

MAINE STATE LEGISLATURE

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N I N E T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 1423

S. P. 527

In Senate, April 7, 1953.

Received by unanimous consent. Referred to Committee on Agriculture.
Sent down for concurrence and 1,000 copies ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Collins of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

AN ACT Regulating the Marketing of Irish Potatoes Grown in the State
of Maine.

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

R. S., c. 27, §§ 249-264, additional. Chapter 27 of the revised statutes is hereby amended by adding thereto 16 new sections, to be numbered 249 to 264, inclusive, to read as follows:

'Maine Potato Marketing Act

Sec. 249. Title. Sections 249 to 264, inclusive, shall be known and may be cited as the "Maine Potato Marketing Art."

Sec. 250. Purposes. The purposes of this act are:

- I. To enable potato producers of this state, with the aid of the state, more effectively to correlate the marketing of their potatoes with market demands therefor.
- II. To provide for uniform grading and proper preparation of potatoes for market.
- III. To provide methods and means for the development of new and larger markets for potatoes grown within this state.

IV. To establish orderly marketing of potatoes grown within this state.

V. To eliminate or reduce economic waste in the marketing of potatoes.

Sec. 251. Definitions. As used in this act, the following terms shall have the following meanings:

“Commissioner” means the commissioner of agriculture of the state of Maine.

“Person” means an individual, partnership, corporation, association, legal representative or any organized group or business unit.

“Potatoes” means all varieties of Irish potatoes grown within the state.

“Handler” is synonymous with shipper and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes in fresh form or packs or prepares potatoes for market.

“Ship” or “handle” means to transport, sell or in any other way to pack or prepare potatoes for market.

“Producer” means any person engaged in the production of potatoes for market.

“Fiscal year” means the period beginning July 1 of each year and ending June 30 of the following year.

“Committee” means the administrative committee, called the “Maine Potato Marketing Committee,” established pursuant hereto.

“Varieties” means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States department of agriculture.

“Seed potatoes” means and includes all potatoes officially certified and tagged, marked or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the state.

“Table stock potatoes” means and includes all potatoes not included within the definition of “seed potatoes.”

“Wholesale pack” means a unit of 50 pounds net weight or more of potatoes contained in a bag, crate or any other type of container.

“Grade” means any one of the officially established grades of potatoes, and “size” means any one of the officially established sizes of potatoes, as defined and set forth in:

I. The United States Standards for Potatoes issued by the Department

of Agriculture on September 10, 1941, effective June 1, 1942 (12 F. R. 3651), or amendments thereto, or modifications thereof, or variations based thereon;

II. United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture on November 3, 1947; effective December 8, 1947 (12 F. R. 7281), or amendments thereto, or modifications thereof, or variations based thereon;

III. State of Maine Standards for potatoes issued by the State of Maine Commissioner of Agriculture on November 26, 1935, or amendments thereto, or modifications thereof, or variations based thereon.

“Export” means shipment of potatoes beyond the boundaries of continental United States.

“District” means each one of the geographical divisions of the production area hereby established as follows:

District No. 1. Township 11, Range 8, Townships 11, 12, 13, and 14, Range 7, Township 14, Range 6, Townships 14, 15, 16, Range 5, Townships 16, 17, Range 4, Township 17, Range 3, the towns of Van Buren, Cyr, Connor, Caswell, Hamlin, and all towns and townships north and west thereof in Aroostook county;

District No. 2. All the towns and townships in Aroostook county not included in Districts No. 1 and 3;

District No. 3. Mount Chase Plantation, Stacyville Plantation, the town of Patten and Township 2, Range 6, in Penobscot county, and Township 8, Range 5, Township 8, Range 4, Township 8, Range 3, Township C, Range 2, the town of Monticello, and all the towns and townships south thereof in Aroostook county;

District No. 4. All the remaining counties, towns and townships in the state of Maine not included in Districts 1, 2, and 3.

Sec. 252. Administration. The commissioner shall administer and enforce the provisions of this act and shall have and may exercise any or all of the administrative powers conferred upon the head of a department of the state. In order to effectuate the declared purposes of this act, the commissioner is hereby authorized to issue, administer and enforce the provisions of marketing orders hereunder regulating the marketing of potatoes within the state.

Whenever the commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this act

he shall, either upon his own motion or upon application of any producer or handler of such commodity, give due notice of and an opportunity for a public hearing upon a proposed marketing order.

Due notice of any hearing called for such purpose shall be given to all persons who may be directly affected by any action of the commissioner pursuant to the provisions of this act and whose names appear upon lists to be filed with the commissioner. Such hearing shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the commissioner at his office.

In order to effectuate the declared policy of this act, the commissioner shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with handlers, producers and others engaged in the handling of potatoes, regulating the preparation, sale and handling of potatoes, which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of such marketing agreement shall in no manner affect the issuance, administration or enforcement of any marketing order provided for in this act. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in this act.

After such notice and hearing, the commissioner may issue a marketing order if he finds that such order will tend to effectuate the declared policy of this act.

Sec. 253. "Maine Potato Marketing Committee"; establishment, terms, vacancies, duties, expenses and compensation.

I. Membership of committee. Any marketing order issued pursuant to this act shall provide for the establishment of an administrative committee to administer such order in accordance with its terms and provisions. This committee shall be known as the "Maine Potato Marketing Committee" and shall consist of 8 members, of whom 5 shall be producers and 3 shall be handlers. For each member of the committee there shall be an alternate who shall have the same qualifications as the member. Person selected as committee members or alternates to represent producers shall be individuals who are producers in the respective district

for which selected or officers or employees of a corporate producer in such district and such persons shall be residents of the respective district for which selected. Persons selected as committee members or alternates to represent handlers shall be individuals who are handlers in the state of Maine or officers or employees of a corporate handler in this state and such persons shall be residents of the state.

II. Term of office. The term of office of committee members and alternates shall be for 1 year, beginning on the 1st day of July and continuing until the end of the then current fiscal year, and until their successors are selected and have qualified. Committee members and alternates shall serve during the fiscal year for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the fiscal year and continuing until the end thereof, and until their successors are selected and have qualified.

III. Selection. The commissioner shall select 2 producer members of the committee, with their respective alternates, from District No. 2 and 1 producer member, with his respective alternate, from each of the other districts, which members and alternates shall represent the respective district from which they are selected. The commissioner shall also select 3 handler members of the committee, with their respective alternates, from the production area at large.

IV. Nomination. The commissioner may select the members of the "Maine Potato Marketing Committee" and their respective alternates from nominations which may be made in the following manner:

A. Nominations for initial members of the committee and their respective alternates may be submitted by producers, handlers or groups thereof, and such nominations may be by virtue of elections conducted by groups of producers and by groups of handlers.

B. In order to provide nominations for succeeding committee members and alternates:

1. The Maine Potato Marketing Committee shall hold or cause to be held prior to May 1 of each year, after the effective date hereof, a meeting or meetings of producers in each of the districts and a meeting or meetings of handlers in the production area;

2. In arranging for such meetings the committee may, if it deems desirable, utilize the services and facilities of existing organizations and agencies;

3. At such meeting at least 2 nominees shall be designated for each position as member and for each position as alternate member on the committee;
 4. Nominations for committee members and alternate members shall be supplied to the commissioner in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal year;
 5. Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;
 6. Each person who is both a handler and a producer may vote either as a handler or as a producer and may elect the group in which he votes; and
 7. Regardless of the number of districts in which a person produces potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates and representatives in designating nominees for committee members and alternates; provided that in the event a person is engaged in producing in more than 1 district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and provided further, that an eligible voter's privilege of casting only 1 vote, as aforesaid, shall be construed to permit a voter to cast 1 vote for each position to be filled in the respective district in which he elects to vote.
- V. Failure to nominate. If nominations are not made within the time and in the manner specified by the commissioner pursuant to paragraph B of subsection IV, the commissioner may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for herein.
- VI. Acceptance. Any person selected by the commissioner as a committee member or as an alternate shall qualify by filing a written acceptance with the commissioner within 10 days after being notified of such selection.
- VII. Vacancies. To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the commissioner from nominations made in the manner spe-

cified in paragraph B of subsection IV, or the commissioner may select such committee member or alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the commissioner within 30 days after such vacancy occurs, the commissioner may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for herein.

VIII. Alternate members. An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of the death, removal, resignation or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

IX. Procedure. Six members of the committee shall be necessary to constitute a quorum and 6 concurring votes shall be required to pass any motion or approve any committee action.

The committee may provide for meeting by telephone, telegraph or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing; provided that if any assembled meeting is held, all votes shall be cast in person.

X. Expenses and compensation. No committee member shall receive a salary, but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized. The commissioner may authorize such board to employ necessary personnel, including an attorney, fix their compensation and terms of employment, and to incur such expenses, to be paid by the commissioner from moneys collected as herein provided, as the commissioner may deem necessary and proper to enable such board properly to perform such of its duties as are authorized herein.

XI. Duties. It shall be the duty of the commissioner:

- A. Subject to the approval of the commissioner, to administer such marketing agreement or order.
- B. To recommend to the commissioner administrative rules and regulations relating to the marketing agreement or order.
- C. To receive and report to the commissioner complaints of violations of the marketing agreement or order.
- D. To recommend to the commissioner amendments to the marketing agreement or order.

E. To submit to the commissioner for his approval an estimated budget of expense necessary for the operation of any marketing agreement or order established by authority of this act; and also submit for approval a method of assessing and collecting such funds as the commissioner may find necessary for the administration of such marketing agreement or order.

F. To assist the commissioner in the collection of such necessary information and data as the commissioner may deem necessary to the proper administration of this act.

Sec. 254. Expenses and assessments.

I. Expenses. The committee is authorized to incur such expenses as the commissioner finds may be necessary to perform its functions hereunder during each fiscal year and for such other purposes as the commissioner may determine to be appropriate pursuant to the provisions hereof. The funds to cover such expenses shall be acquired by the levying of assessments, as herein provided, upon handlers.

II. Assessments. Each handler who first ships potatoes shall pay to the committee, upon demand, such handler's pro rata share of the expenses as the commissioner finds will be incurred by the committee for its maintenance and functioning during each fiscal year, and for such purposes as the commissioner may determine to be appropriate pursuant to the provisions hereof. Such handler's pro rata share of such expense shall be equal to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers as the first handlers thereof during the same fiscal year. The commissioner shall fix the rate of assessment to be paid by such handlers.

At any time during a fiscal year, the commissioner may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the commissioner relative to the expense of the committee. Such increase shall be applicable to all potatoes handled during the given fiscal year. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

III. Accounting. If, at the end of a fiscal year, it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of the excess assessments shall be credited with such refund against the operations of the following fiscal year, unless he demands payment thereof, in which event such propor-

tionate refund shall be paid to him.

If, after reasonable effort by the committee, it is found impossible to return excess funds to handlers, such funds shall, with the approval of the commissioner, be turned over to an appropriate agency serving potato producers in the production area.

The committee may, with the approval of the commissioner, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses of the committee.

IV. Funds. All funds received by the committee pursuant to any provision hereof shall be used solely for the purposes herein specified and shall be accounted for in the following manner:

A. The commissioner may at any time require the committee and its members to account for all receipts and disbursements; and

B. Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the commissioner may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds or claims vested in such member or alternate.

Sec. 255. Regulation.

I. Marketing policy. At the beginning of each fiscal year, the committee shall prepare and submit to the commissioner a report setting forth its proposed policy for the marketing of potatoes during such fiscal year. In the event it becomes advisable to deviate from such marketing policy, because of changed demand and supply conditions, the committee shall formulate a new marketing policy and shall submit a report thereon to the commissioner. The committee shall notify producers and handlers of the contents of such reports.

II. Recommendation for regulations.

A. It shall be the duty of the committee to investigate supply and demand conditions for grade, size and quality of potatoes of all varieties. In such investigations, the committee shall give due consideration to the following factors:

1. Market prices of potatoes, including prices by grade, size and quality in wholesale or in consumer packs or any other shipping unit;
2. Potatoes on hand in the market areas as manifested by supplies en route and on track at the principal markets;
3. Supply of potatoes, by grade, size and quality, in the state of Maine and other production areas;
4. The trend and level of consumer income; and
5. Other relevant factors.

B. The committee shall recommend regulation to the commissioner, in accordance herewith, whenever it finds, on the basis of the foregoing investigation, that such conditions make it advisable:

1. To regulate, in any or all portions of the production area, the preparation for market of particular grades and sizes of any or all varieties of tablestock or seed potatoes, or both, during any period; or
2. To regulate the preparation for market of particular grades and sizes of potatoes differently for different varieties, for different portions of the production area, for consumer or wholesale packs or any other shipping unit, for tablestock and seed, or any combination of the foregoing, during any period; or
3. To regulate the preparation for market of potatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality.

III. Issuance of regulation.

A. The commissioner shall regulate the preparation for market of potatoes as hereinafter set forth, whenever he finds from the recommendations and information submitted by the committee, or from other available information, that it would tend to effectuate the declared policy of this act:

1. To regulate, in any or all portions of the production area, the preparation for market of particular grades and sizes of any or all varieties of tablestock or seed potatoes, or both, during any period; or
2. To regulate the preparation for market of particular grades and sizes of potatoes differently for different varieties, for different portions of the production area, for consumer or wholesale packs, for

tablestock and seed, or any combination of the foregoing, during any period; or

3. To regulate the preparation for market of potatoes by establishing, in terms of grade, size, or both, minimum standards of quality.

B. The commissioner shall notify the committee of any such regulation and the committee shall give reasonable notice thereof to handlers.

IV. Inspection and certification. During any period in which the commissioner regulates the preparation for market of potatoes pursuant to the provisions of this section, each handler who first ships potatoes shall, prior to making shipment, cause each shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Each handler shall make arrangements with the inspecting agency to forward promptly to the committee a copy of such inspection certificate.

V. Exemptions.

A. The committee may adopt, subject to approval of the commissioner, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

B. The committee may issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee:

1. That by reason of a regulation issued pursuant to this section he will be prevented from shipping as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate production area; and

2. That the grade, size or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to ship the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of sale.

C. The committee may issue certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee:

1. That by reason of a regulation issued pursuant to this section he will be prevented from shipping as large a proportion of his storage holdings of ungraded potatoes, acquired during or immediately following the digging season, as the average proportion of ungraded storage holdings shipped by all handlers in said applicant's immediate shipping area; and

2. That the grade, size or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by

Each certificate shall permit the handler to ship the amount of potatoes specified thereon. Such certificate may be transferred with such potatoes at time of sale.

D. The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

E. If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination and shall furnish the commissioner with a copy of the appeal and a statement of considerations involved in making the final determination.

F. The commissioner shall have the right to modify, change, alter or rescind any procedure and any exemptions granted pursuant to this section.

G. The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes shipped under exemption certificates, a record of appeals for reconsideration of applications, and such information as may be requested by the commissioner. Periodic reports on such records shall be compiled and issued by the committee upon request of the commissioner.

VI. Prior approval.

A. No marketing order or amendment thereto issued pursuant to this act shall become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least $\frac{2}{3}$ of the producers who participated in a referendum on the question of its approval and who, during the preceding fiscal year, have been engaged in the production of potatoes for market within

the production area specified in such marketing order, and who, during such year, have produced at least $\frac{2}{3}$ of the volume of potatoes produced for market within such production area.

B. No marketing agreement or amendment thereto, directly affecting handlers, issued pursuant to this act, shall become effective unless and until the commissioner finds that such agreement has been assented to in writing by the handlers who handle not less than 50% of the volume of the potatoes handled within the area defined in such agreement and by not less than 50% of the volume of the potatoes handled within the area defined in such agreement and by not less than 50% of the number of handlers engaged in handling potatoes within such area.

Sec. 256. Regulation of surplus.

I. Recommendations. It shall be the duty of the committee to investigate supply and demand conditions of potatoes. Whenever the committee finds that a surplus of potatoes exists, it shall determine the extent of such surplus of potatoes of any grade, size or quality thereof. If it is deemed advisable, the committee shall recommend the control and disposition of surplus potatoes and plans for equalizing the burden of surplus elimination or control among the producers and handlers thereof under uniform rules established by the committee and approved by the commissioner.

II. Issuance of regulations. Whenever the commissioner finds from the recommendations and information submitted by the committee or from other available information, that the control and disposition of surplus potatoes will tend to effectuate the declared policy of this act, he shall control and dispose of such surplus potatoes and shall further provide for equalizing the burden of such surplus elimination or control among producers and handlers thereof. At any time during which the commissioner provides for the control and disposition of surplus potatoes, the committee is authorized to enter into contracts or agreements with any person, agency or organization for the purpose of facilitating the disposal of surplus potatoes.

Sec. 257. Preparation for market for specified purposes. The commissioner, upon the basis of recommendations of the committee or upon the basis of other available information, may modify, suspend or terminate regulations issued pursuant hereto in order to facilitate preparation for market of potatoes for certain specified purposes, whenever he finds that such actions tend to effectuate the declared policy of this act and that ade-

quate safeguards may be established to prevent such shipments from entering channels of trade for other than the specified purposes.

Sec. 258. Reports. Upon the request of the committee, with approval of the commissioner, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties hereunder. The commissioner shall have the right to modify, change or rescind any requests for reports pursuant to this section.

Sec. 259. Compliance. Except as provided herein, no handler shall have in his possession potatoes prepared for market except in conformity to the provisions of any effective marketing order or agreement issued hereunder.

Sec. 260. Termination. The commissioner may terminate, suspend or amend the operation of any or all of the provisions of any marketing order, whenever he finds that such provisions do not tend to effectuate declared policy of this act.

The commissioner shall terminate the provisions of this act at the end of any fiscal year, whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes; provided that such majority has, during such year, produced for market more than 50% of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before June 30 of the then current fiscal year.

Upon the termination of the provisions hereof, the then functioning members of the committee shall continue as trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

The said trustees shall continue in such capacity until discharged by the commissioner; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the commissioner may direct; and shall, upon request of the commissioner, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant thereto.

Any person to whom funds, property or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustee.

Sec. 261. Effect of termination or amendment. Unless otherwise expressly provided by the commissioner, the termination of any regulation issued pursuant hereto, or the issuance of any amendment thereto, shall not affect nor waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision hereof or any regulation issued hereunder, or release or extinguish any violation hereof or of any regulation issued hereunder, or affect or impair any rights or remedies of the commissioner or of any other person with respect to any such violation.

Sec. 262. Duration of immunities. The benefits, privileges and immunities conferred upon any person by virtue hereof shall cease upon the termination hereof, except with respect to acts done under and during the existence hereof.

Sec. 263. Personal liability. No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes or other acts, either of commission or omission, as such member, alternate or employee, except for acts of dishonesty.

Sec. 264. Penalty. Every person, who violates any provision of this act or any provision of any marketing order duly issued by the commissioner hereunder, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not less than 10 days nor more than 6 months, or by both such fine and imprisonment. Each day during which any of the violations above referred to continues shall constitute a separate offense.'