

# 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**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

**Sec. 3. 22 MRSA §8205**, as enacted by PL 1991, c. 630, §5, is repealed and the following enacted in its place:

**§8205. Collection and disclosure of information about a child's background**

This section governs the collection and disclosure of information about the child's background.

**1. Information to be collected.** The licensed child placing agency shall obtain medical and genetic information on the birth parents and the child. Specifically, the licensed child placing agency shall attempt to obtain:

A. A current medical, psychological and developmental history of the child, including an account of the child's prenatal care, medical condition at birth, results of newborn screening, any drug or medication taken by the child's birth mother during pregnancy, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and

B. Relevant information concerning the medical, psychological and social history of the birth parents, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health of the birth mother during her pregnancy and the health of the birth parents at the time of the child's birth.

**2. Disclosure before placement.** Prior to the child being placed for the purpose of adoption, the licensed child placing agency shall provide the information described in subsection 1 to the prospective adoptive parents.

**3. Specific reasons for concern.** If the licensed child placing agency has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents.

**4. Notice that information unavailable.** The prospective adoptive parents must be informed in writing if any of the information described in subsection 2 can not be obtained, either because the records are unavailable or because the birth parents are unable or unwilling to consent to its disclosure or to be interviewed.

**5. Request for additional information.** If, after a child is placed for adoption and either before or after the adoption is final, the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the birth

parents or the child may be useful in diagnosing or treating such illness, the prospective adoptive or adoptive parents may request the child placing agency to attempt to obtain additional information. The child placing agency shall attempt to obtain the information promptly and shall disclose any information collected to the prospective adoptive or adoptive parents as soon as reasonably possible. The licensed child placing agency may charge a fee to the prospective adoptive or adoptive parents to cover the cost of obtaining and providing the additional information. Fees collected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents.

**6. International adoptions.** If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be compliance with this section.

See title page for effective date.

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**CHAPTER 392**

**S.P. 337 - L.D. 918**

**An Act to Ensure a Sustainable Urchin Fishery in the State**

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

**Sec. 1. 12 MRSA §6533**, as enacted by PL 1993, c. 604, §1, is amended to read:

**§6533. Training required for tender's license**

The commissioner may not issue a sea urchin ~~boat~~ and scallop diving tender license under section 6748 ~~B 6535~~ to any person for calendar year 1995 or later unless that person has attended a safety training session offered under this section.

**1. Tender safety training session.** ~~By August 15, 1994, the~~ The commissioner shall establish a boat tender safety training session to provide basic safety training for persons who seek to obtain a sea urchin ~~boat~~ and scallop diving tender license. The training session may be taught by the department or offered by any public or private sector association or organization authorized by the commissioner to offer the training session. At a minimum, the training session must familiarize participants with basic cardiovascular pulmonary resuscitation techniques and risk factors, including hypothermia, associated with the handharvesting of sea urchins and scallops. For any training session taught by the department, the commissioner

shall charge a fee for that session to recover all costs incurred by the department in teaching the training session.

**2. Allowance for waivers.** The commissioner may waive the requirement to attend a training session offered under this section for any person who demonstrates to the commissioner, either through documented experience or technical or professional accreditation, a level of knowledge at least equal to that expected from a person who completed the session. It is the responsibility of the person seeking such a waiver to request that waiver in writing to the commissioner and to provide the commissioner with any documentation the commissioner determines necessary to make a decision.

**Sec. 2. 12 MRSA §6535** is enacted to read:

**§6535. Sea urchin and scallop diving tender license**

**1. License required.** It is unlawful for a person to operate a boat as a platform for the harvesting of sea urchins and scallops by hand, to act as a diving tender on a boat or to possess, strip, transport or sell scallops or sea urchins unless that person is licensed under this section, section 6701 or section 6748.

**2. Licensed activity.** A person licensed under this section may tend divers and operate a boat as a platform for the harvesting of sea urchins and scallops by hand and may possess, ship, transport and sell sea urchins and scallops. A sea urchin and scallop diving tender license does not authorize the holder to harvest sea urchins and scallops.

**3. Eligibility.** A sea urchin and scallop diving tender license may be issued only to an individual and is a resident license.

**4. Fee.** The fee for a sea urchin and scallop diving tender license is \$89.

**5. Prima facie evidence.** The failure of at least one person on board the boat operated as a platform during periods of diving to harvest scallops or sea urchins to have a license issued under section 6701 or 6748 is prima facie evidence of a violation of this section.

**Sec. 3. 12 MRSA §6748-B**, as enacted by PL 1993, c. 416, §2, is repealed.

**Sec. 4. 12 MRSA §6748-D** is enacted to read:

**§6748-D. Sea urchin hand-raking and trapping license**

**1. License required.** It is unlawful for a person to engage in the activities authorized under this section without a current sea urchin hand-raking and trapping license.

**2. Licensed activity.** The holder of a sea urchin hand-raking and trapping license may take sea urchins by hand-raking or by trap and may possess, ship, transport or sell sea urchins taken by that licensee.

**3. Eligibility.** A sea urchin hand-raking and trapping license may be issued only to an individual and is a resident license.

**4. Fee.** The fee for a sea urchin hand-raking and trapping license is \$89.

**Sec. 5. 12 MRSA §6749**, as enacted by PL 1993, c. 416, §2, is repealed and the following enacted in its place:

**§6749. Sea urchin harvesting season**

It is unlawful for a person to fish for or take sea urchins from May 1st to August 31st.

**Sec. 6. 12 MRSA §6749-N**, as amended by PL 1995, c. 198, §1, is further amended to read:

**§6749-N. Closed areas; 1995 to 1998**

Notwithstanding section 6749, in calendar years 1995, 1996, 1997 and 1998, it is unlawful for a person to fish for or take sea urchins from:

**1. Zone 1.** Zone 1, from April 1st to August 15<sup>th</sup> 31st. For the purposes of this article, "Zone 1" means all coastal waters west of a line beginning at the easternmost point of Fort Point State Park on Cape Jellison then running southwesterly to channel marker #1 south of Sears Island, then running southwesterly to channel marker BW "11" located between Marshall's Point and Bayside in the Town of Northport, then running southwesterly to channel marker #9 east of Great Spruce Head located in the Town of Northport, then running southerly to Graves channel marker northeast of the Town of Camden, then running southeasterly to the Penobscot Bay Buoy east of Rockland harbor, then running southerly to the TB1 whistle southwest of Junken Ledge, then running southeasterly to Red Nun #10 buoy at Foster Ledges, then running due south magnetic to the boundary of the State's coastal waters; and

**2. Zone 2.** Zone 2, from May 15<sup>th</sup> 1st to October 1st. For the purpose of this article, "Zone 2" means all coastal waters east of that line established in subsection 1, including all coastal waters of the Penobscot River north of Fort Point State Park.

~~The commissioner shall report annually to the joint standing committee of the Legislature having jurisdiction over marine resource matters on the quantity and type of sea urchin licenses sold in each zone in each year.~~

The commissioner shall report annually to the joint standing committee of the Legislature having jurisdiction over marine resource matters on the quantity and type of sea urchin licenses sold in each zone in each year.

**Sec. 7. 12 MRSA §6749-0**, as enacted by PL 1993, c. 740, §3, is repealed and the following enacted in its place:

**§6749-O. Limited entry; exceptions**

**1. Handfishing and dragging licenses.** The commissioner may not issue a handfishing sea urchin license or a sea urchin dragging license for calendar year 1994, 1995, 1996, 1997 or 1998 to any person unless that person possessed that license in the previous calendar year.

**2. Hand-raking and trapping license.** The commissioner may not issue a sea urchin hand-raking and trapping license for calendar year 1995 or 1996 to any person unless that person possessed either a handfishing sea urchin license or a sea urchin dragging license in the previous calendar year. The commissioner may not issue a sea urchin hand-raking and trapping license for calendar year 1997 or 1998 to any person unless that person possessed a sea urchin hand-raking and trapping license in the previous calendar year.

**3. Exceptions.** The commissioner may grant a license under this section to a person who was licensed to harvest sea urchins in the year prior to the previous calendar year but did not possess a license in the previous calendar year due to physical injury or other medical condition. The person must provide the commissioner with documentation from a physician describing the physical injury or other medical condition.

**4. License transfer.** The commissioner may transfer the license of a deceased holder of a license issued under this section to a member of the deceased license holder's family. For the purposes of this subsection, "member of the deceased license holder's family" means a deceased license holder's child by birth or adoption, stepchild or spouse.

**Sec. 8. 12 MRSA §6749-P and §6749-Q**, as enacted by PL 1993, c. 740, §3, are amended to read:

**§6749-P. Licenses by zone**

For calendar years 1995, 1996, 1997 and 1998, a person eligible to purchase a license under section 6749-O; may purchase those licenses only for Zone 1 or Zone 2. All of those licenses issued to any one person in any one year must be for the same zone. A handfishing sea urchin license, a sea urchin hand-

raking and trapping license or a sea urchin dragging license authorizes the licensed activity only in the zone for which it is issued. A sea urchin dragging license must list the documentation or registration number of the vessel to be used by that licensee when dragging. A vessel documentation number or registration number may not be listed on more than one sea urchin boat license.

**§6749-Q. License surcharges**

The following surcharges are assessed on licenses sold for calendar years 1995, 1996 and 1997:

**1. Handfishing sea urchin license.** One hundred and sixty dollars on a sea urchin ~~hand harvesting~~ handharvesting license;

**1-A. Sea urchin hand-raking and trapping license.** One hundred and sixty dollars on a sea urchin hand-raking and trapping license;

**2. Sea urchin dragging license.** One hundred and sixty dollars on a sea urchin dragging license;

**3. Sea urchin boat tender's license.** Thirty-five dollars on a sea urchin boat tender's license;

**4. Wholesale seafood license with a sea urchin buyer's permit.** Five hundred dollars on a wholesale seafood license with a sea urchin buyer's permit; and

**5. Wholesale seafood license with a sea urchin processor's permit.** Two thousand five hundred dollars on a wholesale seafood license with a sea urchin processor's permit.

~~The commissioner shall deposit all surcharges assessed in this section in the Sea Urchin Research Fund established in section 6749-R.~~

The commissioner shall deposit all surcharges assessed in this section in the Sea Urchin Research Fund established in section 6749-R.

**Sec. 9. 12 MRSA §6749-U** is enacted to read:

**§6749-U. Extension of closing dates**

The commissioner may by rule extend the closing dates established under sections 6749 and 6749-N for entire zones or portions of zones for the purpose of conserving spawning sea urchins.

**Sec. 10. Report.** The Commissioner of Marine Resources shall report by February 1, 1996 to the joint standing committee of the Legislature having jurisdiction over marine resource matters on the feasibility of administering a roe-yield standard as a means of conserving the State's sea urchin resource. The joint standing committee of the Legislature having jurisdiction over marine resource matters may

report out legislation concerning roe-yield standards during the Second Regular Session of the 117th Legislature.

See title page for effective date.

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## CHAPTER 393

### H.P. 837 - L.D. 1168

#### An Act to Implement the Recommendations of the People with Disabilities Access Commission

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

**Sec. 1. 5 MRSA §4553, first ¶,** as enacted by PL 1971, c. 501, §1, is amended to read:

As used in this Act, unless the context or subchapter otherwise indicates, the following words shall have the following meanings:

**Sec. 2. 5 MRSA §4553, sub-§§1-A, 1-B and 1-C** are enacted to read:

**1-A. Commercial facilities.** "Commercial facilities" means facilities that are intended for nonresidential use.

**1-B. Covered entity.** For purposes of subchapter III, "covered entity" means an employer, employment agency, labor organization or joint labor-management committee. For purposes of subchapter V, "covered entity" means any applicable private entity or public entity.

**1-C. Direct threat.** For purposes of subchapter III, "direct threat" means a significant risk to the health or safety of others that can not be eliminated by reasonable accommodation.

**Sec. 3. 5 MRSA §4553, sub-§2,** as enacted by PL 1971, c. 501, §1, is amended to read:

**2. Discriminate.** "Discriminate" includes, without limitation, segregate or separate.

For purposes of subchapter III, "discriminate" also includes, as it relates to individuals with physical or mental disability:

A. Limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

B. Participating in a contractual or other arrangement or relationship that has the effect of

subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this Act. A relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity or an organization providing training and apprenticeship programs;

C. Utilizing standards, criteria or methods of administration:

(1) That have the effect of discrimination on the basis of disability; or

(2) That perpetuate the discrimination of others who are subject to common administrative control;

D. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

E. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

F. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

G. Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

H. Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant, except