

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1605

6
7 H.P. 1206

House of Representatives, May 12, 1983

8 Speaker laid before the House and on Motion of Representative Brannigan
9 of Portland, referred to the Committee on Agriculture. Sent up for concurrence
and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Lisnik of Presque Isle.

Cosponsors: Representative MacBride of Presque Isle and Representative
11 Crouse of Washburn.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Create a Maine Potato Dealers'
18 Licensing Board.
19

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

22 Sec. 1. 7 MRSA §1011, as enacted by PL 1977, c.
23 366, is repealed and the following enacted in its
24 place:

25 §1011. Purpose

26 The Legislature finds that the potato industry
27 has a substantial and unique effect on the economy of
28 the entire State and Aroostook County, in particular.
29 The processing segment of that industry represents a
30 major market for Maine's potato producers. To that
31 extent, the well-being of the industry is dependent
32 on responsible business practices on the part of per-
33 sons engaged in purchasing potatoes for processing
34 and prompt payment for potatoes purchased for any

1 purpose by individuals licensed under Title 32, chap-
2 ter 52.

3 The Legislature intends through this legislation
4 to exercise the police power of the State in order to
5 protect and promote the general welfare of the potato
6 industry and the people of the State and to maintain
7 and encourage fair and equitable practices in the
8 purchase of potatoes for processing. These practices
9 on the part of all individuals licensed by the State
10 to purchase potatoes will have a beneficial effect on
11 the potato industry as a whole.

12 Sec. 2. 7 MRSA §1013, as amended by PL 1977, c.
13 694, §100, is repealed:

14 Sec. 3. 7 MRSA §1013-A is enacted to read:

15 §1013-A. Authority of the commissioner

16 1. Rules. The commissioner shall, in a manner
17 consistent with the rule-making provisions of the
18 Maine Administrative Procedure Act, Title 5, chapter
19 375, adopt such rules as he considers necessary to
20 accomplish the provisions of this Article.

21 2. Investigations. The commissioner or his duly
22 authorized agent may investigate, upon the verified
23 complaint of any interested person or on his own
24 motion, the following:

25 A. That a broker or dealer licensed under Title
26 32, chapter 52 has failed or refused to make pay-
27 ments required under Title 32, section 3686, sub-
28 section 1, paragraph B; or

29 B. That an applicant or a licensee has committed
30 any of the violations listed in section 1017.

31 Any interested person who filed a verified complaint
32 may be a party of record to all proceedings had with
33 regard to his complaint.

34 3. Hearings. The commissioner may conduct such
35 hearings pursuant to this Article as he considers
36 necessary in a manner consistent with the Maine
37 Administrative Procedure Act, Title 5, chapter 375,

1 and may subpoena such witnesses and documents as he
2 considers necessary.

3 Sec. 4. 7 MRSA §1014, as amended by PL 1975, c.
4 555, §2, is further amended to read:

5 §1014. Licensing; processors

6 No person ~~shall~~ may act as a ~~dealer,~~ processor,
7 ~~broker, agent or retailer~~ unless duly licensed as
8 provided in this Article. Every person, before acting
9 as a ~~dealer,~~ processor, ~~broker, agent or retailer,~~
10 shall file an application with the commissioner for a
11 license to transact the business of a ~~dealer,~~ proces-
12 sor, ~~broker, agent or retailer~~ and ~~such that applica-~~
13 tion shall be accompanied by the license fee provided
14 in this Article.

15 No person ~~shall~~ may buy, or solicit or negotiate
16 the sale of any potatoes in this State as a repre-
17 sentative of any ~~dealer,~~ processor, ~~broker or~~
18 ~~retailer,~~ unless ~~such that~~ representative has been so
19 authorized by a duly licensed ~~dealer,~~ processor, ~~bro-~~
20 ~~ker or retailer~~ in writing, and a copy of ~~such that~~
21 authorization is filed with the commissioner, except
22 where ~~such the~~ representative conducts business in
23 the office of ~~said that~~ ~~dealer,~~ processor, ~~broker or~~
24 ~~retailer.~~ The commissioner shall be notified in
25 writing by ~~said that~~ ~~dealer,~~ processor, ~~broker or~~
26 ~~retailer~~ immediately upon the termination of ~~such the~~
27 authorization.

28 Sec. 5. 7 MRSA §1015, 2nd ¶, as amended by PL
29 1979, c. 127, §45, is further amended to read:

30 Upon receipt of ~~such the~~ applications, the com-
31 missioner immediately shall cause notice thereof to
32 be provided in a manner consistent with the provi-
33 sions of the Maine Administrative Procedure Act,
34 Title 5, chapter 375, as to adjudicatory proceedings
35 ~~and shall, in any case, cause a copy thereof to be~~
36 ~~served upon the Maine Potato Council.~~ Any interested
37 person shall have 30 days in which to file comments
38 as to the applicant's qualifications, to request a
39 hearing, or to file a verified complaint with the
40 commissioner as provided by this Article.

1 Sec. 6. 7 MRSA §1015, 4th ¶, as amended by PL
2 1979, c. 672, Pt. A, §24, is further amended to
3 read:

4 In order to insure the licensee's financial
5 responsibility and to protect Maine potato producers,
6 the commissioner shall require the licensee to file a
7 bond in a form and amount satisfactory to the commis-
8 sioner, but in no event not less than ~~§10,000~~ \$50,000
9 nor more than ~~§100,000~~ \$500,000, payable to the com-
10 missioner in his official capacity and conditioned on
11 the full and prompt payment for all potatoes received
12 or purchased ~~from producers or other licensees~~ during
13 the effective period of the license. The amount of
14 bond required shall be based on the licensee's antic-
15 ipated monthly volume of sales, but may be adjusted
16 to reflect other federal escrow accounts or bond re-
17 quirements met by the licensee which satisfy the pur-
18 poses of this section.

19 Sec. 7. 7 MRSA §1016, as amended by PL 1975, c.
20 555, §3, is repealed.

21 Sec. 8. 7 MRSA §1017, sub-§1, as amended by PL
22 1977, c. 694, §103, is repealed and the following
23 enacted in its place:

24 1. Acts enumerated. The commissioner or his
25 duly authorized agent may refuse to grant a license,
26 after notice and opportunity for a hearing is pro-
27 vided in a manner consistent with the Maine Adminis-
28 trative Procedure Act, Title 5, chapter 375, as to
29 adjudicatory proceedings, upon a finding that any of
30 the following acts have existed within 2 years of the
31 date of the filing of an application for license:

32 A. That the applicant or licensee has failed or
33 refused to render a true account of sales, or to
34 make a settlement thereon, within the time and in
35 the manner required by this Article, or has
36 failed or refused to pay for potatoes purchased
37 by the applicant or licensee within 20 days after
38 acceptance of the potatoes;

39 B. That the applicant or licensee has knowingly
40 made any false material statement as to the con-
41 dition, quality or quantity of potatoes received,
42 purchased or stored by him;

1 C. That the applicant or licensee has defrauded
2 or attempted to defraud a producer;

3 D. That the licensee knowingly made any false
4 material statements in the procurement of that
5 license;

6 E. That the applicant or licensee has not ac-
7 counted promptly and properly to the producer
8 with regard to any claim settled or collected by
9 him for that producer;

10 F. That the applicant or licensee has failed or
11 refused, upon demand, to permit the commissioner
12 or his agents to make the investigations, exami-
13 nations or audits as provided in this Article or
14 that the applicant or licensee has removed or
15 sequestered any books, records or papers neces-
16 sary to any such investigations, examinations or
17 audits, or has otherwise obstructed the investi-
18 gations, examinations or audits;

19 G. That that licensee has failed or refused to
20 keep and maintain the records as required by this
21 Article; or

22 H. That the applicant or licensee has committed
23 any act or conduct with regard to the handling,
24 purchase or storage of potatoes whether of the
25 same or different character than specified in
26 this section, which constitutes or demonstrates
27 bad faith, incompetency or untrustworthiness, or
28 dishonest, fraudulent or improper dealings.

29 Sec. 9. 7 MRSA §1017, sub-§3, as amended by PL
30 1975, c. 555, §§4 and 5, is repealed.

31 Sec. 10. 7 MRSA §1018, as repealed and replaced
32 by PL 1977, c. 694, §109, is repealed.

33 Sec. 11. 7 MRSA §1022, as amended by PL 1979, c.
34 541, Pt. A, §64, is repealed and the following
35 enacted in its place:

36 §1022. Records of transactions

1 Every person required to be licensed under this
2 Article, upon having negotiated a sale of potatoes
3 for others or upon having purchased potatoes from the
4 producer, shall cause a record of the transaction to
5 be made, and deliver promptly to the seller a copy
6 thereof, setting forth the following with reference
7 to the handling, sale and storage of the potatoes:

8 1. Date. The date of the sale;

9 2. Name and address of producer. The name and
10 address of the producer;

11 3. Name and address of buyer. The name and ad-
12 dress of the buyer; and

13 4. Specifications. The grade, size, weight and
14 amount and other specifications.

15 In addition, the licensee shall, for each trans-
16 action, specify the price for the potatoes, per unit
17 and total, and deliver that information to the pro-
18 ducer within 10 business days of delivery and accep-
19 tance of the potatoes.

20 Sec. 12. 7 MRSA §1023, as amended by PL 1971, c.
21 600, §9, is repealed.

22 Sec. 13. 7 MRSA §1025, as amended by PL 1977, c.
23 696, §358, is further amended to read:

24 §1025. Forfeiture of bond; recovery on bond

25 If any ~~licensee~~ person licensed under Title 32,
26 chapter 52 shall fail fails to make such the payment
27 as provided in section ~~1017~~ 3686, subsection 1, para-
28 graph B, such the licensee, by reason of such the
29 nonpayment shall be in default as to all producers or
30 licensees whose accounts shall then remain unpaid,
31 and the bond provided for shall be forfeited to the
32 extent of all sums then due from such the licensee to
33 said the producers or licensees, and by nature of
34 such the default, the conditions of such the bond
35 shall be deemed to be broken, and any such producer
36 or licensee may bring an action on the defaulted bond
37 in the name of the commissioner for the benefit of
38 said that producer or licensee.

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

3 2. Apprentice dealer. "Apprentice dealer" means
4 any individual licensed by the board to work under
5 the supervision of a licensed dealer.

6 3. Associate dealer. "Associate dealer" means
7 any individual registered by the commissioner to work
8 under the supervision of a licensed dealer.

9 4. Board. "Board" means the Maine Potato Deal-
10 ers' Licensing Board.

11 5. Broker. "Broker" means any person engaged in
12 the business of negotiating sales of potatoes in com-
13 merce for or on behalf of the seller or the pur-
14 chaser, respectively. The term "broker" shall apply
15 to nonresidents of this State who carry on that busi-
16 ness in this State, whether that broker is licensed
17 in the state of his residence or not.

18 6. Buyer. "Buyer" means any person other than a
19 consumer who purchases or contracts to purchase pota-
20 atoes.

21 7. Commissioner. "Commissioner" means the Com-
22 missioner of Agriculture, Food and Rural Resources or
23 his duly authorized agent.

24 8. Dealer. "Dealer" means any person engaged in
25 the business of buying or selling potatoes in whole-
26 sale or jobbing quantities in commerce and includes:

27 A. Jobbers, distributors and other wholesalers;

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

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

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

1 9. Licensed federal-state potato inspec-
2 tor. "Licensed federal-state potato inspector" means
3 an authorized representative of the Federal-State
4 Inspection Service.

5 10. Licensee. "Licensee" means any person who
6 holds an unrevoked and valid unsuspended license
7 issued under this chapter.

8 11. Maine Potato Council. "Maine Potato Coun-
9 cil" means the nonstock corporation organized and
10 existing under Title 13, chapter 81, with its princi-
11 ple office in Presque Isle, Maine, and whose
12 membership is comprised exclusively of producers.

13 12. Person. "Person" means any individual,
14 partnership, corporation, association, legal repre-
15 sentative or any organized group or business unit.

16 13. Producer. "Producer" means any person
17 engaged in the production of potatoes for sale in the
18 market.

19 14. Retailer. "Retailer" means a person engaged
20 in the business of buying potatoes in wholesale or
21 jobbing quantities and reselling the potatoes bought
22 primarily to consumers through at least 5 retail out-
23 lets located within or without the State.

24 15. Sale. "Sale" includes every contract of
25 purchase or sale, contract to purchase or sell, pur-
26 chase, sale and disposition of potatoes for value.

27 16. Seller. "Seller" means any person who sells
28 or contracts to sell potatoes in the regular course
29 of business.

30 17. Verified complaint. "Verified complaint"
31 means a writing signed by a person who, under oath,
32 swears that he has reason to believe that a person
33 required to be licensed under this chapter has vio-
34 lated one or more of the provisions of this Article
35 or of the rules promulgated thereunder, setting forth
36 a short and plain statement of the allegations which
37 are the basis for that belief.

1 18. Wholesale or jobbing quantities. "Wholesale
2 or jobbing quantities" means aggregate quantities of
3 potatoes totaling 25 tons, that is, 50,000 pounds or
4 more in weight purchased or contracted to be pur-
5 chased in any calendar month.

6 19. Processor. "Processor" means any person
7 other than a consumer who purchases or contracts to
8 purchase potatoes primarily for manufacture into
9 articles of food, starch or other value-added prod-
10 ucts by operations which change the physical form
11 those potatoes possessed when harvested: Chopping,
12 slicing, cutting, dicing, mashing, removal of skin or
13 peel, frying or otherwise cooking, freezing, canning,
14 dehydrating or comparable methods of preparation for
15 marketing in what is generally considered to be a
16 processed form.

17 §3674. Maine Potato Dealers' Licensing Board

18 There is established in the Department of Agri-
19 culture, Food and Rural Resources a Maine Potato
20 Dealers' Licensing Board to consist of 7 members
21 appointed by the commissioner. Three members shall
22 be licensed potato dealers who have been so licensed
23 for at least 5 years, 2 members shall be potato pro-
24 ducers, one member shall be a representative of the
25 University of Maine system who shall be knowledgeable
26 about the marketing of potatoes and one member shall
27 be a representative of the public. The first 2
28 dealer members and the first 2 producer members shall
29 serve one-year and 2-year terms, respectively. All
30 other appointments shall be for 3-year terms.

31 1. Dealer members. At least 30 days before the
32 appointment of a licensed dealer to a vacancy on the
33 board, a statewide organization designated by the
34 commissioner and representing licensed dealers in the
35 State shall forward to the commissioner for his con-
36 sideration the names of 3 or more qualified licen-
37 sees, and the commissioner shall select one of those
38 names for appointment to the board.

39 2. Producer members. At least 30 days before
40 the appointment of a potato producer to a vacancy on
41 the board, the Maine Potato Council shall forward to
42 the commissioner for his consideration the names of 3

1 or more qualified licensees, and the commissioner
2 shall select one of those names for appointment to
3 the board.

4 §3675. Officers

5 The board shall organize annually by electing a
6 president, a secretary who need not be a member of
7 the board and such other officers as may be deemed
8 necessary. The secretary shall maintain the corre-
9 spondence of the board, keep a record of all proceed-
10 ings, including the disposition of all applications
11 for license and keep a register of all persons cur-
12 rently licensed by the board. All board records
13 shall be open to public inspection during regular
14 office hours.

15 All revenues received by the board shall be
16 deposited with the Treasurer of State and expended on
17 vouchers approved by the commissioner.

18 The commissioner may, subject to the Personnel
19 Law, employ such personnel as may be deemed necessary
20 to carry out the purposes of this chapter.

21 §3676. Meetings

22 The board shall meet at least twice a year at a
23 time and place fixed by the board. Other meetings
24 may be called by the president by giving notice as
25 required by rule. A majority of the board consti-
26 tutes a quorum.

27 §3677. Removal

28 Members of the board may be removed by the com-
29 missioner for cause, after notice and hearing.

30 §3678. Expenses

31 Members of the board shall be paid at the rate of
32 \$50 for each day, or substantial portion thereof,
33 they are engaged in the work of the board, in addi-
34 tion to their actual expenses while carrying out the
35 functions of the board. Expenses shall be paid by
36 vouchers approved by the commissioner.

1 §3679. Powers

2 The board may:

3 1. Establish standards. Establish, consistent
4 with this chapter, standards of qualification for
5 training and licensing as a broker, dealer, associate
6 dealer or apprentice dealer;

7 2. Issue, renew, deny, suspend or revoke
8 licenses. Issue, renew, deny, suspend or revoke bro-
9 ker, dealer, associate dealer and apprentice dealer
10 licenses or otherwise discipline licensees consistent
11 with this chapter and the rules adopted in this chap-
12 ter. These rules shall be made in accordance with
13 the purpose and intent of the law and the standards
14 set forth in this chapter;

15 3. Adopt, amend or repeal rules. Adopt, amend
16 or repeal rules necessary to carry into effect this
17 chapter in a manner consistent with the Maine Admin-
18 istrative Procedure Act, Title 5, chapter 375;

19 4. Establish a schedule of fees. Establish a
20 schedule of fees for licensing and testing of bro-
21 kers, dealers, associate dealers and apprentice deal-
22 ers;

23 5. Testing. Conduct testing of license appli-
24 cants;

25 6. Publish annual register of licen-
26 sees. Annually, prior to October 15th, publish a
27 list of all licensees along with each licensee's
28 business associates and, in the case of dealers,
29 associate dealers and apprentice dealers;

30 7. Conduct investigations. Conduct investiga-
31 tions of alleged violations of this chapter and the
32 rules adopted in this chapter. Information gathered
33 during investigations shall be the confidential prop-
34 erty of the board and shall be excepted from the
35 provisions of Title 1, section 408. Release of this
36 information by a board member, except as an official
37 board action, shall be grounds for removal of that
38 member from the board;

1 8. Hold hearings. Hold hearings on all matters
2 properly brought before the board and, in connection
3 thereto, administer oaths, receive evidence, make
4 necessary determinations and enter orders consistent
5 with the findings. The board may require by subpoena
6 the attendance and testimony of witnesses and the
7 production of papers, records or other documentary
8 evidence and commission depositions. The Superior
9 Court, on petition of the board, may issue a summary
10 process to enforce the lawful orders of the board in
11 these actions; and

12 9. Bring proceedings. Bring proceedings in the
13 courts for the enforcement of this chapter or any
14 rules made pursuant to this chapter.

15 §3680. Licenses required

16 No person may act as a broker or dealer unless
17 duly licensed as provided in this chapter. Notwith-
18 standing any other licensing requirement, no indi-
19 vidual may buy, solicit or negotiate the sale of any
20 potatoes in this State unless that individual has
21 been licensed as an associate dealer or apprentice
22 dealer, as provided in this chapter.

23 §3681. Licensing

24 The applicant shall file an application for a
25 broker, dealer, associate dealer or apprentice dealer
26 license on forms as prescribed and furnished by the
27 board, which forms shall contain the full name of the
28 person applying for the license and, if the applicant
29 be a corporation, partnership, association, exchange
30 or legal representative or officer, director, partner
31 or member thereof, all such names and positions are
32 to be stated on the application. If the applicant is
33 a foreign corporation, it shall certify that it is
34 registered with the Secretary of State under Title
35 13-A, chapter 12, and further state the principal
36 business address of the applicant in this State or
37 elsewhere, the address of all places of business in
38 this State, and the name or names of the person or
39 persons authorized to receive and accept service of
40 lawful process upon the applicant within the State.
41 All questions required to be answered in application
42 for licenses shall be sworn to, and intentionally

1 untruthful answers shall constitute the crime of per-
2 jury.

3 1. Qualifications. No application may be ac-
4 cepted from any applicant if that person or officer,
5 director, partner or member thereof, has been con-
6 victed in any state or federal court of any felony
7 within 5 years of the date of the application. All
8 applicants shall meet criteria for financial respon-
9 sibility, as defined in section 3682. In addition,
10 except as provided in section 3684, the following
11 qualifications shall be met.

12 A. In order to be licensed as a broker, an indi-
13 vidual must pass a written examination as estab-
14 lished by the board.

15 B. In order to be licensed as an associate
16 dealer, an individual must pass a written exami-
17 nation established by the board.

18 C. An individual may not hold an apprentice
19 dealer license for a period of more than 2 calen-
20 dar years.

21 2. Examinations. The board shall hold at least
22 one broker examination and one associate dealer exam-
23 ination during each year and may hold such additional
24 examinations as are necessary. The secretary shall
25 give public notice of the time and place for each
26 examination at least 120 days in advance of the date
27 set for the examination. A person desiring to take
28 an examination shall make application at least 60
29 days before the date of the examination. The pre-
30 paration, administration and grading of examinations
31 shall be governed by regulations prescribed by the
32 board.

33 Examinations shall, at a minimum, be designed to test
34 knowledge of general business practices, state and
35 federal laws and regulations related to the marketing
36 of potatoes, grading standards, transportation sys-
37 tems, merchandising, marketing channels and factors
38 which determine market prices.

39 After each examination, the board shall notify each
40 examinee of the result of his examination and shall

1 issue a certificate to each person successfully com-
2 pleting the examination.

3 Any person failing an examination shall be admitted
4 to any subsequent examination on payment of the
5 application fee.

6 3. License issued. Upon successful completion
7 of the examination and of receipt of evidence of
8 financial responsibility as required under section
9 3682, the board shall issue a license for a period of
10 one year from the date of issue upon payment of the
11 license fee.

12 Each license shall plainly state the name and
13 business address or addresses of the licensee and
14 shall be posted in a conspicuous place in each office
15 where the business is transacted. If the licensee
16 desires to carry on business in more than one place
17 within the State, he shall procure additional copies
18 of the license, certified by the board, for each
19 place where the business is to be conducted.

20 §3682. Minimum criteria for financial responsibility

21 In order to ensure a licensee's financial respon-
22 sibility and to protect potato producers, the board
23 shall require the following:

24 1. Brokers and dealers. Brokers and dealers
25 shall be required to file with the board a certifi-
26 cate of financial responsibility issued by the com-
27 missioner. In order to ensure the applicant's finan-
28 cial responsibility, the commissioner shall require
29 the applicant to file a bond based on anticipated
30 volume of sales in a form and amount satisfactory to
31 the commissioner, but in no event less than \$50,000
32 nor more than \$200,000, payable to the commissioner
33 in his official capacity and conditioned on the full
34 and prompt payment for all potatoes received or pur-
35 chased by the applicant. Upon filing of this bond,
36 the commissioner shall issue a certificate of finan-
37 cial responsibility to the applicant and forward a
38 copy to the board.

39 2. Associate dealers and apprentice dealers.
40 Associate dealers and apprentice dealers shall be re-

1 quired to provide proof of attachment to a dealer
2 bond prior to licensing. It shall be the dealer's
3 responsibility to notify the board, in writing,
4 immediately upon termination of that attachment.

5 §3683. Fees

6 All fees collected under this chapter shall be
7 paid forthwith to the Treasurer of State and credited
8 to the Department of Agriculture, Food and Rural
9 Resources for the administration of this chapter.
10 Any unexpended balance shall not lapse, but shall be
11 carried as a continuing account and available for the
12 purposes specified until expended.

13 §3684. Transitional provisions

14 1. Dealers and brokers. Any person holding a
15 valid license as a potato dealer or broker in this
16 State on the date this chapter becomes effective
17 shall be recognized as a licensed dealer or broker
18 and shall be entitled to retain this status so long
19 as he complies with this chapter, including annual
20 renewal of the license within 30 days of notification
21 of its being due. Within 60 days of the effective
22 date of this chapter, every dealer licensed under
23 this section shall file with the board a certificate
24 of financial responsibility, as provided in section
25 3682.

26 2. Salespeople. Within 30 days of the effective
27 date of this chapter, all persons holding a valid
28 dealer license shall provide to the department the
29 names of salespeople employed by and acting for that
30 dealer in the buying or selling of potatoes, and the
31 length of time each salesperson has been employed by
32 that dealer. The department shall provide this
33 information to the board which shall:

34 A. Without further testing, issue to each
35 salesperson who has been employed by that dealer
36 for at least 2 years a transitional associate
37 dealer license, so long as the salesperson pro-
38 vides evidence of attachment to a dealer bond, as
39 required in section 3682. This transitional
40 associate dealer license shall be valid upon
41 annual renewal within 30 days of notification of

1 its being due so long as the licensee continues
2 to be attached to the same dealer bond; or

3 B. Issue an apprentice license to each
4 salesperson who has been employed by that dealer
5 for less than 2 years. Persons holding an
6 apprentice license under this section may hold
7 that license for 2 years from the date of issue.

8 §3685. Verified complaints; investigation

9 The board or its duly authorized agent may inves-
10 tigate upon the verified complaint of any interested
11 person, or on its own motion, the conduct and activi-
12 ties of any person applying for or holding a license
13 as broker, dealer, associate dealer or apprentice
14 dealer and, for that purpose, may examine the books
15 and papers of any such person and may take testimony
16 and affidavits under oath. Any interested person who
17 has filed a verified complaint may be a party of
18 record to all proceedings had with regard thereto.

19 §3686. Violations

20 1. Acts enumerated. The board may refuse to
21 grant a license, after notice and opportunity for a
22 hearing is provided in a manner consistent with the
23 Maine Administrative Procedure Act, Title 5, chapter
24 375, upon a finding that any of the following acts
25 have existed within 2 years of the date of the filing
26 of an application for license:

27 A. That fraudulent charges or returns have been
28 made by the applicant or licensee for the han-
29 dling, sale or storage of potatoes, or for the
30 rendering of any service in connection with the
31 handling, sale or storage of potatoes;

32 B. That the applicant or licensee has failed or
33 refused to render a true account of sales, or to
34 make a settlement thereon, within the time and in
35 the manner required by this chapter, or has
36 failed or refused to pay for potatoes purchased
37 by the applicant or licensee within 20 days after
38 acceptance of the potatoes;

1 C. That the applicant or licensee has knowingly
2 made any false material statement as to the con-
3 dition, quality or quantity of potatoes received,
4 handled, sold, purchased or stored by him;

5 D. That the applicant or licensee directly or
6 indirectly has purchased, for his or its own ac-
7 count, potatoes received by him upon consignment
8 without prior authorization from consignor,
9 together with price fixed by consignor or without
10 promptly notifying the consignor of that pur-
11 chase. This shall not prevent any broker,
12 dealer, associate dealer or apprentice dealer, in
13 order to close the day's business, from taking
14 into account in his record of sales miscellaneous
15 lots or parcels of potatoes remaining unsold, if
16 that broker, dealer, associate dealer or appren-
17 tice dealer on the business day next following
18 properly enters that transaction in his accounts;

19 E. That the applicant or licensee has made any
20 substantial misrepresentation as to the condi-
21 tions of the market for potatoes;

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

25 G. That a broker, dealer, associate dealer or
26 apprentice dealer to whom any consignment is made
27 has reconsigned that consignment to another bro-
28 ker, dealer, associate dealer or apprentice
29 dealer and has received, collected or charged by
30 those means more than one commission for making
31 the sale therefor for the consignor without writ-
32 ten consent of the consignor;

33 H. That the licensee knowingly made any false
34 material statements in the procurement of that
35 license;

36 I. That the applicant or licensee has not ac-
37 counted promptly and properly to the producer
38 with regard to any claim settled or collected by
39 him for that producer;

1 J. That the applicant or licensee has failed or
2 refused, upon demand, to permit the board or its
3 agents to make the investigations, examinations
4 or audits, as provided in this chapter, or that
5 the applicant or licensee has removed or
6 sequestered any books, records or papers neces-
7 sary to any such investigations, examinations or
8 audits, or has otherwise obstructed the investi-
9 gations, examinations or audits;

10 K. That the licensee has failed or refused to
11 keep and maintain the records as required by this
12 chapter; or

13 L. That the applicant or licensee has committed
14 any act or conduct with regard to the handling,
15 sale or storage of potatoes whether of the same
16 or different character than specified in this
17 section, which constitutes or demonstrates bad
18 faith, incompetency or untrustworthiness, or dis-
19 honest, fraudulent or improper dealings.

20 The Administrative Court may, in a manner consistent
21 with the Maine Administrative Procedure Act, Title 5,
22 chapter 375, suspend or revoke a license upon finding
23 any of the enumerated violations within 2 years of
24 the date of the filing of a complaint.

25 2. Conditional. Any order revoking or sus-
26 pending a license may, within the discretion of the
27 Administrative Court, be made conditional upon the
28 settlement, adjustment or satisfaction of the conse-
29 quence of the violation or violations as specified,
30 and the operation of such an order may be deferred
31 for that purpose. Any such order may contain provi-
32 sions for modification or dismissal thereof upon pre-
33 sentation to the Administrative Court of evidence
34 that the matter of complaint has been settled, ad-
35 justed or withdrawn at any time before the order
36 becomes final.

37 §3687. Records of transactions

38 1. Record. Every person required to be licensed
39 under this chapter, upon having negotiated a sale of
40 potatoes for others or upon having purchased potatoes
41 from the producer, shall cause a record of that

1 transaction to be made, and deliver promptly to the
2 seller a copy thereof, setting forth the following
3 with reference to the handling, sale and storage of
4 the potatoes;

5 A. Date of sale;

6 B. Name and address of producer;

7 C. Name and address of seller;

8 D. Name and address of buyer;

9 E. Name and address of broker, if any;

10 F. Name and address of handler, if any;

11 G. Name and address of any person designated as
12 a secured party on a financing statement naming
13 the seller as debtor, filed in accordance with
14 Title 11, section 9-401, covering the potatoes,
15 if any;

16 H. Mode of transportation of shipment, if known;
17 if unknown, that information shall be provided
18 the seller prior to shipment;

19 I. Name of carrier, if known; if unknown, that
20 information shall be provided the seller prior to
21 shipment;

22 J. If there is a broker or a retailer involved
23 in a transaction, point of final destination;

24 K. Date of shipment;

25 L. If there is a broker or a retailer involved
26 in the transaction, contemplated date of arrival
27 at final destination;

28 M. Grade, size, weight and amount and other
29 specifications;

30 N. Price for the potatoes per unit and total;

31 O. Any deductions to be made from the proceeds
32 for expenses to be borne by the seller or
33 handler;

1 P. All other essential details of the purchase
2 or sale; and

3 Q. If there is a broker involved in the trans-
4 action, an itemized accounting which separately
5 sets forth all charges in connection with the
6 sale, including the brokerage fee, if any.

7 2. Guarantees. In any sale in which the buyer
8 of those potatoes is a person required to be licensed
9 by this chapter and has a place of business in this
10 State, except a retailer, any guarantees with regard
11 to grade, size, weight or other specifications made
12 by the producer shall be deemed satisfied when the
13 grade, size, weight or specifications, as certified
14 by a licensed federal-state potato inspector or seed
15 potato inspector, after those potatoes have been or
16 while they are being loaded for transit, equals or
17 exceeds the grade, size, weight or other specifica-
18 tions of those potatoes stated in the record. Any
19 producer making any such guarantees shall, at all
20 times prior to shipment, have the option to determine
21 whether or not the potatoes shall be inspected in ac-
22 cordance with this subsection. Any agreement, the
23 effect of which is to deny the producer of his right
24 to satisfy his guarantee obligations, and any agree-
25 ment conflicting with this subsection is void; pro-
26 vided that a producer is deemed to waive his rights
27 under this subsection or he may sell his potatoes
28 under an agreement conflicting with this subsection
29 when the record of transaction required by this chap-
30 ter contains the following additional information:

31 A. Name and address of the person to whom the
32 dealer resold the potatoes and any other person
33 to whom the producer is obligated, directly or
34 indirectly, by making any guarantees with regard
35 to grade, size, weight or other specifications;
36 and

37 B. Point of final destination for the shipment
38 of potatoes.

39 3. Waiver. In any sale by a producer in which
40 the making of a record of the transaction is required
41 by this chapter and the name and address of the buyer
42 is not set forth on that record, or if no such record

1 of transaction is made or if a copy of the record of
2 transaction is not delivered by depositing the copy
3 in the United States mail, postage prepaid, addressed
4 to the producer, prior to delivery of the potatoes at
5 the point of final destination, the producer is
6 deemed not to have made any guarantees with regard to
7 grade, size, weight or other specifications, and that
8 omission by the buyer or broker or agent constitutes
9 a waiver of any and all claims against the producer
10 for breach of warranty, expressed or implied.

11 §3688. Brokers

12 1. Brokerage fee. The brokerage fee, if any,
13 shall be an agreed upon percentage of the gross pro-
14 ceeds from the sale, exclusive of the costs of trans-
15 portation, and shall be charged the seller only upon
16 receipt of payment in full of the gross proceeds from
17 the buyer.

18 2. Duties of brokers. In addition to all the
19 duties of the broker otherwise imposed by law or by
20 agreement, the broker shall have the following
21 duties.

22 A. The broker shall invoice the buyer, collect
23 and remit to the seller, and any secured party
24 noted on the record of the transaction, any and
25 all sums due on account of the sale and render an
26 itemized accounting to the seller promptly upon
27 receipt of payment, showing the true gross
28 selling price, all brokerage fees deducted and
29 any other charges or expenses incurred in connec-
30 tion with the sale of the potatoes. Agreement to
31 collect from the buyer and remit to the seller is
32 not a guarantee by the broker that the buyer will
33 pay for the potatoes purchased, unless there is a
34 specific agreement by the broker that the broker
35 will pay if the buyer does not pay.

36 B. The broker shall, to the best of his ability,
37 make all necessary arrangements to effect the
38 transportation of that shipment to the buyer, but
39 the broker, in the absence of a specific agree-
40 ment, does not guarantee the carrier payment of
41 carrier charges.

1 C. The broker shall prepare, file and fully pro-
2 cess with the carrier any and all claims for the
3 seller of the potatoes, including taking all
4 necessary action to bring the matter to a conclu-
5 sion.

6 §3689. Exemptions

7 The following persons are exempt from the licens-
8 ing requirements of this chapter:

9 1. Producers. Producers, when selling potatoes
10 which they have grown, which they are presently grow-
11 ing or which they intend to grow;

12 2. Retailers. Retailers; and

13 3. Processors. Processors licensed under Title
14 7, chapter 103, subchapter X, Article 3.

15 §3690. Enforcement

16 The board may recover the penalties imposed for
17 violations of this chapter and any rules promulgated
18 in this chapter in a civil action brought in its own
19 name, the venue to be as in other civil actions and,
20 if prevailing in that action, the board may recover
21 full costs. The board shall be entitled to and shall
22 receive assistance of the Attorney General and of the
23 several district attorneys.

24 §3691. Jurisdiction and disposal of forfeitures

25 The District Court and the Superior Court shall
26 have concurrent jurisdiction of actions brought for
27 violation of this chapter or the rules promulgated in
28 this chapter. All penalties received under this
29 chapter by county treasurers shall be paid by them to
30 the Treasurer of State for deposit in the General
31 Fund.

32 §3692. Violations

33 Any person who violates any of the provisions of
34 this chapter, except section 3686, subsection 1,
35 paragraph B, or neglects or refuses to comply with
36 the provisions thereof or any rules promulgated in

1 this chapter is subject to the following civil pen-
2 alties payable to the State to be recovered in a
3 civil action:

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

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

8 STATEMENT OF FACT

9 This bill transfers licensing authority for
10 potato dealers and brokers from the Department of
11 Agriculture, Food and Rural Resources to a Maine
12 Potato Dealers' Licensing Board. It also creates
13 associate and apprentice dealer license categories
14 for persons working for dealers.

15 A written examination is a prerequisite for
16 licensing as an associate dealer or broker. A person
17 may be licensed as an apprentice dealer for 2 years
18 without a written examination.

19 Bonding requirements are raised from the current
20 \$10,000 to \$100,000 range for all licensees, from
21 \$50,000 to \$200,000 for brokers and dealers and from
22 \$50,000 to \$500,000 for processors.

23 The authority to investigate complaints and take
24 action in the event of nonpayment to producers
25 remains with the Commissioner of Agriculture, Food
26 and Rural Resources.

27 Specifically, sections 1 to 13 revise the current
28 licensing statute by eliminating licensing of brokers
29 and dealers by the department; by reducing statutory
30 requirements for processor record keeping so that the
31 statute conforms to current practices; and by
32 increasing bonding requirement for processors.

1 Section 14 establishes a new licensing board to
2 license dealers, brokers, associate dealers and
3 apprentice dealers. The board includes 3 dealers, 2
4 producers, one representative of the university sys-
5 tem and one member of the public.

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