

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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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words, those words are amended to read or mean, as appropriate, "Riverview Psychiatric Center," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 5. Transition provisions. All existing supplies, forms, letterheads and similar items bearing the name of or referring to the Bangor Mental Health Institute or the Superintendent of the Bangor Mental Health Institute may be used by the Dorothea Dix Psychiatric Center or the Superintendent of the Dorothea Dix Psychiatric Center until existing supplies of these items are exhausted.

All existing contracts, agreements and compacts of the Bangor Mental Health Institute currently in effect continue in effect.

Any positions authorized and allocated subject to the personnel laws to the Bangor Mental Health Institute are transferred to the Dorothea Dix Psychiatric Center and may continue to be authorized.

See title page for effective date.

CHAPTER 237

H.P. 518 - L.D. 723

An Act To Amend Laws Pertaining to Commercial Fishing and Baitfish

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

Sec. 1. 12 MRSA §10001, sub-§12-A, as enacted by PL 2003, c. 552, §1 and affected by §15 and c. 655, Pt. C, §§2 and 6, is repealed and the following enacted in its place:

12-A. Dip net. "Dip net" means:

A. Except when taking smelts in a tributary or within 100 feet of the mouth of a tributary, a device consisting of a rigid frame filled with netting, firmly attached to a rigid handle and manually operated by a single person; and

B. When used to take smelts in a tributary or within 100 feet of the mouth of a tributary, a device consisting of a rigid circular frame that is not more than 24 inches in diameter as measured at any point on the hoop, filled with netting, firmly attached to a rigid handle and manually operated by a single person.

Sec. 2. 12 MRSA §12456, sub-§2, ¶A, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is repealed and the following enacted in its place:

A. A person who holds a valid Maine fishing license may take smelts for recreational purposes only from the inland waters or portions of inland waters that are naturally free of ice with a dip net in the usual and ordinary way from noon to 2:00 a.m. in accordance with bag limits established by rule. Bag limits established by rule under this paragraph are for a 24-hour period, beginning at noon on a given day and ending at 11:59 a.m. the following day. The commissioner may prohibit the taking of smelts under this section or shorten the noon to 2:00 a.m. smelt fishing timeframe by rule for enforcement or conservation purposes.

(1) A person may not keep more than 5 dozen smelts alive as part of that person's daily bag limit pursuant to this paragraph.

(2) A person may not take smelts with a dip net unless that dip net meets the requirements under section 10001, subsection 12-A.

Each day a person violates subparagraph (1) or (2) that person commits a Class E crime;

Sec. 3. 12 MRSA §12551-A, sub-§7, ¶¶A and B, as enacted by PL 2003, c. 655, Pt. B, §259 and affected by §422, are amended to read:

A. The holder of a smelt wholesale dealer's license may:

(1) Take live smelts for resale from any inland ~~water~~ waters or private pond ponds. The taking of live smelts from inland waters must be in accordance with general rules adopted by the commissioner in regard to the taking of smelts. Except as provided in paragraph B, the holder of a smelt wholesaler's license shall comply with the same daily bag limit and the same tackle restrictions that apply to all other anglers and is subject to the same penalties for violations of those limits and restrictions. This subparagraph does not apply to a holder of a fish cultivator license as provided under section 12507;

(2) Use a baitfish trap, a dip net, From ice-in to ice-out, use a drop net, a lift net, a bag net or hook and line to take up to 8 quarts of smelts in a 24-hour period, beginning at noon on a given day, from specific inland waters designated by the commissioner. A dip net may be used in conjunction with the above methods to assist with the handling and transporting of smelts. A licensee may keep the daily bag limit alive. The daily bag limit established under this subparagraph is for a 24-hour period, beginning at

noon on a given day and ending at 11:59 a.m. the following day;

(2-A) In waters naturally free of ice, take smelts from noon to 2:00 a.m. by the use of a dip net in the usual and ordinary way. The commissioner may establish the daily bag limit by rule and a licensee may keep the daily bag limit of smelts alive. The daily bag limit established under this subparagraph is for a 24-hour period, beginning at noon on a given day and ending at 11:59 a.m. the following day. The commissioner may shorten the noon to 2:00 a.m. smelt fishing timeframe by rule for enforcement or conservation purposes;

(3) ~~May use particles of food~~ Use artificial light for the purpose of luring smelts to a ~~baitfish trap, a dip net, a drop net, or a lift net or a bag net;~~

(4) Transport or possess at the holder's business facility more than the daily bag limit of smelts provided that the smelts were taken by the license holder in accordance with this section or acquired from a person licensed under this section to deal in live smelts;

(5) Designate others to assist in selling live smelts at the holder's business facility; and

(6) Transport or designate others to transport on the license holder's behalf live smelts in accordance with this subsection.

B. The holder of a smelt wholesale dealer's license may not:

(1) When engaged in taking, or assisting in taking, live smelts for resale from inland waters, fail to exhibit the license to any agent of the commissioner upon request;

(2) Take multiple bag limits from waters governed by general rules regulating the taking of smelts in order to attain the 8-quart limit of smelts described in paragraph A, subparagraph ~~2~~ (2);

(3) Use a seine to take smelts;

(4) Transport or possess at the holder's business facility more than the daily bag limit of smelts at any time unless the smelts were acquired in accordance with paragraph A, subparagraph ~~4~~ (4). If the smelts were purchased from another person, the license holder must present a receipted invoice, bill

of lading or bill of sale to any agent of the commissioner upon request;

(5) Transport from an inland water source to the licensee's place of business more than 8 quarts of live smelts;

(6) Permit any person to transport live smelts on the license holder's behalf directly from an inland water source;

(7) Attempt to take from the inland waters of the State live smelts for resale using drop nets through the ice unless the license holder marks all holes made in the ice by that license holder for that purpose. The holes must be marked either by evergreen boughs placed around the hole or by suspending at least one strand of fluorescent biodegradable tape at least 3 feet above the ice around the entire perimeter of the hole so that the tape is visible from all sides;

(8) Take smelts ~~during the winter months, except by hook and line,~~ unless the holder ~~has a~~ uses an operable commercially manufactured number 14 fish grader ~~in operable condition in that holder's immediate proximity to sort smelts by size~~ during the taking of smelts and ~~uses that grader during the smelt harvesting activity.~~ The holder shall liberate immediately all undersized smelts alive into the waters from which they were taken. For the purpose of this subparagraph, a commercially manufactured number 14 grader is a grader having a minimum grate size of 14/64 inches and that allows smelts to pass through at least 2 sides and the bottom of the grader. The commissioner may adopt rules to amend the grate size restrictions under this subparagraph if the commissioner determines such rules are necessary for conservation or enforcement purposes. ~~This subparagraph does not apply to a license holder who fishes with a hook and line only; or~~

(9) Possess at that person's place of business any species of fish that may not legally be sold as bait;

(10) Use particles of food or any other type of bait or lure except light to lure smelts to a drop net or a lift net; or

(11) Use a dip net to take smelts unless that dip net meets the requirements under section 10001, subsection 12-A.

Each day a person violates this paragraph that person commits a ~~class~~ Class E crime.

Sec. 4. 12 MRSA §12551-A, sub-§10 is enacted to read:

10. Reports required. A person licensed under this section must submit a report on forms provided by the department with the following information: name and location, including the town and county of waters fished; date fished; total catch; gear type; and number of nets used. The report must be submitted by May 31st of each year. A person who has not submitted this report may be prohibited from obtaining a license under this section. A person who is prohibited from obtaining a license under this section may submit an appeal to the commissioner.

All data submitted as part of the report are for scientific purposes only and are confidential and not a public record within the meaning of Title 1, chapter 13, subchapter 1, except that the commissioner may disclose data collected under this subsection if that data are released in a form that is statistical or general in nature.

See title page for effective date.

CHAPTER 238

H.P. 299 - L.D. 396

An Act To Amend the Laws Concerning the Maine State Retirement System

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

Sec. 1. 5 MRSA §17105, sub-§3, as repealed and replaced by PL 1993, c. 410, Pt. L, §23, is amended to read:

3. Staff. The executive director shall employ personnel as necessary and in accordance with board policy to transact the business of the system, which may include a general counsel. Additional attorneys may be employed to assist the general counsel with the approval of the Attorney General. The duties of the general counsel and any assistant counsel must be consistent with the terms of a memorandum of understanding between the executive director and the Attorney General.

See title page for effective date.

CHAPTER 239

S.P. 526 - L.D. 1510

An Act To Amend the Lobster Fishing Laws of Maine

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

Sec. 1. 12 MRSA §6421, sub-§5-A, as amended by PL 2003, c. 468, §2, is further amended to read:

5-A. Student license eligibility. A student license may ~~only~~ be issued only to a person who, at the time of application, is a full-time student 8 years of age or older and under 23 years of age. For the purposes of this subsection, "full-time student" means ~~"student" as defined in Title 39-A, section 102, subsection 8, paragraph C.;~~

A. A person attending a public day school in accordance with the attendance requirement of Title 20-A, section 5001-A, subsection 1;

B. A person meeting the requirements of an alternative to attendance at public day school in accordance with Title 20-A, section 5001-A, subsection 3; or

C. A person enrolled in a full-time course of study at a college or university accredited by a state-recognized accrediting agency or body.

A person may not be considered to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if it is shown that the person has a bona fide intention of continuing to pursue a full-time course of study during the semester or other enrollment period immediately following the interim period. For purposes of this subsection, "full-time course of study" means at least 60% of the usual course load for the program in which the person is enrolled.

Sec. 2. 12 MRSA §6431-F, as amended by PL 2003, c. 510, Pt. A, §6, is further amended to read:

§6431-F. Trap tags

1. Trap tag limits. ~~Beginning with the 2000 license year, the~~ The following provisions govern trap tag limits apply to holders of Class I, Class II or Class III lobster and crab fishing licenses.

A. If the license holder purchased as of November 20, 1998 for the 1998 license year between zero and 200 trap tags, the license holder may not purchase more than 300 trap tags for the initial license year. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number does not exceed the trap limit established by rule for the zone in which the person fishes a majority of that person's traps.