

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

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No. 1572

H.P. 1110

House of Representatives, April 13, 2005

An Act To Amend the Potato Industry Licensing Laws

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.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LUNDEEN of Mars Hill.
Cosponsored by Senator MARTIN of Aroostook and
Representative: SHERMAN of Hodgdon, Senator: CLUKEY of Aroostook.

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

2 **Sec. 1. 7 MRSA §1015**, as amended by PL 2003, c. 344, Pt. D,
4 §1, is further amended to read:

6 **§1015. Application and renewal for license**

8 The applicant shall file an application for a license or
10 renewal of a license on forms as prescribed and furnished by the
12 commissioner, which must contain the full name of the person
14 applying for the license and, if the applicant is a corporation,
16 partnership, association, exchange or legal representative,
18 officer, director, partner or member of a corporation,
20 partnership, association or exchange, all such names and
22 positions. If the applicant is a foreign corporation, it shall
24 certify that it is authorized to transact business in the State
under former Title 13-A, chapter 12 or Title 13-C, chapter 15,
and further state the principal business address of the applicant
in the State or elsewhere, the address of all places of business
in the State, and the name or names of the person or persons
authorized to receive and accept service of lawful process upon
the applicant within the State. All questions required to be
answered in the application for licenses must be sworn to, and
intentionally untruthful answers constitute the crime of perjury.

26 Upon receipt of such applications, the commissioner
28 immediately shall cause notice of the applications to be provided
30 in a manner consistent with the provisions of the Maine
Administrative Procedure Act as to adjudicatory proceedings and
shall, in any case, cause a copy of the notice to be served upon
32 the Maine Potato Board. Any interested person has 30 days in
34 which to file comments as to the applicant's qualifications, to
request a hearing or to file a verified complaint with the
commissioner as provided by this Article.

36 This applicant shall satisfy the commissioner of his that
38 applicant's character, financial responsibility and good faith in
40 seeking to engage in the business. The commissioner shall, after
notice and opportunity for a hearing has been provided in a
42 manner consistent with the Maine Administrative Procedure Act as
to adjudicatory proceedings, issue a license to ~~such~~ an applicant
44 if ~~he~~ the commissioner is satisfied as to the applicant's
46 qualifications, such license entitling the applicant to act in
the capacity described in the license for a period of one year
48 from the date of issuance thereof. ~~No~~ A license shall ~~may not~~ be
granted to any applicant if such person or officer, director,
partner, or member thereof, has been convicted in any state or
federal court of any felony within 5 years of the date of the
application.

2 In order to insure the licensee's financial responsibility
and to protect potato and rotation crop producers, the
3 commissioner shall require the licensee to file a bond as a
4 prerequisite to the issuance of a license. The bond must be in a
form and amount satisfactory to the commissioner, but not less
6 than \$50,000 nor more than \$300,000 in the case of dealers and
brokers engaged in buying or selling either potatoes or rotation
8 crops, but not both, not less than \$50,000 nor more than \$400,000
in the case of dealers and brokers engaged in buying and selling
10 both potatoes and rotation crops, or not less than \$100,000 nor
more than \$500,000 in the case of processors, payable to the
12 commissioner in the commissioner's official capacity and
conditioned on the full and prompt payment for all potatoes or
14 rotation crops received or purchased from producers or other
licensees during the effective period of the license. In the case
16 of processors, the amount of bond required must be based on the
licensee's anticipated monthly volume of purchases, but may be
18 adjusted to reflect other federal escrow accounts or bond
requirements met by the licensee that satisfy the purposes of
20 this section.

22 Each license ~~shall~~ must plainly state the name and business
address or addresses of the licensee and ~~shall~~ must be posted in
24 a conspicuous place in each office where the business is
transacted. The ~~initial~~ fee for each license ~~shall be \$80~~ is \$100
26 annually. Such license ~~shall~~ may be ~~automatically~~ renewed for
successive periods of one year each upon payment of the renewal
28 fee ~~which shall be \$80~~ and the submission of proof of financial
responsibility. A license or license renewal issued expires on
30 the 30th day of June following the date of issuance. The
department is not required to provide notice and opportunity for
32 a hearing as provided in the Maine Administrative Procedure Act
for license renewals. If the licensee desires to carry on
34 business in more than one place within the State, ~~he~~ the licensee
shall procure additional copies of the license, certified by the
36 commissioner, for each place where the business is to be
conducted. The fee for each such additional certification shall
38 ~~be \$80~~ is \$100. In the event a person required to be licensed
under this section fails to renew that person's license or submit
40 the annual proof of financial responsibility, the department
shall promptly provide notice to members of the potato producing
42 industry through the Maine Potato Board and an agricultural
bargaining council.

44 All fees collected under this Article ~~shall~~ must be paid
46 ~~forthwith~~ to the Treasurer of State and credited to the
Department of Agriculture, Food and Rural Resources for the
48 administration of this Article and other expenses incident to the
administration of ~~said~~ the department, and ~~shall~~ must be expended
50 by the ~~said~~ commissioner for the purposes for which ~~said~~ the

2 department is created. If any of such fees are not expended
during the year in which they are collected, the unexpended
4 balance shall does not lapse, but shall must be carried as a
continuing account and available for the purposes specified until
6 expended.

8 **Sec. 2. 7 MRSA §1017, sub-§1**, as amended by PL 1997, c. 606,
§10 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is
10 further amended to read:

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

18 A. That fraudulent charges or returns have been made by the
20 applicant or licensee for the handling, sale or storage of
potatoes or rotation crops, or for the rendering of any
22 service in connection with the handling, sale or storage of
potatoes or rotation crops;

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

32 C. That the applicant or licensee has knowingly made any
34 false material statement as to the condition, quality or
quantity of potatoes or rotation crops received, handled,
36 sold, purchased or stored by the applicant or licensee;

38 D. That the applicant or licensee directly or indirectly
has purchased for that applicant's or licensee's own
40 account, potatoes or rotation crops received by the
applicant or licensee upon consignment without prior
42 authorization from consignor together with price fixed by
consignor or without promptly notifying the consignor of
44 such purchase. This does not prevent any dealer, processor,
broker, agent or retailer, in order to close the day's
46 business, from taking into account in the record of sales
miscellaneous lots or parcels of potatoes or rotation crops
48 remaining unsold, if such dealer, processor, broker, agent
or retailer on the business day next following properly

- 2 enters any such transaction in that applicant's or
licensee's accounts;
- 4 E. That the applicant or licensee has made any substantial
misrepresentation as to the conditions of the market for
6 potatoes or rotation crops;
- 8 F. That the applicant or licensee has made fictitious sales
or has defrauded or attempted to defraud a producer;
- 10 G. That a dealer, processor, broker, agent or retailer to
whom any consignment is made has reconsigned such
12 consignment to another dealer, processor, broker, agent or
retailer and has received, collected or charged by such
14 means more than one commission for making the sale therefor
for the consignor without written consent of such consignor;
- 16
- 18 H. That the licensee knowingly made any false material
statements in the procurement of such license;
- 20
- 22 I. That the applicant or licensee has not accounted
promptly and properly to the producer with regard to any
claim settled or collected by the applicant or licensee for
24 such producer;
- 26 J. That the applicant or licensee has failed or refused,
upon demand, to permit the commissioner or the
28 commissioner's agents to make the investigations,
examinations or audits as provided in this Article or that
30 the applicant or licensee has removed or sequestered any
books, records or papers necessary to any such
32 investigations, examinations or audits, or has otherwise
obstructed the same;
- 34
- 36 K. That the licensee has failed or refused to keep and
maintain the records as required by this Article;
- 38
- 40 L. That the applicant or licensee has committed any act or
conduct with regard to the handling, sale or storage of
potatoes or rotation crops whether of the same or different
42 character than specified in this subsection, which
constitutes or demonstrates bad faith, incompetency or
untrustworthiness, or dishonest, fraudulent or improper
44 dealings; or
- 46 M. That the applicant or licensee has failed to deliver to
the seller the confirmation required by section 1022 within
48 the time specified; or

2 N. That the applicant or licensee has failed to maintain a
3 bond to ensure financial responsibility to producers or
4 other licensees as required under section 1015.

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

10 **Sec. 3. 7 MRSA §1017, sub-§4**, as amended by PL 1997, c. 606,
11 §11 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is
12 further amended to read:

14 **4. Notification of insufficient or no payment.** Producers
15 may notify the Department of Agriculture, Food and Rural
16 Resources of insufficient or no payment for potatoes or rotation
17 crops ~~delivered to~~ after acceptance by any processor in the State
18 in violation of subsection 1, paragraph B.

20 A. The Commissioner of Agriculture, Food and Rural
21 Resources or the commissioner's agent, upon notification by
22 producers of insufficient or no payment, shall immediately
23 investigate the complaint and shall, in a manner consistent
24 with the provisions of the Maine Administrative Procedure
25 Act as to adjudicatory proceedings, hold a hearing, unless
26 such hearing is waived by the processor against whom the
27 charge has been made. The processor accused of nonpayment
28 shall provide the commissioner with a copy of the contract,
29 if any, and all other materials and information to enable
30 the commissioner to carry out the provisions of this
31 section. Upon finding after investigation that the processor
32 has violated the contract, express or implied, the
33 commissioner may recover the proceeds of the bond required
34 by section 1015 and apply those proceeds against the amounts
35 owed producers. In the event the bond proceeds are
36 inadequate to cover the debts owed producers, the
37 commissioner shall require the processor to post a an
38 additional bond sufficient to cover the remaining debt owed
39 to the producer or producers.

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

46 (2) The licensee accused of or found by a hearing to
47 be in default of payment to a producer shall submit a
48 payment schedule to the commissioner within one week
49 of the hearing.

2 from the commissioner's request for a payment schedule.
3 In the event that the schedule of payment is not
4 satisfactory to the commissioner, the commissioner
5 shall establish the schedule of payment not to exceed a
6 30-day period.

7 (3) The commissioner shall file a complaint with the
8 District Court seeking to suspend the license of any
9 licensee who fails to conform to the payment schedule
10 established in this section until the producer is paid
11 the total claim to which the producer is entitled.

12 (4) Upon the filing of a complaint by the commissioner
13 in the District Court, the licensee shall post a bond
14 sufficient to cover the total claim owed the producer
15 on the date on which the complaint is filed. The bond
16 required for an appeal procedure may be waived by the
17 District Court in the event that the bond required in
18 paragraph A is valid and sufficient to cover the total
19 claim owed the producer.

20 (5) Nothing in this section may be construed to
21 prohibit a producer from seeking redress for
22 insufficient payment or nonpayment from licensees in
23 any court or in accordance with any federal procedure
24 established to obtain redress.

25 **Sec. 4. 7 MRSA §1025**, as amended by PL 1977, c. 696, §358, is
26 further amended to read:

27 **§1025. Forfeiture of bond; recovery on bond**

28 If any licensee ~~shall--fail~~ fails to make such payment as
29 provided in section 1017, subsection 1, paragraph B, such
30 licensee, by reason of such nonpayment ~~shall-be~~ is in default as
31 to all producers or licensees whose accounts ~~shall-then~~ remain
32 unpaid, and the bond provided for ~~shall-be~~ is forfeited to the
33 extent of all sums then due from such licensee to ~~said~~ those
34 producers or licensees, and by nature of such default, the
35 conditions of such bond ~~shall-be~~ are deemed to be broken, and any
36 such producer or licensee may bring an action on the defaulted
37 bond in the name of the commissioner for the benefit of ~~said~~ the
38 producer or licensee. A producer or a licensee bringing an
39 action against the bond must provide the department with notice
40 of intent to file a claim within 30 days of the payment due
41 date. A formal verified complaint and supporting documentation
42 must be filed with the department within 90 days of the payment
43 due date.

2 The right of a producer or a licensee to bring an action
3 against the bond is subject to the department's right to apply
4 the proceeds of the bond against the producer's or licensee's
5 debts in accordance with section 1017.

6 **Sec. 5. 7 MRSA §1026**, as repealed and replaced by PL 1977, c.
7 696, §84, is amended to read:

8 **§1026. Enforcement**

10 The commissioner may recover the penalties imposed for
11 violations of this Article and any rules and regulations
12 promulgated thereunder in a civil action brought in his the
13 commissioner's own name, the venue to be as in other civil
14 actions and, if he the commissioner prevails in that action, he
15 the commissioner may recover full costs, including, but not
16 limited to, attorney's fees. The commissioner ~~shall--be~~ is
17 entitled to ~~and--shall--receive~~ the assistance of the Attorney
18 General and of the several district attorneys.

20 **Sec. 6. 7 MRSA §1028**, as repealed and replaced by PL 1977, c.
21 696, §86, is amended by adding at the end a new paragraph to read:

22 Each day a violation under this section remains uncorrected
23 may be counted as a separate offense. Penalties may be imposed
24 for each violation.

25

26

27 **SUMMARY**

28 This bill amends the laws governing potato industry
29 licensing and bonding to provide additional protection for
30 producers and licensees in the event that a person required to be
31 licensed under these laws becomes insolvent. The bill requires
32 the submission of a bond as a prerequisite for obtaining a
33 license; requires licensees to apply for a license renewal
34 annually; establishes a June 30th expiration date for all
35 licenses; increases the license fee from \$80 to \$100 per year;
36 and makes other administrative changes.