

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE

FIRST SPECIAL SESSION
September 6, 1983 to September 7, 1983
Chapters 583-588

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

Maine Youth Center in order to assist in the design of individual treatment plans to provide habilitation, education and skill training to mentally retarded juveniles in residence at the Maine Youth Center.

2. Support services. Whenever a program has been designed for a mentally retarded juvenile by the Clinical Services Committee and the Clinical Services Committee has included participation by the bureau professionals, the bureau shall provide, insofar as possible, support services to implement that program.

3. Case management. The bureau may provide case management services to mentally retarded juveniles who are released from the Maine Youth Center.

Sec. 57. Mentally retarded offenders. As a result of the new classification process, the Department of Corrections will be reviewing the rehabilitation and treatment needs of all committed offenders, and expects that there may be special needs of mentally retarded offenders.

It is the intent of the Legislature that the department evaluate the needs of these inmates, in consultation with the Department of Mental Health and Mental Retardation. If the Department of Corrections, after study, determines that a program is necessary to meet these needs, it shall submit the necessary legislation, together with any required funding recommendations, to the Legislature for its approval.

Sec. 58. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1983-84</u>	<u>1984-85</u>
<u>CORRECTIONS, DEPARTMENT OF</u>		
All Other	\$4,275	\$8,550

Sec. 59. Effective date. This Act takes effect January 16, 1984.

Effective January 16, 1984.

CHAPTER 582

H.P. 1271 - L.D. 1685

AN ACT to Stabilize Maine Potato Prices.

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

Sec. 1. 7 MRSA c. 103, sub-c. X, Art. 2-A is enacted to read:

ARTICLE 2-A

MAINE POTATO PRICES

§1008. Purpose

The Legislature finds that the potato industry has a substantial and unique effect on the economy of the entire State, Aroostook County in particular. Over the years, the industry has experienced wide fluctuations in price and price has sometimes not completely reflected the actual demand for Maine potatoes. These fluctuations have caused instability in the economy of a large portion of the State. In seeking to reduce this instability, it is the Legislature's purpose to supplant destructive price competition by requiring the commissioner to set a daily minimum price governing the sale of potatoes by first handlers. This program will encourage the orderly marketing of potatoes grown within this State and reduce economic waste in the marketing of these potatoes.

§1008-A. Definitions

As used in this Article, in addition to applicable definitions in section 993, the following terms have the following meanings.

1. Board. "Board" means the Maine Marketing Advisory Board.

2. Commissioner. "Commissioner" means the Commissioner of Agricultural, Food and Rural Resources.

3. Consumer. "Consumer" means an individual who purchases potatoes for consumption or use, other than for resale or for storage resale.

4. Daily minimum price. "Daily minimum price" means the price set by the commissioner pursuant to section 1008-C, subsection 2, as adjusted by the applicable differential established consistent with section 1008-C, subsection 1.

5. Dealer. "Dealer" means any person engaged in the business of buying or selling potatoes in wholesale or jobbing quantities in commerce and includes jobbers, distributors and other wholesalers, and pro-

ducers who buy and resell potatoes grown by others. The term "dealer" does not include persons buying potatoes for processing within this State.

6. First handler. "First handler" means any person employed in the business of loading or of placing table stock potatoes in any type of container for exposure for sale, provided that first handler does not means any person loading potatoes in bulk for delivery to a processor, which delivery shall occur in this State.

7. Load. "Load" means any truck load or railroad car load of potatoes or any part thereof.

8. Maine potato council. "Maine potato council" means the nonstock corporation organized and existing under Title 13, chapter 81, with its principal office in Presque Isle and whose membership is comprised exclusively of producers.

9. Potatoes. "Potatoes" means all round white potatoes grown within the State which retain the same physical form as possessed when harvested. The effects of the following operations shall not be considered as changing the physical form possessed by potatoes when harvested: Washing with or without chemicals; drying for the removal of surface moisture; precooling, preheating, ventilating, humidifying or otherwise controlling atmospheric conditions in storage; treating with chemical formulations for sprout inhibition; and waxing, packaging or otherwise preparing potatoes for marketing in what is generally considered to be fresh form.

10. Retailer. "Retailer" means a person engaged in the business of buying potatoes in wholesale or jobbing quantities and reselling those potatoes primarily to consumers.

11. Sale. "Sale" shall include every contract or agreement purchase, sale, exchange or other disposition of table stock potatoes for value.

12. Table stock potatoes. "Table stock potatoes" means all potatoes except those officially certified and tagged, marked or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the State.

13. Wholesale or jobbing quantities. "Wholesale or jobbing quantities" means aggregate quantities of potatoes totaling 25 tons (50,000 pounds) or more in weight purchased or contracted to be purchased in any calendar month.

§1008-B. Maine Marketing Advisory Board

1. Board membership. There shall be created an advisory board to advise the commissioner on potato marketing issues as provided for in this Article. This board shall be known as the Maine Marketing Advisory Board and shall consist of 5 members appointed by the commissioner, of whom 3 shall be licensed first handlers, who are not also licensed dealers, and 2 shall be licensed dealers. Members shall each fill a 2-year term, which shall begin on July 1st, except that within 30 days of the effective date of this Article the commissioner shall appoint one licensed first handler and one licensed dealer who shall serve until June 30, 1984, and he shall appoint 2 licensed first handlers and one licensed dealer who shall serve until June 30, 1985.

2. Nominations. Each member shall be appointed by the commissioner from a list of at least 3 nominees selected as follows.

A. For each vacancy in the board, a statewide organization designated by the commissioner and representing licensed dealers in the State shall submit a list of at least 3 nominees at least 30 days before each new term of office begins or after any vacancy occurs, except that nominations for initial appointments shall be submitted within 20 days after the effective date of this Article.

B. For each vacancy on the board, the Maine Potato Council shall submit a list of at least 3 nominees at least 30 days before each new term of office begins or after any vacancy occurs, except nominations for initial appointments shall be submitted within 20 days after the effective date of this Article.

3. Failure to nominate. If nominations are not made within the time specified in subsection 2, the commissioner may, without regard to nominations, appoint board members.

4. Acceptance. Any person selected by the commissioner as a board member shall qualify by filing a written acceptance with the commissioner within 10 days after being notified of that selection.

5. Vacancies. To fill any vacancy occasioned by the failure of any person selected as a board member to qualify, or in the event of the death, removal, resignation or disqualification of any qualified member, a successor for his unexpired term may be selected by the commissioner from nominations made in

the manner specified in subsection 3, or the commissioner may select that board member from previously unselected nominees on the current nominee list. If the names of nominees to fill any such vacancy are not made available to the commissioner within 30 days after the vacancy occurs, the commissioner may fill that vacancy without regard to nominations.

6. Procedure. Three members of the board shall be necessary to constitute a quorum, and 3 concurring votes shall be required to pass any motion or approve any board action. The board may provide for meeting by telephone, telegraph or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing.

7. Expenses and compensation. No board member may receive a salary, but each may be entitled to his actual expenses incurred while engaged in performing his authorized duties. The commissioner may employ necessary personnel, fix their compensation and terms of employment and authorize them to incur such expenses, as the commissioner may deem necessary and proper to enable the board properly to perform its duties as are authorized in this Article.

8. Duties of the board. The board shall:

A. Prior to the beginning of each marketing year, study the existing supply of potatoes in the State and the existing and potential market for the potatoes and shall recommend to the commissioner a pricing strategy for the marketing year or any month or portion thereof. In developing this policy, the board shall consider economic and marketing information, including the estimated volume of Maine potatoes; the estimated volume of potatoes available in other areas; the past, present and prospective demand for Maine potatoes of various grades, sizes and varieties; and conditions under which a daily minimum price might be disruptive to the marketing process. The board shall advise the commissioner of its findings along with recommendations for procedures to guide the establishment of a daily minimum price; and

B. Recommend to the commissioner a schedule for establishing premiums and discounts to reflect differences in quality, container type, transportation cost and such other factors as the board deems appropriate.

§1008-C. Duties of the commissioner

The commissioner shall:

1. Adoption of guidelines; price differentials; information. After considering recommendations of the board and after notice and opportunity for hearing, adopt:

A. Guidelines for establishing a daily minimum price as provided for in subsection 2. These guidelines shall be designed to assure that table stock producers receive a price which reflects the market demand for their potatoes and include, but not be limited to, consideration of:

(1) Prices for potatoes from other areas;

(2) Supplies of Maine potatoes of various varieties and grades;

(3) Current and projected prices for Maine potatoes systematically collected from sources representing all elements of the Maine table stock industry;

(4) Benefits which will result from establishing a minimum price; and

(5) Other pertinent market factors;

B. Price differentials that vary from the minimum price established under subsection 2, to reflect such factors as quality, container type and transportation costs. Whenever the commissioner has reasonable grounds to believe that the differentials so established no longer reflect the market conditions, he may adopt or modify differentials after notice and opportunity for hearing has been provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375; and

C. Procedures for disseminating daily minimum price information to all interested parties;

2. Mandatory daily minimum price. Based on the guidelines established in subsection 1, have the authority to establish a mandatory daily minimum price F.O.B., Presque Isle, for United States number 1, size A, 2-inch minimum, round white potatoes packed in 50-pound containers. Upon request of the board, the commissioner shall provide to the board and other interested parties a written explanation of the basis for the actual daily minimum price as it is established on any given day;

3. Access to information. Ensure that no dealer or first handler will have access to the information which is the basis for the daily minimum price prior

to the establishment of that price by the commissioner. The basis of price determination and the price itself before it is released as public information shall be considered confidential information for purposes of the freedom of access law, Title 1, section 402, subsection 3; and

4. Rules. After notice and opportunity for hearing in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, establish rules to carry out the purposes of this Article.

§1008-D. Enforcement of mandatory minimum price

1. Sale lower than daily minimum price prohibited. No first handler may sell or offer for sale table stock potatoes at a price lower than the daily minimum price. No dealer doing business in the State may purchase table stock potatoes at a price lower than the daily minimum price.

2. Rebates, refunds or returns. No first handler may sell and no dealer may purchase table stock potatoes at a price or for consideration which involved the payment, allowance or acceptance at any time, of any rebate, refund, secret rebate, secret refund or similar return, whether in the form of money or otherwise, which is intended to result in, or which results in, a price lower than the daily minimum price.

3. Separate violations. Each load of potatoes sold or offered for sale at a price below the daily minimum price shall be considered a separate violation of this section, and each day the offer to sell continues shall be a separate offense.

§1008-E. Contracts exempted

1. Exemption. The provisions of section 1008-D shall not apply to any first handler who sells his potatoes:

A. Pursuant to a written contract entered into prior to the effective date of this Article; and

B. Pursuant to a written contract which requires shipment or delivery of potatoes after a period of at least 3 months, provided that the contract establishes a fixed price for the potatoes.

2. Application. This exemption shall only apply when a signed copy of the contract has been filed with the commissioner.

§1008-F. Budget

Each fiscal year, the commissioner shall develop a budget to provide for the efficient and effective operation of a program to carry out the purposes of this Article. This information shall be the basis for establishing licensing fees authorized under the provisions of Article 3-A.

§1008-G. Personal liability of board member

No member or alternate of the board, nor any employee or agent thereof, may be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes or other acts, either of commission or omission, as such member, alternate or employee, except for acts of dishonesty.

§1008-H. Penalties

Any person who violates any provision of this Article, or rules issued by the commissioner thereunder, shall be subject to a civil penalty, payable to the commissioner, of not more than \$1,000 for each violation. Each day, during which any of the violations referred to in this section continue, shall constitute a separate offense.

Sec. 2. 7 MRSA §1017, sub-§1-A is enacted to read:

1-A. Mandatory nonrenewal. The commissioner or his duly authorized agent shall refuse to renew a license for a period of 2 years following a licensee's 3rd conviction for violations of the provisions of Article 2-A.

Sec. 3. 7 MRSA c. 103, sub-c. X, Art. 3-A is enacted to read:

ARTICLE 3-A

LICENSING FIRST HANDLERS

§1029. Purpose

The maintenance of an orderly system for marketing potatoes is essential to the survival of the potato industry. The purpose of this Article is to require the licensing of first handlers of potatoes in order to facilitate improvements in the current market structure. The Legislature finds that the improvement of the Maine potato industry is of sub-

stantial and unique significance to the economy and well being of the people of northern Maine and the State as a whole.

§1029-A. Definitions

As used in this Article, in addition to the applicable definitions in Articles 1 to 3, the term "first handler" means any person employed in the business of loading or of placing table stock potatoes in any type of container for exposure for sale; provided that "first handler" does not mean any person loading potatoes in bulk for delivery to a processor, which delivery shall occur in this State.

§1029-B. Authority of the commissioner

1. Rules. The commissioner shall, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, adopt such rules as he considers necessary to accomplish the purposes of this Article.

2. Investigations. The commissioner or his duly authorized agent may investigate, upon the complaint of any interested person, or on his own motion, the conduct and activities of any person applying for or holding a license under this Article; for that purpose he may examine the books and papers of any person and may take testimony and affidavits thereon under oath.

3. Hearings. The commissioner may conduct such hearings pursuant to this Article as he considers necessary in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375 and may subpoena such witnesses and documents as he considers necessary.

§1029-C. Licensing first handlers

1. Prohibition. Notwithstanding any other licensing requirements, no person may pack, or cause to be packed, potatoes in this State unless duly licensed, as provided in this Article. Every person before acting as a packer shall file an application with the commissioner for a license to be accompanied by the license fee provided in this Article.

2. Application. The applicant shall file an application on forms as prescribed and furnished by the commissioner, which forms shall contain such information as the commissioner may require, including the full name of the person applying for the license, and if the applicant is a corporation, partnership, association, exchange or legal representa-

tive or officer, director, partner or member thereof, all the names and positions are to be stated on the application. If the applicant is a foreign corporation, it shall certify that it is registered with the Secretary of State under Title 13-A, chapter 12, and further state the principal business address of the applicant in this State or elsewhere, the address of all places of business in this State and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within this State.

3. Issuance. The commissioner shall issue a license to the applicant if he is satisfied the applicant has truthfully and completely supplied the information required by subsection 2 and has demonstrated his character, good faith and ability to comply with applicable state law. The licensee is entitled to act in the capacity described in the license for a period of one year from the date of issuance. Each license shall plainly state the name and business address or addresses of the licensee.

4. Fees. The annual license fee shall be established by the commissioner, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, based on the volume of potatoes handled by the applicant in the previous year but the fee shall not in any case be less than \$75 nor more than \$500. The fee schedule shall be established to produce revenues sufficient to cover the costs of administering this Article and Article 2-A.

5. Use of fees. All fees collected under this Article shall be paid immediately to the Treasurer of State and credited to the department for the administration of this Article and Article 2-A. If any such fees are not spent during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account and available for the purposes specified until spent.

§1029-D. Violations

1. Acts enumerated. The commissioner or his duly authorized agent may refuse to grant or renew a license, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory proceedings, upon a finding that the applicant or licensee has:

A. Knowingly made any false material statements

in the procurement or renewal of the license;

B. Failed or refused, upon demand, to permit the commissioner or his agents to make the investigations, examinations or audits, as provided in this Article; removed or sequestered any books, records, papers or other materials necessary to the investigations, examinations or audits; or has otherwise obstructed the same;

C. Failure to comply with the provisions of Article 2-A; or

D. Committed any act or conduct with regard to the handling, sale or storage of potatoes, whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith or untrustworthiness, or dishonest, fraudulent or improper dealings.

2. Mandatory nonrenewal. The commissioner or his duly authorized agent shall refuse to renew a license for a period of 2 years following a licensee's 3rd conviction for violations of the provisions of Article 2-A.

3. Administrative Court. The Administrative Court may, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, suspend or revoke a license upon finding any of the violations enumerated.

4. Civil penalties. Any person who violates any of the provisions of this Article or neglects or refuses to comply with the provisions of any rule promulgated under this Article is subject to the following civil penalties payable to the State to be recovered in a civil action:

A. For the first violation, a civil penalty not to exceed \$1,000; and

B. For each subsequent violation, a civil penalty not to exceed \$3,000.

Sec. 4. Repeal. This Act is repealed June 1, 1986.

Effective September 23, 1983.
