

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,
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J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

C. The fee structure for the current program and projected costs for implementing the expanded riding portion of the program;

D. The feasibility of requiring all first-time recipients of a motorcycle operator's license or learner's permit to have successfully completed a motorcycle driver education program; and

E. Any other issues the Secretary of State determines appropriate.

3. The Secretary of State shall prepare and submit a report to the Second Regular Session of the 115th Legislature no later than March 1, 1992, containing specific findings, conclusions and recommendations for legislation. The Secretary of State shall provide copies of the report to the Executive Director of the Legislative Council.

4. Legislative members shall receive per diem reimbursement. Other members will be compensated for expenses.

See title page for effective date.

CHAPTER 523

H.P. 818 - L.D. 1172

An Act to Establish a Fund to Promote Lobster Marketing

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

Sec. 1. 5 MRSA §12004-H, sub-§14 is enacted to read:

14. Lobster Promotion Council \$55 Per Diem Plus Expenses 12 MRSA §6455

Sec. 2. 12 MRSA c. 619, sub-c. III-A is enacted to read:

SUBCHAPTER III-A

LOBSTER PROMOTION COUNCIL

§6455. Lobster Promotion Council

1. Council established; purpose. The Lobster Promotion Council, established in Title 5, section 12004-H, subsection 14 and referred to in this subchapter as the "council," is created to promote and market actively Maine lobsters in state, regional, national and international markets. The council shall draw upon the expertise of the Maine lobster industry and established private marketing firms to identify market areas that will provide the greatest return on the investments made by lobster license holders and

undertake those media or promotional efforts that represent the most cost-effective use of a limited promotional budget. The council shall remain responsive to the Maine lobster industry, conduct its business in a public manner and undertake marketing efforts that promote the quality and full utilization of the product and the unique character of the coastal Maine lobster fishery.

The council consists of 9 voting members appointed as follows:

A. From the western district of the State, consisting of lands located between the Piscataqua River and the Kennebec River, 3 members meeting the qualifications in subsection 2;

B. From the midcoast district of the State, consisting of all lands located between the Kennebec River and the Penobscot River, 3 members meeting the qualifications in subsection 2; and

C. From the eastern district of the State, consisting of all lands located between the Penobscot River and the St. Croix River, 3 members meeting the qualifications in subsection 2.

The commissioner shall appoint the members of the council from among a list of nominees prepared by the Lobster Advisory Council. The commissioner shall appoint one member within each district for an initial term of one year, one member within each district for an initial term of 2 years and one member within each district for an initial term of 3 years. All subsequent members are appointed by the commissioner for terms of 3 years. A person may not serve more than 2 consecutive 3-year terms as a member of the council. By majority vote, the council shall annually elect a chair from among its members. The commissioner is an ex officio, nonvoting member of the council.

2. Qualifications of members. From each district, 3 members must be appointed who meet the following criteria:

A. One person who is a full-time harvester and who has held a valid lobster and crab fishing license for at least 5 consecutive years;

B. One person who is a dealer or pound operator and who:

(1) Has held a valid wholesale shellfish license or lobster transport license for a period of at least 5 consecutive years; or

(2) Is the manager of, or an officer in, a business entity operating in the State that holds a valid wholesale shellfish license or lobster transport license; and

C. One person who is a public member.

A person is eligible for appointment to the council from a district only if that person is a resident of the district or if that person's place of business is located within the district.

Except for representation of specific interests required by subsection 2, members of the council are governed by the provisions concerning conflict of interest under Title 5, section 18.

3. Meetings. The council shall meet at least quarterly. A quorum of 5 members is required to conduct the business of the council. Additional meetings may be called by the chair. If 3 or more members of the council submit to the chair a written request for a meeting, the chair shall call a meeting to be held no sooner than 14 days after receipt of the written request. The commissioner may remove any member with unexcused absences from 2 or more consecutive meetings of the council. Administrative procedures of the council must be in accordance with the Maine Administrative Procedure Act. All meetings and records of the council are subject to Title 1, chapter 13, subchapter I, except that, by majority vote, the council may designate market studies or promotional plans developed or funded by the council as confidential. The commissioner and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over marine resource matters shall have access to all material designated confidential by the council.

4. Powers and duties. The council may:

A. Undertake promotional marketing programs in cooperation with the lobster industry;

B. Promote national and international markets for lobsters harvested or processed in the State;

C. Provide material and technical assistance to persons seeking to market lobsters harvested or processed in the State;

D. Conduct other efforts as determined necessary to increase the sales of lobsters harvested or processed in the State;

E. Make expenditures from the Lobster Marketing Fund to carry out the purposes of this subchapter. Money in the fund may be used only for the following purposes:

(1) Promotion, advertising and marketing development. The council may implement programs and activities to promote, advertise and develop markets for lobster and make or enter into contracts with any local, state, federal or private agency, department, firm, corporation, entity or person for those purposes. At least 50% of the money expended from the fund annually must be expended for the purposes set forth in this subparagraph; and

(2) The hiring of staff, payment of per diem and reimbursement of expenses for members pursuant to Title 5, section 12004-H and payment of administrative and overhead costs associated with the business of the council. Any person hired by the council is a state employee, subject to the personnel laws of the State; and

F. Accept and deposit in the fund additional funding from any source, public or private.

5. Fund established; license surcharge assessed. The Lobster Promotion Fund, referred to in this subchapter as the "fund," is established in the department to carry out the purposes of this subchapter. The council shall administer the fund and the department shall transfer to the fund all money appropriated or received by the department for the purposes of this subchapter. The fund is capitalized from the following annual surcharges assessed on the following licenses issued by the department for calendar years 1992 and 1993:

A. Class I crab and lobster licenses for persons 18 to 69 years of age, \$25;

B. Class II crab and lobster licenses, \$50;

C. Class III crab and lobster licenses, \$75;

D. Wholesale seafood licenses with lobster permits, \$200; and

E. Lobster transportation licenses, \$200.

A person holding more than one of the licenses listed in this subsection is assessed a surcharge only on the highest surchargeable license held.

The Treasurer of State shall hold all surcharges assessed by this subsection in the fund and invest all money in the fund until disbursement is authorized by the council. Interest from investments accrues to the fund.

All money in the fund is subject to allocation by the Legislature. Unexpended balances in the fund at the end of the fiscal year may not lapse but must be carried forward to be used for the same purposes.

6. Report. By February 15th of each year, the council shall report to the joint standing committees of the Legislature having jurisdiction over financial affairs and marine resource matters on the programs undertaken pursuant to this subchapter, expenditures from the fund and balances in all accounts in the fund.

Sec. 3. 12 MRSA §6851, as amended by PL 1989, c. 348, §§8 and 9 is further amended to read:

§6851. Wholesale seafood license; wholesale seafood license with lobster permit

1. **License required.** It ~~shall be~~ is unlawful for any person to engage in the activities authorized by this license under this section without a current wholesale seafood license or other license issued under this Part authorizing the activities.

2. **License activities.** The holder of a wholesale seafood license may, in the wholesale or retail trade:

A. Within or beyond the state limits, buy, sell, process, ship or transport any marine species or their parts, except lobsters;

B. Within or beyond the state limits, buy, sell, shuck, pack, ship, or, within the state limits, transport fresh or frozen shellfish, except lobsters, 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~~

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

2-A. Wholesale seafood license with lobster permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit may engage in all the activities in subsection 2 and may buy, sell, process, ship or transport lobster or properly permitted or lawfully imported lobster meat or parts anywhere within the state limits. A license under this subsection does not authorize a person to remove lobster meat from the shell unless a permit under section 6857 is held.

3. **Exceptions.** This section ~~shall~~ does not apply to smoked herring or alewives.

4. **License limited.** A license ~~shall~~ under this section only authorize these authorizes activities at one establishment or with one vehicle, but not on a vessel rigged to fish, provided; that this license ~~shall~~ also authorize authorizes the sale and transportation of scallops from any vessel.

5. **Supplemental license.** A supplemental license ~~shall~~ must be obtained for each additional establishment or vehicle.

6. **Fees.** The fees ~~shall be~~ are as follows:

A. \$130 for the wholesale seafood license or a wholesale seafood license with a lobster permit; and

B. \$26 for each supplemental license.

Sec. 4. Initial matters; appointments and report. The Commissioner of Marine Resources shall ap-

point all the initial members of the Lobster Promotion Council no later than 60 days after the effective date of this Act. In its 1992 annual report to the Legislature, the council shall present a lobster marketing plan. The plan must include the council's projected 2-year budget, a full and detailed discussion of the market strategy to be pursued by the council and a summary of issues or problems arising from the implementation of the license surcharges.

Sec. 5. Working capital advance. The State Controller is authorized to advance \$100,000 from General Fund unappropriated surplus to the Lobster Promotion Fund established in the Maine Revised Statutes, Title 12, section 6455, subsection 5. These funds must be used to provide the working capital advance necessary for the Lobster Promotion Council to undertake its statutory duties under Title 12, chapter 619, subchapter III-A. The Lobster Promotion Council shall return all funds advanced for this purpose to the General Fund no later than June 30, 1992.

Sec. 6. Limitations; expenditures and financial commitments. Notwithstanding the Maine Revised Statutes, Title 12, section 6455 or section 10 of this Act, the Lobster Promotion Council may not expend or obligate by contract more than \$100,000 from the Lobster Promotion Fund prior to March 1, 1992.

Sec. 7. Alternative funding mechanism; report. The Commissioner of Marine Resources shall investigate a method of funding the activities of the Lobster Promotion Council that is based upon a fee assessed on each pound of lobster sold by lobster dealers in the State. In conducting the investigation, the commissioner shall determine the most equitable method of assessing such a fee, the minimum fee necessary to maintain a funding level consistent with that generated by license surcharges assessed in the Maine Revised Statutes, Title 12, section 6455 and the costs of the most efficient method of administering and enforcing such a funding mechanism. The commissioner shall report the results of that investigation to the Joint Standing Committee on Marine Resources by February 15, 1992.

Sec. 8. Staff; hiring and qualifications. The Lobster Promotion Council shall hire a part-time executive director and a full-time clerk typist II within a reasonable time after completion of the initial appointment of all members. The executive director is a confidential employee and serves at the pleasure of the council. The executive director is entitled to compensation at pay range 26, step A, must be experienced in public sector budgeting and financial management and knowledgeable in state budgeting, procurement and administrative procedures.

Sec. 9. Allocation. The following funds are allocated from the Lobster Promotion Fund to carry out the purposes of this Act.

1991-92 1992-93

LOBSTER PROMOTION COUNCIL

Lobster Promotion Fund

Positions	(1.5)	(1.5)
Personal Services	\$32,426	\$46,975
All Other	217,421	289,894
Capital Expenditures	25,000	

Provides funds for a part-time Executive Director, a full-time Clerk Typist II, per diem and expenses for the Lobster Promotion Council, contractual services for the promotion and marketing of lobsters, computer equipment, a vehicle and general operating expenses.

LOBSTER PROMOTION COUNCIL		
TOTAL	\$274,847	\$336,869

See title page for effective date.

CHAPTER 524

H.P. 1134 - L.D. 1659

An Act to Protect Consumers from Unfair and Deceptive Telephone Practices

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

Sec. 1. 9-A MRSA §5-117 is enacted to read:

§5-117. Prohibited practices

A seller may not:

1. Misrepresentations. Misrepresent any material fact relating to the terms or conditions of sale;

2. False impressions. Create an impression that is false or the seller does not believe to be true; and

3. False promises. Promise performance that the seller does not intend to perform or knows will not be performed.

Sec. 2. 10 MRSA §1498, sub-§3, as enacted by PL 1989, c. 775, is amended to read:

3. Restriction. A person may not use an automated telephone calling device to make solicitation calls to any telephone number in the State except weekdays between 9 a.m. and 5 p.m., according to the time in this State, and may not complete more than one solicitation call to any telephone number during each 8-hour period. In addition, the person using the device to place the call shall ensure

that the device disconnects no more than 5 seconds following the disconnection of the telephone number called.

Sec. 3. 10 MRSA §1498, sub-§7, ¶A-1 is enacted to read:

A-1. A full transcript of every message that the registrant will transmit to consumers in the course of a solicitation call;

Sec. 4. 32 MRSA §4671 is enacted to read:

§4671. Prohibited practices

A seller may not:

1. Misrepresentations. Misrepresent any material fact relating to the terms or conditions of sale;

2. False impressions. Create an impression that is false or the seller does not believe to be true; and

3. False promises. Promise performance that the seller does not intend to perform or knows will not be performed.

Sec. 5. 32 MRSA §4690 is enacted to read:

§4690. Prohibited practices

A seller may not:

1. Misrepresentations. Misrepresent any material fact relating to the terms or conditions of sale;

2. False impressions. Create an impression that is false or the seller does not believe to be true; and

3. False promises. Promise performance that the seller does not intend to perform or knows will not be performed.

Sec. 6. 35-A MRSA c. 8 is enacted to read:

CHAPTER 8COLLECTION FOR AUDIOTEXT SERVICE CHARGES§801. Definitions

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

1. Audiotext services. "Audiotext services" means informational or other services for which, in addition to any message toll service charge, a fee is levied on a per-call or per-minute basis by a provider that leases telephone lines from a long-distance telephone company for the purpose of providing such services to consumers. "Audiotext services"