

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1320

H.P. 923

House of Representatives, March 26, 1991

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 24.

Reference to the Committee on Agriculture suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARENT of Benton.

Cosponsored by Senator RICH of Cumberland and Senator TITCOMB of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Revise the Maine Horticultural Laws.



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

2
4 Sec. 1. 7 MRSA c. 405, as amended, is repealed.

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

8 CHAPTER 405-A

10 HORTICULTURE

12 §2211. Definitions

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

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

18 2. Nursery stock. "Nursery stock" means:

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

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

24 C. Any other plant or plant part designated by the commissioner if the regulation is necessary to control any plant pest.

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

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

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

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

34 6. State Horticulturist. "State Horticulturist" means a person appointed by the commissioner to carry out the duties of this chapter.

36 §2212. Inspection of nurseries

2 1. Inspection of nurseries. The State Horticulturist or an
3 assistant shall inspect nurseries as determined necessary by the
4 State Horticulturist. Nurseries must be accessible at reasonable
5 times for inspection. If plant pests are found at a level
6 sufficient to pose a threat of the spread of the pest by movement
7 of the nursery stock, the State Horticulturist may issue an order
8 embargoing or detaining the nursery stock. An order issued under
9 this section may not be considered licensing or an adjudicatory
10 proceeding as those terms are defined in the Maine Administrative
11 Procedure Act. The State Horticulturist may prescribe measures
12 designed to control the plant pests. The State Horticulturist
13 shall remove the order of embargo or detention if the State
14 Horticulturist is satisfied that the plant pests have been
15 controlled. A person may not offer for sale:

16 A. Nursery stock that is not healthy or will not maintain
17 its vigor;

18 B. Dead nursery stock; or

19 C. Nursery stock stressed by drying, excessive heat or cold
20 or any other condition limiting plant growth.

21 §2213. Inspection of other material

22 Other material may be inspected by the State Horticulturist
23 upon request to enable the movement or sale of this material.
24 The commissioner may assess fees to cover the costs associated
25 with these inspections. Funds generated from these fees must be
26 deposited in a nonlapsing account to be used to conduct these
27 inspections.

28 §2214. Inspection of orchards, fields and gardens suspected of
29 being infested with plant pests

30 The State Horticulturist or an assistant may inspect any
31 orchard, field, garden or roadside in public or private grounds
32 if the area is suspected of being infested with a plant pest that
33 may be a threat to the health of plants belonging to other
34 property owners or to the health or safety of the general
35 public. The State Horticulturist may, after notice and
36 opportunity for a hearing is provided in a manner consistent with
37 the Maine Administrative Procedure Act, order the owner, occupant
38 or person in charge to take such action as necessary, including
39 the proper treatment or destruction of any infested or diseased
40 plants. If the owner of the property or a person having lawful
41 custody of the plants does not comply with the written order, the
42 commissioner may refer the matter to the Attorney General who may
43 institute an action to abate the problem.

44 §2215. Shipments into the State to be certified

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

28 **§2216. Transportation of uninspected stock forbidden**

30 A person, firm or corporation who is owner, seller or
32 transporter of nursery stock may not bring into this State any
34 nursery stock unless each package bears an unexpired official
36 certificate of inspection that meets the requirements of section
38 2215.

40 **§2217. Violations**

42 Any violation of sections 2211 to 2216, this section and
44 rules pursuant to section 2218, is a civil violation for which a
46 forfeiture of not less than \$500 may be adjudged.

48 **§2218. Powers and rules**

50 The commissioner, in a manner consistent with the Maine
52 Administrative Procedure Act as defined in Title 5, sections 8001
54 to 8062, may adopt rules to implement this chapter.

56 Sec. 3. 32 MRSA §1901, as amended by PL 1977, c. 694, §586,
58 is repealed and the following enacted in its place:

60 **§1901. License required; fee; violation**

62 A person, firm or corporation may not engage in or continue
64 in the business of selling or dealing in nursery stock, as
66 defined in Title 7, section 2211, without first obtaining a
68 license to conduct such business in this State. The State
70 Horticulturist shall prescribe the form of the license. Licenses
72 must be issued upon proper application. The license fee is \$20
74 annually. The license must be issued in the name of the nursery
76 owner or dealer. A license may not be transferred. Each
78 separate agent and each separate store acting under a general
80 agent or store must have a license as provided in this section.
82 Licenses may be revoked by the Administrative Court, in a manner

2 consistent with the Maine Administrative Procedure Act, for
3 failure to comply with the requirements of Title 7, chapter 405-A.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

STATEMENT OF FACT

The Maine Revised Statutes, Title 7, section 2202 currently requires that establishments that handle nursery stock be inspected annually. Additionally, Title 32, section 1901 requires that any person, firm or corporation that handles nursery stock must be licensed to conduct such business in the State. Over the past several years, many individuals who are not bonafide handlers of nursery stock have become licensed under Title 32, making it impossible for the State Horticulturist to carry out the inspection program mandated by Title 7.

This bill clarifies the definition of nursery stock, and defines plant pest and material other than nursery stock that may be subject to inspection. The bill establishes a procedure that must be followed by the Department of Agriculture, Food and Rural Resources when nurseries are found to be infested with plant pests. It authorizes the Commissioner of Agriculture, Food and Rural Resources to assess fees for the inspection of material other than nursery stock. It also authorizes the commissioner to adopt rules to implement the provisions of the bill. Also, the fee for obtaining a license to sell or deal in nursery stock is increased from \$5 every 3 years to \$20 annually.