

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND FIRST LEGISLATURE

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**Legislative Document**

**No. 308**

H. P. 240

House of Representatives, January 16, 1963

Referred to Committee on Natural Resources. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Jameson of Bangor.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-THREE

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### AN ACT Relating to Work on Shade and Ornamental Trees.

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

**Sec. 1. R. S., c. 36, §§ 66-A - 66-S, additional.** Chapter 36 of the Revised Statutes is amended by adding 19 new sections, to be numbered 66-A to 66-S, to read as follows:

#### 'Shade and Ornamental Trees.

**Sec. 66-A. Definitions.** As used in sections 66-A to 66-S, unless the context otherwise specifies, the following words shall have the following meanings:

**I. Arborist.** "Arborist" means a person who, for profit, diagnoses or evaluates the condition of shade or ornamental trees; or recommends or supervises the treatment of such trees; or in any manner treats or removes such trees or parts thereof; or for control of any diseases, injuries or insects, sprays or treats by any other method such trees or forest trees.

**II. Board.** "Board" means the Arborist Examining Board provided for in section 66-M.

**III. Department.** "Department" means the Forestry Department as the official governmental unit to which jurisdiction of sections 66-A to 66-S is assigned.

**IV. Director.** "Director" means the head of the Forestry Department or department staff member designated by him.

**V. Ornamental trees.** "Ornamental trees" means trees of shade, beauty or landscape value.

**VI. Person.** "Person" means an individual, partnership or any group of persons, whether incorporated or not.

**VII. Shade trees.** "Shade trees" means trees grown, established or used to screen persons, grounds, structures, walks, pools, etc. from direct sunlight or observation or both.

**Sec. 66-B. License required.** No person shall advertise, solicit, contract or in any way engage for compensation in the business of an arborist, or make representation as being able to do so, without being licensed as an arborist except that licensees under the current arborist law shall remain validly licensed until December 31, 1963 and eligible for renewal thereafter provided they meet provisions of sections 66-A to 66-S.

**Sec. 66-C. Individual licensed.** No license shall be issued under sections 66-A to 66-S except to an individual who is 18 years or over in age, who is specifically qualified as defined in sections 66-A to 66-S, who passes an examination, and who gives proof of liability insurance and property damage insurance in amounts to be determined under rules and regulations made by the board. When a company is under the control of one person who is solely responsible for the contracts, methods of work and supervision of each piece of work, this person alone will be required to procure a license, but, when more than one person is responsible for contracts, methods of work and supervision of same, each will be required to procure a license.

One of 2 types of licenses shall be issued, namely: Regular and restricted. Regular licenses will allow a licensed individual to engage in all operations in which an arborist is normally involved. Restricted licenses will allow such a licensed individual to perform operations only in those areas stated on the license issued. The department reserves the right to restrict a licensed individual to those operations for which he is judged qualified by the board.

**Sec. 66-D. Exemptions.** Sections 66-A to 66-S shall not apply to:

**I. Certain property.** Any person with reference to trees on his own premises, or on the property of his regular employer.

**II. Personnel.** Any individual performing labor or services on or in connection with trees at the direction and under the personal supervision of a licensed arborist while in the performance of such functions, provided that employed personnel with supervisory responsibility are required to qualify for and hold a license.

**III. Certain employees.** To state, county, municipal or public utility employees while engaged in their regular line of duty.

**IV. Others.** Highway contractors, sub-contractors, and their employees in removal of trees during the performance of contracts for the construction or maintenance of highways."

**Sec. 66-E. Applications.** Applications for examination shall be in writing on forms prescribed by the department, shall be notarized and shall be accompanied by an application fee of \$5 which shall not be returnable. The application form shall require whatever information the board finds necessary to judge qualifications of the applicant.

**Sec. 66-F. Examinations.** Any person shall, upon payment of the application for examination fee, be entitled to written examination prepared by the board. An oral examination may be required of the applicant to enable the board to judge his qualifications for certification.

Applicants for restricted licenses shall be examined in those subjects to which their activities are restricted.

Examination shall be given but once a year unless hardship can be proven to the satisfaction of the board. The grading and passing of applicants shall be exclusively the responsibility of the board.

Applicants failing first examination may apply and take the next or subsequent examination. A no-additional-fee privilege for a 2nd examination shall extend only through the date of the next annual examination.

**Sec. 66-G. License term.** Each license shall be issued for the term of one calendar year, or for such part of a year remaining before December 31st and shall then expire unless renewed.

Failure to renew license within 2 years after date of expiration will necessitate reapplication, reexamination and accompanying fees for a new license.

Any arborist whose license expired while he was in federal service on active duty with the Armed Forces of the United States, or the State Militia called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service may have his license renewed without paying any intervening renewal license fees if within one year after termination of such service, training or education other than by dishonorable discharge, he furnishes the department with an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

**Sec. 66-H. License renewal.** Applications for renewal licenses shall be on forms prescribed by the department, shall be notarized if requested, shall contain whatever information is necessary for the board to determine whether the applicant should continue to hold a license, and shall be accompanied by the required fee, which shall be returnable if the applicant is denied a license renewal. Lost licenses shall be replaced on application by the licensed arborist and payment of \$1.

**Sec. 66-I. License forms.** Each license issued shall consist of 2 parts; a certificate which must be displayed at each place of business of the arborist and a card of wallet size which must be carried by the arborist when occupied in a business capacity.

Where the arborist conducts business at more than one address, additional certificates shall be issued. When an employee of a licensed arborist does not himself hold a license, he shall have with him when working, a signed card or authorization of a form prescribed by the department by that licensed arborist showing under whose supervision he is working and by whom he is employed. The director shall not issue more than one license card to an individual qualified to receive a license, except as provided in section 66-H.

License holders shall display their license to and upon the request, at any time, of any client, other licensed arborist, law enforcement officer or member of the board or department.

Sec. 66-J. Nonresident applicant. Each nonresident applicant, a resident of a different state or province, for an original license or a renewal license shall file an irrevocable consent that actions against him may be filed in any appropriate court of any county or municipality where some part of the transaction occurred out of which the alleged cause of action arose, and that process in any action may be served on the applicant by leaving 2 copies thereof with the director. Such consent shall stipulate and agree that such service of process shall be taken and held to be valid and binding for all purposes. The director shall send one of such process to the applicant at the address shown on the records of the department by registered mail.

Sec. 66-K. Reciprocity. In the event that a nonresident holds a valid arborist license from another state or province, he may on application for a license be waived examination by the board, provided that the other state or province in which he holds such license requires qualification and examination as indicated in sections 66-A to 66-S. If said other state law partially meets the standards of sections 66-A to 66-S, the board will decide in which respect it is lacking and what requirements the applicant must meet for waiver of examination, or whether written examination shall be waived.

Sec. 66-L. Denial of license. The department may refuse to issue or renew or may suspend or revoke a license on any one or more of the following grounds:

I. Misstatement. Deliberate misstatement in the application for original license or in the application for any renewal license under sections 66-A to 66-S.

II. Willful violation. Willful disregard or violation of sections 66-A to 66-S or of any regulation or rule issued pursuant thereto.

III. Aiding or abetting. Willfully aiding or abetting another in the violation of sections 66-A to 66-S or of any regulation or rule issued pursuant thereto.

IV. Unauthorized use of license. Allowing one's license under sections 66-A to 66-S to be used by an unlicensed person.

V. Misrepresentation. Making substantial misrepresentation or false promises of a character likely to influence, persuade or induce in connection with the business of an arborist.

VI. False advertising. Pursuing a continued course of misrepresentation or of making false promises through advertising, salesmen, agents or otherwise in connection with the business of an arborist.

VII. Qualifications. Failure to possess the necessary qualifications or to meet the requirements of sections 66-A to 66-S for the issuance or holding of a license.

**Sec. 66-M. Examining board.** Only those duties and functions of the department and director as indicated under sections 66-A to 66-S shall be exercised without written authorization of the Arborist Examining Board. All decisions of policy not otherwise specified shall be at the discretion of the board. Such board shall be composed of 5 individuals. Three of these shall be respectively the Forest Commissioner, the State Entomologist and a plant pathologist, designated by the Forest Commissioner, who is either on the State or University of Maine staff and part of whose work is concerned with trees. The other 2 members shall be appointed by the Governor and shall be licensed commercial arborists, each of whom shall have been so engaged continuously for a period of 10 years prior to his appointment.

One original member who is a commercial arborist shall serve for 2 years; one original member who is a commercial arborist shall serve for 3 years. Each succeeding commercial-arborist member shall serve for a term of 5 years.

Commercial arborists who are appointed to be, are or have been members of the Arborist Examining Board shall be prohibited from using this position in the advertising of their business in any way.

The action or report in writing of a majority of the board shall be sufficient authority on which the department or the director may act and neither the director nor the department shall act without authorization in writing of a majority of the board except as indicated in sections 66-A to 66-S. Whenever the director is satisfied that justice has not been done in any matter, he may order a reconsideration of such matter by the board and may require a hearing with testimony from conflicting parties presented, but a final decision forthcoming from this reconsideration or rehearing shall be by majority of the board.

The board shall meet at least once a year and at such other times and places as a majority of the board may find necessary for the performance of their duties. Board members not of state agencies shall be paid daily fees of \$20 per day involved, plus current state mileage and living expenses incurred in those days. Members of state agencies shall be paid expenses not covered by state agencies in which employed.

**Sec. 66-N. Responsibilities of board, department and director.** The director of the department shall compile and maintain a complete and up-to-date list of all licensed arborists in the State. Such a list shall be issued once a year and shall be made available to any person upon request.

Any person within the meaning of sections 66-A to 66-S who violates any of the provisions of sections 66-A to 66-S or any of the rules and regulations of the board promulgated as provided in sections 66-A to 66-S shall be punished by having his license to practice as an arborist in this State suspended or revoked by a vote of 4/5 of the board members, provided that no license shall be revoked unless the person accused has been given at least 10 days' notice in writing of the charge or charges against him and afforded a public hearing before the board at a designated time and place set by the board. The board may after a lapse of 6 months, at their discretion, reissue a license which has been suspended or revoked. The board shall make an annual report of its proceedings to the Gov-

error on or before the first Monday in July of each year, which shall contain an account of all moneys received and disbursed by them.

**Sec. 66-O. Appeal.** A person whose license has been suspended or revoked may secure judicial review thereof by commencing, within 30 days after the decision of the board, an action in the Superior Court of Kennebec County against the board for the review of its decision. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the board or upon such person as the board may designate together with as many copies of the petition as there are members of the board and the party so served shall forthwith mail one such copy to each such board members. With its answer, the board shall certify and file with said court the original or a certified copy of all documents and papers and transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceeding under this section, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. An appeal may be taken from the decision of the Superior Court of Kennebec County to the Supreme Judicial Court, in the same manner, but not inconsistent with the provisions hereof, as is provided in civil actions. It shall not be necessary, in any judicial proceedings under this section, to enter objections to the ruling of the board and no bond shall be required for entering such an appeal. Upon the final determination of such judicial proceedings, the board shall enter an order in accordance with such determination. Pending such final determination and the entry of such order in accordance therewith, the action of the board in suspending or revoking the certificate of the petitioner shall be stayed by such an appeal.

**Sec. 66-P. Regulations authorized.** The board shall make and issue such rules and regulations, not inconsistent with the law, as may be necessary to carry out the purposes of sections 66-A to 66-S and shall prepare all necessary forms and rules governing examinations and hearings as may be necessary.

**Sec. 66-Q. Enforcement.** If any person violates sections 66-A to 66-S, the director may, in the name of the State, through the Attorney General apply, in any court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with sections 66-A to 66-S. Upon filing of a verified petition in such court, the court, if satisfied by affidavit that such person has violated sections 66-A to 66-S, may issue a temporary injunction, without notice or bond, enjoining such civil actions. If it is established that such person has violated or is violating sections 66-A to 66-S, the court may enter a decree perpetually enjoining such violation or enforcing compliance with sections 66-A to 66-S. In case of violation of any order or decree issued under this section, the court may summarily try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by sections 66-A to 66-S.

**Sec. 66-R. Penalties.** Any person violating sections 66-A to 66-S shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not more than 2 months, or by both.

**Sec. 66-S. Fees.** A \$5 fee shall accompany each application for examination and shall not be returnable. When an applicant is notified that he is eligible for a license following examination, he shall remit an additional \$10 to cover total license fee of \$15 before a license is issued. The following fees shall be charged:

- I. **Original license.** For an original license to an individual, \$15.
- II. **Annual renewal license.** For an annual renewal license, \$5.
- III. **Replacement.** Replacement of lost license, \$1.

Fees collected shall be credited to the Board and may be expended by the Board for any expense incurred for examining, licensing, and carrying out the purposes of the above law.

**Sec. 2. R. S., c. 36, §§ 66 and 67, repealed.** Sections 66 and 67 of chapter 36 of the Revised Statutes, as repealed and replaced by sections 1 and 2 of chapter 169 of the public laws of 1957 and as amended by sections 1, 2 and 3 of chapter 336 of the public laws of 1961, are repealed.