

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

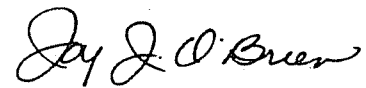
Legislative Document

No. 1565

S.P. 562

In Senate, May 9, 1989

Reference to the Committee on Agriculture suggested and ordered printed.


JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRAUN of Knox.

Cosponsored by Senator PERKINS of Hancock, Representative TOWNSEND of Eastport and Representative TARDY of Palmyra.

STATE OF MAINE

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

An Act to Improve the Sardine Inspection and Grading Programs.



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

3 Sec. 1. 32 MRSA §4151, sub-§§5 and 6 are enacted to read:

5 5. Kippers. "Kippers" means all filets packed in
6 hermetically sealed containers which are not classified as
7 sardines, but have herring as their predominant contents.

9 6. Steaks. "Steaks" means all laterally cut portions
10 packed in hermetically sealed containers which are not classified
11 as sardines, but have herring as their predominant contents.

13 Sec. 2. 32 MRSA §4155, as amended by PL 1979, c. 62, §2, is
14 further amended to read:

15 **§4155. Inspection; conformity with federal acts; branding;**
16 **embargo and condemnation**

17
18 The Commissioner of Agriculture, Food and Rural Resources
19 shall by adequate inspection, by such methods, including sampling
20 procedures, and at such times including before, during and after
21 packing, as he the commissioner may from time to time deem
22 appropriate, see that sardines are packed in conformity with the
23 requirements of the Federal Food and Drug Act, the laws of this
24 State, including this chapter, and the rules and regulations
25 promulgated or established thereunder by the commissioner, ~~and~~
26 ~~shall determine the grade or quality of each lot of sardines for~~
27 ~~which he shall have established grades under section 4157.~~ He The
28 commissioner shall, in a manner consistent with the Maine
29 Administrative Procedure Act, Title 5, chapter 375, make uniform
30 rules and regulations, which shall have the effect of law, for
31 carrying out this chapter and for insuring that sardines are
32 packed in a sanitary environment and manner and for the sanitary
33 storage and conditions of packing media, ~~and may fix standards of~~
34 ~~quality in addition to standards fixed by law.~~ He The
35 commissioner shall authorize the persons packing sardines in
36 conformity with the requirements of this chapter to mark the
37 container of said sardines with a statement certifying that the
38 food contained therein was packed, inspected and passed under
39 Title 22, sections 2151 to 2166. Any sardines falsely marked
40 shall be deemed to be misbranded, and any person, firm,
41 corporation, association or society who shall misbrand or falsely
42 mark any container of sardines or sell or offer for sale such
43 misbranded containers shall be punished by a fine of not more
44 than \$500 for each container thus falsely marked.

45
46 Every holder of a license issued under section 4153 shall,
47 before packing sardines in 1/4 size cans, or in other containers
48 for which grades shall have been established by the ~~commissioner~~
49 Maine Sardine Council under Title 36, section 4157 4701, have on
50 file with the commissioner a code plan satisfactory to the
51 commissioner, which plan shall show the plant where packed, lot

1 and the calendar year of packing, and may at the option of the
licensee show such other information as is desired. Optional
3 coding information may, but need not be included in the plan
filed. The code plan shall define "lot" as not more than the
5 entire output of one packing plant for one day, or for one
personnel shift, whichever is the shorter period of time. Said
7 The plan shall remain effective until modified or rescinded by
said the licensee and another approved code plan is filed. No
9 such licensee shall may pack, process, manufacture, sell, ship,
deliver, consign or have in his the licensee's possession
11 sardines for which a code plan is required unless said the code
appears legibly and permanently upon each container and also upon
13 the shipping case containing said the sardines.

15 The commissioner may issue a certificate for each lot of
sardines, as defined in the applicable code plan on file with him
17 the commissioner, stating the fact of his the commissioner's
inspection, the date of inspection, the code, the number of
19 containers in the lot, and the number of cans inspected, and the
quality or grade of said lot, which said certificate shall be
21 prima facie evidence of the facts therein stated. Certificates
shall be issued only to those packers who make written request to
23 the commissioner, which requests must state that the applicant
applies for certificates for the entire seasonal output of the
25 year in which the application is made, or for the entire output
of the balance of such the season if the application is made
27 after the season has begun, and such the application shall
include all plants operated by the individual, corporation or
29 company making the application.

31 The commissioner shall employ subordinate inspectors,
sufficient in numbers, so that adequate inspection can be
33 performed. It shall be the duty of said the inspectors to make
adequate and uniform and impartial inspection of all the places,
35 shops and factories in the State, wherever sardines are packed
for sale, and for this purpose such inspectors shall have free
37 access, ingress and egress at all reasonable hours to any sardine
packing plant, may open any case or container and may, upon
39 tendering the market price, take samples therefrom.

41 Whenever the commissioner or any duly authorized agent of
the commissioner has reasonable cause to believe that sardines,
43 kippers or steaks are packed in violation of any of the
provisions of this chapter, or regulations promulgated under
45 authority of this chapter or Title 36, section 4701, or that the
finished product does not meet the standards and requirements of
47 such the chapter and regulations, the commissioner or any duly
authorized agent of the commissioner may detain or place an
49 embargo upon such those sardines, kippers or steaks by marking or
tagging the same, giving notice that such the sardines, kippers
51 or steaks were packed in violation of this chapter and that they
have been detained or embargoed, and warning all persons not to

1 remove or dispose of the same by sale or otherwise until
2 permission for removal or disposal is given by the commissioner
3 or the court. It shall be unlawful for any person to remove or
4 dispose of such the detained or embargoed article by sale or
5 otherwise without such permission. Orders for detention or
6 embargo issued under this section shall not be considered to be
7 licensing or an adjudicatory proceeding, as those terms are
8 defined by the Maine Administrative Procedure Act, Title 5,
9 chapter 375.

11 The commissioner or duly authorized agent of the
12 commissioner detaining such those sardines, kippers or steaks
13 shall promptly petition the proper officer of the District Court
14 or the Superior Court within whose jurisdiction the sardines,
15 kippers or steaks are detained for a libel for condemnation of
16 such the sardines, kippers or steaks, the procedure of which
17 shall conform, as nearly as may be, to the procedure for
18 libelling intoxicating liquors.

19 If the court finds that the sardines, kippers or steaks were
20 packed in violation of this chapter, or regulations issued
21 thereunder, it shall enter a decree that they shall be destroyed
22 at the expense of the claimant thereof, under supervision of the
23 commissioner, or any of his the commissioner's duly authorized
24 agents, and all court costs and fees, and storage and other
25 proper expenses shall be taxed against the claimant. When the
26 sardines, kippers or steaks can be brought into conformity with
27 this chapter by proper labelling or by other process, the court,
28 after such any costs, fees and expenses have been paid, and a
29 bond to the commissioner or his the commissioner's successors in
30 office, in such a sum as the court may direct, with good and
31 sufficient sureties, conditioned that such those sardines,
32 kippers or steaks shall be so labelled or processed, has been
33 approved by the court, may order that such those sardines,
34 kippers or steaks be delivered to the claimant thereof for such
35 the labelling or processing under the supervision of the
36 commissioner or any duly authorized agent of the commissioner.
37 The expense of such the supervision shall be paid by the
38 claimant. When the product is not in conflict with the laws of a
39 foreign country to which it is intended for export, and is
40 labelled on the outside of the shipping package to show that it
41 is intended for export, the court, after the costs, fees and
42 expenses have been paid, and a bond to the commissioner or his
43 the commissioner's successors in office in such a sum not less
44 than twice the value of such the goods as the court may direct
45 with good and sufficient sureties, conditioned that such those
46 fish shall be exported to a foreign country, to be named therein,
47 with whose laws such the fish are not in violation and shall not
48 be reimported into the United States by any person whomsoever,
49 may order such the fish to be redelivered to the claimant for
50 export under the supervision of the commissioner or any of his
51 the commissioner's duly authorized agents.

1 **Sec. 3. 32 MRSA §4156**, as amended by PL 1985, c. 748, is
3 repealed.

5 **Sec. 4. 32 MRSA §4157, sub-§3**, as enacted by PL 1979, c. 62,
7 §4, is repealed.

9 **Sec. 5. 32 MRSA §4157, sub-§4**, as enacted by PL 1979, c. 62,
§4, is amended to read:

11 4. **Labeling.** Fish packed in accordance with this section
13 and the regulations promulgated under Title 36, section 4701, may
15 be plainly and conspicuously marked "Maine Sardines." Fish which
17 are packed in a manner inconsistent with this section and the
19 regulations under Title 36, section 4701, shall not be sold for
consumption in the United States unless each can and case is
plainly and conspicuously marked with the word "herring," and the
word "sardine" does not appear.

21 **Sec. 6. 32 MRSA §4157, sub-§5**, as enacted by PL 1979, c. 62,
§4, is repealed.

23 **Sec. 7. 32 MRSA §4157, sub-§6**, as enacted by PL 1979, c. 62,
25 §4, is amended to read:

27 6. **Embargo.** The commissioner, or any duly authorized agent
29 of the commissioner, shall detain or place an embargo upon
sardines, kippers or steaks officially designated as substandard
31 grade as established by the Maine Sardine Council under Title 36,
33 section 4701, for which a certificate is issued, by marking or
tagging the same and warning all persons not to remove or dispose
35 of the same by sale or otherwise until permission for removal or
37 disposal is given by the commissioner. These sardines, kippers or
steaks shall be detained or placed under embargo until the goods
are marked in accordance with this section or the commissioner
has received a bond covering the export provisions of this
section. Orders for detention or embargo issued under this
39 section shall not be considered to be licensing or an
adjudicatory proceeding, as those terms are defined by Title 5,
Part 18.

41 **Sec. 8. 36 MRSA §4695, 2nd ¶**, as amended by PL 1981, c. 614,
43 §1, is further amended to read:

45 An excise tax of 30¢ ~~35¢~~ per case, as defined in section
47 4692, subsections 1 to 3, is levied and imposed upon the
privilege of packing sardines.

49 **Sec. 9. 36 MRSA §4697**, as amended by PL 1983, c. 85, §2, is
51 further amended to read:

§4697. Reports of production and payment of tax

1
3 Every packer shall, on or before the 10th day of each month,
5 report to the State Tax Assessor the quantity of sardines packed
7 by ~~him~~ the packer during the preceding calendar month, on forms
9 furnished by the State Tax Assessor, and pay to the State Tax
11 Assessor the tax of 30¢ ~~35¢~~ per case on all sardines reported as
13 packed. If the State Tax Assessor determines that overpayment of
15 tax has been made, ~~he~~ the State Tax Assessor shall make a refund.
17 In making additional assessment or refund determinations, the
State Tax Assessor shall rely on the records of the Department of
Agriculture, Food and Rural Resources concerning the quantity of
sardines packed in each sardine plant, for sale and suitable for
human consumption. Any packer may pay to the State Tax Assessor
in advance a sum of money based on an estimate of his the
packer's tax for a given number of months, and this sum shall be
a credit against future monthly reports of that packer.

19 Sec. 10. 36 MRSA §4699, sub-§2, ¶C, as amended by PL 1979, c.
731, §19, is further amended to read:

21 C. For gathering, studying, classifying and ~~distributing~~
23 distributing information and data concerning quality,
25 grades, standards, methods of packing and character of the
27 manufactured sardine products, in order to determine and
29 improve their quality and aid in merchandising and
31 advertising them under the direction of the Maine Sardine
33 Council. The information and data and the services of the
personnel who collect and classify it may be made available
to the Commissioner of Agriculture, Food and Rural Resources
for use in ~~promulgating,--establishing--and--modifying--official~~
~~grades--for--sardines--and--for--use--in--assigning--and--determining~~
~~grades--of--sardines--and--in--enforcing~~ applicable provisions of
the law; and

35 Sec. 11. 36 MRSA §4701 is enacted to read:

37 §4701. Regulations

39 1. Grades. The Maine Sardine Council may, in a manner
41 consistent with Title 5, Part 18, and after public hearings,
43 promulgate regulations establishing official grades for sardines,
45 kippers or steaks packed within the State, and for marking,
47 branding or labeling of sardines and the use of the grades. The
hearings shall be held in places reasonably convenient for the
packers. Notice of the hearings and of the final action shall be
sent, by registered mail, to all license holders under Title 32,
section 4153.

49 A. The grades may specify the number of fish per container,
51 the amount, quality and nature of the packing medium or
fill, the quality, appearance, odor, character, taste and
texture of the fish packed, the style of pack, their

1 workmanship and arrangement in the container, the quality of
3 the substances in the container, the size and type of the
5 container and tolerances allowing for reasonable variation
7 from grades.

9 B. In establishing the regulations, the Maine Sardine
11 Council may consider packing practices in Maine and in other
13 jurisdictions, consumer expectancy, habits and desires, the
15 types of fish available, conditions of sanitation, tastes
17 and preferences of varying parts of the consumer public,
19 marketing practices and market experience.

21 2. Substandard grade. Sardines, kippers or steaks which
23 are officially designated as substandard grade, for which a
25 certificate is issued, shall not be sold for consumption in the
27 United States unless each can in the lot has the words
29 "Substandard Grade, Good Food - Not High Quality" so placed as to
31 be easily seen when the name of the product or pictorial
33 representation thereof is viewed and appear conspicuously enough
35 to be seen under ordinary conditions of purchase. The words
37 "Substandard Grade, Good Food - Not High Quality" shall be
39 printed in 2 lines across the cover of all cans in letters not
41 less than 1/8 of an inch in height and be enclosed in lines which
43 are not less than 1/32 of an inch in width. This wording shall
45 be printed on all wrappers, labels, cartons or other outer
47 coverings of the cans with a permanent type of indelible ink, or
49 by means of other approved procedure. The words "Substandard
51 Grade" shall appear in letters not less than one inch in height
on both ends of the shipping container.

31 **Sec. 12. Appropriation.** The following funds are appropriated
33 from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF		
Bureau of Public Services		
41	(2)	(2)
43	\$115,000	\$115,000
45	31,000	31,000

47 This appropriation provides
49 funds for 2 food inspector
51 supervisors, 2 sardine
inspectors and travel
expenses for the sardine
inspection program.

1 DEPARTMENT OF AGRICULTURE, FOOD
AND RURAL RESOURCES

3 TOTAL \$146,000 \$146,000

5 Sec. 13. Allocation. The following funds are allocated from
Other Special Revenue to carry out the purposes of this Act.

7 1989-90 1990-91
9 AGRICULTURE, FOOD AND RURAL
11 RESOURCES, DEPARTMENT OF

13 Bureau of Public Services

15	Positions	(-2)	(-2)
	Personal Services	(\$115,000)	(\$115,000)
17	All Other	(31,000)	(31,000)
19	TOTAL	<u>(\$146,000)</u>	<u>(\$146,000)</u>

21 This deallocation will
23 provide General Fund
operation of the sardine
inspection program.

25 Bureau of Public Services

27	Positions	(-2)	(-2)
29	Personal Services	(\$50,000)	(\$50,000)

31 This deallocation will assist
33 in the transfer of the
grading program from the
Department of Agriculture,
35 Food and Rural Resources to
the Maine Sardine Council.

37 DEPARTMENT OF AGRICULTURE, FOOD AND
39 RURAL RESOURCES

41 TOTAL (\$196,000) (\$196,000)

43 MAINE SARDINE COUNCIL

45	Positions	(2)	(2)
	Personal Services	\$50,000	\$50,000

47 This allocation provides
49 funds for a Sardine Quality .
Grader Supervisor and a
51 Sardine Quality Grader II to
establish grades for
53 sardines, steaks and kippers.

1			
3	MAINE SARDINE COUNCIL		
	TOTAL	<u>\$50,000</u>	<u>\$50,000</u>
5	TOTAL ALLOCATIONS	<u>(\$146,000)</u>	<u>(\$146,000)</u>
7			

9 **STATEMENT OF FACT**

11 Currently, the sardine industry pays for its own inspection
13 costs and is stringently monitored by the Department of
15 Agriculture, Food and Rural Resources. The sardine industry pays
17 an inspection tax of between 8¢ and 20¢ per case of sardines and
19 5¢ to 13¢ per case of kippers and steaks to fund this program.
21 The industry is also subject to a sardine excise tax of 30¢ per
23 case to fund the activities of the Maine Sardine Council. While
the Department of Agriculture, Food and Rural Resources operates
the sardine quality program today, the program is funded by these
2 industry-generated revenue sources. The Department of
Agriculture, Food and Rural Resources and the Maine Sardine
Council propose to change the sardine inspection and grading
programs in 3 basic ways.

25 1. The cost of the Department of Agriculture, Food and
27 Rural Resources sardine inspection program will be paid for
entirely from General Fund revenues.

29 2. The Maine Sardine Council will take over from the
31 Department of Agriculture, Food and Rural Resources the grading
33 program for sardines, steaks and kippers. The Department of
Agriculture, Food and Rural Resources will retain its authority
to embargo goods in support of the grading program.

35 3. The sardine excise tax will increase by 5¢ per case to a
37 total of 35¢ per case to fund personnel within the Maine Sardine
Council to implement the grading program.

39 These changes will allow the Maine Sardine Council to
41 continue and increase its ability to promote Maine sardines and
43 other canned herring products at a time when tax revenues have
been decreasing, while strengthening the integrity of the sardine
grading and inspection programs.