Lead-based paint activities. "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as interim controls, lead screening, lead determination and deleading.

Sec. 5. 22 MRSA §1315, sub-§5-B, as enacted by PL 1991, c. 810, §9, is amended to read:

5-B. Lead inspector. "Lead inspector" means a person licensed by the ~~department~~ Department of Environmental Protection pursuant to Title 38, chapter 12-B to perform environmental lead inspections.

Sec. 6. 22 MRSA §1321, sub-§5, as enacted by PL 1995, c. 453, §12, is repealed.

Sec. 7. 22 MRSA §1321, sub-§6 is enacted to read:

6. Lead-based paint activities prohibition. A person may not perform lead-based paint activities unless that person is licensed by the Department of Environmental Protection pursuant to Title 38, chapter 12-B or unless that person is at least 18 years of age and is performing lead abatement in the dwelling of which the person is the owner and occupant.

A person who conducts lead-based paint activities without a license in violation of this section commits a civil violation for which a penalty of up to \$1,000 may be adjudged. A person who engages in lead testing or lead abatement or who advertises those services in violation of this chapter also violates Title 5, chapter 10.

This subsection does not limit the authority of the department or any other state agency under law.

Sec. 8. 22 MRSA §1322-A, as amended by PL 1995, c. 453, §14, is repealed.

Sec. 9. 22 MRSA §1322-B, as enacted by PL 1991, c. 810, §30, is repealed.

Sec. 10. 22 MRSA §1323, sub-§3, as amended by PL 1995, c. 453, §16, is repealed.

Sec. 11. 22 MRSA §1323, sub-§3-A is enacted to read:

3-A. Department inspections. Performing inspections of residential child-care facilities, preschool facilities and other dwellings for the purpose of determining the existence of environmental lead hazards;

Sec. 12. 22 MRSA §1323, sub-§§4 and 5, as enacted by PL 1991, c. 810, §31, are repealed.

Sec. 13. 22 MRSA §1324-A, sub-§3, ¶A, as enacted by PL 1995, c. 453, §17, is amended to read:

A. Claims against lead abatement professionals licensed ~~under this~~ by the Department of Environmental Protection pursuant to Title 38, chapter 12-B;

Sec. 14. 38 MRSA c. 12-B is enacted to read:

CHAPTER 12-B

LEAD ABATEMENT

§1291. Definitions

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

1. Abatement. "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures.

"Abatement" does not include renovation and remodeling as defined in subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

2. Accredited training program. "Accredited training program" means a training program that has been accredited by the State pursuant to rules adopted in accordance with this chapter.

3. Business entity. "Business entity" means a partnership, firm, association, corporation, sole proprietorship or other business concern.

4. Certificate. "Certificate" means a document issued to an individual by the commissioner affirming that the individual has successfully completed the training and other requirements set forth in this chapter to qualify as a lead professional.

5. Commercial building. "Commercial building" means any building used primarily for commercial or industrial activity that is generally not open to the public or occupied or visited by children, includ-

ing, but not limited to, warehouses, factories, storage facilities, aircraft hangars, garages and wholesale distribution facilities.

6. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

7. Department. "Department" means the Department of Environmental Protection.

8. Design consultant. "Design consultant" means an individual engaged in preparing and supervising the implementation of plans for the removal or abatement of lead-based paint. These activities include, but are not limited to, design, inspection or monitoring of lead abatement activities; and advising building owners, contractors and project supervisors regarding lead abatement activities.

9. Employee. "Employee" means an individual who may be permitted, required or directed by an employer, in consideration of direct or indirect gain or profit, to engage in any employment.

10. In-house lead abatement unit. "In-house lead abatement unit" means the unit of a business or public entity that engages in or intends to engage in lead abatement activities or projects solely within the confines of property owned or leased by the entity and that employs one or more lead abatement supervisors for lead abatement activities.

11. Inspection. "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results.

12. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment and operation of management and resident education programs.

13. Lead abatement contractor. "Lead abatement contractor" means a business entity that engages in or intends to engage in lead abatement activities as a business service and that employs or involves one or more project supervisors for lead abatement activities.

14. Lead abatement professional. "Lead abatement professional" means an individual certified by the commissioner to engage in lead-based paint activities, including, but not limited to, a lead abatement worker, a lead abatement project supervisor, a lead inspector, a lead abatement design consultant and a lead risk assessor.

15. Lead abatement worker. "Lead abatement worker" means an individual engaging in any lead abatement activity for any employer.

16. Lead-based paint. "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

17. Lead-based paint activities. "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as interim controls, lead screening, lead determination and deleading.

18. Lead inspector. "Lead inspector" means an individual whose activities include, but are not limited to, collecting samples and assessing the potential for exposure associated with the presence of lead-containing material.

19. Lead-poisoned. "Lead-poisoned" means having a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the Department of Human Services.

20. License. "License" means a document issued by the commissioner to a business entity or public entity, including, but not limited to, a lead abatement contractor, an in-house lead abatement unit or a lead training provider, affirming that the entity has met the requirements set forth in this chapter to engage in lead-based paint activities.

21. Owner or operator. "Owner" or "operator" means a person who owns, leases, operates, controls or supervises a lead abatement activity within a building, structure or facility.

22. Person. "Person" means any individual, business entity, governmental body or other public or private entity.

23. Project supervisor. "Project supervisor" means an individual with responsibility for the supervision of lead abatement activities. "Project supervisor" includes, but is not limited to, an abatement project supervisor employed by a contractor or by an in-house lead abatement unit.

24. Public building. "Public building" means any building constructed before 1978, except residences and child care facilities, that is generally open to the public or occupied or visited by children, including, but not limited to, schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers and government buildings.

25. Public entity. "Public entity" means the State, any of its political subdivisions or any agency or instrumentality of either.

26. Renovation and remodeling. "Renovation and remodeling" means the replacement or reconstruction of any part of a residence in which the primary intent is to repair, restore or remodel a given structure, which may incidentally result in the reduction of lead-based paint hazards.

27. Risk assessment. "Risk assessment" means the on-site investigation to determine the nature, severity and location of lead-based paint hazards, and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards.

28. Risk assessor. "Risk assessor" means an individual who has been trained to conduct risk assessments as well as lead inspections.

29. Superstructure. "Superstructure" means a large steel or other industrial structure, including, but not limited to bridges or water towers.

30. Training manager. "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

31. Training provider. "Training provider" means a person providing training that is necessary to fulfill certification or licensing requirements under this chapter.

§1292. Prohibitions

1. License or certificate required for residential lead-based paint activities. A person may not engage in any residential lead-based paint activities in the State unless licensed or certified pursuant to this chapter.

2. License or certificate required for lead-based paint activities in public buildings, commercial buildings and superstructures. After the effective date of rules adopted by the department pursuant to section 1295 for licensing and certification to conduct lead-based paint activities in public buildings, commercial buildings and superstructures, a person may not engage in any lead-based paint activities in the State unless licensed or certified pursuant to this chapter.

3. Notification required. A person may not engage in any residential lead abatement activity unless that person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust. After the effective date

of rules adopted by the department pursuant to section 1295 for notification of lead abatement activities in public buildings, commercial buildings and super-structures, a person may not engage in those lead abatement activities unless the person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust.

4. Work practices. All residential lead-based paint activities must be conducted in accordance with work practice standards adopted by rule pursuant to this chapter. After the effective date of rules adopted by the department pursuant to section 1295 for work practices pertaining to lead-based paint activities in public buildings, commercial buildings and super-structures, those lead-based paint activities must be conducted in accordance with the applicable work practice standards adopted by rule.

5. Exemption. A person who is 18 years of age or older need not obtain licensing and certification to perform lead abatement activities within a residential dwelling unit that the person owns and personally occupies, as long as a child residing in the dwelling unit has not been identified as lead-poisoned. A person 18 years of age or older who owns or personally occupies a dwelling unit in which a resident child has been identified as lead-poisoned need not obtain licensing and certification to perform abatement activities within that dwelling unit, as long as the person completes any training required by the Department of Human Services.

§1293. Certification, licensing and accreditation requirements

1. Certification and licensing. The board shall adopt and amend rules necessary to govern the licensing of business or public entities, including, but not limited to, lead abatement contractors and in-house lead abatement units, the accreditation of lead training providers and the certification of lead abatement professionals.

2. Approval of training courses. The board shall adopt and amend rules establishing criteria and procedures for the approval of training courses and examinations that ensure the qualifications of applicants for certification as required in this chapter. These rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A. To ensure a smooth transition period before the adoption of accreditation rules in conformance with the requirements of this chapter, the commissioner shall provide for interim accreditation of training providers by establishing procedures in accordance with 40 Code of Federal Regulations, Part 745, Subpart L, Section 745.228.

To qualify for approval, a training course must contain a combination of class instruction, practical application and public health procedures of a length and content that ensure adequate training for the level and type of responsibility for each named certification category.

Courses certified under this section must be conducted by instructors whose training and experience are determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. Courses must be designed and conducted under the guidance of a training manager.

3. Renewal. A license or certificate issued under this chapter expires one year after the date of issue. A licensee or certificate holder may apply to the commissioner for the renewal of a license or certificate. A renewal may not be granted if the application is received more than 2 years following expiration of the previously issued license or certificate.

To qualify for renewal of a license or certificate, the applicant must submit:

A. The appropriate fees as prescribed by rule pursuant to section 1295;

B. Evidence of completion of any continuing education or training that may be required by rules adopted by the board; and

C. A signed statement disclosing any violations of lead abatement standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous year, that fact must be stated. The disclosure must include evidence that all penalties and fees assessed to the applicant are paid in full.

§1294. Reciprocity agreement

The commissioner may develop reciprocity agreements with other states and with federally recognized tribes when the states and tribes have established licensing and certification and accreditation requirements that are at least as stringent as those set forth in this chapter.

§1295. Rules

The department shall adopt and amend rules to carry out the purposes of this chapter and to ensure that state law relating to lead-based paint activities satisfies minimum requirements of federal law in all respects. In adopting the rules, the department shall consult the regulations of the United States Department of Labor, Occupational Safety and Health

Administration to ensure that the rules minimize duplicative requirements. The rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A and may address, but are not limited to, the following:

1. Licenses and certification. Licensing lead abatement contractors and in-house lead abatement units, and certification of lead abatement professionals;

2. Training programs. Accreditation of training providers offering courses for lead abatement professionals and in lead awareness for homeowners and for contractors involved in renovation, remodeling and painting;

3. Standards of acceptable work practices. Criteria and procedures of acceptable work practices for licensees and certificate holders and for persons exempt from licensing and certification requirements;

4. Standards of conduct. Standards of acceptable professional conduct for licensees and certificate holders engaged in lead-based paint activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate; and

5. Fees. Establishing fees for notifications and annual fees for each license and certification category. The fees must be deposited in the Maine Environmental Protection Fund.

§1296. Emergency provisions

A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint not subject to the licensing and certification requirements of this chapter shall take reasonable precautions to prevent the release of lead to the environment. If the commissioner finds, after investigation, that any location at which lead dust, lead chips or other lead-contaminated wastes are or were handled or otherwise came to be located may create a danger to public health or the safety of any person or to the environment, the commissioner may order the person responsible for the lead dust, lead chips or lead-contaminated waste to cease the activity immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

An order issued under this section must contain findings of fact describing, insofar as possible, the site of the activity and the danger to the public health or

safety. Service of the commissioner's findings and an order must be made pursuant to the Maine Rules of Civil Procedure.

The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 5 days after receipt of the order by a responsible party. The board shall hold the hearing within 5 days after receipt of the application. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

A person who fails without sufficient cause to undertake abatement or remedial action promptly in accordance with an order issued pursuant to this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action.

The Attorney General may commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349.

§1297. Assistance from other departments

The Commissioner of Administrative and Financial Services, the Commissioner of Labor and the Commissioner of Human Services shall assist the commissioner in the enforcement of the licensing and certification requirements of this chapter.

Sec. 15. Rulemaking. In adopting rules to implement the Maine Revised Statutes, Title 38, chapter 12-B, the Department of Environmental Protection shall ensure that for the purposes of renovation and remodeling "residence" includes, but is not limited to, an owner-occupied, single-family primary residence that includes a home-based business or an owner-occupied bed and breakfast with 10 or fewer licensed guest rooms.

Sec. 16. Transition. Beginning on the effective date of this Act, the Department of Environmental Protection shall administer and enforce the rules adopted by the Department of Human Services pursuant to the Maine Revised Statutes, Title 22, chapter 252 governing the abatement of environmental lead hazards, licensure of lead inspectors and lead

abatement personnel and environmental lead inspections.

See title page for effective date.

CHAPTER 376

S.P. 534 - L.D. 1639

An Act to Amend the Corporate Laws

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

Sec. 1. 10 MRSA §1522, sub-§2, as amended by PL 1987, c. 561, §1, is further amended to read:

2. Application for registration. Subject to the limitations set forth in this chapter, any person who adopts and uses a mark in this State may file in the office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

A. The name and business address of the person applying for the registration and, if a corporation, the state of incorporation;

B. The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with the goods or services and the class in which the goods or services fall;

C. The date when, to the best of the applicant's knowledge and belief, the mark was first used anywhere and the date when it was first used in this State by the applicant or ~~his~~ the applicant's predecessor in business; and

D. A statement that to the best of the applicant's knowledge and belief, the applicant is the owner of the mark and that no other person ~~to the best of his knowledge and belief~~ has the right to use the mark in this State as a mark or as a trade name or as a corporate name either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion or to cause mistake or to deceive.

The application ~~shall~~ must be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

The execution of an application containing false statements constitutes unsworn falsification under Title 17-A, section 453.

The application ~~shall~~ must be accompanied by a specimen or facsimile of the mark in triplicate.

The application for registration ~~shall~~ must be accompanied by a filing fee of \$50 for the first class and \$10 for each additional class, payable to the Treasurer of State.

Sec. 2. 10 MRSA §1523, as enacted by PL 1979, c. 572, §2, is amended to read:

§1523. Attested copy

~~Upon compliance by the applicant with the requirements of this chapter, the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary of State and the seal of the State and it shall show the name and business address and, if a corporation, the state of incorporation of the person claiming ownership of the mark, the date claimed for the first use of the mark in this State, the class of goods or services and a description of the goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration.~~ promptly make a copy of the original and attest that copy by marking upon it the same endorsement that is required to appear upon the original, together with a further endorsement that the copy is a true copy of the original document. The attested copy must be returned to the person submitting the document for filing or to that person's representative.

~~Any certificate of registration~~ An attested copy issued by the Secretary of State under this section or a copy duly certified by the Secretary of State ~~shall be~~ is admissible in evidence as competent and sufficient proof of the registration of the mark in any action or judicial proceedings in any court of this State.

Sec. 3. 10 MRSA §1525, sub-§1, as amended by PL 1987, c. 561, §3, is further amended to read:

1. Recording. Any mark and its registration ~~shall be~~ are assignable with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment ~~shall~~ must be by an instrument in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of \$40 payable to the Treasurer of State. The Secretary of State, upon recording of an assignment, shall issue an attested copy in the name of the assignee ~~a new certificate~~. The assignment is valid for the remainder of the term of the registration or of