

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1867

S. P. 686

In Senate, January 24, 1972

Committee on Agriculture suggested.

HARRY N. STARBRANCH, Secretary

Presented by Senator Harding of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-TWO

AN ACT Relating to Clarifying Definitions Relating to the Potato Industry
of Maine.

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

Sec. 1. R. S., T. 7, § 993, sub-§ 9, amended. Subsection 9 of section 993 of Title 7 of the Revised Statutes is amended to read as follows:

9. Potatoes. "Potatoes" means all varieties of Irish potatoes grown within the State which retain the same physical form as possessed when harvested. The effects of the following operations shall not be considered as changing the physical form possessed by potatoes when harvested: Washing with or without chemicals; drying for the removal of surface moisture; slicing or cutting for seed purposes only; precooling, preheating, ventilating, humidifying or otherwise controlling atmospheric conditions in storage; treating with chemical formulations for sprout inhibition; waxing, packaging or otherwise preparing potatoes for marketing in what is generally considered to be fresh form.

Sec. 2. R. S., T. 7, § 1012, sub-§ 5, ¶ B, amended. Paragraph B of subsection 5 of section 1012 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is amended to read as follows:

B. Producers who buy and resell potatoes grown by others in wholesale or jobbing quantities.

Sec. 3. R. S., T. 7, § 1012, sub-§ 9, amended. Subsection 9 of section 1012 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is amended to read as follows:

9. **Retailer.** "Retailer" means a person engaged in the business of ~~selling~~ ~~of buying~~ potatoes in **wholesale or jobbing quantities and reselling the potatoes** bought primarily to consumers through at least 5 retail outlets located within or without the State of Maine.

Sec. 4. R. S., T. 7, § 1012, sub-§§ 13 and 14, additional. Section 1012 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is amended by adding 2 new subsections to read as follows:

13. **Wholesale or jobbing quantities.** "Wholesale or jobbing quantities" means aggregate quantities of potatoes totalling one ton (2,000 pounds) or more in weight in any day, or 25 tons (50,000 pounds) or more in weight in any month, whichever is greater.

14. **Processor.** "Processor" means any person other than a consumer who purchases or contracts to purchase potatoes solely for manufacture into articles of food or starch by operations which change the physical form said potatoes possessed when harvested. The effects of the following operations shall be considered as changing the physical form possessed by potatoes when harvested: Chopping, slicing, cutting, dicing, mashing, removal of skin or peel, frying or otherwise cooking, freezing, canning, dehydrating or comparable methods of preparation for marketing in what is generally considered to be a processed form.

Sec. 5. R. S., T. 7, § 1014, amended. The 2nd paragraph of section 1014 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is repealed and the following enacted in place thereof:

No person shall buy, solicit or negotiate the sale of any potatoes in this State as a representative of any dealer, broker or retailer unless such representative has been so authorized by a duly licensed dealer, broker or retailer in writing, and a copy of such authorization is filed with the commissioner, except where such representative conducts business in the office of said dealer, broker or retailer. The commissioner shall be notified in writing by said dealer, broker or retailer immediately upon the termination of such authorization.

Sec. 6. R. S., T. 7, § 1015, amended. The 2nd sentence of the 5th paragraph of section 1015 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is repealed and the following enacted in place thereof:

The initial fee and the renewal fee for each license shall be set by the commissioner but in no event shall either the initial fee or the renewal fee exceed \$100.

Sec. 7. R. S., T. 7, § 1015, amended. The last paragraph of section 1015 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is repealed and the following enacted in place thereof:

All fees collected under this Article shall be paid forthwith to the Treasurer of State and credited to the Department of Agriculture for the administration of this Article and other expenses incident to the administration of

said department, and shall be expended by the said commissioner for the purposes for which said department is created. If any of such fees are not expended 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 expended.

Sec. 8. R. S., T. 7, § 1022, sub-§ 3, amended. Subsection 3 of section 1022 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is amended to read as follows:

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, or if no such record of transaction is made and a copy thereof delivered to the producer prior to delivery of the potatoes at the point of final destination, the producer shall be deemed not to have made any guarantees with regard to grade, size, weight or other specifications, 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.

Sec. 9. R. S., T. 7, § 1023, amended. Section 1023 of Title 7 of the Revised Statutes, as enacted by chapter 366 of the public laws of 1971, is amended to read as follows:

§ 1023. Brokers and agents

1. **Brokerage fee.** The brokerage fee, if any, shall be an agreed upon percentage of the gross proceeds from the sale, exclusive of the costs of transportation, and shall be charged the seller only upon receipt of payment in full of said gross proceeds from the buyer.

2. **Duties of brokers.** In addition to all the duties of the broker otherwise imposed by law or by agreement, the broker shall have the following duties:

A. The broker shall invoice the buyer, shall collect and remit to the seller and any secured party noted on the record of the transaction any and all sums due on account of the sale, and shall render an itemized accounting to the seller promptly upon receipt of payment, showing the true gross selling price, all brokerage fees deducted, and any other charges or expenses incurred in connection with the sale of the potatoes. Agreement to collect from the buyer and remit to the seller is not a guarantee by the broker that the buyer will pay for the potatoes purchased, unless there is a specific agreement by the broker that the broker will pay if the buyer does not pay.

B. The broker shall, to the best of his ability, make all necessary arrangements to effect the transportation of said shipment to the buyer, but the broker, in the absence of a specific agreement, does not guarantee the carrier payment of carrier charges.

C. The broker shall prepare, file and fully process with the carrier any and all claims for the seller of the potatoes, including taking all necessary action to bring the matter to a conclusion.

3. **Agents contracts.** No person required to be licensed by this Article shall act as an agent for any grower without first having an agreement with the grower reduced to a written contract clearly defining the duties and responsibilities of both parties, the extent of the agent's authority in distributing the potatoes, and the agent's fee or selling charge, if any.

4. **Agent's fees.** The agent's fee or selling charge shall be charged the seller only upon receipt from the buyer of payment in full of the gross proceeds from the sale.

5. **Duties of agents.** In addition to all the duties of the agent of any grower otherwise imposed by law, rule or regulation, or by agreement, the agent shall have the same duties as are imposed upon the broker by subsection 2, paragraphs A, B and C.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.