CHAPTER 404

ARBORIST LICENSING

SUBCHAPTER 1

NURSERY OWNERS AND DEALERS GENERALLY

§2171. License required; fee; violations

A person, firm or corporation may not engage in or continue in the business of selling or dealing in nursery stock, as defined in section 2211, without first obtaining a license to conduct such business in this State. The State Horticulturist shall prescribe the form of the license. Upon proper application, a license must be issued in the name of the nursery owner or dealer and that license may not be transferred. Each agent and each store acting under a general agent or store must have a license as provided in this section. A license may be issued for a one-year, 2-year or 3-year period and expires on December 31st of the year the period ends. Licenses for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee. [PL 2001, c. 299, §2 (AMD).]

1. Fees.
[PL 1999, c. 790, Pt. A, §4 (AMD); MRSA T. 7 §2171, sub-§1 (RP).]

1-A. Fees established by rule. The Commissioner of Agriculture, Conservation and Forestry shall adopt rules in accordance with Title 5, chapter 375 to establish fees for licenses issued under this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2013, c. 405, Pt. D, §4 (AMD).]

2. Violations. Any person, firm or corporation engaged in the business of selling nursery stock without a license commits a civil violation for which a forfeiture not to exceed $500 may be adjudged. Licenses may be revoked by the District Court, as provided in the Maine Administrative Procedure Act, for failure to comply with the requirements of chapter 405-A.
[PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF); PL 1999, c. 790, Pt. A, §7 (AMD).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 1999, c. 790, §§A4,5,7 (AMD). PL 1999, c. 790, §A6 (AFF). PL 2001, c. 299, §2 (AMD). PL 2013, c. 405, Pt. D, §4 (AMD).

SUBCHAPTER 2

TREE SPECIALISTS

ARTICLE 1

GENERAL PROVISIONS

§2173. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 84, §3 (NEW).]

1. Arborist. "Arborist" means a person who, for compensation, takes down or fells, diagnoses or evaluates the condition of shade or ornamental trees; solicits, recommends or supervises the treatment of those trees; or in any manner or for any purpose treats or cares for those trees.
[RR 1999, c. 1, §5 (COR).]

2. Ornamental trees. "Ornamental trees" means trees of shade, beauty or landscape value, or those trees intended to become ornamental trees.
[PL 1999, c. 84, §3 (NEW).]

3. Person. "Person" means an individual, partnership or any group of persons, whether incorporated or not.
[PL 1999, c. 84, §3 (NEW).]

4. Regular employer. "Regular employer" means a person doing business in or operating a business in the State.
[PL 1999, c. 84, §3 (NEW).]

5. Shade trees. "Shade trees" means trees grown, established or used to screen persons or grounds, structures, walks, pools or other similar objects from wind, sunlight, observation or sound.
[PL 1999, c. 84, §3 (NEW).]

6. Takes down or fells. "Takes down or fells" means the cutting for removal of any part of a tree by topping or sections or felling the tree whole.
[PL 1999, c. 84, §3 (NEW).]

7. Treats or cares for. "Treats or cares for" means the pruning, trimming and shaping of trees when the care requires the person to leave the ground. "Treats or cares for" also includes installing lightning protections, cabling or bracing of trees.
[PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

RR 1999, c. 1, §5 (COR). PL 1999, c. 84, §3 (NEW).

§2174. Exemptions

This subchapter does not apply to: [PL 1999, c. 84, §3 (NEW).]

1. Certain property. Any person with reference to trees on that person's own premises or on the property of that person's regular employer;
[PL 1999, c. 84, §3 (NEW).]

2. Personnel. Any individual performing labor or services in connection with trees on a site where a licensed arborist is present;
[PL 1999, c. 84, §3 (NEW).]

3. Certain employees. State, county, municipal, quasi-municipal or public utility employees while engaged in their regular line of duty or those individuals contracted during emergencies that result in public hardships;
[PL 1999, c. 84, §3 (NEW).]

4. Scientific specialists. Scientific specialists such as plant pathologists, entomologists, botanists, foresters, horticulturists and others who are not arborists but who by academic training are professionally qualified to perform certain services performed by licensed arborists. Services performed by those specialists for a fee are limited to consultation, advisory or expert diagnostic services. Those specialists are prohibited from performing all other activities of practicing arborists without examination; or

[PL 1999, c. 84, §3 (NEW).]

5. Others. Highway contractors, subcontractors and their employees who remove trees during the performance of contracts for the construction or maintenance of highways and general contractors who remove interfering shade or ornamental trees or interfering parts of shade or ornamental trees in the conduct of their regular business.
[PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2175. Penalties; injunction

1. Penalties. A person who violates this subchapter commits a civil violation for which a forfeiture of up to $500 a day for each day the violation continues may be adjudged. All penalties collected must be deposited in a nonlapsing account in the department and must be used for the expenses of administering this chapter.
[PL 2001, c. 299, §3 (AMD).]

2. Injunction. The State may bring an action in District Court or Superior Court to enjoin any person from violating this chapter, regardless of whether other proceedings have been or may be instituted.
[PL 2001, c. 299, §4 (AMD).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2001, c. 299, §§3,4 (AMD).

§2176. Powers

The department has the following duties and powers, in addition to those otherwise set forth in this chapter. [PL 1999, c. 84, §3 (NEW).]

1. Licenses; enforcement. The department shall evaluate the qualifications and supervise the examination of applicants for licensure under this chapter and shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with this chapter.
[PL 1999, c. 84, §3 (NEW).]

2. Rules. The department may, in accordance with procedures established by Title 5, chapter 375, subchapter II, adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.
[PL 1999, c. 84, §3 (NEW).]

3. Hearings. Hearings may be conducted by the department to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license or as otherwise considered necessary to fulfill its responsibilities under this chapter.

The department may not refuse to renew a license for any reason other than failure to pay a required fee, unless it has afforded the licensee an opportunity for an adjudicatory hearing. The department shall hold an adjudicatory hearing at the written request of any person who is denied a license for any reason other than failure to pay a required fee, if the request for hearing is received by the department within 30 days of the person's receipt of written notice of the denial, the reasons for the denial and the person's right to request a hearing. Hearings must be conducted in conformity with Title 5, chapter 375, subchapter IV, to the extent applicable. The department may subpoena witnesses, records and documents in any hearing it conducts.
[PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2177. Lists of arborists

The department shall compile and maintain a complete and up-to-date list of all licenses issued under this chapter. This list must be made available to any person upon request and payment of a fee established by rule by the department. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

ARTICLE 2

LICENSES

§2179. License required

A person may not advertise, consult, 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. [PL 2001, c. 299, §5 (AMD).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 2001, c. 299, §5 (AMD).

§2180. Exemptions to licensing requirements for tree removal in municipalities having populations under 2,500 persons

(REPEALED)

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 2001, c. 299, §6 (RP).

§2181. Qualifications; types of licenses

A license may not be issued under this subchapter, except to an individual who is 18 years of age or older, 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 of the department. [PL 2003, c. 343, §1 (AMD).]

A regular or restricted license may be issued under this chapter. A regular license allows a licensed individual to engage in all operations in which an arborist is normally involved. A restricted license allows a licensed individual to perform operations only in those areas stated on the license issued. The department may restrict a licensed individual to those operations for which that individual is judged qualified by the department. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 2003, c. 343, §1 (AMD).

§2182. Applications

Applications for examination must be in writing on forms prescribed by the department and must be accompanied by the prescribed fee. The application form may require whatever information the department finds necessary to judge qualifications of an applicant. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2183. Nonresidents

Each nonresident applicant for an original license or a renewal license shall file an irrevocable consent that actions against the applicant may be filed in any appropriate court of any county or district of this State 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 of the process with the department. The consent must stipulate and agree that the service of process must be taken and held to be valid and binding for all purposes. The department shall send a copy of the process to the applicant by registered mail at the address shown in its records. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2184. Examinations

Each license applicant shall take an examination prepared by the department. [PL 1999, c. 84, §3 (NEW).]

Examinations must be given at least once a year at times and places as the department determines. The grading and passing of applicants are the exclusive responsibilities of the department. [PL 1999, c. 84, §3 (NEW).]

Applicants failing the first examination may apply and take the next or a subsequently scheduled examination upon payment of the required fee. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 2001, c. 299, §7 (AMD).

§2185. Forms

Each license issued consists of 2 parts: a certificate that must be displayed at each place of business of the arborist and a license card that must be carried by the arborist when occupied in a business capacity. [PL 1999, c. 84, §3 (NEW).]

When the arborist conducts business at more than one address, additional certificates must be issued. The department may not issue more than one license card to an individual qualified to receive a license, except as provided in section 2187. [PL 1999, c. 84, §3 (NEW).]

A license holder shall display the holder's license to and upon the request, at any time, of any client, other licensed arborist, law enforcement officer or employee of the department. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2186. Term

A license expires on December 31st or at another time designated by the commissioner and becomes invalid on that date unless renewed. [PL 1999, c. 84, §3 (NEW).]

A license may be renewed up to 90 days after the date of expiration upon payment of a late fee of $10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, except that the department may in its discretion, giving due consideration to the protection of the public, waive examination if the renewal application is made within 2 years from the date of the expiration. [PL 1999, c. 84, §3 (NEW).]

Any arborist whose license expires while the arborist is in federal service on active duty with the Armed Forces of the United States or the National Guard, is called into service or training or is in training or education under the supervision of the Armed Forces of the United States preliminary to induction into the military service may have the license renewed without paying any intervening renewal license fees within one year after termination of that service, training or education other than by dishonorable discharge if the arborist furnishes the department with an affidavit to the effect that the arborist has been so engaged and that the service, training or education has been so terminated. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2187. Renewals

The department shall notify every person licensed under this subchapter of the date of expiration of that person's certificate and the fee required for its annual renewal. The notice must be mailed to the person's last known address at least 30 days in advance of the expiration of the license. An application for a license renewal must contain whatever information is necessary for the department to determine whether the applicant may continue to hold a license and must be accompanied by the required fee, which is returnable if the applicant is denied a renewal license. A licensed arborist must file an application and fee of $5 for replacement of a lost license. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2188. Fees

An application fee and an examination fee may be established by the department in amounts that are reasonable and necessary for their respective purposes. After an applicant is notified of the applicant's eligibility for a license following examination, the applicant shall submit the annual license fee before a license is issued. [PL 1999, c. 84, §3 (NEW).]

The fee for an original or renewal annual license may not exceed $75. [PL 1999, c. 84, §3 (NEW).]

All money, including application fees, examination fees and license fees received pursuant to this section, must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this section must be used for the expenses of administering this chapter. [PL 1999, c. 84, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW).

§2189. Reciprocity

If a nonresident applicant for a license holds a valid arborist license from another state or province, examination of the applicant may be waived by the department if the other state or province in which the applicant holds the license has qualification and examination requirements equivalent to those of this subchapter. If the requirements of the other state or province do not meet the standards set forth in this subchapter, the department may decide in which respects they are lacking and what requirements the applicant must meet for waiver of examination. [PL 1999, c. 84, §3 (NEW).]

If a nonresident applicant for a license holds a valid certificate issued by the International Society of Arboriculture, or successor organization, examination of the applicant may also be waived by the department, providing the testing process of the International Society of Arboriculture or a successor organization does not drop below the standards set forth in this subchapter. [PL 2003, c. 343, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 2003, c. 343, §2 (AMD).

§2190. Denial of license; suspension or revocation

The department may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the department may refuse to issue or renew or the District Court may suspend, revoke or refuse to renew a license on any of the following grounds: [PL 1999, c. 84, §3 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

1. Misstatement. Deliberate misstatement in the application for original license or in the application for any renewal license under this subchapter;
[PL 1999, c. 84, §3 (NEW).]

2. Violation. Violating any provision of this chapter or any rule of the department;
[PL 1999, c. 84, §3 (NEW).]

3. Aiding or abetting. Willfully aiding or abetting another in the violation of this subchapter or of any rule issued pursuant to this subchapter;
[PL 1999, c. 84, §3 (NEW).]

4. Unauthorized use of license. Allowing one's license under this subchapter to be used by an unlicensed person;
[PL 1999, c. 84, §3 (NEW).]

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;
[PL 1999, c. 84, §3 (NEW).]

6. False advertising. Pursuing a continued course of misrepresentation or of making false promises through advertising, sales representatives, agents or otherwise in connection with the business of an arborist;
[PL 2003, c. 343, §3 (AMD).]

7. Qualifications. Failure to possess the necessary qualifications or to meet the requirements of this subchapter for the issuance or holding of a license; or
[PL 2003, c. 343, §3 (AMD).]

8. Continued course of unprofessional conduct. Pursuing a continued course of conduct that violates the standards of practice for the profession as established by rule and that is demonstrated by repeated verified complaints against a licensed arborist.
[PL 2003, c. 343, §4 (NEW).]

SECTION HISTORY

PL 1999, c. 84, §3 (NEW). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 343, §§3,4 (AMD).

§2191. Advisory council established

The Maine Arborist Advisory Council, as established in Title 5, section 12004-I, subsection 1-A and referred to in this section as the "council," advises the commissioner on the licensing and enforcement of arborists in the State. [PL 2001, c. 299, §8 (NEW).]

1. Membership; terms; meetings; removal. The council consists of 7 members appointed by the commissioner. Of the 7 members, one must be a member representing the public and 6 must be arborists licensed by the State. Of the 6 arborists, one must be a licensed arborist employed by a municipality of the State; one must be an employee of an electrical transmission company; one must be

a self-employed arborist; and one must serve on the governing council of a statewide professional organization for licensed arborists. All regions of the State must be represented on the council.

Members serve for a term of 3 years. At the end of a term an outgoing member serves until a successor has been appointed. A member may not serve more than 2 consecutive terms.

The council shall meet at least annually to conduct business and to elect officers. A quorum consists of at least 4 members. The affirmative vote of a majority of the members present is necessary to decide any business brought before the council.

A member may be removed by the commissioner for:

A. Failure to attend council meetings; [PL 2001, c. 299, §8 (NEW).]

B. Failure to maintain a valid arborist license, if required to do so; [PL 2001, c. 299, §8 (NEW).]

C. Moving out of the State; or [PL 2001, c. 299, §8 (NEW).]

D. Cause, as determined by the commissioner. [PL 2001, c. 299, §8 (NEW).]

Members may not be compensated except for expenses incurred in attending meetings. A commercial arborist who is a present or former member of the council may not use membership on the council in the advertising of the arborist's business.
[PL 2001, c. 299, §8 (NEW).]

2. Duties of council. The council shall:

A. Consult with the department on matters in which the members have individual or collective expertise; [PL 2001, c. 299, §8 (NEW).]

B. Assist the department in developing and updating arborist exams; [PL 2001, c. 299, §8 (NEW).]

C. Recommend to the department amendments to arborist licensing laws and rules to ensure they properly regulate the activities of licensed arborists in the State; and [PL 2001, c. 299, §8 (NEW).]

D. Assist the department with investigating complaints of unprofessional conduct and recommend a course of action to resolve such complaints. [PL 2001, c. 299, §8 (NEW).]

[PL 2001, c. 299, §8 (NEW).]

SECTION HISTORY

PL 2001, c. 299, §8 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 129th Maine Legislature and is current through October 1, 2019.. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.