

# MAINE STATE LEGISLATURE

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ACTS, RESOLVES AND CONSTITUTIONAL RESOLUTIONS

AS PASSED BY THE

One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

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THE KNOWLTON AND McLEARY COMPANY  
FARMINGTON, MAINE  
1973

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PUBLIC LAWS  
OF THE  
STATE OF MAINE  
AS PASSED BY THE  
One Hundred and Sixth Legislature

1973

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## CHAPTER 621

### AN ACT to Create a Maine Agricultural Bargaining Board.

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

Sec. 1. R. S., T. 13, c. 85, sub-c. II, Article 6, additional. Subchapter II of chapter 85 of Title 13 of the Revised Statutes is amended by adding a new Article 6 to read as follows:

#### SUBCHAPTER II

#### AGRICULTURAL MARKETING AND BARGAINING

#### ARTICLE 6. MAINE AGRICULTURAL MARKETING AND

#### BARGAINING ACT OF 1973

##### § 1953. Legislative findings and purpose

Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation.

##### § 1954. Short title

Article 6 shall be known and may be cited as the "Maine Agricultural Marketing and Bargaining Act of 1973."

##### § 1955. Definitions

As used in this Article, unless the context otherwise requires, the following words shall have the following meanings.

1. Association of producers. "Association of producers" means any association of producers of agricultural products organized and existing under this subchapter.

2. Board. "Board" means the Maine Agricultural Bargaining Board provided for in this Article.

3. Handler. "Handler," in the case of potatoes, means "processor" as defined under Title 7, section 1012, subsection 14 and in the case of other agricultural products means any person engaged in the business or practice of:

- A. Acquiring agricultural products from producers or associations of producers for processing or sale;
- B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers;
- C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or
- D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C.

4. Person. "Person" includes one or more individuals, partnerships, corporations and associations.

5. Producer. "Producer" means a person engaged in the production of agricultural products, excluding forest products, as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower, or independent agricultural contractor as specified in section 1774, subsections 6-A and 8-A. If producer is also a handler, he shall be considered only a handler for the purposes of this Act.

6. Qualified association. "Qualified association" means an association of producers accredited in accordance with section 1957.

#### § 1956. Maine Agricultural Bargaining Board

1. Board. There is established in the Department of Agriculture a Maine Agricultural Bargaining Board, which shall administer this Article.

2. Membership. The board shall consist of 5 members who shall be appointed by the Governor with the approval of the Council. One member shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One shall be appointed from a list of names submitted by processors of agricultural products. Three shall be representatives of the public.

The initial terms of office of members of the board shall be 2 years for 2 representatives of the public and 3 years for the producer and processor representative and 4 years for the remaining public member. The Governor shall designate one member to serve as chairman of the board. Thereafter all terms shall be for a period of 5 years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of a vacancy, the Governor and Council shall, within one month, appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Members shall take the oath of office prescribed for state officers.

3. Removal. Members of the board shall be removed by the Commissioner of Agriculture upon notice and hearing for neglect of duty or malfeasance in office but for no other cause.

4. Quorum. A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members

of the board shall, at all times, constitute a quorum of the board, provided that reasonable notice has been given to all members of the board of the subject matter and date of any meeting at which the board is to exercise any of its powers.

5. Expenses. Members of the board shall be compensated at the rate of \$50 per day, in addition to their actual expenses while carrying out the functions of the board.

6. Rules and regulations. The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by Title 5, sections 2351 to 2354, such rules and regulations as may be necessary or appropriate to carry out this Article.

§ 1957. Qualification of associations of producers

1. Qualification. Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this Article.

2. Petition. An association of producers desiring qualification shall file with the board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the board.

3. Hearing. The board shall provide for a hearing upon such petition. The board shall qualify such association, if based upon the evidence at such hearing, the board finds:

A. That under the charter documents or the bylaws of the association, the association is directly or indirectly producer-owned and controlled;

B. The association has contracts with its members that are binding under state law;

C. The association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized;

D. The association represents 51% of the producers and produced at least  $\frac{1}{2}$  of the volume of a particular agricultural product for the specific handler involved with those producers and that agricultural product during the previous 12 months; if the board has reasonable cause to question such representation, the board shall require a secret ballot election to certify the percentage of representation; and

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other terms of contracts with respect to the production, sale and marketing of their product.

4. Refiling of petition. If, at said hearing, the board does not deem an association qualified, it shall clearly specify the reasons for such failure to qualify in its decision and upon the refile of said petition, shall reconsider its decision within 30 days after the date on which said petition was filed.

5. Notice. After the board qualifies such association, it shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association represents.

6. Annual report. A qualified association shall file an annual report with the board in such form as shall be required by the regulations of the board. The annual report shall contain such information as will enable the board to determine whether the association continues to meet the standards for qualification.

7. Revocation. If a qualified association ceases to maintain the standards for qualification set forth in subsection 3, the board shall, after notice and hearing, revoke the qualification of such association. Said decisions shall clearly specify the reasons for the revocation of the qualifications of any association.

#### § 1958. Bargaining

1. Definition. As used in this Article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

2. Prior course of dealing. A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any 2 of the preceding 3 years, provided that the sale by a handler of his business shall not negate any prior course of dealing that producers have had with this business.

3. Contracts. Nothing in this Article shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

4. —limitation. It shall be unlawful for a handler to negotiate with other producers of a product with respect to the price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to such product while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of such handler for such product.

5. —further limitation. It shall be unlawful for a handler to purchase a product from other persons under terms more favorable to such persons than those terms negotiated with a qualified bargaining association for such product, unless such handler has first offered to purchase said product under said more favorable terms from the members of the qualified association of producers and said members have failed to supply the required product within a reasonable time according to said more favorable terms.

6. Investigation. Whenever it is charged that a qualified association or handler refuses to bargain as that term is defined in subsection 1, the board shall investigate such charges. If, upon such investigation, the board considers that there is reasonable cause to believe that the person charged has refused to bargain in violation of this Article, the board shall issue and cause to be served a complaint upon such person. A copy of the complaint shall be served on each alleged violator and said complaint shall contain a short and plain statement of the alleged violation or violations. The complaint shall summon the named person to a hearing before the board or a member thereof within 15 days of receipt of service and at the place therein fixed.

7. Hearing. The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person with legal counsel if so desired or to be represented by legal counsel at the hearing and give testimony. In the discretion of the board, any person may be allowed to intervene to present testimony. At such hearings a record of all proceedings shall be maintained and common law or statutory rules of evidence shall apply insofar as practicable, and the board shall request that the Attorney General, or any attorney in his department designated by him, be present at such hearings and shall advise the board on procedure and on the admissibility of any evidence.

8. Findings. If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this Article, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this Article.

9. Dismissal. If, upon a preponderance of the evidence, the board is of the opinion that the person complained of has not refused to bargain, in violation of this Article, it shall make its findings of fact and issue an order dismissing the complaint.

10. Modification. Until the record in a case has been filed in a court, as provided in section 1959, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

#### § 1959. Enforcement of orders and judicial review

1. Complaint. The board shall have power to complain to the Superior Court for the enforcement of its orders made under section 1958 and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce



additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

2. Appeal. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may appeal such order to the Superior Court. The aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of such appeal, the court shall proceed in the same manner as in the case of complaint by the board under subsection 1, and shall have the same jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall in like manner be conclusive.

3. Stay. The commencement of proceedings under subsection 1 or 2 shall not stay enforcement of the board's decision, but the reviewing court may order a stay upon such terms as it deems proper.

4. Procedure. The procedure upon judicial review shall be in accordance with rule 80B of the Maine Rules of Civil Procedure, except as otherwise indicated in this section.

#### § 1960. Copy evidence; oaths; subpoenas

The board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to bargain. The board is empowered to administer oaths and to issue subpoenas requiring the attendance of witnesses or the production of evidence.

#### § 1961. Contempt

In case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation and any failure to obey such order may be punished by the court as a contempt thereof.

#### § 1962. Service

Complaints, orders and other papers of the board shall be served in accordance with the methods provided by the Maine Rules of Civil Procedure.

#### § 1963. Subpoena

In any proceeding before the board under this Act, the board may issue subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath provided that:

1. Upon written application of a party to a proceeding, the board shall issue subpoenas for the attendance of witnesses or for the production of documents;

2. A person who fails to obey the subpoena of the board may be punished as for contempt of court on application by the board to the Superior Court for the county in which such failure occurs;

3. Witnesses who are summoned before the board or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the District Courts of the State.

#### § 1964. Antitrust

The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of this State. Nothing in this Article shall be construed to permit handler to contract, combine or conspire with one another in bargaining with qualified associations.

#### § 1965. Unfair practices

1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor permit an employee or agent to engage in any of the following practices, defined as unfair practices:

A. To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 1958, subsections 4 and 5;

B. To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of his membership in or contract with an association;

C. To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler;

D. To pay or loan money, give anything of value or offer any other inducement or regard to a producer for refusing or ceasing to belong to an association;

E. To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers;

F. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act;

G. To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association;

H. To negotiate with a producer included in the bargaining unit after an association is accredited.

2. An association shall not engage or permit an employee or agent to engage in the following practices, defined as unfair practices:

A. To act in a manner contrary to the bylaws of the association;

B. To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association;

C. To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer;

D. To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers;

E. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act;

F. To hinder or prevent, by picketing, threats, intimidations, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance;

G. To exercise coercive pressure by picketing, patrolling or otherwise business establishments other than the premises owned or controlled by the handler in order to cause such parties to cease doing business with such handler.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the Department of Agriculture the sum of \$21,220 to carry out the purposes of this Act. The breakdown shall be as follows:

Personal Services	(1)	\$3,162	(1)	\$3,162
All Other		7,198		7,198
Capital Expenditures		500		—
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		\$10,860		\$10,360

Effective October 3, 1973

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## CHAPTER 622

### AN ACT Reestablishing the Capitol Planning Commission.

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

Whereas, the purpose of the bill is to reestablish the Capitol Planning Commission; and

Whereas, since there is contemplated construction in the Capitol Area, it is essential that the commission be reestablished as soon as possible to provide expert guidance for the orderly and aesthetic development of the area; and

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

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

Sec 1. R. S., T. 5, § 298, repealed and replaced. Section 298 of Title 5 of the Revised Statutes, as enacted by section 1 of chapter 458 of the public laws of 1967 and as repealed and replaced by section 5 of chapter 615 of the public laws of 1971, is repealed and the following enacted in place thereof:

#### § 298. Capitol Planning Commission

There is created a Capitol Planning Commission, the function of which shall be to administer this chapter and to perform such other duties as may be prescribed by law.

The commission shall consist of 5 members appointed by the Governor for overlapping terms of 5 years. One member of the first commission shall be appointed for a term of one year, one for 2 years, one for 3 years, one for 4 years and one for 5 years. Their successors shall be appointed for terms of 5 years. Each member shall serve for the term of his appointment and thereafter until his successor is appointed and qualified. A vacancy shall be filled for the unexpired term in the same manner in which the original appointment is made. The members of the commission shall serve without compensation, but shall receive their necessary expenses.

The members of the commission shall elect a chairman who shall preside at all meetings of the commission when present. The commission shall meet