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Date: (Filing No. H- )

**AGRICULTURE, CONSERVATION AND FORESTRY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
132ND LEGISLATURE  
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 52, L.D. 88, “An Act Regarding Penalties for Violating the Laws Governing Agriculture and Animals and the Maine Weights and Measures Law”

Amend the bill by striking out the title and substituting the following:

**'An Act Regarding Penalties for Violating the Maine Weights and Measures Law'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 10 MRSA §2633** is enacted to read:

**§2633. Civil penalties; firewood**

A person who violates this subchapter as it relates to the sale of firewood commits a civil violation for which a fine must be adjudged in an amount not less than \$50 nor more than \$2,000.

**Sec. 2. 10 MRSA §2751**, as amended by PL 1991, c. 650, §1, is further amended by amending the section headnote to read:

**§2751. Offenses and penalties**

**Sec. 3. 10 MRSA §2751, first ¶**, as amended by PL 1991, c. 650, §1, is repealed.

**Sec. 4. 10 MRSA §2751-A** is enacted to read:

**§2751-A. Administrative penalties**

Except for any violation of subchapter 2-A or a violation of subchapter 7-A relating to the sale of firewood, the Commissioner of Agriculture, Conservation and Forestry, referred to in this section as "the commissioner," may assess administrative penalties, not to exceed \$5,000, for each violation of this chapter for which a specific penalty has not been prescribed.

**1. Amount of penalty.** In determining the amount of the penalty to be assessed against a person under this section, the commissioner may consider one or more of the following:

**COMMITTEE AMENDMENT**

- 1           A. The degree of actual and potential impact on public health, safety and welfare
- 2           resulting from the violation;
- 3           B. The presence of mitigating or aggravating circumstances;
- 4           C. Whether the person has been warned regarding a violation or found to be in violation
- 5           of the same provision of law in the past;
- 6           D. The economic benefit, if any, gained by the violation;
- 7           E. The deterrent effect of the penalty; and
- 8           F. The financial condition of the person.

9           **2. Separate offenses; continuing violations; maximum total value of penalties.**  
10          The commissioner may consider each violation a separate offense and, in the case of a  
11          continuing violation, the commissioner may consider each day's continuance a separate  
12          offense. The total value of penalties assessed against a person under this section may not  
13          exceed \$50,000.

14          **3. Commissioner may recover costs of investigation.** In addition to the  
15          administrative penalties authorized by this section, the commissioner may recover the costs  
16          of investigation, which must be credited to a special fund and be made available to the  
17          Department of Agriculture, Conservation and Forestry to offset these costs.

18          **4. Enforcement of final administrative penalty.** The commissioner may enforce a  
19          final administrative penalty by filing a civil action in any District Court or Superior Court.

20          **5. Appeal.** Any party aggrieved by a final decision of the commissioner may appeal  
21          de novo to the Superior Court within 30 days of the final decision of the commissioner.

22          **Sec. 5. 10 MRSA §2751-B** is enacted to read:

23          **§2751-B. Administrative penalties; opportunity to request hearing; notice of alleged**  
24          **violation and rights; requesting or waiving hearing**

25          Before a final administrative penalty may be assessed against a person under section  
26          2751-A, the person must be given an opportunity for a hearing after reasonable notice.  
27          Notwithstanding any provision of Title 5, section 9052 to the contrary, the Commissioner  
28          of Agriculture, Conservation and Forestry, referred to in this section as "the commissioner,"  
29          shall use the following procedures in providing to a person notice of the violation or  
30          violations alleged and the opportunity to request a hearing.

31          **1. Notice.** Notice must be served by personal service or by certified mail sent to the  
32          last address of record of the person on file with the Department of Agriculture,  
33          Conservation and Forestry, referred to in this section as "the department." If the person is  
34          not an applicant for or holder of a license, permit, registration or certification issued by the  
35          department, the notice must be served by personal service or by certified mail, return receipt  
36          requested. The notice must include:

- 37               A. A statement of the legal authority and jurisdiction under which the hearing is to be
- 38               held;
- 39               B. A statement of the matter at issue, including reference to the particular statute or
- 40               administrative rule allegedly violated and a factual description of the alleged violation;

1 C. The amount of the proposed administrative penalty and required corrective action,  
2 abatement or mitigation;

3 D. A warning that the decision will become final and the penalty will be imposed if a  
4 hearing is not requested within 15 days of service of the notice, which must specify the  
5 steps a person must take to avoid waiving the right to a hearing; and

6 E. Information regarding the manner of payment if the person elects to pay the penalty  
7 and waive the right to a hearing.

8 **2. Time for requesting hearing; written request required.** A person who receives  
9 notification pursuant to this section is deemed to have waived the right to a hearing unless,  
10 within 15 days of service of the notice, the person requests a hearing in writing.

11 **3. Waiver of right to hearing; final administrative penalty by default.** If a person  
12 waives the right to a hearing, the commissioner shall by default issue a final administrative  
13 penalty under section 2751-A against the person for the violations alleged and imposing  
14 the penalty and any required corrective action, abatement or mitigation. A copy of the final  
15 administrative penalty must be served upon the person by personal service or by certified  
16 mail, return receipt requested.

17 **Sec. 6. 10 MRSA §2751-C** is enacted to read:

18 **§2751-C. Administrative penalties; holding of hearings**

19 When a person requests a hearing in a timely fashion consistent with section 2751-B,  
20 the Commissioner of Agriculture, Conservation and Forestry shall provide notice of and  
21 hold the hearing pursuant to Title 5, sections 9052 to 9064.

22 **Sec. 7. 10 MRSA §2751-D** is enacted to read:

23 **§2751-D. Collections and enforcement of administrative penalties; interest**

24 The following provisions apply to the collection and enforcement of administrative  
25 penalties assessed under section 2751-A.

26 **1. Requirement to pay department.** A person who is assessed a penalty pursuant to  
27 section 2751-A is required to pay the Department of Agriculture, Conservation and  
28 Forestry, referred to in this section as "the department," the amount of the penalty.

29 **2. Appeal; collection stayed.** An appeal of the department's decision to assess a  
30 penalty stays the collection of the penalty.

31 **3. Interest on unpaid penalties.** Interest accrues on a penalty at the rate specified in  
32 Title 14, section 1602-B prior to the completion of an appeal. After the completion of an  
33 appeal process or after an appeal period has passed, interest accrues pursuant to Title 14,  
34 section 1602-C.

35 **4. Require unpaid penalty prior to license renewal.** If the person has not fully paid  
36 any final administrative penalty of the commissioner by the time of an applicable license  
37 renewal, the department may require payment prior to renewing any license issued to the  
38 applicant by the department.

39 **5. Enforcement when person has no license issued by department.** For penalties  
40 assessed against a person who does not have a license issued by the department, a final  
41 administrative penalty may be enforced pursuant to Title 14, section 3138.

