

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1685

6  
7 H.P. 1271

House of Representatives, May 24, 1983

8 Submitted by the Department of Agriculture, Food and Rural Resources  
9 pursuant to Joint Rule 24.

10 Referred to the Committee on Agriculture. Sent up for concurrence and  
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Lisnik of Presque Isle.

11 Cosponsors: Senator Carpenter of Aroostook, Speaker Martin of Eagle  
Lake and Senator Emerson of Penobscot.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Stabilize Maine Potato Prices.  
18

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

21 Sec. 1. 7 MRSA c. 103, sub-c. X, Art. 2-A is  
22 enacted to read:

23 ARTICLE 2-A

24 MAINE POTATO PRICES

25 §1008. Purpose

26 The Legislature finds that the potato industry  
27 has a substantial and unique effect on the economy of  
28 the entire State, Aroostook County in particular.  
29 Over the years, the industry has experienced wide  
30 fluctuations in price and price has sometimes not  
31 completely reflected the actual demand for Maine  
32 potatoes. These fluctuations have caused instability

1 in the economy of a large portion of the State. In  
2 seeking to reduce this instability, it is the  
3 Legislature's purpose to supplant destructive price  
4 competition by requiring the commissioner to set a  
5 daily minimum price governing the sale of potatoes by  
6 first handlers. This program will encourage the  
7 orderly marketing of potatoes grown within this State  
8 and reduce economic waste in the marketing of these  
9 potatoes.

10 §1008-A. Definitions

11 As used in this Article, in addition to applica-  
12 ble definitions in section 933, the following terms  
13 have the following meanings.

14 1. Board. "Board" means the Maine Marketing  
15 Advisory Board.

16 2. Commissioner. "Commissioner" means the Com-  
17 missioner of Agricultural, Food and Rural Resources.

18 3. Consumer. "Consumer" means an individual who  
19 purchases potatoes for consumption or use, other than  
20 for resale or for storage resale.

21 4. Daily minimum price. "Daily minimum price"  
22 means the price set by the commissioner pursuant to  
23 section 1008-C, subsection 2, as adjusted by the  
24 applicable differential established consistent with  
25 section 1008-C, subsection 1.

26 5. Dealer. "Dealer" means any person engaged in  
27 the business of buying or selling potatoes in whole-  
28 sale or jobbing quantities in commerce and includes  
29 jobbers, distributors and other wholesalers, and pro-  
30 ducers who buy and resell potatoes grown by others.  
31 The term "dealer" does not include persons buying  
32 potatoes for processing within this State.

33 6. First handler. "First handler" means any  
34 person employed in the business of loading or of  
35 placing table stock potatoes in any type of container  
36 for exposure for sale, provided that first handler  
37 does not means any person loading potatoes in bulk  
38 for delivery to a processor, which delivery shall  
39 occur in this State.

1           7. Load. "Load" means any truck load or rail-  
2           road car load of potatoes or any part thereof.

3           8. Maine potato council. "Maine potato council"  
4           means the nonstock corporation organized and existing  
5           under Title 13, chapter 81, with its principal office  
6           in Presque Isle and whose membership is comprised  
7           exclusively of producers.

8           9. Potatoes. "Potatoes" means all round white  
9           potatoes grown within the State which retain the same  
10           physical form as possessed when harvested. The  
11           effects of the following operations shall not be con-  
12           sidered as changing the physical form possessed by  
13           potatoes when harvested: Washing with or without  
14           chemicals; drying for the removal of surface mois-  
15           ture; precooling, preheating, ventilating,  
16           humidifying or otherwise controlling atmospheric con-  
17           ditions in storage; treating with chemical  
18           formulations for sprout inhibition; and waxing, pack-  
19           aging or otherwise preparing potatoes for marketing  
20           in what is generally considered to be fresh form.

21           10. Retailer. "Retailer" means a person engaged  
22           in the business of buying potatoes in wholesale or  
23           jobbing quantities and reselling those potatoes  
24           primarily to consumers.

25           11. Sale. "Sale" shall include every contract  
26           or agreement purchase, sale, exchange or other dispo-  
27           sition of table stock potatoes for value.

28           12. Table stock potatoes. "Table stock pota-  
29           toes" means all potatoes except those officially cer-  
30           tified and tagged, marked or otherwise appropriately  
31           identified, under the supervision of the official  
32           seed potato certifying agency of the State.

33           13. Wholesale or jobbing quantities. "Wholesale  
34           or jobbing quantities" means aggregate quantities of  
35           potatoes totaling 25 tons (50,000 pounds) or more in  
36           weight purchased or contracted to be purchased in any  
37           calendar month.

38           §1008-B. Maine Marketing Advisory Board

1        1. Board membership. There shall be created an  
2 advisory board to advise the commissioner on potato  
3 marketing issues as provided for in this Article.  
4 This board shall be known as the Maine Marketing  
5 Advisory Board and shall consist of 5 members  
6 appointed by the commissioner, of whom 3 shall be li-  
7 censed first handlers, who are not also licensed  
8 dealers, and 2 shall be licensed dealers. Members  
9 shall each fill a 2-year term, which shall begin on  
10 July 1st, except that within 30 days of the effective  
11 date of this Article the commissioner shall appoint  
12 one licensed first handler and one licensed dealer  
13 who shall serve until June 30, 1984, and he shall  
14 appoint 2 licensed first handlers and one licensed  
15 dealer who shall serve until June 30, 1985.

16        2. Nominations. Each member shall be appointed  
17 by the commissioner from a list of at least 3 nomi-  
18 nees selected as follows.

19        A. For each vacancy in the board, a statewide  
20 organization designated by the commissioner and  
21 representing licensed dealers in the State shall  
22 submit a list of at least 3 nominees at least 30  
23 days before each new term of office begins or  
24 after any vacancy occurs, except that nominations  
25 for initial appointments shall be submitted  
26 within 20 days after the effective date of this  
27 Article.

28        B. For each vacancy on the board, the Maine  
29 Potato Council shall submit a list of at least 3  
30 nominees at least 30 days before each new term of  
31 office begins or after any vacancy occurs, except  
32 nominations for initial appointments shall be  
33 submitted within 20 days after the effective date  
34 of this Article.

35        3. Failure to nominate. If nominations are not  
36 made within the time specified in subsection 2, the  
37 commissioner may, without regard to nominations,  
38 appoint board members.

39        4. Acceptance. Any person selected by the com-  
40 missioner as a board member shall qualify by filing a  
41 written acceptance with the commissioner within 10  
42 days after being notified of that selection.

1       5. Vacancies. To fill any vacancy occasioned by  
2 the failure of any person selected as a board member  
3 to qualify, or in the event of the death, removal,  
4 resignation or disqualification of any qualified  
5 member, a successor for his unexpired term may be se-  
6 lected by the commissioner from nominations made in  
7 the manner specified in subsection 3, or the commis-  
8 sioner may select that board member from previously  
9 unselected nominees on the current nominee list. If  
10 the names of nominees to fill any such vacancy are  
11 not made available to the commissioner within 30 days  
12 after the vacancy occurs, the commissioner may fill  
13 that vacancy without regard to nominations.

14       6. Procedure. Three members of the board shall  
15 be necessary to constitute a quorum, and 3 concurring  
16 votes shall be required to pass any motion or approve  
17 any board action. The board may provide for meeting  
18 by telephone, telegraph or other means of communica-  
19 tion and any vote cast at such a meeting shall be  
20 confirmed promptly in writing.

21       7. Expenses and compensation. No board member  
22 may receive a salary, but each may be entitled to his  
23 actual expenses incurred while engaged in performing  
24 his authorized duties. The commissioner may employ  
25 necessary personnel, fix their compensation and terms  
26 of employment and authorize them to incur such  
27 expenses, as the commissioner may deem necessary and  
28 proper to enable the board properly to perform its  
29 duties as are authorized in this Article.

30       8. Duties of the board. The board shall:

31       A. Prior to the beginning of each marketing  
32 year, study the existing supply of potatoes in  
33 the State and the existing and potential market  
34 for the potatoes and shall recommend to the com-  
35 missioner a pricing strategy for the marketing  
36 year or any month or portion thereof. In devel-  
37 oping this policy, the board shall consider eco-  
38 nomical and marketing information, including the  
39 estimated volume of Maine potatoes; the estimated  
40 volume of potatoes available in other areas; the  
41 past, present and prospective demand for Maine  
42 potatoes of various grades, sizes and varieties;  
43 and conditions under which a daily minimum price

1 might be disruptive to the marketing process.  
2 The board shall advise the commissioner of its  
3 findings along with recommendations for proce-  
4 dures to guide the establishment of a daily mini-  
5 mum price; and

6 B. Recommend to the commissioner a schedule for  
7 establishing premiums and discounts to reflect  
8 differences in quality, container type, trans-  
9 portation cost and such other factors as the  
10 board deems appropriate.

11 §1008-C. Duties of the commissioner

12 The commissioner shall:

13 1. Adoption of guidelines; price differentials;  
14 information. After considering recommendations of  
15 the board and after notice and opportunity for hear-  
16 ing, adopt:

17 A. Guidelines for establishing a daily minimum  
18 price as provided for in subsection 2. These  
19 guidelines shall be designed to assure that table  
20 stock producers receive a price which reflects  
21 the market demand for their potatoes and include,  
22 but not be limited to, consideration of:

23 (1) Prices for potatoes from other areas;

24 (2) Supplies of Maine potatoes of various  
25 varieties and grades;

26 (3) Current and projected prices for Maine  
27 potatoes systematically collected from  
28 sources representing all elements of the  
29 Maine table stock industry;

30 (4) Benefits which will result from estab-  
31 lishing a minimum price; and

32 (5) Other pertinent market factors;

33 B. Price differentials that vary from the mini-  
34 mum price established under subsection 2, to  
35 reflect such factors as quality, container type  
36 and transportation costs. Whenever the commis-

1           sioner has reasonable grounds to believe that the  
2           differentials so established no longer reflect  
3           the market conditions, he may adopt or modify  
4           differentials after notice and opportunity for  
5           hearing has been provided in a manner consistent  
6           with the Maine Administrative Procedure Act,  
7           Title 5, chapter 375; and

8           C. Procedures for disseminating daily minimum  
9           price information to all interested parties;

10          2. Mandatory daily minimum price. Based on the  
11          guidelines established in subsection 1, have the  
12          authority to establish a mandatory daily minimum  
13          price F.O.B., Presque Isle, for United States number  
14          1, size A, 2-inch minimum, round white potatoes  
15          packed in 50-pound containers. Upon request of the  
16          board, the commissioner shall provide to the board  
17          and other interested parties a written explanation of  
18          the basis for the actual daily minimum price as it is  
19          established on any given day;

20          3. Access to information. Ensure that no dealer  
21          or first handler will have access to the information  
22          which is the basis for the daily minimum price prior  
23          to the establishment of that price by the commis-  
24          sioner; and

25          4. Rules. After notice and opportunity for  
26          hearing in a manner consistent with the Maine Admin-  
27          istrative Procedure Act, Title 5, chapter 375, estab-  
28          lish rules to carry out the purposes of this Article.

29          §1008-D. Enforcement of mandatory minimum price

30          1. Sale lower than daily minimum price prohib-  
31          ited. No first handler may sell or offer for sale  
32          table stock potatoes at a price lower than the daily  
33          minimum price to any dealer doing business in the  
34          State. No dealer doing business in the State may  
35          purchase table stock potatoes at a price lower than  
36          the daily minimum price.

37          2. Rebates, refunds or returns. No first  
38          handler may sell and no dealer may purchase table  
39          stock potatoes at a price or for consideration which  
40          involved the payment, allowance or acceptance at any



1 time, of any rebate, refund, secret rebate, secret  
2 refund or similar return, whether in the form of  
3 money or otherwise, which is intended to result in,  
4 or which results in, a price lower than the daily  
5 minimum price.

6 3. Separate violations. Each load of potatoes  
7 sold or offered for sale at a price below the daily  
8 minimum price shall be considered a separate viola-  
9 tion of this section, and each day the offer to sell  
10 continues shall be a separate offense.

11 §1008-E. Contracts exempted

12 1. Exemption. The provisions of section 1008-D  
13 shall not apply to any first handler who sells his  
14 potatoes:

15 A. Pursuant to a written contract entered into  
16 prior to the effective date of this Article; and

17 B. Pursuant to a written contract which requires  
18 shipment or delivery of potatoes after a period  
19 of at least 3 months, provided that the contract  
20 establishes a fixed price for the potatoes.

21 2. Application. This exemption shall only apply  
22 when a signed copy of the contract has been filed  
23 with the commissioner.

24 §1008-F. Budget

25 Each fiscal year, the commissioner shall develop  
26 a budget to provide for the efficient and effective  
27 operation of a program to carry out the purposes of  
28 this Article. This information shall be the basis  
29 for establishing licensing fees authorized under the  
30 provisions of Article 3-A.

31 §1008-G. Personal liability of board member

32 No member or alternate of the board, nor any  
33 employee or agent thereof, may be held personally  
34 responsible, either individually or jointly with  
35 others, in any way whatsoever, to any handler or to  
36 any person for errors in judgment, mistakes or other  
37 acts, either of commission or omission, as such

1 member, alternate or employee, except for acts of  
2 dishonesty.

3 §1008-H. Penalties

4 Any person who violates any provision of this  
5 Article, or rules issued by the commissioner there-  
6 under, shall be subject to a civil penalty, payable  
7 to the commissioner, of not more than \$1,000 for each  
8 violation. Each day, during which any of the viola-  
9 tions referred to in this section continue, shall  
10 constitute a separate offense.

11 Sec. 2. 7 MRSA §1017, sub-§1-A is enacted to  
12 read:

13 1-A. Mandatory nonrenewal. The commissioner or  
14 his duly authorized agent shall refuse to renew a li-  
15 cence for a period of 2 years following a licensee's  
16 3rd conviction for violations of the provisions of  
17 Article 2-A.

18 Sec. 3. 7 MRSA c. 103, sub-c. X, Art. 3-A is  
19 enacted to read:

20 ARTICLE 3-A

21 LICENSING FIRST HANDLERS

22 §1029. Purpose

23 The maintenance of an orderly system for market-  
24 ing potatoes is essential to the survival of the  
25 potato industry. The purpose of this Article is to  
26 require the licensing of first handlers of potatoes  
27 in order to facilitate improvements in the current  
28 market structure. The Legislature finds that the  
29 improvement of the Maine potato industry is of sub-  
30 stantial and unique significance to the economy and  
31 well being of the people of northern Maine and the  
32 State as a whole.

33 §1029-A. Definitions

34 As used in this Article, in addition to the  
35 applicable definitions in Articles 1 to 3, the term

1 "first handler" means any person employed in the  
2 business of loading or of placing table stock pota-  
3 toes in any type of container for exposure for sale;  
4 provided that "first handler" does not mean any  
5 person loading potatoes in bulk for delivery to a  
6 processor, which delivery shall occur in this State.

7 §1029-B. Authority of the commissioner

8 1. Rules. The commissioner shall, in a manner  
9 consistent with the rulemaking provisions of the  
10 Maine Administrative Procedure Act, Title 5, chapter  
11 375, adopt such rules as he considers necessary to  
12 accomplish the purposes of this Article.

13 2. Investigations. The commissioner or his duly  
14 authorized agent may investigate, upon the complaint  
15 of any interested person, or on his own motion, the  
16 conduct and activities of any person applying for or  
17 holding a license under this Article; for that pur-  
18 pose he may examine the books and papers of any  
19 person and may take testimony and affidavits thereon  
20 under oath.

21 3. Hearings. The commissioner may conduct such  
22 hearings pursuant to this Article as he considers  
23 necessary in a manner consistent with the Maine  
24 Administrative Procedure Act, Title 5, chapter 375  
25 and may subpoena such witnesses and documents as he  
26 considers necessary.

27 §1029-C. Licensing first handlers

28 1. Prohibition. Notwithstanding any other  
29 licensing requirements, no person may pack, or cause  
30 to be packed, potatoes in this State unless duly li-  
31 censed, as provided in this Article. Every person  
32 before acting as a packer shall file an application  
33 with the commissioner for a license to be accompanied  
34 by the license fee provided in this Article.

35 2. Application. The applicant shall file an  
36 application on forms as prescribed and furnished by  
37 the commissioner, which forms shall contain such  
38 information as the commissioner may require, includ-  
39 ing the full name of the person applying for the li-  
40 cense, and if the applicant is a corporation, part-

nership, association, exchange or legal representative or officer, director, partner or member thereof, all the names and positions are to be stated on the application. If the applicant is a foreign corporation, it shall certify that it is registered with the Secretary of State under Title 13-A, chapter 12, and further state the principal business address of the applicant in this State or elsewhere, the address of all places of business in this State and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within this State.

3. Issuance. The commissioner shall issue a license to the applicant if he is satisfied the applicant has truthfully and completely supplied the information required by subsection 2 and has demonstrated his character, good faith and ability to comply with applicable state law. The licensee is entitled to act in the capacity described in the license for a period of one year from the date of issuance. Each license shall plainly state the name and business address or addresses of the licensee.

4. Fees. The annual license fee shall be established by the commissioner, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, based on the volume of potatoes handled by the applicant in the previous year but the fee shall not in any case be less than \$75 nor more than \$500. The fee schedule shall be established to produce revenues sufficient to cover the costs of administering this Article and Article 2-A.

5. Use of fees. All fees collected under this Article shall be paid immediately to the Treasurer of State and credited to the department for the administration of this Article and Article 2-A. If any such fees are not spent during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account and available for the purposes specified until spent.

§1029-D. Violations

1       1. Acts enumerated. The commissioner or his  
2 duly authorized agent may refuse to grant or renew a  
3 license, after notice and opportunity for a hearing  
4 has been provided in a manner consistent with the  
5 Maine Administrative Procedure Act, Title 5, chapter  
6 375, as to adjudicatory proceedings, upon a finding  
7 that the applicant or licensee has:

8       A. Knowingly made any false material statements  
9 in the procurement or renewal of the license;

10       B. Failed or refused, upon demand, to permit the  
11 commissioner or his agents to make the investiga-  
12 tions, examinations or audits, as provided in  
13 this Article; removed or sequestered any books,  
14 records, papers or other materials necessary to  
15 the investigations, examinations or audits; or  
16 has otherwise obstructed the same;

17       C. Failure to comply with the provisions of  
18 Article 2-A; or

19       D. Committed any act or conduct with regard to  
20 the handling, sale or storage of potatoes,  
21 whether of the same or different character than  
22 specified in this subsection, which constitutes  
23 or demonstrates bad faith or untrustworthiness,  
24 or dishonest, fraudulent or improper dealings.

25       2. Mandatory nonrenewal. The commissioner or  
26 his duly authorized agent shall refuse to renew a li-  
27 cence for a period of 2 years following a licensee's  
28 3rd conviction for violations of the provisions of  
29 Article 2-A.

30       3. Administrative Court. The Administrative  
31 Court may, in a manner consistent with the Maine  
32 Administrative Procedure Act, Title 5, chapter 375,  
33 suspend or revoke a license upon finding any of the  
34 violations enumerated.

35       4. Civil penalties. Any person who violates any  
36 of the provisions of this Article or neglects or  
37 refuses to comply with the provisions of any rule  
38 promulgated under this Article is subject to the fol-  
39 lowing civil penalties payable to the State to be re-  
40 covered in a civil action:

1           A. For the first violation, a civil penalty not  
2           to exceed \$1,000; and

3           B. For each subsequent violation, a civil pen-  
4           alty not to exceed \$3,000.

5                               STATEMENT OF FACT

6           The market system facing the Maine Potato Indus-  
7           try is a complex structure characterized by a large  
8           number of growers, dealers and wholesale buyers.  
9           Because of this structure, growers often lack clear  
10          information about market conditions and what prices  
11          they may realistically expect for their product.  
12          This in turn means that growers may receive a price  
13          lower than that which is necessary to compete effec-  
14          tively in the market place.

15          This bill creates a system for establishing a  
16          mandatory daily minimum price for round white pota-  
17          toes to provide producers with specific price infor-  
18          mation. The system can also help to smooth out  
19          drastic price fluctuations and discourage  
20          underpricing.

21          An advisory board of 2 dealers and 3 first hand-  
22          lers would make recommendations to the commissioner  
23          concerning the operation of this system. Each board  
24          member is appointed by the Commissioner of Agricul-  
25          ture, Food and Rural Resources from nominees selected  
26          by either the Sales Association (dealer members) or  
27          the Maine Potato Council (first handler members).  
28          Each fall the board would assess the marketing situa-  
29          tion for the coming year, develop a pricing strategy  
30          and recommend a schedule for premiums and discounts  
31          from the daily minimum price to reflect container  
32          size, quality and transportation cost differences.  
33          The board would also advise the commissioner on the  
34          operation of the system for collecting information to  
35          establish the daily minimum price.

36          The commissioner would establish rules for the  
37          operation of the stabilization program. The daily  
38          minimum price would be for United States number 1,  
39          size A, 2-inch minimum, round white potatoes, in  
40          50-pound containers, F.O.B., Presque Isle. The pric-

1 ing would be done on a daily basis by a well quali-  
2 fied potato pricing specialist. A key component  
3 would be a daily survey of dealers and packers.

4 In addition, to the instate survey, the pricing  
5 specialist could have daily contact with counterparts  
6 in the provinces, market administrators in competing  
7 United States areas and individuals in certain key  
8 markets. The information from these contacts would  
9 help him assess the appropriateness of the instate  
10 survey results. Upon request of the board, the basis  
11 for any given daily minimum price would have to be  
12 documented in writing. The next day's price informa-  
13 tion would not be available to any dealer or packer  
14 in advance of the regular announcement.

15 The daily price would be the price to be paid to  
16 the first handler. A first handler license would be  
17 the primary means of enforcement. No one would be  
18 permitted to load table stock potatoes in any type of  
19 container for exposure for sale, except to a proces-  
20 sor, without a first handler license. The penalty  
21 for selling below the mandatory daily minimum price  
22 would be a fine of up to \$1,000 for the first viola-  
23 tion, \$3,000 for subsequent violations and loss of a  
24 first handler or dealer license after the 3rd convic-  
25 tion. The department would investigate reports of  
26 violations.

27 This price stabilization program would be  
28 financed from first handler license fees based on  
29 volume of potatoes handled. The license fee would  
30 vary from \$75 to \$500.

31 3851051683