

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2001

S.P. 795

December 18, 2007

An Act To Reduce Wild Blueberry Theft

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 18, 2007. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator WESTON of Waldo.

Cosponsored by Representative PIEH of Bremen and Senators: DIAMOND of Cumberland, RAYE of Washington, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, Representatives: BLANCHETTE of Bangor, MAREAN of Hollis, McFADDEN of Dennysville, TIBBETTS of Columbia.

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

2 **Sec. 1. 36 MRSA §4302, sub-§1-F** is enacted to read:

3 **1-F. First hauler.** "First hauler" means a person, firm, partnership, association or
4 corporation engaged in the transportation of wild blueberries from the field from which
5 they were harvested to a shipper or processor.

6 **Sec. 2. 36 MRSA §4302, sub-§4,** as amended by PL 1997, c. 511, §8, is further
7 amended to read:

8 **4. Shipper.** "Shipper" means a person, firm, partnership, association or corporation
9 engaged in the shipping, transporting, storing, selling or otherwise handling of wild
10 blueberries either in processed form or as fresh fruit, whether as owner, agent or
11 otherwise, and that is not a first hauler as defined in subsection 1-F.

12 **Sec. 3. 36 MRSA §4305,** as amended by PL 2003, c. 705, §5, is repealed and the
13 following enacted in its place:

14 **§4305. Certification**

15 **1. Certification required.** Every processor or shipper of wild blueberries shall
16 obtain certification from the assessor before processing or shipping wild blueberries. The
17 assessor shall provide the applications for the certification, which must contain the name
18 under which the processor or shipper is transacting business in the State, the place or
19 places of business, the names and addresses of the persons constituting a firm, company
20 or partnership and, if a corporation, the corporate name and names and addresses of its
21 principal officers and agents in the State. A processor or shipper may not process or ship
22 wild blueberries until the certification has been issued.

23 **2. Violation; failure to obtain certification.** The failure to obtain certification
24 under subsection 1 is a civil violation punishable by a fine of not more than \$5,000.

25 **3. Discretionary suspension or revocation.** The assessor may suspend or revoke
26 certification for:

27 A. Failure to pay the tax imposed by section 4303;

28 B. Filing false or fraudulent reports or returns; or

29 C. Failure to comply with section 4315 or 4316.

30 **4. Mandatory suspension or revocation.** The assessor may suspend or revoke
31 certification of a processor or shipper who is convicted under section 4316, subsection
32 3-A. Any person convicted under section 4316, subsection 3-A whose certification has
33 been suspended may not obtain a new certification from the assessor for 5 years from the
34 date of any such conviction. Any firm, company, partnership, association or corporation
35 who has one or more owners or principal officers who have been convicted or who have
36 been connected with a firm, company, partnership, association or corporation that has

1 been convicted under section 4316, subsection 3-A may not obtain certification from the
2 assessor for 5 years from the date of any such conviction.

3 **5. Certificate not license.** A certificate issued by the assessor pursuant to this
4 section is not a license within the meaning of that term in the Maine Administrative
5 Procedure Act.

6 **Sec. 4. 36 MRSA §4314, sub-§1**, as amended by PL 1997, c. 511, §22, is further
7 amended to read:

8 **1. Possession or removal unlawful.** It is unlawful for a person to harvest, pick,
9 rake, possess or remove wild blueberries from the land of an owner without first securing
10 written permission from the owner or the owner's authorized agent. This section does not
11 apply to members of an organized crew, if the crew leader has first secured the written
12 permission of the owner. The written permission must identify the land by reference to
13 tax map, lot number and town. A person authorized to make inspections under this
14 chapter may require a person on the land of an owner who has possession of wild
15 blueberries or is found harvesting, raking, picking or removing wild blueberries to show a
16 current written ~~permit~~ permission. Violation of this subsection is a strict liability crime as
17 defined in Title 17-A, section 34, subsection 4-A.

18 **Sec. 5. 36 MRSA §4314, sub-§3**, as enacted by PL 1989, c. 214, §2, is repealed
19 and the following enacted in its place:

20 **3. Violation; first offense.** A person who violates subsection 1 commits a Class E
21 crime.

22 **Sec. 6. 36 MRSA §4314, sub-§4** is enacted to read:

23 **4. Violation; subsequent offenses.** A person who violates subsection 1 when the
24 person has a prior conviction for violation of subsection 1 within the prior 5 years
25 commits a Class C crime. Title 17-A, section 9-A governs the use of prior convictions
26 when determining a sentence.

27 **Sec. 7. 36 MRSA §4315**, as amended by PL 2003, c. 452, Pt. U, §§6 to 8 and
28 affected by Pt. X, §2, is further amended to read:

29 **§4315. Transportation of wild blueberries**

30 **1. Transportation of wild blueberries without permit.** A person may not transport
31 wild blueberries in quantities exceeding 25 pounds without first obtaining a transportation
32 permit on an official form to be furnished by the Wild Blueberry Commission of Maine.
33 The Wild Blueberry Commission of Maine shall issue upon request ~~official~~ uniquely
34 numbered transportation permit forms to ~~shippers and processors certified under section~~
35 ~~4305~~ owners. ~~Shippers and processors~~ Owners may issue the transportation permits to
36 ~~owners or owner's transportation agents with written authorization from owners~~ first
37 haulers or shippers who transport wild blueberries directly from the field from which the
38 wild blueberries were harvested. Each transportation permit issued ~~must bear a different~~
39 number and ~~expire~~ automatically expires at the end of September in the calendar year in

1 which it was issued. This subsection does not apply to wild blueberries that have been
2 received by a certified shipper or processor and have been weighed, logged into a
3 permanent record-keeping system and reloaded onto a vehicle for shipping under a bill of
4 lading.

5 **1-A. Records of permits; confidentiality.** When a ~~shipper or processor~~ an owner
6 issues a transportation permit, the ~~shipper or processor~~ owner shall ~~immediately~~ send a
7 copy to the Wild Blueberry Commission of Maine within 3 business days of the date of
8 issuance. The commission shall keep a permanent record of all transportation permits
9 issued. The commission shall establish the form and content of transportation permits
10 and establish the record-keeping requirements of for the commission, shippers and
11 processors. Notwithstanding any provision of Title 1, chapter 13, subchapter 1 to the
12 contrary, records pertaining to transportation permits required to be kept by the Wild
13 Blueberry Commission of Maine under this section are confidential to the extent
14 necessary to preserve the identity of parties to individual business transactions. The
15 confidential status does not apply when records kept by the Wild Blueberry Commi sion
16 of Maine are needed as evidence in a proceeding to enforce ~~a provision~~ the provisions of
17 ~~section 4314~~ or this section chapter or in a prosecution for a violation of any other
18 criminal law.

19 **2. Permits subject to forgery laws.** Every permit specified under this section is
20 deemed to be a written instrument subject to the laws of forgery.

21 **3. Violation.** The following penalties apply to violations of this section.

22 A. A person who transports wild blueberries in violation of this section commits a
23 ~~Class E crime. Violation of this paragraph is a strict liability crime as defined in Title~~
24 ~~17-A, section 34, subsection 4-A.~~

25 (1) A Class E crime if the value of the wild blueberries being transported was
26 \$100 or less;

27 (2) A Class D crime if the value of the wild blueberries being transported was
28 more than \$100 but not more than \$500;

29 (3) A Class C crime if the value of the wild blueberries being transported was
30 more than \$500 but not more than \$5,000; and

31 (4) A Class B crime if the value of the wild blueberries being transported was
32 more than \$5,000.

33 Violation of this paragraph is a strict liability crime as defined in Title 17-A, section
34 34, subsection 4-A.

35 B. A person who violates any other provision of this section commits a civil
36 violation for which a fine of not more than ~~\$500~~ \$1,000 may be adjudged.

37 **4. Exceptions.** A person is not guilty of transporting wild blueberries without a
38 transportation permit if:

39 A. The person is transporting wild blueberries that were not harvested in this State;
40 or

1 B. That person purchased the wild blueberries at a store, farm stand, produce
2 market or other retail outlet; or

3 C. That person is an owner transporting less than 100 pounds of wild blueberries
4 harvested from the owner's own land to the owner's residence for personal use.

5 **Sec. 8. 36 MRSA §4316**, as amended by PL 1997, c. 511, §24, is further amended
6 to read:

7 **§4316. Receivers of wild blueberries**

8 **1. Record keeping required.** A person who receives wild blueberries shall keep a
9 permanent record of each lot or load of wild blueberries received. The record must
10 include the name of the driver of the vehicle used to deliver the wild blueberries, the date
11 of delivery, the delivery point, ~~the number of the transportation permit~~ a copy of the
12 transportation permit, the driver's license number and the total pounds of wild blueberries
13 delivered.

14 **2. Inspection of permit required.** It is unlawful for a person to receive or accept
15 delivery of wild blueberries in lots of greater than 5 pounds without first inspecting the
16 transportation permit of the driver of the vehicle used to deliver the wild blueberries and
17 ~~recording the transportation permit number~~ creating a permanent record in accordance
18 with subsection 1.

19 **3. Violation; civil.** The failure to keep the permanent records of wild blueberries
20 received as required in this section, failure to inspect the transportation permit of a driver
21 of a vehicle used to deliver wild blueberries or any other violation of this section is a civil
22 violation punishable by a fine of not more than ~~\$1,000~~ \$5,000 for a first-time violation
23 and punishable by a fine of not more than \$10,000 when the person is found to have
24 committed a prior civil violation of this section within the prior 5 years.

25 **3-A. Violation; criminal.** A person who violates this section when the person is
26 found to have committed 2 prior civil violations of this section commits a Class C crime.
27 Title 17-A, section 9-A governs the use of prior convictions when determining a
28 sentence.

29 **3-B. Strict liability crime.** Violation of this section is a strict liability crime as
30 defined in Title 17-A, section 34, subsection 4-A.

31 **4. Audits.** The Wild Blueberry Commission of Maine may request the Department
32 of Agriculture, Food and Rural Resources to conduct audits of the records of receivers for
33 the purpose of ascertaining compliance with this section. The commissioner, or a duly
34 authorized agent, has free access, during normal business hours, to all records required to
35 be kept by receivers pursuant to this section and also to receivers' accounts payable,
36 accounts receivable, records of inventories, actual inventories, records of shipments and
37 such other business records as are needed to ascertain compliance with this section. Any
38 documents inspected or taken by the department in furtherance of the audit functions or
39 any other information collected by the department pursuant to the audit must be kept
40 confidential notwithstanding any provision to the contrary contained in Title 1, chapter
41 13, subchapter 1. This confidential status does not apply to any documents, records or

1 information that is needed as evidence in any civil or criminal proceeding to enforce any
2 law under this chapter or any other criminal law.

3

SUMMARY

4 This bill increases the penalties for violation of the laws regarding transportation and
5 receipt of wild blueberries. The bill also clarifies the law regarding issuance of permits
6 for transportation of wild blueberries.