

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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
1999

5. Penalty for possession. Possession of lobsters other than caught by the method specified in subsection 1 is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of ~~\$25~~ \$50 for each violation and, in addition, a fine of ~~\$30~~ \$100 for each lobster involved.

Sec. 3. 12 MRSA §6436, sub-§5, as enacted by PL 1981, c. 433, §9, is amended to read:

5. Penalty. Possession of lobsters in violation of this section is a Class D crime, except that in addition to any punishment ~~which~~ that may be imposed under Title 17-A, Part 3, the court shall impose a fine of ~~\$25~~ \$50 for each violation and, in addition, a fine of ~~\$30~~ \$100 for each lobster involved that is bearing eggs and a fine of \$50 for each female lobster involved that is marked with a v-notch.

Sec. 4. 12 MRSA §6438-A, sub-§2, as enacted by PL 1995, c. 468, §7, is amended to read:

2. Penalty. A violation of this section is a Class D crime, except that the court shall impose a fine of \$500 for each violation and, in addition, a fine of ~~\$100~~ \$150 for each lobster.

See title page for effective date.

CHAPTER 83

H.P. 323 - L.D. 439

**An Act to Amend the Laws
Governing the Hancock County
Budget Process**

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

Sec. 1. 30-A MRSA §764, as enacted by PL 1991, c. 749, §1, is amended to read:

§764. Public hearing

The Hancock County commissioners shall hold ~~one or more~~ a public ~~hearings~~ hearing on the budget estimate before October 1st and an informational meeting, ~~in conjunction with the budget advisory committee, with the Hancock County legislative delegation on the advisory committee's budget estimates~~ before December 1st. Pursuant to the requirements of section 701, subsection 3, written notice and a copy of the estimates must be sent by mail or delivered in person to each member of the

county legislative delegation at least 10 days before the informational meeting on the annual budget.

See title page for effective date.

CHAPTER 84

H.P. 1025 - L.D. 1436

**An Act to Transfer the Regulatory
Responsibilities of the Arborist
Examining Board to the Department
of Agriculture, Food and Rural
Resources**

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

Sec. 1. 5 MRSA §12004-A, sub-§2, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. 2. 7 MRSA §1044-A, first ¶, as amended by PL 1995, c. 435, §1 and affected by §3, is further amended to read:

For the purpose of providing revenues to defray the expense of the inspection and analysis prescribed in this subchapter, the commissioner shall license seed labelers. The commissioner shall prescribe the license application form. License fees established under this subchapter may be collected on other than an annual basis if the license required in this section is issued in conjunction with a nursery operator's license issued under ~~Title 32,~~ section ~~1904~~ 2171.

Sec. 3. 7 MRSA c. 404 is enacted to read:

CHAPTER 404

ARBORIST LICENSING

SUBCHAPTER I

**NURSERY OWNERS AND DEALERS GENER-
ALLY**

§2171. License required; fee; violations

A person, firm or corporation may not engage in or continue in the business of selling or dealing in nursery stock, as defined in section 2211, without first obtaining a license to conduct such business in this State. The State Horticulturist shall prescribe the form of the license. Upon proper application, a license must be issued in the name of the nursery owner or dealer and that license may not be transferred. Each agent and each store acting under a general agent or store must have a license as provided in this section. A license may be issued for a one-year, 2-year or 3-year period. Licenses for a period in excess of one

year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee.

1. Fees. The following provisions apply to the fees payable for a license issued under this section.

A. An applicant who has a nursery stock retail sales area in excess of 150 square feet or gross annual sales of nursery stock in excess of \$500 shall pay a license fee of \$25 per year.

B. An applicant who has gross annual sales of nursery stock of \$500 or less and a nursery stock retail sales area of 150 square feet or less shall pay a license fee of \$5 per year.

C. Educational institutions are exempt from the license fee.

2. Violations. Licenses may be revoked by the Administrative Court, as provided in the Maine Administrative Procedure Act, for failure to comply with the requirements of chapter 405-A.

SUBCHAPTER II

TREE SPECIALISTS

ARTICLE 1

GENERAL PROVISIONS

§2173. Definitions

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

1. Arborist. "Arborist" means a person who, for compensation, takes down or fells, diagnosis or evaluates the condition of shade or ornamental trees; solicits, recommends or supervises the treatment of those trees; or in any manner or for any purpose treats or cares for those trees.

2. Ornamental trees. "Ornamental trees" means trees of shade, beauty or landscape value, or those trees intended to become ornamental trees.

3. Person. "Person" means an individual, partnership or any group of persons, whether incorporated or not.

4. Regular employer. "Regular employer" means a person doing business in or operating a business in the State.

5. Shade trees. "Shade trees" means trees grown, established or used to screen persons or

grounds, structures, walks, pools or other similar objects from wind, sunlight, observation or sound.

6. Takes down or fells. "Takes down or fells" means the cutting for removal of any part of a tree by topping or sections or felling the tree whole.

7. Treats or cares for. "Treats or cares for" means the pruning, trimming and shaping of trees when the care requires the person to leave the ground. "Treats or cares for" also includes installing lightning protections, cabling or bracing of trees.

§2174. Exemptions

This subchapter does not apply to:

1. Certain property. Any person with reference to trees on that person's own premises or on the property of that person's regular employer;

2. Personnel. Any individual performing labor or services in connection with trees on a site where a licensed arborist is present;

3. Certain employees. State, county, municipal, quasi-municipal or public utility employees while engaged in their regular line of duty or those individuals contracted during emergencies that result in public hardships;

4. Scientific specialists. Scientific specialists such as plant pathologists, entomologists, botanists, foresters, horticulturists and others who are not arborists but who by academic training are professionally qualified to perform certain services performed by licensed arborists. Services performed by those specialists for a fee are limited to consultation, advisory or expert diagnostic services. Those specialists are prohibited from performing all other activities of practicing arborists without examination; or

5. Others. Highway contractors, subcontractors and their employees who remove trees during the performance of contracts for the construction or maintenance of highways and general contractors who remove interfering shade or ornamental trees or interfering parts of shade or ornamental trees in the conduct of their regular business.

§2175. Penalties; injunction

1. Penalties. Any person who violates this subchapter is guilty of a Class E crime.

2. Injunction. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

§2176. Powers

The department has the following duties and powers, in addition to those otherwise set forth in this chapter.

1. Licenses; enforcement. The department shall evaluate the qualifications and supervise the examination of applicants for licensure under this chapter and shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with this chapter.

2. Rules. The department may, in accordance with procedures established by Title 5, chapter 375, subchapter II, adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. Hearings. Hearings may be conducted by the department to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license or as otherwise considered necessary to fulfill its responsibilities under this chapter.

The department may not refuse to renew a license for any reason other than failure to pay a required fee, unless it has afforded the licensee an opportunity for an adjudicatory hearing. The department shall hold an adjudicatory hearing at the written request of any person who is denied a license for any reason other than failure to pay a required fee, if the request for hearing is received by the department within 30 days of the person's receipt of written notice of the denial, the reasons for the denial and the person's right to request a hearing. Hearings must be conducted in conformity with Title 5, chapter 375, subchapter IV, to the extent applicable. The department may subpoena witnesses, records and documents in any hearing it conducts.

§2177. Lists of arborists

The department shall compile and maintain a complete and up-to-date list of all licenses issued under this chapter. This list must be made available to any person upon request and payment of a fee established by rule by the department. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

ARTICLE 2**LICENSES****§2179. License required**

Except as provided in section 2180, a person may not advertise, solicit, contract or in any way

engage for compensation in the business of an arborist, or make representation as being able to do so, without being licensed as an arborist.

§2180. Exemptions to licensing requirements for tree removal in municipalities having populations under 2,500 persons

A municipality having a population of fewer than 2,500 persons may adopt, amend or repeal an ordinance regulating and permitting the removal of trees by a person without an arborist's license, as otherwise required under section 2179. The ordinance may authorize the municipal officers to issue a permit to a person to remove trees in the municipality without an arborist's license. The ordinance may establish qualifications and conditions of financial responsibility for the permittee if those qualifications and conditions do not exceed those required for an arborist's license under this subchapter.

A permit issued under a municipal ordinance must state the name of the permittee, the location and number of trees to be removed, the date on which the trees must be removed and any other restrictions that the municipal officers or their designees consider necessary to ensure the safe and responsible removal of the trees. The ordinance may provide for a fee for the issuance of permits that is reasonable and necessary to cover the expenses of issuing permits and otherwise administering this section.

§2181. Qualifications; types of licenses

A license may not be issued under this subchapter, except to an individual who is 18 years of age or older, who is specifically qualified as defined in this subchapter, who passes an examination and who gives proof of financial responsibility in amounts to be determined under rules of the department. When a company is under the control of one person who is solely responsible for the contracts, methods of work and supervision of each piece of work, this person alone must procure a license but when more than one person is responsible for contracts, methods of work and supervision of the same, each person must procure a license.

A regular or restricted license may be issued under this chapter. A regular license allows a licensed individual to engage in all operations in which an arborist is normally involved. A restricted license allows a licensed individual to perform operations only in those areas stated on the license issued. The department may restrict a licensed individual to those operations for which that individual is judged qualified by the department.

§2182. Applications

Applications for examination must be in writing on forms prescribed by the department and must be accompanied by the prescribed fee. The application form may require whatever information the department finds necessary to judge qualifications of an applicant.

§2183. Nonresidents

Each nonresident applicant for an original license or a renewal license shall file an irrevocable consent that actions against the applicant may be filed in any appropriate court of any county or district of this State where some part of the transaction occurred out of which the alleged cause of action arose, and that process in any action may be served on the applicant by leaving 2 copies of the process with the department. The consent must stipulate and agree that the service of process must be taken and held to be valid and binding for all purposes. The department shall send a copy of the process to the applicant by registered mail at the address shown in its records.

§2184. Examinations

Each license applicant shall take an examination prepared by the department.

Applicants for restricted licenses must be examined in those subjects to which their activities are restricted.

Examinations must be given at least once a year at times and places as the department determines. The grading and passing of applicants are the exclusive responsibilities of the department.

Applicants failing the first examination may apply and take the next or a subsequently scheduled examination upon payment of the required fee.

§2185. Forms

Each license issued consists of 2 parts: a certificate that must be displayed at each place of business of the arborist and a license card that must be carried by the arborist when occupied in a business capacity.

When the arborist conducts business at more than one address, additional certificates must be issued. The department may not issue more than one license card to an individual qualified to receive a license, except as provided in section 2187.

A license holder shall display the holder's license to and upon the request, at any time, of any client, other licensed arborist, law enforcement officer or employee of the department.

§2186. Term

A license expires on December 31st or at another time designated by the commissioner and becomes invalid on that date unless renewed.

A license may be renewed up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, except that the department may in its discretion, giving due consideration to the protection of the public, waive examination if the renewal application is made within 2 years from the date of the expiration.

Any arborist whose license expires while the arborist is in federal service on active duty with the Armed Forces of the United States or the National Guard, is called into service or training or is in training or education under the supervision of the Armed Forces of the United States preliminary to induction into the military service may have the license renewed without paying any intervening renewal license fees within one year after termination of that service, training or education other than by dishonorable discharge if the arborist furnishes the department with an affidavit to the effect that the arborist has been so engaged and that the service, training or education has been so terminated.

§2187. Renewals

The department shall notify every person licensed under this subchapter of the date of expiration of that person's certificate and the fee required for its annual renewal. The notice must be mailed to the person's last known address at least 30 days in advance of the expiration of the license. An application for a license renewal must contain whatever information is necessary for the department to determine whether the applicant may continue to hold a license and must be accompanied by the required fee, which is returnable if the applicant is denied a renewal license. A licensed arborist must file an application and fee of \$5 for replacement of a lost license.

§2188. Fees

An application fee and an examination fee may be established by the department in amounts that are reasonable and necessary for their respective purposes. After an applicant is notified of the applicant's eligibility for a license following examination, the applicant shall submit the annual license fee before a license is issued.

The fee for an original or renewal annual license may not exceed \$75.

All money, including application fees, examination fees and license fees received pursuant to this section, must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this section must be used for the expenses of administering this chapter.

§2189. Reciprocity

If a nonresident applicant for a license holds a valid arborist license from another state or province, examination of the applicant may be waived by the department if the other state or province in which the applicant holds the license has qualification and examination requirements equivalent to those of this subchapter. If the requirements of the other state or province do not meet the standards set forth in this subchapter, the department may decide in which respects they are lacking and what requirements the applicant must meet for waiver of examination.

§2190. Denial of license; suspension or revocation

The department may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the department may refuse to issue or renew or the Administrative Court may suspend, revoke or refuse to renew a license on any of the following grounds:

1. Misstatement. Deliberate misstatement in the application for original license or in the application for any renewal license under this subchapter;

2. Violation. Violating any provision of this chapter or any rule of the department;

3. Aiding or abetting. Willfully aiding or abetting another in the violation of this subchapter or of any rule issued pursuant to this subchapter;

4. Unauthorized use of license. Allowing one's license under this subchapter to be used by an unlicensed person;

5. Misrepresentation. Making substantial misrepresentation or false promises of a character likely to influence, persuade or induce in connection with the business of an arborist;

6. False advertising. Pursuing a continued course of misrepresentation or of making false promises through advertising, sales representatives, agents or otherwise in connection with the business of an arborist; or

7. Qualifications. Failure to possess the necessary qualifications or to meet the requirements of this subchapter for the issuance or holding of a license.

Sec. 4. 22 MRSA §1471-D, sub-§11, as enacted by PL 1975, c. 397, §2, is amended to read:

11. Arborists. In the case of persons licensed under Title 32 7, chapter 29 404, subchapter II, the board may waive the application fee and may consider the arborist license as prima facie evidence of qualification to use pesticides in the categories of use provided by Title 32 7, chapter 29 404.

Sec. 5. 32 MRSA c. 29, as amended, is repealed.

Sec. 6. Rules enacted by Arborist Examining Board. All rules enacted by the Arborist Examining Board that were in effect on January 1, 1999 are rules of the Department of Agriculture, Food and Rural Resources and may only be altered pursuant to the Maine Administrative Procedure Act.

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

	1999-00	2000-01
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Division of Plant Industry		
Positions - Legislative Count	(0,500)	(0,500)
Personal Services	\$7,417	\$10,200
All Other	9,428	12,795
Provides funds for the salary and fringe benefits of a part-time Clerk Typist III position, contractual services and general operating expenses related to administering the regulation of arborists.		
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES		
TOTAL	\$16,845	\$22,995
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Office of Licensing and Registration		
Personal Services	(\$1,200)	(\$1,200)
All Other	(2,789)	(3,718)
Deallocates funds no longer necessary from transferring the responsibility for administering the Arborist Examining Board to the Department of		

Agriculture, Food and
Rural Resources.

DEPARTMENT OF
PROFESSIONAL AND
FINANCIAL REGULATION
TOTAL

(\$3,989) (\$4,918)

See title page for effective date.

CHAPTER 85

H.P. 516 - L.D. 723

**An Act to Establish a Marine
Recreation Fishing Conservation and
Management Fund and a Marine
Recreational Fishing Advisory
Council**

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

Sec. 1. 5 MRSA §12004-I, sub-§57-D is
enacted to read:

<u>57-D.</u>	<u>Marine</u>	<u>None</u>	<u>12 MRSA</u>
<u>Marine</u>	<u>Recreational</u>		<u>§6033</u>
<u>Resources</u>	<u>Fishing</u>		
	<u>Advisory</u>		
	<u>Council</u>		

Sec. 2. 12 MRSA §6024, sub-§1-A, as
amended by PL 1995, c. 382, §2, is further amended
to read:

1-A. Appointment; composition; term; compensation. The Marine Resources Advisory Council, established by Title 5, section 12004-G, subsection 27, consists of 15 members. The Chair of the Lobster Advisory Council ~~is an~~ and the chair of the Marine Recreational Fishing Advisory Council are ex officio ~~member~~ members of the council. Each other member is appointed by the Governor and is subject to review by the joint standing committee of the Legislature having jurisdiction over marine resources and to confirmation by the Legislature. Seven members must be persons who are licensed under this Part to engage in commercial harvesting activities. Those 7 members are selected by the Governor from names recommended to the Governor by groups representing commercial harvesting interests. Each member must represent a different commercial harvesting activity, except that none of those 7 members may represent lobster harvesters. The remaining 7 6 members must include ~~one person who represents recreational marine fishing interests~~, one public member, 4 persons who hold a nonharvesting-related license under this Part and one person representing the aquaculture industry. The Governor shall select the person to represent the

aquaculture industry from among the names recommended by the aquaculture industry. The composition of the council must reflect a geographical distribution along the coast. All appointed members are appointed for a term of 3 years, except a vacancy must be filled in the same manner as an original member for the unexpired portion of the term. An appointed member may not serve for more than 2 consecutive terms. Appointed members serve until their successors are appointed. The Chair of the Lobster Advisory Council and the chair of the Marine Recreational Fishing Advisory Council shall serve until a new Chair of the Lobster Advisory Council or a new chair of the Marine Recreational Fishing Advisory Council, respectively, is chosen. Members are compensated as provided in Title 5, chapter 379.

Sec. 3. 12 MRSA §6032 is enacted to read:

§6032. Marine Recreation Fishing Conservation and Management Fund

The Marine Recreation Fishing Conservation and Management Fund, referred to in this section as the "fund," is established within the department. The commissioner may receive on behalf of the fund funds from any source. The purpose of the fund is to support activities related to the management and development of marine recreation fisheries. All money received into the fund must be used for the purposes of the fund. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year to be used for the purposes of the fund. Any interest earned on the money in the fund must be credited to the fund. By February 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resource matters on the amount of money collected in the fund and all expenditures made from the fund in the previous fiscal year.

Sec. 4. 12 MRSA §6033 is enacted to read:

§6033. Marine Recreational Fishing Advisory Council

1. Appointment; composition. The Marine Recreational Fishing Advisory Council, referred to in this section as the "council" and established by Title 5, section 12004-I, subsection 57-D, consists of 9 members. The commissioner shall appoint the members as follows:

A. Four members representing the State's recreational marine fisheries. These members must reflect a geographical distribution along the coast;

B. Three members representing the party charter boat industry;