

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 7, 1998 to March 31, 1998**

**SECOND SPECIAL SESSION**  
**April 1, 1998 to April 9, 1998**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 1998**

**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 9, 1998**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

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

**Sec. 1. 34-B MRSA §1207, sub-§1, ¶C-1** is enacted to read:

C-1. Within 48 hours of a death reportable by the commissioner to the Chief Medical Examiner pursuant to Title 22, section 3025, subsection 1, paragraph E, the commissioner shall provide information on that death to the chairs of the joint standing committee of the Legislature having jurisdiction over health and human services matters. Within 30 days of the reportable death, the commissioner shall provide the members of the committee with a copy of the death report. Information and reports provided pursuant to this paragraph must maintain the confidentiality of the identity of all persons mentioned or referred to in the information and reports.

See title page for effective date.

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**CHAPTER 606**

**H.P. 1442 - L.D. 2006**

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

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

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

**§1011. Purpose**

The Legislature finds that the potato industry has a substantial and unique effect on the economy of the entire State and Aroostook County in particular. Large numbers of the people in the State are directly or indirectly dependent on the industry. Over the years the industry has experienced wide fluctuations in prices and quality of product. Such fluctuations 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.

The Legislature intends through this legislation to exercise the police power of the State in order to protect and promote the general welfare of the potato industry and the people of the 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.

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

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

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

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

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

A. Jobbers, distributors and other wholesalers; ~~and~~

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

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

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

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

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

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

**9-A. Rotation crop.** "Rotation crop" means small grain, soybean or flax grown in rotation with potatoes.

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

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

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

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

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

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

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

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

In order to insure the licensee's financial responsibility and to protect potato and rotation crop producers, the commissioner shall require the licensee to file a bond in a form and amount satisfactory to the commissioner, but ~~in no event~~ not less than \$50,000 nor more than \$300,000 in the case of dealers and brokers engaged in buying or selling either potatoes or rotation 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 both potatoes and rotation crops, or not less than \$100,000 nor more than \$500,000 in the case of processors, payable to the

commissioner in the commissioner's official capacity and conditioned on the full and prompt payment for all potatoes or rotation crops received or purchased from producers or other licensees during the effective period of the license. In the case of processors, the amount of bond required must be based on the licensee's anticipated monthly volume of purchases, but may be adjusted to reflect other federal escrow accounts or bond requirements met by the licensee that satisfy the purposes of this section.

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

**1. Acts enumerated.** The commissioner or ~~his~~ the commissioner's duly authorized agent may refuse to grant a license, 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 following acts have existed within 2 years of the date of the filing of an application for license:

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

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

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

D. That the applicant or licensee directly or indirectly has purchased for ~~his,~~ that applicant's or its licensee's own account, potatoes or rotation crops received by ~~him~~ the applicant or licensee upon consignment without prior authorization from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This ~~shall~~ does not prevent any dealer, processor, broker, agent or retailer, in order to close the 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, broker, agent or retailer on the business day next follow-

ing ~~shall~~ properly ~~enter~~ enters any such transaction in ~~his~~ that applicant's or licensee's accounts;

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

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

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

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

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

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

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

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 character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings; or

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

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

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

**4. Notification of insufficient or no payment.**

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

A. The Commissioner of Agriculture, Food and Rural Resources or ~~his~~ the commissioner's agent, upon notification by producers of insufficient or no payment shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings, hold a hearing, unless such hearing is waived by the processor against whom the charge has been made. The processor accused of nonpayment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding, after investigation that the processor has violated the contract, express or implied, the commissioner shall require the processor to post a bond sufficient to cover the debt owed to the producer or producers.

(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 producer, to formulate a schedule of payments to the producer that is satisfactory to the commissioner. The schedule of payments ~~shall~~ may not exceed a 30-day period.

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

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

(4) Upon the filing of a complaint by the commissioner in the Administrative Court,

the licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the complaint is filed. The bond required for an appeal procedure may be waived by the Administrative Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claim owed the producer.

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

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

**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 upon having purchased potatoes or rotation crops from the producer, shall cause a record of that transaction to be made, and deliver a copy to the seller by depositing a record of transaction in the United States mail, postage paid, within 2 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:

- A. Date of sale;
- B. Name and address of producer;
- C. Name and address of seller;
- D. Name and address of buyer;
- E. Name and address of broker, if any;
- F. Name and address of handler, if any;
- G. Name and address of any person designated as a secured party on a financing statement naming the seller as debtor filed in accordance with Title 11, section 9-401, covering the potatoes or rotation crops, if any;
- H. Mode of transportation of shipment, if known; if unknown, this information ~~shall~~ must be provided to the seller prior to shipment;
- I. Name of carrier, if known; if unknown, this information ~~shall~~ must be provided to the seller prior to shipment;
- J. If there is a broker or a retailer involved in a transaction, point of final destination;
- K. Date of shipment;

L. If there is a broker or a retailer involved in the transaction, contemplated date of arrival at final destination;

M. Grade, size, weight and amount and other specifications;

N. Price for the potatoes or rotation crops, per unit and total;

O. Any deductions to be made from the proceeds for expenses to be borne by the seller or handler;

P. All other essential details of the purchase or sale; and

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

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

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

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

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

**Sec. 14. 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 record of transaction is not delivered by depositing ~~said~~ 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. 15. 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:

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

**Sec. 16. 7 MRSA §1023, sub-§§3 and 5**, as enacted by PL 1971, c. 600, §9, are amended to read:

**3. Agents contracts.** ~~No~~ A person required to be licensed by this Article ~~shall~~ may not act as an agent for any grower without first having an agreement with the grower reduced to a written 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.

**5. Duties of agents.** In addition to all the duties of the agent of any grower otherwise imposed by law, rule or regulation, 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.

**Sec. 17. 7 MRSA §1024, sub-§1**, as enacted by PL 1971, c. 366, is amended to read:

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

See title page for effective date.

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## CHAPTER 607

H.P. 1409 - L.D. 1973

### An Act Regarding the Energy Testing Laboratory of Maine

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

**Sec. 1. 20-A MRSA §10201**, as amended by PL 1989, c. 700, Pt. A, §59, is further amended to read:

#### §10201. Establishment

The Energy Testing Laboratory of Maine, referred to in this chapter as "ETLM," is established ~~at Southern Maine Technical College, referred to in this chapter as "SMTC," within the Department of Education.~~

**Sec. 2. 20-A MRSA §§10202 and 10203**, as amended by PL 1991, c. 824, Pt. A, §33, are further amended to read:

#### §10202. Goals and objectives

The goals and objectives of ETLM are to provide those services ~~which~~ that, among others, must meet the safety needs of industry and the public regarding the quality of construction of products tested by ETLM, the maintenance of high standards for testing conducted by ETLM and the provision of ~~educational and other consultant services, and must merge with the educational goals and objectives of SMTC.~~

#### §10203. Authority

~~ETLM is an integral part of SMTC and may, among other things, conduct tests, list products, supply labels, make reports, provide consultant services, conduct educational programs and provide other services consistent with the overall goals and objectives of ETLM as set forth in section 10202.~~

See title page for effective date.

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