

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2006


H.P. 1442

House of Representatives, January 14, 1998

An Act to Expand the Potato Licensing Laws to Include Rotation Crops.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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


JOSEPH W. MAYO, Clerk

Presented by Representative KNEELAND of Easton.
Cosponsored by Senator KIEFFER of Aroostook and
Representatives: AHEARNE of Madawaska, BELANGER of Caribou, CLUKEY of Houlton,
DESMOND of Mapleton, O'NEAL of Limestone, SIROIS of Caribou, WHEELER of
Bridgewater, Senator: PARADIS of Aroostook.

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

4 **Sec. 1. 7 MRSA §1011**, as enacted by PL 1971, c. 366, is amended to read:

6 **§1011. Purpose**

8 The Legislature finds that the potato industry has a
10 substantial and unique effect on the economy of the entire State
12 and Aroostook County in particular. Large numbers of the people
14 in the State are directly or indirectly dependent on the
16 industry. Over the years the industry has experienced wide
18 fluctuations in prices and quality of product. Such fluctuations
20 have caused commensurate instability in the economy of a large
portion of the State. To a great extent the well-being of the
industry is dependent upon those persons engaged in the marketing
of the potatoes and rotation crops grown by others and the manner
in which their services are performed. The entire manner of
marketing potatoes and rotation crops is unique and requires
special consideration.

22 The Legislature intends through this legislation to exercise
24 the police power of the State in order to protect and promote the
26 general welfare of the potato industry and the people of the
28 State and maintain and encourage fair and equitable practices in
the handling, sale and storage of potatoes and rotation crops.
Such stabilization of the potato industry will have the
beneficial effect of improving the economy of the entire State.

30 **Sec. 2. 7 MRSA §1012, sub-§§1 and 4**, as enacted by PL 1971, c.
366, are amended to read:

32 **1. Agent.** "Agent" means any person who sells or distributes
34 potatoes or rotation crops in commerce for or on behalf of
36 producers or others and whose operations may include the
planting, cultivating, harvesting, grading, packing and
furnishing containers, supplies or other services.

38 **4. Buyer.** "Buyer" means any person other than a consumer
40 who purchases or contracts to purchase potatoes or rotation crops.

42 **Sec. 3. 7 MRSA §1012, sub-§5**, as amended by PL 1981, c. 513,
§9, is further amended to read:

44 **5. Dealer.** "Dealer" means any person engaged in the
46 business of buying or selling potatoes or rotation crops in
wholesale or jobbing quantities in commerce and includes:

48 A. Jobbers, distributors and other wholesalers; and
50

2 B. Producers who buy and resell potatoes or rotation crops
grown by others in wholesale or jobbing quantities; and

4 C. Nonresidents of this State who carry on the business of
6 buying and selling potatoes or rotation crops in this State,
whether such dealer is licensed in ~~the~~ that dealer's state
8 of his residence or not.

10 The term "dealer" does not include persons buying potatoes or
12 rotation crops for canning or processing, or both, within this
State and persons buying potatoes or rotation crops for sale
primarily to consumers.

14 Sec. 4. 7 MRSA §1012, sub-§9, as amended by PL 1971, c. 600,
§3, is further amended to read:

16 9. **Retailer.** "Retailer" means a person engaged in the
18 business of buying potatoes or rotation crops in wholesale or
jobbing quantities and reselling the potatoes or rotation crops
20 bought primarily to consumers through at least 5 retail outlets
located within or without the State ~~of~~-Maine.

22 Sec. 5. 7 MRSA §1012, sub-§9-A is enacted to read:

24 9-A. Rotation crop. "Rotation crop" means small grain or
26 flax grown in rotation with potatoes.

28 Sec. 6. 7 MRSA §1012, sub-§§10 and 11, as enacted by PL 1971,
c. 366, are amended to read:

30 10. **Sale.** "Sale" ~~shall include~~ includes every contract of
32 purchase or sale, contract to purchase or sell, purchase, sale
and disposition of potatoes or rotation crops for value.

34 11. **Seller.** "Seller" means any person who sells or
36 contracts to sell potatoes or rotation crops in the regular
course of business.

38 Sec. 7. 7 MRSA §1012, sub-§14, as enacted by PL 1971, c. 600,
40 §4, is amended to read:

42 14. **Processor.** "Processor" means any person other than a
consumer who purchases or contracts to purchase potatoes or
44 rotation crops primarily for manufacture into articles of food or
starch by operations which that change the physical form ~~said the~~
46 potatoes or rotation crops possessed when harvested. The effects
of the following operations ~~shall be~~ are considered as changing
48 the physical form possessed by potatoes or rotation crops when
harvested: Chopping, slicing, cutting, dicing, mashing, removal
50 of skin or peel, frying or otherwise cooking, freezing, canning,

2 dehydrating or comparable methods of preparation for marketing in
what is generally considered to be a processed form.

4 **Sec. 8. 7 MRSA §1014, 2nd ¶**, as amended by PL 1975, c. 555,
§2, is further amended to read:

6
8 ~~No~~ A person shall ~~may not~~ buy, solicit or negotiate the sale
of any potatoes or rotation crops in this State as a
10 representative of any dealer, processor, broker or retailer,
unless such a representative has been so authorized by a duly
12 licensed dealer, processor, broker or retailer in writing, and a
copy of such authorization is filed with the commissioner, except
14 the dealer, processor, broker or retailer. The commissioner
shall ~~must~~ be notified in writing by said the dealer, processor,
16 broker or retailer immediately upon the termination of such
authorization.

18
20 **Sec. 9. 7 MRSA §1015, 4th ¶**, as amended by PL 1997, c. 388,
§4, is further amended to read:

22 In order to insure the licensee's financial responsibility
and to protect potato and rotation crop producers, the
24 commissioner shall require the licensee to file a bond in a form
and amount satisfactory to the commissioner, but ~~in-no-event~~ not
26 less than \$50,000 nor more than \$300,000 in the case of dealers
and brokers, or not less than \$100,000 nor more than \$500,000 in
28 the case of processors, payable to the commissioner in the
commissioner's official capacity and conditioned on the full and
30 prompt payment for all potatoes or rotation crops received or
purchased from producers or other licensees during the effective
32 period of the license. In the case of processors, the amount of
bond required must be based on the licensee's anticipated monthly
34 volume of purchases, but may be adjusted to reflect other federal
escrow accounts or bond requirements met by the licensee that
36 satisfy the purposes of this section.

38 **Sec. 10. 7 MRSA §1017, sub-§1**, as amended by PL 1991, c. 837,
Pt. A, §20, is further amended to read:

40
42 **1. Acts enumerated.** The commissioner or his the
commissioner's duly authorized agent may refuse to grant a
44 license, after notice and opportunity for a hearing is provided
in a manner consistent with the Maine Administrative Procedure
46 Act as to adjudicatory proceedings, upon a finding that any of
the following acts have existed within 2 years of the date of the
filing of an application for license:

48
50 A. That fraudulent charges or returns have been made by the
applicant or licensee for the handling, sale or storage of
potatoes or rotation crops, or for the rendering of any

2 service in connection with the handling, sale, or storage of
potatoes or rotation crops;

4 B. That the applicant or licensee has failed or refused to
6 render a true account of sales, or to make a settlement
thereon, within the time and in the manner required by this
8 Article, or has failed or refused to pay for potatoes or
rotation crops purchased by the applicant or licensee within
10 30 calendar days after acceptance of the potatoes or
rotation crops;

12 C. That the applicant or licensee has knowingly made any
14 false material statement as to the condition, quality or
quantity of potatoes or rotation crops received, handled,
16 sold, purchased or stored by ~~him~~ the applicant or licensee;

18 D. That the applicant or licensee directly or indirectly
has purchased for ~~his~~, that applicant's or its licensee's
20 own account, potatoes or rotation crops received by ~~him~~ the
applicant or licensee upon consignment without prior
22 authorization from consignor together with price fixed by
consignor or without promptly notifying the consignor of
24 such purchase. This shall ~~do~~ does not prevent any dealer,
processor, broker, agent or retailer, in order to close the
26 day's business, from taking into account in ~~his~~ the record
of sales miscellaneous lots or parcels of potatoes or
rotation crops remaining unsold, if such dealer, processor,
28 broker, agent or retailer on the business day next following
shall properly enter enters any such transaction in ~~his~~ that
30 applicant's or licensee's accounts;

32 E. That the applicant, or licensee, has made any
substantial misrepresentation as to the conditions of the
34 market for potatoes or rotation crops;

36 F. That the applicant, or licensee, has made fictitious
sales or has defrauded or attempted to defraud a producer;

38 G. That a dealer, processor, broker, agent or retailer to
whom any consignment is made has reconsigned such
40 consignment to another dealer, processor, broker, agent or
42 retailer and has received, collected or charged by such
means more than one commission for making the sale therefor
44 for the consignor without written consent of such consignor;

46 H. That the licensee knowingly made any false material
statements in the procurement of such license;

48 I. That the applicant or licensee has not accounted
50 promptly and properly to the producer with regard to any
claim settled or collected by ~~him~~ the applicant or licensee
52 for such producer;

2 J. That the applicant or licensee has failed or refused,
upon demand, to permit the commissioner or his the
4 commissioner's agents to make the investigations,
examinations or audits as provided in this Article or that
6 the applicant or licensee has removed or sequestered any
books, records, or papers necessary to any such
8 investigations, examinations or audits, or has otherwise
obstructed the same;

10
12 K. That the licensee has failed or refused to keep and
maintain the records as required by this Article;

14 L. That the applicant or licensee has committed any act or
conduct with regard to the handling, sale or storage of
16 potatoes or rotation crops whether of the same or different
character than specified in this subsection, which
18 constitutes or demonstrates bad faith, incompetency or
untrustworthiness, or dishonest, fraudulent or improper
20 dealings; or

22 M. That the applicant or licensee has failed to deliver to
the seller the confirmation required by section 1022 within
24 the time specified.

26 The Administrative Court may, in a manner consistent with the
Maine Administrative Procedure Act, suspend or revoke a license
28 upon finding any of the enumerated violations within 2 years of
the date of the filing of a complaint.

30
32 **Sec. 11. 7 MRSA §1017, sub-§4**, as amended by PL 1979, c. 731,
§19, is further amended to read:

34 **4. Notification of insufficient or no payment.** Producers
may notify the Department of Agriculture, Food and Rural
36 Resources of insufficient or no payment for potatoes or rotation
crops delivered to any processor in the State in violation of
38 subsection 1, paragraph B.

40 A. The Commissioner of Agriculture, Food and Rural
Resources or his the commissioner's agent, upon notification
42 by producers of insufficient or no payment shall immediately
investigate the complaint and shall, in a manner consistent
44 with the provisions of the Maine Administrative Procedure
Act as to adjudicatory proceedings, hold a hearing, unless
46 such hearing is waived by the processor against whom the
charge has been made. The processor accused of nonpayment
48 shall provide the commissioner with a copy of the contract,
if any, and all other materials and information to enable
50 the commissioner to carry out the provisions of this

2 section. Upon finding, after investigation that the
processor has violated the contract, express or implied, the
4 commissioner shall require the processor to post a bond
sufficient to cover the debt owed to the producer or
6 producers.

8 (1) The commissioner may require the licensee, who has
been accused or found guilty after a hearing of
insufficient payment or nonpayment of debts owed a
10 producer, to formulate a schedule of payments to the
producer that is satisfactory to the commissioner. The
12 schedule of payments shall may not exceed a 30-day
period.

14 (2) The licensee accused of or found by a hearing to
be in default of payment to a producer shall submit a
16 payment schedule to the commissioner within one week
from the commissioner's request for a payment schedule.
18 In the event that the schedule of payment is not
satisfactory to the commissioner, the commissioner
20 shall establish the schedule of payment not to exceed a
22 30-day period.

24 (3) The commissioner shall file a complaint with the
Administrative Court seeking to suspend the license of
26 any licensee who fails to conform to the payment
schedule established in this section until the producer
28 is paid the total claim to which the producer is
entitled.

30 (4) Upon the filing of a complaint by the commissioner
32 in the Administrative Court, the licensee shall post a
bond sufficient to cover the total claim owed the
34 producer on the date on which the complaint is filed.
The bond required for an appeal procedure may be waived
36 by the Administrative Court in the event that the bond
required in paragraph A is valid and sufficient to
38 cover the total claim owed the producer.

40 (5) Nothing in this section shall may be construed to
42 prohibit a producer from seeking redress for
insufficient payment or nonpayment from licensees in
44 any court or in accordance with any federal procedure
established to obtain redress.

46 **Sec. 12. 7 MRSA §1022, sub-§1**, as repealed and replaced by PL
1985, c. 506, Pt. A, §7, is amended to read:

48
50 **1. Broker and dealer records.** Every dealer and broker
required to be licensed under this Article, upon having
negotiated a sale of potatoes or rotation crops for others or

2 upon having purchased potatoes or rotation crops from the
producer, shall cause a record of that transaction to be made,
4 and deliver a copy to the seller by depositing a record of
transaction in the United States mail, postage paid, within 2
6 working days of negotiation of the sale, setting forth the
following with reference to the handling, sale and storage of
those potatoes or rotation crops:

- 8
- 10 A. Date of sale;
 - 12 B. Name and address of producer;
 - 14 C. Name and address of seller;
 - 16 D. Name and address of buyer;
 - 18 E. Name and address of broker, if any;
 - 20 F. Name and address of handler, if any;
 - 22 G. Name and address of any person designated as a secured
party on a financing statement naming the seller as debtor
24 filed in accordance with Title 11, section 9-401, covering
the potatoes or rotation crops, if any;
 - 26 H. Mode of transportation of shipment, if known; if
28 unknown, this information shall must be provided to the
seller prior to shipment;
 - 30 I. Name of carrier, if known; if unknown, this information
shall must be provided to the seller prior to shipment;
 - 32
 - 34 J. If there is a broker or a retailer involved in a
transaction, point of final destination;
 - 36 K. Date of shipment;
 - 38 L. If there is a broker or a retailer involved in the
40 transaction, contemplated date of arrival at final
destination;
 - 42 M. Grade, size, weight and amount and other specifications;
 - 44 N. Price for the potatoes or rotation crops, per unit and
total;
 - 46
 - 48 O. Any deductions to be made from the proceeds for expenses
to be borne by the seller or handler;
 - 50 P. All other essential details of the purchase or sale; and

2 Q. If there is a broker involved in the transaction, an
4 itemized accounting ~~which~~ that separately sets forth all
6 charges in connection with the sale, including the brokerage
8 fee, if any.

10 **Sec. 13. 7 MRSA §1022, sub-§1-A**, as enacted by PL 1983, c.
12 465, §3, is amended to read:

14 **1-A. Processor records.** Every processor licensed under
16 this Article, upon having purchased potatoes or rotation crops
18 from the producer, shall cause a record of the transaction to be
20 made, and deliver promptly to the seller a copy ~~thereof~~ of that
22 record setting forth the following with reference to the
24 handling, sale and storage of those potatoes or rotation crops:

- 16 A. Date of sale;
- 18 B. Name and address of producer;
- 20 C. Name and address of buyer; and
- 22 D. Grade, size, weight and amount and other specifications.

24 In addition, the processor shall, for each transaction, specify
26 the price for the potatoes or rotation crops, per unit and total,
28 and deliver that information to the producer within 10 business
30 days of delivery and acceptance of the potatoes or rotation crops.

32 **Sec. 14. 7 MRSA §1022, sub-§2**, as amended by PL 1989, c. 319,
34 is further amended to read:

36 **2. Guarantees.** In any sale in which the buyer of such
38 potatoes or rotation crops is a person required to be licensed by
40 this article and has a place of business in this State except a
42 retailer, any guarantees with regard to grade, size, weight or
44 other specifications, made by the producer ~~shall--be~~ is deemed
46 satisfied when the grade, size, weight or specifications, as
48 certified by a licensed federal-state potato inspector, or seed
50 potato inspector, after the potatoes or rotation crops have been
or while they are being loaded for transit, equals or exceeds the
grade, size, weight or other specifications of the potatoes or
rotation crops stated in the record of transaction. Any producer
making any such guarantees shall at all times prior to shipment
have has the option to determine whether or not the potatoes
shall or rotation crops must be inspected in accordance with this
subsection. Any attempt by a dealer to coerce or influence a
producer to forego an inspection ~~shall--be~~ is a civil violation
subject to section 1028. Any agreement the effect of which is to
deny the producer the right to satisfy the producer's guarantee

obligations and any agreement conflicting with this subsection are void; provided except that a producer waives any rights under this subsection or may sell potatoes or rotation crops under an agreement conflicting with this subsection when the record of transaction required by this article contains the following additional information:

A. Name and address of the person to whom the dealer resold the potatoes or rotation crops and any other person to whom the producer is obligated, directly or indirectly, by making any guarantees with regard to grade, size, weight or other specifications;

B. Point of final destination for the shipment of potatoes or rotation crops; and

C. Price for the potatoes or rotation crops, per unit at final destination.

A buyer or dealer who attempts to enforce or hold a producer liable under a guarantee obligation, when the potatoes or rotation crops have been inspected in accordance with this subsection, without supplying the information in paragraphs A, B and C commits a civil violation and ~~shall--be~~ is subject to section 1028.

Sec. 15. 7 MRSA §1022, sub-§3, as amended by PL 1971, c. 600, §8, is further amended to read:

3. Waiver. In any sale by a producer in which the making of a record of such transaction is required by this Article and the name and address of the buyer are not set forth on such record, or if no such record of transaction is made or if a copy of ~~said the~~ the record of transaction is not delivered by depositing ~~said the~~ the copy in the United States mail, postage prepaid, addressed to the producer, prior to delivery of the potatoes or rotation crops at the point of final destination, the producer ~~shall-be~~ is deemed not to have made any guarantees with regard to grade, size, weight or other specifications, and such omission by the buyer or broker or agent ~~shall--constitute~~ constitutes a waiver of any and all claims against the producer for breach of warranty, expressed or implied.

Sec. 16. 7 MRSA §1023, sub-§2, as enacted by PL 1971, c. 366, is amended to read:

2. Duties of brokers. In addition to all the duties of the broker otherwise imposed by law or by agreement, the broker shall have has the following duties+.

2 A. The broker shall invoice the buyer, shall collect and
4 remit to the seller and any secured party noted on the
6 record of the transaction any and all sums due on account of
8 the sale, and shall render an itemized accounting to the
10 seller promptly upon receipt of payment, showing the true
12 gross selling price, all brokerage fees deducted, and any
14 other charges or expenses incurred in connection with the
16 sale of the potatoes or rotation crops. Agreement to collect
18 from the buyer and remit to the seller is not a guarantee by
20 the broker that the buyer will pay for the potatoes or
22 rotation crops purchased, unless there is a specific
24 agreement by the broker that the broker will pay if the
buyer does not pay.

B. The broker shall, to the best of ~~his~~ the broker's
ability, make all necessary arrangements to effect the
transportation of said shipment to the buyer, but the
broker, in the absence of a specific agreement, does not
guarantee the carrier payment of carrier charges.

C. The broker shall prepare, file and fully process with
the carrier any and all claims for the seller of the
potatoes or rotation crops, including taking all necessary
action to bring the matter to a conclusion.

26 **Sec. 17. 7 MRSA §1023, sub-§§3 and 5**, as enacted by PL 1971, c.
600, §9, are amended to read:

28 **3. Agents contracts.** No A person required to be licensed by
30 this Article ~~shall~~ may not act as an agent for any grower without
32 first having an agreement with the grower reduced to a written
34 contract clearly defining the duties and responsibilities of both
parties, the extent of the agent's authority in distributing the
potatoes or rotation crops, and the agent's fee or selling
charge, if any.

36 **5. Duties of agents.** In addition to all the duties of the
38 agent of any grower otherwise imposed by law, rule or regulation,
40 or by agreement, the agent ~~shall~~-have has the same duties as are
imposed upon the broker by subsection 2, paragraphs A, B and C.

42 **Sec. 18. 7 MRSA §1024, sub-§1**, as enacted by PL 1971, c. 366,
is amended to read:

44 **1. Producers.** Producers are exempt from this Article when
46 selling potatoes ~~which~~ or rotation crops that they have grown,
48 ~~which~~ that they are presently growing or ~~which~~ that they intend
to grow, except when acting as an agent.

50

SUMMARY

2

4 This bill would expand the licensing authority under the
6 Maine potato laws to include small grains and flax, which are
 traditionally used as rotation crops for the production of
 potatoes.