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## **An Act To Reduce Wild Blueberry Theft**

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

**Whereas,** the theft of wild blueberries presents a threat to the viability of commercial wild blueberry operations; and

**Whereas,** the harvesting of wild blueberries begins in July in some areas of the State; 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. 36 MRSA §191, sub-§2, ¶II,** as amended by PL 2007, c. 328, §3, is further amended to read:

II. The disclosure to an authorized representative of the Maine Milk Commission of information on the quantity of packaged milk handled in the State and subject to the milk handling fee established in section 4902 and other information obtained by the assessor in the administration of chapter 721; and

**Sec. 2. 36 MRSA §191, sub-§2, ¶JJ,** as enacted by PL 2007, c. 328, §4, is amended to read:

JJ. The disclosure to the State Purchasing Agent of a person's sales tax standing as necessary to enforce Title 5, section 1825-B, subsection 14.; and

**Sec. 3. 36 MRSA §191, sub-§2, ¶KK** is enacted to read:

KK. The disclosure to an authorized representative of the Wild Blueberry Commission of Maine of any information required for or submitted to the assessor in connection with the administration of the tax imposed under chapter 701.

**Sec. 4. 36 MRSA §4302, sub-§1-F** is enacted to read:

**1-F. First hauler.** "First hauler" means a person, firm, partnership, association or corporation engaged in the transportation of wild blueberries from the field where the berries were harvested.

**Sec. 5. 36 MRSA §4305,** as amended by PL 2003, c. 705, §5, is repealed and the following enacted in its place:

**§ 4305. Certification**

**1. Certification required.** A processor or shipper of wild blueberries shall obtain certification from the assessor 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, company 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.

**2. Violation; failure to obtain certification.** A processor or shipper who fails to obtain certification under subsection 1 commits a civil violation for which a fine of not more than \$5,000 may be adjudged.

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

- A. Failure to pay the tax imposed by section 4303 or 4303-A;
- B. Filing false or fraudulent reports or returns; or
- C. Failure to comply with section 4315 or 4316.

**4. Mandatory suspension or revocation.** Upon notification by the Wild Blueberry Commission of Maine, a state agency or a state, county or local law enforcement agency, the assessor shall suspend or revoke certification of a processor or shipper who is convicted under section 4316, subsection 3-A. A person convicted under section 4316, subsection 3-A whose certification has been suspended under this subsection may not obtain a new certification from the assessor for 5 years from the date of the conviction. A firm, company, partnership, association or corporation that has one or more owners, officers or employees who have been convicted under section 4316, subsection 3-A may not obtain certification from the assessor for 5 years from the date of any such conviction. The assessor may determine that an owner, officer or employee has not been convicted under section 4316, subsection 3-A if an applicant for certification submits a notarized statement attesting that none of the applicant's owners, officers or employees has been convicted under section 4316, subsection 3-A in the prior 5 years.

**5. Certificate not license.** 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. 6. 36 MRSA §4314, sub-§1,** as amended by PL 1997, c. 511, §22, is further amended to read:

**1. Possession or removal unlawful.** It is unlawful for 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 does not apply to members of an organized crew, if the crew leader has first secured the written permission of the owner. The written permission must identify the land by reference to tax map, lot number and town, township or plantation or to global positioning coordinates for the area where wild blueberries are managed. A person authorized to make inspections under this chapter may require 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 valid~~ written ~~permit~~ permission. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

**Sec. 7. 36 MRSA §4314, sub-§3**, as enacted by PL 1989, c. 214, §2, is repealed and the following enacted in its place:

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

**Sec. 8. 36 MRSA §4314, sub-§4** is enacted to read:

**4. Violation; subsequent offenses.** A person who violates subsection 1 when the person has 2 prior convictions for violation of subsection 1 commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

**Sec. 9. 36 MRSA §4315**, as amended by PL 2003, c. 452, Pt. U, §§6 to 8 and affected by Pt. X, §2, is further amended to read:

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

**1. Transportation of wild blueberries; permit required.** A person may not transport wild blueberries in quantities exceeding 25 pounds without first obtaining a transportation permit on an official form to be furnished by the Wild Blueberry Commission of Maine. The Wild Blueberry Commission of Maine shall issue upon request ~~official~~ uniquely numbered transportation permit forms to ~~shippers and processors certified under section 4305~~ owners. ~~Shippers and processors may~~ Owners shall issue the transportation permits to ~~owners or owner's transportation agents with written authorization from owners~~ first haulers or shippers who transport wild blueberries directly from the field from which the wild blueberries were harvested. Each transportation permit issued ~~must bear a different number and expire at the end~~ automatically expires on the 30th of September in the calendar year in which it was issued. This subsection does not apply to wild blueberries that have been received by a certified shipper or processor and have been weighed, logged into a permanent record-keeping system and reloaded onto a vehicle for shipping under a bill of lading.

**1-A. Records of permits; confidentiality.** ~~When a shipper or processor~~ an owner issues a transportation permit, the ~~shipper or processor~~ owner shall ~~immediately~~ send a copy to the Wild Blueberry Commission of Maine within 3 business days of the date of issuance. The commission shall keep a permanent record of all transportation permits issued. The commission shall establish the form and content of transportation permits and establish the record-keeping requirements ~~offor~~ the commission; ~~shippers and processors~~ owners. Notwithstanding any provision of Title 1, chapter 13, subchapter 1 to the contrary, records pertaining to transportation permits required to be kept by the 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 Wild Blueberry Commission of Maine are needed as evidence in a proceeding to enforce a ~~provision~~ the provisions of section ~~4314~~ or this section chapter or in a prosecution for a violation of any other criminal law.

**1-B. Restrictions on first haulers.** A first hauler who is not certified as a shipper may not transport berries from the field to any entity other than a shipper or a processor holding a valid certification under section 4305.

**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.** The following penalties apply to violations of this section.

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

(1) A Class E crime; or

(2) A Class D crime if the person has 2 or more prior convictions under this paragraph.

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

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

**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; or

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

**Sec. 10. 36 MRSA §4316**, as amended by PL 1997, c. 511, §24, is further amended to read:

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

**1. Record keeping required.** A ~~person~~shipper or processor who transports or receives wild blueberries shall keep a permanent record of each lot or load of wild blueberries received. The record 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~~a copy of the transportation permit, the driver's license number and the total pounds of wild blueberries delivered.

**2. Inspection of permit required.** It is unlawful for a personshipper or processor to receive or accept delivery of 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~~creating a permanent record in accordance with subsection 1.

**3. Violation; civil.** The failure to keep the permanent records of wild blueberries transported or 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~~\$5,000 for a first-time violation and punishable by a fine of not more than \$10,000 when the person is found to have committed a prior civil violation of this section within the prior 5 years.

**3-A. Violation; criminal.** A shipper or processor who violates this section when the shipper or processor is found to have committed 2 prior civil violations of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

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

**4. Audits.** The Wild Blueberry Commission of Maine may request the Department of Agriculture, Food and Rural Resources to conduct audits of the records of ~~receivers~~shippers or processors 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~~shippers or processors pursuant to this section and also to ~~receivers'~~shippers' or processors' 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 ~~11~~1. 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.

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

Effective April 24, 2008.