

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

AS PASSED BY THE

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Penmor Lithographers
Lewiston, Maine
2003

CHAPTER 312

H.P. 1002 - L.D. 1367

**An Act To Amend the Laws
Regarding Junkyards, Automobile
Graveyards and Automobile
Recycling Businesses**

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

Sec. 1. 29-A MRSA §1106-A is enacted to read:

§1106-A. Municipal notification

The Secretary of State shall provide written notice of all license decisions under section 1106 to the code enforcement officer or municipal designee of the municipality in which the applicant for a recycler license proposed its facilities to be located. If any proposed location is not within an organized municipality, the Secretary of State shall provide written notice to the county commissioners for that location.

Sec. 2. 30-A MRSA §3751, as amended by PL 1993, c. 173, §1, is further amended by adding at the end a new paragraph to read:

Junkyards, automobile graveyards and automobile recycling businesses pose potential risks to the environment, particularly to groundwater and surface water quality if gasoline, oil or other fluids are not managed and disposed of properly. Proper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens. These facilities may create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly. For these reasons, it is declared that these facilities are appropriately subject to certain environmental and operational standards and to appropriate municipal and state regulation.

Sec. 3. 30-A MRSA §3752, sub-§1, as amended by PL 1995, c. 65, Pt. A, §130 and affected by §153 and Pt. C, §15, is repealed and the following enacted in its place:

1. Automobile graveyard. "Automobile graveyard" means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

A. "Automobile graveyard" does not include:

(1) An area used for temporary storage of vehicles or vehicle parts by an establishment or place of business that is primarily engaged in doing vehicle repair work to make repairs to render a motor vehicle serviceable. In order for a vehicle's storage to be considered temporary, it must be removed from the site within 180 calendar days of its receipt;

(2) An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist. For the purposes of this subparagraph, an automobile hobbyist is a person who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles;

(3) An area used for the parking or storage of vehicles, vehicle parts or equipment intended for use by a municipality, quasi-municipal entity or state or federal agency;

(4) An area used for the storage of operational farm tractors and related farm equipment, log skidders, logging tractors or other vehicles exempted from registration under Title 29-A, chapter 5;

(5) An area used for the parking or storage of vehicles or equipment being offered for sale by a dealer, equipment dealer, trailer dealer or vehicle auction business as defined in Title 29-A, section 851;

(6) An area used for the storage of vehicles by an establishment or place of business that is primarily engaged in business as a new vehicle dealer as defined in Title 29-A, section 851;

(7) An area used for temporary storage of vehicles by an establishment or place of business that is primarily engaged in business as an insurance salvage pool. In order for a vehicle's storage to be considered temporary under this subparagraph, the vehicle must be removed from the site within

180 days of receipt of title by the business; or

(8) An area used for the parking or storage of operational commercial motor vehicles, special equipment or special mobile equipment as defined in Title 29-A, section 101 that is temporarily out of service but is expected to be used by the vehicle or equipment owner or by an operator designated by the owner. This subsection does not exempt an area used for the parking or storage of equipment or vehicles that are not operational while stored or parked in the area.

Sec. 4. 30-A MRSA §3752, sub-§1-A, as enacted by PL 1993, c. 173, §2, is amended to read:

1-A. Automobile recycling business. "Automobile recycling business" means the business premises of a person dealer or a recycler licensed under Title 29-A, sections 851 to 1112 who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, ~~provided that~~ as long as 80% of the business premises specified in the site plan in section 3755-A, subsection 1, paragraph C is used for automobile recycling operations.

A. "Automobile recycling business" does not include:

(1) Financial institutions as defined in Title 9-B, section 131, subsections 17 and 17-A;

(2) Insurance companies licensed to do business in the State;

(3) New vehicle dealers, as defined in Title 29-A, section 851, licensed to do business in the State; or

(4) That portion of the business premises that is used for temporary storage of vehicles by an establishment or place of business that is primarily engaged in business as an insurance salvage pool. In order for a vehicle's storage to be considered temporary under this subparagraph, the vehicle must be removed from the site within 180 days of receipt of title by the business.

Sec. 5. 30-A MRSA §3752, sub-§4, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

4. Junkyard. "Junkyard" means a yard, field or other outside area used to store, dismantle or otherwise handle:

A. Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances ~~and~~ or furniture;

B. Discarded, scrap and junked lumber; and

C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; ~~and.~~

~~D. Garbage dumps, waste dumps and sanitary fills.~~

Sec. 6. 30-A MRSA §3752, sub-§6, as enacted by PL 1993, c. 173, §3, is repealed.

Sec. 7. 30-A MRSA §3753, as amended by PL 1993, c. 173, §4, is further amended to read:

§3753. Permit required

~~No~~ A person may not establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard without first obtaining a nontransferable permit from the municipal officers of the municipality in which the automobile graveyard, automobile recycling business or junkyard is to be located, or from the county commissioners of the county of any unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. Permits issued to an automobile graveyard or junkyard under this section are valid until the first day of the following year; except that, beginning in calendar year 2004, permits issued to an automobile graveyard or junkyard under this section are valid until the first day of October of the following year. Permits issued to an automobile recycling business under this section are valid for 5 years from the date of issuance and are renewable provided that the permit holder furnishes a sworn statement, annually, on the anniversary date of the granting of the permit, that the facility complies with the standards of operation applicable at the time of issuance of the permit. A person operating a business that involves the recycling of automobiles may operate under a permit for an automobile graveyard or a permit for an automobile recycling business.

Sec. 8. 30-A MRSA §3754, as amended by PL 1999, c. 761, §5, is further amended to read:

§3754. Hearings

Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish, ~~operate~~

~~or maintain an~~ a new automobile graveyard, automobile recycling business or junkyard and may hold public hearings annually regarding the relicensing of these facilities. ~~They shall~~ Municipal officers or county commissioners shall require an applicant to provide proof of mailing the notice to abutting property owners of an application. Municipal officers or county commissioners shall also post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. The municipal officers or county commissioners shall give written notice of the application to the Department of Transportation establish a new automobile graveyard or automobile recycling business to the automobile dealer licensing section of the Department of the Secretary of State, Bureau of Motor Vehicles by mailing a copy of the application at least 7 and not more than 14 days before the hearing. The municipal officers or county commissioners shall give written notice of the application to a public water supplier for any automobile graveyard, automobile recycling business or junkyard located within its source water supply area. The notice may be given by mailing a copy of the application at least 7 and not more than 14 days before the hearing.

Sec. 9. 30-A MRSA §3754-A is enacted to read:

§3754-A. Limitations on graveyard, automobile recycling business and junkyard permits

1. Highways; Interstate System and Primary System. A permit may not be granted for an automobile graveyard or junkyard within 1,000 feet of the right-of-way of any highway incorporated in both the Interstate System and Primary System or within 600 feet of the right-of-way of any other highway, except for:

A. Those automobile graveyards or junkyards that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening required by this paragraph must be:

- (1) At a height, density and depth sufficient to accomplish complete screening from ordinary view;
- (2) Well constructed and properly maintained at a minimum height of 6 feet;
- (3) Placed outside of the highway right-of-way; and

(4) Acceptable to the municipal officers or county commissioners; and

B. Those automobile graveyards or junkyards located within areas that have been zoned for industrial use and located more than 600 feet but less than 1,000 feet from the right-of-way of any highway incorporated in both the Interstate System and Primary System.

2. Limitation on new permits. A permit may not be granted for an automobile graveyard or junkyard established after October 3, 1973 and located within 100 feet of any highway.

3. Public facilities. A new permit may not be granted for an automobile graveyard or junkyard that is:

A. Located within 300 feet of a public building, public park, public playground, public bathing beach, school, church or cemetery; and

B. Within ordinary view from a facility under paragraph A.

4. Public and private water supplies. A permit may not be granted for an automobile graveyard, junkyard or automobile recycling business that handles junk, scrap metal, vehicles or other solid waste within 300 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the automobile graveyard, junkyard, automobile recycling business or the owner's or operator's abutting residence. This prohibition does not apply to wells installed after an automobile graveyard, junkyard or automobile recycling business has already received a permit under section 3753.

Automobile graveyards, junkyards and automobile recycling businesses operating under the terms of permits issued prior to the effective date of this subsection and handling junk, scrap metal, vehicles or other solid waste within 300 feet of wells that serve as public or private water supplies may continue to operate in those locations under the terms of those permits. Municipal officers or county commissioners may renew a permit allowing the continued handling of junk, scrap metal, vehicles or other solid waste within 300 feet of a well serving as a public or private water supply as long as no further encroachment toward the well occurs and there is no evidence of contamination of the well.

5. Operating standards. All automobile graveyards and junkyards permitted pursuant to section 3753 are required to comply with the following standards:

A. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, battery acid, engine coolant, gasoline and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;

B. A vehicle containing fluids may not be stored or dismantled:

(1) Within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5;

(2) Within the 100-year floodplain; or

(3) Over a mapped sand and gravel aquifer;

C. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or tidal waters of the State or on the ice of inland waters or tidal waters or on the banks of inland waters or tidal waters in such a manner that they may fall or be washed into these waters; and

D. Junkyard and automobile graveyard owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale, trade or personal use.

6. Rules. A permit, other than a limited-term permit as described in this section, may not be granted for an automobile graveyard or automobile recycling business that is not in compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of Title 29-A, chapter 9. Municipal officers or county commissioners may award a limited-term permit conditioned upon an automobile graveyard's or automobile recycling business's demonstrating compliance with the provisions of Title 29-A, chapter 9 within 90 calendar days of the issuance of the municipal or county limited-term permit.

7. Local ordinances. This subchapter may not be construed to limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards, automobile recycling businesses and junkyards that the municipality determines reasonable, including, but not limited to, ordinances concerning:

A. Compliance with state and federal solid waste and hazardous waste regulations;

B. Fire and traffic safety;

C. Levels of noise that can be heard outside the premises;

D. Distance from existing residential or institutional uses;

E. The effect on groundwater and surface water, as long as municipal ordinances on groundwater are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection; and

F. Best management practices for automobile graveyards, junkyards and automobile recycling businesses developed by the Department of Environmental Protection.

Municipal officers or county commissioners shall consider compliance with these local ordinances in deciding whether to grant or deny a permit for any automobile graveyard, automobile recycling business or junkyard and in attaching conditions of approval to a permit.

8. Applicability. Municipalities may apply local ordinances adopted previously under subsection 7 pertaining to automobile graveyards and junkyards to an automobile recycling business without amending those ordinances to include automobile recycling businesses. A municipality must provide notice of its intent to apply these ordinances at the time an application for an automobile recycling business permit is filed.

9. Right of entry. Municipal officers or their designees may, to carry out the provisions of this subchapter or to determine compliance with any laws, ordinances, license or permit approvals, decisions or conditions:

A. Enter any automobile graveyard, junkyard or automobile recycling business property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances set forth in accordance with this subchapter; and

B. Enter any building on the property with the consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the laws or ordinances set forth in accordance with this subchapter.

A municipal officer's or designee's entry onto property under this subsection is not a trespass.

Sec. 10. 30-A MRS §3755, as amended by PL 1993, c. 173, §5, is repealed.

Sec. 11. 30-A MRSA §3755-A, sub-§3, ¶¶A, B and F, as enacted by PL 1993, c. 173, §6, are amended to read:

A. The site of the yard must be enclosed by a visual screen at least 6 feet high and built in accordance with rules adopted by the Department of Transportation pursuant to that complies with the screening requirements of section 3759 3754-A.

B. A vehicle with an intact engine or motor containing fluids may not be stored within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5.

F. ~~A. Except as provided in subsection 3754-A, subsection 4, a vehicle may not be dismantled or stored within 400 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling business or the owner or operator's abutting residence.~~

Sec. 12. 30-A MRSA §3756, as amended by PL 1993, c. 173, §7, is further amended to read:

§3756. Permit fees

The municipal officers or county commissioners shall collect, in advance from the applicant for a permit, a fee in accordance with the following schedule:

1. Graveyard or junkyard. Fifty dollars for each permit application for an automobile graveyard or junkyard located more than 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754;

~~**2. Graveyard or junkyard within 100 feet from highway.** Two hundred dollars for each permit for an automobile graveyard or junkyard located within 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754; and~~

3. Recycling business. Two hundred fifty dollars for a 5-year permit for an automobile recycling business plus the cost of posting and publishing the notice under section 3754-; or

4. Fee. A fee as otherwise established by municipal ordinance or rule.

Sec. 13. 30-A MRSA §3758, as amended by PL 1993, c. 173, §8, is repealed.

Sec. 14. 30-A MRSA §3758-A is enacted to read:

§3758-A. Violations

1. Enforcement. All state, county and local law enforcement officers shall enforce the provisions of this subchapter.

2. Municipal authority. Municipal officers or their designees may enforce the provisions of this subchapter pursuant to:

A. The enforcement of land use laws and ordinances under section 4452;

B. The litter control provisions of Title 17, chapter 80; or

C. The abatement of nuisance provisions of Title 17, chapter 91.

3. Penalties. Violations of this subchapter are subject to the penalty provisions of section 4452; Title 17, sections 2264-A and 2264-B; or Title 17, chapter 91. Each day that the violation continues constitutes a separate offense.

4. Abatement. If the municipality is the prevailing party in an action taken pursuant to the provisions of this Title or Title 17 as outlined in subsection 2 and the violator does not complete any ordered correction or abatement in accordance with the ordered schedule, the municipal officers or designated agent may enter the property and may act to abate the site in compliance with the order. To recover any actual and direct expenses incurred by the municipality in the abatement of the nuisance, the municipality may:

A. File a civil action against the owner to recover the cost of abatement, including the expense of court costs and reasonable attorney's fees necessary to file and conduct the action;

B. File a lien on real estate where the junkyard, automobile graveyard or automobile recycling business is located; or

C. Assess a special tax on real estate where the junkyard, automobile graveyard or automobile recycling business is located. This amount must be included in the next annual warrant to the tax collector of the municipality, for collection in the same manner as other state, county and municipal taxes are collected. Interest as determined by the municipality pursuant to Title 36, section 505 in the year in which the special tax is assessed accrues on all unpaid balances of the special tax beginning on the 60th day after the day of commitment of the special tax to the collector. The interest must be added to and becomes a part of the tax.

5. Revocation or suspension of permit. Violation of any condition, restriction or limitation inserted in a permit by the municipal officers or county commissioners is cause for revocation or suspension of the permit by the same authority that issued the permit. A permit may not be revoked or suspended without a hearing and notice to the owner or the operator of the automobile graveyard, automobile recycling business or junkyard. Notice of hearing must be sent to the owner or operator by registered mail at least 7 but not more than 14 days before the hearing. The notice must state the time and the place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations inserted in the permit.

6. Removal of all materials after permit denial or revocation. The owner or operator of a junkyard, automobile graveyard or automobile recycling business for which a permit has been denied or revoked shall, not later than 90 days after all appeals have been denied, begin the removal of all vehicles, vehicle parts and materials associated with the operation of that junkyard, automobile graveyard or automobile recycling business. The property must be free of all scrapped or junked vehicles and materials not later than 180 days after denial of all appeals. An alternative schedule for removal of junk or vehicles may be employed if specifically approved by the municipal officers or county commissioners.

Sec. 15. 30-A MRSA §3759, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is repealed.

Sec. 16. 30-A MRSA §3760, sub-§1, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

1. Acquisition of land. If the Department of Transportation determines that the topography of the land adjacent to any portion of a highway incorporated in the Interstate or Primary Systems ~~will~~ does not permit adequate screening, ~~as required in sections 3751 to 3760, under section 3754-A, subsection 1~~ or that adequate screening ~~would~~ is not ~~be~~ economically feasible, it may acquire by gift, purchase or condemnation any interests in property that are necessary to secure the relocation, removal or disposal of the automobile graveyards or junkyards.

See title page for effective date.

CHAPTER 313

H.P. 776 - L.D. 1058

An Act To Extend Public Record Requirements of Nongroup Health Insurance Rate Filings to All Health Insurance Rate Filings

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

Sec. 1. 24-A MRSA §2808-B, sub-§2, ¶A, as enacted by PL 1991, c. 861, §2, is amended to read:

A. A carrier issuing a small group health plan after the effective date of this section must file the carrier's community rate and any formulas and factors used to adjust that rate with the superintendent for informational purposes prior to issuance of any small group health plan. All filings must meet the requirements of paragraph G.

Sec. 2. 24-A MRSA §2808-B, sub-§2, ¶G is enacted to read:

G. Every rate filing made by a carrier must state the effective date of the filing. Every such filing must be made not less than 60 days in advance of the stated effective date unless the 60-day requirement is waived by the superintendent, and the effective date may be suspended by the superintendent for a period of time not to exceed 30 days. A rate filing and all supporting information are public records except as provided by Title 1, section 402, subsection 3. When a rate filing under this paragraph is not accompanied by the information upon which the insurer supports the filing, the superintendent shall require the insurer to furnish the information upon which it supports the filing. Notwithstanding this paragraph, rates for group Medicare supplement, nursing home care or long-term care insurance contracts must be filed in accordance with section 2736.

See title page for effective date.

CHAPTER 314

H.P. 619 - L.D. 842

An Act Relating to Portable Classrooms for Certain Cases

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