

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 911

H.P. 678 House of Representatives, March 24, 1987
Reference to the Committee on Agriculture suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MAHANY of Easton.
Cosponsored by Representative PINES of Limestone and
Senator COLLINS of Aroostook.

STATE OF MAINE

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

AN ACT to Encourage Investment in the
Development of Potato Varieties.

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

6 7 MRSA §2103-A, as amended by PL 1983, c. 727, is
7 repealed and the following enacted in its place:

8 1. Certification required. Seed potatoes shall
9 not be certified beyond 5 generations of the seed
10 originally acquired from a nuclear seed generation
11 source meeting criteria established by the depart-
12 ment's rules. Seed potatoes imported into the State
13 shall meet the State's certification standards and
14 all import certificates shall designate the imported
15 seed's generation, which shall equal and compare to a
16 state certified seed designation. The imported seed

1 shall "flush out" at the same rate as the equivalent
2 state seed generation.

3 2. Winter tested. No seed potato may be certi-
4 fied which has not been winter tested. Seed shipped
5 before winter test results are available shall be
6 certified based on field certification.

7 3. Bacterial ring rot. The commissioner may
8 withhold from certification for in-state sales for
9 that year any seed potatoes grown on a farm on which
10 bacterial ring rot has been detected.

11 4. Release to public. In order to encourage and
12 protect investment in the development of new potato
13 varieties, for the benefit of the Maine potato indus-
14 try as a whole, only seed potatoes of a variety which
15 has been released to the public, as provided in this
16 subsection, may be certified, except that seed pota-
17 toes of a variety which are protected by patent or
18 are otherwise not released to the public may be cer-
19 tified if the applicant for certification demon-
20 strates that he has been authorized to propagate the
21 variety by the patent holder or, if there is no pat-
22 ent, the registered breeder. Pursuant to the rule-
23 making provisions of the Maine Administrative Proce-
24 dure Act, Title 5, chapter 375, the commissioner
25 shall establish rules for the administration of this
26 subsection, including, without limitation, procedures
27 for demonstrating authorization from a patent holder
28 or registered breeder and the establishment of a reg-
29 istry of bona fide breeders and patent holders of po-
30 tato varieties. For purposes of this subsection, a
31 potato variety shall be deemed to have been released
32 to the public upon publication of a description of
33 that variety for purposes of release in the North
34 America Potato Variety Inventory, published by the
35 Potato Association of America, or in the American Po-
36 tato Journal or another equivalent scientific or
37 technical journal.

38 5. Rules. The commissioner may adopt rules to
39 provide for exemptions from any of the requirements
40 of this section when the application of the require-
41 ments would work a hardship on the Maine potato indus-
42 try, and seed potato quality would not thereby be
43 jeopardized; provided that the commissioner may not

1 waive the requirements of subsection 4 relating to
2 the certification of seed potatoes of patented or
3 nonreleased potato varieties.

4 6. Repeal. Subsection 4 is repealed January 1,
5 1992.

6 STATEMENT OF FACT

7 The development of potato varieties suitable for
8 production in Maine is essential to the long-term
9 well-being of the Maine potato industry. Variety de-
10 velopment is sometimes undertaken by private individ-
11 uals and entities and requires substantial monetary
12 investment. While a developer may "release" a varie-
13 ty for general distribution, in many cases developers
14 will only invest in variety development if they can
15 recoup their investments by maintaining some control
16 over the distribution of the variety. Patenting is
17 one means of such control, but it is not always
18 available. By denying certification to the seed of
19 nonreleased potato varieties, unless the applicant
20 for certification has been authorized by the patent
21 holder or breeder of the variety, this bill provides
22 another means of insuring the developer's control
23 over the distribution of the variety. It encourages
24 the introduction into Maine of new potato varieties.
25 Under this bill, after 1992, this statutory provision
26 will be eliminated and breeders of potato varieties
27 will have to rely on patenting laws for protection of
28 their varieties.

29 This bill also includes changes in the language
30 of the potato certification law which clarify the
31 fact that seed potato varieties which derive from nu-
32 clear seed sources other than from the State's seed
33 potato farm may be certified in Maine. This does not
34 represent a change in the department's certification
35 program, but represents the Legislature's understand-
36 ing that not all seed potatoes originally derive from
37 the State's farm.

38 This bill further includes a change which elimi-
39 nates the exemption from the generation 'flush out'
40 requirement for imported seed when the generation of

1 such seed is not known. This change makes the gener-
2 ation requirements for imported seed identical to
3 those for seed propagated in-state.

4 Other changes made by this bill are intended to
5 clarify the Legislature's intent behind the State's
6 seed potato certification program.

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