

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

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NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
2005

C. "Pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation under the Code; and a general partnership, limited partnership, limited liability partnership, ~~trust~~, limited liability company or similar entity that for the applicable tax year is not taxed as a C corporation for federal tax purposes. For purposes of this section, "pass-through entity" does not include a financial institution subject to tax under chapter 819.

Sec. 25. 36 MRSA §5276, sub-§1, as amended by PL 1991, c. 546, §36, is further amended to read:

1. General rule. The State Tax Assessor, within the applicable period of limitations, may credit an overpayment of income tax, including an overpayment reported on a joint return, and interest on ~~such~~ the overpayment against any liability arising from a redetermination pursuant to section 6211 or any liability in respect of any tax imposed under this Title or owed by the taxpayer, or by the taxpayer's spouse in the case of a joint return, who made the overpayment, and the balance, after any setoff pursuant to section 5276-A, must be refunded by the Treasurer of State.

Sec. 26. 36 MRSA §5276, sub-§6 is enacted to read:

6. Overpayment by pass-through entity. If there has been an overpayment of tax required to be withheld under section 5250-B, refund must be made to the pass-through entity only to the extent that the amount of the overpayment was not deducted and withheld by the pass-through entity.

Sec. 27. 36 MRSA §6211, as enacted by PL 1987, c. 516, §§3 and 6, is amended to read:

§6211. Audit of claim

If, on the audit of any claim filed under this chapter, the State Tax Assessor determines the amount to have been incorrectly determined, ~~he~~ the assessor shall redetermine the claim and shall notify the claimant of the redetermination and ~~his~~ the reasons for it. The redetermination ~~shall be final unless appealed to the State Tax Assessor within 30 days of notice is reviewable in accordance with section 151.~~ If the claim has been paid, the amount paid in excess of that legally due is subject to interest at the rate determined pursuant to section 186. The assessor may credit a benefit payable to a claimant under this chapter against a liability of that claimant pursuant to this section.

Sec. 28. 36 MRSA §6212, as amended by PL 1989, c. 534, Pt. A, §9, is repealed and the following enacted in its place:

§6212. Denial of claim

1. Fraudulent claim. If the State Tax Assessor determines that a claim under this chapter is excessive and was filed with fraudulent intent, the claim must be disallowed in full. If the claim has been paid, the amount paid may be recovered by assessment, collection and enforcement in the manner provided in chapter 7. A person who, with fraudulent intent, files or prepares an excessive claim, assists in the preparation or filing of an excessive claim or supplies information in support of an excessive claim commits a Class E crime.

2. Negligent claim. If the State Tax Assessor determines that a claim under this chapter is excessive and was negligently prepared, the amount claimed in excess of that legally due plus 10% of the corrected claim must be disallowed. If the claim has been paid, the amount disallowed may be recovered by assessment, collection and enforcement in the manner provided in chapter 7.

3. Unpaid liability. A person who has an unpaid liability arising from this section and the spouse of that person are disqualified from receiving benefits under this chapter.

Sec. 29. 36 MRSA c. 920, as amended, is repealed.

Sec. 30. Application. Those sections of this Act that enact the Maine Revised Statutes, Title 36, section 187-B, subsection 5-B and section 193, subsection 2, paragraphs A and B apply to returns filed for periods beginning on or after January 1, 2006. That section of this Act that amends Title 36, section 1811-B applies to sales occurring on or after September 1, 2005. That section of this Act that amends Title 36, section 5250-B, subsection 1, paragraph C applies to tax years beginning on or after January 1, 2005. Those sections of this Act that repeal Title 36, section 5142, subsection 8 and enact Title 36, section 5142, subsection 8-A apply to tax years beginning on or after January 1, 2004.

See title page for effective date.

CHAPTER 333

H.P. 1110 - L.D. 1572

An Act To Amend the Potato Industry Licensing Laws

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

Whereas, the licensing of potato dealers is vital to the potato industry; and

Whereas, revisions are needed to protect potato growers when contracting for the 2005 crop; 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. 7 MRSA §1015, as amended by PL 2003, c. 344, Pt. D, §1, is further amended to read:

§1015. Application and renewal for license

The applicant shall file an application for a license or renewal of a license on forms as prescribed and furnished by the commissioner, which must contain the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative, officer, director, partner or member of a corporation, partnership, association or exchange, all such names and positions. If the applicant is a foreign corporation, it shall 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.

Upon receipt of ~~such applications~~ an initial application, the commissioner immediately shall cause notice of the ~~applications~~ application to be provided 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 the Maine Potato Board. Any interested person has 30 days in 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.

This applicant shall satisfy the commissioner of ~~his~~ that applicant's character, financial responsibility and good faith in seeking to engage in the business. The commissioner shall, after notice and opportunity for a hearing has been provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, issue a license to ~~such an~~

applicant if ~~he~~ the commissioner is satisfied as to the applicant's qualifications, such license entitling the applicant to act in the capacity described in the license for a period of one year 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.

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 as a prerequisite to the issuance of a license. The bond must be in a form and amount satisfactory to the commissioner, but 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.

Each license ~~shall~~ must plainly state the name and business address or addresses of the licensee and ~~shall~~ must be posted in a conspicuous place in each office where the business is transacted. The ~~initial~~ fee for each license ~~shall be \$80~~ is \$100 annually. Such license ~~shall~~ may be ~~automatically~~ renewed for successive periods of one year each upon payment of the renewal fee ~~which shall be \$80~~ and the submission of an application demonstrating that the applicant continues to meet the requirements for licensing, including filing proof of financial responsibility. A license or license renewal issued expires on the 30th day of June following the date of issuance. The department is not required to provide notice and opportunity for a hearing as provided in the Maine Administrative Procedure Act when granting a license renewal. If the licensee desires to carry on business in more than one place within the State, ~~he~~ the licensee shall procure additional copies of the license, certified by the commissioner, for each place where the business is to be conducted. The fee for each such ~~additional certification shall 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 the annual proof of financial responsibility, the

department shall promptly provide notice to members of the potato producing industry through the Maine Potato Board and an agricultural bargaining council.

All fees collected under this Article ~~shall~~ must be paid ~~forthwith~~ to the Treasurer of State and credited to the Department of Agriculture, Food and Rural Resources for the administration of this Article and other expenses incident to the administration of ~~said~~ the department, and ~~shall~~ must be expended by the ~~said~~ commissioner for the purposes for which ~~said~~ the department is created. If any of such fees are not expended during the year in which they are collected, the unexpended balance ~~shall~~ does not lapse, but ~~shall~~ must be carried as a continuing account and available for the purposes specified until expended.

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 further amended to read:

1. Acts enumerated. The commissioner or the commissioner's duly authorized agent may refuse to grant or renew 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 the applicant or licensee;

D. That the applicant or licensee directly or indirectly has purchased for that applicant's or licensee's own account, potatoes or rotation crops received by 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 does not prevent any dealer, processor, broker, agent or retailer, in order to

close the day's business, from taking into account in 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 following properly enters any such transaction in 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 the applicant or licensee for such producer;

J. That the applicant or licensee has failed or refused, upon demand, to permit the commissioner or 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; or

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

The District 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. 3. 7 MRSA §1017, sub-§4, as amended by PL 1997, c. 606, §11 and PL 1999, c. 547, Pt. B, §78 and affected by §80, 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~~ after acceptance by any processor in the State in violation of subsection 1, paragraph B.

A. The Commissioner of Agriculture, Food and Rural Resources or 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 may recover the proceeds of the bond required by section 1015 and apply those proceeds against the amounts owed producers. In the event the bond proceeds are inadequate to cover the debts owed producers, the commissioner shall require the processor to post a an additional bond sufficient to cover the remaining 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 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 District 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 District 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 District 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 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. 4. 7 MRSA §1025, as amended by PL 1977, c. 696, §358, is further amended to read:

§1025. Forfeiture of bond; recovery on bond

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

The right of a producer or a licensee to bring an action against the bond is subject to the department's right to apply the proceeds of the bond against the

producer's or licensee's debts in accordance with section 1017.

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

§1026. Enforcement

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

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

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

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 8, 2005.

CHAPTER 334

H.P. 254 - L.D. 331

**An Act To Improve the Operation of
Underground Damage Prevention
Procedures**

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

**Sec. 1. 23 MRSA §3360-A, sub-§§5-G and
5-H** are enacted to read:

5-G. Alternative notice requirement procedures for excavations; rulemaking. The Public Utilities Commission may by rule extend alternative notice requirements established for excavation associated with drinking water well construction pursuant to subsection 5-F to other types of excavation. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

5-H. Newly installed underground facilities in active excavation areas; rulemaking. The Public Utilities Commission shall by rule establish procedures to reduce the incidence of damage to newly

installed underground facilities in active excavation areas as defined by the commission by rule. In establishing the rule, the commission may consider adopting additional requirements for excavators or operators, including renotification and marking requirements and system notification procedures. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 23 MRSA §3360-A, sub-§6-C, as amended by PL 2003, c. 505, §3, is further amended to read:

6-C. Penalties. In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty for any violation of this subsection. The administrative penalty may not exceed \$500, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Before imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any of the following violations:

A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section;

B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility;

C. Excavation by an excavator that does not comply with the requirements of subsection 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C;

D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by subsection 4;