

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

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

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
OCTOBER 9, 1991

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

ciples and practice of engineering, and is otherwise qualified, shall be registered to practice engineering in this State.

Sec. 6. 32 MRSA §1353, as amended by PL 1983, c. 413, §48, is further amended to read:

§1353. Application; fees

Application for registration as a professional engineer or certification as an engineer-in-training ~~shall be~~ is on a form prescribed and furnished by the board; ~~shall contain~~ contains statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical experience, and ~~shall contain~~ contains references as set forth in section 1352, none of whom may be members of the board. An application fee and an examination fee may be established by the board in amounts which are reasonable and necessary for their respective purposes.

The registration fee for professional engineers ~~shall be~~ is established by the board in an amount not to exceed ~~\$25~~ \$40.

The registration fee for engineer-in-training certification or enrollment ~~shall be~~ is established by the board in an amount not to exceed 1/2 of the registration fee for professional engineers. ~~The fee paid by an applicant for certification or enrollment as an engineer-in-training shall be credited as the initial payment if and when application is made for registration as a professional engineer.~~

Sec. 7. 32 MRSA §1357, as amended by PL 1983, c. 413, §50, is further amended to read:

§1357. Expiration and renewals

Certificates of registration ~~shall~~ expire on the last day of December of odd-numbered years following their issuance or renewal and ~~shall~~ become invalid on that date unless renewed. It ~~shall be~~ is the duty of the secretary of the board to notify every person registered under this chapter of the date of the expiration of ~~his~~ that person's certificate and the amount of the fee that ~~shall be~~ is required for its renewal for a 2-year period, except when the applicant has become registered during the first year of the 2-year period, then the renewal fee ~~shall be~~ is for the remaining one year of that 2-year period. The notice ~~shall~~ must be mailed at least one month in advance of the date of the expiration of the certificate. Renewal may be effected at any time ~~during the month of December~~ after receipt of notice by the payment of a fee ~~designated~~ established by the board, according to its rules which ~~shall~~ may not exceed ~~\$15~~ \$50 annually ~~or be less than \$5 annually~~. Registration may be renewed up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than

90 days after the registration renewal date ~~shall be~~ is subject to all requirements governing new applicants under this chapter, except that the board may in its discretion, giving due consideration to the protection of the public, waive examination if the renewal application is made within 3 years from the date of the expiration.

Sec. 8. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1991-92	1992-93
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
State Board of Registration for Professional Engineers		
All Other	\$3,000	\$1,000
Provides funds for the printing costs associated with expanding the biennial and supplemental rosters.		

See title page for effective date.

CHAPTER 443

H.P. 1226 - L.D. 1784

An Act to Amend Certain Provisions of the Inland Fisheries and Wildlife Laws

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

Sec. 1. 12 MRSA §7001, sub-§1-A, ¶¶T and U, as enacted by PL 1985, c. 607, §1, are amended to read:

T. White sucker, (*Catostomus commersoni*); ~~and~~

U. Creek chubsucker, (*Erimyzon oblongus*); and

Sec. 2. 12 MRSA §7001, sub-§1-A, ¶V is enacted to read:

V. American eel (*Anquilla rostrata*)

Sec. 3. 12 MRSA §7001, sub-§1-C, as enacted by PL 1987, c. 212, §1, is amended to read:

1-C. Bear bait. "Bear bait" means any animal or plant or derivative of an animal or plant used to attract bear. "Bear bait" does not include any packaging or container materials that fall within the definition of litter under Title 17, section 2263.

Sec. 4. 12 MRSA §7001, sub-§§1-D, 14-A, 33-C, 33-D and 38-A are enacted to read:

1-D. Artificial lure. "Artificial lure" means any fishing lure constructed by humans as an imitation or substitute for natural bait or fish forage. "Artificial lure" includes, but is not limited to, artificial flies, spinners, spoons, poppers, plugs, jigs and plastic, rubber or other artificial imitations of natural bait.

An artificial lures only rule prohibits the use of any live, dead or chemically preserved natural or organic bait or food.

14-A. Hook. "Hook" means a single fishhook constructed with one, 2 or 3 points.

33-C. Set line. "Set line" means a line extending into the water and rigged to catch fish that has one end secured to the shore or to a fixed or buoyant object and that is not personally attended.

33-D. Single-baited hook. "Single-baited hook" means up to 3 hooks attached together or in tandem to the end of a line and baited as a single apparatus designed to catch only one fish at a time.

38-A. Troll. "Troll" means to fish by trailing a line rigged to catch fish through or over the water behind a watercraft being propelled by mechanical, wind or manual power.

Sec. 5. 12 MRSA §7001, sub-§13-A, as enacted by PL 1983, c. 329, §1, is amended to read:

13-A. Habitual violator. "Habitual violator" means any person whose record, as maintained by the department, shows that the person has been convicted of 3 or more of the prohibited acts contained in chapters 701 to 713 and 717 to 721 within the previous 5-year period, provided except that, whenever more than one prohibited act is violated at the same time, multiple convictions shall be considered as are deemed to be one offense. For purposes of this subsection, records maintained by the department shall commence on January 1, 1984.

Sec. 6. 12 MRSA §7034, sub-§2, as enacted by PL 1979, c. 420, §1, is amended to read:

2. Administration and enforcement. Except as provided by existing statute, the commissioner shall have has general supervision of the administration and enforcement of the inland fisheries and wildlife laws and shall have has the responsibility for the management of all inland fish and wildlife in the State. The commissioner has responsibility for investigations carried out on behalf of the State in matters related to the status and needs of any inland fisheries and wildlife species and is the representative of the State in providing information associated with the status and needs of these natural

resources to municipalities, political subdivisions of the State and the Federal Government.

Sec. 7. 12 MRSA §7076, sub-§4-A, as amended by PL 1989, c. 493, §12, is further amended to read:

4-A. Resident disabled veterans. A complimentary license to hunt or fish; or a combination hunting and fishing license and, if requested, a pheasant hunting permit, shall a muzzle-loading hunting license under section 7107-A may be issued to any resident of the State who:

A. Is a veteran, as defined in Title 37-B, section 505, subsection 1, paragraph A, subparagraph (5);

B. Has a service-connected disability evaluated at 100%; and

C. Applies for that license to the commissioner.

This application shall must be accompanied by evidence satisfactory to the commissioner that the applicant meets the requirements of this subsection. Each license issued under this subsection shall remain remains valid through December 31st of the 2nd complete calendar year following the year of issuance.

Sec. 8. 12 MRSA §7102, sub-§4, 1A, as amended by PL 1989, c. 913, Pt. A, §2, is further amended to read:

A. It is legal, except as otherwise provided in chapters 701 to 721, to hunt any wild animal or wild bird by bow and arrow during any open season on that animal or bird.

Sec. 9. 12 MRSA §7102, sub-§4, 1C, as enacted by PL 1981, c. 414, §17, is amended to read:

C. An archery hunting license is required for persons 16 years of age or older to hunt any species of wild animal or wild bird with bow and arrow during the special archery season on deer open season described in paragraph B.

Sec. 10. 12 MRSA §7102, sub-§7, as enacted by PL 1987, c. 354, §1, is amended to read:

7. Archery hunter training program requirements. Any person who applies for an archery hunting license, other than a junior license, shall must submit proof of having successfully completed an education course of the type described in subsection 8 and approved by the commissioner, or satisfactory evidence of having previously held an adult archery hunting license, which allowed hunting with bow and arrow, in this State or any other state, province or country in any year after 1977, or having successfully completed a hunter safety course as provided in section 7035, subsection 10.

When proof or evidence ~~cannot~~ can not otherwise be provided, the person may substitute a signed affidavit that ~~he~~ the person has previously held the required adult ~~archery~~ hunting license or ~~that he~~ has successfully completed the required ~~archery~~ hunter education course.

Sec. 11. 12 MRSA §7103, as amended by PL 1983, c. 807, Pt. P, §5, is repealed.

Sec. 12. 12 MRSA §7103-A is enacted to read:

§7103-A. Falconry hunting permit

1. Eligibility. Any person who possesses a valid hunting license is eligible to obtain a permit from the commissioner to engage in the practice of falconry.

2. Issuance. The commissioner shall issue permits to eligible persons to engage in the practice of falconry at a fee of \$20.

3. Restrictions. Falconry hunting is subject to the following limitations.

A. Persons who hold valid falconry hunting permits may take, possess and use any raptor, except as provided in chapters 701 to 721 or by federal regulation and except as the commissioner may by rule provide.

B. Persons engaged in the practice of falconry are subject to all rules adopted by the commissioner pertaining to seasons and bag limits on wild birds and wild animals.

4. Exceptions. A person not a resident of the State who holds a valid permit to engage in the practice of falconry in another state may import and use raptors in this State for up to 30 days solely for the purpose of hunting without the permit described in this section if that person holds a valid Maine hunting license issued in accordance with section 7101. A person must have both the permit to engage in the practice of falconry in the other state and the Maine hunting license in possession at all times while engaged in the practice of falconry in this State. These documents must be exhibited to any warden or employee of the department upon request.

5. Rules. The commissioner may adopt any rules necessary for the proper administration and enforcement of this section.

Sec. 13. 12 MRSA §7107-A, sub-§1, as enacted by PL 1985, c. 320, §2, is amended to read:

1. Eligibility. Any person who will be ~~46~~ 14 years of age or older at the beginning of the special season ~~in~~ established under subsection 4; may obtain a muzzle-loading license from the commissioner or ~~his~~ the commissioner's authorized agent, provided that ~~that~~ the person possesses a valid license to hunt big game. The

muzzle-loading hunting license ~~shall~~ must be in the form of a stamp ~~which shall~~ that must be affixed to the person's big game hunting license. The stamp ~~shall~~ must bear the words "RIGHT TO BEAR ~~ARMS~~": ARMS."

Sec. 14. 12 MRSA §7110, sub-§5, as repealed and replaced by PL 1989, c. 878, Pt. A, §34, is repealed.

Sec. 15. 12 MRSA §7154, sub-§3, as repealed and replaced by PL 1989, c. 493, §19, is amended to read:

3. Fee. The fee for a permit to conduct a one-day bass tournament ~~shall be \$35~~ is \$20.

Sec. 16. 12 MRSA §7155, sub-§3, as enacted by PL 1985, c. 234, §2, is amended to read:

3. Issuance. The commissioner, following a determination that the person has complied with all rules promulgated pursuant to this section, may issue a permit to the applicant authorizing the conduct of the derby or tournament. Persons who have conducted derbies or tournaments in the requested body of water in the past which have conformed with all rules ~~shall~~ must be given preference in the issuance of permits.

The fee for a permit shall be \$10.

Sec. 17. 12 MRSA §7155, sub-§4 is enacted to read:

4. Fee. The fee for a permit to conduct a fishing derby or fishing tournament is \$20.

Sec. 18. 12 MRSA §7315, as enacted by PL 1987, c. 742, §7, is repealed and the following enacted in its place:

§7315. Guide license revocation

1. Conditions for revocation. The commissioner may suspend or revoke a guide license pursuant to section 7077 to 7079 and Title 5, section 10004. The commissioner may revoke, suspend, refuse to issue or refuse to renew a guide license or the Administrative Court may revoke or suspend a guide license in any one of the following circumstances:

A. If the guide fails to meet the standards of competency established pursuant to section 7314;

B. If the guide fails to meet the qualifications for a guide license, including, but not limited to, failure to pass a reexamination conducted pursuant to section 7313, subsection 4; or

C. If the guide is found to be incompetent, negligent or neglectful in the conduct of guiding activities, including, but not limited to, entering into a contrac-

tual agreement with a client to provide services and then failing, without just cause, to provide the services as agreed.

Sec. 19. 12 MRSA §7316, as enacted by PL 1987, c. 742, §7, is repealed.

Sec. 20. 12 MRSA §7377, sub-§1, as enacted by PL 1979, c. 420, §1, is amended to read:

1. Hunting. Notwithstanding section 7371 as it applies to subchapter II, any resident over 10 years of age and any member of ~~his~~ the resident's immediate family over 10 years of age may hunt without a license, including an archery hunting license and a muzzle-loading license, on any single plot of land:

- A. To which they are legally entitled to possession;
- B. On which they are actually domiciled;
- C. Which is used exclusively for agricultural purposes; and
- D. Which is in excess of 10 acres.

Sec. 21. 12 MRSA §7406, sub-§3, as enacted by PL 1979, c. 420, §1, is repealed and the following enacted in its place:

3. Hunting under the influence or with excessive blood-alcohol level. A person is guilty of a Class E crime if that person hunts wild animals or wild birds:

A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs; or

B. While having 0.08% or more by weight of alcohol in that person's blood.

Sec. 22. 12 MRSA §7406, sub-§3-A is enacted to read:

3-A. Failure to comply with duty to submit. A person is guilty of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7408 if that person refuses to submit to or fails to complete a blood-alcohol test when requested to do so by a law enforcement officer who has probable cause to believe that the person is hunting wild animals or wild birds while under the influence of intoxicating liquor.

Sec. 23. 12 MRSA §7406, sub-§5, as enacted by PL 1979, c. 420, §1, is amended to read:

5. Night hunting. A person is guilty of night hunting if ~~he~~ that person:

- A. Hunts wild birds from sunset to 1/2 hour before sunrise of the following day; or

B. Hunts wild animals, except raccoons and coyotes as provided in chapters 701 to 721, from 1/2 hour after sunset until 1/2 hour before sunrise the following day.

Sec. 24. 12 MRSA §7408 is enacted to read:

§7408. Implied consent to chemical tests

Any person who hunts wild animals or wild birds within this State has a duty to submit to a test to determine that person's blood-alcohol level by analysis of blood or breath if there is probable cause to believe that the person is hunting wild animals or wild birds while under the influence of intoxicating liquor. The duty to submit to a blood-alcohol test includes the duty to complete either a blood or breath test. Tests and procedures for determining whether a person is under the influence of intoxicating liquor are governed by section 7912.

Sec. 25. 12 MRSA §7454, sub-§4, as enacted by PL 1979, c. 420, §1, is repealed.

Sec. 26. 12 MRSA §7466, as amended by PL 1979, c. 732, §§11 and 31, is repealed.

Sec. 27. 12 MRSA §7503, sub-§2, as amended by PL 1981, c. 644, §28, is further amended to read:

2. Deer, moose and bear.

A. The operator or owner having knowledge of any motor vehicle which has been involved in an accidental collision with a deer, moose or bear shall, by the quickest means, report the accident to a ~~game warden~~ law enforcement officer.

B. The ~~warden~~ officer shall investigate and, if ~~he~~ the officer finds that the motor vehicle has encountered apparent damage as the result of the collision, ~~he~~ she shall give a certificate ~~to the person entitling him which entitles the person to the ownership of the carcass.~~ The person may then take possession and immediately remove the entire carcass from the scene of the collision.

Sec. 28. 12 MRSA §7552, sub-§5, ¶B, as enacted by PL 1979, c. 420, §1, is repealed.

Sec. 29. 12 MRSA §7552, sub-§5, ¶C, as amended by PL 1989, c. 913, Pt. A, §10, is repealed.

Sec. 30. 12 MRSA §7553, sub-§1, ¶B, as amended by PL 1989, c. 493, §42, is repealed and the following enacted in its place:

B. At the following places, the fishway and the area within 75 feet of any part of the fishway are closed to fishing at all times:

(1) Grand Falls Powerhouse Dam on the St. Croix River in Baileyville; and

(2) Woodland Dam on the St. Croix River in Baileyville;

Sec. 31. 12 MRSA §7553, sub-§1, ¶B-1 is enacted to read:

B-1. At the following places, the area within 75 feet of the mouth of the fishway is closed to fishing at all times:

(1) East Grand Lake Dam in Forest City Township, T9 R4 NBPP; and

(2) Spednic Lake Dam in Vanceboro;

Sec. 32. 12 MRSA §7652, sub-§3, ¶B, as amended by PL 1985, c. 304, §19, is further amended to read:

B. The following areas ~~shall be~~ are classified as state-owned wildlife management areas:

Alonzo H. Garcelon (Mud Mill Flowage) -- Augusta, Windsor -- Kennebec County.

Brownfield -- Brownfield, Denmark, Fryeburg -- Oxford County.

Bud Leavitt (Bull Hill) -- Atkinson, Charleston, Dover Foxcroft and Garland -- Penobscot and Piscataquis Counties.

Cesar Pond -- Bowdoin -- Sagadahoc County.

Chesterville -- Chesterville -- Franklin County.

Coast of Maine -- ~~certain coastal islands in Washington, Hancock, Knox, Lincoln, Cumberland, Waldo, Sagadahoc and York Counties~~ all state-owned coastal islands that are owned or managed by the Department of Inland Fisheries and Wildlife.

David Priest (Dwinal Pond) -- Lee, Winn -- Penobscot County.

Dickwood Lake -- Eagle Lake -- Aroostook County.

Earle R. Kelley (Dresden Bog) -- Alna, Dresden -- Lincoln County.

Fahi Pond -- Embden -- Somerset County.

Francis D. Dunn (Sawtelle Deadwater) -- T6 R7 WELS -- Penobscot County.

Gene Letourneau (Frye Mountain) -- Montville, Knox, Morrill -- Waldo County.

George Bucknam (Belgrade Stream) -- Mount Vernon -- Kennebec County.

Great Works -- Edmunds Twp. -- Washington County.

Jonesboro -- Jonesboro -- Washington County.

Long Lake -- St. Agatha -- Aroostook County.

All of Long Lake within the Town of St. Agatha.

Lyle Frost -- (formerly Scammon), Eastbrook, Franklin -- Hancock County.

Madawaska -- Palmyra -- Somerset County.

Mainstream -- Cambridge -- Somerset County.

Manuel -- Hodgdon, Cary Plt., Linneus -- Aroostook County.

Maynard F. Marsh (Killick Pond) -- Hollis, Limington -- York County.

Mercer Bog -- Mercer -- Somerset County.

Merrymeeting Bay -- Dresden and Bowdoinham -- Lincoln and Sagadahoc Counties.

~~Vernon S. Walker -- Newfield Shapleigh -- York County.~~

Muddy River -- Topsham -- Sagadahoc County.

Narraguagus Junction -- Cherryfield -- Washington County.

Old Pond Farm -- Maxfield-Howland -- Penobscot County.

Orange River -- Whiting -- Washington County.

Peaks Island -- Portland -- Cumberland County.

Pennamaquam -- Pembroke-Charlotte -- Washington County.

Ruffingham -- Montville-Searsmont -- Waldo County.

St. Albans -- St. Albans -- Somerset County.

~~Steep Falls -- Standish, Baldwin -- Cumberland County.~~

Sandy Point -- Stockton Springs -- Waldo County.

Scarborough -- Scarborough-Old Orchard Beach-Saco -- Cumberland and York Counties.

Steep Falls -- Standish, Baldwin -- Cumberland County.

Steve Powell -- Perkins Twp. -- Sagadahoc County.

Being the islands in the Kennebec River near Richmond known as Swan Island and Little Swan Island formerly known as Alexander Islands.

Vernon S. Walker -- Newfield, Shapleigh -- York County.

Weskeag Marsh -- South Thomaston, Thomaston, Rockland and Owl's Head -- Knox County.

Sec. 33. 12 MRSA §7799, sub-§7 is enacted to read:

7. Exception. This section does not apply to any person who operates a watercraft in connection with a boys or girls camp located in this State and licensed by the Department of Human Services or located in another state and licensed in a similar manner in that state.

Sec. 34. 12 MRSA §7827, sub-§9, as amended by PL 1981, c. 698, §80, is repealed and the following enacted in its place:

9. Operating a snowmobile under the influence or with excessive blood-alcohol level. A person is guilty of a Class E crime if that person operates or attempts to operate any snowmobile:

A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs; or

B. While having 0.08% or more by weight of alcohol in that person's blood.

Sec. 35. 12 MRSA §7827, sub-§9-A is enacted to read:

9-A. Failure to comply with duty to submit. A person is guilty of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7828 if that person refuses to submit to or fails to complete a blood-alcohol test when requested to do so by a law enforcement officer who has probable cause to believe that the person operated or attempted to operate a snowmobile while under the influence of intoxicating liquor.

Sec. 36. 12 MRSA §7828 is enacted to read:

§7828. Implied consent to chemical tests

Any person who operates or attempts to operate a snowmobile within this State has a duty to submit to a test to determine that person's blood-alcohol level by analysis of blood or breath if there is probable cause to believe that the person has operated or attempted to

operate a snowmobile while under the influence of intoxicating liquor. The duty to submit to a blood-alcohol test includes the duty to complete either a blood or breath test. Tests and procedures applicable in determining whether a person is under the influence are governed by section 7912.

Sec. 37. 12 MRSA §7857, sub-§10, as enacted by PL 1983, c. 297, §§1 and 3, is repealed and the following enacted in its place:

10. Operating an ATV under the influence or with excessive blood-alcohol level. A person is guilty of a Class E crime if that person operates or attempts to operate any ATV:

A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs; or

B. While having 0.08% or more by weight of alcohol in that person's blood.

Sec. 38. 12 MRSA §7857, sub-§10-A is enacted to read:

10-A. Failure to comply with duty to submit. A person is guilty of failure to comply with the duty to submit to and complete a blood-alcohol test under section 7860 if that person refuses to submit to or fails to complete a blood-alcohol test when requested to do so by a law enforcement officer who has probable cause to believe that the person operated or attempted to operate an ATV while under the influence of intoxicating liquor.

Sec. 39. 12 MRSA §7860 is enacted to read:

§7860. Implied consent to chemical tests

Any person who operates or attempts to operate an ATV within this State has the duty to submit to a test to determine that person's blood-alcohol level by analysis of blood or breath if there is probable cause to believe that the person has operated or attempted to operate an ATV while under the influence of intoxicating liquor. The duty to submit to a blood-alcohol test includes the duty to complete either a blood or breath test. Tests and procedures applicable in determining whether a person is under the influence are governed by section 7912.

Sec. 40. 12 MRSA §7861, sub-§3 is enacted to read:

3. Rock dove permits. Notwithstanding section 7456, the commissioner may issue permits to persons licensed as breeders under section 7235 to take rock doves from the wild by the use of box traps or nets for the purpose of training sporting dogs pursuant to this section and section 7863.

Sec. 41. 12 MRSA §7901, sub-§14, as enacted by PL 1989, c. 599, §4, is amended to read:

14. Penalties for failure to comply with duty to submit. The ~~offense~~ offenses defined in section 7406, subsection 3-A; section 7801, subsection 9-A, ~~is a~~; section 7827, subsection 9-A and section 7857, subsection 10-A are civil ~~violation~~ violations for which a forfeiture of up to \$500 may be adjudged.

Sec. 42. 12 MRSA §7912, as enacted by PL 1989, c. 599, §5, is amended to read:

§7912. Hunting or operating under the influence or with an excessive blood-alcohol level; tests and procedures

1. Blood or breath test. If the law enforcement officer has probable cause to believe a person hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, then the officer shall inform the person that a breath test will be administered, unless, in the determination of the officer, it is unreasonable for a breath test to be administered, in which case a blood test ~~shall~~ must be administered. When a blood test is required, the test may be administered by a physician of the accused's choice, at the request of the accused and if reasonably available. The law enforcement officer may determine which type of breath test, as described in subsection 5, ~~is to~~ will be administered.

2. Prerequisites to tests. Before any test is given, the law enforcement officer shall inform the person to be tested that, if that person fails to comply with the duty to submit to and complete a blood-alcohol test to determine the level of ~~blood-alcohol~~ blood alcohol at the direction of the officer, that person ~~will be~~ is committing a civil violation for which the person may be required to pay a civil forfeiture of up to \$500. The officer shall also inform the person that the failure to comply with the duty to submit to a blood-alcohol test ~~shall be~~ is admissible in evidence against that person at any trial for hunting or operating under the influence of intoxicating liquor.

No test results may be excluded as evidence in any proceeding before any administrative officer or court of this State as a result of the failure of the law enforcement officer to comply with these prerequisites. The only effects of the failure of the officer to comply with the prerequisites ~~shall be~~ are as provided in subsection 7.

3. Results of test. Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests ~~shall~~ must be made available to that person or that person's attorney by the law enforcement officer.

4. Blood-alcohol level. The following percentages by weight of alcohol in the defendant's blood ~~shall~~ have the following evidentiary effect.

A. If there was, at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. If there was, at the time alleged, in excess of 0.05% but less than 0.08% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section, but that fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

C. For purposes of evidence in proceedings other than those arising under section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; or section 7857, subsection 10, it ~~shall be~~ is presumed that a person was under the influence of intoxicating liquor when that person has a blood-alcohol level of 0.08% or more by weight.

D. Percent by weight of alcohol in the blood ~~shall be~~ is based upon grams of alcohol per 100 milliliters of blood.

5. Administration of tests. Persons conducting analyses of blood or breath for the purpose of determining the blood-alcohol level ~~shall~~ must be certified for this purpose by the Department of Human Services under certification standards ~~to be~~ set by that department.

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services under certification standards ~~to be~~ set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood to determine the blood-alcohol level of a person who is complying with the duty to submit to a blood-alcohol test. This limitation ~~shall~~ does not apply to the taking of breath specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate ~~which~~ that states that the person is in fact a duly licensed or certified person as required by this ~~paragraph~~ subsection and that the person followed the proper procedure for drawing a specimen of blood to determine the blood-alcohol level. That certificate, when duly signed and sworn to by the person, ~~shall be~~ is admissible ~~in~~ as evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen of blood to determine the blood-alcohol level, unless, with ~~10 days'~~ 10 days' written notice to the prosecution, the defendant requests that the person testify as to

licensure or certification, or the procedure for drawing the specimen of blood.

A law enforcement officer may take a sample specimen of the breath of any person whom the officer has probable cause to believe hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor and who is complying with the duty to submit to and complete a blood-alcohol test. The sample specimen ~~shall~~ must be submitted to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level of that sample.

Only equipment approved by the Department of Human Services ~~shall~~ may be used by a law enforcement officer to take a sample specimen of the defendant's breath for submission to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting tests of the sample specimen to determine the blood-alcohol level of that sample. Approved equipment ~~shall~~ must have a stamp of approval affixed by the Department of Human Services. Evidence that the equipment was in a sealed carton bearing the stamp of approval ~~shall~~ must be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath.

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person; whom the officer has probable cause to believe hunted wild birds or wild animals or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, by use of a self-contained, breath-alcohol testing apparatus to determine the blood-alcohol level, provided the testing apparatus is reasonably available. The procedures for the operation and testing of self-contained, breath-alcohol testing apparatuses ~~shall~~ must be as provided by rule adopted by the Department of Human Services. The result of any such test ~~shall~~ must be accepted as prima facie evidence of the blood-alcohol level in any court.

Approved self-contained, breath-alcohol testing apparatuses ~~shall~~ must have a stamp of approval affixed by the Department of Human Services after periodic testing. That stamp of approval ~~shall be~~ is valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of approval ~~shall~~ must be accepted in court as prima facie evidence that the equipment was approved by the Department of Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath.

Failure to comply with any provision of this subsection or with any rule adopted under this subsection ~~shall~~ does not, by itself, result in the exclusion of evidence of blood-alcohol

level, unless the evidence is determined to be not sufficiently reliable.

Testimony or other evidence that any materials used in operating or checking the operation of the equipment were bearing a statement of the manufacturer or of the Department of Human Services ~~shall~~ must be accepted in court as prima facie evidence that the materials were of a composition and quality as stated.

A person certified by the Maine Criminal Justice Academy, under certification standards ~~to be~~ set by the academy, as qualified to operate approved self-contained, breath-alcohol testing apparatuses may operate those apparatuses to collect and analyze a sample specimen of a defendant's breath.

6. Liability. No physician, physician's assistant, registered nurse, person certified by the Department of Human Services or hospital or other health care provider in the exercise of due care ~~may be~~ is liable in damages or otherwise for any act done or omitted in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section.

7. Evidence. The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of the defendant's blood or breath or by results of a self-contained, breath-alcohol testing apparatus authorized by subsection 5, ~~shall be~~ is admissible in evidence.

When a person, certified under subsection 5, conducts a chemical analysis of blood or breath to determine blood-alcohol level, the person may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, ~~shall be~~ is admissible in evidence in any court of the State. It ~~shall be~~ is prima facie evidence that the person taking a specimen of blood was a person authorized by subsection 5; that the equipment, chemicals and other materials used in the taking of the blood specimen or a breath sample were of a quality appropriate for the purpose of producing reliable test results; that any equipment, chemicals or materials required by subsection 5 to be approved by the Department of Human Services were in fact approved; that the sample tested by the person certified under subsection 5 was in fact the same sample taken from the defendant; and that the percentage by weight of alcohol in the defendant's blood was, at the time the blood or breath sample was taken, as stated in the certificate, unless with ~~10 days'~~ 10 days' written notice to the prosecution, the defendant requests that a qualified witness testify as to any of the matters as to which the certificate constitutes prima facie evidence. The notice ~~shall~~ must specify those matters concerning which the defendant requests testimony.

A person certified under subsection 5; as qualified to operate a self-contained, breath-alcohol testing apparatus to de-

termine the blood-alcohol level; may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, ~~shall be~~ is admissible in evidence in any court of the State. It ~~shall be~~ is prima facie evidence that the percentage by weight of alcohol in the defendant's blood was, at the time the breath sample was taken, as stated in the certificate, unless, with ~~40 days'~~ 10 days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

Transfer of sample specimens to and from a laboratory for purposes of analysis ~~may be~~ is by certified or registered mail and, when so made, ~~shall be~~ is deemed to comply with all requirements regarding the continuity of custody of physical evidence.

The failure of a person to comply with the duty to submit to and complete a blood-alcohol test under section 7408, 7802 ~~shall be~~, 7828 or 7860 is admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor. If the law enforcement officer having probable cause to believe that the person hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor fails to give either of the warnings required under subsection 2, the failure of the person to comply with the duty to submit to a blood-alcohol test ~~shall~~ is not be admissible, except when a test was required pursuant to subsection 11. If a failure to submit to and complete a blood-alcohol test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

If a test result is not available for a reason other than failing to comply with the duty to submit to and complete a blood-alcohol test, the unavailability and the reason ~~shall be~~ are admissible in evidence.

8. Statements by accused. Any statement by a defendant that the defendant was the operator of a watercraft, ~~which~~ snowmobile or ATV that the defendant is accused of operating in violation of section 7801, subsection 9; section 7827, shall be subsection 9; or section 7857, subsection 10 is admissible if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the watercraft, snowmobile or ATV was operated and was operated by the defendant. Any statement by a defendant that the defendant was hunting wild animals or wild birds is admissible against a defendant accused of hunting wild animals or wild birds in violation of section 7406, subsection 3 if the statement was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the defendant was hunting wild animals or wild birds.

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of blood or breath ~~shall~~ must be paid from the General Fund or from dedicated revenues of the Department of Inland Fisheries and Wildlife when a law enforcement officer of the Department of Inland Fisheries and Wildlife authorizes the chemical tests. The Department of Marine Resources shall pay for chemical tests authorized by marine patrol officers with funds available within that department.

10. Accidents and officer's duties. The law enforcement officer ~~shall have~~ has the following duties.

A. After a person has been charged with hunting wild animals or wild birds or with operating or attempting to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, the investigating or arresting officer shall investigate to determine whether the charged person has any previous convictions of a violation of section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; or section 7857, subsection 10 or adjudications for failure to comply with the duty to submit to and complete a blood-alcohol test under section 7408, 7802, 7828 or 7860. As part of that investigation, the officer shall review the records maintained by the courts, the State Bureau of Identification, the Secretary of State, including telecommunications of records maintained by the Secretary of State, or the Department of Inland Fisheries and Wildlife.

B. A law enforcement officer may arrest, without a warrant, any person whom the officer has probable cause to believe hunted any wild animal or wild bird or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of blood-alcohol level.

11. Fatalities. Notwithstanding any other provision of this section, ~~each~~ any person hunting wild animals or wild birds who is involved in a hunting accident or any operator of a watercraft, snowmobile or ATV who is involved in a watercraft, snowmobile or ATV accident which that results in the death of any person shall must submit to and complete a test to determine that person's blood-alcohol level by analysis of blood or breath. A law enforcement officer may determine which type of test ~~shall~~ will be administered. The result of a test taken pursuant to this ~~paragraph~~ subsection is not admissible at trial unless the court is satisfied that probable cause exists, independent of the test result, to believe that the hunter or operator was under the influence of intoxicating liquor or drugs or had an excessive blood-alcohol level.

12. **Aid in enforcement among municipalities.** Except as otherwise prohibited by municipal charter or ordinance, municipalities may, in the manner provided by Title 30-A, section 2674, enter into agreements regarding mutual aid in enforcing laws governing the hunting of wild animals or wild birds while under the influence or the operation of a watercraft, snowmobile or ATV while under the influence.

See title page for effective date.

CHAPTER 444

H.P. 990 - L.D. 1435

An Act to Clarify Use of Motor Vehicle Auxiliary Lights and Emergency Signals

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

Sec. 1. 29 MRSA §1, sub-§1-B, as amended by PL 1985, c. 108, §8, is repealed.

Sec. 2. 29 MRSA §946, as amended by PL 1989, c. 707, §1, is repealed.

Sec. 3. 29 MRSA §946-A, as amended by PL 1989, c. 707, §§2 and 3, is repealed.

Sec. 4. 29 MRSA §946-B, as enacted by PL 1989, c. 707, §4, is repealed.

Sec. 5. 29 MRSA §946-C is enacted to read:

§946-C. Emergency and auxiliary lights; sirens; privileges

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

A. "Ambulance" means any vehicle designed, constructed and routinely used or intended to be used for the transportation of ill or injured persons and licensed by Maine Emergency Medical Services pursuant to Title 32, chapter 2-B.

B. "Authorized emergency vehicle" means any one of the following vehicles:

- (1) An ambulance;
- (2) A Baxter State Park Authority vehicle operated by a Baxter State Park ranger;
- (3) A Bureau of Marine Patrol vehicle operated by a coastal warden;

(4) A Department of Conservation vehicle operated by a forest ranger;

(5) A Department of Conservation vehicle used for forest fire control;

(6) A Department of Corrections vehicle used for responding to the escape of or performing the high-security transfer of a prisoner, juvenile client or juvenile detainee;

(7) A Department of Inland Fisheries and Wildlife vehicle operated by a warden;

(8) A Department of Public Safety vehicle operated by a liquor enforcement officer for the purpose of enforcing section 1312-B or Title 28-A, a state fire inspector or a Bureau of Intergovernmental Drug Enforcement officer;

(9) An emergency medical service vehicle;

(10) A fire department vehicle;

(11) A hazardous material response vehicle;

(12) A railroad police vehicle;

(13) A sheriff's department vehicle;

(14) A State Police or municipal police department vehicle;

(15) A vehicle operated by a chief of police, a sheriff or a deputy sheriff when authorized by the sheriff;

(16) A vehicle operated by a municipal fire inspector, a municipal fire chief, an assistant or deputy chief or a town forest fire warden;

(17) A vehicle operated by a qualified deputy sheriff or other qualified individual to perform court security-related functions and services as authorized by the State Court Administrator pursuant to Title 4, section 17, subsection 15; or

(18) A Federal Government vehicle operated by a federal law enforcement officer.

C. "Auxiliary light" means a light, other than standard equipment lighting such as headlights, taillights, directional signals, brake lights, clearance lights, parking lights and license plate lights, that is displayed on a vehicle and used to increase the operator's visibility of the road or the visibility of the vehicle to other operators and pedestrians.