

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

of Harbor Island, Swan's Island; thence northerly to Quarry Wharf, Minturn, Swan's Island.

Sec. 10. 12 MRSA §6954-A, sub-§1-A is enacted to read:

1-A. Scalloping permitted by rule. The commissioner may adopt and amend rules permitting the taking of scallops in the Frenchboro area, as defined in subsection 1, except that the rules may not permit the use of drags more than 30 inches wide and may not permit the use of drag ropes more than 3/8 inch in diameter.

Sec. 11. 12 MRSA §7606, sub-§3, as enacted by PL 1991, c. 591, Pt. T, §20, is repealed.

Sec. 12. 12 MRSA §7792, sub-§6, as enacted by PL 1991, c. 301, §3, is repealed.

Sec. 13. 22 MRSA §2154, sub-§4-A, as amended by PL 1981, c. 705, Pt. C, §3, is further amended to read:

4-A. Food establishment. "Food establishment" means a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, held for introduction into commerce or sold. Eating establishments, as defined in section 2491, subsection 7, fish and shellfish processing establishments inspected under Title 12, section 4682, 6101, 6102 or 6856, storage facilities for one kind of native produce, such as apple warehouses, potato warehouses or carrot warehouses, and establishments, such as farm stands primarily selling fresh produce, not including dairy and meat products, are not considered food establishments required to be licensed under section 2167.

Sec. 14. 32 MRSA §4168, sub-§§4 and 5, as enacted by PL 1991, c. 446, Pt. C, §3, are amended to read:

4. Labeling. Sardines packed in accordance with rules adopted under this section may be plainly and conspicuously marked "Maine Sardines." Except as provided in section 4619 4169, sardines packed in a manner inconsistent with rules adopted under this section may not be sold for consumption in the United States unless each can and case is plainly and conspicuously marked with the word "herring" and the word "sardine" does not appear.

5. Substandard grade. Except as provided in section 4619 4169, sardines, kippers and steaks that are officially designated as substandard grade, for which a certificate is issued, may not be sold for consumption in the United States unless each can in the lot has the words "Substandard Grade, Good Food - Not High Quality" so placed as to be easily seen when the name of the product or pictorial representation thereof is viewed and appear conspicuously enough to be seen under ordinary condi-

tions of purchase. The words "Substandard Grade, Good Food - Not High Quality" must be printed in 2 lines across the cover of all cans in letters not less than 1/8 inch in height and be enclosed in lines that are not less than 1/32 inch in width. This wording must be printed on all wrappers, labels, cartons or other outer coverings of the cans with a permanent type of indelible ink or by means of other approved procedure. The words "Substandard Grade" must appear in letters not less than one inch high on both ends of the shipping container.

Sec. 15. Resolve 1991, c. 39, §1, first 2 sentences are amended to read:

That, on or before May 15, 1994, the Department of Marine Resources on behalf of the State, may convey to the Bigelow Laboratory for Ocean Sciences a reasonable subdivision of land and buildings, including the main research building and associated maintenance building with no more than 2 acres of land. The transfer must be completed on or before May 15, 1994 and must be on equitable terms to benefit the people of the State as provided in section 2.

Sec. 16. Application. A municipal shellfish conservation ordinance adopted prior to the effective date of this Act that is not consistent with the Maine Revised Statutes, Title 12, section 6671, subsection 3-A, paragraph B, as amended in this Act, may remain in effect until July 1, 1993 but is void after that date unless modified or amended to be consistent with Title 12, section 6671, subsection 3-A, paragraph B.

See title page for effective date.

CHAPTER 785

H.P. 1498 - L.D. 2110

An Act to Revise the Maine Horticultural Laws

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

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-A, 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.

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

4. 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.

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

6. Plant pest. "Plant pest" means any insect, mite, nematode, fungus, virus, bacteria, slug, snail or other 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.

§2212. Appointment of State Horticulturist

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

§2213. Inspections

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

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

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

B. A person may not offer for sale dead nursery stock or stock stressed by drying, excessive heat, excessive cold or 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.

2. Inspection of orchards, fields and gardens. The State Horticulturist or an assistant may inspect any orchard, field, garden or roadside in public or private grounds if there is reasonable cause to believe the area is infested with a plant pest that may be a threat to plants belonging to other property owners or to the health or safety of the general public. The State Horticulturist, after notice and opportunity for a hearing as provided in the Maine Administrative Procedure Act, may order the owner, occupant or person in charge to take any necessary action including the proper treatment or destruction of 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.

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

§2214. Shipments certified

Nursery stock shipped into this State from any other state, province or country must bear a certificate

on each package stating that the contents were inspected by an authorized inspecting officer and that the contents appear to be free from plant pests. The State Horticulturist or an assistant may inspect, at the point of destination, all nursery stock coming into the State. If that nursery stock is infested with any plant pests, the State Horticulturist, after notice and opportunity for a hearing as provided in the Maine Administrative Procedure Act, may order the stock destroyed or returned to the consignor at the consignor's expense.

§2215. Transportation of uninspected stock

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

§2216. Violations

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

§2217. Powers and rules

The commissioner may adopt rules to implement this chapter.

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

§1901. License required; fee; violations

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

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

A. A greenhouse;

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.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1992-93

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Agricultural Production

Positions	(1.0)
Personal Services	\$32,000
All Other	5,790

Provides funds for a full-time Assistant Horticulturist position and related expenses.

DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES TOTAL

\$37,790

Sec. 7. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1992-93

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Agriculture - Plant Industry

All Other	\$2,384
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Provides funds for the inspection of cut Christmas trees, containers, seeds and other nonnursery stock materials.

See title page for effective date.