

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

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
1993

sell the premises to the highest bidder at the public sale and deliver a deed of that sale to the purchaser. The deed conveys the premises free and clear of all interests of the parties in interest joined in the action. The mortgagee or any other party in interest may bid at the public sale. If the mortgagee is the highest bidder at the public sale, there is no obligation to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are limited to the amount established as of the date of the public sale. The date of the public sale is the date on which bids are received to establish the sales price, no matter when the sale is completed by the delivery of the deed to the highest bidder.

2. Additional notice requirements for civil actions commenced on or after January 1, 1995. In foreclosures by civil action commenced on or after January 1, 1995, the mortgagee shall cause notice of the public sale to be mailed by ordinary mail to all parties who appeared in the foreclosure action or to their attorneys of record. The notice must be mailed no less than 30 calendar days before the date of sale. Failure to provide notice of the public sale to any party who appeared does not affect the validity of the sale.

See title page for effective date.

CHAPTER 545

H.P. 1199 - L.D. 1607

An Act to Establish the Lobster Promotion Council as a Public Instrumentality

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

Whereas, the Lobster Promotion Council can more efficiently and effectively perform its duties as a public instrumentality than as a state agency; and

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

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

Sec. 1. 12 MRSA §6455, sub-§1-A is enacted to read:

1-A. Council is a public instrumentality. The council is established as a public instrumentality serving a public purpose. As a public instrumentality:

A. Employees of the council may not be construed to be state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372 and the state retirement system provisions of Title 5, Part 20;

B. The council may not be construed to be a state agency for any purposes, including the budget, accounts and control, auditing, purchasing or other provisions of Title 5, Part 4; and

C. Notwithstanding any provisions of paragraphs A and B:

(1) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter I, except that, by majority vote of the members, 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 have access to all material designated confidential by the council;

(2) Except as required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18; and

(3) For the purposes of the Maine Tort Claims Act, the council is a "governmental entity" and its employees are "employees" as those terms are defined in Title 14, section 8102.

Sec. 2. 12 MRSA §6455, sub-§§2 and 3, as enacted by PL 1991, c. 523, §2, are amended to read:

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.~~

Sec. 3. 12 MRSA §6455, sub-§3-A, as enacted by PL 1993, c. 282, §1, is amended to read:

3-A. Employees. The council shall hire a full-time executive director and may hire clerical staff as needed to perform its duties. Employees of the Lobster Promotion Council serve at the pleasure of the council. ~~Except as provided in this subsection, employees of the council are not state employees and are not subject to the provisions of Title 5, chapters 71 and 372 or Title 5, Part 20. The salary and benefits for employees of the council are determined by the council. For the purposes of the Maine Tort Claims Act, the council is a governmental entity and its employees are employees as those terms are defined in Title 14, section 8102.~~

Sec. 4. 12 MRSA §6455, sub-§4, ¶E, as amended by PL 1993, c. 282, §3, is further amended to read:

E. Make expenditures from the Lobster ~~Marketing~~ Promotion 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 and the payment of compensation for employees, 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; and

Sec. 5. 12 MRSA §6455, sub-§5, as amended by PL 1993, c. 282, §4, is further amended to read:

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 pay to the fund all money appropriated or received by the department for the purposes of this subchapter, except that the department may retain funds necessary to reimburse the department for the actual cost of collecting the license surcharges established in this subsection.~~ The fund is capitalized from the following annual surcharges assessed on the following licenses issued by the department for calendar years 1992, 1993, 1994, 1995, 1996 and 1997:

- 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~~ disbursed to the council upon request of 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.

In addition to payment of the regular license fee and the surcharge, a person purchasing a license subject to the surcharges established in this subsection may make voluntary contributions to the fund at the time the license is purchased. Voluntary contributions received by the department from a licensee pursuant to this subsection must be deposited in the fund by the department and must be used by the council for the purposes of this subchapter.

Sec. 6. 12 MRSA §6455, sub-§7 is enacted to read:

7. **Audit.** Beginning with fiscal year 1994-95, the Department of Audit shall annually perform a postaudit of expenditures by the council and shall report the results of that audit to the joint standing committee of the Legislature having jurisdiction over marine resource matters. The council shall reimburse the Department of Audit for costs incurred by that department to conduct that audit.

Sec. 7. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1994-95
AUDIT, DEPARTMENT OF	
Audit - Departmental Bureau	
All Other	\$5,625
Provides for the allocation of funds to perform a postaudit of expenditures of the Lobster Promotion Council.	
DEPARTMENT OF AUDIT	
TOTAL	\$5,625
 LOBSTER PROMOTION COUNCIL	
Lobster Promotion Council	

All Other	(\$400,000)
Provides for the deallocation of funds to reflect the new status of the Lobster Promotion Council as an instrumentality of the State.	

Lobster Promotion Council

All Other	\$400,000
Provides for the allocation of funds to reflect the new status of the Lobster Promotion Council as an instrumentality of the State and to allow the council to receive state funds from the Lobster Promotion Fund.	

LOBSTER PROMOTION COUNCIL TOTAL

\$0

TOTAL ALLOCATIONS

\$5,625

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect on July 1, 1994.

Effective July 1, 1994.

CHAPTER 546

H.P. 1207 - L.D. 1615

An Act to Repeal the Sunset on Rating Practices in Small Group Health Plans and Individual Health Insurance

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

Sec. 1. 24-A MRSA §2736-C, sub-§2, ¶D, as enacted by PL 1993, c. 477, Pt. C, §1 and affected by Pt. F, §1, is amended to read:

D. A carrier may vary the premium rate due to age, smoking status, occupation or industry, and geographic area only under the following schedule and within the listed percentage bands.