

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

(EMERGENCY)

SECOND REGULAR SESSION

---

ONE HUNDRED AND ELEVENTH LEGISLATURE

---

Legislative Document

No. 2118

---

H.P. 1596

House of Representatives, February 23, 1984

Submitted by the Department of Agricultural, 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 Representative Lisnik of Presque Isle.

Cosponsors: Representative Crouse of Washburn and Representative Smith of Island Falls.

---

STATE OF MAINE

---

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

---

AN ACT Relating to Agricultural  
Marketing and Bargaining.

---

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature has found that good faith bargaining between producers and handlers of agricultural products is essential to orderly marketing; and

Whereas, the Maine Agricultural Marketing and Bargaining Act of 1973, as amended, provides for final offer arbitration when no contract agreement has been reached between a handler of potatoes and a qualified association of potato producers; and

Whereas, implementation of the final offer provision during bargaining for the 1983 potato crop re-

1 vealed defects in the present law detrimental to both  
2 producers and handlers which must be addressed prior  
3 to the 1984 crop season; and

4 Whereas, in the judgment of the Legislature,  
5 these facts create an emergency within the meaning of  
6 the Constitution of Maine and require the following  
7 legislation as immediately necessary for the preser-  
8 vation of the public peace, health and safety; now,  
9 therefore,

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

12 Sec. 1. 13 MRSA §1958, sub-§1, as enacted by PL  
13 1973, c. 621, §1, is amended to read:

14 1. Definition. As used in this Article, "bar-  
15 gaining" is the mutual obligation of a handler and a  
16 qualified association to meet at reasonable times and  
17 negotiate in good faith with respect to the price,  
18 terms of sale, compensation for commodities produced  
19 or sold, or both, under contract and other contract  
20 provisions relative to the commodities that such  
21 qualified association represents and the execution of  
22 a written contract incorporating any agreement  
23 reached if requested by either party. Such obligation  
24 on the part of any handler shall extend only to a  
25 qualified association that represents producers with  
26 whom such handler has had a prior course of dealing.  
27 Such Subject to section 1958-A, such obligation does  
28 not require either party to agree to a proposal or to  
29 make a concession.

30 Sec. 2. 13 MRSA §1958, sub-§4, as enacted by PL  
31 1973, c. 621, §1, is amended to read:

32 4. Limitation. It shall be unlawful for a han-  
33 dler to negotiate with other producers of a product  
34 with respect to the price, terms of sale, compensa-  
35 tion for commodities produced under contract and oth-  
36 er contract provisions relative to such product while  
37 negotiating with a qualified bargaining association  
38 able to supply all or a substantial portion of the  
39 requirements of such handler for such product, or  
40 during the pendency of final offer arbitration under  
41 section 1958-A.

1           Sec. 3. 13 MRSA §1958-A, sub-§3, ¶C, as enacted  
2 by PL 1981, c. 274, is amended to read:

3           C. Not later than March 20th, each party to bar-  
4 gaining terminated pursuant to paragraph B shall  
5 submit in writing to the commissioner their final  
6 offer, consisting at a minimum, of the following:

7                   (1) Identification of all items for a con-  
8 tract on which the parties agree, with a  
9 draft of that part of the contract setting  
10 forth this agreement;

11                   (2) Identification of all items on which  
12 there is disagreement, with each party's fi-  
13 nal offer, with a draft of that part of the  
14 contract setting forth this offer; and

15                   (3) Any other material the party wishes to  
16 submit.

17           ~~The commissioner shall immediately give copies of~~  
18 ~~the written final offer to the arbitrator se-~~  
19 ~~lected pursuant to subsection 4-~~

20           Sec. 4. 13 MRSA §1958-A, sub-§4, as enacted by  
21 PL 1981, c. 274, is repealed and the following en-  
22 acted in its place:

23           4. Selection of arbitrator and alter-  
24 mate. Within 2 calendar days of the receipt of all  
25 final offers provided for in subsection 3, paragraph  
26 C, the Commissioner of Agriculture, Food and Rural  
27 Resources shall initiate the following procedure.

28           A. From a standing panel of not less than 12  
29 persons, he shall submit to each party a list  
30 with the names of 7 persons. No member of the  
31 panel may have personal interest in the issues  
32 subject to bargaining under this Article and all  
33 members shall be willing to serve and shall, in  
34 the determination of the commissioner, be quali-  
35 fied to make an objective choice between the fi-  
36 nal offers submitted.

37           B. The parties shall proceed to chose an arbi-  
38 trator and an alternate arbitrator from the list

1 submitted by the commissioner within 2 days of  
2 receipt of the list. Each party shall strike  
3 names alternately. The party entitled to strike  
4 the first name shall be chosen by lot. The one  
5 name remaining after each party has struck 3  
6 names shall be the arbitrator. The parties shall  
7 then remove from the list the name of the arbi-  
8 trator and the first name previously struck. In  
9 similar fashion, they shall proceed to alternate-  
10 ly strike 2 names each from the 5 names left on  
11 the list, except that the first strike shall be  
12 made by the party who did not strike the first  
13 name from the full list of 7. The one name re-  
14 maining after each party has struck 2 names from  
15 the list of 5 shall be the alternate arbitrator.

16 C. The commissioner shall immediately give  
17 copies of the written final offers to the arbi-  
18 trator chosen pursuant to paragraph B.

19 D. In the event the arbitrator cannot, for any  
20 reason, serve, the alternate arbitrator shall be-  
21 come the arbitrator and shall be given copies of  
22 the written final offers.

23 Sec. 5. 13 MRSA §1958-A, sub-§5, ¶C, as enacted  
24 by PL 1981, c. 274, is amended to read:

25 C. Not later than April 1~~st~~ 5<sup>th</sup>, the arbitrator  
26 shall choose and submit to the commissioner the  
27 final offer of one party, except that in the  
28 event the original arbitrator cannot serve and  
29 the alternate arbitrator becomes the arbitrator,  
30 he shall have up to 10 days after receiving all  
31 final offers in which to make a choice between  
32 final offers. The contractual language for that  
33 offer, submitted pursuant to subsection 3, para-  
34 graph C, subparagraph (2), plus the language of  
35 subsection 3, paragraph C, subparagraph (1) shall  
36 be combined into a written proposed contract  
37 which shall be presented to the parties. The com-  
38 missioner shall promptly present the proposed  
39 contract to the parties.

40 Sec. 6. 13 MRSA §1958-A, sub-§6, as enacted by  
41 PL 1981, c. 274, is repealed and the following en-  
42 acted in its place:

1           6. Effect of proposed contract. Between the  
2 time of presentation and the following June 15th, any  
3 contracts for the purchase and sale of potatoes made  
4 by and between parties to final offer arbitration un-  
5 der this section shall contain all of the terms of  
6 the proposed contract selected by the arbitrator and  
7 no others. Any handler who is a party to final of-  
8 fer arbitration under this section shall have the  
9 right to adopt any proposed contract of the qualified  
10 association of producers which has been selected by  
11 an arbitrator.

12 After June 15th, the proposed contract shall not be  
13 binding on the parties. The prohibition of bargain-  
14 ing contained in subsection 3, paragraph B shall also  
15 end on June 15th, and the parties shall not be re-  
16 quired to bargain for the purchase and sale of pota-  
17 toes under this Article for the remainder of that  
18 crop year.

19           Sec. 7. 13 MRSA §1958-A, sub-§7 is enacted to  
20 read:

21           7. Fees and expenses. The arbitrator or alter-  
22 nate arbitrator shall be paid a fee of \$100 for each  
23 day or part thereof devoted to his duties and shall  
24 receive his actual and reasonable expenses incurred  
25 in the performance of his duties. Payment of the  
26 arbitrator's fees and expenses shall be made in equal  
27 shares by the parties to the arbitration.

28           Sec. 8. 13 MRSA §1966 is enacted to read:  
29 §1966. Injunctive and other equitable relief

30           The Superior Court shall have jurisdiction upon  
31 complaints filed by the board to restrain and enjoin  
32 any person from committing any act prohibited by this  
33 Article for which no penalty is specifically pro-  
34 vided. In any such proceeding the Superior Court may  
35 order the rescission or modification of any agreement  
36 made in violation of this Article and may also order  
37 such other equitable relief as, in the discretion of  
38 the court, will best effectuate the purposes of this  
39 Article. The board shall not be required to post a  
40 bond when applying for injunctive relief under this  
41 section.

