

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

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

Augusta, Maine
2009

may vary." A menu, menu board or written nutrition information provided to a customer by a chain restaurant may include the following statement or a statement similar to the following: "Nutrition information is based upon standard recipes and product formulations; however, modest variations may occur due to differences in preparation, serving sizes, ingredients or special orders."

4. Different varieties. For a food or beverage item that is listed as a single item but includes more than one variety, the caloric information required under subsection 1 for that item must be the median value of calories for all varieties offered for that item if the caloric information for each variety of the item is within 20% of the median for that item. If the caloric information required by subsection 1 for a variety of a food or beverage item is not within 20% of the median for that item, then the caloric information must be stated for each variety of that item. If a food display tag is used to identify a specific variety of a food or beverage item, the caloric information required by subsection 1 must be for that specific variety of the item.

5. Exceptions. A chain restaurant is not required to provide information pursuant to subsection 1 for:

A. Food items served at a self-service salad bar or buffet;

B. An item offered for a limited time that appears on a menu, menu board or food display tag for less than 90 days per year;

C. A condiment or other item offered to a customer for general use without charge;

D. An item sold to a customer in a manufacturer's original sealed package that contains nutrition information as required by federal law; or

E. A custom order for a food or beverage item that does not appear on a menu, menu board or food display tag.

6. Alcoholic beverages. A chain restaurant shall state on a food display tag, menu or menu board the average caloric value for beers, wines and spirits as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference. A food display tag, menu or menu board for beer, wine and spirits may include the following statement: "Signature drinks or liqueurs with added ingredients may contain increased caloric content."

7. Compliance; enforcement. The department or an agent authorized to inspect an eating establishment under section 2499 shall ensure compliance with the provisions of this section but is not required to verify the accuracy of the caloric information required by this section. Upon request a chain restaurant shall provide to the department documentation of the accu-

racy of the information required by subsection 1. A violation of this section is a violation of the Maine Unfair Trade Practices Act, enforceable against the owner or franchisee of the eating establishment, except that no private remedies exist under Title 5, section 213. This section may not be construed to create or enhance any claim, right of action or civil liability that did not exist under state law prior to the effective date of this subsection or limit any claim, right of action or civil liability that otherwise exists under state law. No private right of action arises out of this section. The only mechanism for enforcing this section is as provided in this subsection.

8. Uniformity of regulation; preemption. To the extent consistent with federal law, the regulation of disclosure of caloric and nutritional information is a matter of statewide concern, and state law governing that disclosure occupies the whole field of regulation regarding disclosure by chain restaurants of nutritional information and requirements regarding the content required to be posted on menus, menu boards and food display tags. A local government may not adopt an ordinance regulating the dissemination of caloric or nutritional information or requiring information to be placed on menus, menu boards or food display tags by a chain restaurant, and any ordinance or regulation that violates this subsection is void and has no force or effect.

Sec. 8. Effective date. This Act takes effect February 1, 2011.

Effective February 1, 2011.

CHAPTER 396 S.P. 95 - L.D. 278

An Act To Bring Equity to the Sea Urchin License Fees

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

Sec. 1. 12 MRSA §6302-A, sub-§1, as amended by PL 1999, c. 491, §3 and affected by §9, is further amended to read:

1. Tribal exemption; commercial harvesting licenses. A member of the Passamaquoddy Tribe who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6505-A, 6505-C, 6535, ~~6536~~, 6601, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803 or 6804 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe to conduct the activities authorized under the state license or permit. A member of the Passamaquoddy Tribe issued a tribal license pursuant to this subsection to conduct activities is subject to all

laws and rules applicable to a person who holds a state license or permit to conduct those activities and to all the provisions of chapter 625, except that the member of the tribe:

A. May utilize lobster traps tagged with trap tags issued by the tribe in a manner consistent with trap tags issued pursuant to section 6431-B. A member of the tribe is not required to pay trap tag fees under section 6431-B if the tribe issues that member trap tags;

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe in a manner consistent with tags issued pursuant to 6505-B. A member of the tribe is not required to pay elver fishing gear fees under section 6505-B if the tribe issues that member elver fishing gear tags; and

C. Is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671.

Sec. 2. 12 MRSA §6533, as amended by PL 1997, c. 158, §§1 and 2, is further amended to read:

§6533. Training required to act as a scallop or sea urchin tender

~~Except as provided under subsection 3, the~~ The commissioner may not issue a sea urchin and scallop diving tender license under section 6535 ~~or a scallop diving tender license under section 6536 to any a~~ person or allow a person to act as a tender under a license issued pursuant to section 6701, subsection 5, paragraph B or section 6748, subsection 4, paragraph B unless that person has attended a safety training session offered under this section met the diving tender safety requirements established in rule.

~~1. Tender safety training session.~~ The commissioner shall establish a boat tender safety training session to provide basic safety training for persons who seek to obtain a sea urchin and scallop diving tender license. ~~The training session may be taught by the department or offered by any public or private sector association or organization authorized by the commissioner to offer the training session. At a minimum, the training session must familiarize participants with basic cardiovascular pulmonary resuscitation techniques and risk factors, including hypothermia, associated with the handharvesting of sea urchins and scallops. For any training session taught by the department, the commissioner shall charge a fee for that session to recover all costs incurred by the department in teaching the training session.~~

~~2. Allowance for waivers.~~ The commissioner may waive the requirement to attend a training session offered under this section for any person who demonstrates to the commissioner, either through documented experience or technical or professional accreditation, a level of knowledge at least equal to that

~~expected from a person who completed the session. It is the responsibility of the person seeking such a waiver to request that waiver in writing to the commissioner and to provide the commissioner with any documentation the commissioner determines necessary to make a decision.~~

~~3. Requirement for 30-day license.~~ The commissioner may issue a 30-day temporary sea urchin and scallop diving tender license under section 6535, subsection 2-A to a person if that person provides a current certificate documenting that the person has received training in cardiopulmonary resuscitation.

Sec. 3. 12 MRSA §6535, as amended by PL 2003, c. 20, Pt. WW, §9, is further amended to read:

§6535. Sea urchin and scallop diving tender license

1. License required. A person may not operate a boat as a platform for the harvesting of sea urchins and scallops by hand, act as a diving tender on a boat engaged as a platform for the harvesting of sea urchins and scallops by hand or possess, ship, transport or sell scallops or sea urchins unless that person is licensed under this section, section 6701 or section 6748.

2. Licensed activity. A person licensed under this section may tend divers who harvest sea urchins and scallops by hand and operate a boat as a platform for the harvesting of sea urchins and scallops by hand and may possess, ship, transport and sell sea urchins and scallops harvested by licensed harvesters the tender has tended. A sea urchin and scallop diving tender license does not authorize the holder to harvest sea urchins and scallops. As used in this subsection, "tend" means to assist the diver in any way, to operate a boat as a platform for harvesting or to cull or otherwise handle the harvested product.

~~2-A. Thirty-day temporary license.~~ A person may be issued a 30-day temporary sea urchin and scallop diving tender license. A person may be issued a license only one time under this subsection. A license issued under this subsection may not be renewed.

3. Eligibility. A sea urchin and scallop diving tender license and a 30-day temporary sea urchin and scallop diving tender license may be issued only to an individual who is a resident.

4. Fee. Fees for licenses issued under this section are: The fee for a sea urchin and scallop diving tender license is \$111.

A. For a sea urchin and scallop diving tender license, \$111; and

B. For a 30-day temporary sea urchin and scallop diving tender license, \$31.

5. Prima facie evidence. The failure of at least one person on board the boat operated as a platform during periods of diving to harvest scallops or sea urchins to have a license issued under section 6701 or

6748 is prima facie evidence of a violation of this section.

6. Violation. A person who violates this section commits a civil violation for which a ~~forfeiture fine~~ of not less than \$100 nor more than \$500 may be adjudged.

Sec. 4. 12 MRSA §6536, as amended by PL 2003, c. 20, Pt. WW, §10, is repealed.

Sec. 5. 12 MRSA §6701, sub-§1, as amended by PL 2001, c. 421, Pt. B, §40 and affected by Pt. C, §1, is further amended to read:

1. License required. A person may not engage in the activities authorized under this section without a current hand fishing scallop license or other license issued under this Part authorizing the activities. The hand fishing scallop license with tender issued under subsection 5, paragraph B authorizes a person to engage in the activities described in section 6535, subsection 2 aboard the licensee's boat when it is engaged in the harvesting of scallops.

Sec. 6. 12 MRSA §6701, sub-§2, as amended by PL 2003, c. 248, §7, is further amended to read:

2. Licensed activity. The holder of a hand fishing scallop license may take scallops by hand or possess, ship, transport or sell shucked scallops the holder has taken. A tender authorized under subsection 5, paragraph B may possess, ship, transport and sell shucked scallops the hand fishing scallop license holder has taken. A person may not act as a tender under subsection 5, paragraph B unless that person has met the tender safety requirements adopted by rule pursuant to section 6533.

Sec. 7. 12 MRSA §6701, sub-§5, as amended by PL 2003, c. 20, Pt. WW, §13, is repealed and the following enacted in its place:

5. Fee. Fees for hand fishing scallop licenses are:

A. For an individual hand fishing scallop license, \$111; and

B. For a hand fishing scallop license with tender, \$161.

Sec. 8. 12 MRSA §6748, as amended by PL 2003, c. 20, Pt. WW, §19, is further amended to read:

§6748. Handfishing sea urchin license

1. License required. A person may not engage in the activities authorized under this section without a current handfishing sea urchin license or other license issued under this Part authorizing the activities. The handfishing sea urchin license with tender issued under subsection 4, paragraph B authorizes a person to engage in the activities described in section 6535, subsection 2 aboard the licensee's boat when it is engaged in the harvesting of sea urchins.

2. Licensed activity. The holder of a handfishing sea urchin license may take sea urchins by hand or possess, ship, transport or sell sea urchins taken by that licensee. A tender authorized under subsection 4, paragraph B may possess, ship, transport and sell sea urchins the handfishing sea urchin license holder has taken. A person may not act as a tender under subsection 4, paragraph B unless that person has met the tender safety requirements adopted by rule pursuant to section 6533.

3. Eligibility. A handfishing sea urchin license may be issued only to an individual who is a resident.

4. Fee. ~~The fee for a handfishing sea urchin license is \$111.~~ Fees for handfishing sea urchin licenses are:

A. For an individual handfishing sea urchin license, \$111; and

B. For a handfishing sea urchin license with tender, \$161.

4-A. Temporary Zone 1 fee. Notwithstanding subsection 4, the fees for a handfishing sea urchin license and a handfishing sea urchin license with tender issued for calendar year 2010 or 2011 to handfish for sea urchins within the area designated as Zone 1 under section 6749-N are \$25 and \$50 per year, respectively.

This subsection is repealed December 31, 2011.

5. Rebuttable presumption. It is unlawful for an individual to dive from a vessel with sea urchins on board unless that individual is licensed under this section. It is a rebuttable presumption that an individual diving from a vessel with sea urchins on board at any time of the year is diving for the purpose of fishing for or taking sea urchins.

6. Violation. A person who violates this section commits a civil violation for which a ~~forfeiture fine~~ of not less than \$100 nor more than \$500 may be adjudged.

Sec. 9. 12 MRSA §6748-A, sub-§4-A is enacted to read:

4-A. Temporary Zone 1 fee. Notwithstanding subsection 4, the fee for a sea urchin dragging license issued for calendar year 2010 or 2011 to drag for sea urchins within the area designated as Zone 1 under section 6749-N is \$25 per year.

This subsection is repealed December 31, 2011.

Sec. 10. 12 MRSA §6748-D, sub-§4-A is enacted to read:

4-A. Temporary Zone 1 fee. Notwithstanding subsection 4, the fee for a sea urchin hand-raking and trapping license issued for calendar year 2010 or 2011

to hand-rake or trap sea urchins within the area designated as Zone 1 under section 6749-N is \$25 per year.

This subsection is repealed December 31, 2011.

See title page for effective date.

CHAPTER 397

H.P. 381 - L.D. 536

An Act To Enhance Maine's Electronic Waste Recycling Law

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

Sec. 1. 38 MRSA §1310-B, sub-§2, as repealed and replaced by PL 2007, c. 466, Pt. A, §72, is amended to read:

2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6, ~~paragraph A, subparagraph (4), division (i) and section 1610, subsection 6, paragraph B 6-A~~ or information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the

competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

Sec. 2. 38 MRSA §1610, sub-§2, ¶A, as reallocated by RR 2003, c. 2, §119, is amended to read:

A. "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet. "Computer monitor" includes a digital picture frame.

Sec. 3. 38 MRSA §1610, sub-§2, ¶C, as reallocated by RR 2003, c. 2, §119, is amended to read:

C. "Covered electronic device" means a computer central processing unit, a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile, a household appliance, a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act.

Sec. 4. 38 MRSA §1610, sub-§2, ¶C-1 is enacted to read:

C-1. "Desktop printer" means a device that prints text or illustrations on paper and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile.