

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 28, 2011**

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

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**Augusta, Maine**  
**2011**

ing and processing methods and any other provisions required to ensure the public safety. ~~A depuration plant operator shall maintain a generalized management plan on file with the commissioner that sets forth a timeline for harvest, harvest limits and harvester selection.~~ The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning.

**Sec. 2. 12 MRSA §6856, sub-§3-A,** as amended by PL 2009, c. 561, §32, is repealed.

**Sec. 3. 12 MRSA §6856, sub-§3-B,** as enacted by PL 2007, c. 15, §3, is repealed.

**Sec. 4. 12 MRSA §6856, sub-§3-C,** as enacted by PL 2007, c. 15, §4, is repealed.

**Sec. 5. 12 MRSA §6856, sub-§3-D** is enacted to read:

**3-D. Soft-shelled clam depuration harvesting in municipalities with municipal shellfish conservation programs.** Soft-shelled clam depuration activities conducted within a municipality that has a municipal shellfish conservation program pursuant to section 6671 are subject to the following provisions.

A. Using the following general guidelines to identify whether pollution abatement activities are likely to succeed in a shellfish growing area, the commissioner may close a shellfish growing area for municipal pollution abatement activities.

(1) Pollution abatement activities are likely to succeed in shellfish growing areas affected by identified failing residential septic systems and other identified localized sources of human or animal fecal contamination when funding for abatement is available.

(2) Pollution abatement activities are not likely to succeed in shellfish growing areas affected by wastewater treatment plant outfall or other point sources of treated or partially treated sewage unless complete removal of pollution sources has been achieved.

(3) Abatement activities are not likely to succeed in shellfish growing areas affected by chronic nonpoint source contamination from rivers or streams.

At the request of the municipality, the commissioner may allow soft-shelled clam depuration harvesting in a shellfish growing area closed under this paragraph.

B. In conducting depuration harvesting activities under this subsection, a person holding a depuration certificate shall engage commercial harvesters holding valid municipal and state commercial shellfish licenses. If there are insufficient mu-

nicipally licensed commercial harvesters, the depuration certificate holder may supplement with other commercial shellfish harvesters licensed in the State.

C. A depuration certificate holder shall maintain a generalized depuration management plan on file with the commissioner that sets forth methods for identifying harvest limits, operational procedures for harvest management and responsibilities of authorized representatives.

D. A depuration certificate holder shall pay each municipality an amount equal to 50¢ for each bushel of soft-shelled clams taken in that municipality under the depuration certificate. When submitting payment to a municipality under this paragraph, the depuration certificate holder shall include a summary of reports submitted to the department pursuant to rules adopted under subsection 4.

**Sec. 6. 12 MRSA §6856, sub-§7,** as amended by PL 2007, c. 15, §5, is repealed.

**Sec. 7. 12 MRSA §6856, sub-§8,** as enacted by PL 1991, c. 831, §2, is repealed.

See title page for effective date.

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## CHAPTER 176

### S.P. 332 - L.D. 1099

#### An Act Concerning Independent Contractors in the Trucking and Messenger Courier Industries

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

**Sec. 1. 39-A MRSA §114** is enacted to read:

**§114. Independent contractor status for truckers and couriers**

**1. Presumption of employee status.** Notwithstanding section 102, subsection 13, the operator of a motor vehicle engaged in the business of freight transportation or courier and messenger services is considered an employee unless all of subsection 2 applies or the operator is able to provide proof of coverage by a valid workers' compensation insurance policy; in either of which case, the operator is considered an independent contractor. For purposes of this section, "motor vehicle" means a van, truck or truck tractor used for freight transportation or courier and messenger services.

**2. Factors to determine independent contractor status.** An operator of a motor vehicle is considered an independent contractor in the business of

freight transportation or courier and messenger services if the operator:

A. Owns the motor vehicle or holds it under a bona fide lease agreement;

B. Is responsible for the maintenance of the motor vehicle;

C. Is responsible for substantially all of the principal operating expenses of the motor vehicle, including without limitation fuel, repairs, supplies and insurance. The operator may be reimbursed, including prospectively, for the operator's fuel surcharge fees and incidental costs, including tolls, permits and freight handling fees, by the entity contracting with the operator;

D. Is responsible for paying the operator's personal expenses;

E. Is responsible for supplying the necessary services to operate the motor vehicle;

F. Is compensated based on factors directly related to the work performed, such as mileage-based rates, and not solely on the amount of time expended by the operator;

G. Substantially controls the means and manner of performing the services related to the business of freight transportation or courier and messenger services in conformance with the specifications of a shipper and the law; and

H. Possesses a certification statement affirming that the operator whose services are being acquired meets each of the factors in paragraphs A to G and that the operator is understood to be an independent contractor and not an employee. The statement must be signed and dated by the operator supplying the service and the hiring entity. The statement must be supplied on demand to an insurance premium auditor or the board.

3. Repeal. This section is repealed October 1, 2013.

See title page for effective date.

**CHAPTER 177**

**H.P. 306 - L.D. 380**

**An Act To Enhance Enforcement of Civil Orders of Arrest**

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

**Sec. 1. 14 MRSA §3135, as amended by PL 2009, c. 205, §§1 and 2, is further amended to read:**

**§3135. Civil order of arrest**

A civil order of arrest issued under section 3134, subsection 1, or section 3136, must direct the sheriff to arrest the individual named in the order and bring the individual to a hearing any day the court is in session. In the case of a nonindividual debtor, the civil order of arrest must be issued for the arrest of any officer, director or managing agent of the debtor or other agent appointed by the debtor to accept service and who was served with the disclosure subpoena.

After a civil order of arrest has been issued, the sheriff shall cause the ~~individual debtor~~ named in the order to be arrested and shall deliver the ~~individual debtor~~ without undue delay to the division of the District Court designated in the civil order of arrest or obtain from the debtor a personal recognizance bond to appear in court at the specified date and time. ~~Should the debtor fail to appear at that time a warrant may issue for the debtor's arrest.~~ The sheriff may take such steps determined necessary for the sheriff's safety or the safety of others then present, including searching the debtor for weapons, if the sheriff has a reasonable suspicion that the debtor has a weapon, and handcuffing the debtor if that is necessary to transport the debtor to the court or to cause the debtor to remain peaceably at the court. Upon arrival at the court, the sheriff shall notify the clerk or bailiff that the debtor is present and may release the debtor into the custody of the bailiff. The sheriff shall instruct the debtor that the debtor must wait at the court until released by the court or clerk. Upon release of the debtor into the custody of the bailiff, the sheriff need not remain with the debtor at the court. ~~A debtor who fails to appear for the disclosure hearing after being released upon the debtor's personal recognizance commits a Class E crime.~~

After the judgment debtor is brought to the court, the clerk shall promptly notify the judgment creditor or the judgment creditor's attorney of record in person or by telephone that the presence of one of them is required for a hearing. If a disclosure or contempt hearing cannot be held that day due to the inability of the judgment creditor or the judgment creditor's attorney to appear or due to the absence of the judge or the inability of the court to hear the matter because of other business, the court or clerk shall release the debtor upon the debtor's personal recognizance for appearance on a date certain. ~~A debtor who fails to appear for the disclosure or contempt hearing after being released upon the debtor's personal recognizance commits a Class E crime.~~

If the debtor fails to appear at the time and place specified in a personal recognizance bond obtained by the sheriff, clerk or court, and upon request of the judgment creditor, the court shall order the Department of Labor to provide the judgment creditor with the name and address of the current or most recent