

MAINE STATE LEGISLATURE

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

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

Amend the bill by striking all of the title and inserting in its place the following:

'An Act Regarding Enforcement of Pesticide Laws'

Further 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Sec. 2. 7 MRSA §616, as amended by PL 1977, c. 696, §65, is repealed.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. Violations. A person violating any provisions of this subchapter or rules adopted pursuant to this subchapter commits a civil violation for which the following forfeitures may be adjudged:

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

B. For each subsequent violation within a 4-year period, a forfeiture not to exceed \$1,000.

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

4 3. Considerations. In setting a penalty under this
5 section, the court shall consider without limitation:

6 A. Prior violations by the same party;

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

8 C. The degree of environmental damage that has not been
9 abated or corrected;

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

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

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

15 (1) The foreseeability of the violation;

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

17 (3) Whether or not the violator reported the incident
18 to the board.

19 4. Injunction. The board may bring an action to enjoin the
20 violation or threatened violation of any provision of this
21 subchapter or any rule made pursuant to this subchapter in a
22 court of competent jurisdiction of the district in which the
23 violation occurs or is about to occur.

24 5. No damages from administrative action if probable cause
25 exists. A court may not allow the recovery of damages from
26 administrative action taken or for a stop sale, use or removal
27 order, if the court finds that there was probable cause for the
28 administrative action.

29 **Sec. 4. 22 MRSA §1471-B, sub-§2, as amended by PL 1981, c.**
30 **632, §1, is further amended to read:**

31 **2. Organization of the board.** The board shall elect ~~its-own~~
32 ~~ehairman~~ a chair and such ~~any~~ other officers as it deems
33 determines necessary from among the membership. The board shall
34 meet at the call of the ~~ehairman~~ chair or at the request of any 3
35 members. Four members shall constitute a quorum and, except as
36 otherwise provided in this subsection, any action shall-require
37 requires the affirmative vote of the greater of either a majority
38 of those present and voting or at least 2 members. Any action by
39 the board requesting that the Attorney General pursue a court

2 action against an alleged violator of any law or rule requires an
3 affirmative vote by 3 members or a majority of those present and
4 voting, whichever is greater. The chairman chair and the any
5 other officers shall serve in such capacities for a period of one
6 year following their elections.

7 **Sec. 5. 22 MRSA §1471-B, sub-§5**, as amended by PL 1979, c.
8 731, §19, is further amended to read:

10 5. **Staff.** The board may must establish standards for the
11 delegation of its authority to the director and staff. Any person
12 aggrieved by a decision of the director and staff has a right to
13 a review of the decision by the board. The Commissioner of
14 Agriculture, Food and Rural Resources shall provide the board
15 with administrative services of the department, including
16 assistance in the preparation of the board's budget. He The
17 commissioner may require the board to reimburse the department
18 for these services.

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

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

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

27 **§1471-H. Inspection**

28 ~~For the purpose of carrying out the provisions of this~~
29 ~~chapter~~ Upon presentation of appropriate credentials, the
30 chairman chair or any member of the board or any authorized
31 employee or consultant of the board may enter upon any public or
32 private premises at reasonable times for the purpose of
33 inspecting any equipment, device or apparatus used in applying
34 pesticides; inspecting storage and disposal areas; inspecting or
35 investigating complaints of injury to persons or land from
36 pesticides; observing the use and application of pesticides;
37 sampling pesticides in use or storage; and sampling pesticide
38 residues on crops, foliage, soil, water or elsewhere in the
39 environment. Upon denial of access to the board or its agents,
40 the board or its agents may seek an appropriate search warrant in
41 a court of competent jurisdiction. Notwithstanding other
42 provisions of this section, a board member or representative of
43 the board may enter public or private premises without
44 notification to obtain samples following a complaint or if an
45 emergency exists.

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

2 **§1471-J. Penalties**

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

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

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

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

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

Sec. 11. Effective date. Section 10 of this Act takes effect
January 1, 1993.

FISCAL NOTE

 This bill will require the Board of Pesticides Control to
develop certain standards and implement specific procedural
changes. All costs associated with this bill will be absorbed by
the Department of Agriculture, Food and Rural Resources, Board of
Pesticides Control, utilizing existing budgeted resources.'

STATEMENT OF FACT

COMMITTEE AMENDMENT "B" to H.P. 1386, L.D. 1916

2 This amendment is the minority report of the Joint Standing
Committee on Agriculture. The amendment deletes the title and
4 the text of the original bill, replacing them with language that
adds guidance to the courts in assessing penalties for pesticide
6 law violations and amending or establishing several provisions on
the enforcement of pesticide laws by the Board of Pesticides
Control.

8
10 The amendment establishes or reinterprets the following
directives to the Board of Pesticides Control:

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

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

18 3. Requires the board to provide licensees with an
20 explanation of the enforcement process;

22 4. Directs the board staff to attempt to notify the
applicator before collecting samples in response to a drift
24 complaint; and

26 5. Requests that the board attempt to meet in the
geographic area of an alleged violation when considering an
28 enforcement action.

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

Reported by the Minority of the Committee on Agriculture
Reproduced and distributed under the direction of the Clerk of the
House
3/29/90 (Filing No. H-1023)