

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

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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
1995

A. The maintenance of a roster of blind persons eligible to become ~~operators~~ managers and issuance of licenses;

B. A fair hearing. In the case of ~~an operator~~ a manager desiring to appeal a decision ~~that the operator determines to be adverse to the operator~~ the division shall appoint a hearing board consisting of 3 persons, one to be chosen by the ~~operator~~ manager, one to be chosen by the division and the 3rd person chosen by the other 2 persons. The decision of the board is final;

C. The right to, the title to and the interest in vending facility equipment and stock; and

D. The civil rights of ~~operators~~ managers;

Sec. 18. 20-A MRSA §18078, sub-§3, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

3. Surveys. Conduct surveys to find locations where vending facilities may be operated by ~~operators~~ blind persons and establish vending facilities as it determines appropriate;

Sec. 19. 20-A MRSA §18079, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

§18079. Construction, remodeling; planning for vending facility

To carry out the purposes of this chapter, when new construction, remodeling, leasing, acquisition or improvement of public buildings or properties is authorized, the agency directing that construction, remodeling, leasing, acquisition or improvement shall, when the size of the building or property warrants, make available suitable space and facilities for vending facilities to be operated in the building or property by ~~operators~~ blind persons.

Sec. 20. 20-A MRSA §18081, as enacted by PL 1993, c. 708, Pt. G, §1, is amended to read:

§18081. Fees

A ~~license fee, a rental fee or other charge~~ may not be ~~demande~~d, ~~assessed~~, ~~exacte~~d, required or received ~~from an operator for the granting of authority to the division to operate a vending facility.~~

See title page for effective date.

CHAPTER 323

S.P. 428 - L.D. 1196

An Act to Encourage an Alternative Fishery

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

Sec. 1. 12 MRSA §6621, sub-§3, as amended by PL 1991, c. 168, §§1 to 3, is further amended to read:

3. Exception. This section ~~shall~~ does not apply to:

A. The taking of shellfish under the authority of section 6856;

B. Shellfish kept or washed in waters sterilized with a system that has been approved in writing by the commissioner, ~~provided that~~ if the waters are also approved for that use;

C. Municipal officials, with express written authorization from the commissioner, who are engaging in activities authorized under section 6671. Requests for exception must be submitted to the commissioner in writing stating the activities proposed and the name of the person designated by the municipal officials to supervise those activities. In addition, the municipality shall, at least 24 hours prior to engaging in the activity, notify the department of the time or times the activity authorized under this paragraph will be conducted; ~~or~~

D. The harvesting of shellfish from closed areas designated for purposes of relaying when harvesting is approved in writing by the commissioner consistent with regulations promulgated under section 6856-; or

E. The harvesting of marine mollusks from closed areas for the use of bait or other uses not meant for human consumption, if the harvesting takes place according to rules adopted by the commissioner. The commissioner may adopt rules that permit the taking, possession, shipping, transportation and selling of marine mollusks for bait or other uses not meant for human consumption, if the rules do not jeopardize certification of the State's shellfish according to the National Shellfish Sanitation Program.

See title page for effective date.

CHAPTER 324

H.P. 860 - L.D. 1191

An Act to Amend the Substance Abuse Testing Laws

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

Sec. 1. 26 MRSA §681, sub-§3, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

3. Collective bargaining agreements. This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance abuse testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

Sec. 2. 26 MRSA §681, sub-§8, ¶B, as repealed and replaced by PL 1989, c. 832, §2, is amended to read:

B. This subchapter, except for section 685, subsection 2 and section 689, subsections 1 and 4, does not apply to employees subject to substance abuse testing under any federal law or regulation or under rules adopted by ~~this State's~~ the Department of Public Safety that incorporate any federal laws or regulations related to substance abuse testing for motor carriers. This exception does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees as long as the agreements are consistent with federal law.

(1) For the purposes of applying section 685, subsection 2 to an employee under this paragraph, the employee is deemed to have previously worked in an employment position subject to random or arbitrary testing under an employer's written policy.

Sec. 3. 26 MRSA §682, sub-§2, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

2. Employee. "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment while receiving a mandated benefit, including but not limited to workers' compensation, unemployment compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is

an employee for a minimum of 30 days beyond the separation.

A. A full-time employee is an employee who customarily works 30 hours or more each week.

Sec. 4. 26 MRSA §683, sub-§2, ¶K, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result. The policy must include a mechanism that provides an opportunity to appeal at no cost to the appellant; and

Sec. 5. 26 MRSA §683, sub-§3, as amended by PL 1989, c. 832, §7, is further amended to read:

3. Copies to employees and applicants. The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 at least 30 days before any portion of the written policy applicable to employees takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee. If an employer intends to test an applicant, the employer shall provide the applicant with a copy of the written policy under subsection 2 before administering a substance abuse test to the applicant. The 30-day and 60-day notice periods provided for employees under this subsection do not apply to applicants.

Sec. 6. 26 MRSA §683, sub-§5, ¶A, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

A. Segregate a portion of the sample for that person's own testing. Within 5 days after ~~the sample is collected~~ notice of the test result is given to the employee or applicant, the employee or applicant shall notify the employer of the testing laboratory selected by the employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the same chain of custody

requirements applicable to testing of the employer's portion of the sample. The employee or applicant shall pay the costs of these tests. Payment for these tests may not be required earlier than when notice of the choice of laboratory is given to the employer; and

Sec. 7. 26 MRSA §685, sub-§2, ¶A, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

- (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;
- (2) Discharge of an employee;
- (3) Discipline of an employee; or
- (4) Change in the employee's work assignment.

Sec. 8. 26 MRSA §685, sub-§2, ¶A-1 is enacted to read:

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy.

Sec. 9. 26 MRSA §686, sub-§2, ¶A, as affected by PL 1989, c. 604, §§2 and 3, is amended to read:

A. The rules ~~shall~~ must provide for notice to be given to the employees of any employer who submits a written policy or amendment applicable to employees to the department for review under this section. The employees may submit written comments to the department challenging any portion of the employer's written policy, including the proposed designation of any position under section 684, subsection 3, paragraph B.

See title page for effective date.

CHAPTER 325

S.P. 495 - L.D. 1354

An Act to Modify the Electricians' Examining Board Law

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

Sec. 1. 32 MRSA §1101, sub-§1-A is enacted to read:

1-A. Electrical company. "Electrical company" means a person, firm, corporation or partnership employing licensees engaged in the business of doing electrical installations. A company license must be validated by an employee or officer of the company holding a current master or limited electrical license. A limited licensee may validate only a company license making installations specific to the limited license. The company license becomes void upon the death of or the severance from the company of the validating licensee.

Sec. 2. 32 MRSA §1101, sub-§3, as amended by PL 1989, c. 450, §11, is further amended to read:

3. Helper electrician. "Helper electrician" means a person who is engaged in assisting in making electrical installations in the employment of a master electrician, limited electrician or electrical company and under the direct supervision of a master, journeyman or limited electrician but who does not qualify under subsection 1. The biennial renewal fee for a helper electrician license shall be \$20.

Sec. 3. 32 MRSA §1101, sub-§3-A, as amended by PL 1987, c. 735, §43, is further amended to read:

3-A. Journeyman-in-training electrician. "Journeyman-in-training electrician" means a person doing work of installing electrical wires, conduits, apparatus, fixtures and other electrical equipment making electrical installations in the employment of a master electrician, limited electrician or electrical company and under the supervision of a journeyman, limited or a master electrician.

Sec. 4. 32 MRSA §1101, sub-§4, as amended by PL 1987, c. 735, §44, is further amended to read:

4. Journeyman electrician. "Journeyman electrician" means a person doing work of installing electrical wires, conduits, apparatus, fixtures and other electrical equipment making electrical installations in the employment of a master electrician, limited electrician or electrical company.

Sec. 5. 32 MRSA §1101, sub-§4-A, as amended by PL 1993, c. 349, §66, is further amended to read:

4-A. Supervision. One apprentice electrician or one helper electrician may work with and under the