

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

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

Augusta, Maine
2012

~~B. Lobster parts or meat, if they are purchased from a wholesale seafood license holder who possesses a lobster processor license under section 6851-B or if they have been lawfully imported.~~

3-B. Certificate limited. An enhanced retail certificate authorizes activities pursuant to subsection 2-A at only one establishment.

4. Fee. The fee for a retail seafood license under subsection 1 is \$122. The fee for an enhanced retail certificate under subsection 2-A is \$28 and must be deposited in the Shellfish Fund under section 6651.

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

6. Rules. The commissioner may adopt or amend rules that establish requirements for retail seafood license holders and enhanced retail certificate holders concerning:

- A. The minimum sanitation standards for establishments and vehicles;
- B. The sanitation and quality control standards for shellfish and whole scallops and their products;
- C. The methods for handling, shipping and transporting of shellfish and whole scallops;
- D. The records and reports of purchases, shipping and transporting of shellfish and whole scallops;
- E. The labeling or marking of shipments of shellfish and wholesale scallops; and
- F. The protection of public health.

Rules adopted pursuant to this subsection must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data and must be designed to protect the public health and safety while allowing reasonable use of shellfish and whole scallops. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 45. 12 MRSA §6852-A, as amended by PL 2011, c. 311, §5, is repealed.

Sec. 46. 12 MRSA §6852-B is enacted to read:

§6852-B. Retail sale of certain seafood products

Notwithstanding any provision of law to the contrary, a license or certificate is not required for a person to sell at retail:

1. Shucked shellfish. Shucked shellfish, if the shucked shellfish is purchased from a wholesale seafood license holder certified under section 6856; or

2. Lobster parts or meat. Lobster parts or meat, if they are purchased from a wholesale seafood license holder with a lobster permit, from the holder of a lobster processor license or from an individual permitted under section 6857 or if they have been lawfully imported.

Sec. 47. 12 MRSA §6955, as enacted by PL 1985, c. 211, is amended to read:

§6955. Fishing in waters of Union River Bay and the lower Union River

It is unlawful to fish with any type of net, fish trap or weir from April 15th to August 1st in the tidal waters of Union River Bay and the lower Union River north of a line drawn from the southernmost tip of Newbury Neck in the Town of Surry and extended eastward to the southernmost tip of Oak Point in the Town of Trenton. The closed area ~~shall extend~~ extends northward to the downstream side of the Bangor Hydropower Company dam in the City of Ellsworth. Fishing for eels or smelts by means of hand dip nets, fyke nets or baited eel traps ~~shall be~~ is exempt from this section. The taking of ~~alewives~~ river herring under the provisions of section 6131, subsection 5, ~~shall be~~ is exempt from this section.

Sec. 48. 12 MRSA §6977, as enacted by PL 2003, c. 573, §1, is repealed.

Sec. 49. Rules. Notwithstanding any provision of law to the contrary, rules adopted by the Department of Marine Resources pertaining to enhanced retail seafood license holders apply to enhanced retail certificate holders under the Maine Revised Statutes, Title 12, section 6852, subsection 2-A pending adoption by the department of revised rules in accordance with this Act.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 6, 2012.

CHAPTER 599

S.P. 596 - L.D. 1739

An Act To Change Regulation of Forestry Activities

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

Sec. 1. 12 MRSA §685-A, sub-§12, as repealed and replaced by PL 2005, c. 226, §1, is amended to read:

12. Timber harvesting activities. Rules adopted by the Commissioner of Conservation pursuant to section 8867-B for the purpose of regulating timber har-

vesting and timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters become effective for the unorganized and deorganized areas on the date established under Title 38, section 438-B, subsection 5.

The Director of the Bureau of Forestry within the Department of Conservation shall administer and enforce the regulation of timber harvesting and timber harvesting activities in these areas. For the purposes of this subsection, "timber harvesting" and "timber harvesting activities" have the same meanings as in section 8868, subsections 4 and 5.

Beginning November 1, 2012, the Director of the Bureau of Forestry within the Department of Conservation shall administer and enforce the regulation of timber harvesting and timber harvesting activities in protection districts and management districts in accordance with rules adopted under section 8867-D.

Sec. 2. 12 MRSA §685-A, sub-§14 is enacted to read:

14. Land management roads, gravel pits and water crossings. Beginning November 1, 2012, the Director of the Bureau of Forestry within the Department of Conservation shall administer and enforce the regulation of construction, maintenance and repair of land management roads, water crossings and gravel pits of less than 5 acres in protection districts and management districts in accordance with rules adopted under section 8867-E. For the purposes of this subsection, "land management road" has the same meaning as under section 8868, subsection 7.

Sec. 3. 12 MRSA §8867-C is enacted to read:
§8867-C. Enhancement of cold water fisheries habitat

By November 1, 2012, the Commissioner of Conservation shall adopt rules to allow activities that enhance cold water fishery habitat without a permit or fee. The rules must establish standards for the placement of wood in stream channels and specify that only a licensed forester trained by the bureau in cooperation with the Department of Inland Fisheries and Wildlife in techniques to enhance fisheries habitat may implement these techniques.

In developing standards to enhance brook trout habitat and the training required to implement habitat enhancement, the Commissioner of Conservation shall consult with the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Department of Environmental Protection. The bureau shall notify the departments of habitat enhancement activities conducted under this section.

A permit is not required for activities conducted in accordance with the rules adopted under this section in stream segments that have been identified by the Department of Inland Fisheries and Wildlife as lacking

desired habitat features. The Department of Marine Resources must be consulted and approve of any habitat enhancement under this section on a stream that is identified as Atlantic salmon habitat.

The initial rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. This section does not relieve a person from meeting the requirements of section 8867-B or Title 38, chapter 3, subchapter 1, article 2-B.

Sec. 4. 12 MRSA §8867-D is enacted to read:
§8867-D. Regulation of timber harvesting and timber harvesting activities within the unorganized and deorganized areas of the State

Beginning November 1, 2012, the director of the bureau shall administer and enforce the regulation of timber harvesting and timber harvesting activities in areas classified as protection districts and management districts by the commission in accordance with section 685-A. The Commissioner of Conservation shall establish standards in rule to implement this section.

The initial rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 12 MRSA §8867-E is enacted to read:
§8867-E. Regulation of land management roads, gravel pits and water crossings within the unorganized and deorganized areas of the State

1. Regulation. In accordance with section 685-A, subsection 14, beginning November 1, 2012, the director of the bureau shall administer and enforce the regulation of construction, maintenance and repair of land management roads, water crossings and gravel pits of less than 5 acres in areas designated as protection districts and management districts by the commission.

2. Rules. The Commissioner of Conservation shall adopt rules to implement this section. Initial rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted under this subsection must be adopted in consultation with the commission. The rules must:

A. Require a permit from the bureau for activities located within areas of special flood hazard as defined in the commission's rules;

B. Include standards to protect outstanding river segments, historic, scenic, scientific, recreational and aesthetic resources in districts classified by the commission for special protection and delineated on land use maps adopted under section 685-A, subsection 7-A; and

C. Require review by and approval from the commission for any activity in a protection district described in paragraph B that requires a permit.

Sec. 6. 12 MRSA §8867-F is enacted to read:

§8867-F. Fee schedule

The bureau shall establish a schedule of fees through rulemaking for the administration of sections 8867-D and 8867-E. Notwithstanding Title 5, section 8071, subsection 2, paragraph A, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The bureau may not issue an approval, certificate, special exception or variance until the required fee has been paid.

Sec. 7. 12 MRSA §8868, sub-§1-A is enacted to read:

1-A. Commission. "Commission" means the Maine Land Use Regulation Commission established under section 683.

Sec. 8. 12 MRSA §8868, sub-§5, as enacted by PL 1999, c. 695, §2, is amended to read:

5. Timber harvesting activities. "Timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Sec. 9. 12 MRSA §8868, sub-§7 is enacted to read:

7. Land management road. "Land management road" means a road constructed and used primarily for agricultural or forest management activities.

Sec. 10. 38 MRSA §438-B, as amended by PL 2005, c. 397, Pt. C, §23 and affected by §24, is further amended to read:

§438-B. Timber harvesting and timber harvesting activities in shoreland areas; authority of Director of the Bureau of Forestry in the Department of Conservation

Except as provided in subsection 4, beginning on the effective date established under subsection 5, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide for the purpose of regulating timber harvesting and timber harvesting activities in shoreland areas.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Director" means the Director of the Bureau of Forestry within the Department of Conservation.

B. "Statewide standards" means the performance standards for timber harvesting activities adopted pursuant to Title 12, section 8867-B.

C. "Timber harvesting" means cutting or removal of timber for the primary purpose of selling or processing forest products.

D. "Timber harvesting activities" means the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

2. Municipal acceptance of statewide standards. A municipality may choose to have the statewide standards apply to timber harvesting and timber harvesting activities in that municipality by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas and notifying the director of the repeal. The authorization must specify a repeal date ~~consistent with the effective date established under subsection 5.~~ When a municipality accepts the statewide standards in accordance with this subsection, the director shall administer and enforce the statewide standards within that municipality beginning on the effective date established under subsection 5 or the municipal repeal date specified in the notification received under this subsection.

3. Municipal adoption of ordinance identical to statewide standards. A municipality may adopt an ordinance to regulate timber harvesting and timber harvesting activities that is identical to the statewide standards. A municipality that adopts an ordinance under this subsection may request the director to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning on the effective date established under subsection 5 or within 60 days of the director's receiving a request. When a municipality requests joint responsibilities, the director and the municipality shall enter into an agreement that delineates the administrative and enforcement duties of each. To continue to receive administrative and enforcement assistance from the director under this subsection, a municipality must amend its ordinance as necessary to maintain identical provisions with the statewide standards.

4. Municipal ordinances that are not identical to statewide standards. A municipal ordinance regulating timber harvesting and timber harvesting activities that is in effect and consistent with state laws and

rules in effect on December 31, 2005 continues in effect unless action is taken in accordance with subsection 2 or 3. A municipality that retains an ordinance with provisions that differ from the statewide standards shall administer and enforce that ordinance unless the municipality requests that the director administer and enforce the ordinance and the director agrees with the request after reviewing the ordinance. The director may not administer or enforce any ordinance that is more stringent than or significantly different from the requirements of section 438-A. A municipality may not amend a municipal ordinance regulating timber harvesting and timber harvesting activities unless the process established in Title 12, section 8869, subsection 8 is followed. Beginning on the effective date established under subsection 5, a municipality may not amend an ordinance regulating timber harvesting and timber harvesting activities in a manner that results in standards that are less stringent than or otherwise conflict with the statewide standards.

5. Effective date for statewide standards. Except as provided in subsection 4, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide beginning on the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3. Within 30 days of making the determination that the 252-municipality threshold has been met, the Commissioner of Conservation shall notify the Secretary of State in writing and advise the secretary of the effective date for the statewide standards.

6. Effective date for statewide standards in certain municipalities. Notwithstanding any provision in a local ordinance to the contrary, beginning January 1, 2013 rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply in all municipalities that have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3.

Sec. 11. 38 MRSA §480-B, sub-§2-B, as amended by PL 2005, c. 116, §1, is further amended to read:

2-B. Forest management activities. "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting,

the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

Sec. 12. 38 MRSA §480-E-1, first ¶, as amended by PL 2009, c. 615, Pt. E, §11, is further amended to read:

The Except as provided in section 480-E-3, the Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter, except as provided in subsection 3.

Sec. 13. 38 MRSA §480-E-3 is enacted to read:

§480-E-3. Delegation of permit-granting authority to the Department of Conservation, Bureau of Forestry

Notwithstanding section 480-E-1, the Department of Conservation, Bureau of Forestry shall issue all permits under this article for timber harvesting activities that are located within the unorganized and deorganized areas of the State as defined in Title 12, section 682, subsection 1 and are not subject to review and approval by the department under any other article of this chapter. For the purposes of this section, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

1. Activity located in organized and unorganized area. If a timber harvesting activity is located in part within an organized area and in part within an unorganized or deorganized area, that portion of the timber harvesting activity within the organized area is subject to department review under this article if that portion is an activity pursuant to this article. That portion of the timber harvesting activity within an unorganized or deorganized area of the State is not subject to the requirements of this article except as provided in subsection 2.

2. Allowed use. If a timber harvesting activity is located as described in subsection 1, the department may review that portion of the activity within the unorganized and deorganized areas if the Department of Conservation, Bureau of Forestry determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed. A permit from the Bureau of Forestry is not required for those aspects of

an activity approved by the department under this subsection.

The Department of Conservation, Bureau of Forestry, in consultation with the department, shall annually review standards for timber harvesting activities adopted by the Bureau of Forestry to ensure that the standards afford a level of protection consistent with the goals of this article and the goals of Title 12, chapter 805, subchapter 3-A.

Sec. 14. 38 MRSA §480-Q, sub-§32 is enacted to read:

32. Placement of wood in streams. The placement of wood in stream channels to enhance cold water fisheries habitat in accordance with Title 12, section 8867-C and rules adopted to implement that section.

Sec. 15. Transition. In adopting rules under the Maine Revised Statutes, Title 12, section 8867-D, the Department of Conservation shall review rules adopted by the Maine Land Use Regulation Commission and in effect for timber harvesting, timber harvesting activities, land management roads, water crossings and gravel pits of less than 5 acres. The department and the commission shall jointly review standards for land management roads, water crossings and gravel pits to protect historic, scenic, scientific, recreational and aesthetic resources in areas identified by the commission as requiring special protection. The department may adopt permit by rule standards through rulemaking under Title 12, sections 8867-D and 8867-E to allow activities without a permit.

See title page for effective date.

CHAPTER 600

H.P. 1326 - L.D. 1799

An Act Regarding the Collection of Fees for Prepaid Wireless Service

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

Sec. 1. 25 MRSA §2927, sub-§1-F, ¶¶B to J, as enacted by PL 2009, c. 400, §10 and affected by §15, are repealed.

Sec. 2. 25 MRSA §2927, sub-§2-B, as amended by PL 2009, c. 400, §12 and affected by §15, is further amended to read:

2-B. Surcharge remittance. Each local exchange telephone utility, cellular or wireless telecommunications service provider and interconnected voice over Internet protocol service provider shall remit the statewide E-9-1-1 surcharge revenues collected from its customers pursuant to subsection 1-D on a monthly

basis and within one month of the month collected to the Treasurer of State for deposit in a separate account known as the E-9-1-1 fund. Each telephone utility or service provider required to remit statewide E-9-1-1 surcharge revenues shall provide, on a form approved by the bureau, supporting data, including but not limited to the following:

- A. The calculation used to arrive at the surcharge remittance amount;
- B. The calculation used to arrive at the uncollectible amount of surcharge;
- C. The total surcharge;
- D. The month and year for which surcharge is remitted;
- E. The legal name of company and telephone number and, if applicable, the parent company name, address and telephone number; and
- F. The preparer's name and telephone number.

Prepaid wireless E-9-1-1 surcharges collected by sellers must be remitted to the ~~Treasurer of State~~ State Tax Assessor in accordance with ~~subsection 1-F, paragraph G~~ Title 35-A, section 7104-C.

Sec. 3. 35-A MRSA §7101, sub-§6 is enacted to read:

6. Prepaid wireless telecommunications services. The Legislature further finds that, because prepaid wireless telecommunications services are provided to consumers without a periodic bill, the collection of fees and surcharges regarding prepaid wireless telecommunications services must be accomplished according to a methodology that differs from the collection of fees and surcharges on other wireless telecommunications services to ensure fairness and competitive neutrality with respect to other telecommunications services provided to consumers of wireless telecommunications services who do receive a periodic bill.

Sec. 4. 35-A MRSA §7102, sub-§§4 to 8 are enacted to read:

4. Prepaid wireless telecommunications service. "Prepaid wireless telecommunications service" has the same meaning as in Title 25, section 2921, subsection 13.

5. Prepaid wireless telecommunications service consumer or prepaid wireless consumer. "Prepaid wireless telecommunications service consumer" or "prepaid wireless consumer" has the same meaning as in Title 25, section 2921, subsection 13-A.

6. Prepaid wireless telecommunications service provider. "Prepaid wireless telecommunications service provider" has the same meaning as in Title 25, section 2921, subsection 14.