

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

# ONE HUNDRED AND FIFTH LEGISLATURE

---

---

## Legislative Document

No. 1580

S. P. 467

In Senate, March 17, 1971

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Schulten of Sagadahoc.

---

---

## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

---

### AN ACT to Amend and Rearrange the Arborist Law.

---

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

Sec. 1. R. S., T. 32, c. 28, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 28 to read as follows:

#### CHAPTER 28 ARBORIST LAW

##### § 1861. Definitions

As used in this chapter, unless the context otherwise specifies, the following words shall have the following meanings:

1. **Arborist.** "Arborist" means a person who, for compensation diagnoses or evaluates the condition of shade or ornamental trees; or solicits, recommends or supervises the treatment of such trees; or in any manner or for any purpose treats or cares for such trees or parts thereof; or takes down or fells such trees by topping or by sections; or for control of any diseases, injuries or insects, sprays or treats by any other method such trees or forest trees.

2. **Board.** "Board" means the Arborist Examining Board.

3. **Department.** "Department" means the Forestry Department.

4. **Director of the Board.** "Director of the Board" means the commissioner of the department or department staff member designated by him.

5. **Ornamental trees.** "Ornamental trees" means trees of shade, beauty or landscape value, or those trees intended to become such.

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

7. 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, or those trees intended to become such.

8. Takes down or fells. "Takes down or fells" means taking down trees by topping or by sections. Taking down of those trees which can safely be felled whole, and similar to a woodsman felling a forest tree, does not require licensing.

9. Treats or cares for. "Treats or cares for" means pruning, trimming, shaping, installing lightning protections, cabling, bracing, feeding or fertilizing and excavating, draining or filling decayed and cavity areas of trees.

#### § 1862. Exemptions

This chapter shall not apply to:

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

2. 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, foremen and salesmen are required to qualify for and hold a license;

3. Certain employees. State, county, municipal, quasi-municipal or public utility employees while engaged in their regular line of duty;

4. Scientific specialists. Scientific specialists such as plant pathologists, entomologists, botanists, foresters, horticulturists and others who are not arborists, but who by academic training are professionally qualified, provided that any services performed for a fee are limited to consultations, advisory or expert diagnostic services and that all other activities of practicing arborists are prohibited them without examination;

5. Others. Highway contractors, subcontractors and their employees in the removal of trees during the performance of contracts for the construction or maintenance of highways and the removal of interfering trees or interfering parts of trees by a general contractor in the conduct of his business.

#### § 1863. Appeals

A person whose license has been suspended or revoked may secure review thereof through appeal to the Superior Court of Kennebec County within 30 days after decision. Findings of the board as to facts, if supported by the evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law.

#### § 1864. Enforcement

If any person violates this chapter, the director may, in the name of the State, through the Attorney General, apply in any court of competent juris-

diction for an order enjoining such violation or for an order enforcing compliance with this chapter. Upon filing of a verified petition in such court, the court, if satisfied by affidavit that such person has violated this chapter, may issue a restraining order, enjoining such violation. If it is established that such person has violated or is violating this chapter, the court may enter a decree perpetually enjoining such violation or enforcing compliance with this chapter. 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 this chapter.

#### § 1865. Penalties

Any person violating this chapter shall be punished by a fine of not less than \$50 nor more than \$200 for each offense, or by imprisonment for not more than 2 months, or by both.

#### § 1866. Membership, hearings, meetings, compensation and expense

Only those duties and functions of the department and director as indicated under this chapter 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. Two of these shall be the Forest Commissioner and the State Entomologist. The other 3 members shall be appointed by the Governor, one of whom shall be a plant pathologist who is either on the State or University of Maine staff and part of whose work is concerned with trees and 2 of whom 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 member of the board shall serve for a term of 5 years.

Commercial arborists who are appointed to be, are or have been members of the 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 this chapter. 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 a majority of the board.

The board shall meet at least once a year and at such other times and places as a majority 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 on those days. Members of state agencies shall be paid expenses not covered by state agencies in which they are employed.

**§ 1867. Rules and regulations**

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 this chapter, and shall prepare all necessary forms and rules governing examinations and hearings as may be necessary.

**§ 1868. List of arborists; suspension or revocation of licenses**

The director of the board 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 this chapter who violates any of the provisions of this chapter or any of the rules and regulations of the board promulgated as provided in this chapter 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 suspended or 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 Governor on or before the first Monday in July of each year, which shall contain an account of all moneys received and disbursed by them.

**§ 1869. Disposal of fees**

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 this chapter.

**§ 1870. 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 eligible for renewal provided they meet the provisions of this chapter.

**§ 1871. Qualifications; types of licenses**

No license shall be issued under this chapter, except to an individual who is 18 years or over in age, who is specifically qualified as defined in this chapter, who passes an examination and who gives proof of financial responsibility in amounts to be determined under rules and regulations of 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.

#### § 1872. Applications

Applications for examination shall be in writing on forms prescribed by the department, shall be notarized and shall be accompanied by the application fee of \$5. The application form shall require whatever information the board finds necessary to judge qualifications of the applicant.

#### § 1873. Nonresidents

Each nonresident applicant, a resident of another 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 district of this State, 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 a copy of the process to the applicant by registered mail at the address shown on the records of the department.

#### § 1874. Examinations

Any person shall, upon payment of the application fee, be entitled to a 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 the first examination may apply and take the next or subsequent examination. A non-additional-fee privilege for a 2nd examination shall extend only through the date of the next annual examination.

#### § 1875. 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 card or authorization on a form prescribed by the department signed by the 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 1877.

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

#### § 1876. 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 a license within 5 years after the date of expiration will necessitate reapplication, reexamination and accompanying fees for a new license.

Any arborist whose license expires while he is in federal service on active duty with the Armed Forces of the United States, or in the National Guard 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, and if 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.

#### § 1877. Renewals

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.

#### § 1878. 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:

1. Original license. For an original license to an individual, \$15;
2. Annual renewal license. For an annual renewal license, \$5;
3. Replacement. Replacement of lost license, \$1.

#### § 1879. 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 of examination by the board, provided that the other state or province in which he holds

such license requires qualification and examination equivalent to this chapter. If said other state or province law partially meets the standards of this chapter, the board may 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.

§ 1880. Denial of license; suspension or revocation

The board may refuse to issue or renew or may suspend or revoke a license on any one or more of the following grounds:

1. Misstatement. Deliberate misstatement in the application for original license or in the application for any renewal license under this chapter;

2. Willful violation. Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto;

3. Aiding or abetting. Willfully aiding or abetting another in the violation of this chapter or of any regulation or rule issued pursuant thereto;

4. Unauthorized use of license. Allowing one's license under this chapter to be used by an unlicensed person;

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

6. 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.

7. Qualifications. Failure to possess the necessary qualifications or to meet the requirements of this chapter for the issuance or holding of a license.

Sec. 2. R. S., T. 32, c. 29, sub-c. II, repealed. Subchapter II of chapter 29 of Title 32 of the Revised Statutes, as amended, is repealed.

## STATEMENT OF FACT

Purpose of the Arborist Law is to protect the interest of the public in proper care of trees, to insure their health and continuance. To fulfill this purpose and to carry out its responsibilities properly the Arborist Examining Board makes suggested amendments for the purposes of:

(1) clarifying the meaning and enforcement of the law by arranging sections in a more logical sequence to allow ready and better understanding,

(2) clarification to avoid evasion by a suspect-party's claiming profit was not realized, and

(3) delineating the role of a general contractor from the role of an arborist.