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AGRICULTURE, CONSERVATION AND FORESTRY

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STATE OF MAINE

SENATE

129TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT “ ” to S.P. 575, L.D. 1726, Bill, “An Act To Penalize Violators of Wood Shipment and Quarantine Laws”

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Sec. 1. 7 MRSA §2303, as repealed and replaced by PL 1977, c. 696, §94, is repealed and the following enacted in its place: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

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1 attorney's fees and reasonable expert witness fees, to be deposited in the General Fund if
2 the State or any of its officers or agencies is a prevailing party in the action or proceeding
3 and the defendant's defense was not substantially justified. For the purposes of this
4 subsection, a defense is substantially justified if the defense had a reasonable basis in law
5 or fact at the time it was raised.'

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

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

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

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

16 SUMMARY

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

18 1. A rule governing the quarantine of forest or shade trees or part of a forest or shade
19 tree capable of supporting disease or insect infestation; or

20 2. A condition or term of an order, permit or notice issued by the Director of the
21 Bureau of Forestry within the Department of Agriculture, Conservation and Forestry or
22 the Commissioner of Agriculture, Conservation and Forestry governing plant or wood
23 products that may cause the introduction or spread of a dangerous forest insect or disease.

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

28 The amendment reduces the penalty in current law for a violation of a Department of
29 Agriculture, Conservation and Forestry rule governing the quarantine of any class of
30 nursery stock, plant, fruit, seed or other article of any character capable of supporting a
31 disease or insect infestation from a Class E crime to a civil violation and sets fines at
32 \$100 to \$1,000 for each day of a violation and from \$1,000 to \$2,000 for each day of a
33 violation by a violator that violated the rules within the previous 5-year period. It allows
34 maximum fines to be increased to account for economic benefit and provides for the
35 award of litigation costs in any action or proceeding brought by the Attorney General.
36 These penalty provisions are the same as those in the bill for violations with respect to
37 trees and plant or wood products.