

4:8-28 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 4:8-28 et al (Apple and Peach trees--seller responsible for trueness to variety)

LAWS OF: 1985 **CHAPTER:** 418

BILL NO: S2642

Sponsor(s): Haines and others

Date Introduced: January 28, 1985

Committee: Assembly: -----

Senate: Natural Resources and Agriculture

Amended during passage: No

Date of Passage: **Assembly:** December 9, 1985
Senate: June 27, 1985

Date of Approval: January 13, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** No
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

SENATE, No. 2642

STATE OF NEW JERSEY

INTRODUCED JANUARY 28, 1985

By Senators HAINES, EWING, FORAN, CONNORS, ZANE
and HURLEY

Referred to Committee on Natural Resources and Agriculture

AN ACT concerning the sale of apple and peach trees, supplement-
ing chapter 8 of Title 4 of the Revised Statutes, and repealing
sections 4:8-18 to 4:8-27, inclusive, of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Apple tree" means any commercially accepted or advertised
3 variety of *Malus domestica* Borkh budded to a seedling or dwarf-
4 ing rootstock where one graft union is formed or budded to an
5 interstem dwarfing rootstock combination where two graft unions
6 are provided.

7 b. "Commercial grower" means a purchaser of a lot of 100 trees
8 or more who plants them on land qualified for farmland assessment
9 pursuant to the "Farmland Assessment Act of 1964," P. L. 1964,
10 c. 48 (C. 54:4-23.1 et seq.) and is not primarily engaged in the sale
11 or resale of apple or peach trees.

12 c. "Peach tree" means any commercially accepted or advertised
13 variety of *Prunus persica* (L.) batch budded to understock where
14 a draft union is formed or the variety has been directly rooted
15 into soil or rooting medium without the use of an undershoot.

16 d. "Seller" means any person engaged in the business of solicit-
17 ing or negotiating the sale, resale, exchange or shipment of apple
18 or peach trees.

19 e. "Variety" means a subdivision of a kind of apple or peach tree
20 as qualified by date of bloom, flower type, date of ripening, tree

21 growth habit, fruit characteristics, peach leaf glands or other
22 characteristics by which it can be differentiated from other plants
23 of the same kind.

1 2. a. Any seller of apple trees to a commercial grower is liable
2 for the trueness to variety, rootstock, or interstem for a period
3 of eight years following the date of delivery to the grower.

4 b. Any seller of peach trees to a commercial grower is liable
5 for trueness to variety, rootstock, or interstem for a period of
6 four years following the date of delivery to the grower.

7 c. A seller shall not sell one or more lots of apple or peach trees
8 to a commercial grower where 7% or more of the trees do not
9 conform to the variety, rootstock, or interstem stated on a bill of
10 lading, invoice, or any other document provided by the seller to
11 the grower.

1 3. Any commercial grower may bring a civil action in law or
2 equity on the grower's own behalf against a seller for a violation
3 of any provision of this act. The Superior Court has jurisdiction
4 of this action. The court, upon finding a violation of this act, may
5 award costs of litigation, including reasonable attorney and expert
6 witness fees.

7 The court, upon finding a violation of this act, shall award dam-
8 ages to the commercial grower for each tree found of untrue variety
9 at the rate of four times the original cost of the tree. Where the
10 number of untrue trees exceeds 25% of the lot, the court shall award
11 damages at the rate of four times the cost of the entire lot.

1 4. R. S. 4:8-18 to R. S. 4:8-27, inclusive, are repealed.

1 5. This act shall take effect immediately.

STATEMENT

Some 300,000 apple and peach trees are annually planted by New Jersey fruit growers. To bring an orchard into production the estimated cost ranges from \$4,000.00 to \$6,000.00 per acre. Fruit growers select varieties to meet consumer demand and harvest schedules. A fruit grower cannot determine a tree's variety until several years after purchase. For a fruit grower to discover four to eight years following the planting that the trees are not of true variety is costly and time consuming. There have been instances where the entire block has to be removed and replanting established.

The purpose of this bill is to avoid these costly mistakes by holding the seller responsible for trueness to variety.

This bill repeals sections 4:8-18 to 4:18-27, inclusive, of the Revised Statutes. These sections provide for a bonding mechanism to protect growers from untrue varieties of apple, peach, pear, plum and cherry trees. These sections were never enforced and are inadequate to protect commercial growers. Because the growing of plum, pear, and cherry trees is almost nonexistent in New Jersey there was no need to incorporate them into this bill.

SENATE, No. 2642

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 3 of any provision of this act. The Superior Court has jurisdiction
 4 of this action. The court, upon finding a violation of this act, may
 5 award costs of litigation, including reasonable attorney and expert
 6 witness fees.

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 9 at the rate of four times the original cost of the tree. Where the
 10 number of untrue trees exceeds 25% of the lot, the court shall award
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SENATE NATURAL RESOURCES AND AGRICULTURE
COMMITTEE

STATEMENT TO

SENATE, No. 2642

STATE OF NEW JERSEY

DATED: MAY 6, 1985

This bill holds the seller of apple or peach trees to a commercial grower responsible for trueness to variety, and awards damages to the commercial grower for each tree found of untrue variety at the rate of four times the original cost of the tree. If the number of untrue trees exceeded 25% of the lot, damages at the rate of four times the cost of the entire lot would be awarded.

This bill also repeals sections 4:8-18 to 4:18-27, inclusive, of the Revised Statutes. These sections provide for a bonding mechanism to protect growers from untrue varieties of apple, peach, pear, plum and cherry trees. These sections were never enforced and are inadequate to protect commercial growers. Because the growing of plum, pear, and cherry trees is almost nonexistent in New Jersey there was no need to incorporate them into this bill.

The Governor exercised his line-item veto power to reduce the appropriation to \$50 million, noting that the additional \$20 million was intended for a water treatment project which is not included in the Statewide Water Supply Master Plan, a use which is not authorized by the Water Supply Bond Act.

S-2377, sponsored by State Senator Paul J. Contillo, D-Bergen, which would allow a municipality that votes against Sunday shopping in a county where Sunday shopping is approved in the future to submit the question to the voters of the municipality.

S-2642, sponsored by State Senator William C. Haines, R-Burlington, which amends the State Seed Law to provide that sellers of apple and peach trees be held liable for the trueness of variety, root stock or interstem. The period of liability would be eight years from date of delivery for apple trees and four years from date of delivery for peach trees. The requirements reflect the amount of time necessary for a tree to mature to the point where the buyer can determine if the tree is producing as originally represented.

S-2648, sponsored by State Senator Leonard T. Connors, Jr., R-Ocean, which authorizes advance payment of monies by a local unit of government which is participating in a statutorily authorized joint, inter-local or other cooperative activity.

S-2739, sponsored by State Senator C. Louis Bassano, R-Union, which appropriates \$70,000 to Union Township, Union County, to establish a pilot program on police officer stress management and health maintenance.

S-2797, sponsored by State Senator Gerald Cardinale, R-Bergen, which requires municipalities to except from vacation the rights of affected public utilities when municipalities vacate public streets.