

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
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

ized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor do those subsections protect the operator from the consequences of the operator's reckless disregard for the safety of others.

Sec. 6. 29 MRSA §1362, 2nd ¶, as amended by PL 1989, c. 32, §2, is further amended to read:

No signaling device may be unnecessarily sounded nor any braking or acceleration unnecessarily made so as to cause a harsh, objectionable or unreasonable noise. ~~No bell or siren may be installed or used on any motor vehicle, except that fire and police department vehicles and ambulances and vehicles operated by state, city and town fire inspectors, city and town fire chiefs, assistant fire chiefs, police chiefs and assistant police chiefs may be so equipped for use only when responding to emergency calls; motor vehicles used by forest rangers or personnel engaged in forest fire control as may be designated by the Department of Conservation; motor vehicles used by sheriffs and deputy sheriffs; motor vehicles used by inland fisheries and game wardens as may be designated by the Department of Inland Fisheries and Wildlife; motor vehicles used by coastal wardens as may be designated by the Department of Marine Resources; motor vehicles used by United States Government law enforcement officials; motor vehicles used by a state or municipal department which controls or supervises electrical alarm and communication systems may be so equipped for use as provided by law; and motor vehicles used by corrections personnel as may be designated by the Department of Corrections may be so equipped for use only when responding to committed offender escapes or performing high security transfers of committed offenders.~~

Sec. 7. 29 MRSA §1367-B, as amended by PL 1991, c. 61, §1, is repealed.

Sec. 8. 29 MRSA §1461 is repealed.

Sec. 9. 29 MRSA §1462, as amended by PL 1991, c. 61, §§2 and 3, is repealed.

Sec. 10. 29 MRSA §1463 is repealed.

See title page for effective date.

CHAPTER 445

H.P. 1101 - L.D. 1600

An Act to Increase the Penalty for Failure to Secure a Child with a Seat Belt

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

29 MRSA §1368-C, sub-§4, as enacted by PL 1987, c. 245, is amended to read:

4. Penalty. ~~Following the initial 6-month warning period, violation~~ Violation of this section is a civil violation for which a forfeiture of \$25 for the first violation and ~~\$50~~ **\$200** for each subsequent violation may be adjudged.

See title page for effective date.

CHAPTER 446

H.P. 552 - L.D. 789

An Act to Improve Grading and Inspection of Maine Sardines

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

Whereas, the sardine season begins in June and the financial and administrative changes contained in this legislation should be in effect before the season commences; 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:

PART A

Sec. A-1. 32 MRSA §4151, as amended by PL 1985, c. 737, Pt. A, §89, is repealed.

Sec. A-2. 32 MRSA §4152, as amended by PL 1989, c. 503, Pt. B, §143, is repealed.

Sec. A-3. 32 MRSA §4155, as amended by PL 1979, c. 62, §2, is repealed.

Sec. A-4. 32 MRSA §4156, as amended by PL 1983, c. 85, §1, is repealed.

Sec. A-5. 32 MRSA §4157, as amended by PL 1989, c. 639, §1, is repealed.

Sec. A-6. 32 MRSA §4157-A, as amended by PL 1989, c. 639, §2, is repealed.

Sec. A-7. 32 MRSA §4158 is repealed.

Sec. A-8. 32 MRSA §4159, as repealed and replaced by PL 1989, c. 482, §2, is reallocated to 12 MRSA §6547.

PART B

Sec. B-1. 36 MRSA §4691 is repealed.

Sec. B-2. 36 MRSA §4692, as amended by PL 1985, c. 737, Pt. A, §101, is repealed.

Sec. B-3. 36 MRSA §4692-A is enacted to read:

§4692-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Case. "Case" means either of the following number of cans of sardines, regardless of the packing medium:

A. One hundred cans when the stated net weight of the contents is under 7 ounces; or

B. Forty-eight cans when the stated net weight of the contents is 7 ounces or over.

2. Council. "Council" means the Maine Sardine Council established by Title 5, section 12004-H, subsection 8.

3. Kippers. "Kippers" means all fillets packed in hermetically sealed containers that are not classified as sardines but are predominantly herring.

4. Packer. "Packer" means any person, partnership, association, firm, corporation or entity engaged in packing sardines for sale.

5. Sardine. "Sardine" means any canned, small size, clupeoid fish.

6. Steaks. "Steaks" means all laterally cut portions packed in hermetically sealed containers that are not classified as sardines but are predominantly herring.

Sec. B-4. 36 MRSA §4693, as amended by PL 1989, c. 878, Pt. A, §109, is repealed.

Sec. B-5. 36 MRSA §4695, 2nd ¶, as amended by PL 1981, c. 614, §1, is further amended to read:

An excise tax of 30¢ 35¢ per case, as defined in section 4692, subsections 1 to 3, is levied and imposed upon the privilege of packing sardines and an excise tax of 15¢ per case is levied and imposed upon the privilege of packing kippers and steaks.

Sec. B-6. 36 MRSA §4695, 3rd ¶, as enacted by PL 1965, c. 332, §5, is amended to read:

Sardines ~~which that~~ are packed specifically for export under Title 32, ~~section 4157-A~~ chapter 61, subchapter II are exempt from this section.

Sec. B-7. 36 MRSA §4697, as amended by PL 1983, c. 85, §2, is further amended to read:

§4697. Reports of production and payment of tax

Every packer shall, on or before the 10th day of each month, report to the State Tax Assessor the quantity of sardines, kippers or steaks packed by ~~him~~ the packer during the preceding calendar month, on forms furnished by the State Tax Assessor, and pay to the State Tax Assessor the tax of ~~30¢~~ 35¢ per case on all sardines reported as packed and 15¢ per case on all kippers or steaks reported as packed. If the State Tax Assessor determines that overpayment of tax has been made, ~~he~~ the State Tax Assessor shall make a refund. In making additional assessment or refund determinations, the State Tax Assessor shall rely on the records of the ~~Department of Agriculture, Food and Rural Resources~~ Maine Sardine Council concerning the quantity of sardines, kippers or steaks packed in each sardine plant, for sale and suitable for human consumption. Any packer may pay to the State Tax Assessor in advance a sum of money based on an estimate of ~~his~~ the packer's tax for a given number of months, and this sum ~~shall be~~ is a credit against future monthly reports of that packer.

Sec. B-8. 36 MRSA §§4698 and 4699, as amended by PL 1979, c. 731, §19, are further amended to read:

§4698. Inspections

The State Tax Assessor or ~~his~~ a duly authorized agent ~~shall have~~ has authority to enter any place of business of a packer, or any car, boat, truck or other conveyance in which sardines, kippers or steaks are to be transported, and duly inspect any books or records of any packer for the purpose of determining what sardines, kippers or steaks are taxable, or for the purpose of determining the truth or falsity of any statement or return made by any packer, and ~~he shall have~~ the assessor has authority to delegate ~~such~~ those powers to the ~~Commissioner of Agriculture, Food and Rural Resources~~ Maine Sardine Council, ~~his~~ its deputies, agents, servants or employees, and to the Commissioner of Marine Resources, ~~his~~ or any of the commissioner's deputies, agents, ~~servant~~ servants or employees.

§4699. Appropriation and use of money received

Money received under this chapter by the Treasurer of State ~~shall~~ must be appropriated and used for the following purposes:

1. Collection and enforcement. For the collection of the tax and enforcement of this chapter and Title 32, chapter 61, subchapter II; and

2. Balance of funds. The balance in such amounts as ~~shall be~~ are from time to time determined by the Maine Sardine Council:

A. For the purpose of merchandising and advertising Maine sardines, kippers or steaks for food under the direction of the Maine Sardine Council;

B. For conducting research and investigation of methods of propagating and conserving clupeoid fish, particularly the clupea harengus, with a view of improving both the quality and quantity of ~~the same~~ these fish in Maine waters, and for the implementation of all feasible methods of improving, propagating and conserving ~~the same~~ these fish, under the joint direction of the Commissioner of Marine Resources and the Maine Sardine Council; and

C. For gathering, studying, classifying and ~~distributing~~ distributing information and data concerning quality, grades, standards, methods of packing and character of the manufactured sardine, kipper and steak products, in order to determine and improve their quality and aid in merchandising and advertising them under the direction of the Maine Sardine Council. ~~The information and data and the services of the personnel who collect and classify it may be made available to the Commissioner of Agriculture, Food and Rural Resources for use in promulgating, establishing and modifying official grades for sardines and for use in assigning and determining grades of sardines and in enforcing applicable provisions of the law.~~

D. ~~For transferring funds to the Department of Agriculture, Food and Rural Resources for helping to finance the inspection of sardines as defined under Title 22, section 4155, when in the opinion of the council such action is necessary for the accomplishment of such inspection. The council has the sole authority to determine when such a need and emergency exists and to fix the amount of sardine tax funds that may be transferred.~~

Sec. B-9. 36 MRSA 4699-A, as amended by PL 1979, c. 541, Pt. A, §229, is further amended to read:

§4699-A. Refund on sardines exported

In the event sardines, kippers and steaks upon which an excise tax has been paid under section 4695 are exported from the United States, the packer who has paid the tax ~~after September 3, 1965 shall be~~ is entitled to a refund of all of such tax upon application to the Maine Sardine Council.

PART C

Sec. C-1. 5 MRSA §12004-H, sub-§8, as enacted by PL 1987, c. 786, §5, is amended to read:

8. Maine Sardine Council	Expenses Only	36 MRSA §4693 <u>32 MRSA §4167</u>
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Sec. C-2. 32 MRSA c. 61, first 2 lines are repealed and the following enacted in their place:

CHAPTER 61
SARDINE PACKERS

SUBCHAPTER I
LICENSES

Sec. C-3. 32 MRSA c. 61, sub-c. II is enacted to read:

SUBCHAPTER II
MAINE SARDINE COUNCIL

§4165. Purpose

The packing of sardines is one of the most important industries of the State, and this subchapter will protect the public health and welfare, stabilize the industry and conserve and promote the prosperity and welfare of the State by fostering and promoting better methods of production, packing, merchandising and advertising in the sardine industry of this State.

§4166. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Broken fish. "Broken fish" means any fish that is shattered, belly-blown, or blown or broken from any cause. No fish is free from defects within the meaning of section 4168 that is broken, decomposed, contains foreign material, is unfit for food or is not in good condition from any cause.

2. Case. "Case" means either of the following number of cans of sardines, regardless of the packing medium:

A. One hundred cans when the stated net weight of the contents is under 7 ounces; or

B. Forty-eight cans when the stated net weight of the contents is 7 ounces or over.

3. Cutting. "Cutting" means removing the heads of the fish by some implement or device operated by hand or by machine or mechanical device operated by power. "Cutting" does not mean removing the head of the fish by snipping or pinching with the fingers.

4. Kippers. "Kippers" means all fillets packed in hermetically sealed containers that are not classified as sardines but are predominantly herring.

5. Packer. "Packer" means any person, partnership, association, firm, corporation or entity engaged in packing sardines for sale.

6. Sardine. “Sardine” means any canned, small size, clupeoid fish.

7. Steaks. “Steaks” means all laterally cut portions packed in hermetically sealed containers that are not classified as sardines but are predominantly herring.

§4167. Maine Sardine Council

1. Council established. The Maine Sardine Council, as established by Title 5, section 12004-H, subsection 8, referred to in this subchapter as the “council,” consists of not more than 9 nor fewer than 3 members to be appointed by the Commissioner of Marine Resources. Fifty-one percent of the members of the council constitutes a quorum and the affirmative vote of at least 51% of the members is necessary for the transaction of all business and the carrying out of the duties of the council. The members must be sardine packers operating within the State who have been actively engaged in packing sardines for not less than 2 years and must remain so while in office. A person is considered to be actively engaged in packing sardines if that person has derived, during the period, a substantial portion of income from packing sardines or has been the director or manager of an entity that derives a substantial portion of its income from packing sardines.

2. Alternates. Each council member may designate one alternate to represent that member as a voting council member during any council meeting that the member can not attend. Each alternate council member must be appointed by the Commissioner of Marine Resources. At no time may both a regular council member and that member’s designated alternate vote on any matter that may be before the council during any meeting.

3. Appointments. Regular council member appointments and alternate council member appointments are for terms of 5 years and each member shall serve until a successor is duly appointed and qualified. In the case of a vacancy caused by death, resignation or otherwise, the vacancy must be filled promptly by the Commissioner of Marine Resources for the unexpired period of the term.

4. Compensation. The members of the council are entitled to compensation according to the provisions of Title 5, chapter 379. Each council member’s designated alternate is entitled to reimbursement for expenses incurred in the performance of that alternate’s duties, but at no time may a regular council member and that member’s designated alternate be reimbursed for expenses incurred for attendance at the same meeting.

5. Executive director; staff. The council, in concurrence with the Commissioner of Marine Resources, may select and employ and fix the salary of an executive director-advertising and merchandising manager to administer the advertising, merchandising, research and development program. The executive director, with the consent of the

council, may engage, subject to the Civil Service Law, sufficient clerical personnel and other employees for the efficient performance of the executive director’s duties.

6. Proceedings. Administrative proceedings of the council must be in accordance with the Maine Administrative Procedure Act. Meetings and records of the council are subject to Title 1, chapter 13, subchapter I, except that all council records containing tax records filed in accordance with Title 36, section 4697, including individual plant pack data; quality control information records compiled pursuant to section Title 36, section 4699, subsection 2, paragraph C; and any other proprietary information obtained from individual processing plants, including information concerning packing technology, are confidential.

§4168. Standards

1. General standards. The heads of all fish packed in cans must be removed by cutting. No broken fish may be packed. In packing the following sized cans, these standards must apply.

A. For the 1/4 size can:

(1) The minimum count of fish is 4. In cans packed with fewer than 7 fish, the tails must be removed by cutting or must be neatly trimmed; and

(2) The feeding device must deliver the packing medium at a rate of not less than 19.66 cubic centimeters per can, if the can will hold that much.

B. For the #1 oval can, commonly known as a one pound or 15-ounce oval can:

(1) The minimum count of fish is 4. In cans packed as a single layer, the tails must be removed by cutting or must be neatly trimmed; and

(2) The feeding device must deliver the packing medium at a rate of not less than 2 ounces per can.

C. For the 8-ounce oval can:

(1) The minimum count of fish is 4. In cans packed as a single layer, the tails must be removed by cutting or must be neatly trimmed; and

(2) The feeding device must deliver the packing medium at a rate of not less than one ounce per can.

2. Packing mediums. In packing sardines, kippers and steaks, the packing medium must meet the following

minimum standards if applicable to the type of packing medium used.

A. The vegetable salad oil must be a pure, edible vegetable oil that is clear and thoroughly refined. It must be a deodorized oil free from rancidity and objectionable flavor and must satisfactorily stand the 5-hour cold test, so-called. Its color may not be darker than 7 lovibond units. The oil must have a free fatty acid content of not more than .07% and must retain a satisfactory flavor after heating to 400 degrees Fahrenheit.

B. The olive oil must possess a typical greenish to light yellow color and must possess a free fatty acid content, calculated as oleic, of not more than 1.4%. The olive oil must be free of defects and possess a good typical odor and a good typical flavor.

C. The tomato sauce used must possess a fairly good red tomato color and must be free of defects and must possess a fairly good tomato puree, tomato pulp flavor. It must have not less than 8.37% salt-free tomato solids and a specific gravity of not less than 1.035.

3. Grades. The council may adopt rules establishing official grades for sardines, kippers and steaks packed within the State, and for the marking, branding or labeling of sardines, kippers and steaks and the use of the grades. Prior to adopting rules under this section, the council shall hold public hearings in places reasonably convenient for the packers. Notice of the hearings and of the final action must be sent, by certified mail, to all license holders under section 4153.

A. The grades may specify the number of fish per container; the amount, quality and nature of the packing medium or fill; the quality, appearance, odor, character, taste and texture of the fish packed; the style of pack, the quality of the packing and arrangement in the container; the quality of the substances contained in the container; the size and type of the container; and tolerances allowing for reasonable variation from grades.

B. When adopting rules under this section, the council may consider packing practices in the State and in other jurisdictions, consumer expectancy, habits and desires, the types of fish available, conditions of sanitation, tastes and preferences of varying parts of the consumer public, marketing practices and market experience.

4. Labeling. Sardines packed in accordance with rules adopted under this section may be plainly and conspicuously marked "Maine Sardines." Except as provided in section 4619, sardines packed in a manner inconsistent with rules adopted under this section may not be sold for consumption in the United States unless each can and case is plainly and conspicuously marked with the word "hering" and the word "sardine" does not appear.

5. Substandard grade. Except as provided in section 4619, sardines, kippers and steaks that are officially designated as substandard grade, for which a certificate is issued, may not be sold for consumption in the United States unless each can in the lot has the words "Substandard Grade, Good Food - Not High Quality" so placed as to be easily seen when the name of the product or pictorial representation thereof is viewed and appear conspicuously enough to be seen under ordinary conditions of purchase. The words "Substandard Grade, Good Food - Not High Quality" must be printed in 2 lines across the cover of all cans in letters not less than 1/8 inch in height and be enclosed in lines that are not less than 1/32 inch in width. This wording must be printed on all wrappers, labels, cartons or other outer coverings of the cans with a permanent type of indelible ink or by means of other approved procedure. The words "Substandard Grade" must appear in letters not less than one inch high on both ends of the shipping container.

6. Embargo. The council or any duly authorized agent of the council shall detain or place an embargo upon sardines, kippers and steaks officially designated as substandard grade for which a certificate is issued by marking or tagging the same and warning all persons not to remove or dispose of the same by sale or otherwise until permission for removal or disposal is given by the council. These sardines, kippers and steaks must be detained or placed under embargo until the goods are marked in accordance with this section or the Maine Sardine Council has received a bond covering the export provisions of this section. Orders for detention or embargo issued under this section are not considered licensing or an adjudicatory proceeding as those terms are defined by Title 5, Part 18.

§4169. Sardines for export; exempt from quantity and quality provisions of Maine Sardine Law

Sardines that satisfy the requirements of the Maine Food Law, but not the requirements of the Maine Sardine Law, may be exported by complying with the shipping carton marking and bonding provisions of this section. For the purposes of this section, the term "exported" includes shipments of sardines to the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the trust territory of Palau.

1. Labels. The cover of each can of sardines that satisfy the requirements of the Maine Food Law but not the requirements of the Maine Sardine Law must be labeled with the name of the packer or distributor. Each shipping carton must be marked plainly and conspicuously with the words "FOR EXPORT" in letters not less than 1/2 inch high.

2. Detention; embargo. The council or any duly authorized agent of the council shall detain or place an embargo upon sardines as described in subsection 1 by marking or tagging them. Orders for detention or em-

bargo issued under this section are not considered licensing or an adjudicatory proceeding as those terms are defined by the Maine Administrative Procedure Act. The council may not release the sardines from detention or embargo until the packer provides a bond with good and sufficient sureties in an amount not less than twice the value of the sardines, conditioned that the sardines must be exported to a foreign country to be named in the bond and may not be reimported into the United States by any person or in such other amount and upon such other conditions as may be established by the executive director. If the packer is regularly engaged in the business of exporting sardines, the packer may provide one bond in the amount of \$10,000 to cover all such exports, conditioned that the sardines must be exported to a foreign country and may not be reimported to the United States by any person and that the packer must inform the executive director of the value and the foreign country of destination of each shipment in writing prior to release of the embargo and provide any additional documentary evidence the executive director may require within 45 days of the date of the shipment. A packer is deemed to be regularly engaged in the business of exporting sardines if the packer makes 2 or more shipments in any one year.

3. Military procurement. Shipments to United States military procurement agencies of sardines that do not meet market requirements within the United States, its territories and possessions as specified by the Maine Sardine Law are not deemed to be exported to a foreign country.

§4170. Cans to be sealed; lined

On all cans used for packing sardines there must be a compound lined gasket or other adequate gasket that will hermetically seal the container. All cans used for packing sardines must be enamel lined.

PART D

Sec. D-1. Transition. The following rules of transition apply to the Department of Agriculture, Food and Rural Resources and the Maine Sardine Council.

1. Rules. Rules adopted by the department under the Maine Revised Statutes, Title 32, chapter 61 remain in effect until modified or repealed through rules adopted by the council pursuant to its authority under this Act.

2. Unexpended balances; transfer of funds. Effective July 1, 1991 all unexpended money in the department's dedicated account, #014-01A-0289-01, is transferred to the council's dedicated account, #014-945-0254-01. The council may use funds transferred under this subsection only for costs authorized under Title 32, chapter 61, subchapter II. After the effective date of this Act and prior to July 1, 1991, the depart-

ment may use funds in the dedicated account for salary and overhead costs for existing sardine inspectors and any costs, including accrued vacation, that are payable upon termination of those employees.

3. Membership on the council. Members serving on the council on the effective date of this Act shall continue to serve the terms for which they were appointed.

Sec. D-2. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1991-92	1992-93
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Bureau of Public Services		
Positions	(-11.0)	(-11.0)
Personal Services	(\$277,675)	(\$287,286)
All Other	(119,618)	(127,106)
Total	(\$397,293)	(\$414,392)
Provides for the deallocation of funds for the elimination of 2 Sardine Inspector Supervisor positions, 6 Food Inspector II positions, one Food Inspector Supervisor position, 2 Sardine Quality Grader positions and associated general operating expenses.		
Maine Sardine Council		
Positions	(1.0)	(1.0)
Personal Services	\$27,343	\$29,440
All Other	3,000	3,000
Total	\$30,343	\$32,440
Provides funds for a Sardine Quality Grader Supervisor position and general operating expenses to grade sardines, kippers and steaks.		
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES		
TOTAL	(\$366,950)	(\$381,952)

Sec. D-3. Effective date. Section D-2 of this Act is effective on July 1, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective June 20, 1991, unless otherwise indicated.