

# 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)



1       Whereas, there is some question of interpretation  
2 of a key provision in the Maine Revised Statutes,  
3 Title 38, section 7; and

4       Whereas, last year's legislation is to take effect  
5 April 1, 1988; and

6       Whereas, this date will have gone by before the  
7 necessary clarification can be made unless legislation  
8 is passed on an emergency basis; and

9       Whereas, in the judgment of the Legislature, these  
10 facts create an emergency within the meaning of the  
11 Constitution of Maine and require the following  
12 legislation as immediately necessary for the  
13 preservation of the public peace, health and safety;  
14 now, therefore,

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

17       **Sec. 1. 38 MRSA §1, first ¶, as repealed and**  
18 **replaced by PL 1987, c. 412, §§1 and 8, is repealed**  
19 **and the following enacted in its place:**

20       The municipal officers of a town, on request by  
21 any person desiring mooring privileges or regulation  
22 of mooring privileges for boats or vessels, shall  
23 appoint a harbor master for a term of not less than  
24 one year, who shall be subject to all the duties and  
25 liabilities of that office as prescribed by state law,  
26 municipal ordinances and regulations adopted by the  
27 municipal officers, municipal harbor commissioners,  
28 municipal port authorities or other such bodies  
29 empowered to regulate municipal harbors. The  
30 municipal officers may establish the harbor master's  
31 compensation and, for cause by them declared in  
32 writing, after due notice to the officer and hearing,  
33 if requested, remove the harbor master and appoint  
34 another one.

35       **Sec. 2. 38 MRSA §2, as amended by PL PL 1987, c.**  
36 **412, §§2 and 8, is further amended to read:**

1     2. Rules for channel lines; enforcement

2             The municipal officers of all maritime towns and  
3 plantations, other bodies empowered to regulate  
4 municipal harbors and the county commissioners in the  
5 case of maritime unorganized townships may make rules  
6 and regulations, with suitable provision for  
7 enforcement for the keeping open of to keep open  
8 convenient channels for the passage of vessels in the  
9 harbors and waterways of the towns or townships for  
10 which they act, and may establish the boundary lines  
11 of those channels and assign suitable portions of  
12 their harbors and other coastal and tidal waters  
13 within their jurisdiction for anchorages.

14             In the event fishing gear is within the boundary  
15 lines of a channel in violation of local rules, the  
16 harbor master may issue a warning of navigational  
17 interference and may commence court action to order  
18 removal of that gear.

19             Such rules and regulations as may be made by those  
20 municipal officers, other bodies empowered to regulate  
21 harbors or county commissioners shall be enforced and  
22 carried out by the harbor master of that town or  
23 unorganized township, or any other law enforcement  
24 officer of the State or any political subdivision of  
25 the State.

26             The harbor master may appoint deputies who, under  
27 his direction, shall enforce and carry out the rules  
28 and regulations of this section.

29             Sec. 3. 38 MRSA §3, as repealed and replaced by  
30 PL 1987, c. 412, §§3 and 8, is repealed and the  
31 following enacted in its place:

32     §3. Mooring sites

33             In all harbors wherein channel lines have been  
34 established by the municipal officers, as provided in  
35 section 2, and in all other coastal and tidal waters  
36 and harbors where mooring rights of individuals are  
37 claimed to be invaded and protection is sought of the  
38 harbor master, the harbor master shall assign and

1 indicate only to the masters or owners of boats and  
2 vessels the location which they may occupy for mooring  
3 purposes and shall change the location of those  
4 moorings from time to time when the crowded condition  
5 of that harbor, the need to conform to section 7-A or  
6 other conditions render the change desirable.

7 Mooring assignments shall not be transferred.  
8 Assignments shall not be rented unless the provision  
9 for rental was part of the agreement when the mooring  
10 was assigned.

11 Assignment of these mooring privileges does not  
12 confer any right, title or interest in submerged or  
13 intertidal lands owned by the State. To the extent  
14 that there is any inconsistency between this  
15 subchapter and any law which establishes or otherwise  
16 provides for a port authority, board of harbor  
17 commissioners or similar authority for any coastal  
18 waters of the State, that inconsistency shall be  
19 resolved in favor of this subchapter.

20 Whenever practicable, the harbor master shall  
21 assign mooring privileges in those waters where  
22 individuals own the shore rights to a parcel of land,  
23 are masters or owners of a boat or vessel and are  
24 complainants, and shall locate suitable mooring  
25 privileges therefor for boats and vessels, temporarily  
26 or permanently, as the case may be, fronting their  
27 land, if so requested, but not to encroach upon the  
28 natural channel or channels established by municipal  
29 officers; provided that not more than one mooring may  
30 be assigned to any shore-front parcel of land under  
31 this privilege. Notwithstanding section 11, persons  
32 who, prior to January 1, 1987, owned shore rights of  
33 at least 100 feet of frontage regardless of the size  
34 of the lot shall have mooring privileges assigned  
35 according to this section. The limitation of one  
36 mooring assigned under this privilege shall not  
37 prevent the owner of a shore-front parcel from  
38 receiving additional mooring assignments under the  
39 allocation system for all other residents.

40 A harbor master may refuse to assign mooring  
41 privileges to any vessel or boat owner or master who

1 has not paid any fee, charge for services, forfeiture  
2 or penalty levied pursuant to this subchapter.

3       Sec. 4. 38 MRSA §5, first ¶, as repealed and  
4 replaced by PL 1987, c. 412, §§5 and 8, is amended to  
5 read:

6       A harbor master, upon receiving complaint to him  
7 by from the master, owner or agent of any vessel,  
8 shall cause any other vessel or vessels obstructing  
9 the free movement or safe anchorage of that vessel to  
10 remove to a position to be designated by him the  
11 harbor master and to shall cause, without any  
12 complaint being made to him the harbor master, any  
13 vessels anchoring within the channel lines as  
14 established by the municipal authorities, as provided  
15 in section 2, to remove to such anchorage as he the  
16 harbor master may designate. Whoever neglects or  
17 refuses to obey the orders of the harbor master is  
18 guilty of a Class-E crime.

19       Sec. 5. 38 MRSA §7, as amended by PL 1987, c.  
20 412, §§6 and 8, is repealed and the following enacted  
21 in its place:

22 §7. Relation to other laws

23       Nothing in this subchapter may be construed to be  
24 a limitation on the authority of municipalities to  
25 enact ordinances to regulate the assignment or  
26 placement of moorings and other activities in their  
27 harbors. These ordinances may include, but need not  
28 be limited to: A process for assigning mooring  
29 privileges and determining the location of moorings; a  
30 waiting list for the assignment of mooring privileges;  
31 a fee schedule; construction standards for moorings;  
32 time limits on the mooring of vessels; a process for  
33 appeals from decisions of the harbor master; and  
34 provisions which establish a harbor commission or  
35 committee to administer the ordinance or ordinances  
36 and oversee the duties of the harbor master.  
37 Regulations adopted by the municipal officers under  
38 section 2 shall remain in effect unless the  
39 municipality's legislative body enacts an ordinance  
40 pertaining to the same matter pursuant to the

1 Constitution of Maine, Article VIII, Part 2, and Title  
2 30, section 1917.

3 Sec. 6. 38 MRS §7-A is enacted to read:

4 §7-A. Waiting lists; nonresident moorings

5 1. Waiting lists. If a municipality receives  
6 more applications for mooring privileges on  
7 state-owned lands that are controlled by its rules or  
8 ordinances than there are mooring spaces, the  
9 municipality shall assign spaces as they become  
10 available from a waiting list or lists according to  
11 its rules or ordinances, except as provided in this  
12 section. Waiting lists in effect at the time that  
13 this section becomes law may continue in effect, but  
14 persons shall be selected from those lists in  
15 accordance with the allocation provisions of this  
16 section. If at the time a person applies for a  
17 mooring there is no waiting list, this person may be  
18 assigned a mooring without regard to the allocation  
19 provisions of this section.

20 2. Allocations to nonresidents. If there are  
21 applicants who are nonresidents who wish to moor a  
22 vessel the principal use of which is noncommercial and  
23 less than 10% of the moorings are currently assigned  
24 to persons fitting this description, the next mooring  
25 available shall be assigned to the first such person  
26 on the list. If there are applicants who are  
27 nonresidents who wish to moor a vessel the principal  
28 use of which is commercial and less than 10% of the  
29 assigned moorings are currently assigned to persons  
30 fitting this description, the next mooring available  
31 shall be assigned to the first such person on the  
32 list. If both nonresident noncommercial and  
33 nonresident commercial assignments are below 10% and  
34 there are both types of applicants on the waiting  
35 list, the available space shall be assigned to an  
36 applicant in the category that is the farthest below  
37 10%. The burden of proof in determining residence and  
38 the principal use of a vessel shall be upon the  
39 applicant.

40 Each year, persons with mooring assignments shall

1 report to the harbor master their anticipated  
2 residency status for the next year and whether they  
3 anticipate the principal use of their boats to be  
4 commercial or noncommercial. The harbor master shall  
5 update the percentage of mooring holders in each  
6 category from this data.

7 It is not a requirement of this section that a person  
8 lose a current mooring assignment to meet the  
9 objectives of this section.

10 Shorefront property owners shall be assigned mooring  
11 privileges as established in section 3.

12 If the mooring fee charged to nonresidents exceeds \$20  
13 a year, the fee charged shall be reasonable in  
14 relation to the costs involved in providing that  
15 mooring and shall not exceed 5 times the amount  
16 charged to residents.

17 This subsection shall be construed broadly in order to  
18 accomplish the distribution of moorings to  
19 nonresidents as specified in this section.

20 Sec. 7. 38 MRSA §10, as enacted by PL 1987, c.  
21 412, §§7 and 8, is amended to read:

22 §10. Harbor master liability

23 In addition to the immunities from liability and  
24 the limitations and defenses provided under the Maine  
25 Tort Claims Act, Title 14, sections 8103, 8111 and  
26 8112, a harbor master who, in the performance of  
27 his statutory duties as set forth in sections 4 and  
28 5, causes any damage to property or any injury to a  
29 person shall not be liable for damage or injury,  
30 unless the damage or injury is a direct result of the  
31 gross negligence, gross recklessness or bad faith  
32 intentional misconduct of the harbor master.

33 Sec. 8. 38 MRSA §12 is enacted to read:

34 §12. Violation of subchapter

35 Whoever neglects or refuses to obey any lawful



1 order of a harbor master authorized pursuant to this  
2 subchapter commits a Class E crime.

3 Emergency clause. In view of the emergency  
4 cited in the preamble, this Act shall take effect when  
5 approved.

6 STATEMENT OF FACT

7 This new draft accomplishes the following:

8 1. Deletes the provision on harbor master  
9 training at the Maine Criminal Justice Academy, since  
10 this will be incorporated in legislation coming out of  
11 the study on law enforcement training from the Joint  
12 Standing Committee on Legal Affairs.

13 2. Indicates that municipal harbor commissions  
14 and port authorities have the same authorization as  
15 municipal officers to make rules regarding channel  
16 lines;

17 3. Gives the harbor master the authority to take  
18 action to obtain the removal of fishing gear placed in  
19 a location prohibited by municipal rules;

20 4. Removes the provision for harbor master  
21 compensation from the Maine Revised Statutes, Title  
22 38, section 3 because it is already in Title 38,  
23 section 1, and that section is more appropriate;

24 5. Makes the following changes in Title 38,  
25 section 7, for purposes of clarity and useability:

26 A. Transfers several sections which more  
27 appropriately belong in Title 38, section 3,  
28 mooring sites;

29 B. Creates a separate section 7-A which deals  
30 with nonresident moorings. Currently this subject  
31 is inappropriately under section 7, relating to  
32 other laws; and

1 C. Regroups the paragraphs and places them under  
2 subsections, waiting lists and allocations to  
3 nonresidents;

4 6. Changes the requirement in Title 38, section  
5 7, that moorings be assigned from a waiting list in  
6 order of listing to assignment according to municipal  
7 rule, regulation or ordinance. The provision for  
8 nonresidents receiving at least a specified quota of  
9 moorings continues in effect;

10 7. Adds several words to the list of items which  
11 would constitute harbor master liability. The purpose  
12 is to make this list consistent with statutes which  
13 deal with tort claims; and

14 8. Places the bill on an emergency basis so that  
15 the provisions of item 6 may go into effect before the  
16 effective date of April 1, 1988, when last year's  
17 harbor master bill is to take effect.

18

4879030788