

MAINE STATE LEGISLATURE

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April 24, 1969

JB
JL
Austin H. Wilkins, Commissioner

Forestry

Jerome S. Natus, Assistant

Attorney General

Sale of Unapproved Spark Arresters

SYLLABUS:

Under present Maine statutes there is no direct way to force a distributor of saws to cease the sale of unapproved spark arresters.

FACTS:

By memorandum you presented the following:

"We have a dealer in Bangor who is selling spark arresters which do not meet our requirements of safety. He recently sold four to this department and since the specifications did not spell out the type arrester, he sent four arresters which are not suitable.

"One of our Forest Rangers talked with him as to his reasons for not complying. These are enumerated on a separate sheet. (The enumerated reasons provided are not material to this opinion and are, therefore, not listed.)

"You should be aware that most states have required a screen that is of .023" or smaller mesh as basis for qualification of a spark arrester. Our guide has been that any carbon particle exiting from the saw must come in contact with at least three points of impingement. This is a less stringent requirement than the .023 mesh screen. On this basis, we have asked that specific arresters put out by this company not be sold in Maine."

QUESTION:

"Is there any way we can enforce compliance by this distributor of saws?"

ANSWER:

See OPINION.

OPINION:

There is no direct way under 12 M.R.S.A. § 1456-A to enforce compliance by the distributor; nor have we found any other statutory provision which can enforce such compliance.

12 M.R.S.A. § 1456-A reads as follows:

"No equipment for producing power shall be operated in, through or near forest lands unless it is provided with approved and efficient spark arresters designed to prevent the escape of sparks, carbon deposits or other substances likely to cause fires. The operator of equipment not provided with such a spark arrester or having such a spark arrester which is not in effective operating condition shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or by both."

Thus, it is clear that 12 M.R.S.A. § 1456-A provides for punishment of the operator of unapproved spark arresting equipment and not the distributor.

If operators of unapproved spark arresters sold by this distributor can be found operating such unapproved spark arresters in, through or near forest lands, then the operators can be fined or imprisoned, or both, under the provisions of 12 M.R.S.A. § 1456-A. Perhaps such action would force the distributor for business reasons to cease the sale of such unapproved spark arresters. Another approach is to go to the legislature and amend the statute to provide for penalties for the sale or distribution of such unapproved spark arresters.

Jerome S. Matus
Assistant Attorney General

JSM:H