

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

2005 only if the referendum submitted pursuant to section 3 of this Act is approved pursuant to section 3.

See title page for effective date, unless otherwise indicated.

## CHAPTER 511

H.P. 1169 - L.D. 1646

### An Act to Increase the Effectiveness of the Maine Blueberry Commission

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the growing and processing of wild blueberries is an important industry of this State; and

**Whereas,** the Maine Blueberry Commission will operate more efficiently and provide enhanced services as a public instrumentality; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 5 MRSA §12004-H, sub-§13,** as enacted by PL 1989, c. 503, Pt. A, §22, is repealed.

**Sec. 2. 5 MRSA §12004-H, sub-§13-A** is enacted to read:

<u>13-A. Wild</u>	<u>Expenses</u>	<u>36 MRSA</u>
<u>Blueberry Commission</u>	<u>Only</u>	<u>§4312-C</u>
<u>of Maine</u>		

**Sec. 3. 36 MRSA §4301,** as amended by PL 1983, c. 836, §1, is further amended to read:

#### §4301. Purpose

The production and marketing of wild blueberries is one of the most important agricultural industries of the State, and this chapter is enacted into law to conserve and promote the prosperity and welfare of this State and of the wild blueberry industry of this State by fostering research and extension programs and, by ~~encouraging~~ supporting the development of ~~expanded market opportunities and other~~ promotional opportunities and other activities related to the wild blueberry industry.

**Sec. 4. 36 MRSA §4302, sub-§1** is repealed.

**Sec. 5. 36 MRSA §4302, sub-§1-A,** as enacted by PL 1983, c. 836, §2, is amended to read:

**1-A. Grower.** "Grower" means ~~any~~ a person, firm, partnership, association or corporation engaged in the growing ~~or selling~~ of wild blueberries and ~~which that~~ that is not a "processor" as defined in subsection 2.

**Sec. 6. 36 MRSA §4302, sub-§§1-C and 1-D,** as enacted by PL 1989, c. 214, §1, are amended to read:

**1-C. Organized crew.** "Organized crew" means a group of people working together under the supervision of a crew leader to harvest, pick, rake, possess or remove wild blueberries from the land of an owner.

**1-D. Owner.** "Owner" includes a landowner or leaseholder of land on which wild blueberries are grown and harvested for profit, or the landowner's or leaseholder's authorized agent, and includes a receiver of wild blueberries grown in Canada and purchased from Canadian sellers.

**Sec. 7. 36 MRSA §4302, sub-§2,** as amended by PL 1989, c. 29, §1, is further amended to read:

**2. Processor.** "Processor" means ~~any~~ a person, firm, partnership, association or corporation engaged in the fresh packing, canning, freezing or dehydrating of wild blueberries whether as owner, agent or otherwise.

**Sec. 8. 36 MRSA §4302, sub-§§3 and 4** are amended to read:

**3. Seller.** "Seller" ~~shall mean any~~ means a person, firm, partnership, association or corporation offering fresh wild blueberries for sale, either to themselves or to others.

**4. Shipper.** "Shipper" ~~shall mean any~~ means a person, firm, partnership, association or corporation engaged in the shipping, transporting, storing, selling or otherwise handling of wild blueberries either in processed form or as fresh fruit, whether as owner, agent or otherwise.

**Sec. 9. 36 MRSA §4302, sub-§5,** as enacted by PL 1989, c. 214, §1, is amended to read:

**5. Transportation permit.** "Transportation permit" means an official permit on forms duly adopted and furnished by the Maine Wild Blueberry Commission of Maine to owners.

**Sec. 10. 36 MRSA §4302, sub-§6** is enacted to read:

**6. Wild blueberries.** "Wild blueberries" means all lowbush blueberries grown, purchased, sold or handled for commercial purposes in this State.

**Sec. 11. 36 MRSA §4303**, as amended by PL 1989, c. 29, §2, is further amended to read:

#### **§4303. Rate of tax**

There is levied and imposed a tax at the rate of 1/2¢ per pound of fresh fruit on all fresh wild blueberries grown, purchased, sold, handled or processed in this State. The tax ~~shall be~~ is computed on a fresh fruit basis, regardless of how the wild blueberries are processed.

**Sec. 12. 36 MRSA §4303-A**, as amended by PL 1989, c. 29, §3, is further amended to read:

#### **§4303-A. Additional tax**

There is levied and imposed an additional tax at the rate of 1/2¢ per pound of fresh fruit on all fresh wild blueberries grown, purchased, sold, handled or processed in this State. The tax ~~shall be~~ is computed on a fresh fruit basis, regardless of how the berries are processed, and ~~shall may not be neither~~ deducted from the purchase price ~~nor or~~ collected from the seller under section 4306.

**Sec. 13. 36 MRSA §4304**, as amended by PL 1971, c. 425, §2, is further amended to read:

#### **§4304. Due date**

The tax imposed by section 4303 and the additional tax imposed by section 4303-A ~~shall be~~ are due upon any particular lot or quantity of wild blueberries under section 4307.

**Sec. 14. 36 MRSA §4305**, as amended by PL 1995, c. 639, §14, is further amended to read:

#### **§4305. Certification**

Every processor or shipper of wild blueberries shall obtain certification from the State Tax Assessor annually before processing or shipping wild blueberries. The assessor shall provide the applications for the certification, which must contain the name under which the processor or shipper is transacting business in the State, the place or places of business, the names and addresses of the persons constituting a firm or partnership and, if a corporation, the corporate name and names and addresses of its principal officers and agents in the State. A processor or shipper may not process or ship wild blueberries until the certification has been issued. Certification may be suspended or revoked by the assessor for failure to pay the tax imposed by section 4303 or for the filing of false or fraudulent reports or returns. All certification expires each year on June 30th. A certificate issued by the

assessor pursuant to this section is not a license within the meaning of that term in the Maine Administrative Procedure Act.

**Sec. 15. 36 MRSA §4306**, as amended by PL 1983, c. 836, §5, is further amended to read:

#### **§4306. Tax deducted from purchase price**

Each processor or shipper, purchasing wild blueberries and paying or becoming liable to pay the tax imposed by section 4303, shall charge and collect from the seller a tax at the rate of 1/2¢ per pound, to be deducted from the purchase price of all wild blueberries subject to the tax ~~so~~ purchased by ~~such the~~ processor or shipper.

**Sec. 16. 36 MRSA §4307**, as amended by PL 1983, c. 836, §6, is further amended to read:

#### **§4307. Records and reports; payment of tax**

Every processor or shipper shall, on or before November 1st of each year, report to the State Tax Assessor; the quantity of wild blueberries grown, purchased or sold by him that processor or shipper during the current season, on forms furnished by the State Tax Assessor. ~~Said The report shall must contain such further the information pertinent thereto to the purchase or sale as said the State Tax Assessor shall prescribe prescribes.~~ With ~~said the~~ report, each processor or shipper shall forward payment of the tax at the rate of 1¢ per pound upon all wild blueberries ~~so~~ reported as grown, sold or purchased.

**Sec. 17. 36 MRSA §4308**, as amended by PL 1979, c. 731, §19, is further amended to read:

#### **§4308. Inspection**

The State Tax Assessor or ~~his~~ the assessor's duly authorized agents ~~shall~~ have authority to enter any place of business of any processor or shipper or any car, boat, truck or other conveyance in which wild blueberries are to be transported and to inspect any books or records of any processor or shipper, or any premises where wild blueberries are stored, handled, transported or merchandised, for the purpose of determining what wild blueberries are taxable under this chapter or for the purpose of determining the truth or falsity of any statement or return made by any processor or shipper, and ~~he shall have authority to the State Tax Assessor may~~ delegate ~~such that~~ power to the Commissioner of Agriculture, Food and Rural Resources, ~~his or the commissioner's~~ deputies, agents, servants or employees.

**Sec. 18. 36 MRSA §4311-A**, as amended by PL 1985, c. 779, §81, is further amended to read:

#### **§4311-A. Appropriations of money received**

Money received from the tax levied by sections 4303 and 4303-A ~~shall must~~ be appropriated for the following purposes:

**1. Collection and enforcement.** ~~For the collection of the taxes imposed by this law and the enforcement of this chapter. Any funds which accrue to the blueberry tax account and are held by the Treasurer of State shall be invested by him until disbursement is authorized by the Maine Blueberry Commission. The first \$20,000, each year, of income from any investment of blueberry tax funds shall accrue to the General Fund undedicated revenue, any additional amounts shall accrue to the blueberry tax account and shall be appropriated for the same purposes as specified elsewhere in this section. The commission shall pay a sum to the State Tax Assessor representing the cost incurred by the State in collection of the taxes imposed by this chapter and the enforcement of this chapter;~~

**1-A. Transfer, allocation and appropriation.** Money received by the Treasurer of State under this chapter, including all receipts of taxes levied under sections 4303 and 4303-A, must be transferred to the Wild Blueberry Commission of Maine in its capacity as an independent agency on a monthly basis by the 15th of the month following collection and be used for all activities of the commission authorized under this chapter. All money received by the Treasurer of State under this chapter, including all receipts of taxes levied under sections 4303 and 4303-A, must be allocated or appropriated to the commission by the Legislature. Money received by the commission does not lapse and may be invested until expended for activities authorized under this chapter;

**2. Promotion and advertising.** ~~The Maine Wild Blueberry Commission of Maine may implement programs and activities to promote and advertise wild blueberries; and join with any local, state, federal or private agency, department, firm, corporation or association to implement the purposes of this section. At least 25% of the funds collected shall be allocated for these purposes;~~

**3. Research and extension educational programs.** ~~Thirty percent of the funds collected, but not to exceed \$85,000, shall must be dedicated to the University of Maine System for the purpose of supplementing its research and extension programs related to improved methods of growing, harvesting, processing, product development and marketing of wild blueberries. The Maine Wild Blueberry Commission of Maine may allocate additional funds to the University of Maine System or other organizations for research and extension programs as may be appropriate to implement the purposes of this section; and~~

**4. Administration and other activities.** ~~The Maine Blueberry Commission, as authorized under section 4312-B, shall commission may allocate not more than 15% of the funds collected for employment of personnel and expenses incurred necessary for the administration of this chapter and for other activities related to the economic viability of the Maine wild blueberry industry; and~~

**5. Balance of funds.** ~~Any funds remaining over and above the expenses incurred for subsections 1, 2, under subsection 3 and 4 shall do not lapse, but shall be must be carried forward to the same fund and for the same purposes for the next fiscal year.~~

**Sec. 19. 36 MRSA §4312, first ¶,** as amended by PL 1989, c. 503, Pt. B, §166, is further amended to read:

The University of Maine System Wild Blueberry Advisory Committee, as authorized by Title 5, chapter 379, shall be is appointed by the Maine Wild Blueberry Commission of Maine. The committee shall consist consists of 7 members who are active in and representative of the wild blueberry industry. The duty of the committee shall be is to advise and work with the University of Maine System to develop and approve a plan of work and budgets for research and extension programs related to the production and marketing use of wild blueberries.

**Sec. 20. 36 MRSA §4312-B,** as amended by PL 1995, c. 331, §2, is repealed.

**Sec. 21. 36 MRSA §4312-C** is enacted to read:

#### **§4312-C. Wild Blueberry Commission of Maine**

**1. Commission established as a public instrumentality.** The Wild Blueberry Commission of Maine, as established by Title 5, section 12004-H, subsection 13-A and referred to in this section as the "commission," is established as a public body corporate and politic and an incorporated public instrumentality of the State. The exercise of powers conferred by this chapter is held to be the performance of essential government functions.

A. Employees of the commission may not be construed to be state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372.

B. The commission may not be construed to be a state agency for any purpose, including the budget, accounts and control, auditing, purchasing or other provisions of Title 5, Part 4.

C. Notwithstanding paragraphs A and B:

(1) Employees of the commission may be state employees for the purposes of the state retirement provisions of Title 5, Part 20 and the state employee health insurance program under Title 5, chapter 13, subchapter II;

(2) For the purposes of the Maine Tort Claims Act, the commission is a governmental entity and its employees and members are employees as those terms are defined in Title 14, section 8102;

(3) Funds received by the commission pursuant to this chapter must be allocated to the commission by the Legislature in accordance with Title 5, section 1673; and

(4) All meetings and records of the commission are subject to the provisions of Title 1, chapter 13, subchapter I, except that by majority vote of those members present, records and meetings of the commission may be closed to the public when public disclosure of the subject matter of the records or meetings would adversely affect the competitive position of the wild blueberry industry of the State or segments of that industry. The Commissioner of Agriculture, Food and Rural Resources and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over agricultural, conservation and forestry matters have access to all material designated confidential by the commission.

**2. Appointment.** Appointments to the commission are made by the Commissioner of Agriculture, Food and Rural Resources.

**3. Membership.** The commission consists of 8 members who are active in and representative of the wild blueberry industry, appointed by the Commissioner of Agriculture, Food and Rural Resources. Three members must be grower representatives. For the purposes of this section, "grower" means a person, firm, partnership, association or corporation engaged in the growing of wild blueberries and processing less than 1,000,000 pounds of wild blueberries in a calendar year. Five members must be processor representatives who process 1,000,000 pounds or more of wild blueberries in a calendar year.

**4. Term.** Members serve 4-year terms.

**5. Organization.** Members of the commission shall elect annually by majority vote one member of the commission to serve as chair and one member to serve as vice-chair. The commission may appoint by majority vote an executive director who is the

commission's chief administrator and such personnel as the commission considers necessary to administer policies and programs established by the commission. The executive director and other staff serve at the pleasure of the commission. The salaries paid to the executive director and other staff of the commission are fixed by the commission. The executive director and other staff are not subject to the personnel laws of the State.

**6. Compensation of commissioners.** Members of the commission are entitled to compensation in accordance with Title 5, chapter 379.

**7. Function of commission.** It is the responsibility of the commission to utilize and allocate such funds as may be available from the funds collected under section 4307. The commission may make contracts or enter into contracts with any local, state, federal or private agency, department, firm, corporation or association as may be necessary to carry out the purposes of this chapter.

**8. Debt.** A debt or obligation incurred by the commission is not a debt or obligation of the State.

**9. Books and records.** The commission shall keep books, records and accounts of all its activities, which must be open to inspection and audit by the State at all times. An independent certified public accountant shall conduct an annual audit of the financial records of the commission and report the results of the audit to the commission, the Commissioner of Agriculture, Food and Rural Resources, the Treasurer of State and the Legislature.

**10. Funding.** The commission may receive and expend funds from any source, public or private, that it determines necessary to carry out its purposes.

**11. Appropriation and use of money received.** The commission may accept grants or contributions of money or other things of value from any source, public or private. Those grants or other contributions must be held by the commission and used to carry out the purposes of this chapter, subject to any condition under which the grant or contribution was accepted by the commission.

**12. Bylaws.** The commission may adopt bylaws to govern its functions.

**Sec. 22. 36 MRSA §4314, sub-§1,** as enacted by PL 1989, c. 214, §2, is amended to read:

**1. Possession or removal unlawful.** It shall be unlawful for any a person to harvest, pick, rake, possess or remove wild blueberries from the land of an owner without first securing written permission from the owner or the owner's authorized agent. This section shall does not apply to members of an

organized crew, ~~provided if~~ the crew leader has first secured the written permission of the owner. ~~Any~~ A person authorized to make inspections under this chapter may require ~~any~~ a person on the land of an owner who has possession of wild blueberries or is found harvesting, raking, picking or removing wild blueberries to show a current written permit.

**Sec. 23. 36 MRSA §4315**, as amended by PL 1989, c. 859, §1, is further amended to read:

**§4315. Transportation of wild blueberries**

**1. Transportation of wild blueberries without permit.** It is unlawful for ~~any~~ a person to transport wild blueberries in quantities exceeding 25 pounds without first obtaining a transportation permit on an official form to be furnished by the Maine Wild Blueberry Commission of Maine. The Maine Wild Blueberry Commission of Maine shall issue official transportation permit forms to owners who may issue the transportation permits to individuals. Each permit issued must bear a different number and expire at the end of the calendar year. When an owner issues a transportation permit, the owner shall immediately send a copy to the Maine Wild Blueberry Commission of Maine. The commission shall keep a permanent record of all permits issued. The commission may ~~promulgate~~ adopt rules establishing the form and content of transportation permits and governing the means of their issuance and establishing the record-keeping functions of the commission and the owners. Notwithstanding any provision of Title 1, chapter 13, subchapter I to the contrary, records pertaining to transportation permits required to be kept by the Maine Wild Blueberry Commission of Maine under this section are confidential to the extent necessary to preserve the identity of parties to individual business transactions. The confidential status does not apply when records kept by the Maine Wild Blueberry Commission of Maine are needed as evidence in any proceeding to enforce any provision of section 4314 or this section, or in any prosecution for a violation of any other criminal law.

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

**3. Violation.** Any person who transports wild blueberries in violation of this section is guilty of a Class E offense. Any other violation of this section is a civil violation punishable by a fine of not more than \$500.

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

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

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

**Sec. 24. 36 MRSA §4316**, as amended by PL 1989, c. 859, §§2 and 3, is further amended to read:

**§4316. Receivers of wild blueberries**

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

**2. Inspection of permit required.** It ~~shall be~~ is unlawful for ~~any~~ a person to receive or accept delivery of ~~any~~ wild blueberries in lots of greater than 5 pounds without first inspecting the transportation permit of the driver of the vehicle used to deliver the wild blueberries and recording the transportation permit number in accordance with subsection 1 ~~of this section~~.

**3. Violation.** The failure to keep the permanent records of wild blueberries received as required in this section, failure to inspect the transportation permit of a driver of a vehicle used to deliver wild blueberries or any other violation of this section is a civil violation punishable by a fine of not more than \$1,000.

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

**Sec. 25. Transition provisions.** The following provisions apply to the Maine Wild Blueberry Commission on July 1, 1997.

**1. Funds transferred.** All funds held by the State for distribution to the Maine Blueberry Commission pursuant to the Maine Revised Statutes, Title 36, section 4307 must be transferred to the Wild Blueberry Commission of Maine in its capacity as an independent agency.

**2. Personnel transferred.** Employees of the Maine Blueberry Commission must be transferred from state employment to the Wild Blueberry Commission of Maine in its capacity as an independent agency.

**3. Retirement benefits.** Employees of the Wild Blueberry Commission of Maine may continue to be treated as state employees for purposes of rights and benefits under the Maine State Retirement System. The retirement accounts of employees transferred to the commission in its capacity as an independent agency must remain in the state regular plan. New employees may also become members of the Maine State Retirement System under the state regular plan. The commission shall make employer contributions at the state regular plan rate for member employees. Member employees shall make employee contributions at the state regular plan rate.

**4. Health insurance.** Employees of the Wild Blueberry Commission of Maine may continue to be treated as state employees for the purposes of the state employee health insurance program. Commission employees covered by the state employee health insurance program are entitled to the same health benefits as state employees.

**5. Debt or obligation.** A debt or obligation incurred by the Maine Blueberry Commission prior to July 1, 1997 that remains, in whole or in part, payable to any person becomes a debt obligation of the Wild Blueberry Commission of Maine.

**6. Contracts and agreements.** All contracts and agreements with the Maine Blueberry Commission in effect prior to July 1, 1997 remain in effect following the effective date of this Act.

**7. Terms of commission members.** Members of the Maine Blueberry Commission on June 30, 1997 serve as members of the Wild Blueberry Commission of Maine in its capacity as an independent agency until their terms expire.

**8. Accrued fringe benefits.** The accrued fringe benefits of employees transferred to the Wild Blueberry Commission of Maine in its capacity as an independent agency, including vacation and sick leave, health and life insurance and retirement, remain with the transferred employee.

**9. Transfer of property and equipment.** All property and equipment owned by the Maine Blueberry Commission remains the property and equipment of the Wild Blueberry Commission of Maine as an independent agency.

**Sec. 26. Transitional actions.** From the effective date of this Act until July 1, 1997 the executive director of the Maine Blueberry Commission is authorized to sign contracts and take planning measures necessary for the transition of the commission to be an independent agency.

**1. Assistance.** The Department of Administrative and Financial Services shall assist the Maine Blueberry Commission and the commission's executive director with the orderly implementation of transition provisions under this Act.

**Sec. 27. Members of Wild Blueberry Commission of Maine.** Members serving on the Maine Blueberry Commission on the effective date of the Act continue to serve as members on the Wild Blueberry Commission of Maine for the duration of the terms to which they were appointed. Notwithstanding the Maine Revised Statutes, Title 36, section 4312-C, subsection 4, the Commissioner of Agriculture, Food and Rural Resources shall make initial appointments so that 2 members' terms expire each year on August 31st. Appointments made to fill positions that do not expire on August 31st are shortened so that 2 of those appointments expire on August 31st of each year. A vacancy must be filled for the duration of the unexpired term.

**Sec. 28. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
<b>WILD BLUEBERRY COMMISSION OF MAINE</b>		
<b>Blueberry Commission</b>		
Positions	(-1,000)	(-1,000)
Personal Services	(\$76,159)	(\$80,744)
All Other	96,159	100,744
<b>TOTAL</b>	<b>\$20,000</b>	<b>\$20,000</b>
Allocates funds to reflect the commission's new status as a public instrumentality of the State and to reflect a change in the name of the commission.		



**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 12, 1997.

## CHAPTER 512

### H.P. 703 - L.D. 967

#### An Act to Clarify the Laws Relating to Backyard Burning

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

**Sec. 1. 12 MRSA §9321, sub-§1, ¶¶G and H,** as enacted by PL 1979, c. 545, §3, are amended to read:

G. The presence or availability of sufficient force and equipment to control the burning; ~~and~~

H. Experience and capability of the permittee in the safe use and control of the proposed burning; ~~and~~

**Sec. 2. 12 MRSA §9321, sub-§1, ¶I** is enacted to read:

I. In issuing a permit under section 9325, subsection 1, paragraph E, any prior convictions for violating that paragraph or section 9324, subsection 7.

**Sec. 3. 12 MRSA §9321-A, sub-§1,** as enacted by PL 1987, c. 618, §2, is amended to read:

**1. Possession and production of permit in organized territory.** Any person, firm or corporation ~~which that~~ engages in out-of-door burning in any municipality, plantation or village corporation as permitted by this article shall possess the permit at the scene of the burning and shall produce the permit on the demand of authorized persons, including fire chiefs, town forest fire wardens or their designated agents, state forest rangers, municipal code enforcement officers and any law enforcement officer as defined in Title 17-A.

**Sec. 4. 12 MRSA §9324, sub-§6,** as enacted by PL 1983, c. 504, §4, is repealed.

**Sec. 5. 12 MRSA §9324, sub-§7** is enacted to read:

**7. Trash.** Out-of-door burning of highly combustible trash is prohibited where municipal trash collection service is available and will accept those materials. Out-of-door burning of plastics, rubber,

styrofoam, metals, food wastes or chemicals is prohibited in all areas of the State.

For purposes of this subsection, the following terms have the following meanings.

A. "Highly combustible trash" means wooden boxes or other wood material, paper and cardboard.

B. "Municipal trash collection service" means any curbside trash collection service that is operated or contracted for by the municipality or that is required by municipal ordinance.

**Sec. 6. 12 MRSA §9325, sub-§1, ¶E,** as enacted by PL 1991, c. 36, §4, is repealed and the following enacted in its place:

E. Residential out-of-door burning of highly combustible trash as defined in section 9324, subsection 7 in open or enclosed incinerators where municipal trash collection service as defined in section 9324, subsection 7 is not available or will not accept those materials. The incinerator must have been inspected and approved by a municipal fire chief, town forest fire warden or forest ranger using minimum criteria established by the director for safe operation;

**Sec. 7. Department of Environmental Protection to Study Backyard Burning.** The Department of Environmental Protection shall, within its existing budgeted resources, examine the following issues:

1. The extent of backyard burning in the State and a comparison of the extent of and issues involved with backyard burning in urban, suburban and rural areas;

2. The impact of cultural influences and economic incentives on backyard burning;

3. The impact of backyard burning on local air quality and the level of human exposure to pollutants. Existing data may be used to examine these issues;

4. The state solid waste management and recycling infrastructure and its impact on backyard burning, including existing disincentives to recycle or dispose of trash properly;

5. Alternative solid waste management strategies that may reduce backyard burning;

6. Where backyard burning should be prohibited or restricted; and

7. The impact of prohibiting backyard burning on municipalities, including island communities, and on the costs of solid waste management.