

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 923, L.D. 1320, Bill, "An Act to Revise the Maine Horticultural Laws"

Amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. 2. 7 MRSA c. 405-A is enacted to read:

CHAPTER 405-A

HORTICULTURE

§2211. Definitions

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

1. Commissioner. "Commissioner" includes a designee of the Commissioner of Agriculture, Food and Rural Resources.

2. Nursery. "Nursery" means a place where nursery stock is produced, stored or offered for sale.

3. Nursery stock. "Nursery stock" means:

A. Woody plants, including ornamental and fruiting trees, shrubs, vines and all viable parts of these plants;

B. Herbaceous plants, including florist stock plants, annuals, perennials, vegetable seedlings, herbs, potted plants and all viable parts of these plants; and

C. Any other plant or plant part designated by the commissioner.

"Nursery stock" does not include cut Christmas trees, wreaths, field crops, seeds, dried herbs and flowers and cut flowers.

2 4. Other materials. "Other materials" means material not
included in the definition of "nursery stock," such as
4 containers, seeds and cut Christmas trees.

6 5. Plant pest. "Plant pest" means any insect, mite,
nematode, fungus, virus, bacteria, slug, snail or any form of
8 aquatic or terrestrial plant or organism that may cause injury to
a plant or that the commissioner declares to be a plant pest.

10 §2212. Appointment of State Horticulturist

12 The commissioner shall appoint the State Horticulturist
within the Department of Agriculture, Food and Rural Resources to
14 carry out the provisions of this chapter.

16 §2213. Inspections

18 1. Inspections of nurseries; sales prohibitions.
Inspections of nurseries and sales prohibitions are as follows.

20 A. The State Horticulturist or an assistant shall inspect
22 nurseries as determined necessary by the State
24 Horticulturist. Nurseries must be accessible at reasonable
26 times for inspection. If plant pests are found at
28 sufficient levels to pose a threat to other horticultural
30 establishments or the general public, the State
32 Horticulturist may issue an order embargoing or detaining
the nursery stock. Upon issuing an order of embargo or
detention, the State Horticulturist shall notify the owner
of the nursery stock of the order. Within 10 days of
receipt of notification, the owner may request a hearing to
be held in accordance with provisions of the Maine
Administrative Procedure Act.

34 The State Horticulturist may prescribe measures designed to
36 control the plant pests. The State Horticulturist shall
38 remove the order of embargo or detention if the State
Horticulturist is satisfied that the plant pests have been
controlled.

40 B. A person may not offer for sale dead nursery stock or
42 stock stressed by drying, excessive heat, excessive cold or
44 any other condition that prevents the normal growth of the
stock. A person may not offer for sale nursery stock that
is subject to an order of embargo or detention.

46 2. Inspection of orchards, fields and gardens suspected of
48 being infested with plant pests. The State Horticulturist or an
assistant may inspect any orchard, field, garden or roadside in

2 public or private grounds if the area is suspected of being
4 infested with a plant pest that may be a threat to plants
6 belonging to other property owners or to the health or safety of
8 the general public. The State Horticulturist may, after notice
10 and opportunity for a hearing is provided in a manner consistent
12 with the Maine Administrative Procedure Act, order the owner,
occupant or person in charge to take such action as necessary,
including the proper treatment or destruction of any infested or
diseased plants. If the owner of the property or a person having
lawful custody of the plants does not comply with the written
order, the commissioner may refer the matter to the Attorney
General who may institute an action to abate the problem.

14 3. Inspection of other material. A person may request
16 inspection of other material by the State Horticulturist prior to
18 the movement or sale of this material. The commissioner may
20 assess fees to cover the costs associated with these
inspections. Funds generated from these fees must be deposited
in a nonlapsing account to be used to conduct these inspections.

22 §2214. Shipments into the State to be certified

24 All nursery stock shipped into this State from any other
26 state, province or country must bear a certificate on each
28 package stating that the contents were inspected by an authorized
30 inspecting officer and that the contents appear to be free from
32 plant pests. The State Horticulturist or an assistant may
34 inspect, at the point of destination, all nursery stock coming
into the State. If such nursery stock is infested with any plant
pests, the State Horticulturist, after conferring with the
consignor, may order that stock destroyed or returned to the
consignor at the consignor's expense. The decision of the State
Horticulturist to require destruction or return of infested
nursery stock may not be considered licensing or an adjudicatory
proceeding as defined by the Maine Administrative Procedure Act.

36 §2215. Transportation of uninspected stock forbidden

38 A person, firm or corporation who is the owner, seller or
40 transporter of nursery stock may not bring into this State any
42 nursery stock unless each package bears an unexpired official
certificate of inspection that meets the requirements of section
2214.

44 §2216. Violations

46 Any violation of this chapter and rules adopted pursuant to
48 section 2217 is a civil violation for which a forfeiture of not
more than \$500 may be adjudged.

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§2217. Powers and rules

The commissioner may adopt rules to implement this chapter.

Further amend the bill by inserting after section 3 the following:

'Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Agricultural Production		
Positions	(1.0)	(1.0)
Personal Services	\$22,410	\$32,461
All Other	2,400	4,000
Capital Expenditures	14,269	
Provides funds for an Assistant Horticulturist position, a vehicle and general operating expenses for the inspecting of nurseries and other specified duties.		
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES		
TOTAL	\$39,079	\$36,461

FISCAL NOTE

	1991-92	1992-93
APPROPRIATIONS/ALLOCATIONS		
General Fund	\$39,079	\$36,461
REVENUES		
General Fund	\$30,000	\$30,000

This bill increases the license fee for selling nursery stock from \$5 every 3 years to \$20 annually, which will increase General Fund revenue by \$30,000 annually beginning in fiscal year 1991-92. The Department of Agriculture, Food and Rural Resources will require General Fund appropriations of \$39,079 in fiscal

2 year 1991-92 and \$36,461 in fiscal year 1992-93 for an Assistant
Horticulturist and general operating expenses. The bill also
4 allows the department to assess fees to cover the costs
associated with other inspections. The expected increase in
6 dedicated revenue and the required allocations can not be
determined at this time.

8 The additional work load and administrative costs associated
with a minimal number of new cases filed in District Court as a
10 result of the stricter standards will be absorbed within the
budgeted resources of the Judicial Department. The additional
12 collection of civil penalties will increase General Fund revenue
in an amount that can not be determined at this time.

14 The Department of the Attorney General can absorb, within
16 budgeted resources, the costs associated with instituting actions
on matters referred by the commission.'

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STATEMENT OF FACT

22 This amendment restructures certain language. It reduces
24 the penalty for violations of horticulture laws from not less
than \$500 to not more than \$500. The amendment makes technical
26 changes to conform to preferred statutory language and also adds
a fiscal note to the bill.

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Reported by the Committee on Agriculture
Reproduced and distributed under the direction of the Clerk of the
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