

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)

R. 018

L.D. 226

DATE: 6/13/95

(Filing No. H-458)

INLAND FISHERIES AND WILDLIFE

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 178, L.D. 226, Bill, "An Act to Strengthen the Laws Pertaining to Poaching"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 12 MRSA §7035, sub-§7, as enacted by PL 1979, c. 420, §1, is amended to read:

7. Sale of arms and ammunition. The commissioner may sell all ~~arms-and-ammunition~~ property held or confiscated by the State for violation of laws relating to the protection of inland fisheries and wildlife. ~~He~~ The commissioner shall transmit all ~~moneys~~ money received by the sales ~~forthwith~~ to the Treasurer of State to be credited to the department.

Sec. 2. 12 MRSA §7035, sub-§15 is enacted to read:

15. Possession and disposal of fish and wildlife. The commissioner may take possession of sick, injured or dead fish and wildlife that is not the property of another person. For any fish and wildlife possessed by the commissioner under this section, the commissioner may:

A. For sick or injured fish and wildlife, destroy that fish or wildlife when necessary in a manner consistent with the provisions of Title 17, section 1043; and

B. For dead fish or wildlife, dispose of that fish or wildlife in any manner considered appropriate by the commissioner.

COMMITTEE AMENDMENT

R 48

COMMITTEE AMENDMENT "A" to H.P. 178, L.D. 226

2 This subsection does not apply to fish or wildlife seized by the
3 commissioner under section 7907.

4 **Sec. 3. 12 MRSA §7071, sub-§6**, as enacted by PL 1979, c. 543,
5 §4, is repealed.

6 **Sec. 4. 12 MRSA §7077, sub-§1**, as amended by PL 1987, c. 317,
7 §3, is repealed and the following enacted in its place:

8 **1. Conviction of violation.** Any conviction for a violation
9 of chapters 701 to 721 is grounds for suspension of any license
10 or permit issued under this Part. Except where provided by law,
11 the commissioner shall determine the suspension period. To
12 suspend a license or permit based upon a conviction, the
13 commissioner shall follow the procedures under section 7077-B.
14 Suspensions and revocations of a license by the Administrative
15 Court are subject to the provisions of section 7101, subsection 8.

16 **Sec. 5. 12 MRSA §7077, sub-§1-A**, as enacted by PL 1993, c.
17 136, §1, is amended by repealing the first paragraph and enacting
18 the following in its place:

19 **1-A. Mandatory hunting license revocation for certain**
20 **violations.** The commissioner shall suspend a person's hunting
21 license for at least one year and may suspend any other license
22 issued under this Part and held by that person if that person is
23 convicted of a violation of one of the following:

24 **Sec. 6. 12 MRSA §7077, sub-§1-B**, as enacted by PL 1993, c.
25 136, §1, is amended by repealing the first paragraph and enacting
26 the following in its place:

27 **1-B. Mandatory fishing license revocation for certain**
28 **violations.** The commissioner shall suspend a person's fishing
29 license for at least one year and may suspend any other license
30 issued under this Part and held by that person if that person is
31 convicted of a violation of one of the following:

32 **Sec. 7. 12 MRSA §7077, sub-§1-B, ¶B**, as enacted by PL 1993, c.
33 136, §1, is amended to read:

34 B. Taking or possessing sport fish in violation of bag,
35 weight and size limits in violation of section 7604, as it
36 relates to trout, salmon, togue and black bass, whenever the
37 violation involves twice the general bag and possession
38 limit adopted by rule by the commissioner for that species
39 of fish in that body of water;

R 4/8

2 **Sec. 8. 12 MRSA §7077, sub-§2**, as amended by PL 1987, c. 317, §4, is repealed.

4 **Sec. 9. 12 MRSA §7077, sub-§§3, 5 and 6**, as enacted by PL 1979, c. 420, §1, are repealed.

6 **Sec. 10. 12 MRSA §7077, sub-§7**, as enacted by PL 1983, c. 329, §2, is repealed.

10 **Sec. 11. 12 MRSA §7077-A**, as enacted by PL 1993, c. 141, §1, is amended to read:

12 **§7077-A. Mandatory license revocation for certain violations**

14 **1. Shooting domestic animals.** Notwithstanding any other provision of this Part, a person convicted of shooting a domestic animal in violation of section 7406, subsection 14 is not eligible to obtain a license to hunt in this State for a period of at least 5 years from the date of conviction.

20 **2. Offenses against a person.** Notwithstanding any other provision of this Part, a person convicted of a violation of Title 17-A, chapter 9, if the offense occurred in the context of a hunting activity and if, through failure of the hunter to make proper target identification, the offense resulted in the injury or death of another person, is not eligible to obtain a license to hunt in this State for a period of at least 10 years from the date of the conviction.

30 ~~**3.-- Notice and hearing.--**The commissioner shall give notice to any person whose license has been revoked pursuant to this section as provided by section 7077, subsection 7.~~

34 ~~A.-- Any person whose licenses have been revoked under this section may, within 30 days of the effective date of the revocation, petition for a hearing before the commissioner to show cause why the licenses should not have been revoked.~~

38 ~~B.-- If, after the hearing, the commissioner finds that the person has not been convicted or that the conditions of subsection 1 or 2 do not apply, the revocation is rescinded. If the commissioner finds that the person has been convicted and that the conditions of subsection 1 or 2 apply, the revocation remains in effect. If the petitioner denies any of the facts contained in the record, the petitioner has the burden of proof.~~

48 **4. Conviction of violation of Title 17-A while hunting or fishing.** If a person holding a license or permit under this chapter is convicted of the violation of any provision of Title

R 018

COMMITTEE AMENDMENT "A" to H.P. 178, L.D. 226

2 17-A while on a hunting or fishing trip or in the pursuit of wild
3 animals, wild birds or fish, the commissioner may revoke the
4 license or permit held by that person for a period not to exceed
5 5 years, except when the killing or wounding of a human being has
6 occurred, in which case the commissioner may revoke the license
7 or permit for not less than 5 years.

8 5. Persons convicted of disturbing traps. A person
9 convicted of a violation of section 7432, subsection 7 is not
10 eligible to obtain any license issued by the department for 3
11 years from the date of conviction in the case of a first offense
12 and 5 years from the date of conviction in the case of a 2nd or
13 subsequent offense. Any license in effect at the time of
14 conviction is revoked upon conviction and must be immediately
15 surrendered to the commissioner.

16 ~~A hunting license held by a person whose license eligibility~~
17 ~~is restricted in accordance with subsection 1 or 2 is considered~~
18 ~~revoked on the date of conviction and must be surrendered to the~~
19 ~~commissioner.~~

22 A person whose privilege to hold a hunting license has been
23 revoked under this section becomes eligible to obtain a hunting
24 license at the end of the period of ineligibility described in
25 ~~subsection 1 or 2~~ this section only upon successful completion of
26 a firearms training program established under section 7035,
27 subsection 10 or some other ethics program established by the
28 commissioner.

30 **Sec. 12. 12 MRSA §§7077-B, 7077-C and 7077-D** are enacted to
31 read:

32 **§7077-B. Effective date for suspensions**

34 1. For mandatory suspensions. For violations having a
35 minimum statutory suspension period, a suspension is effective
36 upon conviction and the license holder must surrender the license
37 immediately to the commissioner. That person is not entitled to
38 a hearing under section 7077-D if the suspension period does not
39 exceed the minimum period of suspension required by law.

42 2. For all other suspensions. For violations that do not
43 have a minimum statutory suspension period, a suspension is
44 effective upon written notification of suspension by the
45 commissioner. That person must surrender that license to the
46 commissioner upon receipt of a notice of suspension and is
47 entitled to a hearing under section 7077-D.

48 The commissioner may require a person whose license is
50 suspended for a violation of section 7077 or 7077-A to complete

RWB

2 a course on hunting ethics prior to reinstatement of any
suspended license.

4 **§7077-C. Notice of suspension**

6 A decision by the commissioner to suspend a license of a
8 person convicted of a violation that does not carry a mandatory
10 suspension must be made within 60 days after that conviction.
12 The commissioner shall give written notice of all suspensions
14 immediately following a decision to suspend. A notice of
suspension must state the license or permit that is suspended and
the effective date and length of the suspension and must inform
the person of any applicable hearing provisions under section
7077-D.

16 **§7077-D. Hearings**

18 A person receiving a notice of suspension under section
20 7077-C may request a hearing on that suspension. A request for a
22 hearing must be in writing and must be made not later than 30
24 days after receipt of the suspension notice required under
section 7707-B. The commissioner shall notify the person of the
date and location of the hearing.

26 **1. Evidence.** A person may present evidence at a hearing
28 concerning the violation that might justify reinstatement of the
30 license or permit or the reduction of the suspension period. If
the petitioner denies any of the facts contained in the record,
the petitioner has the burden of proof.

32 **2. Decisions.** Decisions of the commissioner must be in
34 writing. Except as provided in subsection 3, the commissioner
36 may reinstate the license or permit or reduce the suspension
period if the commissioner finds that the person has not been
convicted or that reinstatement of the license or permit or
reduction of the suspension period would be in the best interests
of justice.

38 **3. Mandatory suspension period not waived.** The
40 commissioner may not waive or reduce any mandatory minimum
42 suspension period established in statute.

44 **Sec. 13. 12 MRSA §7101, sub-§8,** as amended by PL 1979, c. 618,
is further amended to read:

46 **8. Suspension and revocation.**

48 A. The commissioner may bring a complaint in the
50 Administrative Court seeking to revoke or suspend the
current hunting license or the privilege to obtain a hunting

COMMITTEE AMENDMENT "A" to H.P. 178, L.D. 226

license of any person who he the commissioner reasonably believes to have killed, wounded or recklessly endangered the safety of another human being while hunting. The Administrative Court shall revoke or suspend the person's license or privilege for a period ~~not-to-exceed~~ of at least 5 years if it finds that the person, while hunting, has killed, wounded or recklessly endangered the safety of another human being and the public safety will be endangered by the person's retention of his that license or privilege. For the purpose of this paragraph, "recklessly" has the same meaning as that set out in Title 17-A, section 10, subsection 3.

B. Any person described in paragraph A whose hunting license has been revoked or suspended, or whose right to hunt or the right to obtain a hunting license ~~for a period not-to-exceed-5-years~~ has been denied, may, after the expiration of one year from the date of the revocation or suspension, petition the commissioner for restoration of his the person's privilege to procure such a license.

C. The commissioner, after hearing, may restore the petitioner's privilege if he the commissioner determines that the public safety will not be endangered by it.

D. If the commissioner disallows the petition and thereby refuses to grant the restoration of his the privilege, the petitioner may appeal to the commissioner's advisory council which, after hearing on the petition, may allow it and restore the privilege.

Sec. 14. 12 MRSA §7235-A, sub-§7, as enacted by PL 1993, c. 438, §11, is amended to read:

7. Permit revocation for failure to report. The commissioner may revoke any permit issued under this section if the permit holder fails to meet the reporting requirements of subsections 5 and 6. The commissioner shall notify the permit holder of the revocation in accordance with ~~section--7077,~~ section 7077-C. A person whose permit has been revoked under this section may request a hearing before the commissioner. If, after hearing, the commissioner finds that the person met the reporting requirements of subsections 5 and 6, the revocation is rescinded. If the commissioner finds that the person did not meet the reporting requirements, the revocation remains in effect.

Sec. 15. 12 MRSA §7315, sub-§1-A, as enacted by PL 1993, c. 258, §1, is amended to read:

1-**A. Mandatory revocation.** The commissioner shall revoke for a period of 3 years the guide's license of a guide who is convicted of violating a provision of this Part punishable by a mandatory fine of not less than \$1,000 and at least 3 days in jail. The commissioner shall provide notice of revocation as provided in ~~section 7077, subsection 7~~ section 7077-C. A person whose license has been revoked under this subsection may, within 30 days of the effective date of the revocation, petition the commissioner for a hearing to show cause why the license should not have been revoked. If, after the hearing, the commissioner finds that the person has not been convicted or that the conditions of this subsection do not apply, the revocation is rescinded. If the commissioner finds that the person has been convicted and that the conditions of this subsection apply, the revocation remains in effect.

Sec. 16. 12 MRSA §7907, as enacted by PL 1979, c. 420, §1, is repealed and the following enacted in its place:

§7907. Seizure of fish, wildlife and equipment

1. Seizure; filing libel. All fish or wildlife hunted, trapped, fished, bought, sold, carried, transported or found in possession of any person in violation of chapters 701 to 721, and all equipment, including firearms, possessed or used in violation of chapters 701 to 721 are contraband and subject to seizure by any officer authorized to enforce chapters 701 to 721. Except for property exempted from libel under subsection 2, an officer making such a seizure shall file, within a reasonable time, with the court a libel against that property. The libel must describe the property seized and the date and place of that seizure, cite the provision of law that is alleged to have been violated and request a decree of forfeiture. The libel proceedings and disposal of property are governed by section 7909.

2. Exemption from libel proceedings. The following property may be lawfully seized under this section but is not subject to the libel requirements of this section:

A. Unless reasonable doubt exists as to ownership, property having a value less than \$10;

B. Any firearm seized in connection with a violation of:

(1) Section 7406, subsection 5;

(2) Section 7077, subsection 1-A; or

(3) Section 7077-A;

R 4/8

COMMITTEE AMENDMENT "A" to H.P. 178, L.D. 226

2 C. Any fishing equipment that is contraband under this
3 section and is seized in connection with a violation of
4 section 7077, subsection 1-B; and

5 D. Any fish or wildlife that is contraband under this
6 section and is seized in connection with any violation of
7 chapters 701 to 721.

8
9 Property seized by the commissioner that is exempt from libel
10 under this subsection must be retained by the commissioner
11 pending disposition of criminal proceedings and is forfeited to
12 the State upon conviction.

13 Property forfeited to the State under this section may be
14 disposed of by the commissioner in any manner considered
15 appropriate by the commissioner.

16
17 **Sec. 17. Application.** This Act does not apply to violations
18 that occurred prior to the effective date of this Act.'

19
20 Further amend the bill by inserting at the end before the
21 statement of fact the following:

22
23
24 **FISCAL NOTE**

25
26 Increasing the terms and types of mandatory license
27 revocations may result in insignificant reductions of General
28 Fund revenue from license fee collections.

29
30 The Department of Inland Fisheries and Wildlife will incur
31 some minor additional costs to administer these revocation and
32 notification provisions. These costs can be absorbed within the
33 department's existing budgeted resources.'

34
35 **STATEMENT OF FACT**

36
37
38 This amendment replaces the bill. The amendment makes
39 mandatory suspensions of licenses issued by the Department of
40 Inland Fisheries and Wildlife for poaching violations effective
41 upon conviction and nonmandatory suspensions for other types of
42 poaching violations effective upon notification by the
43 Commissioner of Inland Fisheries and Wildlife. The amendment
44 retains the minimum periods of mandatory suspension in current
45 law but broadens the commissioner's authority to set the term for
46 other suspensions. The amendment clarifies the hearing process
47 available to a person whose license has been suspended.

2 4 6
COMMITTEE AMENDMENT "A" to H.P. 178, L.D. 226

2 The amendment allows the commissioner to dispose of weapons
used in poaching violations after conviction without going
through the libel process.

4
6 The amendment applies to poaching violations that occur
after the effective date of the bill.

8 The amendment also adds a fiscal note to the bill.