

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1386, L.D. 1916, Bill, "An Act to Increase Penalties for Violation of the Pesticide Laws"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 7 MRSA §602, as amended by PL 1979, c. 731, §19, is further amended to read:

§602. Enforcing official

This subchapter shall be is administered by the Commissioner of ~~Agriculture, Food and Rural Resources~~ Board of Pesticides Control, hereinafter referred to as the "~~commissioner~~" "board."

Sec. 2. 7 MRSA §616, as amended by PL 1977, c. 696, §65, is repealed.

Sec. 3. 7 MRSA §616-A is enacted to read:

§616-A. Penalties

1. Informal hearing. When the staff proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing, as defined under the Maine Administrative Procedure Act.

2. Violations. Except as provided in subsection 4, a person violating any provisions of this subchapter or Title 22, chapter 258-A or rules adopted pursuant to this subchapter or Title 22, chapter 258-A commits a civil violation for which the following forfeitures may be adjudged:

2 A. For the first violation, a forfeiture not to exceed
4 \$1,500; and

6 B. For each subsequent violation within a 4-year period, a
8 forfeiture not to exceed \$4,000.

10 3. Continuation. Each day that the violation continues is
12 considered a separate offense.

14 4. Exceptions. A forfeiture against a private applicator,
16 as defined in Title 22, section 1471-C, may not exceed \$500 for a
18 first violation, or \$1,000 for any subsequent violation within a
20 4-year period, of:

22 A. Title 22, section 1471-O or any rule adopted pursuant to
24 Title 22, section 1471-O; or

26 B. Any rule regarding records maintained pursuant to section
28 606, subsection 2, paragraph G.

30 5. Criminal violations. Any person who intentionally or
32 knowingly violates any provision of this subchapter or Title 22,
34 chapter 258-A, any rules adopted under this subchapter or Title
36 22, chapter 258-A or any restriction of a registration issued
38 pursuant to this subchapter commits a crime punishable by a fine
40 not to exceed \$7,500 and is subject to imprisonment not to exceed
42 30 days, or both, for each violation. Prosecution under this
44 subsection is by summons and not by warrant. A prosecution under
46 this subsection is separate from any action pursued under
48 subsections 2 and 4.

50 6. Other relief. Notwithstanding Title 22, section 1471-D,
52 subsections 6 to 8 and in addition to other sanctions provided
54 under this section, the court may order that a violator obtain
56 recertification credits through board-approved meetings or
58 courses as a condition of retaining, maintaining or renewing a
60 certification or license required under Title 22, chapter 258-A.

62 7. Considerations. In setting a penalty under this
64 section, the court shall consider, without limitation:

66 A. Prior violations by the same party;

68 B. The degree of harm to the public and the environment;

70 C. The degree of environmental damage that has not been
72 abated or corrected;

74 D. The extent to which the violation continued following the
76 board's notice to the violator;

2 E. The importance of deterring the same person or others
3 from future violations; and

4 F. The cause and circumstances of the violation, including:

6 (1) The foreseeability of the violation;

8 (2) The standard of care exercised by the violator; and

10 (3) Whether or not the violator reported the incident
11 to the board.

12 8. Injunction. The board may bring an action to enjoin the
13 violation or threatened violation of any provision of this
14 subchapter or any rule made pursuant to this subchapter in a
15 court of competent jurisdiction of the district in which the
16 violation occurs or is about to occur.

18 9. No damages from administrative action if probable cause
19 exists. A court may not allow the recovery of damages from
20 administrative action taken, or for a stop sale, use or removal
21 order, if the court finds that there was probable cause for the
22 administrative action.

24 10. Sunset. Subsections 2 to 5 are repealed on January 1,
25 1993.

28 Sec. 4. 22 MRSA §1471-B, sub-§2, as amended by PL 1981, c.
29 632, §1, is further amended to read:

30 2. Organization of the board. The board shall elect its-own
31 chairman a chair and such any other officers as it deems
32 determines necessary from among the membership. The board shall
33 meet at the call of the chairman chair or at the request of any 3
34 members. Four members shall constitute a quorum and, except as
35 otherwise provided in this subsection, any action shall-require
36 requires the affirmative vote of the greater of either a majority
37 of those present and voting or at least 2 members. Any action by
38 the board requesting that the Attorney General pursue a court
39 action against an alleged violator of any law or rule requires an
40 affirmative vote by 3 members or a majority of those present and
41 voting, whichever is greater. The chairman chair and the any
42 other officers shall serve in such those capacities for a period
43 of one year following their elections.

46 Sec. 5. 22 MRSA §1471-B, sub-§5, as amended by PL 1979, c.
47 731, §19, is further amended to read:

48 5. Staff. The board may must establish standards for the
49 delegation of its authority to the director and staff. Any person
50 aggrieved by a decision of the director and staff has a right to
51 a review of the decision by the board. The Commissioner of
52

Agriculture, Food and Rural Resources shall provide the board with administrative services of the department, including assistance in the preparation of the board's budget. He The commissioner may require the board to reimburse the department for these services.

Sec. 6. 22 MRSA §1471-B, sub-§8 is enacted to read:

8. Meetings. The board shall periodically meet in various geographic regions of the State. When considering an enforcement action, the board shall attempt to meet in the geographic region where the alleged violation occurred.

Sec. 7. 22 MRSA §1471-H, as enacted by PL 1975, c. 397, §2, is further amended to read:

§1471-H. Inspection

~~For the purpose of carrying out the provisions of this chapter~~ Upon presentation of appropriate credentials, the chairman chair or any member of the board or any authorized employee or consultant of the board may enter upon any public or private premises at reasonable times for the purpose of inspecting any equipment, device or apparatus used in applying pesticides; inspecting storage and disposal areas; inspecting or investigating complaints of injury to persons or land from pesticides; observing the use and application of pesticides; sampling pesticides in use or storage; and sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Upon denial of access to the board or its agents, the board or its agents may seek an appropriate search warrant in a court of competent jurisdiction. Notwithstanding other provisions of this section, a board member or any authorized employee or consultant of the board may enter public or private premises without notification if an emergency exists. The need to take a residue sample in a timely manner constitutes an emergency under this section.

Sec. 8. 22 MRSA §1471-J, as repealed and replaced by PL 1975, c. 770, §§91 and 92, is amended to read:

§1471-J. Penalties

~~Any~~ A person who violates any provision of this chapter or any order, regulation rule, decision, certificate or license issued by the board or ~~does~~ commits any act constituting a ground for revocation, except in acts punishable under section 1471-D, subsection 8, paragraphs A and H shall be punished by a fine of not more than \$500 for the first offense, and not less than \$500 for each subsequent offense, commits a civil violation subject to the penalties established in Title 7, section 616-A. Each day

2 that--any--person--so--operates--shall--be--considered--a--separate
offense.

4 Sec. 9. 22 MRSA §1471-M, sub-§§5 and 6 are enacted to read:

6 5. Disclosure of rights. When issuing a license, the board
8 shall provide to each licensee a written statement outlining the
10 enforcement process and the process of negotiating agreements in
12 lieu of court action that may occur in the event enforcement
14 action is pursued. The Department of the Attorney General and
the Department of Agriculture, Food and Rural Resources shall
assist the board in developing an appropriate written statement.
The board shall make this information available to all existing
licensees within 30 days of the effective date of this section.

16 6. Notification. Whenever the board or its staff
18 investigates a complaint alleging a violation of rules adopted
20 pursuant to Title 7, section 606, subsection 2, paragraph G, the
staff shall make all reasonable efforts to notify the alleged
violator, if identity is known, prior to collecting samples.

22 Sec. 10. 22 MRSA §1471-W, sub-§4, as enacted by PL 1989, c.
24 93, §2, is repealed.

26 FISCAL NOTE

28 Enactment of this bill will result in:

30 1. A potential increase in the collection of General Fund
32 fine revenue due to the proposed creation of 3 levels of
penalties for violations of pesticide law. The exact increase in
General Fund revenue can not be determined at this time; and

34 2. The Board of Pesticides Control developing certain
36 delegation of authority standards and implementing specific
procedural changes. All costs associated with this bill will be
38 absorbed by the Department of Agriculture, Food and Rural
Resources, Board of Pesticides Control, utilizing existing
40 budgeted resources.'

42 STATEMENT OF FACT

44 This amendment is the majority report of the Joint Standing
46 Committee on Agriculture. The amendment replaces the original
bill with language that creates 3 levels of penalties for
48 violations of pesticide law.

50 In most circumstances, the violation of a pesticide law
52 would be a civil violation and the court may adjudge a fine not
to exceed \$1,500 for first violations and not to exceed \$4,000
for subsequent violations.

2 Private applicators who violate the returnable pesticide
4 container law or drift management reporting requirements may
6 receive a fine not to exceed \$500 for first violations and not
8 exceed \$1,000 for subsequent violations.

10 Intentional and knowing violations are established as a
12 crime and the court may adjudge a fine not to exceed \$7,500,
14 imprisonment not to exceed 30 days, or both.

16 The court is given authority to require that a violator
18 attend educational courses in pesticide use as a condition of
20 retaining or regaining a license. The amendment also outlines
22 for the court various factors that should be considered when
24 determining the appropriate level of penalty for a violation of
26 pesticide law. All penalty provisions for civil and criminal
28 violations are repealed effective January 1, 1993.

30 In addition, the amendment establishes or reinterprets the
32 following directives to the Board of Pesticides Control:

34 1. Requires that motions requesting the Attorney General to
36 pursue a court action against an alleged violator be approved by
38 at least 3 board members;

40 2. Requires the board to establish standards for delegation
42 of its authority to the staff;

44 3. Requires the board to provide licensees with an
46 explanation of the enforcement process;

48 4. Directs the board staff to attempt to notify the
50 applicator before collecting samples in response to a drift
52 complaint;

54 5. Requires that the board notify an alleged violator
56 before discussing action on the alleged violation; and

58 6. Requests that the board attempt to meet in the
60 geographic area of an alleged violation when considering an
62 enforcement action.

64 The amendment also places violations by general use
66 pesticide dealers under the general penalty structure and adds a
68 fiscal note.

Reported by the Majority of the Committee on Agriculture
Reproduced and distributed under the direction of the Clerk of the
House
3/29/90 (Filing No. H-1022)