

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by inserting after the enacting clause and before section 1 the following:

‘**Sec. 1. 7 MRSA §2303**, as repealed and replaced by PL 1977, c. 696, §94, is repealed and the following enacted in its place:

§ 2303. Penalties

1. Civil violation. A person who violates a rule adopted pursuant to section 2301 commits a civil violation.

2. Penalty. Except as provided in subsection 3, the following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$100 and not more than \$1,000 may be adjudged for each day of that violation.

B. A person who violates this section after having been adjudicated of a violation of this section within the previous 5-year period commits a civil violation for which a fine of not less than \$1,000 and not more than \$2,000 may be adjudged for each day of that violation.

3. Economic benefit. If the economic benefit resulting from a violation under subsection 1 exceeds the applicable penalties under subsection 2, the maximum fines may be increased. The maximum fine may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or the enhanced value accrued at the time of the violation by the violator as a result of not complying with the applicable legal requirements.

4. Costs permitted. In any action or proceeding brought by the Attorney General under this section, the court may award litigation costs, including court costs, reasonable attorney's fees and reasonable expert witness fees, to be deposited in the General Fund if the State or any of its officers or agencies is a prevailing party in the action or proceeding and the defendant's defense was not substantially justified. For the purposes of this subsection, a defense is substantially justified if the defense had a reasonable basis in law or fact at the time it was raised.’

Amend the bill in section 1 in §8307 by striking out all of subsection 1 (page 1, lines 4 to 7 in L.D.) and inserting the following:

‘**1. Civil violation.** A person who violates a rule adopted pursuant to section 8306 or a condition or term of an order, permit or notice issued by the director or the Commissioner of Agriculture, Conservation and Forestry in accordance with section 8305 commits a civil violation.’

Amend the bill in section 1 in §8307 in subsection 3 in the 4th line (page 1, line 20 in L.D.) by striking out the following: "bureau" and inserting the following: 'court'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment clarifies that the penalty in the bill applies to a person who violates:

1. A rule governing the quarantine of forest or shade trees or part of a forest or shade tree capable of supporting disease or insect infestation; or
2. A condition or term of an order, permit or notice issued by the Director of the Bureau of Forestry within the Department of Agriculture, Conservation and Forestry or the Commissioner of Agriculture, Conservation and Forestry governing plant or wood products that may cause the introduction or spread of a dangerous forest insect or disease.

The amendment also clarifies that the court, rather than the Department of Agriculture, Conservation and Forestry as in the bill, must consider the costs avoided or the enhanced value accrued at the time of the violation by the violator as a result of not complying with the applicable legal requirements.

The amendment reduces the penalty in current law for a violation of a Department of Agriculture, Conservation and Forestry rule governing the quarantine of any class of nursery stock, plant, fruit, seed or other article of any character capable of supporting a disease or insect infestation from a Class E crime to a civil violation and sets fines at \$100 to \$1,000 for each day of a violation and from \$1,000 to \$2,000 for each day of a violation by a violator that violated the rules within the previous 5-year period. It allows maximum fines to be increased to account for economic benefit and provides for the award of litigation costs in any action or proceeding brought by the Attorney General. These penalty provisions are the same as those in the bill for violations with respect to trees and plant or wood products.