

# MAINE STATE LEGISLATURE

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## CHAPTER 29

## NURSERYMEN AND ARBORISTS

Subch.	Sec.
I. Nurserymen Generally .....	1901
II. Tree Specialists .....	1951

## SUBCHAPTER I

## NURSERYMEN GENERALLY

Sec.  
1901. License required; fee; violations.

**§ 1901. License required; fee; violations**

No person, firm or corporation shall engage in, continue in or carry on the business of selling or dealing in nursery stock, as defined in Title 7, section 2201, or solicit purchases of nursery stock within this State, either as owner thereof or as agent of such owner, without first obtaining a license to carry on and conduct such business in this State. The form of license shall be prescribed by the State Horticulturist and the licenses shall be issued by him upon proper application therefor and shall expire on December 31st of each year. The license fee shall be \$1 per year, excepting that for growers of strawberry, blackberry and raspberry plants, gladiolus, dahlias and herbaceous plants out-of-doors and whose total area of land devoted to those plants does not exceed  $\frac{1}{4}$  acre, there shall be no license fee. The license shall be issued in the name of the nurseryman, dealer, solicitor, salesman or agent, as the case may be, and no license shall be assigned or transferred. Licenses of salesmen, dealers, agents or solicitors shall show the name and location of nursery and place of business of the nurserymen or tree dealers whom they represent or from whom they purchase this stock. Each separate agent and each separate store acting under a general agent or store must have a license as provided in this section. Fees obtained from such licenses shall be paid to the Treasurer of State for deposit in the General Fund. Such license may be revoked at any time for failure to comply with the aforesaid requirements or for such other causes as may in the opinion of the Commissioner of Agriculture be sufficient. Any violation of this sec-

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tion shall be punishable by a fine of not less than \$10 nor more than \$50, for each offense.

R.S.1954, c. 32, § 158.

**SUBCHAPTER II**

**TREE SPECIALISTS**

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**ARTICLE 1. GENERAL PROVISIONS**

**§ 1951. Definitions**

As used in this subchapter, unless the context otherwise specifies, the following words shall have the following meanings:

**1. Arborist.** "Arborist" means a person who, for profit, diagnoses or evaluates the condition of shade or ornamental trees;

or recommends or supervises the treatment of such trees; or in any manner treats such trees or parts thereof; or for control of any diseases, injuries or insects, sprays or treats by any other method such trees or forest trees. The term "arborist" shall not apply to the removal, pruning, trimming or shaping of shade or ornamental trees by a general contractor in the conduct of his business.

**2. Board.** "Board" means the Arborist Examining Board provided for in section 2001.

**3. Department.** "Department" means the Forestry Department as the official governmental unit to which jurisdiction of this subchapter is assigned.

**4. Director.** "Director" means the head of the Forestry Department or department staff member designated by him.

**5. Ornamental trees.** "Ornamental trees" means trees of shade, beauty or landscape value.

**6. Person.** "Person" means an individual, partnership or any group of persons, whether incorporated or not.

**7. Shade trees.** "Shade trees" means trees grown, established or used to screen persons, grounds, structures, walks, pools, etc. from direct sunlight or observation or both.

1963, c. 368, § 1.

## § 1952. Exemptions

This subchapter shall not apply to:

**1. Certain property.** Any person with reference to trees on his own premises, or on the property of his regular employer;

**2. Personnel.** Any individual performing labor or services on or in connection with trees at the direction and under the personal supervision of a licensed arborist while in the performance of such functions, provided that employed personnel with supervisory responsibility are required to qualify for and hold a license;

**3. Certain employees.** To state, county, municipal or public utility employees while engaged in their regular line of duty;

**4. Others.** Highway contractors, sub-contractors, and their employees in removal of trees during the performance of contracts for the construction or maintenance of highways.

1963, c. 368, § 1.

**32 § 1953**    PROFESSIONS AND OCCUPATIONS    Title 32

**§ 1953. Appeals**

A person whose license has been suspended or revoked may secure review thereof through Title 5, chapters 301 to 307.

1963, c. 368, § 1.

**§ 1954. Enforcement**

If any person violates this subchapter, the director may, in the name of the State, through the Attorney General apply, in any court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with this subchapter. Upon filing of a verified petition in such court, the court, if satisfied by affidavit that such person has violated this subchapter, may issue a temporary injunction, without notice or bond, enjoining such civil actions. If it is established that such person has violated or is violating this subchapter, the court may enter a decree perpetually enjoining such violation or enforcing compliance with this subchapter. In case of violation of any order or decree issued under this section, the court may summarily try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this subchapter.

1963, c. 368, § 1.

**§ 1955. Penalties**

Any person violating this subchapter shall be punished by a fine of not more than \$200 or by imprisonment for not more than 2 months, or by both.

1963, c. 368, § 1.

ARTICLE 2. ARBORIST EXAMINING BOARD

**§ 2001. Membership; hearings; meetings; compensation and expenses**

Only those duties and functions of the department and director as indicated under this subchapter shall be exercised without written authorization of the Arborist Examining Board. All decisions of policy not otherwise specified shall be at the discretion of the board. Such board shall be composed of 5 individuals. Two of these shall be the Forest Commissioner and the State Entomologist. The other 3 members shall be appointed by the



Governor, one of whom shall be a plant pathologist who is either on the State or University of Maine staff and part of whose work is concerned with trees and 2 of whom shall be licensed commercial arborists, each of whom shall have been so engaged continuously for a period of 10 years prior to his appointment.

One original member who is a commercial arborist shall serve for 2 years; one original member who is a commercial arborist shall serve for 3 years. Each succeeding commercial-arborist member shall serve for a term of 5 years.

Commercial arborists who are appointed to be, are or have been members of the board shall be prohibited from using this position in the advertising of their business in any way.

The action or report in writing of a majority of the board shall be sufficient authority on which the department or the director may act and neither the director nor the department shall act without authorization in writing of a majority of the board except as indicated in this subchapter. Whenever the director is satisfied that justice has not been done in any matter, he may order a reconsideration of such matter by the board and may require a hearing with testimony from conflicting parties presented, but a final decision forthcoming from this reconsideration or rehearing shall be by majority of the board.

The board shall meet at least once a year and at such other times and places as a majority of the board may find necessary for the performance of their duties. Board members not of state agencies shall be paid daily fees of \$20 per day involved, plus current state mileage and living expenses incurred in those days. Members of state agencies shall be paid expenses not covered by state agencies in which employed.

1963, c. 368, § 1.

### **§ 2002. Rules and regulations**

The board shall make and issue such rules and regulations, not inconsistent with the law, as may be necessary to carry out the purposes of this subchapter, and shall prepare all necessary forms and rules governing examinations and hearings as may be necessary.

1963, c. 368, § 1.

### **§ 2003. Lists of arborists; suspension or revocation of licenses**

The director of the department shall compile and maintain a complete and up-to-date list of all licensed arborists in the State.

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Such a list shall be issued once a year and shall be made available to any person upon request.

Any person within the meaning of this subchapter who violates any of the provisions of this subchapter or any of the rules and regulations of the board promulgated as provided in this subchapter shall be punished by having his license to practice as an arborist in this State suspended or revoked by a vote of  $\frac{4}{5}$  of the board members, provided that no license shall be revoked unless the person accused has been given at least 10 days' notice in writing of the charge or charges against him and afforded a public hearing before the board at a designated time and place set by the board. The board may after a lapse of 6 months, at their discretion, reissue a license which has been suspended or revoked. The board shall make an annual report of its proceedings to the Governor on or before the first Monday in July of each year, which shall contain an account of all moneys received and disbursed by them.

1963, c. 368, § 1.

**§ 2004. Disposal of fees**

Fees collected shall be credited to the board and may be expended by the board for any expense incurred for examining, licensing and carrying out the purposes of this subchapter.

1963, c. 368, § 1.

ARTICLE 3. LICENSES

**§ 2051. License required**

No person shall advertise, solicit, contract or in any way engage for compensation in the business of an arborist, or make representation as being able to do so, without being licensed as an arborist except that licensees under the current arborist law shall remain validly licensed until December 31, 1963 and eligible for renewal thereafter provided they meet provisions of this subchapter.

1963, c. 368, § 1.

**§ 2052. Qualifications; types of licenses**

No license shall be issued under this subchapter, except to an individual who is 18 years or over in age, who is specifically

qualified as defined in this subchapter, who passes an examination, and who gives proof of financial responsibility in amounts to be determined under rules and regulations made by the board. When a company is under the control of one person who is solely responsible for the contracts, methods of work and supervision of each piece of work, this person alone will be required to procure a license, but, when more than one person is responsible for contracts, methods of work and supervision of same, each will be required to procure a license.

One of 2 types of licenses shall be issued, namely: Regular and restricted. Regular licenses will allow a licensed individual to engage in all operations in which an arborist is normally involved. Restricted licenses will allow such a licensed individual to perform operations only in those areas stated on the license issued. The department reserves the right to restrict a licensed individual to those operations for which he is judged qualified by the board.

1963, c. 368, § 1.

### § 2053. Applications

Applications for examination shall be in writing on forms prescribed by the department, shall be notarized and shall be accompanied by an application fee of \$5 which shall not be returnable. The application form shall require whatever information the board finds necessary to judge qualifications of the applicant.

1963, c. 368, § 1.

### § 2054. —Nonresidents

Each nonresident applicant, a resident of a different state or province, for an original license or a renewal license shall file an irrevocable consent that actions against him may be filed in any appropriate court of any county or municipality where some part of the transaction occurred out of which the alleged cause of action arose, and that process in any action may be served on the applicant by leaving 2 copies thereof with the director. Such consent shall stipulate and agree that such service of process shall be taken and held to be valid and binding for all purposes. The director shall send one of such process to the applicant at the address shown on the records of the department by registered mail.

1963, c. 368, § 1.

**32 § 2055** PROFESSIONS AND OCCUPATIONS Title 32

**§ 2055. Examinations**

Any person shall, upon payment of the application for examination fee, be entitled to written examination prepared by the board. An oral examination may be required of the applicant to enable the board to judge his qualifications for certification.

Applicants for restricted licenses shall be examined in those subjects to which their activities are restricted.

Examination shall be given but once a year unless hardship can be proven to the satisfaction of the board. The grading and passing of applicants shall be exclusively the responsibility of the board.

Applicants failing first examination may apply and take the next or subsequent examination. A no-additional-fee privilege for a 2nd examination shall extend only through the date of the next annual examination.

1963, c. 368, § 1.

**§ 2056. Forms**

Each license issued shall consist of 2 parts: A certificate which must be displayed at each place of business of the arborist and a card of wallet size which must be carried by the arborist when occupied in a business capacity.

Where the arborist conducts business at more than one address, additional certificates shall be issued. When an employee of a licensed arborist does not himself hold a license, he shall have with him when working, a signed card or authorization of a form prescribed by the department by that licensed arborist showing under whose supervision he is working and by whom he is employed. The director shall not issue more than one license card to an individual qualified to receive a license, except as provided in section 2058.

License holders shall display their license to and upon the request, at any time, of any client, other licensed arborist, law enforcement officer or member of the board or department.

1963, c. 368, § 1.

**§ 2057. Term**

Each license shall be issued for the term of one calendar year, or for such part of a year remaining before December 31st and shall then expire unless renewed.

Failure to renew license within 5 years after date of expiration will necessitate reapplication, reexamination and accompanying fees for a new license.

Any arborist whose license expired while he was in federal service on active duty with the Armed Forces of the United States, or the State Militia called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service may have his license renewed without paying any intervening renewal license fees if within one year after termination of such service, training or education other than by dishonorable discharge, he furnishes the department with an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

1963, c. 368, § 1.

### § 2058. Renewals

Applications for renewal licenses shall be on forms prescribed by the department, shall be notarized if requested, shall contain whatever information is necessary for the board to determine whether the applicant should continue to hold a license, and shall be accompanied by the required fee, which shall be returnable if the applicant is denied a license renewal. Lost licenses shall be replaced on application by the licensed arborist and payment of \$1.

1963, c. 368, § 1.

### § 2059. Fees

A \$5 fee shall accompany each application for examination and shall not be returnable. When an applicant is notified that he is eligible for a license following examination, he shall remit an additional \$10 to cover total license fee of \$15 before a license is issued. The following fees shall be charged:

1. **Original license.** For an original license to an individual, \$15;
2. **Annual renewal license.** For an annual renewal license, \$5;
3. **Replacement.** Replacement of lost license, \$1.

1963, c. 368, § 1.

**§ 2060. Reciprocity**

In the event that a nonresident holds a valid arborist license from another state or province, he may on application for a license be waived examination by the board, provided that the other state or province in which he holds such license requires qualification and examination as indicated in this subchapter. If said other state law partially meets the standards of this subchapter, the board will decide in which respect it is lacking and what requirements the applicant must meet for waiver of examination, or whether written examination shall be waived.

1963, c. 368, § 1.

**§ 2061. Denial of license; suspension or revocation**

The department may refuse to issue or renew or may suspend or revoke a license on any one or more of the following grounds:

**1. Misstatement.** Deliberate misstatement in the application for original license or in the application for any renewal license under this subchapter;

**2. Willful violation.** Willful disregard or violation of this subchapter or of any regulation or rule issued pursuant thereto;

**3. Aiding or abetting.** Willfully aiding or abetting another in the violation of this subchapter or of any regulation or rule issued pursuant thereto;

**4. Unauthorized use of license.** Allowing one's license under this subchapter to be used by an unlicensed person;

**5. Misrepresentation.** Making substantial misrepresentation or false promises of a character likely to influence, persuade or induce in connection with the business of an arborist;

**6. False advertising.** Pursuing a continued course of misrepresentation or of making false promises through advertising, salesmen, agents or otherwise in connection with the business of an arborist;

**7. Qualifications.** Failure to possess the necessary qualifications or to meet the requirements of this subchapter for the issuance or holding of a license.

1963, c. 368, § 1.