

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1147

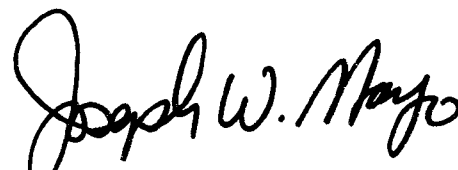
H.P. 824

House of Representatives, February 9, 1999

**An Act to Decriminalize Resource Protection Violations by Seafood  
Dealers.**

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Reference to the Committee on Business and Economic Development suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative VOLENIK of Brooklin.

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

2           **Sec. 1. 5 MRSA §12004-A, sub-§37-A** is enacted to read:

4                   **37-A. Board                   \$55/Day                   32 MRSA §15301**  
6 **of Seafood Dealers**

8           **Sec. 2. 10 MRSA §8001, sub-§38, ¶¶KK and LL**, as enacted by PL  
10 1995, c. 560, Pt. H, §4 and affected by §17, are amended to read:

12                   **KK. Board of Boiler Rules; and**

14                   **LL. Board of Elevator and Tramway Safety; and**

16           **Sec. 3. 10 MRSA §8001, sub-§38, ¶MM** is enacted to read:

18                   **MM. Board of Seafood Dealers.**

20           **Sec. 4. 12 MRSA §6858, sub-§7**, as enacted by PL 1977, c. 661,  
22 §5, is repealed.

24           **Sec. 5. 12 MRSA §6861-A, sub-§6**, as enacted by PL 1989, c.  
26 348, §13, is repealed.

28           **Sec. 6. 12 MRSA §6865** is enacted to read:

30                   **§6865. Enforcement**

32                   **Notwithstanding section 6404, the Board of Seafood Dealers,**  
34 **established in Title 5, section 12004-A, subsection 37-A, shall**  
36 **determine penalties for violations of this chapter under the**  
38 **provisions of Title 32, chapters 1-A and 135. A law enforcement**  
40 **officer must report a violation of this chapter to the Board of**  
42 **Seafood Dealers.**

44           **Sec. 7. 32 MRSA c. 135** is enacted to read:

46                                   **CHAPTER 135**

48                                   **SEAFOOD DEALERS**

**§15301. Board of Seafood Dealers**

**1. Establishment. The Board of Seafood Dealers within the**  
**Department of Professional and Financial Regulation, as**  
**established by Title 5, section 12004-A, subsection 37-A and**  
**referred to in this chapter as the "board," shall carry out the**  
**purposes of this chapter.**

2           2. Members. The board consists of the following 7 members:

4           A. Five seafood dealers licensed under Title 12, chapter  
6           625, appointed by the Governor. The seafood dealers must  
          represent the various types of seafood dealer businesses and  
          the coastal regions of the State:

8           B. One member of the public, appointed by the Governor; and

10          C. One member who is a representative of the Department of  
12          Marine Resources with expertise in matters relating to  
          seafood dealers, appointed by the Governor upon the  
          recommendation of the Commissioner of Marine Resources.

14          3. Timetable. The Governor shall make initial appointments  
16          to the board by January 1, 2000. The board shall elect a chair  
18          and secretary from among its members at its first meeting of each  
          year. A person may not serve as chair for more than 3 years.  
20          The commissioner shall call the first meeting of the board, which  
          must take place within 30 days of the completion of the  
          appointments of the initial members.

22          4. Terms of office. Of the first board members, the  
24          Governor shall appoint 3 for a term of one year; 2 for 2 years;  
26          and 2 for 3 years. Their successors must be appointed for terms  
          of 3 years each.

28          5. Removal. The Governor may remove any member of the  
30          board for cause and the reason for the termination of each  
32          appointment must be communicated to each member so terminated.  
          The appointment of any member of the board must be terminated if  
          a member is absent for 6 consecutive board meetings without good  
          and just cause that is communicated to the chair.

34          6. Meetings; quorum. The board shall hold monthly  
36          meetings. Additional meetings may be held upon the call of the  
38          chair or the secretary or upon the written request of any 2 board  
          members. Four members of the board constitute a quorum.

40          **§15302. Powers and duties of the board**

42          The board has the following powers and duties in addition to  
44          all other powers and duties otherwise set forth in this chapter.

46          1. Rules. The board may adopt, in accordance with the  
48          Maine Administrative Procedure Act, rules necessary to carry out  
          the purposes of this chapter. Rules adopted pursuant to this  
          chapter are major substantive rules as defined in Title 5,  
          chapter 375, subchapter II-A.

2           2. Complaints. The board shall investigate or cause to be  
investigated all complaints made on its own motion or on written  
4           complaint filed with the board and all cases of noncompliance  
with or violation of Title 12, chapter 625 or any rules adopted  
6           by the board.

8           3. Records. The board shall keep records and minutes as  
are necessary to the ordinary dispatch of its functions.

10           4. Reports. The board shall submit to the Commissioner of  
Professional and Financial Regulations an annual report of its  
12           operations for the preceding fiscal year no later than August 1st  
of each year.

14           5. Officers and secretary duties. The secretary shall keep  
16           records and minutes of all activities and meetings.

18           6. Hearings. The board shall conduct hearings to assist  
20           with investigations and to determine whether grounds exist for  
suspension or revocation of a license or as otherwise determined  
22           necessary to the fulfillment of its responsibilities under this  
chapter.

24           §15303. Disciplinary action grounds; procedure; complaints

26           1. Grounds. The board may suspend or revoke a license  
28           pursuant to Title 5, section 10004. In addition, the board may  
take any other action pursuant to Title 10, section 8003,  
30           subsection 5. The board's actions may be based on:

32           A. The practice of fraud or deceit in obtaining a license  
under Title 12, chapter 625 or in connection with service  
34           rendered within the scope of the license issued;

36           B. Aiding or abetting a person not duly licensed under  
Title 12, chapter 625 who represents that person as being so  
38           licensed;

40           C. Subject to the limitations of Title 5, chapter 341,  
conviction of a crime that involves dishonesty or false  
42           statement or that relates directly to the practice of  
seafood dealers or conviction of any crime for which  
44           incarceration for one year or more may be imposed; or

46           D. Violation of any provisions of this chapter or any rule  
of the board.

48           2. Procedure. Except as provided in Title 5, section  
50           10004, a license may not be suspended or revoked for the reasons

2 set forth in subsection 1 without prior written notice and  
3 opportunity for hearing on that suspension. The burden of proof  
4 is on the board in any proceeding to suspend or revoke a  
5 license. A license may not be suspended under this section  
6 except by majority vote of the board.

7  
8 3. Complaints. A person may file a complaint with the  
9 board seeking disciplinary action against the holder of a license  
10 issued under Title 12, chapter 625. Complaints must be in  
11 writing in a form prescribed by the board by rule. If the board  
12 determines that a complaint makes allegations that, if true,  
13 would require revocation or suspension or other disciplinary  
14 action, the board shall conduct a hearing pursuant to the Maine  
15 Administrative Procedure Act. When the board establishes that a  
16 complaint does not warrant a hearing, the complaint may be  
17 dismissed. Persons making complaints must be advised in writing  
18 of each formal decision made by the board regarding that  
19 complaint.

20 An individual whose license or registration has been suspended or  
21 revoked may apply to the board for licensure reinstatement one  
22 year after the date of the board's original action. A competency  
23 review is a condition of reinstatement. The board shall  
24 determine the nature of this review.

25 The board shall conduct its proceedings in accordance with the  
26 provisions of Title 5, chapter 375, subchapter IV.  
27

## 30 SUMMARY

31  
32 This bill establishes the Board of Seafood Dealers to  
33 enforce violations, review complaints against seafood dealers and  
34 take disciplinary action. The board consists of 7 members  
35 appointed by the Governor. Six members are licensed seafood  
36 dealers. One member is a representative of the Department of  
37 Marine Resources with expertise in matters relating to seafood  
38 dealers.