

# MAINE STATE LEGISLATURE

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L.D. 632

Date: 4/8/13

(Filing No. S-23)

**MARINE RESOURCES**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**126TH LEGISLATURE**

**FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 222, L.D. 632, Bill, "An Act To Improve Enforcement Mechanisms to the Elver Industry and To Make Technical Changes to Maine's Marine Resources Laws"

Amend the bill by striking out the title and substituting the following:

**'An Act To Enact Measures To Improve Enforcement Mechanisms in the Elver Industry'**

Amend the bill by striking out everything after the title and before the summary and inserting the following:

**'Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** elver prices are unusually high and elver purchasing transactions have created law enforcement difficulties; and

**Whereas,** the safety of the public and of law enforcement is at stake and elver season is already under way, and therefore it is necessary immediately to modify the strategies available to law enforcement to increase safety and accountability in the elver industry; and

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

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

**Sec. 1. 12 MRSA §6173, sub-§1,** as enacted by PL 2003, c. 170, §1, is amended to read:

**1. Collection and reporting of statistics.** The commissioner may, with the advice and consent of the advisory council, adopt rules to collect pertinent data with respect to the fisheries, including, but not limited to, information regarding the type and quantity of

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1 fishing gear used, catch by species in numbers of fish or weight, areas in which fishing  
2 was conducted, time of fishing, number of hauls and the estimated processing capacity of,  
3 and the actual processing capacity utilized by United States fish processors. The  
4 commissioner may collect statistics from any source and may require reporting of these  
5 statistics. The information collected by or reported to the commissioner is confidential  
6 and may not be disclosed in a manner or form that permits identification of any person or  
7 vessel, except when required by court order or when specifically permitted under this  
8 section. The commissioner may share data collected under this section with the National  
9 Marine Fisheries Service or successor organization for research or fisheries management  
10 purposes, ~~provided that~~ as long as federal laws and regulations protect the confidentiality  
11 of the shared data. The commissioner may share landings data collected under this  
12 subsection with the Bureau of Marine Patrol when necessary for the enforcement of  
13 reporting requirements under this section. The commissioner shall adopt rules to carry  
14 out the purposes of this section. Rules adopted under this section are routine technical  
15 rules pursuant to Title 5, chapter 375, subchapter 2-A.

16 **Sec. 2. 12 MRSA §6305, sub-§1-A** is enacted to read:

17 **1-A. Photo identification.** When a person is engaged in an activity for which a  
18 license is required under section 6505-A, that person shall, on the request of a marine  
19 patrol officer or other authorized person, present a government-issued identification card  
20 with the person's photograph and date of birth.

21 **Sec. 3. 12 MRSA §6404-A**, as amended by PL 2011, c. 549, §1, is further  
22 amended to read:

23 **§6404-A. Suspension or revocation based on conviction of molesting elver gear**

24 The commissioner shall suspend or revoke the elver fishing license of any license  
25 holder ~~adjudicated in court~~ convicted of violating section 6575-D.

26 **1. First offense.** For a first offense, the commissioner shall suspend the license  
27 holder's license for 3 years.

28 **2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke  
29 the license holder's license.

30 **Sec. 4. 12 MRSA §6404-H**, as enacted by PL 2011, c. 549, §2, is amended to  
31 read:

32 **§6404-H. Suspension or revocation based on conviction of an elver fishing license**  
33 **offense**

34 The commissioner shall suspend or revoke a person's eligibility for the elver lotteries  
35 under section 6505-A, subsection 2-B if the person is ~~adjudicated in court~~ or convicted of  
36 an offense in violation of section 6505-A, subsection 1.

37 **1. First offense.** For a first offense, the commissioner shall suspend the person's  
38 eligibility for the elver lotteries under section 6505-A, subsection 2-B for one year.

39 **2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke  
40 the person's eligibility for the elver lotteries under section 6505-A, subsection 2-B.

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**Sec. 5. 12 MRSA §6404-I**, as enacted by PL 2011, c. 549, §2, is amended to read:

**§6404-I. Suspension or revocation based on conviction of untagged elver gear**

The commissioner shall suspend or revoke the elver fishing license of any license holder ~~adjudicated in court~~ convicted of violating section 6505-B.

**1. First offense.** For a first offense, the commissioner shall suspend the license holder's license for one year.

**2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke the license holder's license.

**Sec. 6. 12 MRSA §6404-J**, as enacted by PL 2011, c. 549, §2, is amended to read:

**§6404-J. Suspension or revocation based on conviction of fishing during closed season or a closed period**

The commissioner shall suspend or revoke the elver fishing license of any license holder ~~adjudicated in court~~ convicted of violating section 6575 or 6575-A.

**1. First offense.** For a first offense, the commissioner shall suspend the license holder's license for one year.

**2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke the license holder's license.

**Sec. 7. 12 MRSA §6404-K**, as enacted by PL 2011, c. 549, §2, is amended to read:

**§6404-K. Suspension or revocation based on conviction of a violation of an elver dealer's license**

The commissioner shall suspend or revoke the elver dealer's license of any elver dealer's license holder ~~adjudicated in court~~ convicted of violating section 6864.

**1. First offense.** For a first offense, the commissioner shall suspend the license holder's license for one year.

**2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke the license holder's license.

**Sec. 8. 12 MRSA §6505-A, sub-§8**, as repealed and replaced by PL 2011, c. 549, §5, is repealed.

**Sec. 9. 12 MRSA §6505-A, sub-§8-A** is enacted to read:

**8-A. Violation.** A person who violates this section commits a Class D crime for which a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

**Sec. 10. 12 MRSA §6505-B, sub-§6**, as amended by PL 2011, c. 549, §6, is further amended to read:

**6. Violation.** A person who violates this section commits a ~~civil violation~~ Class D crime for which a fine of \$2,000 ~~may~~ must be adjudged imposed, none of which may be

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1 suspended. Violation of this section is a strict liability crime as defined in Title 17-A,  
2 section 34, subsection 4-A.

3 **Sec. 11. 12 MRSA §6575, sub-§5** is enacted to read:

4 **5. Violation.** A person who violates this section commits a Class D crime for which  
5 a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this  
6 section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

7 **Sec. 12. 12 MRSA §6575-A**, as amended by PL 2011, c. 549, §7, is repealed and  
8 the following enacted in its place:

9 **§6575-A. Closed period; elver harvesting**

10 **1. Prohibition.** It is unlawful for a person to fish for or take elvers from noon  
11 Tuesday to noon Wednesday and from noon Saturday to noon Sunday. A person may  
12 leave an elver fyke net or a Sheldon eel trap in the waters of the State during the closed  
13 period if the net or trap is left in a condition that prevents the capture of elvers. The  
14 terminal portion of a fyke net cod end must contain a rigid device with an opening not  
15 less than 3 inches in diameter and not exceeding 6 inches in length that is unobstructed by  
16 any other portion of the net.

17 **2. Violation.** A person who violates this section commits a Class D crime for which  
18 a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this  
19 section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

20 **Sec. 13. 12 MRSA §6575-C, sub-§1**, as amended by PL 2003, c. 452, Pt. F, §13  
21 and affected by Pt. X, §2, is repealed.

22 **Sec. 14. 12 MRSA §6575-D, sub-§2**, as amended by PL 2011, c. 549, §8, is  
23 further amended to read:

24 **2. Violation.** A person who violates this section commits a ~~civil violation~~ Class D  
25 crime for which a fine of \$2,000 ~~may~~ must be ~~adjudged~~ imposed, none of which may be  
26 suspended. Violation of this section is a strict liability crime as defined in Title 17-A,  
27 section 34, subsection 4-A.

28 **Sec. 15. 12 MRSA §§6575-G and 6575-H** are enacted to read:

29 **§6575-G. Dams with fishways; elver fishing**

30 **1. Dams with fishways.** A person may not fish for or take elvers within 150 feet of  
31 any part of a dam with a fishway or within 150 feet of a fishway.

32 **2. Violation.** A person who violates this section commits a Class D crime for which  
33 a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this  
34 section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

35 **§6575-H. Sale of elvers**

36 **1. Sale of elvers.** A person may not sell elvers for cash or credit or receive from any  
37 person any goods, wares, merchandise or other articles or form of payment in exchange  
38 for elvers other than a check that identifies both the seller and the buyer, each of whom  
39 must be a person holding a license issued under section 6864, a person who, pursuant to

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COMMITTEE AMENDMENT "A" to S.P. 222, L.D. 632

1 section 6864, subsection 9, is an authorized representative of a person holding a license  
2 issued under section 6864 or a person holding a license issued under section 6505-A.

3 **2. Violation.** A person who violates this section commits a Class D crime for which  
4 a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this  
5 section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

6 **Sec. 16. 12 MRSA §6864, sub-§7,** as amended by PL 2011, c. 549, §9, is further  
7 amended to read:

8 **7. Violation.** A person who violates this section commits a ~~civil violation~~ Class D  
9 crime for which a fine of \$2,000 may ~~must~~ be ~~adjudged~~ imposed, none of which may be  
10 suspended. Violation of this section is a strict liability crime as defined in Title 17-A,  
11 section 34, subsection 4-A.

12 **Sec. 17. 12 MRSA §6864, sub-§10,** as enacted by PL 2011, c. 549, §9, is  
13 amended to read:

14 **10. Purchase of elvers.** A person who holds an elver dealer's license, or the  
15 authorized representative of that person under subsection 9, may purchase elvers from  
16 licensed harvesters at locations other than the permanent facility identified on the license  
17 holder's license. The license holder or the license holder's authorized representative shall  
18 keep a record that identifies each harvester from which elvers were purchased and the  
19 amount of elvers purchased from each harvester. The license holder or the license holder's  
20 authorized representative shall make the record available for inspection by a marine  
21 patrol officer. ~~The license holder or the license holder's authorized representative may~~  
22 ~~not purchase elvers for cash or credit or provide to any person any goods, wares,~~  
23 ~~merchandise or other articles or form of payment in exchange for elvers other than a~~  
24 ~~check that identifies both the seller and the buyer, each of whom must be a person~~  
25 ~~holding a license issued under this section, a person who, pursuant to subsection 9, is an~~  
26 ~~authorized representative of a person holding a license issued under this section or a~~  
27 ~~person holding a license issued under section 6505-A.~~

28 **Sec. 18. 12 MRSA §6864, sub-§12** is enacted to read:

29 **12. Nonnegotiable checks.** A licensed elver dealer or an authorized representative  
30 of a licensed elver dealer may not purchase or attempt to purchase elvers with a  
31 nonnegotiable check.

32 **Sec. 19. 12 MRSA §6864, first ¶,** as amended by PL 2011, c. 549, §9, is further  
33 amended to read:

34 A holder of an elver dealer's license when buying directly from a harvester may buy  
35 only from a harvester who possesses an elver fishing license under section 6505-A. The  
36 harvester shall make the elver fishing license and a government-issued identification card  
37 with the harvester's photograph and date of birth available for inspection upon the elver  
38 dealer's license holder's request.

39 **Emergency clause.** In view of the emergency cited in the preamble, this  
40 legislation takes effect when approved.'

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**SUMMARY**

This amendment replaces the bill and adds an emergency preamble and an emergency clause. The amendment requires an elver harvester to provide, upon request of a law enforcement officer or elver dealer, a government-issued identification with the harvester's photograph and birth date. The amendment restricts the form of payment with respect to the sale and purchase of elvers to a check. The amendment converts many elver fishing violations that are currently civil violations to Class D crimes and requires courts to impose the maximum fine for those Class D crimes.

**FISCAL NOTE REQUIRED**  
(See attached)



# 126th MAINE LEGISLATURE

LD 632

LR 465(02)

**An Act To Improve Enforcement Mechanisms to the Elver Industry and To Make Technical Changes to Maine's Marine Resources Laws**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (S-23)**  
**Committee: Marine Resources**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund  
Minor revenue increase - General Fund

### Correctional and Judicial Impact Statements

Establishes new Class D crimes.

The collection of additional fines may also increase General Fund revenue by minor amounts.