

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

do so. Compliance with the provisions of this subsection is a requirement for basic school approval pursuant to sections 2902 and 4502.

Sec. 2. 20-A MRSA §2902, sub-§7, as amended by PL 1997, c. 266, §5, is further amended to read:

7. Approval rules. Meet the requirements applicable to the approval of private schools for attendance purposes adopted jointly by the state board and the commissioner; ~~and~~

Sec. 3. 20-A MRSA §2902, sub-§8, as enacted by PL 1997, c. 266, §6, is amended to read:

8. Release of student records. Upon the request of a school unit, release copies of all student records for students transferring from the private school to the school unit; ~~and~~

Sec. 4. 20-A MRSA §2902, sub-§9 is enacted to read:

9. Medication. Meet the requirements for administering medication under section 254, subsection 5.

Sec. 5. 20-A MRSA §4502, sub-§5, ¶L, as amended by PL 1997, c. 428, §2, is further amended to read:

~~L. Prepare~~ Preparation and implement implementation of an ongoing school improvement process and annually the annual update of a written school improvement plan, including a fully developed staff development plan for identifying at-risk students in kindergarten to grade 12, including, but not limited to, truants and dropouts and the development of appropriate alternative programs to meet their needs; and

Sec. 6. 20-A MRSA §4502, sub-§5, ¶M, as enacted by PL 1997, c. 428, §3, is amended to read:

M. The use of time-out areas, administered in accordance with standards adopted by the department and with this paragraph. The use of a time-out area is subject to the following:

(1) The time-out area must be well ventilated and sufficiently lighted. The time-out area may not be locked; and

(2) The time-out area must be designed to ensure the safety of the student so that the student is supervised by a professional staff member in the room or can be observed from outside of the time-out area and can be heard by a person supervising the time-out area; ~~and~~

Sec. 7. 20-A MRSA §4502, sub-§5, ¶N is enacted to read:

N. Preparation of a written local policy and implementation of training for all unlicensed personnel who administer medication in accordance with the requirements under section 254, subsection 5.

Sec. 8. Policy implementation. The Commissioner of Education in cooperation with public and approved private schools shall establish and implement the provisions of the Maine Revised Statutes, Title 20-A, section 254, subsection 5, paragraph B, no later than the start of the 2001-02 school year.

Sec. 9. Rule-making guidelines. The rules developed by the Commissioner of Education for the training of unlicensed personnel who administer medications pursuant to the Maine Revised Statutes, Title 20-A, section 254, subsection 5, paragraph A must follow the training model and use the training manual developed by the School Health Advisory Committee.

See title page for effective date.

CHAPTER 670

S.P. 942 - L.D. 2472

An Act to Increase the Penalty for Leaving the Scene of a Motor Vehicle Accident

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

Sec. 1. 29-A MRSA §2252, sub-§5 is enacted to read:

5. Aggravated punishment category. Notwithstanding subsection 4, a person commits a Class C crime if that person intentionally, knowingly or recklessly fails to comply with this section and the accident resulted in serious bodily injury, as defined in Title 17-A, section 2, subsection 23, or death.

See title page for effective date.

CHAPTER 671

H.P. 1760 - L.D. 2466

An Act to Promote the Safe Conduct of Fireworks Displays in the State of Maine

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

Sec. 1. 8 MRSA §221, as enacted by PL 1985, c. 23, §2, is repealed.

Sec. 2. 8 MRSA §221-A is enacted to read:

§221-A. Definitions

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

1. Commissioner. "Commissioner" means the Commissioner of Public Safety or a designee.

2. Department. "Department" means the Department of Public Safety.

3. Display. "Display" means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects. "Display" includes a special effects display.

4. Fireworks. "Fireworks" means any:

A. Combustible or explosive composition or substance;

B. Combination of explosive compositions or substances;

C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;

D. Fireworks containing any explosive or flammable compound; or

E. Tablets or other device containing any explosive substance or flammable compound.

The term "fireworks" does not include toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand can not come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture or sparklers that do not contain magnesium chlorates or perchlorates.

5. Fireworks technician. "Fireworks technician" means a person licensed pursuant to section 231 who, by examination, experience and training, has demonstrated the required skill and competence in the use and discharge of fireworks to conduct a display or special effects display. A fireworks technician is the person who is responsible for safety, setting up and conducting the display.

6. Permit. "Permit" means the nontransferable permission granted by the commissioner pursuant to section 227-A to hold a display.

7. Person. "Person" means any individual, combination of individuals, association, municipality, amusement park or other legal or commercial entity.

8. Possession. "Possession" means the intentional or knowing possession of what the possessor knows or believes to be fireworks.

9. Sale or sell. "Sale" or "sell" means any transfer or delivery of fireworks to a person for consideration.

10. Special effects display. "Special effects display" means an entertainment feature using pyrotechnics manufactured or designed to be used with or discharged in conjunction with theatrical, musical or similar productions. "Special effects display" includes the indoor use of pyrotechnics before a proximate audience.

Sec. 3. 8 MRSA §222, as amended by PL 1995, c. 528, §1, is further amended to read:

§222. Possession of fireworks

A person may not possess or have under that person's control fireworks, except if that person is issued a permit pursuant to section ~~227~~ 227-A.

Sec. 4. 8 MRSA §226, as enacted by PL 1985, c. 23, §2, is repealed.

Sec. 5. 8 MRSA §227, as amended by PL 1991, c. 464, §2, is repealed.

Sec. 6. 8 MRSA §§227-A, 227-B and 227-C are enacted to read:

§227-A. Requirements for obtaining permit

1. Permits; requirements. A person may not conduct a display without a permit. The commissioner shall issue a permit to possess and conduct a fireworks display to an applicant who:

A. Applies in writing to the commissioner for a permit at least 10 days in advance of the proposed display;

B. Applies on forms furnished by the department. An application for a permit must include:

(1) A certificate of public liability insurance in the amount of \$500,000 to cover loss, damage or injuries to persons or property that might result from the display; and

(2) A site plan for the proposed display depicting a diagram of the grounds or facilities at which or in which the display will be held. The diagram must show points of discharge, fallout areas, any buildings or other structures in proximity to the display site and the location of any audience that may be present. Distances of and distances between the points of discharge and any buildings or structures must be stated on the diagram; and

C. Submits with the application fees set out in subsection 3.

2. Inspection. Upon receipt of a complete application, the department shall conduct an inspection of the proposed display site to determine the hazard posed by the display.

3. Fees. The fee for a permit is \$30 per display and the fee for a site inspection is \$15.

§227-B. Regulation restricted; exception

1. Regulation restricted. Except as provided in subsection 2, a political subdivision of the State, including, but not limited to, a municipality, county, township or village corporation, may not adopt an order, ordinance, rule or regulation concerning the issuance of permits under section 227-A.

2. Exception. This section does not prohibit an order, ordinance, rule or regulation of a political subdivision that, with the exception of appropriate penalty provisions, conforms exactly with an applicable provision of state law or that regulates the issuance of these permits within a jurisdiction.

§227-C. Denial, suspension or revocation of permit

The commissioner may, after a hearing in conformance with the applicable provisions of the Maine Administrative Procedure Act, suspend or revoke a permit issued under this chapter. The following are grounds for denial, suspension or revocation of a permit:

1. Incomplete. The application or a document filed with the application is incomplete;

2. Misstatement. The application or a document filed with the application contains a material misstatement;

3. Site inspection. The site fails to pass an inspection conducted by the department pursuant to section 227-A; or

4. Failure to employ or use fireworks technician. The applicant fails to use a licensed fireworks technician to conduct the display.

Sec. 7. 8 MRSA §228, sub-§2, ¶B, as enacted by PL 1985, c. 23, §2, is repealed.

Sec. 8. 8 MRSA §228, sub-§2, ¶D, as enacted by PL 1985, c. 23, §2, is amended to read:

D. To the sale or use of blank cartridges for a duly licensed show or theatre or for signal or ceremonial purposes in athletics or sports;

Sec. 9. 8 MRSA §228, sub-§2, ¶¶G and H, as enacted by PL 1985, c. 23, §2, are amended to read:

G. In teaching the use of firearms; or

H. To the sale of shells for firearms, cartridges, gunpowder and explosives for the purpose of any legal use of firearms; or

Sec. 10. 8 MRSA §228, sub-§2, ¶I, as enacted by PL 1985, c. 23, §2, is repealed.

Sec. 11. 8 MRSA §229, sub-§1, as amended by PL 1995, c. 528, §2, is further amended to read:

1. Criminal penalties. A person who violates section 222, if the value of the fireworks possessed exceeds \$100, or section 224 or 225 commits a Class E crime. A person who violates section 227 227-A by failing to obtain a permit for display commits a Class D crime. Any person who violates section 227 227-A by conducting the display in violation of the permit commits a Class E crime.

Sec. 12. 8 MRSA §§231 to 236 are enacted to read:

§231. Fireworks technician license qualifications

A person may not act as a fireworks technician unless the person meets the qualifications specified in this section and obtains a license. The person must:

1. Age. Be at least 21 years of age;

2. Citizenship. Be a citizen or resident alien of the United States;

3. Experience. Have experience and training working under the direction of a fireworks technician during at least 5 displays, or comparable experience as determined by the department;

4. Character. Be of good moral character as determined by the department and not have been

convicted of a crime that is punishable by a maximum term of imprisonment equal to or exceeding one year. In making the determination of good moral character, the commissioner shall consider matters recorded within the previous 5 years, including, but not limited to:

A. Records of incidents of abuse by the applicant of family or household members provided pursuant to Title 19-A, section 4012, subsection 1;

B. Records provided by the Department of Human Services regarding the failure of the applicant to meet child or family support obligations;

C. Records of 3 or more convictions of the applicant for Class D or Class E crimes;

D. Records of 3 or more civil violations by the applicant; and

E. Records that the applicant has engaged in recklessness or negligence that endangered the safety of others;

5. Examination. Successfully complete a written examination administered by the department encompassing fireworks and the conduct of displays; and

6. Application. Submit an application to the department that contains:

A. The applicant's full name, full current address, social security number and date of birth; and

B. A statement granting the commissioner authority to check the criminal records of the applicant.

§232. Fees

All license and permit fees received pursuant to this chapter by the department must be used for carrying out this chapter. Any balance of these fees may not lapse but must be carried forward as a continuing account to be expended for the same purpose in the following fiscal years.

1. Fee for fireworks technician. The fee for a fireworks technician license is \$25.

§233. Renewal of license

Each fireworks technician license is valid for a term of one year. Unless revoked or suspended, the license is renewable annually.

§234. Denial; suspension; revocation; grounds

The commissioner may, after a hearing in conformance with applicable provisions of the Maine Administrative Procedure Act, suspend or revoke a license issued under this chapter. The following are grounds for denial, suspension or revocation of a license:

1. Fraud or deceit. The practice of fraud or deceit in obtaining a license under this chapter or in the performance of services within the scope of the license issued;

2. Conviction of certain crimes. Conviction of a crime that relates directly to the practice for which the person is licensed or conviction of a crime for which incarceration for one year or more may be imposed;

3. Violation of chapter or rule. A violation of this chapter or a rule adopted by the commissioner;

4. Aiding or abetting unlicensed practice. Aiding or abetting the practice of displaying or discharging fireworks by a person not duly licensed under this chapter; or

5. Incompetence. Incompetence in the practice of displaying or discharging fireworks. A licensee is considered incompetent in the practice if the licensee has:

A. Engaged in professional conduct that evidences a lack of ability or fitness to perform the duties for which that licensee is licensed; or

B. Engaged in professional conduct that evidences a lack of knowledge of, or inability to apply, appropriate principles or skills to carry out the practice for which that licensee is licensed.

§235. Suspension by commissioner

1. Immediate suspension. If the commissioner has probable cause to believe that a person licensed under this chapter poses, because of gross negligence in the performance of duties associated with the license, an immediate threat to the public, the commissioner shall immediately suspend that person's license.

2. Duration of suspension. A suspension remains in effect for 30 days unless a revocation procedure under section 234 is commenced within the 30 days, in which case the suspension continues until the revocation procedure is complete.

§236. Adoption of rules

The commissioner shall, in accordance with the Maine Administrative Procedure Act, adopt reasonable rules relative to the use, storage, transportation and display of fireworks and special effect pyrotech-

rules. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 672

S.P. 921 - L.D. 2372

An Act to Regulate the Sea Cucumber Fishery

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

Whereas, the sea cucumber fishery is a new fishery; and

Whereas, the fishery is being intensively harvested; and

Whereas, there is inadequate scientific data to assess the impact of harvesting on the resource or the ecosystem; 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 c. 623, sub-c. IV, art. 2 is enacted to read:

Article 2

LIMITS ON FISHING

§6811. Sea cucumber harvesting season

Unless modified by rules adopted under section 6171-A, it is unlawful for a person to fish for or take sea cucumbers from July 1st to September 30th, both days inclusive.

§6812. Sea cucumber drag

1. Drag width. It is unlawful to utilize a drag to fish for or take sea cucumbers that exceeds 5 feet, 6 inches in width, measured from extreme outside edge to extreme outside edge.

2. Configuration of drag. The commissioner shall adopt rules that describe the type of drag that may be used to fish for or take sea cucumbers,

including, but not limited to, limitations on the type or size of drag components. Such rules are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6813. Sea Cucumber Management Fund

1. Fund established. The Sea Cucumber Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department. The commissioner may receive on behalf of the fund money from any source for the purposes described in subsection 2. 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 may 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.

2. Purposes of fund. The commissioner shall use the fund to research and manage the State's sea cucumber fishery and to enforce the laws related to sea cucumbers.

Sec. 2. Legislation. The joint standing committee of the Legislature having jurisdiction over marine resources matters may report out a bill regarding regulation of the sea cucumber fishery to the Second Regular Session of the 120th Legislature.

Sec. 3. Rules. The Commissioner of Marine Resources shall adopt rules in accordance with the Maine Revised Statutes, Title 12, section 6812, subsection 2 no later than September 30, 2000.

Sec. 4. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2000-01

**MARINE RESOURCES,
DEPARTMENT OF**

**Division of Administrative
Services**

All Other \$500

Provides for the allocation of funds for the Sea Cucumber Management Fund to research and manage the State's sea cucumber fishery and to enforce the laws related to sea cucumbers.