

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
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I. The registered owner may, without waiving the right to a hearing before a violation clerk as provided by paragraph J and also without waiving the right to judicial review as provided by Title 5, chapter 375, subchapter 7, appeal a notice of liability as provided by paragraph C, subparagraph (4) and receive a review and disposition of the violation from a violation clerk by mail. The appeal by mail must contain a signed statement from the registered owner explaining the basis for the appeal. The signed statement may be accompanied by signed statements from witnesses, police officers, government officials or other relevant parties or photographs, diagrams, maps or other relevant documents that the registered owner determines appropriate to submit. Statements or materials sent to a violation clerk for review must have attached to them the name and address of the registered owner as well as the number of the notice of liability and the date of the violation. All information submitted by the registered owner becomes part of the violation record. The violation clerk shall, within 60 days of receipt of such material, review the material and dismiss or uphold the violation and notify the registered owner of the disposition of the hearing in writing by mail. If the appeal by mail is denied, the violation clerk shall explain the reasons for the determination. The review and disposition handled by mail is informal, the rules of evidence do not apply and the decision is final, subject to the hearing provisions of paragraph J.

J. As provided by paragraph C, subparagraph (4) or within 30 days of the issuance of a decision by a violation clerk under paragraph I, a registered owner may make a written request for an appeal hearing before a violation clerk designated by the authority. The violation clerk shall then notify the registered owner in writing by certified mail, return receipt requested of the date, time and place of the hearing. The hearing is informal, the rules of evidence do not apply and the decision of the violation clerk is final. The violation clerk shall notify the parties in person or by mail of the decision following the hearing. Each written appeal decision must contain a statement of reasons for the decision including a determination of each issue of fact necessary to the decision. Failure to appear at the date, time and place specified on the hearing notice automatically results in the denial of the appeal.

K. Any decision by a violation clerk under this section is subject to judicial review of final agency action in the manner provided by Title 5, chapter 375, subchapter 7. If a registered owner files an appeal pursuant to this subsection, the authority may not notify the Secretary of State to

suspend the registration certificate and plate issued for the vehicle involved in the alleged failure to pay until the appeal is resolved.

Sec. 3. 23 MRSA §1980, sub-§2-B, ¶C is enacted to read:

C. A photograph, microphotograph, videotape or recorded image obtained from a photo-monitoring system as defined in subsection 2-A may not be used by the authority for the purposes of collection of a toll or other charge if the photograph, microphotograph, videotape or recorded image shows the face of a passenger or driver of a motor vehicle.

Sec. 4. 29-A MRSA §154, sub-§6, as enacted by PL 1995, c. 65, Pt. A, §84 and affected by §153 and Pt. C, §15, is amended to read:

6. Recovery of turnpike tolls. Upon receipt of an order of suspension notice from the court Maine Turnpike Authority in accordance with Title 23, section 1980, subsection 2-A, paragraph G, the Secretary of State shall promptly mail a notice to the person liable under that subsection for unpaid Maine Turnpike Authority tolls, warning the person that, if the amount due the Maine Turnpike Authority is not paid within 10 days from the date of mailing the notice, suspension of the registration certificate and plates issued for the vehicle in question will result. If the person fails to pay the required amount within 10 days after mailing of the notice, the Secretary of State shall, in accordance with section 2482, shall mail the required 10-day notice and suspend, pursuant to chapter 23, the registration certificate and plates issued for the vehicle in question. This subsection takes effect July 1, 1995. The Secretary of State may not reinstate the registration certificate and plates until the Maine Turnpike Authority provides notice that the toll and applicable fines and penalties have been paid. Notwithstanding any other provision of law, Title 5, section 9052, subsection 1 does not apply to a notice of suspension issued pursuant to this subsection.

See title page for effective date.

CHAPTER 592

H.P. 1238 - L.D. 1662

An Act To Strengthen the Prohibition against Night Hunting

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

Sec. 1. 12 MRSA §10502, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read:

§10502. Seizure of fish, wildlife and equipment

1. Seizure; filing libel. All fish or wildlife hunted, trapped, fished, bought, sold, carried, transported or found in possession of any person in violation of this Part, and all equipment, including but not limited to firearms, possessed or used in violation of this Part are contraband and subject to seizure by any officer authorized to enforce this Part. Except for property exempted from libel under subsection 2, an officer making such a seizure shall file, within a reasonable time, with the court a libel against that property. The libel must describe the property seized and the date and place of that seizure, cite the provision of law that is alleged to have been violated and request a decree of forfeiture. The libel proceedings and disposal of property are governed by section 10503.

2. Exemption from libel proceedings. The following property may be lawfully seized under this section but is not subject to the libel requirements of this section:

A. Unless reasonable doubt exists as to ownership, property having a value less than \$10;

B. ~~Any~~ A firearm seized in connection with a violation of:

(1) Section 11206;

(2) Section 10902, subsection 6; or

(3) Section 10752, subsection 6, paragraph B and section 10902, subsection 4, paragraphs A and B;

C. ~~Any fishing~~ Fishing equipment that is ~~contraband under this section and~~ is seized in connection with a violation of section 10902, subsection 8 except for motor boats or motor vehicles; and

D. ~~Any fish~~ Fish or wildlife that is ~~contraband under this section and~~ is seized in connection with ~~any~~ a violation of this Part; and

E. Night vision equipment seized in connection with a violation of section 11206.

Property seized by the commissioner that is exempt from libel under this subsection must be retained by the commissioner pending disposition of ~~criminal~~ proceedings and is forfeited to the State upon conviction or adjudication that the person committed the violation.

3. Disposal of forfeited property. The commissioner may dispose of property forfeited to the State under this section in any manner considered appropriate by the commissioner.

~~Property forfeited to the State under this section may be disposed of by the commissioner in any manner considered appropriate by the commissioner.~~

Sec. 2. 12 MRSA §10902, sub-§7-A is enacted to read:

7-A. Hunting with night vision equipment. A hunting license of a person convicted of night hunting in violation of section 11206, subsection 1 and found to have been in possession of night vision equipment at the time of the offense must be revoked, and that person is ineligible to obtain a hunting license for a period of 5 years from the date of conviction.

Sec. 3. 12 MRSA §11206, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is repealed and the following enacted in its place:

§11206. Night hunting

1. Prohibition. Except as otherwise provided in this Part, a person may not:

A. Hunt wild birds or wild animals from 30 minutes after sunset to 30 minutes before sunrise of the following day; or

C. Possess any wild animal or wild bird taken in violation of paragraph A.

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a Class D crime for which the court shall impose a sentencing alternative of not less than 3 days for the first offense, none of which may be suspended, and of not less than 10 days for each succeeding offense, none of which may be suspended; the court also shall impose a fine of not less than \$1,000, none of which may be suspended.

B. A person who violates subsection 1 and is in possession of night vision equipment commits a Class D crime for which the court shall impose a sentencing alternative of not less than 3 days for the first offense, none of which may be suspended; the court also shall impose a fine of not less than \$2,000, none of which may be suspended.

C. A person who violates subsection 1, is in possession of night vision equipment and has been convicted of a Class D crime within the past 10 years under Title 12, Part 13 commits a Class D crime for which the court shall impose a sentencing alternative of not less than 6 days for the first offense, none of which may be suspended, and of not less than 10 days for each succeeding

offense, none of which may be suspended; the court also shall impose a fine of not less than \$2,000, none of which may be suspended.

For purposes of this subsection, "night vision equipment" means a light amplification or thermal imaging device.

Sec. 4. 12 MRSA §11901, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is repealed and the following enacted in its place:

§11901. Raccoons

1. Open season. An open season for hunting raccoons established by the commissioner must be of uniform duration throughout the State.

2. Night hunting. Notwithstanding the night hunting prohibition in section 11206, raccoons may be hunted at night during an open season established pursuant to this section.

See title page for effective date.

CHAPTER 593

H.P. 1271 - L.D. 1749

An Act To Provide for the Assessment of the Mahogany Quahog Resource

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

Whereas, the mahogany quahog fishery industry provides an important source of income to Maine fishermen; and

Whereas, the mahogany quahog quota for Maine is determined at the federal level and is not based on current scientific information; and

Whereas, a source of funding is needed to accurately assess Maine's mahogany quahog resource and ensure the sustainability of the Maine fishery; 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 §6731-A, sub-§5, as enacted by PL 1991, c. 561, §1, is amended to read:

5. Mahogany Quahog Monitoring Fund. ~~The~~ The Mahogany Quahog Monitoring Fund is established within the department. The commissioner shall use any money credited to the ~~Toxin~~ Mahogany Quahog Monitoring Fund exclusively for the collection of samples required under this section to monitor the level of paralytic shellfish toxin in mahogany quahogs and to conduct stock assessments of the mahogany quahog resource. All money in the ~~Toxin~~ Mahogany Quahog Monitoring Fund is subject to allocation by the Legislature. The ~~Toxin~~ Mahogany Quahog Monitoring Fund may not lapse but must carry forward to be used for the same purpose. Nothing in this subsection prohibits the commissioner from using other funds budgeted by the department to carry out the purposes of this section.

Sec. 2. 12 MRSA §6731-A, sub-§6 is enacted to read:

6. Stock assessment and report. The department shall conduct stock assessments of the mahogany quahog resource beginning no later than January 1, 2005. The department shall report biennially to the joint standing committee of the Legislature having jurisdiction over marine resources matters on the progress of the stock assessment and the status of the Mahogany Quahog Monitoring Fund starting on January 1, 2006.

Sec. 3. 36 MRSA §4718, as amended by PL 2003, c. 20, Pt. WW, §28, is further amended to read:

§4718. Contributions; Mahogany Quahog Monitoring Fund

The State Tax Assessor shall determine annually the total amount of tax revenue collected under this chapter. ~~The~~ Until June 30, 2004, the State Tax Assessor shall deduct the cost of administering the mahogany quahog tax from those revenues and report the remainder to the Treasurer of State, who shall credit that amount to the ~~Toxin~~ Mahogany Quahog Monitoring Fund established in Title 12, section 6731-A, subsection 5, except that not more than \$56,000 may be credited to the fund in any year. ~~Revenues~~ Until June 30, 2004, revenues collected that are in excess of \$56,000 must be credited to the General Fund.

Beginning July 1, 2004, the State Tax Assessor shall deduct the cost of administering the mahogany quahog tax from those revenues and report the remainder to the Treasurer of State, who shall credit 58% of that amount or \$56,000, whichever is greater, to the Mahogany Quahog Monitoring Fund established in Title 12, section 6731-A, subsection 5 and 42% or the remainder, as applicable, to the General Fund.

Sec. 4. Transfers from existing accounts. The Department of Marine Resources shall transfer the