

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
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THE GENERAL EFFECTIVE DATE FOR
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NON-EMERGENCY LAWS IS
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Penmor Lithographers
Lewiston, Maine
2003

CHAPTER 466

H.P. 520 - L.D. 703

**An Act To Change the Options for a
Lobster Management Zone and To
Change Entry Criteria for
Noncommercial Licensees**

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

Sec. 1. 12 MRSA §6421, sub-§3-A, ¶F, as enacted by PL 1995, c. 568, §1, is amended to read:

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. At the time a noncommercial lobster and crab fishing license is issued or renewed, the applicant or license holder shall declare the vessel that will be used to conduct lobster and crab fishing activities under that license. The license holder's trap tags are allocated to that vessel, pursuant to the license. The department is not authorized to issue more than 10 noncommercial trap tags to the declared vessel, regardless of the number of noncommercial license holders fishing from that vessel.

Sec. 2. 12 MRSA §6446, sub-§1-A, as enacted by PL 1999, c. 508, §1, is amended to read:

1-A. Declared lobster zone. A person shall declare on an application for a Class I, Class II or Class III or noncommercial lobster and crab fishing license the lobster management zone in which that person proposes to fish a majority of that person's lobster traps. A license must identify the zone in which the person is authorized to fish a majority of that person's lobster traps.

Sec. 3. 12 MRSA §6446, sub-§2-B is enacted to read:

2-B. Rules pursuant to section 6447, subsection 5-B. The commissioner may adopt rules for a zone established under subsection 1 that are proposed pursuant to section 6447, subsection 5-B 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.

This subsection is repealed June 1, 2006.

Sec. 4. 12 MRSA §6447, sub-§5-B is enacted to read:

5-B. Zone E council authority. Notwithstanding any other provision in this subchapter, upon approval in a referendum under subsection 6, a lobster management policy council for Zone E as defined in rules adopted by the department may propose to the commissioner rules for Zone E that do any or all of the following:

A. Increase the length of time an apprentice must be enrolled in the apprentice program up to a maximum of 5 years. A proposal to increase the length of enrollment does not apply to apprentices enrolled in the program at the time that proposal takes effect;

B. Require a sponsor of an apprentice to have held a Class I, Class II or Class III lobster and crab fishing license for at least 5 years; or

C. Require that an apprentice may enter Zone E only if the apprentice apprenticed in Zone E.

This subsection is repealed June 1, 2006.

Sec. 5. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 12, section 6421, subsection 3-A, paragraph F and section 6446, subsection 1-A take effect January 1, 2004.

See title page for effective date, unless otherwise indicated.

CHAPTER 467

S.P. 424 - L.D. 1293

**An Act To Improve the Fairness of
the Health Care Provider Tax and To
Ensure Fair Implementation of
Health Care Reimbursement
Reforms**

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

Sec. 1. 36 MRSA §2871, sub-§2, as enacted by PL 2001, c. 714, Pt. CC, §3 and affected by §8, is amended to read:

2. Annual net operating revenue. "Annual net operating revenue" means gross charges less any

amounts allowable recorded as bad debts, charity care or payer discounts in accordance with generally accepted accounting principles.

Sec. 2. 36 MRSA §2871, sub-§3, as enacted by PL 2001, c. 714, Pt. CC, §3 and affected by §8, is repealed.

Sec. 3. 36 MRSA §2871, sub-§3-A is enacted to read:

3-A. Facility fiscal year. "Facility fiscal year" means the fiscal year actually used by a person subject to this chapter in keeping that person's books and records.

Sec. 4. 36 MRSA §2871, sub-§6-A is enacted to read:

6-A. State fiscal year. "State fiscal year" means the uniform fiscal year established pursuant to Title 5, section 1501 for all financing and reporting of state government expenditures.

Sec. 5. 36 MRSA §2872, as enacted by PL 2001, c. 714, Pt. CC, §3 and affected by §8, is repealed and the following enacted in its place:

§2872. Tax imposed; fiscal years beginning 2002

Beginning July 1, 2002, in addition to all other fees and taxes assessed or imposed by the Maine Revised Statutes, a tax is imposed annually against each residential treatment facility and nursing home located in the State and calculated as follows.

1. Residential treatment facilities. The tax imposed on a residential treatment facility under this section is calculated as follows:

A. For the state fiscal year beginning July 1, 2002, the tax imposed against each residential treatment facility is equal to 6% of its annual gross patient services revenue for the state fiscal year;

B. For facility fiscal years beginning on or after July 1, 2002 and before July 1, 2003, the tax imposed against each residential treatment facility in addition to the tax imposed pursuant to paragraph A is equal to 6% of its gross patient services revenue for that portion of the facility fiscal year occurring after June 30, 2003; and

C. For facility fiscal years beginning on or after July 1, 2003, the tax imposed against each residential treatment facility is equal to 6% of its annual gross patient services revenue for the corresponding facility fiscal year.

2. Nursing homes. The tax imposed on a nursing home under this section is calculated as follows:

A. For the state fiscal year beginning July 1, 2002, the tax imposed against each nursing home is equal to 6% of its annual net operating revenue for the state fiscal year;

B. For facility fiscal years beginning on or after July 1, 2002 and before July 1, 2003, the tax imposed against each nursing home in addition to the tax imposed pursuant to paragraph A is equal to 6% of its net operating revenue for that portion of the facility fiscal year occurring after June 30, 2003; and

C. For facility fiscal years beginning on or after July 1, 2003, the tax imposed against each nursing home is equal to 6% of its annual net operating revenue for the corresponding facility fiscal year.

The tax imposed by this section is an obligation of the provider pursuant to section 2873 and may not be billed to a patient as a separately stated charge.

Sec. 6. 36 MRSA §2873, sub-§1, as enacted by PL 2001, c. 714, Pt. CC, §3 and affected by §8, is amended to read:

1. Monthly returns required; payment of estimated tax liability. On or before the 15th day of each month, each person subject to the tax imposed by this chapter shall submit to the assessor a return on a form prescribed and furnished by the assessor. Each return must be accompanied by a payment of an amount equal to 1/12 of the person's estimated tax liability for the entire current state fiscal year or facility fiscal year or, in the case of a facility taxed on the basis of a partial facility fiscal year after June 30, 2003, an amount equal to a fraction of the estimated liability in which the denominator is the number of months remaining in the facility fiscal year and the numerator is one. A person may estimate its tax liability for the current state fiscal year or facility fiscal year by applying the tax rates provided by section 2872 to the most recent state fiscal year or facility fiscal year for which ~~relevant taxable revenues have been finally determined and are no longer open to audit adjustment or correction~~ a Medicaid cost report has been finally settled and is no longer open to audit adjustment or correction, ~~provided that~~ as long as the fiscal year in question began no earlier than 3 years prior to the beginning of the current fiscal year; in the event that the information necessary to prepare this estimate is not available, an estimate may be prepared on the basis of the reconciliation return most recently submitted or, if the first such return has not yet been filed, then on the basis of the revenues formally reported by the facility in accordance with generally accepted accounting principles. Regardless of the method used for preparing the estimate, the estimate may include adjustments to reflect changes in

the number of licensed or certified beds or extraordinary changes in payment rates. Once a taxpayer has made its first monthly payment for a state fiscal year or facility fiscal year pursuant to this subsection, the monthly amount must remain fixed throughout the fiscal year unless the assessor authorizes a change. If the person's estimated annual tax liability as reported and paid pursuant to this subsection does not equal the tax imposed on that person by section 2872, any adjustments necessary to reconcile the estimated tax with the correct tax amount must be made pursuant to subsection 2.

Sec. 7. 36 MRSA §2873, sub-§2, as enacted by PL 2001, c. 714, Pt. CC, §3 and affected by §8, is repealed and the following enacted in its place:

2. Reconciliation return required. On or before October 15, 2003 and on or before the 15th day of the 4th month following the end of each facility fiscal year ending after October 15, 2003, each person subject in that state fiscal year or facility fiscal year to the tax imposed by this chapter shall submit a reconciliation return on a form prescribed and furnished by the assessor. The reconciliation return must account for any adjustments necessary to reconcile the annual tax for a prior state fiscal year or facility fiscal year estimated pursuant to subsection 1 with the person's correct tax liability, and the person shall submit with the reconciliation return payment of any amount due for the prior state fiscal year or facility fiscal year or portion of any prior state fiscal year or facility fiscal year. The taxpayer may also claim on the reconciliation return a refund or credit for any overpayment of tax. The determination of amounts due or overpaid is calculated by comparing the tax originally estimated and paid in the prior state fiscal year or facility fiscal year or years with the tax imposed by section 2872 on taxable revenues accrued for that period, together with any audit adjustments or corrections of which the person has knowledge on or before the 15th day of the month immediately preceding the due date of the return. The obligation to file a reconciliation return with respect to a particular state fiscal year or facility fiscal year continues until the relevant taxable revenues for that period have been finally determined and are no longer open to audit adjustment or correction and the person has reported those revenues on a reconciliation return.

Sec. 8. 36 MRSA §2873, sub-§3, as enacted by PL 2001, c. 714, Pt. CC, §3 and affected by §8, is amended to read:

3. Audit period to remain open; accrual of penalties and interest. Notwithstanding any other provision of law, the tax imposed against a person by section 2872 for any fiscal year remains open to audit and further assessment by the assessor until the person's taxable revenues for that fiscal year have been

finally determined completion of the audit of the Medicaid cost report or reports for the fiscal year. Any underestimates of tax liability reported and paid pursuant to subsection 1 are subject to an assessment of interest at the rate provided in section 186 from the date or dates of underpayment until payment is made, unless the estimated tax liability was calculated by applying the tax rates provided by section 2872 to the most recent fiscal year for which relevant taxable revenues have been finally determined in compliance with the standards provided in subsection 1, in which case no interest may accrue prior to the date on which the reconciliation return for the year is due. Any amount of tax that is reported on a reconciliation return required by subsection 2 but not paid at the time the reconciliation return is filed is subject to the accrual of interest as provided by section 186, as well as to any applicable provisions of section 187-B, including, without limitation, the penalty provided by section 187-B, subsection 2 for failure to pay a tax.

Sec. 9. Long-term care financing. The Joint Standing Committee on Health and Human Services may consider the issue of long-term care financing, including dedication to long-term care of all or any portion of the health care provider tax and revenues attributable to that tax under the Maine Revised Statutes, Title 36, section 2873 and statutory requirements specifying enhanced reimbursement levels for long-term care providers, during the Second Regular Session of the 121st Legislature and may report out a bill on long-term care financing to the Second Regular Session of the 121st Legislature.

See title page for effective date.

CHAPTER 468

H.P. 1003 - L.D. 1368

An Act Concerning Age Requirements for Student, Apprentice and Noncommercial Lobster Licenses

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

Sec. 1. 12 MRSA §6421, sub-§3-A, ¶E, as amended by PL 1999, c. 490, §1, is repealed and the following enacted in its place:

E. A student license authorizes the license holder to engage in the licensed activities under subsection 2. A student license may be issued only to a person who, at the time of application, is 8 years of age or older and under 23 years of age. A person issued a student license may not submerge more than: