

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 114

H. P. 50

House of Representatives, January 6, 1981

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

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

EDWIN H. PERT, Clerk

Presented by Mr. Sherburne of Dexter.

Cosponsors: Mr. Hall of Dover-Foxcroft, Mr. Hichens of York and Mr. Richard of Madison.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Relating to the Licensing of Dealers in Certain Agricultural Commodities.

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

7 MRSA c. 101, subchapter II-A is enacted to read:

SUBCHAPTER II-A

**LICENSING OF DEALERS IN
AGRICULTURAL COMMODITIES**

§ 451. Purpose

The Legislature finds that agricultural production has a substantial and unique effect on the economy and way of life of the entire State. Large numbers of the people in the State are directly or indirectly dependent on agricultural production and related industries. It is of vital importance that producers be assured of payment for their production in order to assure commensurate stability in the productive capacity and economy. To a great extent the well-being of the industry is dependent upon those persons engaged in the buying and marketing of the agricultural commodities grown by others and the manner in which their services are performed. The entire manner of marketing of our agricultural production requires special consideration.

The Legislature intends through this legislation to exercise the police power of the State in order to protect and promote the general welfare of the agricultural producers and the people of the State and maintain and encourage fair and equitable practices in the purchase, handling and sale of agricultural commodities, which will, in turn, have the beneficial effect of improving the economy and well-being of the entire State.

§ 452. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

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

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

3. Broker. "Broker" means any person engaged in the business of negotiating sales of licensed commodities in commerce for or on behalf of the seller or the purchaser, respectively. The term "broker" applies to nonresidents of this State who transact business with respect to licensed commodities produced or processed within this State, whether the broker is licensed in the state of his residence or not.

4. Commissioner. "Commissioner" means the Commissioner of Agriculture, Food and Rural Resources.

5. Consumer. "Consumer" means any person who purchases a licensed commodity for consumption or use other than sale, storage or retention for the purpose of sale.

6. Dealer. "Dealer" means any person other than a consumer, engaged in the business of buying or selling licensed commodities in commerce, except as provided in section 458. The term "dealer" applies to nonresidents of this State who transact business of buying and selling licensed commodities produced or processed in this State, whether the dealer is licensed in the state of his residence or not.

7. Licensed commodities. "Licensed commodities" means apples, dry beans and other vegetables, but does not mean potatoes which are governed by chapter 103, subchapter X, article 3.

8. Licensee. "Licensee" means any person who holds a commodities license issued under this subchapter.

9. Processor. "Processor" means any person other than a consumer who purchases or contracts to purchase licensed commodities primarily for manufacture into articles of food by operations which change the physical form

the commodities possessed when harvested. The effect of the following operations shall be considered as so changing the physical form possessed 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.

10. Retailer. "Retailer" means a person engaged in the business of buying licensed commodities in wholesale quantities and reselling the licensed commodities bought, primarily to consumers.

11. Sale. "Sale" includes every contract of purchase or sale, contract to purchase or sell, purchase, sale and disposition of licensed commodities for value.

12. Seller. "Seller" means any person who sells or contracts to sell licensed commodities in the regular course of business.

§ 453. Rules and regulations

The commissioner may, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375 adopt rules for carrying out this subchapter.

§ 454. Licensing required

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

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

§ 455. Application for license

1. Application. The applicant shall file an application on forms as prescribed and furnished by the commissioner. These forms shall include the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative or officer, director, partner or member thereof, all 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 the State or elsewhere, the address of all places of business in the State 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. All questions required to be answered in application for licenses shall be sworn to.

2. **Notice to interested persons.** Upon receipt of the applications, the commissioner shall cause written notice to be provided to any person who has filed, within the preceding year, a written request to receive the notice of applications. Any interested person shall have 10 days in which to file comments as to the applicant's qualifications or to request a hearing prior to the issuance of the license.

3. **Qualifications of applicant.** The applicant shall satisfy the commissioner of his character, financial responsibility and good faith in seeking to engage in the business. The commissioner may issue a license to the applicant if he is satisfied as to the applicant's qualifications. When the license is issued, the applicant may act in the capacity described in the license for a period of one year from the date of issuance.

4. **Bond.** In order to insure the licensee's financial responsibility and to protect producers of licensed commodities, the commissioner shall require the license to file a bond in a form and amount satisfactory to the commissioner, but in any event not less than \$5,000 nor more than \$100,000, payable to the commissioner in his official capacity and conditioned on the full and prompt payment for all licensed commodities received or purchased from producers or other licensees during the effective period of the license.

5. **License fees.** 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 fee for each license is \$50. 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 business is to be conducted. The fee for each certification is \$10. All fees collected under this subchapter shall be paid forthwith to the Treasurer of State and credited to the Department of Agriculture, Food and Rural Resources for the administration of this subchapter and other expenses incident to the administration of the department, and shall be expended by the commissioner for the purposes for which the department is created. If any 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 available for the purposes specified, until expended.

§ 456. Complaints; investigation; hearings

The commissioner or his duly authorized agent may investigate, upon the complaint of any interested person, or on his own motion, the conduct and activities of any person applying for or holding a license under this subchapter and, for that purpose, may examine the books and papers of any applicant or licensee and may require testimony and affidavits thereof under oath. The commissioner may, in a manner consistent with the Maine Administrative Procedure Act, conduct such hearings as he deems necessary pursuant to this subchapter. He shall have full power to subpoena such witnesses and documents as he deems necessary.

§ 457. Refusal, suspension, revocation of license

1. Acts enumerated. The commissioner or his duly authorized agent may refuse to grant a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, upon a finding that any of the following acts have occurred:

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

B. That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this subchapter or has failed to or refused to pay for licensed commodities purchased by the applicant or licensee within 30 days after acceptance of the licensed commodities;

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

D. That the applicant or licensee has knowingly made any substantial misrepresentation as to the condition of the market for licensed commodities;

E. That the applicant or licensee has defrauded or attempted to defraud a producer;

F. That the applicant or licensee to whom any consignment is made has reconsigned the consignment to another dealer, processor, broker or agent and has received, collected or charged by such means more than one commission for making the sale for the consignor without previously obtaining the written consent of the consignor;

G. That the applicant or licensee knowingly made any false material statements in the procurement of a license under this subchapter;

H. That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by him for the producer;

I. 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 subchapter 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;

J. That the applicant or licensee has failed or refused to keep and maintain the records as required by this subchapter; or

K. That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of licensed commodities, whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings.

2. Administrative Court. The Administrative Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding that the licensee has committed any of the Acts enumerated in subsection 1.

Any order revoking or suspending a license may, within the discretion of the Administrative Court, 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 that purpose. Any order may contain provisions for its modification or dismissal upon presentation to the Administrative Court of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before the order becomes final.

3. Notification of insufficient payment or nonpayment. Producers may notify the commissioner of insufficient payment or nonpayment for licensed commodities delivered to any agent, broker, dealer or processor in violation of subsection 1, paragraph B. In addition to any other remedies available under this subchapter:

A. The commissioner or his agent, upon notification by a producer of insufficient payment or nonpayment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act, hold a hearing. The person accused of nonpayment, the respondent, shall provide the commissioner with a copy of the contract, if any, and all other materials and information necessary to enable the commissioner to carry out this section. Upon finding that the respondent has violated the contract or other obligation, express or implied, the commissioner shall require the respondent to post a bond sufficient to cover the debt owed to the producer or producers. Failure to post the bond shall be considered a violation of this subchapter and each day failure continues shall be considered a separate violation;

B. The commissioner may require the licensee, accused of or found after a hearing to be in default of payment to a producer, to submit a payment schedule to the commissioner. In the event that the schedule of payment proposed is not satisfactory to the commissioner, he may establish the schedule of payment; and

C. The commissioner may file a complaint with the Administrative Court to compel the posting of a bond required under paragraph A and to suspend the license of any licensee who fails to conform to the payment schedule established in this subsection until the producer is paid the total claim to which the producer is entitled. Upon the filing of a complaint by the commissioner in the

Administrative Court, the licensee shall post a bond sufficient to cover the total claim on the date on which the complaint is filed. The bond required in a court proceeding may be waived by the Administrative Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claimed. Nothing in this subsection may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any other state and federal procedure established to obtain redress.

§ 458. Exemptions

1. **Producers.** Producers are exempt from this subchapter when selling licensed commodities which they have grown, which they are presently growing or which they intend to grow.

2. **Other persons.** The commissioner, by rule, may provide an exemption from this subchapter for persons who deal in quantities of licensed commodities sufficiently small so as to not require the imposition of the standards of financial responsibility established by this subchapter.

§ 459. Forfeiture of bond; recovery on bond

If any licensee fails to make such payment as provided in section 457, subsection 1, paragraph B, that licensee, by reason of the nonpayment is in default as to all producers or licensees whose accounts then remain unpaid and the bond provided for shall be forfeited to the extent of all sums then due from the licensee to the producers or licensees. Whenever the commissioner determines that a licensee has failed to make payment, he shall, in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, provide notice that payment under the bond will be sought and indicating the time within which other producer or licensee claims may be made known to him. Upon determination of the commissioner that there has been a default in payment by a licensee, the conditions of the bond shall be deemed to be broken and the commissioner may bring action on the defaulted bond for the benefit of producers or licensees. Whenever the amount of the bond is not sufficient to cover all valid claims, the commissioner shall distribute the amount available on a pro rata basis.

§ 460. Violations

Any person who commits any of the actions specified in section 457, except in section 457, subsection 1, paragraph B, or otherwise fails, neglects or refuses to comply with the provisions of this subchapter or any rule promulgated hereunder is subject to the following civil penalties payable to the State, to be recovered in a civil action:

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

2. **Subsequent violation.** For each subsequent violation, a civil penalty not to exceed \$3,000.

The commissioner may recover the penalties imposed for violations in a civil action brought in his own name and, if he prevails in that action, he may recover full costs. The District Court and the Superior Court shall have concurrent jurisdiction of the actions. The Attorney General and the several district attorneys shall provide assistance to the commissioner.

All penalties received under this subchapter shall be paid to the Treasurer of State for deposit in the General Fund.

STATEMENT OF FACT

This bill provides for the licensing of dealers in certain commodities: Apples, dry beans and other vegetables. Its provisions parallel those of the Potato Licensing Law. There have been several reported instances of buyers coming into the State, contracting for the purchase of our commodities and even receiving them and then not paying. There are even more instances of payment being received many months after delivery to the severe economic detriment of our producers. There are also a fair number of buyers who are involved in bankruptcy proceedings which delay or preclude producers being paid. The bill establishes a system of licensing and bonding of agents, brokers, dealers and processors who deal in these commodities in order to assure prompt and adequate payment to producers. The bill creates minimum standards of financial and business responsibility to protect producers from fraudulent activities and to reduce the risk of their not being paid for their commodities.