

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1990

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Legislative Document

No. 101

H.P. 73

House of Representatives, December 31, 1990

Reference to the Committee on Agriculture suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative TARDY of Palmyra.  
Cosponsored by Senator TWITCHELL of Oxford.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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**An Act Amending the Potato Branding Laws.**

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

2           Sec. 1. 7 MRSA §950, sub-§1, as enacted by PL 1965, c. 219,  
4 §1, is amended to read:

6           1. **Exposed for sale.** Potatoes packed in any type or kind of  
8 container, and found in any place in the State of Maine, whether  
10 that place ~~shall be~~ is a depot, station, warehouse, packing  
12 house, boat dock or any place where potatoes are held in storage,  
or loaded on a boat, truck, trailer, or railroad car or motor  
vehicle, ~~shall be deemed to be~~ are considered exposed for sale  
under this subchapter.

14 Potatoes in transit, in any boat, truck, trailer, railroad car or  
motor vehicle are not considered exposed for sale.

16 Potatoes in any dwelling house for the purpose of consumption on  
18 the premises ~~shall~~ are not be ~~deemed to be~~ considered exposed for  
sale.

20           Sec. 2. 7 MRSA §952, as amended by PL 1985, c. 655, §1, is  
22 further amended to read:

24 **§952. Branding**

26           It ~~shall be~~ is unlawful for any person, firm, association,  
28 organization or corporation, or agent, representative or  
assistant to any person, firm, association, organization or  
30 corporation to expose for sale, or sell, at wholesale or retail,  
to ship, deliver or consign or have in possession potatoes  
32 prepared for market unless in containers which that have been  
legibly and conspicuously tagged, branded, labeled or stenciled  
34 with the name and address of the person or persons responsible  
for packing and the name of the grade, net weight and the word  
"potatoes." All potatoes packed in this State must be packed in  
36 containers which that conspicuously bear the name of the country  
where the potatoes were grown. The person or persons responsible  
38 for grading ~~shall be~~ are as follows: If the violation is  
discovered in the packing house, then the person or persons  
40 packing the potatoes ~~shall be~~ are responsible; if the violation  
is discovered at any other place, then the person or persons  
42 whose ~~name appears~~ names appear on the container ~~shall be~~ are  
responsible. Each lot of potatoes sold at wholesale ~~shall~~ must be  
44 accompanied by a bill of lading or invoice stating grade, name  
and address of packer, name and address of the consignor, name  
46 and address of the consignee, date of loading and name of loading  
point. The bill of lading or invoice ~~shall be~~ is prima facie  
48 evidence in any court of the person or persons packing potatoes.  
It ~~shall be~~ is conclusive evidence that potatoes are exposed for  
50 sale when packed in containers for delivery or transit, or when  
the same ~~are in the process of delivery or transit, or~~ are  
52 located at a depot, station, warehouse, packing house, boat dock

2 or any place where potatoes are held in storage, or loaded on a  
4 boat, truck, trailer or railroad car, for immediate or future  
6 sale or transit. For the purposes of this section only, potatoes  
8 located at warehouses, or packing houses at point of origin,  
10 shall are not be ~~deemed~~ considered exposed for sale until they  
12 are loaded or are in the process of being loaded in vehicles of  
14 transportation. When a violation of this section occurs, it is  
16 deemed considered to have taken place at the loading point or  
18 where such the violation first became evident to the commissioner  
20 or his the commissioner's duly authorized representative. Upon  
request and submission of proof to the Department of Agriculture,  
Food and Rural Resources by a packer that he the packer has on  
hand a supply of bags that do not meet the requirement that the  
bags conspicuously bear the name of a country where the potatoes  
were grown, and those bags were purchased or contracted for  
before September 23, 1983, the Commissioner of Agriculture, Food  
and Rural Resources shall exempt the packer from that requirement  
until January 1, 1986. The commissioner, ~~at his discretion and~~  
upon unusual circumstances, may grant packers extended waivers  
until January 1, 1987.

22 Sec. 3. 7 MRSA §956, as amended by PL 1985, c. 655, §2, is  
24 further amended to read:

26 **§956. Enforcement; jurisdiction**

28 The commissioner shall diligently enforce ~~all--of--the~~  
30 ~~provisions--of~~ sections 951 to 957. The commissioner may authorize  
32 a representative to do any action that this section authorizes  
34 the commissioner to do. ~~He,--either--in--person--or--by--a--duly~~  
36 ~~authorized--representative,--shall--have--free--access,--ingress--and~~  
38 ~~egress--to~~ Upon presentation of credentials, the commissioner may  
40 enter at reasonable times for the purpose of potato inspection  
42 any place or any building, boat,--truck,--trailer,--or--railroad--car,--  
44 warehouse, depot, station, packing house, boat dock, or any  
46 building wherein potatoes are packed, stored, transported, sold,  
offered or exposed for sale or for transportation. He The  
commissioner may also, in person, or by duly authorized  
representative, open any container and may take samples  
therefrom. He The commissioner shall, upon written request,  
~~therefor,~~ pay the packer the fair market value of any sample  
retained or destroyed by him the commissioner. He The  
commissioner may recover forfeitures imposed for violation of  
these sections 951 to 957 in a civil action brought in his the  
commissioner's own name and, if he the commissioner prevails in  
that action, shall may recover full costs.

48 ~~Any--person--who--refuses--or--interferes--with--access--by--the~~  
50 ~~commissioner--or--his--representative--as--provided--for--in--this~~  
52 ~~section,--following--oral--request--and--warning--given--by--the~~  
~~commissioner--or--his--representative--regarding--the--contents--of--this~~  
~~section,--shall--be--guilty--of--a--separate--civil--violation--under~~

2 ~~section--957,--provided--that--oral--request--and--warning--by--the~~  
3 ~~commissioner--or--his--representative--shall--substitute--for--a--first~~  
4 ~~violation--warning--under--section--957,--subsection--1,--and--any~~  
5 ~~continued--refusal--or--interference--shall--be--subject--to--the--civil~~  
6 ~~penalties--as--provided--in--section--957,--subsection--2.~~

7 Upon being denied access, the commissioner may seek an  
8 administrative inspection warrant as provided in section 13.

10 All fees received under sections 951 to 957 by the  
11 commissioner and all money and forfeitures received by him the  
12 commissioner under those sections shall must be paid by him the  
13 commissioner to the Treasurer of State and shall be appropriated  
14 for carrying out those sections. The commissioner shall, in a  
15 manner consistent with the Maine Administrative Procedure Act,  
16 establish such rules as may be needed for the proper enforcement  
17 of sections 951 to 957.

18 Sec. 4. 7 MRSA §956-A is enacted to read:

19 §956-A. Exception

21 The commissioner or the commissioner's duly authorized  
22 representative may not stop or cause to be stopped for the  
23 purpose of potato inspection a truck in transit nor may the  
24 commissioner or the commissioner's representative inspect  
25 potatoes in a truck or trailer stopped in transit for any other  
26 purpose.

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32 **STATEMENT OF FACT**

33 This bill amends the enforcement section of the potato  
34 branding laws. Currently, a person who refuses access to an  
35 inspector is guilty of a violation. As amended, refusal of  
36 access would not be a separate violation. An administrative  
37 search warrant could still be obtained under the Maine Revised  
38 Statutes, Title 7, section 13.

39 This bill prohibits the inspection of potatoes in transit.  
40 In addition to these substantive changes, several technical  
41 changes are made to conform to preferred statutory language.