

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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November 28, 1995 to December 1, 1995

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JULY 4, 1996

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
1995

C. Reasonable attorney's fees for preparing the claim and bringing the court action under this section plus costs.

4. Measure of damages. For damage to property under subsection 1, paragraph A, the owner's damages may be measured either by the replacement value of the damaged property or by the cost of repairing the damaged property. For damages for disposing of litter, the owner's damages include the direct costs associated with properly disposing of the litter, including obtaining permits, and the costs associated with any site remediation work undertaken as a result of the litter.

5. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7552 from that defendant for the same specific damage.

Sec. 2. 14 MRSA §7552, as repealed and replaced by PL 1995, c. 450, §2, is amended by repealing and replacing the headnote to read:

§7552. Injury to land, forest products or agricultural products

Sec. 3. 14 MRSA §7552, sub-§§2, 3 and 4, as enacted by PL 1995, c. 450, §2, are amended to read:

2. Prohibitions. Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own; or

~~B. Damage or throw down any fence, bar or gate, or leave a gate open, or break glass or do other damage to any structure on property not that person's own; or~~

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property.

3. Measure of damages. Paragraphs A and B govern This subsection governs the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner's damages may be measured either by the value of the lost products themselves or by the diminution

in value of the real estate as a whole resulting from the violation.

B. For lost trees, the owner may claim in lieu of market value the forfeiture amounts in Title 17, section 2510, subsection 2. In addition, the owner's damages may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

C. When a monument or marker has been disturbed, removed or destroyed, the owner's damages may include the cost of replacing a monument or marker by a licensed surveyor.

4. Damages recoverable. Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3 or \$250, whichever is greater.

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3 or \$500, whichever is greater.

C. In addition to the damages recoverable under paragraphs A and B, a person who violates subsection 2 is also liable to the owner for the costs the owner may incur if the violation results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding.

Sec. 4. 14 MRSA §7552, sub-§8 is enacted to read:

8. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7551-B from that defendant for the same specific damage.

See title page for effective date.

CHAPTER 586

S.P. 665 - L.D. 1725

An Act to Clarify and Improve the Governor's Authority to Ban Out-of-door Fires and Restrict Human Activity during Periods of High Fire Danger

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

Sec. 1. 12 MRSA §9001, sub-§§1 and 2, as enacted by PL 1979, c. 545, §3, are amended to read:

1. Determination by director. ~~Whenever the~~ The director shall inform the Governor when the director determines that:

- A. A high degree of forest fire danger exists in any part of the State; and
- B. Human activity ~~in connection with hunting or fishing~~ is likely to pose a forest fire menace, the director shall communicate such determination to the Governor.

2. Proclamation. The Governor may, by proclamation, suspend the open season for hunting or fishing or prohibit out-of-door smoking or building or using out-of-door fires or ~~prohibit any~~ other human activity likely to be a menace to the forests for such time and in such ~~sections~~ areas of the State as considered necessary. The type and manner of hunting and fishing or other human activity that is prohibited shall ~~must~~ be designated in the proclamation.

Sec. 2. 12 MRSA §9001, sub-§3, as enacted by PL 1979, c. 545, §3, is repealed.

Sec. 3. 12 MRSA §§9001-A and 9001-B are enacted to read:

§9001-A. Definitions

As used in this subchapter, the following terms have the following meanings.

1. Licensed camping facility. "Licensed camping facility" means a recreational camp or camping area licensed under Title 22, chapter 562.

§9001-B. Exemptions

1. General. The Governor may, in a proclamation issued under section 9001, exempt from the prohibitions specified in the proclamation human activities or out-of-door fires that the Governor determines are not a significant menace to the forests.

2. Certain public campsites. The Governor may, in a proclamation issued under section 9001, exempt from the prohibitions specified in the proclamation out-of-door fires and the use of charcoal and gas grills at campsites under the jurisdiction of the Department of Conservation or the Baxter State Park Authority, as long as the campsite and the use of out-of-door fires and charcoal and gas grills at the campsite comply with rules adopted under subsection 4.

3. Licensed camping facilities. The Governor may, in a proclamation issued under section 9001, exempt from the prohibitions specified in the proclamation out-of-door fires and the use of charcoal and gas grills at a licensed camping facility if:

- A. The facility and the use of out-of-door fires and charcoal and gas grills at the facility comply with rules adopted under subsection 4;
- B. The owner or operator of the facility notifies the director in writing that the facility complies with rules adopted pursuant to subsection 4; and
- C. The director provides the owner or operator of the facility written confirmation of receipt of notification required under paragraph B. Confirmation of receipt does not imply a determination that the facility complies with the rules adopted pursuant to subsection 4.

4. Rules. The director shall adopt rules that establish standards of design, construction and use under which the use of an out-of-door fire or a charcoal or gas grill at a public campsite or licensed camping facility may be exempted pursuant to subsections 2 and 3.

Rules adopted pursuant to this subsection are major substantive rules as defined in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II-A.

5. Inspection. The director may at any time inspect a licensed camping facility to determine whether that facility complies with rules adopted under subsection 4. If the director determines that a facility fails to comply with the rules, the facility is not exempt. A facility that fails an inspection may not be granted a future exemption unless the director inspects the facility and determines that it complies with the rules. The director may delegate authority to conduct inspections to a state or municipal employee.

6. Notification. The owner or operator of a licensed camping facility and the supervisor of a campsite under the jurisdiction of the Department of Conservation or the Baxter State Park Authority shall post a notice of a proclamation issued under section 9001 and any standards of use to be met under rules adopted pursuant to subsection 4.

Sec. 4. 12 MRSA §§9002 and 9003, as enacted by PL 1979, c. 545, §3, are amended to read:

§9002. Posting and publishing

~~Such~~ The proclamation shall ~~must~~ be published in such newspapers of the State and posted in such places as the Governor deems necessary and a copy of ~~such~~ that proclamation shall ~~must~~ be filed

with the Secretary of State. A like copy shall must be furnished to the director, who shall attend to the posting and publication of the proclamation. All The expense thereof of posting and publication and all the expense of enforcing the proclamation shall be are paid by the director, after allowance by the State Controller, from the appropriation for general forestry purposes.

§9003. Repeal; amend

If, after issuing the proclamation provided for in section 9001, by reason of rains or otherwise the Governor is satisfied that the occasion for the issuance of the proclamation has passed, he the Governor may ~~and~~ amend, repeal and replace it by another proclamation affecting the sections covered by the original proclamation, or any part thereof of the original proclamation, which and that new proclamation shall must be published and posted in the same manner as provided for the issuance of the original proclamation.

Sec. 5. 12 MRSA §9004, as enacted by PL 1979, c. 545, §3, is repealed and the following enacted in its place:

§9004. Penalty

1. Violation of proclamation. Notwithstanding section 9701, any person who in fact violates the provisions of a proclamation issued under section 9001 commits a Class E crime.

2. Violation at licensed camping facility. Notwithstanding subsection 1 and section 9701, a person who is an occupant or customer of a licensed camping facility commits a Class E crime if that person:

A. Is notified of a proclamation in accordance with section 9001-B, subsection 6 and violates a proclamation issued under section 9001.

3. Violation at exempt licensed camping facility. Notwithstanding subsection 1 and section 9701, a person who is an occupant or customer of a licensed camping facility provided an exemption under section 9001-B, subsection 3 commits a Class E crime if that person:

A. Is notified of an exemption and standard of use in accordance with section 9001-B, subsection 6 and burns an out-of-door fire or utilizes a charcoal or gas grill in violation of a rule adopted under section 9001-B, subsection 4.

4. Violation by owner or operator of licensed camping facility. Notwithstanding section 9701, an owner or operator of a licensed camping facility commits a Class E crime if the owner or operator:

A. Fails to notify a person in accordance with section 9001-B, subsection 6;

B. Allows a person to violate a proclamation issued under section 9001; or

C. Operates a facility that is exempt pursuant to 9001-B that does not comply with rules adopted under section 9001-B, subsection 4.

See title page for effective date.

CHAPTER 587

S.P. 696 - L.D. 1770

An Act to Exempt Certain Individuals from Unemployment Insurance Requirements

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

Whereas, under federal law, certain individuals engaged in fishing activities are exempt from unemployment insurance requirements; and

Whereas, Maine's Department of Labor recently determined that a clam digger is an employee and that the clam digger's employer is required to pay unemployment insurance; and

Whereas, Maine's Department of Labor has indicated that other types of individuals engaged as licensed Maine guides also are subject to unemployment insurance requirements; and

Whereas, requiring the payment of unemployment insurance on clam diggers and Maine guides when the individuals consider themselves independent contractors and when federal law provides an exemption may have a deleterious impact on the economic competitiveness of certain businesses in Maine; 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. 26 MRSA §1043, sub-§11, ¶F, as amended by PL 1995, c. 204, §§1 and 2, is further amended by amending subparagraphs (32), (36) and (37) to read: