

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1540

H.P. 1096

House of Representatives, May 23, 1995

**An Act Concerning Potato Blight Eradication and the Disposal of Cull Potatoes.**

(EMERGENCY)

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Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KNEELAND of Easton. (GOVERNOR'S BILL)  
Cosponsored by Representatives: AHEARNE of Madawaska, CAMPBELL of Holden, CLUKEY of Houlton, CROSS of Dover-Foxcroft, DESMOND of Mapleton, DONNELLY of Presque Isle, HEESCHEN of Wilton, HICHBORN of Lagrange, JONES of Pittsfield, JOY of Crystal, KILKELLY of Wiscasset, MARSHALL of Eliot, MAYO of Bath, O'NEAL of Limestone, ROBICHAUD of Caribou, SIROIS of Caribou, SPEAR of Nobleboro, STROUT of Corinth, TYLER of Windham, WHEELER of Bridgewater, Senators: CASSIDY of Washington, KIEFFER of Aroostook, MICHAUD of Penobscot, PARADIS of Aroostook.

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

4           Whereas, the practice of maintaining potato cull piles has  
6 created a threat to the potato industry in that the disease may  
grow and be spread to nearby potato crops; and

8           Whereas, the discovery of the A2 strain of late blight has  
10 raised the possibility of devastating economic losses due to this  
disease; and

12           Whereas, these potential losses could negatively affect the  
14 health, safety and welfare of the citizens of this State and the  
potato industry unless action is taken to remove the potato culls  
16 and potato cull piles; and

18           Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
20 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
22 safety; now, therefore,

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

26           **Sec. 1.** 7 MRSA §1007 is repealed.

28           **Sec. 2.** 7 MRSA §1007-A is enacted to read:

30           **§1007-A. Penalty for maintaining potato cull piles**

32           **1. Purpose.** The Legislature hereby declares that the A2  
34 strain of late blight and other potato diseases constitute a  
clear and present danger to the production of potatoes in the  
36 State and to a substantial portion of the economy of the State.  
Control of the A2 strain of late blight and other potato diseases  
38 through the control of potato cull piles could result in the  
saving of potato crops and improvement in the economy. In the  
40 exercise of the police power of the State, the Legislature finds  
that it is necessary to require the proper disposal of cull  
42 potatoes and potato cull piles and to provide a procedure for  
disposal of those potatoes by the department by implementing best  
44 management practices pursuant to Title 17, section 2805 when the  
owner or lessee of the property on which those potatoes were  
46 grown, stored or disposed of fails to comply with the  
requirements of this section.

48           **2. Disposal of cull potatoes required.** The owner or lessee  
of any real property in this State on which potato plants are  
50 grown or on which potato cull piles are maintained or disposed of

2 shall properly dispose of potato cull piles for the purpose of  
3 killing the A2 strain of late blight and other potato diseases.  
4 The disposal must take place no later than June 10th of each year  
5 unless the commissioner designates otherwise. In addition, a  
6 person may not maintain a cull potato pile between June 10th and  
7 October 1st of each year, or between such other dates as the  
8 commissioner may designate. A person who fails to dispose  
9 properly of cull potatoes and cull potato piles as required by  
10 this section commits a civil violation for which a forfeiture not  
11 to exceed \$1,000 for each violation and not more than \$200 for  
12 each succeeding day that the violation fails to be in compliance  
13 with the requirements of this section may be adjudged.

14 3. Rules. The commissioner is authorized to adopt any  
15 rules necessary to implement this section in accordance with the  
16 provisions of the Maine Administrative Procedure Act, except that  
17 the commissioner may suspend the notice requirements to the  
18 extent necessary and may adopt rules without making the findings  
19 required for emergency rules under Title 5, section 8054. In  
20 adopting any rules necessary to implement this section, the  
21 commissioner shall consult with the Maine Potato Board. The  
22 commissioner may determine best management practices for the  
23 handling of cull potatoes in accordance with Title 17, section  
24 2805.

26 4. Authorization. The commissioner may properly dispose of  
27 potato culls and potato cull piles that constitute a violation of  
28 subsection 2 for the purpose of potato disease control. The  
29 commissioner or the commissioner's designee may enter on private  
30 property to effectuate the disposal and to inspect the disposal  
31 to determine whether proper disposal has been made. The  
32 commissioner has a cause of action against the owner or lessee of  
33 any real property of this State to recover the actual costs of  
34 removing and disposing of cull potatoes and cull potato piles.  
35 The commissioner or the commissioner's designee must be held  
36 harmless for any such entry on private property if the entry is  
37 related to the inspection and disposal of cull potatoes and cull  
38 potato piles.

40 Employees and agents of the department may enter at reasonable  
41 hours any farm where potatoes are grown or other premises where  
42 potatoes are stored, packed, loaded for shipment or handled and  
43 enter any building with the consent of the property owner,  
44 lessee, occupant or agent or, pursuant to an administrative  
45 search warrant, to inspect the farm or other premises to  
46 determine compliance with subsection 2. Notwithstanding the  
47 provisions of the Maine Rules of Civil Procedure, Rule 80E,  
48 paragraph (b), the commissioner may obtain an administrative  
49 inspection warrant pursuant to this subsection by describing the  
50 farm or other premises to be inspected and the purpose of the  
inspection and demonstrating that the inspection sought is

2 reasonable and represents a minimal intrusion in furtherance of a  
3 legitimate governmental obligation of the department. This  
4 demonstration is deemed to be a demonstration of probable cause.

6 6. **Potato Cull Removal Fund.** The Potato Cull Removal Fund  
7 is established and may be used by the commissioner to enforce the  
8 provisions of this section and to pay the expenses of potato cull  
9 removal. The commissioner may receive funds from any source to  
10 be deposited into this fund, which does not lapse. If at any  
11 time the balance of the fund falls below \$15,000, any penalties  
12 collected under this section must be deposited into the fund.  
13 Whenever the balance of the fund exceeds \$15,000, any penalties  
14 collected must be deposited to the General Fund.

16 **Emergency clause.** In view of the emergency cited in the  
17 preamble, this Act takes effect when approved.

## 18 **STATEMENT OF FACT**

20  
21 Cull potatoes and cull potato piles present a serious threat  
22 to the potato industry because they can be the source of disease  
23 that can infect a growing crop. The recent discovery of the A2  
24 strain of late blight creates an extremely serious risk of  
25 devastating economic losses to the crop. It is necessary to  
26 prohibit cull potatoes and cull potato piles when a growing crop  
27 may become infected with the A2 strain of late blight or other  
28 serious potato diseases.

30 This bill makes it a civil violation to maintain cull  
31 potatoes and cull potato piles between June 10th and October 1st  
32 of each year and gives the Commissioner of Agricultural, Food and  
33 Rural Resources or the commissioner's designee the authority to  
34 inspect farms to determine whether cull potatoes and cull potato  
35 piles are being maintained illegally. The commissioner also has  
36 the authority to remove illegal cull potatoes and cull potato  
37 piles and can recover the costs of removal and disposal from the  
38 landowner. A forfeiture for each violation is set at \$1,000 and  
39 \$200 for each additional day. A Potato Cull Removal Fund is  
40 established to pay the expenses of potato cull removal.