

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

Sec. 7. 22 MRSA §6202, sub-§6-A is enacted to read:

6-A. Licensed adult day care program. A "licensed adult day care program" means a program of adult day care which has been licensed by the Department of Human Services according to section 8602.

Sec. 8. 22 MRSA §6202, sub-§8 is enacted to read:

8. Provider. "Provider" means any facility or program which meets the licensing and program standards of the department.

Sec. 9. 22 MRSA §6203, as enacted by PL 1983, c. 545, §1, is amended to read:

§6203. Rules; agreements

1. **Rules.** The department shall promulgate such rules as may be necessary for the effective administration of adult day care ~~and other services through long-term health care facilities~~ pursuant to this chapter, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. In the development of these rules, the department shall consult with the ~~associations representing long-term health~~ Maine Committee on Aging, the associations representing care facilities and with area agencies on aging.

2. **Agreements.** In order to provide adult day care and other services, the department ~~and the Bureau of Maine's Elderly~~ may enter into agreements with long-term health care facilities and community-based programs, separate and distinct from any other agreements between the department and the same facility or programs.

Any facility ~~participating in this demonstration or program providing adult day care pursuant to this chapter~~ shall enter into an agreement with the department. Each agreement shall specify, among other things, the services to be provided, the fees for services, the method of payment, records to be maintained and the provisions for evaluating the services provided.

Sec. 10. 22 MRSA §§6204, 6205, 6206 and 6207, as enacted by PL 1983, c. 545, §1, are repealed.

Sec. 11. 22 MRSA §6208, as enacted by PL 1983, c. 545, §1, is repealed and the following enacted in its place:

§6208. Report

A report of services provided pursuant to this chapter shall be included in the annual Maine Social Services Report.

Sec. 12. 22 MRSA §6209 is enacted to read:

§6209. Funds

1. Distribution. The department shall disburse funds, pursuant to this Subtitle, in a manner that ensures, to the extent practicable, equitable distribution of services

among adults with long-term care needs and the various regions of the State.

2. Fee scale. The department shall develop, wherever practicable, sliding fee scales for adult day care services provided pursuant to this Subtitle.

See title page for effective date.

CHAPTER 348

H.P. 201 - L.D. 281

An Act to Amend Certain Provisions of the Marine Resources Laws

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

Sec. 1. 5 MRSA §945, sub-§1, as amended by PL 1985, c. 481, Pt. A, §10, is further amended to read:

1. **Major policy-influencing positions.** The following positions are major policy-influencing positions within the Department of Marine Resources. Notwithstanding any other provision of law, these positions and their successor positions shall be subject to this chapter:

A. Deputy Commissioner; ~~and~~

B. Chief, Bureau of Marine Patrol; and

D. Assistant to the Commissioner for Public Information.

Sec. 2. 12 MRSA §6001, sub-§10, as enacted by PL 1977, c. 661, §5, is amended to read:

10. **Crayfish.** "~~Crawfish~~" "Crayfish" means all species of from either fresh or salt water including, but not limited to, the family Palinuridae, including the representative genera ~~Panulirus, Jasus, Galathea and Panulirus~~ Palinurus, which have been called by such terms including, but not limited to, rock lobster, spiny lobster, sea crawfish, red lobster, thorny lobster, langoust, langoustini, langostino, crayfish, Sidney crawfish, kreef, Cuban rock lobster, African lobster or African crawfish.

Sec. 3. 12 MRSA §6022, sub-§3, as amended by PL 1985, c. 785, Pt. B, §65, is further amended to read:

3. **Organization and personnel.** The commissioner shall organize the department into the administrative units which ~~he~~ the commissioner decides are necessary to carry out its duties. The commissioner shall hire all necessary employees of the department subject to the Civil Service Law, except that persons in the following positions shall be appointed by and serve at the pleasure of the commissioner: Deputy Commissioner; Chief, Bureau of Marine Patrol; and Assistant to the Commissioner for Public Information. The Chief of the Bureau of Marine Patrol shall be appointed

from among the patrol personnel of the bureau with the rank of sergeant or higher. In the event that the Chief of the Bureau of Marine Patrol is not reappointed, ~~he~~ that person shall have the right to be restored to the classified position from which ~~he~~ that person shall have been promoted or to a position equivalent thereto in salary grade without impairment of ~~his~~ that person's personnel status or the loss of seniority, retirement or other rights to which uninterrupted service in the classified position would have entitled ~~him~~ that person. If ~~his~~ that person's service in the position of Chief of the Bureau of Marine Patrol shall be terminated for cause, ~~his~~ that person's right to be so restored shall be determined by the State Civil Service Appeals Board.

Sec. 4. 12 MRSA §6306, sub-§3 is enacted to read:

3. Refusal. Refusal to permit inspection or seizure shall be a basis for suspension of any or all licenses under this chapter.

Sec. 5. 12 MRSA §6601, sub-§2, as enacted by PL 1977, c. 661, §5, is amended to read:

2. Licensed activities. The holder of a shellfish license may fish for or take shellfish or possess, ship or transport within the state limits or sell shellstock ~~he~~ the holder has taken. The holder may also shuck, in the holder's home, shellfish ~~he~~ the holder has taken and sell those shucked shellfish from ~~his~~ that home in the retail trade. This license shall not authorize the holder to fish for or take shellfish in violation of a municipal ordinance adopted pursuant to section 6671.

Sec. 6. 12 MRSA §6745, sub-§4, as enacted by PL 1987, c. 328, §3, is amended to read:

4. Exception. In any one day, any person may take or possess not more than 2 bushels of shell mussels ~~or 4 quarts of shucked mussels~~ for personal use without a mussel license.

Sec. 7. 12 MRSA §6746, sub-§4, as enacted by PL 1987, c. 328, §3, is amended to read:

4. Exception. In any one day, any person may take or possess not more than 2 bushels of shell ~~mussel~~ or 4 quarts of shucked mussels for personal use without a mussel license.

Sec. 8. 12 MRSA §6851, sub-§2, ¶¶B and C, as enacted by PL 1977, c. 661, §5, are amended to read:

B. Within or beyond the state limits, buy, sell, ~~process or~~ shuck, pack, ship, or within the state limits, transport fresh or frozen shellfish to the extent these activities are expressly authorized by a shellfish certificate issued under section 6856; ~~or~~

C. Buy, sell, process, ship or, within the state limits, transport lobster and properly permitted or lawfully imported lobster meat or parts. This license shall not

authorize removing lobster meat from the shell unless a permit under section 6857 is held; or

Sec. 9. 12 MRSA §6851, sub-§2, ¶D is enacted to read:

D. Buy, sell, process, ship or, within the state limits, transport crayfish.

Sec. 10. 12 MRSA §6852, sub-§2, ¶¶B and C, as enacted by PL 1977, c. 661, §5, are amended to read:

B. Shucked shellfish, if they are bought from a wholesale seafood license holder certified under section 6856; ~~or~~

C. Lobster parts or meat, if they are properly permitted under section 6857, or have been lawfully imported; or

Sec. 11. 12 MRSA §6852, sub-§2, ¶D is enacted to read:

D. Crayfish.

Sec. 12. 12 MRSA §6861, as amended by PL 1987, c. 513, §9, is repealed.

Sec. 13. 12 MRSA §6861-A is enacted to read:

§6861-A. Permitted and prohibited activities for crayfish dealers

1. Meat. Crayfish meat is subject to the following prohibitions.

A. It is unlawful to possess crayfish meat removed from the shell except as follows:

- (1) For immediate personal consumption;
- (2) For the purpose of serving the meat immediately to a customer;
- (3) Under refrigeration and in its original container, clearly labeled as crayfish, with the country or state of origin clearly disclosed; or
- (4) Mixed with other food if receipts are available to prove the product is crayfish.

A violation of this paragraph is subject to the general penalty provisions of section 6204.

B. It is prima facie evidence that lobster or crayfish meat is illegal lobster meat if the crayfish or lobster meat is outside the shell; is not in its original container and clearly labeled as crayfish, with the country or state of origin clearly disclosed; and:

- (1) Does not meet the legal length requirements for lobster established in section 6858; or

(2) Is unmixed with any other food and there are no receipts available to prove the product is crayfish.

A violation of this paragraph is subject to the penalties provided by section 6858.

2. Mix or commingle. It shall be unlawful to mix or commingle crayfish in any form with lobster or to possess such a mixture or to cause or allow it to be done.

3. List. It shall be unlawful to list, label, advertise, sell, offer for sale or represent, for the purpose of sale, crayfish as lobster or imitation lobster, unless the country or state of origin is clearly disclosed or the listing, labeling or advertising is designed to clearly and affirmatively reflect the product being offered for sale.

4. Records. Any person, licensed under section 6851 or 6852 who deals in crayfish, shall make records available to a marine patrol officer on demand.

5. Rules. The commissioner shall adopt or amend any rules necessary to supervise and control licensees dealing in crayfish and to protect the interests of the State in the conduct, management and operation of the business of dealing in crayfish to assure compliance with this section.

6. Penalty. Violation of this section shall be a Class D crime, except that the court shall impose a fine of not less than \$100.

7. License exception for bait purposes. A license shall not be required for crayfish kept or sold for bait purposes and marked or labeled "Not for Human Consumption."

See title page for effective date.

CHAPTER 349

S.P. 171 - L.D. 328

An Act to Clarify the Applicability of the Maine Tort Claims Act to the Consumer Advisory Board

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

Sec. 1. 14 MRSA §8102, sub-§1, as repealed and replaced by PL 1987, c. 737, Pt. C, §§27 and 106, and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10; and c. 769, Pt. A, §52, is repealed and the following enacted in its place:

1. Employee. "Employee" means a person acting on behalf of the governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials, volunteer firefighters as defined in Title 30-A, section 3151, emergency medical

service personnel, members and staff of the Consumer Advisory Board pursuant to Title 34-B, section 1216, Maine National Guardsmen while receiving state active duty pay under Title 37-B, section 143, in accordance with Title 37-B, sections 181 to 183 and 742, and while engaged in the Domestic Action Program, but the term employee does not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

Sec. 2. 34-B MRSA §1216 is enacted to read:

§1216. Consumer Advisory Board

1. Responsibilities. The Consumer Advisory Board, as established by the Pineland Consent Decree, functions as an independent body which carries out responsibilities pursuant to appendices A and B of the consent decree and subsequent agreements approved by the United States District Court for the District of Maine.

2. Maine Tort Claims Act. The Consumer Advisory Board members and staff act as employees of the State, as defined in Title 14, section 8102, subsection 1, when engaged in official duties specified in the consent judgment or assigned by the board.

See title page for effective date.

CHAPTER 350

S.P. 491 - L.D. 1333

An Act to Amend the Laws Concerning the Use of Seat Belts

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

29 MRSA §1368-C, as amended by PL 1987, c. 402, Pt. C, §§8 and 9, is further amended to read:

§1368-C. Use of seatbelts; children at least 4 but under 16 years of age

1. Children at least 4 but under 16 years of age. When a child 4 years of age or older, but less than ~~13~~ 16 years of age, is a passenger in a motor vehicle, which is required by the United States Department of Transportation to be equipped with seat belts, the operator of the motor vehicle shall have the child properly secured in a seat belt or in a child safety seat that meets the requirements set out in 49 Code of Federal Regulations, Part 571.

2. Exception. Subsection 1 does not apply when the number of passengers exceeds the seating capacity of the vehicle.

3. Warnings. Any person stopped for a violation of this section, during the initial 6 months after this section