

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2014 to July 16, 2015

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 15, 2015

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

Augusta, Maine
2015

324, subsections 2 and 3; section 359, subsection 2; and section 360; ~~and~~

G. The results of the monitoring program giving side-by-side information compilations for the past 5 years pursuant to section 359, subsection 3; ~~and~~

Sec. 23. 39-A MRSA §358-A, sub-§1, ¶H is enacted to read:

H. The timeliness of examinations conducted pursuant to section 312 and any other data regarding independent medical examiners and examinations.

Sec. 24. Transition. A Workers' Compensation Board hearing officer serving on the effective date of this Act who is admitted to the practice of law in Maine becomes an administrative law judge on the same terms and conditions of employment as existed on the day prior to the effective date of this Act and has the same authority to hear and decide cases as existed prior to the effective date of this Act. A Workers' Compensation Board hearing officer serving on the effective date of this Act who is not admitted to the practice of law in Maine remains a hearing officer on the same terms and conditions of employment as existed on the day prior to the effective date of this Act and, notwithstanding any provision of law to the contrary, is considered an administrative law judge for all purposes under the Maine Revised Statutes, Title 39-A and has all of the rights, responsibilities, duties and authority that existed prior to the effective date of this Act. The term "hearing officer," as used in Title 39-A prior to the effective date of this Act, is coextensive with the term "administrative law judge," used subsequent to the effective date of this Act.

See title page for effective date.

CHAPTER 298

S.P. 525 - L.D. 1410

An Act To Strengthen Maine's Fisheries Laws

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

Sec. 1. 12 MRSA §10001, sub-§6, ¶¶E and M, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, are repealed.

Sec. 2. 12 MRSA §10001, sub-§6, ¶T, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is amended to read:

T. White sucker, (*Catostomus commersoni*); and

Sec. 3. 12 MRSA §10001, sub-§6, ¶U, as amended by PL 2007, c. 159, §1, is repealed.

Sec. 4. 12 MRSA §10001, sub-§§16 and 18, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, are amended to read:

16. Eel. "Eel" means a member of the species *Anguilla rostrata* in that stage of its life cycle when it is 6 9 inches or more in length.

18. Elver. "Elver" means a member of the species *Anguilla rostrata* in that stage of its life cycle when it is less than 6 9 inches in length.

Sec. 5. 12 MRSA §10001, sub-§36-A is enacted to read:

36-A. Lamprey eel. "Lamprey eel" means the species *Petromyzon marinus* (sea lamprey).

Sec. 6. 12 MRSA §10001, sub-§59-A is enacted to read:

59-A. Sucker. "Sucker" means only the species *Catostomus commersoni* (white sucker) and the species *Catostomus catostomus* (longnose sucker).

Sec. 7. 12 MRSA §12258, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7 and c. 614, §9 and amended by c. 655, Pt. B, §§219 and 220 and affected by §422, is repealed.

Sec. 8. 12 MRSA §12506, as amended by PL 2013, c. 148, §§1 and 2, is further amended to read:

§12506. Eel, sucker, lamprey and yellow perch harvesting method permit; elver prohibition; limitations on alewife harvesting

1. Permit required. Except as otherwise authorized pursuant to this Part and except as provided in subsection 5-A, a person may not fish for or possess the following fish using the harvesting methods listed in subsection 2 without a valid permit issued under this section:

- B. Eels;
- C. Suckers;
- D. Lampreys; or
- E. Yellow perch.

Each day a person violates this subsection, that person commits a Class E crime for which a minimum fine of \$50 and an amount equal to twice the applicable license fee must be imposed.

2. Issuance. The commissioner may adopt rules providing for the issuance of permits to fish for or possess the following fish using the following harvesting methods in the inland waters of the State, provided the permits do not interfere with any rights granted under section 6131:

- A. Eels using eel pots or weirs;
- B. Suckers and yellow perch using trap nets, dip nets or spears;

C. Lampreys by hand or using hand-held dip nets; and

E. Yellow perch using seines.

The commissioner may place conditions on the use of gear allowed under this subsection and may prohibit or restrict the use of any gear used to concentrate species for harvest under this subsection.

Each day a person violates a condition or restriction placed on the use of gear allowed under this subsection, that person commits a Class E crime.

3. Fees; transfer of permit. The minimum fee for an individual permit for suckers, lampreys and yellow perch is \$44. ~~A~~ The holder of an individual permit for suckers, lampreys or yellow perch may purchase a crew permit ~~may be sold~~ for suckers, lampreys and yellow perch for \$102, authorizing up to 3 persons to engage in the permitted activity. The annual fee for an eel pot or weir permit is \$102. An eel pot or eel weir permit is not transferable.

4. Five-year limited entry; eel weirs. A person is ineligible to receive an eel weir permit unless that person possessed a valid eel weir permit for calendar year 1995. The department shall adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A regarding the issuance of eel weir permits. The number of weirs and the number of square miles of watersheds in this State fished by eel weirs may be no more than those permitted in calendar year 1995.

5-A. Limitations on alewife harvesting. Except as provided in this subsection a person may not harvest alewives.

A. A person may fish for alewives by use of a dip net or single hook and line for consumption by that person or members of that person's family, as long as the person takes or possesses no more than 25 fish in any day and as long as the alewives are taken downstream from any location where a municipality or other person has been granted exclusive rights under section 6131; and

B. A person may fish for or possess alewives from inland waters if that person has been granted fishing rights under section 6131.

A person that violates this subsection commits a Class E crime.

5-B. Harvesting suckers for bait without a permit. Notwithstanding subsection 1, a person may take suckers for use as bait for fishing in inland waters as provided in section 12551-A without a permit under subsection 2.

6. Eels and elvers prohibitions. The following prohibitions apply to the harvesting of eels and elvers in inland waters.

A. A person may not fish for or take elvers from inland waters.

B. A person other than the owner of a weir used to fish for or take eels in inland waters may not tend that weir while the weir is immersed unless that person has in the person's possession written permission from the owner to tend the weir or is in the presence of the owner and has the owner's permission to tend the weir.

A person who violates this subsection commits a Class E crime.

7. Other harvesting methods for suckers. Notwithstanding subsection 1, a person licensed or otherwise entitled to fish in Maine waters may take suckers for that person's use in all rivers, brooks and streams that are open to fishing between April 1st and June 30th of each calendar year by the use of a hand spear, by bow and arrow or by snagging.

A. A person may not use a bow and arrow to harvest suckers unless the arrow used has a barbed or pronged point and the arrow is attached to the bow with a line.

B. The following penalties apply to violations of paragraph A.

(1) A person who violates paragraph A commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates paragraph A after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

8. Reports required. A person issued a permit under this section shall submit a completed report on forms provided by the department with the following information: water name and location, including the town and county of waters fished; date fished; total catch; gear type and quantity; number of crew; amount of time the gear is set; total gear in the water; water depth; total time the boat is on the water; species and pounds harvested; license number of the dealer the catch was sold to or the disposition of the catch; town where the catch was brought to shore; boat registration number; vessel name; and the harvester's name, telephone number and permit number. A holder of an eel permit must submit the report by the date specified on the permit. A holder of a sucker, lamprey or yellow perch permit must submit the report by December 31st of each year. All data submitted as part of the report are for scientific purposes only and are confidential and not part of a public record within the meaning of Title 1, chapter 13, subchapter 1, except that the commissioner may disclose data collected under this sub-

section if that data are released in a form that is statistical or general in nature.

If a person issued a permit under this section fails to provide information required under this section, the commissioner may refuse to renew or may revoke that person's permit. If a person becomes ineligible for a permit as a result of a violation of this section, that person may request a hearing in accordance with section 10905.

Sec. 9. 12 MRSA §12551-A, sub-§2-A is enacted to read:

2-A. License required. The holder of a license issued under this section may not receive, possess for resale, sell or offer to sell gift baitfish or gift smelts.

See title page for effective date.

CHAPTER 299

S.P. 541 - L.D. 1439

An Act To Establish a Secure Internet-based Background Check Center for Providers of Long-term Care, Child Care and In-home and Community-based Services

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

Sec. 1. 22 MRSA §1717, sub-§1, ¶¶A-1 to A-3 are enacted to read:

A-1. "Direct access" means access to the property, personally identifiable information, financial information or resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other individual served by a provider subject to this chapter.

A-2. "Direct access personnel" means individuals employed in positions that have direct access.

A-3. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant.

Sec. 2. 22 MRSA §1717, sub-§1, ¶C, as amended by PL 2007, c. 324, §2, is further amended to read:

C. "Personal care agency" means a business entity or subsidiary of a business entity that is not otherwise licensed by the Division of Licensing

and Regulatory Services and that hires and employs ~~unlicensed assistive direct access~~ personnel or individuals who work in direct contact with clients, patients or residents to provide assistance with activities of daily living and related tasks to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs ~~unlicensed assistive direct access~~ personnel or individuals who work in direct contact with clients, patients or residents to provide care for that individual is not a personal care agency, except when permitted by rule of the department.

Sec. 3. 22 MRSA §1717, sub-§1, ¶D, as amended by PL 2007, c. 324, §2, is repealed.

Sec. 4. 22 MRSA §1717, sub-§2, as amended by PL 2007, c. 324, §2, is further amended to read:

2. Registration of personal care agencies and placement agencies. Beginning August 1, 1998, a personal care agency not otherwise licensed by the department shall register with the department. Beginning January 1, 2008, a placement agency not otherwise licensed by the department shall register with the department. The department shall adopt rules establishing the annual registration fee, which must be at least between \$25 and \$250. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 22 MRSA §1717, sub-§3, as amended by PL 2011, c. 257, §1, is repealed and the following enacted in its place:

3. Prohibited employment based on disqualifying offenses. A personal care agency or a placement agency shall conduct a comprehensive background check for direct access personnel in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws when hiring, employing or placing direct access personnel, including, but not limited to, a certified nursing assistant or a direct care worker.

Sec. 6. 22 MRSA §1717, sub-§3-A is enacted to read:

3-A. Verification of listing on the registry. Prior to hiring a certified nursing assistant or a direct care worker, a personal care agency or a placement agency shall check the Maine Registry of Certified Nursing Assistants and Direct Care Workers established pursuant to section 1812-G and verify that a certified nursing assistant or direct care worker listed on the registry has no disqualifying notations.

The department may adopt rules necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.