

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Sec. 3. 10 MRSA §2751, first ¶, as amended by PL 1991, c. 650, §1, is repealed.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

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.

Sec. 8. 10 MRSA §2751-E is enacted to read:

§2751-E. Rulemaking

The Commissioner of Agriculture, Conservation and Forestry shall adopt rules to carry out the purposes of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

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

SUMMARY

This amendment, which replaces the bill and changes the title, authorizes the Commissioner of Agriculture, Conservation and Forestry to assess administrative penalties for each violation of the Maine Revised Statutes, Title 10, chapter 501, known as the Maine Weights and Measures Law, for which a specific penalty has not been prescribed, with certain exceptions. Penalties may not exceed \$5,000 for each occurrence and may not exceed \$50,000 in total. The amendment 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. The amendment establishes procedures for providing notice, holding hearings and remedies that the commissioner may use when a person fails to pay a penalty imposed.

The amendment clarifies that a person who violates provisions of the Maine Weights and Measures Law relating 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, which is the penalty under current law applicable to violations for which there is no specific penalty.

The amendment provides that administrative penalties do not apply to violations of the Maine Weights and Measures Law relating to the sale of firewood under Title 10, subchapter 7-A or the sale of commodities under Title 10, subchapter 2-A and that the civil penalties for a violation of those provisions under current law are unchanged.

FISCAL NOTE REQUIRED

(See attached)