

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1119

H. P. 913

House of Representatives, March 17, 1977

Referred to the Committee on Marine Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Blodgett of Waldoboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Eliminate Tax on Marine Worms and Replace it With a Fee for Inspection and to Specify Certain Offenses Concerning the Sale of Marine Worms and Other Commodities.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 10 MRSA § 2751, as last amended by PL 1973, c. 654, § 2, is repealed and the following enacted in its place:

§ 2751. Prohibitions and penalties

No person shall by himself or by his servant or agent, or as the servant or agent of another person, perform any one of the following acts:

1. Incorrect weight or measure. Use, or have in possession for the purpose of using, for any commercial purpose specified in section 2404, sell, offer or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

2. Not sealed. Use, or have in possession for current use, in the buying or selling of any commodity or thing, or for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any weight or measure that has not been sealed by the state sealer, his deputy or one of his inspectors, or a sealer or deputy sealer within one year, unless written notice has been given to the state sealer or to the sealer in whose territory the weight or measure is located, to the effect that such weight or measure is available for

examination, or is due for reexamination, as the case may be, or unless specific written permission to use such weight or measure has been received from the office of the state sealer or from the sealer in whose territory the weight or measure is located, except meters for measuring water, gas or electricity supplied by companies subject to regulation by the Public Utilities Commission, until they are sealed by a public sealer of weights and measures;

3. Rejected or condemned. Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation;

4. Removal of tag, seal or mark. Remove from any weight or measure, contrary to law or regulation, any tag, seal or mark placed thereon by the state sealer, his deputy or one of his inspectors, or a sealer or deputy sealer;

5. Sale of less quantity represented. Sell, offer or expose for sale, less than the quantity he represents of any commodity, thing or service;

6. Take more quantity as buyer. Take more than the quantity he represents of any commodity, thing or service when, as a buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined;

7. Commodity in unlawful condition. Keep for the purpose of sale, advertise or offer or expose for sale, or sell any commodity, thing or service in a condition or manner contrary to law or regulation;

8. Indications not positioned to be accurately read. Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weight or measuring operation observed from some position which may reasonably be assumed by a customer;

9. Violate chapter or regulations. Violate any provision of this chapter or of the regulations promulgated under this chapter, for which a specific penalty has not been prescribed;

10. Hinder sealers. Hinder or obstruct in any way the state sealer, his deputy or any one of his inspectors, or a sealer or deputy sealer, in the performance of his duties;

11. Impersonate sealers. Impersonate in any way the state sealer, his deputy or any one of his inspectors, or a sealer or deputy sealer, by the use of his seal or a counterfeit of his seal, or in any other manner;

12. Device not tested and sealed. Use, or have in his possession any weighing or measuring device which has not been tested and does not bear the seal of approval of the state sealer or a sealer placed thereon within one year; and

13. Scales relocated. Use any scale which requires permanent installation which has been relocated without first having the same tested and approved by the state sealer or a sealer.

A violation of any provision of this section shall be a civil violation for which a forfeiture of not more than \$100 for a first violation and not more

than \$200 for a 2nd or subsequent violation may be adjudged, except that for a 2nd or subsequent violation of subsection 6, a forfeiture of not more than \$500 may be adjudged.

Sec. 2. 12 MRSA § 4301-D is enacted to read:

§ 4301-D. Marine worm sale and inspection

1. Definitions. As used in this section the following words shall have the following meanings.

A. "Dealer" shall mean any person, firm or corporation engaged in purchasing and selling marine worms.

B. "Digger" shall mean any person engaged in digging or extracting marine worms from the land or tidal areas for the purposes of sale.

2. Packaging and labeling. Every dealer who engages in the business of purchasing marine worms for sale shall furnish facilities for the storing, protection and security of trays, containers and worms belonging to diggers. Such facilities shall be constructed and located on the dealer's premises in accordance with regulations established by the Commissioner of Agriculture.

All diggers shall count all marine worms sold to dealers in the facilities provided by dealers as required by this subsection and shall place such worms in containers provided by the dealer. The digger shall seal and conspicuously label all such containers in accordance with regulations established by the Commissioner of Agriculture. Storage or counting of marine worms by a digger in a facility provided by a dealer shall constitute the offering or exposing for sale of such marine worms within the meaning of Title 10, section 2751.

All dealers shall seal and label all containers of marine worms in accordance with regulations established by the Commissioner of Agriculture prior to such worms being offered, sold or transported for sale. Such labeling shall include a statement as to the quantity of marine worms contained therein and the name of the dealer.

The Commissioner of Agriculture may promulgate such rules and regulations as he deems necessary to achieve the purposes of this subsection.

3. Penalties. Any violation of any provision of this section or any rule or regulation promulgated hereunder shall be a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

Dealers, diggers and marine worms of any kind shall be subject to Title 10, section 2751.

4. Inspection. The Commissioner of Agriculture is authorized under the Personnel Law to employ weights and measures inspectors. Such inspectors shall have free access, ingress and egress, at all reasonable hours, to any establishment where marine worms are held and may open any container of marine worms as may be required to make a proper inspection.

5. Fee. The Commissioner of Agriculture shall set a fee for each individual inspection of worm count to cover the cost of that inspection. The fee is

to be paid by the marine worm dealer at the facility that is inspected. Inspection shall be made when requested by a Maine marine worm dealer, and it shall be mandatory that, if a complaint of short count is made by an out-of-state worm dealer to the Department of Agriculture, the facility that purchased the worms from the digger be inspected and a report of the inspection be forwarded to the complainant.

Sec. 3. 36 MRSA c. 706, as last amended by PL 1971, c. 287, § 1, is repealed.

STATEMENT OF FACT

This bill would eliminate the marine worm tax and would provide for the regulation and inspection of marine worm sales by the Department of Agriculture on a fee-for-service schedule and to cover the cost of that inspection.

It would also replace prior law specifying offenses dealing with weights and measures in the sale of commodities, including marine worms.