

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

**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**

commissioner or the commissioner's designated representative;

B. A person who operates an aquarium;

C. A person who operates a festival;

D. A person who undertakes a public service activity; or

E. A municipality that operates a hydraulic or mechanical soft-shell clam dredge for municipal transplanting projects under section 6623.

See title page for effective date.

**CHAPTER 568**

**S.P. 673 - L.D. 1733**

**An Act to Clarify Certain Provisions of Law Pertaining to Lobster Management**

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

**Whereas,** lobster fishing is essential to the culture and economy of Maine's coastal communities; and

**Whereas,** the State's lobster laws need amending to enable participants in the lobster fishery to obtain licenses in 1996; and

**Whereas,** certain provisions of the State's lobster laws are in need of clarification; 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 §6421,** as amended by PL 1995, c. 468, §3, is further amended to read:

**§6421. Lobster and crab fishing licenses**

**1. License required.** It is unlawful for any person to engage in the activities authorized by this license under this section without a current Class I, Class II, Class III, ~~Class IV~~ or apprentice, student or noncommercial lobster and crab fishing license or other license issued under this Part authorizing the activities.

**2. Licensed activity.** The holder of a Class I, Class II, Class III, ~~Class IV~~ apprentice or student lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs the license holder has taken. The license does not authorize the license holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat. The holder of a Class II or Class III license is liable for the licensed activities under this subsection of all unlicensed crew members assisting that licensee.

**2-A. Licensed activity; noncommercial license.** The holder of a noncommercial lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs the license holder has taken. The license does not authorize the license holder to sell lobsters or to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat.

**3-A. License limitation.** A license authorizes activities by individuals as follows.

A. A Class I license authorizes the licensed activities under subsection 2 by the individual who is named in the license. Any individual assisting or helping a Class I license holder in these activities must also be licensed.

B. A Class II license authorizes the license holder to engage in the licensed activities under subsection 2. A Class II license holder may engage one unlicensed crew member to assist in the licensed activities under the direct supervision of the Class II license holder.

C. A Class III license authorizes the license holder to engage in the licensed activities under subsection 2. A Class III license holder may engage 2 unlicensed crew members to assist in the licensed activities under the direct supervision of the Class III license holder.

~~D. A Class IV~~ An apprentice lobster and crab fishing license authorizes the apprentice so licensed to engage in the licensed activities under subsection 2 on that apprentice's sponsor's vessel when the apprentice's sponsor is on board the vessel. ~~A Class IV license holder person who holds an apprentice lobster and crab fishing license~~ may not tend any traps unless the traps are fished by the sponsor of the apprentice so licensed. For the purpose of this paragraph, "apprentice's sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

E. A student license authorizes the license holder to engage in the licensed activities ~~using not more than 150 lobster traps at any one time~~

under subsection 2. A person issued a student license may not submerge at any one time more than 150 lobster traps in the coastal waters of the State.

F. A noncommercial lobster and crab fishing license authorizes the license holder to engage in the licensed activities under subsection 2-A. A person issued a noncommercial lobster and crab fishing license may not submerge at any one time more than 5 lobster traps in the coastal waters of the State.

**4. Exception.** A license is not required to take or catch crabs with bare hands or hook and line.

**5. Eligibility.** A Class I, Class II, Class III, ~~Class IV~~ apprentice, noncommercial or student lobster and crab fishing license may only be issued to an individual and is a resident license. A Class I, Class II or Class III license may be issued to a person only if the person:

~~A. Possessed a calendar year 1993 or calendar year 1994 Class I, Class II or Class III license issued under this section or possessed a Class I, Class II or Class III license under this section that was issued between January 1, 1995 and March 31, 1995 and owned and operated a boat used for harvesting lobsters in the coastal waters in calendar year 1993 or 1994 or between January 1, 1995 and March 31, 1995 Documents to the commissioner that the person harvested lobsters in calendar year 1993, calendar year 1994 or at any time between January 1, 1995 and September 30, 1995 while in possession of a Class I, Class II or Class III license issued to that person under this section;~~

B. Held a Class I, Class II or Class III license issued under this section in calendar year 1992 and documents to the satisfaction of the commissioner that the person did not possess a license issued under this section in calendar year 1993 or 1994 and did not apply for a license issued under this section at any time between January 1, 1995 and ~~March 31~~ September 30, 1995 because of an injury or other medical condition;

C. Meets the requirements of the apprentice program under section 6422;

D. Documents to the commissioner that the commissioner had suspended the person's license privileges for a length of time that included the entire period ~~between from~~ January 1, 1993 ~~and March 31~~ to September 30, 1995;

E. Documents to the commissioner that the person made a substantial investment at any time between January 1, 1993 and ~~April~~ September

30, 1995 in equipment directly related to the harvesting of lobsters. The commissioner shall define by rule the term "substantial investment"; ~~or~~

F. Is 65 years of age or older and has held a lobster and crab fishing license-; or

G. Documents to the commissioner that the person obtained practical lobster fishing experience as a sternman employed by the holder of a Class I, Class II or Class III license issued under this section during one of the following time periods:

(1) At any time between January 1, 1995 and October 1, 1995 and during any part of any calendar year prior to calendar year 1995; or

(2) During any part of any 2 calendar years prior to calendar year 1995.

**5-A. Student license eligibility.** A student license may only be issued to a person who, at the time of application, is a full-time student not more than 22 years of age. For the purposes of this subsection, "full-time student" means "student" as defined in Title 39-A, section 102, subsection 8, paragraph C.

**6. Buoy colors.** Each license applicant must describe, on the application, a single color design of the applicant's buoys.

**7-A. Fee.** Except as provided in subsection 8, the fee for the license is:

A. Forty-six dollars for a Class I license for applicants under 18 years of age;

B. Ninety-three dollars for a Class I license for applicants 18 years of age or older;

C. One hundred eighty-six dollars for a Class II license;

D. Two hundred seventy-nine dollars for a Class III license;

E. Forty-six dollars for ~~a Class IV~~ an apprentice lobster and crab fishing license for applicants under 18 years of age;

F. Ninety-three dollars for ~~a Class IV~~ an apprentice lobster and crab fishing license for applicants 18 years of age or older; ~~and~~

G. Forty-six dollars for a student lobster and crab fishing license-; and

H. Forty-six dollars for a noncommercial lobster and crab fishing license.

**8. Exception.** The fee for a Class I or ~~a Class IV~~ an apprentice lobster and crab fishing license for applicants 70 years of age or older is \$46.

**Sec. 2. 12 MRSA §6422, sub-§§1 and 4,** as enacted by PL 1995, c. 468, §4, are amended to read:

**1. Program established; experience component.** By July 1, 1996, the commissioner shall establish by rule an apprentice program for entry into the lobster fishery. The program must include practical lobster fishing experience. A person must hold ~~a Class IV~~ an apprentice lobster and crab fishing license under section 6421 to ~~participate in~~ enter the program.

**4. Allowance for waivers.** Notwithstanding subsections 1 and 2, the commissioner may waive all or part of the practical lobster fishing experience component or the program length for a person ~~who holds a Class IV license before that person enters the apprentice program~~ if the person:

A. Documents to the commissioner that the person obtained practical lobster fishing experience as a sternman employed by the holder of a Class II or Class III license issued under section 6421;

B. Documents to the commissioner that the person obtained practical lobster fishing experience as a holder of a student license issued under section 6421; or

~~C. Documents to the commissioner that the person:~~

~~(1) Held a license issued under section 6421 during any calendar year between calendar year 1984 and calendar year 1994 or between January 1, 1995 and March 31, 1995; and~~

~~(2) Held a license issued under section 6501, 6701, 6702, 6731, 6745, 6746, 6748 or 6748 A in calendar year 1994 or between January 1, 1995 and March 31, 1995.~~

D. Documents to the commissioner that the person harvested lobster while in possession of a license issued to that person under section 6421.

**Sec. 3. 12 MRSA §6431-D, sub-§2, ¶¶A and B,** as enacted by PL 1995, c. 468, §5, are amended to read:

A. Document to the commissioner the average number of traps the license holders fished from the boat in the coastal waters of the State in calendar year 1994 and calendar year 1995 and that average number exceeds 1,200.

(1) When license holders qualify under this paragraph, the trap limit for the boat in calendar year 1996 is the average number of traps the license holders fished from the boat in the coastal waters of the State in calendar year 1994 and calendar year 1995. The number of traps fished from the boat must be reduced to 1,200 or less by March 1, 2003. The commissioner may determine by rule a method for proportionally reducing the number of traps fished from a boat; or

B. Document to the commissioner that the license holders fished an average of more than 1,200 traps from a boat in the coastal waters of the State in calendar year 1994 and calendar year 1995 and are family members. For the purposes of this paragraph, being "family members" means that one license holder on the boat must be related to each of the license holders on the boat as either a spouse, sibling, parent by blood, parent by adoption, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

(1) When license holders qualify under this paragraph, the trap limit for the boat is the product of 1,200 multiplied by the number of license holders who are family members documented under this paragraph who continue to harvest lobsters from the boat in calendar year 1996 and consecutive calendar years thereafter. A license holder who is a family member documented under this paragraph and who does not harvest lobsters from the boat in calendar year 1996 or any subsequent calendar year ~~not harvest lobsters from the boat~~ harvest lobsters from the boat as long as the total number of traps fished from the boat does not exceed 1,200.

**Sec. 4. 12 MRSA §6446, sub-§2,** as enacted by PL 1995, c. 468, §8, is repealed and the following enacted in its place:

**2. Rules for zones.** The commissioner may adopt rules for a zone established under subsection 1 that place limits on lobster and crab fishing license holders who fish in that zone regarding the number of lobster traps fished and the time periods allowed for complying with that number, the number of lobster traps allowed on a trawl and the time of day when lobster fishing may occur only when the rules were proposed by the lobster management policy council established for that zone pursuant to section 6447, subsection 1 and the proposed rules were approved in a referendum pursuant to section 6447, subsection 6. The commissioner may accept the rules proposed by a

lobster management policy council as reasonable and adopt those rules or reject the council's proposed rules as unreasonable. The rules adopted under this subsection by the commissioner must accurately reflect the intent of the rules proposed by a lobster management policy council but are not required to be a verbatim rendition of the proposed rules.

**Sec. 5. 12 MRSA §6446, sub-§4**, as enacted by PL 1995, c. 468, §8, is amended to read:

**4. Public hearing not required.** In adopting rules under subsection 2, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052. ~~The~~ Except as provided in subsection 6, the commissioner shall comply with all other provisions of Title 5, chapter 375 when adopting rules under subsection 2.

**Sec. 6. 12 MRSA §6446, sub-6** is enacted to read:

**6. Petition for rule prohibited.** A person may not petition the commissioner pursuant to Title 5, section 8055 for the adoption or modification of a rule for a lobster management zone established under this section that regulates the number of lobster traps fished and the time periods allowed for complying with that number, the number of lobster traps allowed on a trawl and the time of day when lobster fishing may occur.

**Sec. 7. 12 MRSA §6447, sub-§§5 and 6**, as enacted by PL 1995, c. 468, §8, are amended to read:

**5. Council authority.** Upon approval in a referendum under subsection 6, a lobster management policy council may propose to the commissioner ~~regulations rules~~ for a zone to place the following limitations on lobster and crab fishing license holders that fish in that zone, provided the proposed limitations are equal to or stricter than the limitations under section 6431-A, ~~6431-D~~, 6439, 6439-A or 6440:

- A. The number of lobster traps fished and the time periods allowed for complying with that number;
- B. The number of lobster traps allowed on a trawl; and
- C. The time of day when lobster fishing may occur.

**6. Referendum on policy proposals.** A lobster management policy council must submit proposed ~~regulations rules~~ to referendum in the zone in which the ~~regulations rules~~ would apply before submitting those proposed ~~regulations rules~~ to the commissioner. A lobster management policy council may submit proposed ~~regulations rules~~ to the commissioner if the

proposed ~~regulations rules~~ are approved by 2/3 of those voting in the referendum.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 26, 1996.

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## CHAPTER 569

### H.P. 1281 - L.D. 1760

#### An Act to Amend the Definition of "State Agency Client"

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

**Sec. 1. 20-A MRSA §1, sub-§34-A**, as amended by PL 1993, c. 410, Pt. CCC, §7, is further amended to read:

**34-A. State agency client.** "State agency client" means a child of eligible school age who is:

- A. In the care or custody, or both, of the Department of Human Services, the Department of Mental Health and Mental Retardation or the Department of Corrections;
- B. Placed, with the recommendation of a Division of Mental Retardation case manager or an employee of the Bureau of Children with Special Needs, Department of Mental Health and Mental Retardation, with a person who is not the child's parent, legal guardian or relative;
- C. On entrustment or absent-with-leave status from the Maine Youth Center; or
- D. Attending a public or private school while still a resident of a state-operated institution.

Notwithstanding paragraphs A to D, a "state agency client" may in addition be either a child who is under 3 years of age and has a diagnosed, established condition or a biological factor that has a high probability of resulting in developmental delay or a child who is under 6 years of age and in need of early intervention of special education services due to a delay in one or more of the following areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development.

See title page for effective date.

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