

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION
December 3, 1986 to June 30, 1987
Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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PUBLIC LAWS

OF THE

STATE OF MAINE

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- (1) The land base currently used or suitable for agricultural production, its nature and extent, use and ownership;
- (2) The market, supply and service infrastructure serving the area;
- (3) The availability and cost of production inputs in the area;
- (4) The local demand for agricultural goods produced in the area; and
- (5) The needs of the agricultural sector in the area perceived to be critical to maintaining or enhancing its economic strength.

C. The department shall compile and analyze information received pursuant to paragraph B and shall, after consultation with local lead agencies, propose redirection of existing programs and implementation of new programs as appropriate; and

3. Funds. Establish by rule provisions for the expenditure of funds authorized for the purposes of this chapter.

Sec. 3. 7 MRSA §315, as enacted by PL 1985, c. 482, §2, is repealed and the following enacted in its place:

§315. Implementation

1. State implementation. Within one year following completion of a regional assessment, the commissioner shall consider implementation of appropriate state programs to respond to regional needs identified in the assessment. In determining whether and when to initiate implementation of the programs, the commissioner shall consider the effect of implementation on agriculture as a whole, on agriculture in other parts of the State and on existing departmental programs.

2. Local implementation grant program. The commissioner shall, from funds appropriated for this purpose, establish a program to provide funds to local lead agencies which have satisfactorily completed a local area assessment as defined in section 314 to carry out activities which address needs identified in that local area assessment. The commissioner shall, no later than August 1st each year, provide notice of the availability of funds to support local implementation efforts and a schedule for accepting applications for these funds. Activities chosen to receive state support shall be selected by the commissioner with the advice of the Agriculture Viability Advisory Committee. The criteria for selection shall be established by rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, and shall require, at a minimum, that proposed activities:

A. Address particular local needs identified in the local area assessment;

B. Demonstrate the potential for a significant improvement to agricultural viability of the region in proportion to the public funds requested; and

C. Reflect coordination with other public or private agencies in order to take advantage of other resources available to support the proposed activities.

Sec. 4. Effective date. Section 1 of the Act shall take effect June 30, 1991.

Effective September 29, 1987, unless otherwise indicated.

CHAPTER 425

H.P. 925 — L.D. 1237

AN ACT to Change the Lime Laws.

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

Sec. 1. 7 MRSA c. 103, sub-c. V-A is enacted to read:

SUBCHAPTER V-A

AGRICULTURAL LIMING MATERIALS

§761. Title

This subchapter shall be known and may be cited as the "Maine Agricultural Liming Materials Act."

§762. Definitions

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

1. Agricultural liming materials. "Agricultural liming material" means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity.

2. Brand. "Brand" means the term, designation, trademark, product name or other specific designation under which an individual agricultural liming material is offered for sale.

3. Bulk. "Bulk" means a nonpackaged form.

4. Burnt lime. "Burnt lime" means a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

5. Calcium carbonate equivalent. "Calcium carbonate equivalent" means the acid neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

6. Commissioner. "Commissioner" means the Commissioner of Agricultural, Food and Rural Resources.

7. Distribute; distributor. "Distribute" means to offer for sale, sell, barter or otherwise supply agricultural liming materials. The term "distributor" means any person who is engaged in the business of distributing agricultural liming materials.

8. Fineness. "Fineness" means the percentage by weight of the material which will pass federal standard sieves of specified sizes. In promulgating rules relating to fineness, the commissioner shall be guided by recommendations established by the American Society for Testing Materials.

9. High magnesium. "High magnesium" means lime designated as high-mag or dolomitic which must contain at least 5% magnesium.

10. Hydrated lime. "Hydrated lime" means a material, made from burnt lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and magnesium hydroxide.

11. Industrial by-product. "Industrial by-product" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

12. Label. "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

13. Limestone. "Limestone" means a material capable of neutralizing soil acidity, consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate.

14. Marl. "Marl" means a granular or loosely consolidated loam composed largely of clays, sea shell fragments and carbonates of calcium and magnesium.

15. Percent or percentage. "Percent" or "percentage" means by weight.

16. Person. "Person" means individual, partnership, association, firm or corporation.

17. Ton. "Ton" means a net weight of 2,000 pounds avoirdupois or metric weight, if and when appropriate and in accordance with rules.

18. Weight. "Weight" means the weight of undried material as offered for sale.

§763. Labeling

1. Contents of label. Agricultural liming materials distributed in the State shall have affixed to each package in a conspicuous manner on the outside of the pack-

age, a plainly printed, stamped or otherwise marked label, tag or statement or, in the case of bulk sales, a delivery slip setting forth at least the following information:

- A. The name and principal office address of the manufacturer or distributor;
- B. The brand or trade name of the material;
- C. The identification of the type of agricultural liming material according to section 762;
- D. The net weight of the agricultural liming material;
- E. A statement expressing minimum total neutralizing value stated as calcium carbonate equivalence and the minimum calcium carbonate equivalence derived from magnesium sources; and
- F. The minimum percent of the agricultural liming material by weight passing through federal standard sieves as prescribed by rules adopted by the commissioner.

2. False or misleading information prohibited. No information or statement may appear on any package, label, delivery slip or advertising matter which is false or misleading relative to the quality, analysis, type or composition of the agricultural liming material.

3. Adulterated material. In the case of any material which has been adulterated subsequent to packaging, labeling or loading and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of the adulteration.

4. Posting of statement. At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the label required by this section for each brand and type of agricultural liming material sold in bulk.

5. Rule concerning calcium and magnesium content. When the commissioner finds, after a public hearing held in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, that the requirement for expressing the calcium and magnesium in elemental form will not impose an economic hardship on distributors and users of agricultural liming materials by reason of conflicting labeling requirements among the states, he may require that the minimum percentage of calcium carbonate and magnesium carbonate be expressed in the following form:

| | | |
|----------------------|-------|---------|
| Total calcium (Ca) | | percent |
| Total magnesium (Mg) | | percent |

The effective date of the rule shall be not less than 6 months following the issuance of the rule and, for a peri-

od of 2 years following the effective date of the rule, the equivalent of calcium and magnesium may also be shown in the form of calcium carbonate and magnesium carbonate.

§764. Prohibited acts

No person may sell or offer for sale any agricultural liming material in this State unless it complies with this subchapter and rules adopted under this subchapter. No person may sell or offer for sale any agricultural liming material in this State containing materials that are or will be deleterious to plant or animal life, when the agricultural liming material is applied at rates recommended by a soils testing laboratory.

§765. Registration

1. Registration required; fee. Each separately identified agricultural liming product shall be registered before being offered for sale, sold or distributed in the State. The application for registration shall be submitted to the commissioner on forms furnished or approved by the commissioner and shall be accompanied by a fee of \$50. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31st of each year.

2. Fees; nonlapsing fund. The commissioner shall collect all fees under this subchapter and deposit them with the Treasurer of State. These funds shall be appropriated for carrying out this subchapter, including the cost of inspection, sampling and analysis. These funds shall not lapse, but shall remain in a carry-over account.

3. Registration not required if already registered. A distributor shall not be required to register any brand of agricultural liming material which is already registered under this subchapter by another person, provided that the label does not differ in any respect.

§766. Report of tonnage

1. By registrants. On or before September 1st in each year each registrant shall file with the commissioner, on forms prescribed by him, the number of tons of each agricultural liming material sold during the 12 months preceding July 1st of the current year.

2. Commissioner's report. The commissioner may publish and distribute annually, to each agricultural liming material registrant and other interested persons, a composite report showing the tons of agricultural liming material sold in the State.

§767. Inspection; sampling; analysis

1. Commissioner shall inspect, analyze, test. The commissioner, or his authorized agent, shall sample, inspect, analyze and test the agricultural liming materials distributed within this State to determine whether the agricultural liming materials are in compliance with this

subchapter. The commissioner, individually or through his agent, may enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming materials subject to this subchapter and rules adopted under this subchapter and to the records relating to their distribution.

2. Methods of analysis and sampling. The methods of analysis and sampling shall be those approved by the commissioner and shall be guided by the Association of Official Analytical Chemists procedures.

3. Adulterated or misbranded materials. When the inspection and analysis of an official sample indicate an agricultural liming material has been adulterated or misbranded, the results of analysis shall be forwarded by the commissioner to the registrant and to the distributor of the sample. If the registrant or distributor, within 30 days of notification, requests a portion of the test sample then the commissioner shall furnish, within 30 days of this request, a portion of the sample to the registrant or distributor who made the request.

§768. Stop sale orders

1. Issuance of order. The commissioner may issue a written "stop sale, use or removal" order to the owner or custodian of any lot of agricultural liming materials when the commissioner determines that a violation of this subchapter has taken place. The order must include a notice that the owner or custodian may request a review of the determination of the commissioner at a hearing by filing a written request with the commissioner.

2. Hearing. Within 10 days of receipt of a request for a hearing under subsection 1, the commissioner shall hold a hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. Upon the hearing, the commissioner shall either rescind the order or, for good cause shown, continue the order.

3. Release of materials. When the requirements of this subchapter have been met and all costs and expenses incurred in connection with the withdrawal have been paid, the commissioner shall release the agricultural liming materials held under this section by terminating the "stop sale, use or removal" order and issuing a release order. The issuance of the release order shall not be considered licensing or an adjudicatory proceeding, as defined by the Maine Administrative Procedure Act, Title 5, chapter 375.

§769. Forfeitures for violations

Any person, firm or corporation violating any of the provisions of this subchapter or any rule promulgated under this subchapter commits a civil violation for which a fine of not more than \$100 for the first violation and not more than \$200 for each subsequent violation may be adjudged. Nothing in this subchapter may be construed as requiring the commissioner to report for suit

or for the institution of seizure proceedings minor violations of this subchapter when he believed that the public interests would have been best served by a suitable notice of warning in writing.

§770. Rules for administration

The commissioner after reasonable notice and hearing may promulgate and enforce rules for the administration of this subchapter, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, and grant exemptions from specific requirements of this subchapter as, from time to time, may be required.

Sec. 2. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

| | 1987-88 | 1988-89 |
|---|---------|---------|
| <u>AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF</u> | | |
| Bureau of Public Services | | |
| All Other | \$1,000 | \$1,000 |
| Provides funds for increased sampling and testing of lime products. | | |

Sec. 3. Effective date. This subchapter shall take effect January 1, 1988.

Effective January 1, 1988.

CHAPTER 426

H.P. 1156 — L.D. 1571

AN ACT Relating to the Purchase of Alcoholic Beverages by Minors.

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

28-A MRSA §2051, sub-§2, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

2. Violation. Any minor who violates this section commits a civil violation for which a forfeiture shall be adjudged of not less than \$100 ~~or nor~~ more than \$300 for the first offense; not less than \$200 ~~or nor~~ more than \$500 for the 2nd offense, none of which may be suspended, except as provided in paragraph B; and \$500 for the 3rd and subsequent offenses, none of which may be suspended, except as provided in paragraph B.

A. When a person is adjudged to have committed his first offense under this section, the judge shall inform that person that the forfeitures for the 2nd and subsequent offenses are mandatory and cannot be suspended, except as provided in paragraph B. Failure to inform the first offender that subsequent forfeitures are mandatory is not a ground for suspension of any subsequent forfeiture.

B. The judge, as an alternative to or in addition to the civil forfeitures required by this subsection, may assign the minor to perform specified work for the benefit of the State, the municipality or other public entity or charitable institution.

Effective September 29, 1987.

CHAPTER 427

H.P. 682 — L.D. 923

AN ACT to Amend the Maine Tort Claims Act.

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

Sec. 1. 14 MRSA §8111, sub-§1, ¶¶B and C, as enacted by PL 1977, c. 2, §2, are amended to read:

B. The undertaking, or failure to undertake, any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial; ~~or~~

C. The performance or failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused; and whether or not the statute, charter, ordinance, order, resolution, regulation or resolve under which the discretionary function or duty is performed is valid; or

Sec. 2. 14 MRSA §8111, sub-§1, ¶D is enacted to read:

D. An intentional act or omission within the course and scope of their employment and for which the governmental entity is not liable; provided that such immunity shall not exist in any case in which an employee's actions are found to have been in bad faith.

Sec. 3. 14 MRSA §8112, sub-§1, as repealed and replaced by PL 1977, c. 578, §4, is repealed and the following enacted in its place:

1. When governmental entity is not liable. A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against a claim which arises out of an act or omission occurring within the course or scope of his employment and for which the governmental entity is not liable.

If the defense of its employee will otherwise create a conflict of interest between the governmental entity and the employee, the governmental entity shall be liable for reasonable fees for the employee's attorney and for his court costs, except in the event that the employee is determined to be criminally liable for the acts or omissions in question.