

## **132nd MAINE LEGISLATURE**

## FIRST REGULAR SESSION-2025

Legislative Document

No. 88

H.P. 52

House of Representatives, January 8, 2025

## An Act Regarding Penalties for Violating the Laws Governing Agriculture and Animals and the Maine Weights and Measures Law

Submitted by the Department of Agriculture, Conservation and Forestry pursuant to Joint Rule 204.

Received by the Clerk of the House on January 6, 2025. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative PLUECKER of Warren.

1	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 7 MRSA §16-A is enacted to read:
3	<u>§16-A. Administrative penalties</u>
4 5 6 7	In addition to other penalties provided by law, the commissioner may assess administrative penalties, not to exceed \$5,000, for each violation of this Title and each violation of Title 10, chapter 501, as provided in Title 10, section 2751, unless a higher administrative penalty amount is otherwise provided for in Title 10, chapter 501.
8 9	<b>1. Amount of penalty.</b> In determining the amount of the penalty to be assessed under this section, the commissioner may consider one or more of the following:
10 11	A. The degree of actual and potential impact on public health, safety and welfare resulting from the violation;
12	B. The presence of mitigating or aggravating circumstances;
13 14	C. Whether the violator has been warned regarding a violation or found to be in violation of the same provisions of law in the past;
15	D. The economic benefit gained by the violation;
16	E. The deterrent effect of the penalty; and
17	F. The financial condition of the violator.
18 19 20 21 22	2. Separate and distinct offenses; continuing violations; maximum total value of penalties. The commissioner may consider each violation a separate and distinct offense and, in the case of a continuing violation, the commissioner may consider each day's continuance a separate and distinct offense. The total value of penalties assessed against a person under this section may not exceed \$50,000.
23 24 25 26	3. Commissioner may recover costs of investigation. In addition to the administrative penalties authorized by this section, the commissioner may recover the costs of investigation, which must be credited to a special fund and be made available to the department to offset these costs.
27 28	<b>4. Enforcement of final administrative penalty.</b> The commissioner may enforce a final administrative penalty by filing a civil action in any District Court or Superior Court.
29 30	<b>5. Appeal.</b> Any party aggrieved by a final decision of the commissioner may appeal de novo to the Superior Court within 30 days of the final decision of the commissioner.
31	Sec. 2. 7 MRSA §16-B is enacted to read:
32 33	<u>§16-B. Administrative penalties; opportunity to request hearing; notice of alleged</u> <u>violation and rights; requesting or waiving hearing</u>
34 35 36 37 38 39	Before a final administrative penalty may be assessed against a person under section 16-A, the person must be given an opportunity for a hearing after reasonable notice. Notwithstanding any provision of Title 5, section 9052 to the contrary, the commissioner shall use the following procedures in providing to an alleged violator notice of the violation or violations alleged and the opportunity to request a hearing.
39 40	<b>1. Notice.</b> Notice must be served by personal service or by certified mail sent to the last address of record on file with the department. If the alleged violator is not an applicant

1 2 3	for or holder of a license, permit, registration or certification issued by the department, the notice must be served by personal service or by certified mail, return receipt requested. The notice must include:
4 5	A. A statement of the legal authority and jurisdiction under which the hearing is to be held;
6 7	B. A statement of the matter at issue, including reference to the particular statute or administrative rule allegedly violated and a factual description of the alleged violation;
8 9	C. The amount of the proposed administrative penalty and required corrective action, abatement or mitigation;
10 11 12	D. A warning that the decision will become final and the penalty will be imposed if no hearing is requested within 15 days of service of the notice, which must specify the steps an alleged violator must take to avoid waiving the right to a hearing; and
13 14	E. Information regarding the manner of payment if the person elects to pay the penalty and waive the right to a hearing.
15 16 17	2. Time for requesting hearing; written request required. A person who receives notification pursuant to this section is deemed to have waived the right to a hearing unless, within 15 days of service of the notice, the person requests a hearing in writing.
18 19 20 21 22	<b>3. Waiving right to hearing; final order by default.</b> If a person waives the right to a hearing, the commissioner shall by default issue a final order finding against the person in respect to the violations alleged and imposing the penalty and any required corrective action, abatement or mitigation. A copy of the final order must be served upon the violator by personal service or by certified mail, return receipt requested.
23	Sec. 3. 7 MRSA §16-C is enacted to read:
24	<u>§16-C. Administrative penalties; holding of hearings</u>
25 26 27	When a person requests a hearing in a timely fashion consistent with section 16-B, the commissioner shall provide notice of and hold the hearing pursuant to Title 5, sections 9052 to 9064.
28	Sec. 4. 7 MRSA §16-D is enacted to read:
29	§16-D. Collections and enforcement of administrative penalties; interest
30 31	The following provisions apply to the collection and enforcement of penalties assessed under Title 10, section 2751.
32 33	<b>1. Requirement to pay department.</b> A person who is assessed a penalty pursuant to Title 10, section 2751 is required to pay the department the amount of the penalty.
34 35	<b>2.</b> Appeal; collection stayed. An appeal of the department's decision to assess a penalty stays the collection of the penalty.
36 37 38 39	<b>3.</b> Interest on unpaid penalties. Interest accrues on a penalty at the rate specified in Title 14, section 1602-B prior to the completion of an appeal. After the completion of an appeal process or after an appeal period has passed, interest accrues pursuant to Title 14, section 1602-C.

4. Require unpaid penalty prior to license renewal. If the person has not paid any
collectible penalty by the time of an applicable license renewal, the department may require
payment prior to renewing any license issued to the applicant by the department.
5. Enforcement when person has no license issued by the department. For penalties

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

Sec. 5. 10 MRSA §2751, first ¶, as amended by PL 1991, c. 650, §1, is further
amended to read:

9 A person who violates the following enumerated provisions or any provision of this 10 chapter or rules adopted pursuant thereto, for which a specific penalty has not been prescribed, commits a civil violation for which a forfeiture must be adjudged in an amount 11 not less than \$50 nor more than \$2,000 is subject to an administrative penalty under Title 12 7, section 16-A. The Commissioner of Agriculture, Conservation and Forestry may 13 14 consider each violation a separate and distinct offense and, in the case of a continuing violation, the commissioner may consider each day's continuance a separate and distinct 15 16 offense. A person who fails to pay a penalty assessed against that person under Title 7, 17 section 16-A is subject to the enforcement provisions provided in Title 7, section 16-A, subsection 4 and Title 7, section 16-D, which may include, but are not limited to, a 18 19 requirement that the person pay the collectible penalty prior to renewal of any license issued 20 to that person by the Department of Agriculture, Conservation and Forestry.

## SUMMARY

This bill authorizes the Commissioner of Agriculture, Conservation and Forestry to assess administrative penalties for violations of the laws governing agriculture and animals and certain provisions of the Maine Weights and Measures Law. Under the bill, penalties may not exceed \$5,000 for each occurrence and may not exceed \$50,000 in total. The bill requires that a person be given notice of the penalties assessed and be given an opportunity to request a hearing before the penalty is imposed.

28 The bill establishes procedures for providing notice, holding hearings and remedies 29 that the commissioner may use when a person fails to pay a penalty imposed. These 30 remedies include allowing the commissioner to file a civil action to enforce penalties and, 31 in cases when the Maine Weights and Measures Law has been violated, allowing the 32 department to require a person to pay any unpaid penalties before renewing a license issued 33 by the Department of Agriculture, Conservation and Forestry and allowing enforcement by 34 the Superior Court in cases when the person does not have a license issued by the 35 department.

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