

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1621, L.D. 2243, Bill, "An Act to Amend Certain Provisions of the Fish and Wildlife Laws"

Amend the bill by inserting after the enacting clause and before section 1 the following:

'PART A'

Further amend the bill by striking out all of sections 5 and 6.

Further amend the bill in section 9 in paragraph D in subparagraph (2) in the 2nd line (page 3, line 41 in L.D.) by striking out the following: "March" and inserting in its place the following: 'February'

Further amend the bill in section 10 in subsection 2 in paragraph D in the 2nd line (page 4, line 22 in L.D.) by inserting after the following: "viscera" the following: 'and rib cage'

Further amend the bill in section 11 in subsection 5-A in paragraph A in the last line (page 4, line 34 in L.D.) by inserting after the following: "viscera" the following: 'and rib cage'

Further amend the bill in section 15 in subsection 19 in the first paragraph in the next to the last line (page 5, line 19 in L.D.) by striking out the following: "\$500" and inserting in its place the following: '\$300'

Further amend the bill in section 17 in subsection 22 in paragraph A in the 4th line (page 5, line 48 in L.D.) by striking out the following: "\$500" and inserting in its place the following: '\$300'

2 Further amend the bill in section 19 in subsection 22 in
paragraph A in the 4th line (page 6, line 21 in L.D.) by striking
out the following: "\$500" and inserting in its place the
4 following: '\$300'

6 Further amend the bill in section 20 in subsection 1 in
paragraph A in the first line (page 6, line 38 in L.D.), in
8 paragraph B in the first line (page 6, line 42 in L.D.) and in
paragraph C in the first line (page 6, line 46 in L.D.) by
10 striking out the following: "who possesses a valid Maine hunting
license"

12 Further amend the bill by renumbering the sections to read
14 consecutively beginning with section A-1.

16 Further amend the bill by inserting before the emergency
clause the following:

18 **PART B**

20 **Sec. B-1. 12 MRSA §7001, sub-§36-A is enacted to read:**

22 36-A. Trap, the noun. "Trap" means any device that is
24 designed primarily to catch or hold wild animals, including, but
not limited to, a foothold trap, a killer-type trap, a cage-type
26 trap or a snare.

28 **Sec. B-2. 12 MRSA §7001, sub-§37, as repealed and replaced by**
PL 1981, c. 644, §1, is repealed and the following enacted in its
30 place:

32 37. Trap, the verb. To "trap" means to set, place or tend
any trap within the fields, forests or waters of the State, to
34 kill any animal that is caught in a trap or to aid or assist
another person in setting or placing a trap, tending a trap or
36 killing an animal that is caught in a trap.

38 **Sec. B-3. 12 MRSA §7171, sub-§5 is enacted to read:**

40 5. Effect of revoked or suspended license. Notwithstanding
this section, a person whose license to deal in live smelts and
42 baitfish has been revoked or suspended pursuant to section 7077,
7078 or 7079, may not assist another dealer in selling or
44 transporting live smelts and baitfish.

46 **Sec. B-4. 12 MRSA §7311, sub-§2. ¶C. as enacted by PL 1987, c.**
742, §7, is repealed and the following enacted in its place:

48 C. Be currently certified in first aid through completion
50 of any standard first aid course that meets the criteria
established by rule of the commissioner; and

52

2 **Sec. B-5. 12 MRSA §7406, sub-§17, ¶M,** as enacted by PL 1979,
c. 420, §1, is amended to read:

4 M. Hunts any wild animal or wild bird by any method other
6 than the usual method of shooting with a firearm not larger
than number 10-gauge, shooting with a ~~long~~ hand-held bow and
arrow or by falconry.

8 **Sec. B-6. 12 MRSA §7432, sub-§2, ¶C,** as repealed and replaced
10 by PL 1989, c. 493, §28, is amended to read:

12 C. While trapping in any unorganized or deorganized place,
14 fails to visit each killer-type trap or water set,
so-called, except under ice water sets for beaver and
muskrat, or fails to cause the same to be visited at least
16 once in every ~~3~~ 5 calendar days, including Sunday.

18 **Sec. B-7. 12 MRSA §7452, sub-§1-D** is enacted to read:

20 1-D. Illegal trapping of bear. A person is guilty of
22 illegally trapping bear if that person catches a bear in a
trap and causes or allows another person to kill or register
that bear.

24 **Sec. B-8. 12 MRSA §7552, sub-§5, ¶D,** as amended by PL 1987, c.
26 115, §1, is further amended to read:

28 D. The commissioner may issue a rule establishing an annual
opening date as the last Saturday of April on waters
30 reclaimed by the removal of rough fish; and

32 **Sec. B-9. 12 MRSA §7552, sub-§5, ¶G,** as enacted by PL 1983, c.
274, §3, is amended to read:

34 G. There shall be a continued closed season on the dipping
36 of smelts from Morrill Pond and its tributaries in Somerset
County; and

38 **Sec. B-10. 12 MRSA §7552, sub-§5, ¶H** is enacted to read:

40 H. Whenever the last day of open water fishing season falls
42 on a Saturday, the commissioner shall issue a rule extending
the season one day to include the following Sunday.

44 **Sec. B-11. 12 MRSA §7794, sub-§7,** as enacted by PL 1979, c.
46 420, §1, is amended to read:

48 7. **Transfer of ownership.** Whoever transfers ownership of a
motorboat for which a certificate of number has already been
50 issued under this subchapter and applies for a certificate of
number for another motorboat is entitled to a new certificate of
52 number upon payment of a transfer fee of \$2 as set forth in

2 subsection 4, paragraph D, provided the applicant returns to the
3 commissioner the old certificate of number properly signed and
4 executed, showing that ownership of the motorboat has been
5 transferred and that there are at least 6 months of unexpired
6 time on his old certificate of number.

8 **Sec. B-12. 12 MRSA §7801, sub-§32** is enacted to read:

10 32. Unlawfully operating a watercraft within the water
11 safety zone. A person is guilty, except as provided in section
12 7802, of unlawfully operating a watercraft within the water
13 safety zone if that person operates a watercraft at a speed
14 greater than headway speed while within the water safety zone or
15 within a marina or an approved anchorage in coastal or inland
16 waters.

18 **Sec. B-13. 12 MRSA §7827, sub-§18**, as enacted by PL 1979, c.
19 420, §1, is repealed and the following enacted in its place:

20 18. Unlawfully operating a snowmobile on railroad tracks.
21 A person is guilty, except as provided in subsection 23,
22 paragraph F-1, of unlawfully operating a snowmobile on railroad
23 tracks, if that person:

24 A. Operates any snowmobile along or adjacent and parallel
25 to the tracks of any railroad within the limits of any
26 railroad right-of-way without written permission from the
27 railroad owning the right-of-way; or

30 B. Operates any snowmobile across the tracks of any
31 railroad after having been forbidden to do so by the
32 railroad owning the railroad right-of-way, or by an agent of
33 that railroad, either personally or by appropriate notices
34 posted conspicuously along the railroad right-of-way.

36 **Sec. B-14. 12 MRSA §7857, sub-§16, ¶C**, as enacted by PL 1989,
37 c. 70, is amended to read:

38 C. Every new ATV sold in Maine, except 2-wheel off-road
39 motorcycles, manufactured after January 1, 1991, shall and
40 sold in Maine, must be equipped with working headlights,
41 taillights and brake lights.

44 **Sec. B-15. 12 MRSA §7950**, as amended by PL 1983, c. 819, Pt.
45 A, §34, is repealed and the following enacted in its place:

46 §7950. Records of the Department of Inland Fisheries and Wildlife

48 A certificate, signed by the commissioner or deputy
49 commissioner, stating what the records of the Department of
50

2 Inland Fisheries and Wildlife show on any given matter is
3 admissible in evidence in all courts of this State to prove what
4 the records of the department are on that matter.

6 1. Certificate prima facie evidence person not the holder
7 of a license, permit, registration or certificate of number. A
8 certificate, signed by the commissioner or deputy commissioner,
9 stating that the records of the department do not show that a
10 particular person on a stated date held a license, permit,
11 registration or certificate of number issued under chapters 701
12 to 721, is admissible in evidence in all courts of this State and
13 is prima facie evidence that the particular person named in the
14 certificate did not hold a license, permit, registration or
15 certificate of number as specified in the certificate on the date
16 specified in the certificate.

18 2. Certificate prima facie evidence of license, permit,
19 registration or certificate of number revocation. A certificate,
20 signed by the commissioner or deputy commissioner, stating that
21 the records of the department show that a particular person's
22 license, permit, registration or certificate of number issued
23 under chapters 701 to 721, was revoked or suspended on a
24 particular stated date is admissible in evidence in all courts of
25 this State and is prima facie evidence that the particular
26 person's license, permit, registration or certificate of number
27 as specified in the certificate, was revoked or suspended on the
28 date stated.

PART C

30 Sec. C-1. 3 MRSA §927, sub-§6, ¶B, as enacted by PL 1989, c.
31 483, Pt. A, §§4 and 62, is amended to read:

34 B. Independent agencies:

36 (1) Advisory Board for Licensure of Water Treatment
37 Plant Operators;

38 ~~(2) --Keep-Maine-Seenie-Committee;~~

40 (3) Office of Energy Resources;

42 (4) Saco River Corridor Commission;

44 (5) State Soil and Water Conservation Commission;

46 (6) Acupuncture Licensing Board;

48 (7) Board of Licensing of Auctioneers;

50 (8) Board of Licensing of Dietetic Practice; and
52

~~(9) (8) Board of Commercial Driver Education; and~~

~~(9) Advisory Board for the Licensing of Taxidermists.~~

Sec. C-2. 5 MRSA §12004-I, sub-§23-A is enacted to read:

<p>23-A. Envi- ronment: Natural Resources</p>	<p>Advisory Board for the Licensing of Taxi- dermists</p>	<p>\$50/Day</p>	<p>12 MRSA §7355</p>
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Sec. C-3. 12 MRSA §7351, as amended by PL 1987, c. 317, §16, is repealed.

Sec. C-4. 12 MRSA §§7354 to 7357 are enacted to read:

§7354. Taxidermy: general provisions

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Board" means the Advisory Board for the Licensing of Taxidermists established by Title 5, section 12004-I, subsection 23-A.

B. "Taxidermy training" means learning and acquiring the knowledge of the art of taxidermy under the direction and supervision of a person licensed to practice the art of taxidermy under this subchapter, or in conjunction with a bona fide taxidermy training program.

2. Permitted activities. The holder of a taxidermist license may:

A. Possess, at the licensee's place of business, lawfully acquired fish or wildlife specimens for the sole purpose of preparing and mounting them;

B. Transport lawfully acquired fish and wildlife specimens to and from the licensee's place of business;

C. Sell lawfully acquired specimens of fish and wildlife that have been preserved through the art of taxidermy if that sale does not violate regulations of the United States Federal Migratory Bird Treaty Act or other federal regulations;

D. Designate others to aid or assist in conducting business at the licensee's place of business; and

2 E. Train persons who hold a training permit pursuant to
4 section 7356 in the art of taxidermy at the licensee's place
 of business or in conjunction with a bona fide taxidermy
 training program.

6
8 3. Records. The holder of a taxidermist license shall keep
 a true and complete record, in such form as required by the
10 commissioner, of all activities conducted by virtue of the
 taxidermist license. The record must be open for inspection by
12 any agent of the commissioner during normal business hours. The
 license holder shall file a notarized copy of the record with the
14 commissioner no later than 10 days after the end of the year
 during which the license is valid.

16 4. Competency standards. The commissioner shall establish
 standards of competency for the practice of taxidermy and shall
18 provide a copy of these standards to each applicant for a
 taxidermy license or a training permit.

20 5. Rules. The commissioner may, pursuant to the Maine
22 Administrative Procedure Act, adopt rules to implement the
 provisions of this section and sections 7355 to 7357.

24 §7355. Advisory Board for the Licensing of Taxidermists

26 The Advisory Board for the Licensing of Taxidermists is
28 established by Title 5, section 12004-I, subsection 23-A.

30 1. Membership. Members of the board must be residents of
 the State. The board consists of 5 members: two employees of
32 the department, appointed by the commissioner; 2 licensed
 taxidermists with expertise in the art of taxidermy, appointed by
34 the Governor; and one member of the general public with no
 affiliation to the art of taxidermy, appointed by the Governor.

36 2. Term. The term of office is 3 years, except that the
38 terms are staggered to the extent possible. Appointments for
 terms of less than 3 years may be made in order to stagger the
40 terms. Upon expiration of a member's term, that member shall
 serve until a qualified successor is appointed. The successor's
42 term is 3 years from the date of the expiration, regardless of
 the date of appointment. A vacancy in the office of a member is
44 filled by the appointing authority for that position for the
 unexpired term. The department members may be removed by the
46 commissioner for cause. All other members may be removed by the
 Governor for cause.

48 3. Staff assistance. The department shall provide staff
50 assistance as necessary.

2 4. Duties. The board shall advise the commissioner
3 regarding implementation of section 7354, this section and
4 sections 7356 and 7357, and any related rules and assist in the
5 development of and in conducting examinations.

6 5. Quorum. Three members of the board constitute a quorum
7 for the transaction of business.

8
9 6. Compensation. All members, except state employees, are
10 entitled to receive compensation as provided in Title 5, chapter
11 379.

12 §7356. Licensure; training permit

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14
15 1. License or permit required. In order to safeguard the
16 life, health and welfare of the people of this State, any person
17 practicing the art of taxidermy for commercial purposes must hold
18 a taxidermist license or a training permit as provided in this
19 section.

20
21 2. License and permit qualifications. To be eligible for a
22 taxidermist license or training permit issued pursuant to this
23 section, an applicant must:

24 A. Satisfactorily pass a taxidermy examination, as the
25 commissioner shall prescribe by rule; and

26
27 B. Demonstrate trustworthiness and competence to practice
28 the art of taxidermy in such a manner, as prescribed by the
29 commissioner by rule, as to safeguard the interests of the
30 public.

31
32 3. Training permit. Any person who is undergoing taxidermy
33 training as defined in section 7354 must obtain a training permit
34 before that person may participate in taxidermy training. No
35 person holding a training permit may practice the art of
36 taxidermy for commercial purposes, except under the direct
37 supervision of a licensed taxidermist. The licensed taxidermist
38 is responsible for the performance and final product of the
39 trainee.

40
41 4. License application. Each applicant for a license or
42 training permit must submit a written application to the
43 commissioner on a form prescribed by the commissioner. The
44 commissioner may require any applicant who has previously held a
45 taxidermist license to provide a notarized statement indicating
46 that the person has not failed to provide services to a customer
47 as promised through a contractual agreement with that customer.

48
49 A. The application must contain satisfactory evidence of
50 the qualifications required of the applicant under this
51 section and must be sworn to by the applicant.

2 B. Failure or refusal to provide information requested on
4 the application form is sufficient grounds for the
commissioner to reject the application.

6 C. The application must be accompanied by a nonrefundable
8 fee of \$10.

10 D. Within 10 working days of receipt of any application for
12 a taxidermist license or training permit, the commissioner
14 shall notify the applicant as to the acceptability of the
application and shall provide the applicant with at least 2
weeks' notice prior to any examination.

16 5. Examination. Each applicant for a license or permit
18 shall appear at a time and place designated by the commissioner,
20 to be examined by means of written, practical and oral tests, as
the commissioner determines. An applicant for a training permit
may not be required to take a practical examination. The
commissioner shall determine the form and content of examinations.

22 6. Reexamination. The commissioner may require any
24 taxidermist to be reexamined if the commissioner receives a
26 written complaint and, upon investigation, finds that the
taxidermist no longer meets the qualifications to be licensed as
a taxidermist.

28 7. Fee. License applicants who successfully meet the
30 qualifications set forth in this section must be issued a license
32 upon payment of a \$3 fee. This fee is in addition to the \$10
34 examination fee. Permit applicants who successfully meet the
qualifications of this section must be issued a training permit.
A fee in addition to the \$10 examination fee is not required for
a training permit.

36 8. Annual renewal of license; fees; effect of failure to
38 renew. Licenses and permits issued pursuant to this section run
40 for the current year until the 30th day of June following the
42 date of the issuance, on which date the license or permit
44 terminates unless sooner revoked. Subject to any revocation or
suspension, the license or permit may be renewed annually upon
application by the licensee or permittee accompanied by a \$13
license fee or \$5 permit fee.

46 **§7357. Investigation; grounds for suspension of license**

48 The commissioner shall investigate or cause to be
50 investigated all complaints made to the department and all cases
of noncompliance with or violation of sections 7354 to 7356 and
this section. Any person may register a complaint of fraud,

2 deceit, gross negligence, incompetency or misconduct against any
3 licensee or permittee. These complaints must be in writing, be
4 sworn to by the person making them and filed with the department.

5 1. Disciplinary action. The commissioner may suspend or
6 revoke a license or permit pursuant to sections 7077 to 7079 and
7 Title 5, section 10004. The commissioner may refuse to issue or
8 renew a license or the Administrative Court may revoke, suspend
9 or refuse to renew a license or permit for any one of the
10 following causes:

11 A. Procuring a license or permit by fraud or deceit
12 practiced upon the department or a purchaser;

13 B. Failure to meet the competency standards established
14 pursuant to section 7354;

15 C. Engaging in the art of taxidermy or taxidermy training
16 under a false name or alias with fraudulent intent;

17 E. Incompetence, negligence or neglect in the conduct of
18 the practice of the act of taxidermy or taxidermy training,
19 including, but not limited to, entering into a contractual
20 agreement with a customer to provide services and then
21 failing, without just cause, to provide the services as
22 agreed;

23 F. Failure to meet the qualifications for a license or
24 permit, including, but not limited to, failing to pass a
25 reexamination pursuant to section 7356, subsection 6; or

26 G. For any violation of sections 7354 to 7356 and this
27 section or any rules adopted pursuant to section 7354,
28 subsection 5.

29 2. Reissue of license or permit. The commissioner may
30 reissue a license or permit to any former licensee or permittee
31 whose license or permit has been revoked.

32 3. Hearings. Hearings may be conducted by the commissioner
33 to assist with investigations, to determine whether grounds exist
34 for suspension, revocation or denial of a license or permit, or
35 as otherwise necessary to implement the provisions of sections
36 7354 to 7356 and this section. The commissioner shall hold an
37 adjudicatory hearing at the written request of any person who is
38 denied a license or permit without a hearing for any reason other
39 than failure to pay a required fee, provided that the request for
40 hearing is received by the commissioner within 30 days of the
41 applicant's receipt of written notice of the denial of the
42 application, the reasons for the denial and the right to request
43 a hearing. Hearings must be conducted in conformity with the
44 Maine Administrative Procedure Act, Title 5, chapter 375,
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2 subchapter IV, to the extent applicable. The commissioner may
3 subpoena witnesses, records and documents in any hearing the
4 commissioner conducts.

5 4. Terms of revocation of license or permit. A person
6 whose license or permit has been revoked under this subsection
7 may not apply for a new license for a minimum of 3 years.

8
9 **Sec. C-5. Transition.** All licenses and permits issued
10 pursuant to the Maine Revised Statutes, Title 12, chapter 707,
11 subchapter X, former section 7351, remain in effect until they
12 expire pursuant to the terms under which they were issued.'

13 Further amend the bill by inserting after the emergency
14 clause and before the statement of fact the following:

15
16 **FISCAL NOTE**

17
18 Enactment of this bill would:

19
20 1. Result in a slight reduction in dedicated revenue in
21 fiscal year 1989-90 and a loss of General Fund revenue of
22 approximately (\$3,600) for fiscal year 1990-91. This estimate is
23 based on the proposal to reduce the fee for the nonresident guide
24 license from \$300 to \$75. It should be understood that this
25 license is issued for a 3-year term.

26
27 2. Establish an Advisory Board for the Licensing of
28 Taxidermists and make other procedural changes. The financial
29 impact of the board and the proposed changes, including the
30 adoption of rules, are expected to be minimal and all costs would
31 be absorbed by the Department of Inland Fisheries and Wildlife
32 utilizing existing budgeted resources. Also, this bill
33 establishes a taxidermist license application fee of \$10. The
34 additional revenue expected from the proposed application fee can
35 not be determined at this time.

36
37 3. Establish several new Class E crimes. These Class E
38 crimes could result in an increase in the workload of the
39 Judicial Department. However, these costs are expected to be
40 minimal and would be absorbed by the Judicial Department
41 utilizing existing budgeted resources.'

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45 **STATEMENT OF FACT**

46
47 Part A of this amendment amends the original bill as follows:

48
49 1. It deletes sections 5 and 6 of the original bill
50 concerning recordkeeping by hide dealers and the sale of the

hide, head or gall bladder of an animal by other than a hide dealer;

2. It revises section 9 of the original bill extending the deadline by which the Commissioner of Inland Fisheries and Wildlife must announce a decision to shorten bear hunting season. The bill proposed a March 1st deadline. This amendment establishes a February 1st deadline;

3. It amends sections 10 and 11 of the original bill by deleting the requirement that a bear hunter present the bear's rib cage with the rest of the bear in order to register that bear;

4. It amends sections 15, 17 and 19 of the original bill to reduce the proposed increase from \$500 to \$300 for the amount of property damage that must occur before a watercraft, snowmobile or ATV accident must be reported to a law enforcement officer; and

5. It removes the requirement in section 20 of the original bill that would have prohibited training dogs on wild birds and wild animals without a valid Maine hunting license.

Part B of the amendment adds new sections to the original bill that provide the following:

1. It amends the definition of "trap" to address both the trapping implement itself and the act of using the trapping implement. The amendment also makes it clear that killing an animal in a trap constitutes trapping and requires a trapping license;

2. It establishes clearly that any person whose bait dealer's license has been revoked is prohibited from assisting another bait dealer in selling or transporting live baitfish and smelts;

3. It allows guide license applicants to receive the required first aid training from sources other than the Red Cross provided that the training meets the criteria established by the commissioner through the rule-making process;

4. It removes the term "long bow" from the list of legal hunting methods and substitutes the term "hand-held bow," to account for the use of compound bows;

5. It changes the frequency a trapper must visit killer or drowning traps in the unorganized territory from 3 days to 5 days;

6. It prohibits a person who traps a bear from allowing another person to kill and register that animal;

COMMITTEE AMENDMENT "A" to H.P. 1621, L.D. 2243

2 7. It extends the open water fishing season one extra day,
if September 30th falls on a Saturday, to allow for a full
weekend of fishing at the end of the season;

4
6 8. It removes a provision from the boating laws that
currently prohibits a motorboat owner from transferring the
8 registration from one boat to another unless there are at least 6
months of unexpired time on the old registration. This law was
10 enacted when a motorboat registration was valid for 3 years. Now
that a registration is valid for only one year, this provision is
no longer appropriate;

12
14 9. It prohibits unlawful operation of a watercraft in the
water safety zone;

16 10. It amends the current law concerning the unlawful
operation of a snowmobile by prohibiting snowmobiles from
18 crossing railroad tracks after having been forbidden to cross the
railroad tracks or in an area that is conspicuously posted to
20 prohibit such crossings. This amendment conforms to changes
recently enacted in the ATV law; and

22
24 11. It expands the existing law to establish that
certification of any license-related record maintained within the
Department of Inland Fisheries and Wildlife is admissible as
26 evidence in court. The current law provides that department
certification of watercraft-related records maintained by the
28 Division of Licensing and Registration is admissible as evidence
in court. The expansion of this provision to include licensing
30 records of the entire department will resolve problems recently
encountered in 2 different courts when the defense successfully
32 challenged the commissioner's statutory authority to certify that
a person did not hold a valid guide's license.

34
36 Part C of the amendment establishes a licensing board for
taxidermists.

38 The amendment also adds a fiscal note.

Reported by the Committee on Fisheries and Wildlife
Reproduced and distributed under the direction of the Clerk of the
House
3/27/90 (Filing No. H-1012)