

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 429

S.P. 150

In Senate, January 23, 1997

**An Act to Protect the Potato Industry from the Spread of Serious Disease.**

(EMERGENCY)

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Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 204.

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator PARADIS of Aroostook.  
Cosponsored by Representative BUNKER of Kossuth Township and  
Senators: KIEFFER of Aroostook, KILKELLY of Lincoln, NUTTING of Androscoggin,  
Representatives: BAKER of Dixfield, BELANGER of Wallagrass, CROSS of  
Dover-Foxcroft, KNEELAND of Easton.

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 need to ensure the proper disposal of cull  
6 potatoes and to prevent the importation of potato diseases is  
immediate; and

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

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

16           **Sec. 1. 7 MRSA §951-A, first ¶,** as amended by PL 1985, c. 184,  
18 is further amended to read:

20           No seed potato, the product of which is intended for sale,  
may be planted in the State in lots of one or more acres unless  
22 that seed is certified in accordance with rules adopted by the  
commissioner. These rules may include without limitation  
24 requirements for filing reports with the commissioner and  
requirements for filing records to the commissioner or his a  
26 designee, upon request, which that demonstrate that the potatoes  
so planted have been properly certified. A person, firm or  
28 corporation that plants potatoes in violation of this section  
~~shall-be~~ is subject to a civil penalty of not less than \$20-~~and~~  
30 ~~not-more-than~~ \$100 per acre for each acre or part of an acre  
planted in violation of this section; provided that failure to  
32 file complete and accurate reports or failure to provide complete  
and accurate records in accordance with the rules adopted by the  
34 commissioner ~~shall-be~~ is an additional violation resulting in a  
separate civil penalty of not less than \$200 nor more than \$1,000  
36 for each such failure. Any civil penalty collected under this  
section ~~shall--be~~ is payable to the Treasurer of State and  
38 credited without lapsing to the commissioner for the enforcement  
of this section. The commissioner shall adopt and may amend rules  
40 consistent with the Maine Administrative Procedure Act, Title 5,  
chapter 375, to implement this section. In addition to the  
42 enforcement powers and penalties established in this section, the  
commissioner may issue subpoenas to any individual in order to  
44 compel delivery of any reports or records which that are required  
under this section. These subpoenas ~~shall-be~~ are enforceable by  
46 any court of competent jurisdiction.

48           **Sec. 2. 7 MRSA §1007-A,** as enacted by PL 1995, c. 261, §2, is  
50 repealed and the following enacted in its place:



2 commissioner's designee is authorized to enter any property to  
3 inspect potato cull piles and to take any action required to  
4 secure their proper disposal. Designated representatives of the  
5 commissioner may, without search warrant, enter at reasonable  
6 times any real property, other than a building where potatoes are  
7 grown, stored, packed, loaded for shipment or handled, and may  
8 enter any building, either with the consent of the owner, lessee,  
9 occupant or agent or pursuant to an administrative search  
10 warrant. Notwithstanding the Maine Rules of Civil Procedure,  
11 Rule 80E, paragraph (b), the commissioner or the commissioner's  
12 designee may obtain an administrative search warrant pursuant to  
13 this section by describing the premises to be entered and the  
14 purpose of the inspection or other authorized action and by  
15 demonstrating that the entry is necessary in order to inspect  
16 potato cull piles or otherwise carry out the requirements of this  
17 section. This demonstration is deemed to be a demonstration of  
18 probable cause.

19 The costs incurred by the department in removing and properly  
20 disposing of cull potatoes and cull piles must be reimbursed by  
21 the owner or lessee of the property on which the potatoes were  
22 found or any other person responsible for the potatoes, each of  
23 whom is jointly and severally liable for those costs to the  
24 department. The department, its employees and agents and any  
25 person acting on behalf of the department are not liable for any  
26 action taken pursuant to this section.

27 **5. Potato Cull Removal Fund.** The Potato Cull Removal Fund  
28 is established to be used by the department to administer and  
29 enforce the provisions of this section and to pay any expenses of  
30 potato cull removal and disposal. The commissioner may receive  
31 funds from any source to be deposited into this fund, which does  
32 not lapse. If at any time the balance of the fund falls below  
33 \$15,000, any penalties collected under this section must be  
34 deposited into the fund. Otherwise, penalties collected must be  
35 deposited into the General Fund.

36 **6. Civil penalties.** Any person who violates any of the  
37 requirements of this section or any rules adopted under this  
38 section commits a civil violation for which a forfeiture of not  
39 more than \$1,000 for each violation, together with not more than  
40 \$200 for each succeeding day of a continuing violation, may be  
41 adjudged.

42 **Sec. 4. 7 MRSA §2103-A, sub-§1,** as enacted by PL 1987, c. 336,  
43 is amended to read:

44 **1. Certification required.** Seed potatoes shall may not be  
45 certified beyond 5 generations of the seed originally acquired  
46 from a nuclear seed generation source meeting criteria  
47 meeting criteria

2 established by the department's rules. Seed potatoes imported  
3 into the State shall must meet the State's certification  
4 standards and all import certificates shall must designate the  
5 imported seed's generation, which shall must equal and compare to  
6 a state certified seed designation. The imported seed shall must  
7 "flush out" at the same rate as the equivalent state seed  
8 generation. The commissioner may test, or cause to be tested, a  
9 seed lot imported into the State if the commissioner has reason  
10 to believe the seed lot is, or may be infected with a potato  
11 disease that poses a risk to the well-being of the State's potato  
12 industry. A person importing seed or receiving imported seed  
13 that the commissioner indicates must be tested shall submit a  
14 sample for testing. A person may not plant seed from an imported  
15 seed lot required to be tested under this subsection until the  
16 seed sample is tested and meets allowable disease standards for  
17 seed potatoes produced in the State.

18 **Emergency clause.** In view of the emergency cited in the  
19 preamble, this Act takes effect when approved.  
20

## 22 SUMMARY

24 This bill clarifies procedures in order to protect the Maine  
25 potato industry from the spread of diseases from potato cull  
26 piles and the importation of diseased potatoes and increases the  
27 penalties for planting noncertified seed potatoes.  
28