

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

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SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
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practices as required by the Commissioner of Agriculture, Food and Rural Resources, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this section or any other applicable state law, and the court may order the abatement with costs as provided under section 2702, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this section constitutes a separate civil violation for which a forfeiture of up to \$1,000, together with an additional forfeiture of up to \$250 per day for every day that the violation continues, may be adjudged.

7. Agricultural Complaint Response Fund. There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept funds from any source designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm or farm operation and to abate conditions potentially resulting from farms or farm operations.

8. Rules. The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this section.

9. Educational outreach. The Commissioner of Agriculture, Food and Rural Resources shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this section and the currently adopted best management practices of the Department of Agriculture, Food and Rural Resources. The commissioner shall inform the public about the provisions of this section, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources.

See title page for effective date.

CHAPTER 724

H.P. 1893 - L.D. 2634

**An Act to Implement the
Recommendations of the Joint
Standing Committee on Agriculture,
Conservation and Forestry Relating
to Review of the State Board of
Pesticides Control Under the State
Government Evaluation Act**

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

Sec. 1. 22 MRSA §1471-M, sub-§7, as enacted by PL 1997, c. 389, §1, is amended to read:

7. Data collection; annual report. The board shall implement a system of record keeping, reporting, data collection and analysis that provides information on the quantity of product and brand names of pesticides sold. The board, in cooperation with the University of Maine Cooperative Extension Service, shall study ways to improve pesticide information data bases and to optimize the useful analysis of reported information.

No later than October 1, 1998, and each year thereafter, the board shall publish an annual pesticides report containing the quantity of product, sorted by the name and United States Environmental Protection Agency registration number, of all pesticides sold in the prior year, with the data further sorted by sector of use wherever possible, except that the pesticides report under this subsection is not required in the years 2000 and 2001.

Sec. 2. State Board of Pesticides Control; progress report. During the First Regular Session of the 120th Legislature, the State Board of Pesticides Control shall report to the joint standing committee of the Legislature having jurisdiction over agricultural matters on the board's discussions regarding data collection and progress in developing methods to increase the reliability and usefulness of data collected on pesticide use. The joint standing committee of the Legislature having jurisdiction over agricultural matters may report out legislation to the Second Regular Session of the 120th Legislature regarding data collection and reporting of pesticide use.

See title page for effective date.

CHAPTER 725

S.P. 1059 - L.D. 2650

**An Act to Clarify the Enforcement
Authority of the Manufactured
Housing Board**

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

Whereas, the Attorney General has recently opined that the manufactured housing law provides for the preemption of state or other political subdivision codes, standards, rules or regulations under certain circumstances; and

Whereas, the Attorney General has also opined that the Manufactured Housing Board has no jurisdiction to enforce those preemptive provisions against state or local political subdivisions; and

Whereas, the opinions of the Attorney General indicate a state of affairs whereby no means are available to the State to enforce the preemptive provisions of the manufactured housing law; 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 §9001, sub-§2, ¶¶B and E, as amended by PL 1993, c. 642, §8, are further amended to read:

B. To provide and enforce, with respect to its licensees and political subdivisions, uniform performance standards for construction and installation of manufactured housing that ensure durability and safety of manufactured housing;

E. To require this board to assume responsibilities as consistent with this chapter, including the enforcement of the provisions of this chapter, the administration and enforcement of rules, investigations of complaints and any other acts that are consistent with the purposes of this chapter;

Sec. 2. 10 MRSA §9011, sub-§4, as amended by PL 1993, c. 642, §21, is repealed and the following enacted in its place:

4. Private actions. The private rights of action created by this subsection are in addition to any rights of enforcement and relief granted to the board in this chapter. The board shall notify all claimants of their right to seek remedy.

A. A person damaged as a result of a violation of this chapter also has a cause of action in court against the person responsible for the manufacture, sale, lease, installation or service, and the court may award appropriate damages and cost for litigation in its judgment.

B. After exhausting all administrative remedies, a person damaged as a result of a violation of section 9042 also has a cause of action in court against the political subdivision of the State that fails to comply with the provisions of section 9042, and the court may award injunctive relief.

Sec. 3. 10 MRSA §9042, sub-§3, as amended by PL 1993, c. 642, §27, is further amended to read:

3. Exemption. New Notwithstanding the provisions of Title 25, section 2357 and Title 30-A, section 4358, new manufactured housing that is manufactured, sold, installed or serviced in compliance with this chapter is exempt from all state or other political subdivision codes, standards, rules or regulations that regulate the same matters. A building permit or certificate of occupancy may not be delayed, denied or withheld on account of any alleged failure of new manufactured housing to comply with any code, standard, rule or regulation from which the new manufactured housing is exempt under this subsection.

Sec. 4. 10 MRSA §9042, sub-§§5 and 6 are enacted to read:

5. Local enforcement. Except as specifically set forth in this subsection, a certificate of occupancy for any certified manufactured housing may not be denied, delayed or withheld on account of any alleged failure to comply with this chapter or any building code or rule adopted by the board. For the purposes of this section, "certified manufactured housing" means new manufactured housing to which a label, seal or other device has been affixed, in accordance with rules adopted by the board, certifying the compliance of the housing with this chapter and all applicable rules.

A. The State or a political subdivision of the State may deny a certificate of occupancy for any certified manufactured housing when, in the exercise of reasonable judgment, the State or the political subdivision of the State determines that an imminent and direct risk of serious physical injury or death would exist in the normal use of the manufactured housing.

B. If a certificate of occupancy for certified manufactured housing is denied, the State or a political subdivision of the State shall promptly provide the applicant for the certificate of occupancy with written notice of the denial. The notice must describe each reason for the denial of the certificate of occupancy in sufficient detail to allow the applicant to correct each deficiency noted. The State or a political subdivision of the State shall simultaneously provide a copy of the notice to the board.

C. If the code enforcement or other inspection officer of the State or a political subdivision of the State identifies a failure of certified manufactured housing to comply with this chapter or any building code or rule adopted by the board, the officer may file a complaint with the board in accordance with section 9051.

D. This chapter may not be construed to impose a duty on a code enforcement or other inspection officer of the State or a political subdivision of the State to inspect any certified manufactured housing for compliance with this chapter or any building code or rule adopted by the board. Unless a certificate of occupancy has been issued pursuant to the provisions of section 9043, subsection 2, paragraph A, a certificate of occupancy for certified manufactured housing does not constitute a representation by the State or a political subdivision of the State that the manufactured housing meets the standards established under this chapter.

6. Review of denial; issuance of certificate of occupancy. Notwithstanding the provisions of Title 25, chapter 313, if a certificate of occupancy for certified manufactured housing is denied on account of any alleged failure of the manufactured housing to comply with this chapter or any building code or rule adopted by the board or any law, rule, regulation or ordinance from which the manufactured housing is exempt under this chapter, the applicant for the certificate of occupancy may petition the board to review the denial.

The board shall issue a certificate of occupancy for the manufactured housing if, after appropriate notice and administrative hearing in accordance with Title 5, chapter 375, subchapter IV, the board determines that:

A. The manufactured housing has been certified pursuant to the rules adopted by the board;

B. The certificate of occupancy was not denied pursuant to subsection 5, paragraph A; and

C. The notice of denial issued under subsection 5, paragraph B does not specify any violation of applicable law, rule, regulation or ordinance from which the manufactured housing is not exempted under this chapter.

A certificate of occupancy issued under this subsection has the same validity, force and effect as if issued by the State or a political subdivision of the State in which the manufactured housing is located.

Sec. 5. 25 MRSA §2357, as amended by PL 1989, c. 502, Pt. A, §101, is further amended to read:

§2357. No occupancy without certificate; appeal

~~No~~ Subject to the provisions of Title 10, chapter 951, a new building may not be occupied until the inspector of buildings has given a certificate that the same has been built in accordance with section 2353, and so as to be safe from fire. If the owner permits it to be so occupied without such certificate, the owner ~~shall~~ **must** be penalized in accordance with Title 30-A,

section 4452. In case the inspector of buildings for any cause declines to give that certificate and the builder has in the builder's own judgment complied with section 2353, an appeal may be taken to the municipal officers and, if on such appeal it ~~shall be~~ is decided by them that ~~said~~ the section has been complied with, the owner of ~~said~~ the building ~~shall is~~ **is** not be liable to a fine for want of the certificate of the inspector.

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

Effective April 14, 2000.

CHAPTER 726

S.P. 1052 - L.D. 2642

An Act to Require Nutrient Management Plans for Fish Hatcheries Except for Aquaculture

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

Sec. 1. 7 MRSA §4214 is enacted to read:

§4214. Nutrient management plans for fish hatcheries

1. Nutrient management plan required for fish hatcheries. A person who owns or operates a fish hatchery, not including an off-shore marine aquaculture operation in estuarine or marine waters, must have and implement a nutrient management plan for the fish waste from the hatchery by the date specified in rules adopted pursuant to subsection 2. The commissioner shall maintain a list of fish hatcheries that have a nutrient management plan.

2. Rules for fish hatcheries. In accordance with Title 5, chapter 375, the commissioner shall adopt rules to establish requirements for nutrient management plans for fish hatcheries, compliance schedules for fish hatcheries, a process for review of the nutrient management plans, periodic revisions of plans and determination of compliance with the plans. A nutrient management plan for a fish hatchery must address storage, management and use of fish waste from the hatchery with the goal of improving water quality.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.
