

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
2000

C. Have environmental monitoring and other leak detection procedures approved by the commissioner, including monthly visual monitoring for oil and monthly visual inspection of the tank piping; and

D. Store only #6 fuel oil.

After ~~October 1, 2000~~ July 1, 2002 or after a documented leak or subsurface discharge of oil, a person may not operate, maintain or store oil in a concrete underground oil storage facility or tank exempt under this subsection. An owner or operator of a concrete underground oil storage tank exempt under this subsection is not eligible for coverage from the fund of clean-up costs and 3rd-party damage claim costs under section 568-A for any discharge discovered at that tank after October 1, 1997.

See title page for effective date.

CHAPTER 641

H.P. 1886 - L.D. 2625

An Act to Strengthen the Habitual Motor Vehicle Offender Law

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

Sec. 1. 29-A MRSA §2556, sub-§2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

2. Petition. An habitual offender whose license has been revoked pursuant to section 2552 may petition the Secretary of State for a work-restricted license only after the expiration of 8 months from the date the license was revoked pursuant to section 2552.

See title page for effective date.

CHAPTER 642

S.P. 113 - L.D. 310

An Act to Allow Children to Fish from Shore with a Single Baited Hook and Line on Certain Portions of the Aroostook River

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

Whereas, a lifelong interest in recreational sport fishing begins with children who have the opportunity to fish; and

Whereas, current sport fishing rules unreasonably restrict the opportunity for a child to fish with a single baited hook and line; and

Whereas, such opportunities must be in place as quickly as possible; 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 §7559 is enacted to read:

§7559. Aroostook River

A person 12 years of age or younger may fish from shore with a singlebaited hook and line on the following areas of the Aroostook River during the open water fishing season:

1. Caribou. In the Town of Caribou, from and including Otter Brook upstream to the Maine Public Service Company dam, including all tributaries in this section upstream to the first highway bridge intersecting each tributary; and

2. Fort Fairfield. In the Town of Fort Fairfield, from and including Pattee Brook upstream to Hockenhull Brook, including all tributaries in this section upstream to the first highway bridge intersecting the tributary.

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

Effective April 7, 2000.

CHAPTER 643

H.P. 1847 - L.D. 2584

An Act to Establish an Appeals Process for License Denial Under Limited-entry Fisheries

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

Whereas, people have been denied lobster and crab fishing licenses and sea urchin harvesting licenses because of illness or military service since limited-entry laws were enacted for those fisheries; and

Whereas, it is important to provide a timely opportunity for those people to appeal the license denial and return to fishing; 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 §6310 is enacted to read:

§6310. Appeal of license denial

1. Appeal of license denial. A person who is denied a Class I, Class II or Class III lobster and crab fishing license because that person does not meet the eligibility requirements of section 6421, subsection 5, paragraph A or a person who is denied a handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license because that person does not meet the eligibility requirements of section 6749-O, subsection 2-A may appeal to the commissioner under this section for a review of that license denial.

2. Criteria for license issuance on appeal. The commissioner may issue a license on appeal only if the criteria in this subsection are met.

A. A Class I, Class II or Class III lobster and crab fishing license may be issued to a person on appeal only if:

(1) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for a license in 1997, 1998 or 1999, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person may not request an appeal under this subparagraph after December 31, 2001;

(2) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for a license in licensing year 2000 or in subsequent years, and the person documents that the person harvested lobsters while in posses-

sion of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person must request an appeal under this subparagraph within one year of the onset of the illness or medical condition; or

(3) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the lobster fishery and meeting the eligibility requirements for a license, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subparagraph within one year of discharge from service.

B. A handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license may be issued to a person on appeal only if:

(1) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for that license, and the person documents that the person harvested sea urchins while in possession of the same license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person must request an appeal under this subparagraph within one year of the onset of the illness or medical condition; or

(2) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the urchin fishery and meeting the eligibility requirements for that license and the person documents that the person harvested sea urchins while in possession of the same license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the

most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subsection within one year of discharge from service.

For the purposes of this subsection, "family member" means a spouse, brother, sister, son-in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

3. Appeals process. A person appealing a license denial under this section must request the appeal in writing. The commissioner shall hold a hearing on the appeal if a hearing is requested in writing within 10 days of the initial request for appeal. If a hearing is requested, it must be held within 30 days of the request unless a longer period is mutually agreed to in writing, and it must be conducted in the Augusta area.

A hearing held under this subsection is informal. At the hearing, the appellant may present any evidence concerning the criteria listed in subsection 2 that might justify issuing a license to the person, and the commissioner may request any additional information the commissioner considers necessary. Any medical information provided as part of the appeal is a confidential record for the purposes of Title 1, section 402, subsection 3, paragraph A.

4. Issuance on appeal. Issuance of a license on appeal is at the discretion of the commissioner, except that a license may not be issued unless the criteria in subsection 2 are met. Decisions of the commissioner must be in writing.

Sec. 2. 12 MRSA §6408 is enacted to read:

§6408. Suspension of lobster and crab fishing license

A person whose Class I, Class II or Class III lobster and crab fishing license has been suspended for more than one year must appear in person before the commissioner prior to being issued a Class I, Class II or Class III lobster and crab fishing license pursuant to section 6421, subsection 5, paragraph D.

Sec. 3. 12 MRSA §6421, sub-§5, ¶D, as repealed by PL 1999, c. 330, §2 and amended by c. 397, §1, is repealed and the following enacted in its place:

D. Did not possess a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year:

Sec. 4. 12 MRSA §6421-B, as enacted by PL 1999, c. 330, §5, is repealed.

Sec. 5. 12 MRSA §6431-F, sub-§2, ¶C, as enacted by PL 1999, c. 397, §6, is amended to read:

C. If the license holder was issued a Class I, Class II or Class III lobster and crab fishing license on appeal, the license holder may purchase for the initial license year a number of trap tags up to the number of trap tags purchased by the person for the most recent year in which the person held a license if the person held a license in 1996, ~~1997 or 1998~~ or later or 300 trap tags if the person did not hold a license in 1996, ~~1997 or 1998~~ or later. For each following year, the license holder may purchase up to an increase of 100 trap tags each year ~~as long as the total~~. The number ~~does of trap tags may~~ not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps.

Sec. 6. 12 MRSA §6431-F, sub-§3, as enacted by PL 1999, c. 397, §6, is amended to read:

3. Appeal of trap tag denial. A lobster and crab fishing license holder who ~~is not issued any~~ was issued 300 or fewer trap tags under subsection 1 ~~or 2~~ for the 2000 license year because that person had purchased no trap tags as of November 20, 1998 may appeal to the commissioner for a review of that denial ~~additional trap tags~~. The appeals process is as follows.

A. The commissioner may issue trap tags on appeal only if the following criteria are met:

(1) The person documents that the person harvested lobsters in 1996 ~~and~~ or 1997; and

(2) The person documents that the person did not purchase trap tags in 1998 because of a substantial illness or other medical condition on the part of the person or a family member or the person documents that service in the Armed Forces of the United States or the United States Coast Guard precluded participation in the lobster fishery and the purchase of trap tags in 1998. For the purposes of this subparagraph, "family member" means a spouse, brother, sister, son-in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

B. A person appealing the denial of trap tags under this subsection shall request the review in writing. The commissioner shall hold a hearing on the appeal if it is requested in writing within 10 days of the initial request. If a hearing is re-

requested, it must be held within 10 days of the request, unless a longer period is mutually agreed to in writing, and it must be conducted in the Augusta area.

A hearing held under this subsection is informal. At the hearing, the appellant may present any evidence concerning the criteria listed in paragraph A that might justify issuing trap tags to the person, and the commissioner may request any additional information the commissioner considers necessary. Any medical information provided as part of the appeal is a confidential record as defined in Title 1, section 402, subsection 3, paragraph A.

C. A license holder whose appeal is approved under this subsection may purchase a number of trap tags up to the number of trap tags purchased in 1996 or 1997, whichever is greater. For each following year, the license holder may purchase up to an increase of 100 trap tags each year ~~as long as the total~~. The number does of trap tags may not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps.

Issuance of trap tags on appeal is at the discretion of the commissioner, except that trap tags may not be issued unless the criteria in paragraph A are met. Decisions of the commissioner must be in writing.

Sec. 7. 12 MRSA §6448, sub-§8, as enacted by PL 1999, c. 508, §3, is repealed and the following enacted in its place:

8. Exceptions. Notwithstanding subsection 4, the following persons may be issued a Class I, Class II or Class III lobster and crab fishing license that identifies a limited-entry zone as the declared lobster zone without meeting the requirements in subsection 4.

A. A person who is issued a Class I lobster and crab fishing license and who is under 18 years of age or is 70 years of age or older may declare any zone as that person's declared lobster zone.

B. A person who is issued a Class I, Class II or Class III lobster and crab fishing license on appeal pursuant to section 6310, subsection 2, paragraph A, subparagraph (1) or (2) may declare as that person's declared lobster zone the zone in which the person was authorized to fish a majority of that person's lobster traps in the most recent year in which the person held a license.

C. A person who is issued a Class I, Class II or Class III lobster and crab fishing license pursuant to section 6421, subsection 5, paragraph D may declare as that person's declared lobster zone the

zone in which the person was authorized to fish a majority of that person's lobster traps in the most recent year in which the person held a license.

A person who declares a limited-entry zone as that person's declared lobster zone pursuant to this subsection may not be counted for the purposes of the exit ratio or the number of new zone entrants that may be authorized for that zone.

Sec. 8. 12 MRSA §6749-O, sub-§§3 and 4, as enacted by PL 1995, c. 392, §7, are repealed.

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

Effective April 7, 2000.

CHAPTER 644

H.P. 338 - L.D. 454

An Act to Expand the Warrantless Arrest Law and to Establish the Crime of Obstructing the Report of a Crime or Injury

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

Sec. 1. 17-A MRSA §15, sub-§1, ¶A, as repealed and replaced by PL 1999, c. 127, Pt. A, §33, is amended by amending subparagraph (5-A) to read:

(5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 15, section 321;

Sec. 2. 17-A MRSA §758 is enacted to read:

§758. Obstructing report of crime or injury

1. A person is guilty of obstructing the report of a crime or injury if that person intentionally, knowingly or recklessly disconnects, damages, disables, removes or uses physical force or intimidation to block access to a telephone, radio or other electronic communication device with the intent to obstruct, prevent or interfere with another person's:

A. Report to a law enforcement agency; or

B. Request for an ambulance or emergency medical assistance to a governmental agency, hospital, physician or other medical service provider.