

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1117

S. P. 401

In Senate, March 4, 1971

Referred to Committee on Agriculture. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Harding of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Establishing Licensing for the Marketing of Potatoes.

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. Title 7 of the Revised Statutes is amended by adding a new Article 3 to subchapter X of chapter 103, to read as follows:

ARTICLE 3. LICENSING

§ 1011. Purpose

The purposes of this Article, in addition to the purposes set forth in section 992, are to maintain fair and equitable practices in the handling, sale and storage of potatoes in this State.

§ 1012. Definitions

As used in this Article, in addition to the meanings given to the terms set forth in section 993 which meanings are applicable to such terms when used in this Article, the following terms shall have the following meanings:

1. Agent. "Agent" means any person who sells or distributes potatoes in commerce for or on behalf of producers or others and whose operations may include the planting, cultivating, harvesting, grading, packing and furnishing containers, supplies or other services.

2. Applicant. "Applicant" means any person applying for a license under this Article.

3. Broker. "Broker" means any person engaged in the business of negotiating sales of potatoes in commerce for or on behalf of the vendor or the purchaser, respectively. The term "broker" shall apply to nonresidents of

this State who carry on such business in this State, whether such "broker" is licensed in the state of his residence or not.

4. Buyer. "Buyer" means any person other than a consumer who purchases or contracts to purchase potatoes.

5. Dealer. "Dealer" means any person engaged in the business of buying or selling potatoes in wholesale or jobbing quantities in commerce and includes:

A. Jobbers, distributors and other wholesalers; and

B. Producers who buy and resell potatoes grown by others.

C. Nonresidents of this State who carry on the business of buying and selling potatoes in this State, whether such dealer is licensed in the state of his residence or not.

The term "dealer" does not include persons buying potatoes for canning or processing, or both, within this State and persons buying potatoes for sale primarily to consumers.

6. Licensed federal-state potato inspector. "Licensed federal-state potato inspector" means an authorized representative of the Federal-State Inspection Service.

7. Licensee. "Licensee" means any person who holds an unrevoked and valid unsuspended license issued under this Article.

8. Maine Potato Council. "Maine Potato Council" means the nonstock corporation organized and existing under Title 13, chapter 81 with its principal office in Presque Isle, Maine, and whose membership is comprised exclusively of producers.

9. Retailer. "Retailer" means a person engaged in the business of selling of potatoes primarily to consumers.

10. Sale. "Sale" shall include every contract of purchase or sale, contract to purchase or sell, purchase, sale and disposition of potatoes for value.

11. Seller. "Seller" means any person who sells or contracts to sell potatoes in the regular course of business.

12. Verified complaint. "Verified complaint" means a writing signed by a person, who, under oath, swears that he has reason to believe that a person required to be licensed under this Article has violated one or more of the provisions of this Article or of the rules and regulations promulgated thereunder, setting forth a short and plain statement of the allegations which are the basis for such belief.

§ 1013. Rules and regulations

The commissioner shall make uniform rules and regulations for carrying out this Article.

§ 1014. Licensing; agents

No person shall act as a dealer, broker or agent unless duly licensed as provided in this Article. Every person, before acting as a dealer, broker or agent shall file an application with the commissioner for a license to transact the business of a dealer, broker or agent and such application shall be accompanied by the license fee provided in this Article.

No agent shall receive a license to buy, solicit or negotiate the sale of any potatoes in this State on behalf of any dealer or broker unless such agent has been designated by a duly licensed dealer or broker in writing, requesting the commissioner to issue to the agent an agent's license.

§ 1015. Application for License

The applicant shall file an application on forms as prescribed and furnished by the commissioner which forms shall contain the full name of the person applying for such license, and if the applicant be a corporation, partnership, association, exchange, or legal representative or officer, director, partner or member thereof, all such 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, chapter 19, and further state the principal business address of the applicant in the State of Maine or elsewhere, the address of all places of business in the State of Maine, and the name, or names, of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State of Maine. All questions required to be answered in application for licenses shall be sworn to, and intentionally untruthful answers shall constitute the crime of perjury.

Upon receipt of such applications, the commissioner immediately shall cause a copy thereof to be served upon the Maine Potato Council. Service of such notice shall be sufficient if sent by registered mail to the address of the principal office of the Maine Potato Council. The Maine Potato Council or its member producers, or both, shall have 30 days in which to file comments as to the applicant's qualifications or to file a verified complaint with the commissioner as provided by this Article.

This applicant shall satisfy the commissioner of his character, financial responsibility and good faith in seeking to engage in the business. No license shall be granted to any applicant if such person or officer, director, partner, or member thereof, has been convicted in any state or federal court of any felony within 5 years of the date of the application.

The commissioner, if satisfied as to the applicant's qualifications and if a verified complaint has not been timely filed, shall thereupon issue to such applicant a license entitling the applicant to act in the capacity described in the application for a period of one year from January 1st of the year in which the application was made. Each license shall plainly state the name and business address or addresses of the licensee and shall be posted in a conspicuous place in each office where the business is transacted. The initial fee for each license shall be \$50. Such license shall be automatically renewed for successive periods of one year each upon payment of the renewal fee which shall be \$25. If the licensee desires to carry on business in more than one place within the State, he shall procure additional copies of the license, certified by the

commissioner, for each place where the business is to be conducted. The fee for each such certification shall be \$2.

§ 1016. Verified complaints; investigations

The commissioner or his duly authorized agent shall have full authority to investigate upon the verified complaint of any interested person, or on his own motion, the conduct and activities of any person applying for or holding a license as dealer, broker or agent and for such purpose may examine the books and papers of any such person and may take testimony and affidavits thereon under oath. The Maine Potato Council shall be deemed an interested person and may be a party of record to all proceedings and any complaint filed by it may be verified by one of its officers or directors. Any interested person who has filed a verified complaint may be a party of record to all proceedings had with regard thereto.

§ 1017. Violations

1. Acts enumerated by the commissioner or his duly authorized agent may refuse to grant a license, may revoke or suspend any license, as the case may require, when, after a hearing as provided, he has found any of the following acts to have existed within 2 years of the date of the commencement of such hearing:

A. That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of potatoes, or for the 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 knowingly made any false material statement as to the condition, quality or quantity of potatoes received, handled, sold, purchased 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 authorization from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any dealer, broker or agent, in order to close the day's business, from taking into account in his record of sales, miscellaneous lots or parcels of potatoes remaining unsold, if such dealer, broker or agent on the business day next following shall properly enter such transaction in his accounts.

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

F. That the applicant, or licensee, has made fictitious sales or has defrauded or attempted to defraud a producer;

G. That a dealer, broker or agent to whom any consignment is made has reconsigned such consignment to another dealer, broker or agent and

has received, collected or charged by such means more than one commission for making the sale therefor for the consignor without written consent of such consignor;

H. That the licensee knowingly made any false material statements of fact in the procurement of such license;

I. That the applicant or licensee has failed or refused to file with the commissioner a schedule of his charges for services in connection with potatoes handled on account of or as an agent of another;

J. That the applicant or licensee has not accounted to the producer with regard to any claim settled or collected by him for such producer;

K. That the applicant or 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 Title or that the applicant or licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examinations or audits, or has otherwise obstructed the same;

L. That the licensee has failed or refused to keep and maintain the records as required by this Article;

M. That the applicant or licensee has engaged in any unfair practice with regard to handling, sale or storage of potatoes.

2. Conditional. 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.

3. Effective date. The commission of the acts enumerated in this section after the effective date of this statute constitutes a violation of this Article.

§ 1018. Hearings; fees of witness; summary process

The provisions of section 14 to the contrary notwithstanding, in administering this Article, the commissioner or his duly authorized agent may conduct hearings, subpoena witnesses, administer oaths, examine witnesses, take depositions, take testimony and order the production of books and papers and for the purposes of this Article may issue all processes necessary for the performance of his duties. A full and complete record shall be kept of all proceedings had before the commissioner or his duly authorized agent, but he need not have a transcript of the testimony prepared unless required for rehearing or appeal. The fees for the reporter and the travel and attendance of witnesses shall be the same as for reporters and witnesses before the Superior Court and shall be paid by the Department of Agriculture which shall promptly be reimbursed by the Treasurer of State out of the General Fund. The Superior Court, on the petition of the commissioner, may issue summary process to enforce the lawful orders of the commissioner in such matters.

The commissioner or his duly authorized agent shall issue a written decision containing his findings of fact and conclusions of law in each case. Findings of fact consist of a concise statement of the conclusions of each contested issue of fact.

§ 1019. Notice of hearing.

Notice of the hearing and a copy of any verified complaint on file with the commissioner shall be served upon the applicant or licensee by registered mail, postage prepaid, addressed to the place of business or last known residence address of the applicant or licensee at least 30 days prior to the time fixed for the hearing. Such notice shall state the place, day and hour of the hearing, and the purpose of the hearing and inform the applicant or licensee that he may then and there appear, in person or through counsel, to show cause why his application should not be denied or license should not be revoked or suspended.

Copies of such notice shall be served in the same manner upon the Maine Potato Council and upon any interested person who has filed a verified complaint.

During the conduct of any hearing, the commissioner or his duly authorized agent shall be entitled to and shall have assistance of the Attorney General and of the several county attorneys. The rules of evidence set forth in Title 5, section 2405 shall be observed to the extent applicable and references therein to "The Hearing Commissioner" shall be deemed to mean the commissioner or his duly authorized agent; for the purpose of cross-examination, any person who has signed and seasonably filed a verified complaint pertaining to the subject matter of the hearing shall be deemed an opposing party.

Such applicant or licensee may subpoena and examine witnesses, take depositions, take testimony and subpoena books and records material to the purpose of the hearing and it shall be the duty of the commissioner upon the reasonable request of such applicant or licensee to issue all processes necessary to the protection of rights accorded such applicant or licensee, by law.

§ 1020. Decisions

After hearing, on default, or with the consent of the applicant or licensee, the commissioner or his duly authorized agent may suspend or revoke the license of such person or approve or deny the application of such person for a license. The commissioner shall notify such person and all other parties of record of the result of the hearing by mailing, postage prepaid, a copy of the decision to each of them or his attorneys of record.

§ 1021. Appeals

Any interested person aggrieved by the decision of the commissioner or his duly authorized agent is entitled to appeal to the Superior Court in the county in which the appellant resides or has his principal place of business by filing a complaint within 30 days thereafter. Copies of the complaint must be sent to the commissioner and all parties of record. No responsive plead-

ing need be filed. In all other respects appeals will follow the procedures set forth in Title 5, section 2451 and references therein to "the Hearing Commissioner" shall be deemed to mean the commissioner or his duly authorized agent.

An aggrieved party may appeal from the decision of the Superior Court to the Supreme Judicial Court as in other civil cases.

§ 1022. Records of transactions

1. Record. Every person required to be licensed under this Article, upon having negotiated a sale of potatoes for others or upon having purchased potatoes from the producer, shall cause a record of such transaction to be made, and deliver promptly to the seller a copy thereof, setting forth the following with reference to the handling, sale and storage of such potatoes;

- A. Date of sale;
- B. Name and address of producer;
- C. Name and address of seller;
- D. Name and address of buyer;
- E. Name and address of broker, if any;
- F. Name and address of handler, if any;
- G. Mode of transportation of shipment;
- H. Name of carrier, if known; if unknown, such information shall be provided the seller prior to shipment;
- I. Point of final destination;
- J. Date of shipment;
- K. Contemplated date of arrival at final destination;
- L. Grade, size, weight, and amount and other specifications;
- M. Price for the potatoes, per unit and total;
- N. Any deductions to be made from the proceeds for expenses to be borne by the seller or handler;
- O. Time of payment which shall in no event be more than 10 days after acceptance of said potatoes;
- P. All other essential details of the purchase or sale;
- Q. If there is a broker involved in the transaction, an itemized accounting which separately sets forth all charges in connection with the sale, including the brokerage fee, if any, which in no event shall exceed 5% of the gross proceeds from the sale.

2. Guarantees. In any sale in which the buyer of such potatoes is a person required to be licensed by this Article and has its principal place of business in this State, any guarantees with regard to grade, size, weight or other specifications, or both, made by the producer shall be deemed satisfied when the grade, size, weight or specifications, or both, are certified by a li-

censed federal-state potato inspector, or other potato inspector designated by the buyer in such record after said potatoes have been or while they are being loaded for transit, equals or exceeds the grade, size, weight or other specifications, or both, of such potatoes stated in such record.

3. **Waiver.** In any sale by a producer in which the making of a record of such transaction is required by this Article and the name and address of the buyer are not set forth on such record, the producer shall be deemed not to have made any guarantees with regard to grade, size, weight or other specifications, or both, and such omission by the buyer or broker or agent shall constitute a waiver of any and all claims against the producer for breach of warranty, expressed or implied.

§ 1023. Exemptions.

1. **Producers.** Producers are exempt from this Article when selling potatoes which they have grown, which they are presently growing or which they intend to grow, except when acting as an agent.

2. **Retailers and processors.** Retailers and processors are exempt from this Article.

§ 1024. Enforcement

The commissioner may recover the penalties imposed for violations of this Article and any rules and regulations promulgated thereunder in a civil action brought in his own name, the venue to be as in other civil actions, and if he prevails in any such action, he may recover full costs, or he may prosecute for such violations by complaint or indictment and such prosecution shall be commenced in the county in which the offenses are committed. In such proceedings he shall be entitled to and shall receive assistance of the Attorney General and of the several county attorneys.

§ 1025. Jurisdiction and disposal of fines

The District Court and the Superior Court shall have concurrent jurisdiction of actions brought for recovery of penalties imposed by this Article and of prosecutions for violation of this Article or the rules and regulations promulgated thereunder. All fines received under this Article by county treasurer shall be paid by them to the Treasurer of State for deposit in the General Fund.

§ 1026. Penalties

Any person who shall violate any of the provisions of this Article or shall neglect or refuse to comply with the provisions thereof or any rule or regulation promulgated hereunder shall be punished by a fine of not more than \$1,000 for the first offense and not more than \$2,000 for each subsequent offense.

STATEMENT OF FACT

The purpose of this bill is reflected in the first section.