

# MAINE STATE LEGISLATURE

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(New Draft of S.P. 390, L.D. 1190)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 1734

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S.P. 606

In Senate, June 7, 1983

Reported by Report B from the Committee on Agriculture and printed under Joint Rule 2.

Original bill presented by Senator Wood of York. Cosponsored by Representative Locke of Sebec and Representative Connolly of Portland.

JOY J. O'BRIEN, Secretary of the Senate

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STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-THREE

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AN ACT to Revise the Wood Measurement  
Law.

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

Sec. 1. 10 MRSA §2361, as repealed and replaced by PL 1977, c. 537, §1, is repealed.

Sec. 2. 10 MRSA §2361-A is enacted to read:

§2361-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agreement of the parties. "Agreement of the parties" means the mutual agreement of the parties or their representatives, and is distinguished from a unilateral condition of employment.

1           2. Butt diameter. Except as otherwise provided  
2 by the state sealer, "butt diameter" means the diame-  
3 ter of the severed stem butt, measured the short way  
4 through the center, disregarding crevices and cracks.

5           3. Butt measure. "Butt measure" means the lin-  
6 ear measure of the butt end of tree length wood,  
7 without conversion to volume by any means. As may be  
8 agreed upon by the parties, this measurement may be  
9 represented with or without regard to butt diameter  
10 classes.

11           4. Butt scale. "Butt scale" means the volume  
12 measure of wood based solely on measurement of the  
13 butt end of individual trees and converted to volume  
14 by any means.

15           5. Green wood. "Green wood" means trees or  
16 parts of trees that have been freshly felled.

17           6. Oven-dried wood. "Oven-dried wood" means  
18 wood that has been oven-dried to remove its moisture  
19 content according to standards as adopted by the  
20 American Society of Testing and Materials.

21           7. Payment for services. "Payment for services"  
22 means where payment is made for services in or inci-  
23 idental to harvesting, hauling or chipping wood, and  
24 does not involve transfer of title to the wood.

25           8. Sale of wood. "Sale of wood" means a trans-  
26 action involving transfer of title to wood or payment  
27 for services performed in or incidental to the har-  
28 vesting, hauling or chipping of wood. Nothing in  
29 this subchapter supersedes or in any way modifies the  
30 measurement standards relating to fuel wood provided  
31 for in section 2302, subsection 1.

32           9. Standard cord. A "standard cord" means the  
33 cubic foot measurement of wood, ranked and well  
34 stowed, and stacked 4 feet wide, 4 feet high and 8  
35 feet long, or its equivalent, which stack measure  
36 contains 128 cubic feet of wood, bark and air space.  
37 A "standard cord" when used in connection with  
38 sawdust chips, bark or shavings means the volume of  
39 material contained in 128 cubic feet at the time of  
40 sale.

1           10. Wood. "Wood" means the severed but unproc-  
2 essed fibrous derivative of trees, without regard for  
3 quality or grade and also means the chipped fibrous  
4 derivative of trees.

5           Sec. 3. 10 MRSA §2362, as repealed and replaced  
6 by PL 1977, c. 537, §2, is repealed.

7           Sec. 4. 10 MRSA §2362-A is enacted to read:

8           §2362-A. Measurement of wood

9           1. Cubic measure and standard cord. In all  
10 transactions involving the sale of wood, the volume  
11 may be measured in cubic feet or by the standard cord  
12 as provided for by the state sealer.

13           2. Weight scale. In all transactions involving  
14 the sale of wood, weight measurement may be used,  
15 provided that:

16           A. The weight measurement shall not be converted  
17 to volume;

18           B. Where payment is made for services in har-  
19 vesting wood, all weight measurements shall be  
20 expressed on a green wood or green weight basis.  
21 Except as otherwise provided by the state sealer,  
22 when the wood is not, or will not be, weighed  
23 within 10 days of felling, the person performing  
24 the services may, prior to hauling, require that  
25 the wood instead be measured by butt measure, or  
26 another authorized method of measurement agreed  
27 upon by the parties; and

28           C. All sales of wood chips may be based on  
29 oven-dried weight, except where payment is made  
30 for harvesting wood.

31           3. Tree length wood. Butt measure shall be the  
32 standard state method for the measurement of tree  
33 length wood. Where expressly agreed upon, the par-  
34 ties may use any other method of measurement author-  
35 ized by this subchapter.

36           A. Butt scale measurements may be used as fol-  
37 lows.

1 (1) In the sale of wood involving payment  
2 for services, the use of butt scale measure-  
3 ments is prohibited as of April 1, 1985.  
4 Until that date, the use of butt scale mea-  
5 surements is permitted for tree length wood,  
6 under the following conditions.

7 (a) Prior to its usage, the parties or  
8 their authorized representatives, shall  
9 sign and date the volume table which  
10 shall designate the applicable harvest-  
11 ing area or areas.

12 (b) The parties, or their authorized  
13 representatives, shall receive a copy  
14 of the signed butt scale table.

15 (c) The volume table to which the mea-  
16 surements are applied shall reasonably  
17 represent the volume of trees being cut  
18 on the operation.

19 (2) In the sale of wood not involving pay-  
20 ment for services, butt scale measurements  
21 shall continue to be permitted for tree  
22 length wood, under the following conditions.

23 (a) The applicable butt scale table  
24 shall be provided in a written contract  
25 agreement.

26 (b) The volume table to which the mea-  
27 surements are applied shall reasonably  
28 represent the volume of trees being cut  
29 on the operation.

30 (3) In any case where butt scale is permit-  
31 ted, prior to its usage, the parties shall  
32 provide the state sealer with a signed copy  
33 of the volume table for the designated har-  
34 vesting area.

35 4. Log scale measurements. Log scale measure-  
36 ments shall be made as follows.

37 A. When no other scale rule is agreed upon by  
38 the parties, the international 1/4 inch log rule

1           shall be the standard state rule for the measure-  
2           ment of logs. Nothing in this section may pre-  
3           vent the use of any other log rule which is  
4           agreeable to the parties.

5           B. Where agreed upon by the parties, cubic foot  
6           measurement or weight scale may also be used to  
7           measure logs.

8           Sec. 5. 10 MRSA §2363, as amended by PL 1977, c.  
9           694, §174, is repealed.

10          Sec. 6. 10 MRSA §2363-A is enacted to read:

11          §2363-A. Accurate and verifiable measurements

12           1. Standards. It is the intent of this subchap-  
13           ter that any method of wood scaling or measurement  
14           used in the sale of wood shall provide an accurate  
15           and verifiable count of the volume, quantity, dimen-  
16           sion or weight measured, according to the standards  
17           established by the state sealer, provided that those  
18           standards may be efficiently and conveniently applied  
19           in transactions in this State involving the sale of  
20           wood as defined in this subchapter.

21           2. Measurements. No person who scales or mea-  
22           sures wood and no person who makes payment to another  
23           in the sale of wood may represent a weight, volume  
24           quantity or dimension of wood which is less than the  
25           weight, volume, quantity or dimension of wood to be  
26           measured.

27           A. In the sale of wood involving payment for  
28           services, no deductions relating to merchant-  
29           ability or quality factors shall be taken from  
30           the total measure of properly prepared wood.  
31           Measurement deductions which are prohibited  
32           include those based on grading, soundness or  
33           other merchantability factors. Nothing in this  
34           section prevents making reasonable deductions  
35           based on quantity factors, such as for loose  
36           piling, short or undersized wood or for wood that  
37           was not designated to be harvested, hauled or  
38           chipped. Nothing in this section may be inter-  
39           preted to cancel or repeal any written contract  
40           rights existing prior to enactment of this  
41           section.

1 B. In the sale of wood not involving payment for  
2 services, reasonable deductions relating to mer-  
3 chantability factors are permitted where speci-  
4 fied in a written contract.

5 C. In the sale of wood involving payment for  
6 services, the calculation of payment shall be  
7 expressed in terms of the same unit of measure as  
8 was used in making the measurement.

9 Sec. 7. 10 MRSA §2364-A is enacted to read:

10 §2364-A. Licensing of measuring and scaling oper-  
11 ators

12 The state sealer has the authority to license all  
13 wood scalers and has the authority to issue rules,  
14 establish fees related to licensing in this section.  
15 Once a licensing program is instituted then the fol-  
16 lowing provisions of this section shall be in effect.

17 1. Applications. Applications for licenses  
18 under this subchapter shall be made in writing on  
19 forms prescribed by the state sealer for each wood  
20 scalers. The application shall include the name of  
21 the applicant scaler, his qualifications, the name of  
22 the owner of the operation, the location of the oper-  
23 ation and such other pertinent information as the  
24 state sealer shall require.

25 2. License; denial; revocation; suspension. The  
26 state sealer may deny or revoke or suspend a license  
27 for any of the following reasons:

28 A. Any material misstatement in the application  
29 for a license;

30 B. Willful misrepresentation of the quantity of  
31 wood measured;

32 C. Failure to maintain accurate weighing or mea-  
33 suring devices; or

34 D. Willful failure to apply measurement stan-  
35 dards or procedures established by the state  
36 sealer.

1           3. Violation. Any person who scales or measures  
2 wood without a proper license shall be in violation  
3 of this section.

4           Sec. 8. 10 MRSA §2365-A is enacted to read:

5           §2365-A. Disputed wood

6           In case a dispute arises as to whether wood was  
7 accurately scaled or measured, the person aggrieved  
8 may file a complaint with the state sealer. Any com-  
9 plaint shall be initiated within 30 calendar days of  
10 the alleged grievance. The state sealer shall investi-  
11 gate the complaint. As part of the investigation,  
12 the state sealer or deputy state sealer may subpoena  
13 such witnesses and documents as may be necessary to  
14 determine the matter, and may cause the disputed wood  
15 to be impounded and check measured if it may be sepa-  
16 rately identified. In the event that an aggrieved  
17 party fails to file a complaint within 30 days of the  
18 alleged grievance, the aggrieved party is barred from  
19 seeking a remedy under section 2368, subsection 1.

20           Sec. 9. 10 MRSA §2366, as amended by PL 1979, c.  
21 127, §62, is repealed.

22           Sec. 10. 10 MRSA §2366-A is enacted to read:

23           §2366-A. Rules

24           The state sealer shall, in a manner consistent  
25 with the Maine Administrative Procedure Act, Title 5,  
26 chapter 375, promulgate and adopt rules relating to:

27           1. Weight scale. Procedures for determining the  
28 weight of wood sold according to weight scale;

29           2. Butt measure; other measurement systems.  
30 Procedures and standards for the lineal and  
31 volumetric measurement of wood;

32           3. Measurement equipment standards and toler-  
33 ances. Measurement equipment standards and toler-  
34 ances;

35           4. Complaints; investigations. Procedures for  
36 the filing and investigating of complaints and for



1 the sampling, check scaling and check measurement of  
2 disputed wood;

3 5. Designation; units of measure. The designa-  
4 tion of appropriate units of measure which can be  
5 efficiently and conveniently used in the sale of  
6 wood;

7 6. Dissemination; scaling and measurement  
8 tallies. The dissemination of the scaling and mea-  
9 surement tallies or slips as appropriate to prevent  
10 unfair or deceptive representations of the quantity  
11 of wood measured;

12 7. Measuring and scaling operators, licens-  
13 ing. Licensing of measuring and scaling operators;  
14 and

15 8. Other standards. Other standards and rules  
16 necessary to the administration of this subchapter.

17 Sec. 11. 10 MRSA §§2367 to 2369 are enacted to  
18 read:

19 §2367. Violations; penalties

20 Any person violating this subchapter or any rule  
21 promulgated pursuant to this subchapter shall be sub-  
22 ject to a civil penalty not to exceed \$1,000 for a  
23 first offense and \$2,000 for each subsequent offense.  
24 These penalties may be recovered by the state sealer  
25 in a civil action.

26 §2368. Discrimination

27 1. Discrimination. No person may discriminate  
28 against any other person in any way for filing a com-  
29 plaint, participating in an investigation, testifying  
30 or in any way asserting a claim or aiding another in  
31 his assertion of a claim under this subchapter. Any  
32 person aggrieved by discrimination or retaliation  
33 relating to asserting a claim under this subchapter,  
34 may apply to any court of competent jurisdiction for  
35 redress of this violation. Any person who so dis-  
36 criminates is liable in a civil action to the person  
37 discriminated against for all damages caused by that  
38 discrimination, plus reasonable attorneys' fees and  
39 costs of suit.



1           2. Establishes butt measure as the standard  
2 state method for measurement of tree length wood. As  
3 agreed upon by the parties, this measurement may be  
4 represented in either the number of stems in each  
5 butt diameter class by species; or alternatively, in  
6 the cumulative sum of the butt diameters by species,  
7 expressed in inches, without regard to the butt diam-  
8 eter class;

9           3. Where payment is made for services, this new  
10 draft prohibits the usage of butt scale measurements  
11 as of April 1, 1985. Where payment is made for other  
12 than services, this new draft allows for the contin-  
13 ued usage of butt scale measurements under specified  
14 conditions;

15           4. Provides that the international 1/4 inch rule  
16 is the state standard for the measurement of logs;  
17 and, where agreed upon by the parties, allows for  
18 measurement of logs by the cubic foot, weight scale  
19 or by another log rule;

20           5. Where payment is made for services, this new  
21 draft requires that sales of wood based on weight be  
22 calculated on a green weight or green wood basis;

23           6. Except where payment is made for harvesting  
24 wood, provides that all sales of wood chips may be  
25 based on oven-dried weight;

26           7. Where payment is made for services, this new  
27 draft prohibits the taking of deductions relating to  
28 merchantability or quality factors, but does not pro-  
29 hibit the taking of deductions relating to quantity  
30 such as for loose piling or short wood. This pro-  
31 hibition against grading or quality deductions should  
32 prevent the use of dual measurement guidelines, one  
33 set for harvesting and another set for calculating  
34 payment;

35           8. Where payment is made for services, this new  
36 draft prohibits the conversion of measurements from  
37 one system or unit to another;

38           9. Provides for the licensing of scaling or mea-  
39 surement operators;

1           10. Provides for the investigation of disputes  
2 under the subchapter. The investigation may include  
3 impounding and check scaling, except where the mea-  
4 sured wood has already been processed and therefore  
5 can no longer be identified;

6           11. Decriminalizes violations of the wood mea-  
7 surement law, and provides for a civil fine in the  
8 case of violations. In order to recover damages, the  
9 aggrieved party would pursue a private right of ac-  
10 tion, such as for breach of contract or for unpaid  
11 wages;

12           12. Provides for expanded remedies to persons  
13 aggrieved by violations of this subchapter. These  
14 expanded remedies include a private right of action  
15 to enforce the subchapter, in which a person may be  
16 awarded treble damages and attorneys' fees, and a  
17 remedy for persons discriminated against in  
18 retaliation for filing a complaint or otherwise  
19 asserting claims under this subchapter; and

20           13. Repeals the miscellaneous wood measurement  
21 legislation that has been superseded by or incorpo-  
22 rated into the wood measurement law codified in Title  
23 10, or the department's rule-making authority under  
24 that law.

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