

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1283

S. P. 373

In Senate, March 12, 1969

Referred to the Committee on Agriculture. Sent down for concurrence and 1,000 copies ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Barnes of Aroostock by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Relating to Bonding of Potato Brokers.

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

R. S., T. 7, c. 103, sub-c. X, Art. 3, additional. Subchapter X of chapter 103 of Title 7 of the Revised Statutes is amended by adding a new Article 3, to read as follows:

ARTICLE 3

BONDING OF BROKERS

§ 1011. Definitions

As used in this article unless the context otherwise indicates, the following words shall have the following meanings:

1. Agent. "Agent" means any person who, on behalf of any commission merchant or dealer or broker or cash buyer, receives, contracts for or solicits any potatoes from a producer thereof or who negotiates the consignment or purchase of any potatoes on behalf of any commission merchant, dealer, broker or cash buyer.

2. Broker. "Broker" means any person, other than a commission merchant, or dealer or cash buyer, who negotiates the purchase or sale of potatoes, provided that no broker may handle either the potatoes involved or the proceeds of a sale.

3. Cash buyer. "Cash buyer" means any person, other than a commission merchant or dealer or broker, who obtains from the producer thereof title, possession or control of any potatoes, or who contracts for the title,

possession or control of potatoes, or who buys or agrees to buy any potatoes by paying to the producer at the time of obtaining possession or control, or at the time of contracting for the title, possession or control of any potatoes, the full agreed price of such potatoes in coin or currency, lawful money of the United States.

4. Commission merchant. "Commission merchant" means any person who shall receive on consignment or solicit from the producer thereof any potatoes in trust from the producer thereof for the purpose of sale, or who shall sell or offer for sale on commission any potatoes, or who shall in any way handle for the account of or as an agent of the producer thereof any potatoes. Any person who shall accept potatoes by contract of purchase and sale, designating the price to be paid to the producer.

5. Dealer. "Dealer" means any person other than a cash buyer who solicits, or obtains from the producer thereof title, possession, control or delivery of any potatoes for the purpose of resale or who buys or agrees to buy potatoes from the producer thereof, provided that no dealer shall obtain title, possession, control or delivery of any potatoes except by contract of purchase and sale, or by contract of agreement to purchase, wherein the price to be paid by the dealer to the producer is designated in the contract.

6. Grower or producer. "Grower" or "producer" means any person engaged in the business of growing or producing potatoes in this State.

7. Person. "Person" includes any individual, firm, association, partnership or corporation.

8. Processor. "Processor" means one who converts potatoes from the original state by any form of cooking, freezing, canning, packing, curing, etc., for further sale and consumption.

§ 1012. License

No person shall act as a potato commission merchant, dealer, broker, cash buyer, agent or processor shall file an application with the Commissioner of Agriculture for a license to transact the business of a potato commission merchant, dealer, broker, cash buyer, agent or processor, and such application shall be accompanied by the license fee provided in this article.

The applicant shall file an application on forms as prescribed and furnished by the Commissioner of Agriculture, which shall contain the full name of the person applying for such license, and if the applicant be a firm, partnership, association, exchange, the administrator or executor of the estate of a deceased individual, the legal representative or receiver, trustee or successor of the listed entities, officers, directors, owners or partners or those similar management 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's office under Title 13, sections 591 to 600. Such application shall further state the principal business address of the applicant in the State of Maine or elsewhere, and the name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

The applicant shall satisfy the Commissioner of Agriculture of his character, financial responsibility and good faith in seeking to engage in the business. No license shall be granted to any applicant if an individual, or to any firm, exchange, association, corporation or partnership, if such applicant or any firm, exchange, association, corporation or partnership applicant or employee of the foregoing has been convicted in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, breaking and entering, robbery, criminal conspiracy to fraud, or bribery, of which the record of conviction or a copy certified by the clerk or judge of the court shall be conclusive evidence.

The Commissioner of Agriculture shall thereupon issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application for a period of one year from the first day of January following the effective date of this Act, and annually thereafter such license may be renewed so long as the commissioner regards the business as responsible and safe, but in all cases to terminate unless renewed on the first day of the succeeding January. Each license shall plainly state the name and business address of the licensee and shall be posted in a conspicuous place in the office where the business is transacted. The fee for each license shall be \$50. If the licensee desires to carry on business in more than one place within the State, he shall procure a license for each place where the business is to be conducted.

§ 1013. Agent

No agent shall receive a license to buy, solicit or negotiate the sale of any potatoes in this State on behalf of any commission merchant, dealer, broker or processor unless such agent has been designated by a duly licensed commission merchant, dealer, broker, or processor in writing, requesting the Commissioner of Agriculture to issue to the agent an agent's license. Licenses of agents shall expire upon the date of expiration of the license of the principal for whom the agent acts.

§ 1014. Dealer's license

The Commissioner of Agriculture shall issue to any dealer who buys, solicits or negotiates the sale of potatoes from producers, a dealer's license which shall bear the signature of said dealer, and the dealer shall show said license upon the request of any interested person.

§ 1015. Fees

All license fees collected under this article shall be paid into the State Treasury monthly and shall be credited and expended in carrying out of this article.

§ 1016. Bonds

Before any license is issued to any commission merchant, dealer, broker, cash buyer, agent, or processor, the applicant shall file with the Commissioner of Agriculture a bond in which the applicant shall be the obligor, in

the sum of \$2,000, with one or more sureties to be approved by said Commissioner of Agriculture, which bond shall run to the Commissioner of Agriculture for the use of the State and of any person or persons who may have a cause of action against the obligor of said bond under this article, and shall be conditioned that said obligor will conform to and abide by each and every provision of this article and will pay to the State and to any such person or persons any and all monies that may become due or owing to the State, and to such person or persons from said obligor, under and by virtue of this article. If, in the opinion of the Commissioner of Agriculture, the bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than \$1,000, satisfactory to the Commissioner of Agriculture, shall be filed, and upon failure of the obligor to file such additional bond, the license shall be revoked by the Commissioner of Agriculture.

§ 1017. Investigations

The Commissioner of Agriculture, or an employee of the Department of Agriculture whom he may designate, shall have full authority to investigate upon the verified complaint of any interested person, or of his own motion, the record of any person applying for or holding a license as commission merchant, dealer, broker, cash buyer, agent or processor, and for such purpose may examine the ledgers, books or accounts, memoranda or other documents of any such person and may take testimony thereon under oath.

§ 1018. Hearing

When a verified complaint is filed with the Commissioner of Agriculture, as mentioned in section 1017, with respect to any person applying for, or holding a license, the Commissioner of Agriculture shall conduct a hearing thereon and shall furnish such person with a copy of the complaint and a notice of the time and place of hearing, which notice shall be served, either personally or by registered mail, directed to his place of business or last known residence address, at least 10 days prior to the time fixed for the hearing. In the hearing of any complaint, the Commissioner of Agriculture, or assistant whom he may designate, may sign and issue subpoenas, administer oaths, examine witnesses, take depositions, receive evidence and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records and memoranda as may be material for the determination of the matter alleged in the complaint.

The Commissioner of Agriculture, or assistant whom he may designate, shall render a decision either dismissing the complaint or specifying the facts which he deems established at the hearing.

§ 1019. Transcript as evidence

Any transcript from the copy of said records, certified by the Commissioner of Agriculture, may be used in evidence in all cases in which the same is material and with the effect as though the original records were produced.

§ 1020. Hearing procedure

Before any license is revoked, the Commissioner of Agriculture shall give the licensee at least 10 days notice of the time and place of hearing before the Commissioner of Agriculture and shall furnish him with a copy of the complaint against him, which complaint and notice shall be served upon the licensee in the manner provided in section 1017.

At the time and place fixed for hearing, the Commissioner of Agriculture shall receive evidence, administer oaths, examine witnesses and hear the testimony and shall thereafter file an order either dismissing the proceeding or revoking the license.

§ 1021. Revocation or suspension of license

1. Violations. The commissioner may refuse to grant a license or renewal of license and may revoke or suspend any license, as the case may require, when, after a hearing as provided, he is satisfied of the existence of any of the following facts, the existence of which is declared to be a violation of this article:

A. That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of or for rendering of any service in connection with the handling, sale or storage of potatoes;

B. That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for potatoes received, within the time and in the manner required by this article;

C. That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of potatoes received, handled, sold or stored by him;

D. That the applicant, or licensee, directly or indirectly, has purchased for his, or its own account, potatoes received by him upon consignment without prior authority from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant, dealer, broker, cash buyer, agent or processor from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of potatoes remaining unsold, if such commission merchant, dealer, broker, cash buyer, agent or processor shall forthwith enter such transaction on his account of sales;

E. That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for potatoes;

F. That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the producer;

G. That a commission merchant, dealer, broker, cash buyer, agent or processor to whom any consignment is made has reconsigned such consignment to another commission merchant, dealer, broker, cash buyer, agent or processor and has received, collected, or charged by such means more than one commission for making the sale therefor for the consignor, unless by written consent of such consignor;

H. That the licensee was intentionally guilty of fraud or deception in the procurement of such license;

I. That the licensee or applicant has failed or refused to file with the Commissioner of Agriculture a schedule of his charges for services in connection with potatoes handled on account of or as an agent of another; that the applicant, or licensee, has indulged in any unfair practice;

J. That the applicant or licensee has not made an accounting of any claim collected by him;

K. That the licensee has failed or refused, upon demand, to permit the commissioner or his agents to make the investigations, examinations or audits as provided in this article, or that the licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits, or has otherwise obstructed the same;

(1) That the licensee has failed or refused to keep and maintain the records as required by this article.

(2) Any order revoking or suspending a license may, within the discretion of the commissioner, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the commissioner of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final.

§ 1022. Claims

Upon default of any licensee in the payment of any money due to any grower, the grower may file with the commissioner, upon a form prescribed by him, a verified statement of his claim. If the grower has reduced his claim to judgment a transcript of the judgment shall be filed with the Commissioner of Agriculture. Such statement may be filed at any time during the period of the license and within 90 days from the termination of such period, for debts contracted during such licensed period.

§ 1023. Audit; satisfy claims; actions

The Commissioner of Agriculture shall audit claims properly filed and determine the amounts due all such creditors. After the expiration of 90 days from the termination of the license period or at any earlier date when all claims shall have been filed, the Commissioner of Agriculture shall sell the securities so deposited or make demand upon the surety for payment of an amount necessary to satisfy the claims determined to be due or such part thereof as shall equal the amount of the bond so filed. If the surety shall not make payment of the amount so demanded, upon the expiration of 90 days from the termination of the license period, the Commissioner of Agriculture shall bring an action at law to recover from the surety on said bond the amount necessary to satisfy such claims or such part thereof as shall equal the amount of the bond, which action may be instituted by the

Commissioner of Agriculture in his official capacity as such on behalf of said claimants, but without naming them as plaintiffs or defendants therein. The moneys obtained from the sale of said securities or by action against the surety shall be used for the satisfaction of such claims, and the Commissioner of Agriculture shall make distribution thereof to the claimants in accordance with the amounts determined to be due thereon, and if less than the total amount of said claims shall be so obtained, distribution shall be made ratably to the creditors according to said amounts.

If a creditor had reduced his claim to judgment, the judgment shall be presumptive proof of the amount due him.

Claims not filed during the license period or within 90 days from the termination of the license period, shall not be received, acted upon or paid and shall not participate in the proceeds of any bond, moneys or securities deposited with the Commissioner of Agriculture.

The Commissioner of Agriculture may bring an action in any court of competent jurisdiction against the licensee or surety or sureties on the bond or bonds for the recovery of any money due and owing to a grower or growers as hereinbefore provided.

§ 1024. Records

1. Records. Every commission merchant, dealer, broker, cash buyer, agent or processor, having received any potatoes for sale or purchased potatoes, or both, from the producer, as such commission merchant, dealer, broker, cash buyer, agent, or processor shall promptly make and keep a correct record for 3 years showing in detail the following with reference to the handling, sale or storage of such potatoes:

- A. The name and address of the consignor;
- B. The date received;
- C. Date of such sale for account of consignor;
- D. The price for which sold;
- E. An itemized statement of the charges to be paid by consignor in connection with the sale;
- F. The name and addresses of all purchasers if said commission merchants, dealers, brokers, cash buyers, agents or processors have any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, dealer, broker, cash buyer, agent or processor, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise, such interest shall be noted in said records following the name of any such purchaser;
- G. Any claim or claims which have been, or may be filed, by the commission merchant, dealer, broker, cash buyer, agent or processor against any person for overcharges or for damages resulting from the injury or de-

teriation of such potatoes by the act, neglect or failure of such person and such records shall be open to the inspection of the commissioner and the consignor of potatoes for whom such claim or claims are made.

§ 1025. Construction

No provisions of this article shall be construed to prevent a grower from selling potatoes that he grows himself.

§ 1026. Rules and regulations

The commissioner shall establish such rules and regulations as may be needed for the proper enforcement of this article.

§ 1027. Jurisdiction

The District Court and the Superior Court shall have concurrent jurisdiction of actions brought for the recovery of penalties imposed by this article, and of prosecutions for violations thereof. All fees received under this article by the commissioner, and all money and fines received by him under this article shall be paid by him to the Treasurer of State and the same are appropriated for carrying out this article.

§ 1028. Penalties

Any person, firm, partnership or corporation who shall violate any of the provisions of this article, or neglect or refuse to comply with any of the provisions required therein, or in any way violate any of said provisions shall be punished by a fine of not more than \$200 for the first offense, and by a fine of not more than \$300 for each subsequent offense.