

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 7, 1998 to March 31, 1998**

**SECOND SPECIAL SESSION**  
**April 1, 1998 to April 9, 1998**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 1998**

**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 9, 1998**

**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**  
**1997**

as provided in Title 5, section 20071, subsection 4-B.

A 2nd or subsequent offender may be issued a license following the completion of the period of suspension provided the Secretary of State has received notice that the person has completed the alcohol and drug program of the Office of Substance Abuse as provided in Title 5, section 20071, subsection 4-B.

**Sec. 21. 29-A MRSA §2503, sub-§1**, as amended by PL 1995, c. 368, Pt. AAA, §25, is further amended to read:

**1. Administrative suspension; work-restricted license.** On receipt of a petition for a work-restricted license from a person under suspension pursuant to section 2453, ~~2457, subsection 1, paragraph B~~, or section 2472, subsection 3, paragraph B for a first offense, the Secretary of State may stay a suspension during the statutory suspension period and issue a work-restricted license, if the petitioner shows by clear and convincing evidence that:

A. As determined by the Secretary of State, a license is necessary to operate a motor vehicle:

(1) Between the residence and a place of employment or in the scope of employment, or both; or

(2) Between the residence and an educational facility attended by the petitioner if the suspension is under section 2472, subsection 3, paragraph B for a first offense;

B. No alternative means of transportation is available; and

C. The petitioner has not, within 10 years, been under suspension for an OUI offense or pursuant to section 2453.

**Sec. 22. Application.** That section of this Act that repeals the Maine Revised Statutes, Title 29-A, section 1304, subsection 1, paragraph G applies to permits that are issued after August 1, 1998. A person who filed an application for an instruction permit or driver's license with the Secretary of State before August 1, 1998, was 17 years of age at the time of application and had not completed an approved driver education course may be issued a license by the Secretary of State. That section of this Act that amends Title 29-A, section 2472, subsection 1 applies to licenses issued on or after August 1, 1998. Provisional licenses issued under Title 29-A, section 2472, subsection 1 prior to July 1, 1998 are provisional licenses for a period of one year.

See title page for effective date.

## CHAPTER 738

S.P. 585 - L.D. 1748

### An Act to Modernize Maine's Fuel Tax Laws

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

**Sec. 1. 36 MRSA §2902, sub-§§5 and 6** are enacted to read:

**5. Terminal.** "Terminal" means a storage and distribution facility for internal combustion engine fuel supplied by a pipeline or marine vessel, or both, that has been registered as a qualified terminal by the Internal Revenue Service.

**6. Wholesaler.** "Wholesaler" means a person that owns, operates or otherwise controls a terminal or a person that holds the internal combustion engine fuel inventory position in a terminal when that person has a contract with the terminal operator for the use of storage facilities and terminal services for fuel at the terminal.

**Sec. 2. 36 MRSA §2903, sub-§1**, as amended by PL 1993, c. 414, Pt. E, §1, is repealed and the following enacted in its place:

**1. Excise tax imposed.** An excise tax is imposed on internal combustion engine fuel used or sold within this State, including sales to the State or a political subdivision of the State, at the rate of 19¢ per gallon, except that the rate is 3.4¢ per gallon on internal combustion engine fuel, as defined in section 2902, bought or used for the purpose of propelling jet or turbojet engine aircraft.

**Sec. 3. 36 MRSA §2903, sub-§2**, as enacted by PL 1983, c. 852, §4, is repealed.

**Sec. 4. 36 MRSA §2903, sub-§§3 and 4** are enacted to read:

**3. Legal incidence of tax.** Internal combustion engine fuel may be taxed only once under this section. The tax imposed by this section is declared to be a levy and assessment on the ultimate consumer and other persons levied and assessed pursuant to this chapter are agents of the State for the collection of the tax. The distributor that first receives the fuel in this State is primarily responsible for paying the tax except when the fuel is sold and delivered to a licensed exporter wholly for exportation from the State or to another distributor in the State, in which case the purchasing distributor is primarily responsible for paying the tax.

**4. Exemptions.** This subsection does not apply to internal combustion engine fuel:

- A. Sold wholly for exportation from this State;
- B. Brought into this State in the ordinary standardized equipment fuel tank attached to and a part of a motor vehicle and used in the operation of that vehicle in this State;
- C. Sold in bulk to any political subdivision of this State;
- D. Bought or used by any person to propel jet or turbojet engine aircraft in international flight;
- E. Brought into this State in the fuel tanks of an aircraft; or
- F. On which the collection of the tax imposed by this section is precluded by federal law or regulation.

**Sec. 5. 36 MRSA §2906**, as amended by PL 1991, c. 846, §34, is repealed and the following enacted in its place:

**§2906. Reports; payment of tax; allowance for losses**

**1. Monthly reports from distributors, importers and exporters.** Every licensed distributor, importer and exporter shall file with the assessor on or before the 21st day of each month a report stating the number of gross gallons of internal combustion engine fuel received, sold and used in the State by that distributor, importer or exporter during the preceding calendar month. The report must be filed on a form prescribed and furnished by the assessor and must contain any other information reasonably required by the assessor.

**2. Payment of tax.** At the time of filing the report required by this section, each distributor and importer shall pay to the assessor the tax imposed by section 2903 on each gallon reported as sold, distributed or used.

**3. Allowance for certain losses.** An allowance of not more than 1/2 of 1% from the amount of fuel received by a distributor, plus 1/2 of 1% on all transfers in vessels, tank cars or full tank truck loads by a distributor in the regular course of the distributor's business from one of the distributor's places of business to another within the State, may be granted by the assessor to cover losses sustained by the distributor through shrinkage, evaporation or handling. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 1% of the receipts by the distributor. The allowance must be calculated on an annual basis. A further deduction may not be allowed

unless the assessor is satisfied upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.

**4. Refunds to retailers.** A retail dealer is entitled to a refund for tax paid on account of shrinkage or loss by evaporation of motor fuel in an amount no greater than 1/2 of 1% of the tax paid on gross purchases. The procedure for such a refund is as follows.

A. All applications for refunds must be made under penalties of perjury and must be made semiannually within 90 days after June 30th and December 31st respectively.

B. The application must be made on a form prescribed and furnished by the assessor and must be accompanied by a statement from the distributor, supplier or wholesaler of the gross purchases of motor fuel made by the retail dealer during the relevant 6-month period.

C. The assessor shall calculate the amount of the refund due on all properly completed applications and shall certify that amount and the name of the person entitled to the refund to the Treasurer of State. The Treasurer of State shall make a certified refund from taxes imposed by this chapter.

**5. Monthly reports from wholesalers.** Each wholesaler shall submit on or before the last day of each month on a form prescribed and furnished by the assessor a report stating the number of gross gallons sold by that wholesaler to each distributor, importer, exporter or any other person that purchased internal combustion engine fuel from that wholesaler during the preceding month. The report must clearly identify each purchaser and indicate the number of gallons that each purchaser received from the wholesaler. The report must also contain any other information reasonably required by the assessor.

**Sec. 6. 36 MRSA §2914**, as enacted by PL 1983, c. 852, §5, is repealed.

**Sec. 7. 36 MRSA §2915**, as amended by PL 1989, c. 501, Pt. DD, §45, is repealed.

**Sec. 8. 36 MRSA §2916-A**, as enacted by PL 1987, c. 793, Pt. B, §2, is repealed.

**Sec. 9. 36 MRSA §3202, sub-§§7-A and 10** are enacted to read:

**7-A. Terminal.** "Terminal" means a storage and distribution facility for special fuel supplied by a pipeline or marine vessel, or both, that has been

registered as a qualified terminal by the Internal Revenue Service.

**10. Wholesaler.** "Wholesaler" means a person that owns, operates or otherwise controls a terminal or a person that holds the special fuel inventory position in a terminal when that person has a contract with the terminal operator for the use of storage facilities and terminal services for fuel at the terminal.

**Sec. 10. 36 MRSA §3203**, as amended by PL 1997, c. 262, §1, is repealed and the following enacted in its place:

**§3203. Tax levied; consignment sales; credited to Highway Fund; allowance for losses**

**1. Generally.** Except as provided in section 3204-A, an excise tax is levied and imposed on all suppliers of special fuel sold and on all users of special fuel used in this State for each gallon of distillate at the rate of 20¢ per gallon and for each gallon of low-energy fuel at the rate of 18¢ per gallon.

**2. Legal incidence of tax.** Special fuel may be taxed only once under this section. The tax imposed by this section is declared to be a levy and assessment on the ultimate consumer and other persons levied and assessed pursuant to this chapter are agents of the State for the collection of the tax. The supplier is primarily responsible for paying the tax except when the fuel is sold and delivered to a licensed exporter wholly for exportation from the State or to another supplier in the State, in which case the purchasing supplier is primarily responsible for paying the tax.

**3. Consignment sales.** When special fuel is delivered by a supplier on a consignment basis to a consumer or to a retail outlet, whether or not the retail outlet is wholly owned by the supplier, it is considered to have been sold within the meaning of this chapter.

**4. Highway Fund.** All taxes and fines collected under this chapter must be credited to the Highway Fund.

**5. Allowance for certain losses of undyed diesel fuel.** An allowance of not more than 1/4 of 1% from the amount of undyed diesel fuel received by the distributor, plus 1/4 of 1% on all transfers in vessels, tank cars or full tank truck loads by a distributor in the regular course of business from one of the distributor's places of business to another of the distributor's places of business within the State, may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 1/2 of 1% of the receipts by the distributor. The allowance must be calculated on an annual basis. A further deduction may not be allowed unless the

assessor is satisfied upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.

**6. Allowance for certain losses of propane.**

An allowance of not more than 1% from the amount of propane received by the distributor, plus 1% on all transfers in vessels, tank cars or full tank truck loads by a distributor in the regular course of business from one of the distributor's places of business to another of the distributor's places of business within the State, may be allowed by the assessor to cover the loss through shrinkage, evaporation or handling sustained by the distributor. The total allowance for these losses must be supported by documentation satisfactory to the assessor and may not exceed 2% of the receipts by the distributor. A further deduction may not be allowed unless the assessor is satisfied upon definite proof submitted to the assessor that a further deduction should be allowed for a loss sustained through fire, accident or some unavoidable calamity.

**Sec. 11. 36 MRSA §3204-A**, as enacted by PL 1995, c. 271, §7, is amended to read:

**§3204-A. Exemptions**

The following fuels are exempt from the tax imposed by section 3203:

~~1. Single lot. Special fuel purchased in a single lot of no more than 275 gallons and used solely for heating or cooking purposes;~~

**2. Delivered into tank.** Special fuel delivered into a tank used solely for heating or cooking purposes, sold for resale to a licensed or registered supplier;

**3. Political subdivision.** Special fuel sold to this State or any political subdivision of this State;

**4. Preclusion by federal law.** Special fuel sold or used in such form or under such circumstances as precludes the collection of tax by reasons of federal law;

**5. Exportation.** Special fuel sold only for exportation from this State;

**6. Generation.** Special fuel sold to a person for the generation of power for resale or manufacturing; ~~and~~

**7. Kerosene for retail sale.** Kerosene delivered into a separate tank for retail sale, in which case the excise tax must be remitted by licensed users pursuant to section 3207, rather than by the supplier; ~~and~~

**8. Dyed fuel.** Dyed fuel.

~~The purchaser of special fuel that qualifies for one of the above exemptions must sign and provide to the seller a sworn statement indicating that the fuel will be used for the exempt purpose. The State Tax Assessor shall make forms available to suppliers for this purpose. The signed form must be retained by the supplier for at least 3 years.~~

**Sec. 12. 36 MRSA §3209**, as amended by PL 1987, c. 200, §2 and affected by §3, is repealed and the following enacted in its place:

**§3209. Reports; payment of tax; allowance for losses**

**1. Suppliers.** Every licensed supplier shall file on or before the last day of each month a report with the assessor stating the gross gallons of special fuel received, sold and used in this State by that supplier during the preceding calendar month, on a form prescribed and furnished by the assessor. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each supplier must pay to the assessor a tax as prescribed in section 3203 upon each gallon reported as a taxable sale or as taxable gallons used.

**2. Users generally.** Except as provided by subsection 4, for the purpose of determining the amount of tax imposed, each user, not later than the last day of April, July, October and January of each year, shall file with the assessor a report that must include the total gallonage of fuels used within this State during the quarter ending the last day of the preceding month. The report must contain any further information reasonably required by the assessor. At the time of filing the report required by this subsection, each user shall pay to the assessor the tax imposed by section 3203 upon each gallon reported as a taxable use or as taxable gallons used, which has not been subjected to the special fuel tax.

**3. Exempt users.** Any user of special fuel operating exclusively within this State and using only special fuel purchased within this State upon which the State has received the special fuel tax, may be exempted, at the discretion of the assessor, from filing reports under this chapter. Any user of special fuel requesting exemption from filing reports shall file an affidavit as prescribed by the assessor.

**4. Annual returns in certain circumstances.** Notwithstanding any other provisions of this section, when the annual tax liability is expected to be \$100 or less, a user, with the approval of the assessor, may file an annual return with payment on or before January 31st of each year covering the prior year.

**5. Monthly reports from wholesalers.** Each wholesaler shall submit on or before the last day of

each month on a form prescribed and furnished by the assessor a report stating the number of gross gallons sold by that wholesaler to each distributor, importer, exporter or any other person that purchased special fuel from that wholesaler during the preceding month. The report must clearly identify each purchaser and indicate the number of gallons that each purchaser received from the wholesaler. The report must also contain any other information reasonably required by the assessor.

**Sec. 13. Allocation.** The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

1998-99

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

**Bureau of Revenue Services**

Positions - Legislative Count	(1,000)
Personal Services	\$29,660
All Other	14,835

Provides funds for a Revenue Agent position and related administrative expenses to perform desk audits of fuel tax reports.

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**  
**TOTAL**

\$44,495

See title page for effective date.

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**CHAPTER 739**

**S.P. 573 - L.D. 1730**

**An Act to Implement the Recommendations of the Great Pond Task Force**

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

**Sec. 1. 12 MRSA §685-C, sub-§10** is enacted to read: