

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "A" to H.P. 1498, L.D. 2110, Bill, "An Act to Revise the Maine Horticultural Laws"

Amend the bill by striking everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 7 MRSA §12-A is enacted to read:

§12-A. Emergency rules

Notwithstanding Title 5, section 8054, subsection 3, an emergency rule adopted under any of the provisions of chapter 201, 301, 303, 305, 401, 403, 405, 409, 411 or 525 may be renewed when the commissioner determines that the circumstances creating the emergency continue to exist. Emergency rules may be renewed for successive 90-day periods under this section until the department has a reasonable opportunity to conduct rulemaking pursuant to Title 5, chapter 375.

Sec. 2. 7 MRSA c. 405, as amended, is repealed.

Sec. 3. 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. Greenhouse. "Greenhouse" means a structure covered with glass, plastic, fiberglass or other transparent material in which plants are cultivated in a controlled environment.

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

4 4. Nursery stock. "Nursery stock" means:

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

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

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

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

20 5. Other materials. "Other materials" means material not
22 included in the definition of "nursery stock," such as
23 containers, seeds and cut Christmas trees.

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

30 §2212. Appointment of State Horticulturist

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

34 §2213. Inspections

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

40 A. The State Horticulturist or an assistant shall inspect
42 nurseries as determined necessary by the State
43 Horticulturist. Nurseries must be accessible at reasonable
44 times for inspection. If plant pests are found at
45 sufficient levels to pose a threat to other horticultural
46 establishments or the general public, the State
47 Horticulturist may issue an order to embargo or detain the
48 nursery stock. Upon issuing an order of embargo or
49 detention, the State Horticulturist shall notify the owner

2 of the nursery stock of that order. Within 10 days of
3 receipt of notification, the owner may request a hearing to
4 be held in accordance with the Maine Administrative
5 Procedure Act.

6 The State Horticulturist may prescribe measures designed to
7 control the plant pests. The State Horticulturist shall
8 remove the order of embargo or detention if satisfied that
9 the plant pests have been controlled.

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

15 2. Inspection of orchards, fields and gardens. The State
16 Horticulturist or an assistant may inspect any orchard, field,
17 garden or roadside in public or private grounds if there is
18 reasonable cause to believe the area is infested with a plant
19 pest that may be a threat to plants belonging to other property
20 owners or to the health or safety of the general public. The
21 State Horticulturist, after notice and opportunity for a hearing
22 as provided in the Maine Administrative Procedure Act, may order
23 the owner, occupant or person in charge to take any necessary
24 action including the proper treatment or destruction of infested
25 or diseased plants. If the owner of the property or a person
26 having lawful custody of the plants does not comply with the
27 written order, the commissioner may refer the matter to the
28 Attorney General.

29 3. Inspection of other material. A person may request
30 inspection of other material by the State Horticulturist prior to
31 the movement or sale of that material. The commissioner may
32 assess fees to cover the costs associated with those
33 inspections. Funds generated from the fees must be deposited in
34 a nonlapsing account and used to conduct the inspections.

35 **§2214. Shipments certified**

36 Nursery stock shipped into this State from any other state,
37 province or country must bear a certificate on each package
38 stating that the contents were inspected by an authorized
39 inspecting officer and that the contents appear to be free from
40 plant pests. The State Horticulturist or an assistant may
41 remove the order of embargo or detention if satisfied that
42 the plant pests have been controlled.

2 inspect, at the point of destination, all nursery stock coming
3 into the State. If that nursery stock is infested with any plant
4 pests, the State Horticulturist, after notice and opportunity for
5 a hearing as provided in the Maine Administrative Procedure Act,
6 may order the stock destroyed or returned to the consignor at the
7 consignor's expense.

8 **§2215. Transportation of uninspected stock**

10 A person, firm or corporation who owns, sells or transports
11 nursery stock may not bring nursery stock into this State unless
12 each package bears an unexpired official certificate of
13 inspection that meets the requirements of section 2214.

14 **§2216. Violations**

16 Any violation of this chapter or rules adopted pursuant to
17 section 2217 is a civil violation for which a forfeiture of not
18 more than \$500 may be adjudged.

20 **§2217. Powers and rules**

22 The commissioner may adopt rules to implement this chapter.

24 Sec. 4. 32 MRSA §1901, as amended by PL 1977, c. 694, §586,
25 is repealed and the following enacted in its place:

28 **§1901. License required; fee; violations**

30 A person, firm or corporation may not engage in or continue
31 in the business of selling or dealing in nursery stock, as
32 defined in Title 7, section 2211, without first obtaining a
33 license to conduct such business in this State. The State
34 Horticulturist shall prescribe the form of the license. Upon
35 proper application, a license must be issued in the name of the
36 nursery owner or dealer and that license may not be transferred.
37 Each agent and each store acting under a general agent or store
38 must have a license as provided in this section and that license
39 expires annually on December 31st.

40 1. Fee. An applicant must pay a license fee of \$25 per
41 year if that applicant has one or more of the following:

44 A. A greenhouse;

46 B. A retail sales area in excess of 150 square feet; or

C. Gross annual sales of nursery stock in excess of \$500.

There is no license fee for applicants who do not meet the provisions of this subsection.

2. Violations. Licenses may be revoked by the Administrative Court, as provided in Maine Administrative Procedure Act, for failure to comply with the requirements of Title 7, chapter 405-A.

Sec. 5. Transition. Any license issued pursuant to the Maine Revised Statutes, Title 32, section 1901 prior to the effective date of this Act remains in effect, but a license in effect on December 31, 1992 expires on that date.

FISCAL NOTE

1992-93

APPROPRIATIONS/ALLOCATIONS

| | |
|--------------|----------|
| General Fund | \$37,790 |
| Other Funds | 2,384 |

REVENUES

| | |
|--------------|----------|
| General Fund | \$37,790 |
| Other Funds | 2,384 |

Establishing a nursery license fee of \$25 annually for certain greenhouse establishments will increase General Fund revenue by \$37,790 in fiscal year 1992-93. These additional revenues are appropriated to the Department of Agriculture, Food and Rural Resources for an Assistant Horticulturist position.

Assessing fees to cover the costs associated with the inspection of other material will increase dedicated revenue to the Department of Agriculture, Food and Rural Resources by \$2,384 in fiscal year 1992-93. These additional funds are allocated in the bill.

Costs associated with the adoption of rules can be absorbed by the Department of Agriculture, Food and Rural Resources utilizing existing budgeted resources.

2 The additional workload and administrative costs associated
4 with the minimal number of new cases filed in the court system
6 can be absorbed within the budgeted resources of the Judicial
 Department. The collection of additional civil penalties will
 increase General Fund revenue by a minor amount.

8 The Department of the Attorney General can absorb the costs
10 associated with instituting actions on matters referred by the
 Commissioner of Agriculture, Food and Rural Resources within
 budgeted resources.'

12
14

STATEMENT OF FACT

16 This amendment restructures certain language. It replaces
18 language reading "is suspected of being infested" with "has
 reasonable cause to believe an area is infested." It also
20 provides for due process by stating that notice and an
 opportunity for a hearing must be provided prior to ordering
 infested nursery stock destroyed or returned.

22

24 This amendment also establishes an annual license fee of \$25
 for establishments that have a greenhouse, more than 150 square
26 feet of retail sales area or gross annual sales of nursery stock
 exceeding \$500. Licenses are required for all nurseries, but no
 fee is charged for operations that do not meet these criteria.

28

30 This amendment allows emergency rules regarding plant and
 animal diseases and pests to be renewed for successive 90-day
 periods. This amendment also adds a fiscal note.

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

2/26/92

(Filing No. H-986)