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Chapter 32.

Department of Agriculture.

Division of Administration

Sections 1- 2. The Department; Commissioner; Duties.
Sections 3- 15. Enforcement. Additional Duties.
Sections 16- 29. County and Local Agricultural Societies.

Division of Markets

Sections 30- 31. Marketing and Advertising Farm Products.
Sections 32- 38. Grades and Standards for Farm Products.
Sections 39- 47. Eggs.

Division of Animal Industry

Section 48. Animal Husbandry Expert.
Sections 49- 57. Prevention of Diseases.
Sections 58- 63. Livestock Community or Commission Auctions.
Sections 64- 70. Eradication of Diseases. Miscellaneous Provisions.
Sections 71- 73. Quarantine Powers.
Sections 74- 80. Bang's Disease.
Sections 81- 87. Vesicular Exanthema.
Sections 88- 91. Production and Sale of Milk.
Sections 92- 99. Milk Dealers.
Sections 100-113. Standard Measure of Milk and Containers; Cleansing, Testing, Grading, Etc.
Sections 114-126. Protection of Milk Dealers in the Use of Containers.
Sections 127-132. Poultry.
Sections 133-140. Dealers in Livestock.
Section 141. Breeding and Raising Mink.

Division of Plant Industry

Sections 142-145. Certified Seed.
Sections 146-151. Seed Potato Board.
Section 152. Dumping of Waste Potatoes.
Sections 153-160. Trees and Shrubs.
Sections 161-164. European Corn Borer.
Sections 165-176. Bee Industry.
Sections 177-179. Quarantines.

Division of Inspection

Sections 180-215. Adulterated or Misbranded Goods.
Sections 216-228. Maine Food Law.
Sections 229-236. Maine Seed Law.
Sections 237-247. Maine Economic Poisons Law.
Sections 248-254. Slaughterhouses and Meat Processing Plants.
Section 255. Horse Meat.
Sections 256-257. Packing of Food.
Sections 258-267. Packing of Sardines.
Sections 268-276. Packing of Apples.
Sections 277-285. Beverages.
Sections 286-294. Maine Frozen Dairy Products Law.
Sections 295-301. Branding of Potatoes.

Sections 302-305. Agricultural Experiment Station.
Sections 306-310. Extension Work with U. of M. College of Agriculture.
Sections 311-319. State Sealer of Weights and Measures.
Sections 320-335. Maine Potato Marketing Act.

DIVISION OF ADMINISTRATION.

The Department; Commissioner; Duties.

Sec. 1. Department; commissioner.—The state department of agriculture, as heretofore established and hereinafter in this chapter called the "department," shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry. A commissioner of agriculture, hereinafter in this chapter called the "commissioner," shall be elected by the legislature by joint ballot of the senators and representatives in convention, and shall hold his office for the term of 4 years and until his successor is elected and qualified. He shall receive an annual salary of $7,000. He shall also receive his actual expenses incurred in the performance of his official duties. He may employ such clerical labor as may be required, subject to the provisions of the personnel law, and he may expend such sums for postage, telephone, telegraph and other general office expenses as may be necessary in the performance of his duties, the same to be paid out of any money appropriated by the legislature for such purpose. The commissioner may, with the approval of the governor and council, appoint a deputy commissioner of agriculture, who shall be the chief of one of the department bureaus in the department of agriculture, and shall perform the duties of the commissioner during his absence, in addition to his duties as chief of a department bureau. The deputy commissioner shall hold office during the term of office of the commissioner or until his successor is appointed, and his compensation and expenses shall be paid from any funds appropriated for the use of the department bureau of which he is chief. When the office of commissioner shall become vacant by reason of the death, resignation, removal or inability to serve of the regularly elected incumbent of the office, the governor shall appoint a commissioner of agriculture to serve until the election of his successor, as provided by law, and his qualification. (R. S. c. 27, § 1. 1945, c. 364. 1951, c. 412, § 10.)

See Me. Const., Art. 9, § 1, re oath; c. 16, § 232, re Maine potato tax committee.

Sec. 2. Duties.—The commissioner is the chief executive charged with the enforcement of the provisions of this chapter and shall be vigilant in discovering violations thereof and making complaint to the proper authorities. He shall by personal observation, investigation and correspondence acquaint himself with the methods and wants of practical husbandry, the means of fertilization and the adaptation of various products to the soils and climate of the state; also, with the progress of scientific and practical agriculture elsewhere, with a view to the more complete development of the natural resources of the state. He shall gather statistics of information concerning agriculture and publish the same annually; he shall assist the farmers of the state, in so far as is practicable, to secure farm help and to promote increased production of farm crops through the selection, the growing and the dissemination of superior strains of seeds. He shall make and preserve a full record of all rules and regulations promulgated under the provisions of this chapter, and all payments and expenses incurred hereunder, and all other transactions performed by him in the discharge of his duties, as herein provided. He shall collect the legal and usual fees payable to him by virtue

of his office and shall pay them over forthwith to the treasurer of state. (R. S. c. 27, § 2.)

See § 136, re dealers in livestock; c. 25, § 165, re revocation of licenses; c. 34, § 11, re soil conservation; c. 38, § 91, re shellfish certificate for interstate transportation; c. 38, § 95, re shellfish shucking certificate; c. 100, § 11, re inspection and regulation of dog kennels; c. 100, § 16, re copies of laws relating to registration and licensing of dogs.

Enforcement. Additional Duties.

Sec. 3. Uniform rules, regulations; standards of purity.—The commissioner shall make uniform rules and regulations for carrying out the provisions of sections 3 to 9, inclusive, 32 to 38, inclusive, 142 to 145, inclusive, 180 to 215, inclusive, 256 to 272, inclusive and 274 to 285, inclusive. He may also fix standards of purity, quality or strength when such standards are not specified or fixed by law, and shall publish them together with such other information concerning articles of commercial feeding stuff, commercial fertilizer, drug or food as he may deem to be of public benefit. (R. S. c. 27, § 3. 1949, c. 349, § 52. 1951, c. 74, § 2; c. 205, § 2. 1953, c. 308, § 42.)

See §§ 177-179, re quarantines.

Sec. 4. Hearing in case of violation.—When the commissioner becomes cognizant of the violation of any provision of sections 3 to 9, inclusive, 32 to 38, inclusive, 142 to 145, inclusive, 180 to 247, inclusive, 256 to 272, inclusive, and 274 to 285, inclusive, he shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings or, in case of a packer of food, a copy of the charge to be preferred, to be given to the person concerned and the person from whom the sample was obtained, and the person whose name appears upon the label, if a resident of the state, who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the said commissioner. When the hearing relates to the packing of apples, it shall be held in the county where the inspection was made. (R. S. c. 27, § 4. 1949, c. 349, § 53. 1951, c. 74, § 3; c. 205, § 3. 1953, c. 308, § 43; c. 334, § 3.)

Sec. 5. Enforcement of laws.—The commissioner shall diligently enforce all provisions of this chapter and shall be entitled to and shall receive the assistance of the attorney general and of the several county attorneys. He may recover the penalties imposed for violations of the provisions of this chapter in an action of debt brought in his own name, the venue to be as in other civil cases, and if he prevails in any such action, shall recover full costs; or he may prosecute for violations hereof by complaint or indictment, and such prosecution shall be commenced in the county in which the offense was committed. (R. S. c. 27, § 5.)

See § 285, re disposal of fees, fines, etc.;
c. 137, § 14, re sale of adulterated candy.

Sec. 6. Penalty.—Any person, firm, partnership or corporation who shall violate any of the provisions of this chapter or of the rules and regulations promulgated thereunder, excepting only those for the violation of which specific penalties have been provided, shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (1945, c. 222, § 1.)

Sec. 7. Deputies.—The commissioner may, with the approval of the governor and council, appoint and fix the compensation of a chief deputy and such other deputies as in his judgment are required to assist him, and to enable him to carry out the provisions of all laws, the execution of which is entrusted to him. The chief deputy shall hold office during good behavior and such other deputies

during the pleasure of the commissioner; their compensation and expenses shall be paid from any funds appropriated for the use of the commissioner in the execution of said laws. (R. S. c. 27, § 6.)

Sec. 8. Rules of construction.—The word "person" as used in this chapter shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for or empowered by any corporation, company, society or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society or association as well as that of the person. (R. S. c. 27, § 7.)

Sec. 9. Jurisdiction; disposal of funds.—Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court, of actions brought for the recovery of penalties imposed by the provisions of this chapter, and of prosecutions for violations hereof. All fines received under the provisions of this chapter shall accrue to the treasurer of state for deposit in the general fund. (R. S. c. 27, § 8. 1945, c. 297, § 5.)

See § 285, re disposal of fees, fines, etc.;
c. 150, § 5, re fines, costs and forfeitures
to be paid to county treasurer.

Sec. 10. Departmental divisions. — The various bureaus and lines of work in the department shall be grouped into divisions, known as divisions of administration, markets, animal industry, plant industry and inspection. (R. S. c. 27, § 9.)

Sec. 11. Farmers' institutes.—The commissioner shall hold or cause to be held 2 farmers' institutes in each county annually and as many more as the appropriation therefor will allow. The work of said institutes shall be devoted to the presentation and discussion of questions bearing upon agriculture and the agricultural interests of the state; and for this purpose said commissioner may employ speakers who are qualified and versed in the subjects assigned them. He may also appoint and employ assistants, experts, lecturers, a stenographer and other aids needed in conducting such institute work, and shall fix the compensation of such employees. He may hold such institutes independently or in connection with other organizations devoted to agricultural interests and as far as possible and for the best agricultural interests of the state; aid and encourage agricultural societies and associations in the state, and shall collect and preserve in his office for public inspection all valuable data relating to the practical work of such societies and associations. (R. S. c. 27, § 10.)

Sec. 12. Dairymen's conference. — The commissioner shall, in connection with and with the aid of the Maine dairymen's association, annually hold a state dairymen's conference for the exhibit of cattle, dairy products and appliances, wherein prizes for high merit and quality may be offered, and may employ experts and lecturers to enhance dairy interests. (R. S. c. 27, § 11. 1953, c. 83.)

Sec. 13. Horticultural and dairy work. — The commissioner shall aid and assist societies and associations organized and established for the advancement of pomology, horticulture and dairy work, also societies devoted to the interests of the pure breeding of stock of all kinds. (R. S. c. 27, § 12.)

Sec. 14. Biennial report.—The commissioner shall biennially make a report to the governor and council, on or before the 1st day of July of each even-

numbered year, of the work of the department in detail, combining in the same a report of the Maine state pomological society and Maine dairymen's association, and all other matters relating to the promotion of agriculture; and for the purpose of said report, said society and association shall furnish said commissioner with all necessary data therefor on or before the 1st day of June of each year. He shall further report all farmer's institutes held and the work therein done, and all public lectures carried on under his authority, and such part of said reports as is of public interest shall be printed for free distribution; for the purpose of making up his report as herein provided, said commissioner shall attend the various agricultural exhibitions in the state and report upon the quality and character of the work of the same. (R. S. c. 27, § 13.)

Sec. 15. Annual account of all expenditures.—He shall render on the 1st day of July of each year a detailed and itemized account of all expenses of his office, of all institutes held and of all moneys paid out for employees under the provisions hereof, also all sums of money paid for prizes on exhibits and for all other purposes; and for this purpose he shall keep necessary books in which an account of all moneys received and expended shall be entered, which books shall be open to public inspection. (R. S. c. 27, § 14.)

County and Local Agricultural Societies.

Sec. 16. County and local societies to hold and manage property; bonds of treasurers. — County and local agricultural societies may take and hold property, real and personal, the annual income of which shall be applied to the purposes provided in their charters; or their treasurers may receive conveyances or leases of such property for their societies, and hold, sell, mortgage or pledge it, and shall give bonds to the trustees for the safekeeping thereof and the faithful discharge of their duties. (R. S. c. 27, § 15. 1947, c. 366, § 1.)

Sec. 17. Stipend; apportionment; qualifications.—There shall be appropriated annually from the state treasury a sum of money not to exceed 2¢ per inhabitant of the state, and an additional sum of money equal to 5% of the amount contributed under the provisions of section 15 of chapter 86, and an additional sum of money as provided and limited by the provisions of section 14 of chapter 86, which shall be known as the state stipend for aid and encouragement to agricultural societies and hereafter designated as the "stipend." This stipend shall be divided among the legally incorporated agricultural clubs, societies, counties and fair associations of the state, hereafter in this chapter designated as "societies," according to the following schedule and method. Said stipend shall be divided pro rata among the legally incorporated societies, not heretofore provided for, according to the amount of premiums and gratuities actually paid in full and in cash or valuable equivalent by said societies upon horses, cattle, sheep, swine, poultry and agricultural and domestic products, but no such society whether specifically mentioned in this chapter or otherwise shall be entitled to any share of the stipend unless it shall have complied with the following requirements, which shall be considered by the commissioner as the basis upon which his apportionment of the stipend shall be made as provided in this section. No premiums or gratuities shall be considered by the said commissioner in apportioning the amount of stipend to which any society is entitled except those offered and paid upon horses, cattle, sheep, swine, poultry, vegetables, grain, fruit, flowers, products derived from horses, cattle, sheep, swine, home canned foods, grange exhibits, farm exhibits, boys' and girls' club exhibits, exhibits of the mechanical arts, domestic and fancy articles produced in the farm home and pulling contests by horses and oxen. No society, the Maine state pomological society excepted, shall receive from the state a sum greater than that actually raised and paid by the society as premiums

and gratuities in the classes herein provided, and in no case shall any society be entitled to any share of the stipend unless it shall have raised and paid in premiums in the classes heretofore set forth at least $200. No society shall receive any portion of the stipend in excess of $10,000, except that such limitation shall not apply to any additional stipend provided for by the provisions of section 14 of chapter 86 or the provisions of section 13 of chapter 87. No society shall receive any portion of such stipend unless it shall have regularly entered and displayed in an attractive manner upon its exhibition grounds distinct exhibits or entries of vegetables, fruits, grains or dairy products, or of subordinate and other granges and 4-H clubs, of a quality acceptable to the commissioner or his regularly authorized agent and of varieties known to be common or standard to the county in which such exhibition is held. No society shall be entitled to any share of the stipend unless all cattle to be shown or exhibited shall have come from herds wherein all animals were negative to the tuberculin tests within 1 year of the opening date of the show.

All breeding cattle shown or exhibited shall be from herds free from Brucellosis as shown by 2 consecutive tests, the last within 90 days of the date of the show, or from certified herds tested within 6 months of the date of the show.

Officially vaccinated animals under 24 months of age from herds of either status described above, and officially vaccinated animals 24 to 36 months of age from such herds, showing a reaction not higher than incomplete in the dilution of 1-100 shall be considered free of the disease for this purpose.

Cattle under 6 months of age from herds not under quarantine are eligible to be shown.

All female and male goats shown or exhibited shall pass a negative test for Brucellosis within 90 days of the date of the show.

All cattle and goats allowed on the grounds shall conform to the above law.

In the distribution of such stipend no allowance shall be made or consideration given on account of lump sums, payments or premiums previously arranged and agreed upon by exhibitors and the officers of any society for the presentation and display of any animals or products without regard to competition which may subsequently appear, excepting, however, any special agricultural exhibits of such nature as to preclude their entry in competition.

No stipend shall be paid on premiums or purses offered and paid by any such society at any event held other than during the period at which its annual exhibition is held.

A society within the meaning of this section to qualify for a stipend shall mean:

I. A society which has an agricultural display of the products of agriculture, typical of the area at the time the fair is held; (1949, c. 375)

II. A society which pays a minimum of $300 on premiums, exclusive of those for horse and ox pulling contests; (1949, c. 375)

III. A society which has not less than 10 stockholders or members, or the primary purpose of which is not profit to be distributed to its members or stockholders. (1949, c. 375)

The commissioner may summon before him and examine on oath any officer of an incorporated society or other person whose testimony he shall deem necessary in the proper discharge of his duties, and may require such witnesses to bring before him for examination any books or records in their custody or control which he may deem necessary for his information in the performance of his duties. The commissioner shall apportion annually the stipend due from the state to the societies, including the Maine state pomological society. He shall issue blanks to the proper officers of said societies for such returns as may be deemed necessary for a full and complete knowledge of the work of said societies for each

year, and shall certify to the governor and council the amount of stipend due such society, and shall designate to the treasurer of state to whom such moneys shall be paid, but said societies shall not be entitled to such stipend unless they shall make such returns. Neglect or failure on the part of any society to observe any of the foregoing requirements shall be deemed sufficient cause for withholding such society's share of the stipend, and the commissioner is required and directed to authorize payment of stipend only to such societies as have observed all of the said requirements.

Provided, however, that the conducting of pari mutuel betting by any such society under license of the state harness racing commission, in accordance with the provisions of sections 1 to 22, inclusive, of chapter 86, shall not be deemed cause for withholding such society's share of the stipend. (R. S. c. 27, § 16. 1945, c. 361, § 1. 1947, c. 366, § 2. 1949, c. 89; c. 98, § 1; c. 375; c. 388, §§ 1, 2. 1951, c. 181; c. 266, § 33. 1953, cc. 60, 81; c. 308, § 44; c. 423, § 1.)

See §§ 19, 20 and 21, re additional requirements for stipend; § 22, re annual reports of societies.

Sec. 18. Payments withheld until certain certificates and specifications are filed; complaints.—No payment of any state aid, whether made under the provisions of the preceding section or by special appropriation, shall be made to any society until the treasurer thereof files with the treasurer of state a certificate on oath, stating the amount raised by it and the amount actually awarded and paid in premiums; and also a certificate from the commissioner that he has examined into the claim of said society; that in his opinion it has complied with the provisions of sections 17 and 21; that there has been awarded and paid by said society as premiums and gratuities a sum at least equal to the amount apportioned to said society. In case of any complaint in writing, signed by the complainant, of the violation of any of the provisions of this chapter relating to the payment of state aid in any form to agricultural societies, the commissioner may investigate such alleged violation and employ such agents and counsel as may be necessary to aid him in such investigation, and the expense incurred shall be paid out of the general appropriation for aid of societies; provided that when it is found upon such investigation that the society against which complaint has been made has violated the provisions of this chapter, the expense of such investigation shall be paid from the amount that would otherwise have been paid to said society; provided further, that if the society against which the complaint is made receives its aid by special enactment, then the expense of the investigation shall be paid from the said appropriation for such society. (R. S. c. 27, § 17. 1949, c. 98, § 2.)

See § 22, re annual reports of societies.

Sec. 19. Exhibits.—Agricultural fair associations holding pari mutuel racing meets shall, as a requirement for receiving a "fair stipend" from the state, during one racing meet each year, put on an agricultural fair with exhibits of miscellaneous and representative farm and orchard products and exhibits of livestock, crafts, etc.; such exhibits to be kept in attractive display for a minimum of 3 consecutive days during the meet. The total premium payments for these exhibits shall be, at least, an amount equal to the premiums or purses paid for pulling contests at this same fair and race meet, and not less than 35% of the amount paid for purses for harness horse races conducted during the annual fair. This section is in addition to any present requirements for eligibility for the "fair stipend." (1949, c. 320. 1953, c. 106; c. 203, § 2.)

Sec. 20. Law enforcement. — The chief of the state police shall assign members of the state police to special duty at all agricultural fairs for the purpose of enforcing the laws of the state.

All local and county law enforcement officers are directed to cooperate with the state police.

In case the said chief of police discovers that any agricultural club, society or fair association permits illegal sale of liquor, gambling or exhibitions of immoral shows at any such fair, he shall report the fact to the commissioner who may on such report refuse to pay the stipend provided for in this chapter. (R. S. c. 27, § 18.)

Sec. 21. No stipend to societies offering premiums on grade males. —No state stipend shall be paid to any society offering or paying premiums on grade males; the commissioner may make this a part of the sworn return to be made by the proper officers of all societies; provided that satisfactory evidence as to eligibility to registration shall be accepted as proof of purity of blood. (R. S. c. 27, § 19.)

Sec. 22. Annual report of secretaries.—Each society claiming a share of the state stipend under the provisions of section 17 shall file with the commissioner, not later than December 31st of the year for which said stipend is requested, a statement by its secretary, setting forth the financial condition and transactions of the society, the amounts paid in premiums in the several classes or displays provided for in section 17 and such additional information relative to the character of displays and the conduct of exhibitions as the commissioner may request, and upon blanks to be furnished by him. Upon receipt and after examination of these statements, if the commissioner finds them to be accurate, complete and in accordance with the provisions of section 17, he shall issue the certificate mentioned in section 18, and not otherwise. (R. S. c. 27, § 22. 1947, c. 366, § 3. 1949, c. 98, § 3.)

Sec. 23. Defrauding societies. — Whoever shall gain admission to the grounds or buildings of any agricultural or horticultural society during the holding of an exhibition, otherwise than by the regular entrance provided, for the purpose of defrauding such society out of the regular entrance fee to such grounds or buildings; or who by fraud, misrepresentation or otherwise unlawfully obtains such admission; and any person obtaining any premium or gratuity offered by such society by fraud or misrepresentation shall be deemed guilty of larceny from such society and on conviction shall be punished accordingly. (R. S. c. 27, § 24.)

See c. 132, § 1, re punishment for larceny.

Sec. 24. Persons appointed to act as constables.—The officers of any society described in the preceding section may appoint a sufficient number of suitable persons to act as constables at cattle shows and exhibitions, with all the powers of constables, for the preservation of the public peace and the enforcement of the regulations of said society, within the towns where such shows and exhibitions are held, from noon of the day preceding the commencement of the same until noon of the day succeeding the termination thereof, and no longer. (R. S. c. 27, § 25.)

Sec. 25. Sale of merchandise and refreshments; exhibitions near grounds.—Whoever sells any refreshments or other merchandise, or exhibits any show or play within a quarter of a mile of the fair grounds of any society, during the time of any exhibition thereof, unless in his own dwelling house or usual and ordinary place of business, or lets any land or building adjoining or overlooking the fair grounds of such society to spectators of any exhibition thereof during the time of such exhibition, without the written consent of its trustees, forfeits to such society not exceeding $100, to be recovered on complaint of 2 of its trustees. (R. S. c. 27, § 26.)

Sec. 26. Competitors for premiums to pay entry fee; lien on animals.—Whoever makes entries of animals or articles as competitors for premiums or purses offered by any society or by any person or association in the state shall be holden to pay the entry fee in accordance with the advertised rules and regulations of any such society, person or association not in conflict with the laws of the state; and a lien is created upon such animals and articles for such entry fee to secure payment thereof with costs, to be enforced by an action of debt against the person owning such animals or articles, or the person entering the same; or the same may be enforced in the same manner as liens on goods in possession and choses in action, but such lien shall not affect the title of any innocent purchaser of said animals or articles without actual notice of such lien. (R. S. c. 27, § 28.)

See c. 178, § 66, re lien on colts for service fee.

Sec. 27. Conduct of exhibitions.—Agricultural societies, persons and associations holding public exhibitions for competition for premiums or purses are authorized to conduct and manage the same in accordance with the advertised rules and regulations not in conflict with the laws of the state. (R. S. c. 27, § 29.)

See c. 133, § 19, re penalty for false registration of blooded animal; c. 133, § 20, re penalty for entering in any race a disguised horse, or entering a horse in wrong class.

Sec. 28. Maine state pomological society.—The Maine state pomological society, a nonprofit organization incorporated in 1873, is authorized to promote the interests of better fruit growing in Maine by holding an annual exhibition wherein premiums on horticultural products and appliances shall be paid. It may also hold such field meetings as may be thought profitable by the executive committee of the society and to pay other incidentals thereof including compensation and traveling expenses of officers; providing an itemized account of all money expended be rendered each year to the commissioner and upon his approval and presentation of proper vouchers said bill shall be paid. (R. S. c. 27, § 30.)

Sec. 29. Maine state poultry association and Androscoggin poultry and pet stock association.—The Maine state poultry association and Androscoggin poultry and pet stock association, nonprofit organizations, as heretofore established, are authorized to promote the interests of improved poultry production and utility poultry breeding in Maine, by holding annual exhibitions wherein lectures and demonstrations shall be given and premiums on live poultry and poultry products and appliances shall be paid, and to pay other incidentals thereof, provided an itemized account of all money expended be rendered each year to the commissioner and upon his approval and presentation of proper vouchers said bills shall be paid. The sum appropriated to carry out the provisions of this section shall be apportioned between the said societies, as the commissioner may direct and in proportion to the amounts paid by each society, in premiums in all classes of poultry and poultry products and the expenses incurred thereby. (R. S. c. 27, § 31.)

DIVISION OF MARKETS.

Marketing and Advertising Farm Products.

Sec. 30. Methods and costs of marketing farm products, study.—The commissioner is authorized and directed, through such agents as he may appoint for the purpose and in cooperation with such agricultural corporations or associations as he may deem proper, to investigate the existing methods and costs

of marketing farm products and purchasing farm supplies and to secure improvement therein. (R. S. c. 27, § 32.)

Sec. 31. Maine farm products advertised.—The commissioner may investigate and furnish statements to shippers and other interested parties as to the quality and condition of fruits, vegetables, dairy and other perishable farm products when received within the state for intrastate or interstate commerce, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered. All such fees and all such money thus collected for such services rendered by the commissioner shall be paid by him to the treasurer of state; and the aforesaid funds and money are appropriated for the purposes of this chapter. Any unexpended balance from such funds thus appropriated shall not lapse, but shall be carried forward to the same fund for the next fiscal year. Statements so issued by the authorized agents of the department shall be received in all courts of this state as prima facie evidence of the truth of the statements therein contained. He may enter into agreements or cooperative arrangements with any person, firm or corporation for the purpose of advertising and increasing the sale and consumption of Maine farm products or disseminating information concerning the same; and he may receive, administer and disburse any funds or contributions from such persons, firms or corporations, either independently or in conjunction with state funds allocated to said purpose; provided that funds so contributed shall be used for the purposes herein set forth only. He may employ such agents and assistants, subject to the provisions of the personnel law, and make such purchases as may be necessary in the proper performance of his duties. (R. S. c. 27, § 33.)

Grades and Standards for Farm Products.

Cross Reference.—See § 4, re hearings after violations.

Sec. 32. Grades for farm products; hearings.—The commissioner may establish and promulgate official grades and standards for farm products, excepting dairy products and apples, produced within the state for the purposes of sale, and may from time to time amend or modify such grades and standards. Before establishing, amending or modifying any such grades or standards, the said commissioner shall hold public hearings in such places within the state as shall be most convenient to producers of the commodity under consideration. Notice of such hearings shall be advertised for 3 successive weeks prior thereto, in a newspaper or newspapers of general circulation within the county where the hearing is to be held, and shall specify the date and place of each hearing and that it is to be held for the purpose of obtaining information with a view to establishing grades or standards for farm products. (R. S. c. 27, § 34.)

Sec. 33. Brands, labels and trade-marks; use of brands; revocation.—The commissioner may determine or design brands, labels or trade-marks for identifying farm products packed in accordance with such official grades and standards established as provided by law and may furnish information to packers and shippers as to where such labels and trade-marks may be obtained. A written application to the said commissioner requesting permission to use said brands, labels or trade-marks, and a written acceptance thereto by the said commissioner or duly authorized assistants, shall be a condition precedent to the use of such brands, labels or trade-marks. The said commissioner may revoke or suspend the right to use such brands, labels or trade-marks whenever it appears on investigation that they have been used to identify farm products not in fact conforming to the grade indicated. (R. S. c. 27, § 35.)

Sec. 34. Publicity of grades, standards, brands, etc.—Upon the es-

tablishment of the grades or standards, brands, labels or trade-marks, the commissioner shall give due publicity through the newspapers of the state, setting forth the grade or grades so established and the date on which such establishment is to become effective, and distribute information explaining the same and their use. (R. S. c. 27, § 36.)

Sec. 35. Permit for brands, labels and trade-marks.—After notice of the establishment of grades or standards and the determination of brands, labels or trade-marks as herein provided, it shall be unlawful to use a brand, label or trade-mark to identify farm products as being of a grade established as aforesaid before a permit is granted or after the revocation of the right to use such brand, label or trade-mark by the commissioner. Violations of the provisions of this section shall be punished for the first offense by a fine of not more than $50 and for subsequent offenses by a fine of not more than $200. (R. S. c. 27, § 37.)

Sec. 36. Inspection of branded products; certificates of inspection. —The commissioner or his duly authorized agents may inspect farm products, marked, branded or labeled in accordance with official grades or standards established and promulgated by the said commissioner, as provided in this chapter, for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of such inspection and executed by the inspector shall state the date and place of inspection, the grade, condition and approximate quality of the farm products inspected and such other pertinent facts as the said commissioner may require. Such a certificate relative to the condition or quality of said farm products shall be prima facie evidence in all courts of the state of the facts required as aforesaid to be stated therein. (R. S. c. 27, § 38.)

Sec. 37. Rules and regulations.—The commissioner may prescribe rules and regulations for carrying out the purposes of sections 32 to 38, inclusive, including the fixing of fees as provided in section 31. (R. S. c. 27, § 39.)

Sec. 38. Inspections; obstructing commissioner. — The commissioner, in person or by deputy, shall have free access at all reasonable hours to any building or other place wherein it is reasonably believed that farm products are marked, branded or labeled in accordance with official grades established and promulgated by the said commissioner or are being marketed or held for commercial purposes. He shall also have power in person or by deputy to open any bags, crates or other containers containing said farm products and examine the contents thereof and may, upon tendering the market price, take samples therefrom. Whoever obstructs or hinders the said commissioner or any of his duly qualified assistants in the performance of his duties under the provisions of sections 32 to 38, inclusive, shall be punished by a fine of not less than $10, nor more than $100. (R. S. c. 27, § 40.)

Eggs.

Sec. 39. Labeling of shell eggs.—All eggs sold or offered for sale for human consumption by any person, partnership, association, firm or corporation shall be labeled with the grade and size designation as set forth in the Maine consumer grades, except as hereinafter provided. (R. S. c. 27, § 42. 1945, c. 108, § 1. 1949, c. 318, § 1.)

Sec. 40. Standards of quality.—The standards of quality for Maine consumer grades for shell eggs, Grade AA, Grade A, Grade B and Grade C, that are or may be established by the commissioner, shall apply to all shell eggs sold or offered for sale. Any edible eggs not conforming to the specifications Maine Grade AA, A, B or C shall be sold as "ungraded eggs" or as "checks," "cracks" or

"dirties". The final determination of the grades shall be made by candling. (R. S. c. 27, § 43. 1945, c. 108, § 2. 1949, c. 318, § 1.)

See § 204, re definition of "storage eggs".

Sec. 41. Grades; advertising. — The net weight and size requirements for Maine consumer grades for shell eggs shall be established by the commissioner and an advisory committee chosen by the Maine Poultry Improvement Association.

All advertising of such eggs shall include the correct size and grade designation in describing the eggs and the correct size and grade designation shall appear in clearly legible letters on the container in which such eggs are offered for sale. Each lot of eggs sold at wholesale shall be accompanied by an invoice stating both size and grade designation.

No signs, flyers, advertisements or false labels shall be used to sell or offer for sale or expose for sale any eggs which do not conform to the standards for quality and size for Maine consumer grades or established by the commissioner, or which do not conform to the provisions of sections 39 to 47, inclusive. (R. S. c. 27, § 44. 1945, c. 108, § 3.)

Sec. 42. Use of certain terms.—The terms "fresh eggs," "strictly fresh eggs," "hennery eggs," "new-laid eggs," "farm fresh eggs," "selected eggs," "quality certified eggs," "nearby eggs," "native eggs" or words or descriptions of similar import shall not be used on any eggs which do not meet the minimum requirements for Maine consumer Grade A. (R. S. c. 27, § 45. 1945, c. 108, § 4. 1949, c. 318, § 1.)

Sec. 43. Definitions.—Terms used in sections 39 to 47, inclusive, shall be construed as follows unless a different meaning is clearly apparent from the language or context:

"Candling" means the common practice of examining the interior of an egg by holding and twirling the same before a light passing through an aperture in an opaque shield;

"Retail" means selling direct to consumer;

"Wholesale" means selling to retailers. (R. S. c. 27, § 46. 1945, c. 108, § 5. 1949, c. 318, § 1.)

Sec. 44. Exemptions.—

I. Producers selling eggs of their own producing direct to household users are exempt from the provisions of sections 39 to 47, inclusive, except when they are marked as to grade or size.

II. All sales by a producer or shipper to other than a retailer or consumer are exempt except when they are marked as to grade or size. (1949, c. 318, § 2.)

Sec. 45. Enforcement. — The commissioner shall have authority to administer the provisions of sections 39 to 47, inclusive, and to make uniform rules and regulations for such administration. The commissioner may recover the penalties imposed for violations of the provisions of sections 39 to 47, inclusive, in an action of debt brought in his own name, the venue to be as in other civil cases, and if he prevails in any such action, shall recover full costs; or he may prosecute for violation of the provisions of said sections by complaint or indictment and such prosecution shall be commenced in the county in which the offense is committed. (R. S. c. 27, § 47.)

Sec. 46. Penalty.—Any person, firm, partnership, association or corporation who shall violate any of the provisions of sections 39 to 47, inclusive, or shall neglect or refuse to comply with the provisions thereof or any rule or regula-

tion promulgated hereunder shall be punished by a fine of not more than $50 for the 1st offense, and not more than $200 for each subsequent offense.. (R. S. c. 27, § 48. 1949, c. 318, § 3.)

Sec. 47. Jurisdiction and disposal of funds.—Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court, of actions brought for the recovery of penalties imposed by the provisions of sections 39 to 47, inclusive, and of prosecutions for violations of the provisions thereof. All fines received under the provisions of sections 39 to 47, inclusive, by county treasurers shall be paid by them to the commissioner; and all money received by the commissioner under the provisions of said sections shall be paid by him to the treasurer of state for deposit in the general fund. (R. S. c. 27, § 49. 1945, c. 297, § 6.)

DIVISION OF ANIMAL INDUSTRY.

Animal Husbandry Expert.

Sec. 48. Animal husbandry expert.—The commissioner is authorized to employ an animal husbandry expert. He may employ such assistants as he deems necessary, subject to the provisions of the personnel law. Such expenses in connection therewith shall be paid as said commissioner may approve. (R. S. c. 27, § 51.)

See c. 100, § 9, et seq., re registration and licensing of dogs.

Prevention of Diseases.

Cross Reference.—See c. 25, § 3, re duties of department of health and welfare.

Sec. 49. Diseases; existence; investigation.—The commissioner shall cause investigation to be made as to the existence of contagious and infectious diseases among domestic animals; and he, or his duly constituted agent, may enter any premises or places, including stockyards, cars and vessels, within any county or part of the state, in or at which he has reason to believe there exists any such disease, and make search, investigation and inquiry in regard to the existence thereof. (R. S. c. 27, § 52. 1945, c. 275, § 1. 1951, c. 288, § 1.)

See § 70, re payment of expenses; c. 25, § 104, re notice to commissioner of agriculture of cases of tuberculosis or glanders in domestic animals; c. 77, § 5, re nongraduate veterinarian, in service of state, to submit to examination as to his fitness to render professional services.

Sec. 50. Quarantine; appraisal, indemnity. — Upon the discovery of any contagious or infectious disease among livestock or poultry, the commissioner or his agent in charge of livestock sanitary work shall establish and maintain such quarantine of animals, places, premises or localities as he may deem necessary; he may cause the animal or animals affected with any contagious or infectious disease to be appraised in accordance with the rules and regulations made by him, as hereinafter authorized and provided, and may cause the same to be destroyed and a proper disposition of the carcass made, according to the rules and regulations aforesaid. He or his approved agent shall appraise each animal at its true market value at the time it is condemned, and shall pay out of any money appropriated by the legislature for that purpose, an indemnity, but such indemnity paid by the state shall not exceed $200 for cattle, with a pedigree recorded, or recordable, in the recognized herd book of the breed in which the cattle destroyed may belong, nor more than $100 for the cattle which have no recordable pedigree. No appraised value shall exceed $100 for any horse condemned. In no case shall compensation be allowed for any animal destroyed un-

der the provisions of this chapter, which may have contracted or been exposed to such disease in a foreign country or on the high seas, or that may have been brought into this state within 1 year previous to such animal showing evidence of such disease, except cattle that are accompanied by tuberculin test papers showing that they are from an accredited herd or a herd under supervision of the state or country from which they come, tested within 1 year and no disease found; and the owner or owners thereof shall furnish satisfactory evidence as to the time during which such animal or animals shall have been owned in the state. No compensation shall be allowed for any cattle condemned that have been illegally brought into any modified accredited area, nor to any owner who in person or by agent knowingly or willfully conceals animals that should be tested, the existence of such disease, or the fact of exposure thereto in animals of which the person making such concealment, by himself or agent, is in whole or in part owner. In addition to the appraisal value paid to the owner of cattle as above provided, such owner shall also be entitled to the proceeds derived from the sale of any carcass. (R. S. c. 27, § 53. 1951, c. 288, § 2. 1953, c. 79.)

Sec. 51. Rules and regulations; approval by governor.—The commissioner shall make, record and publish rules and regulations, providing for and regulating the agencies, methods and manner of conducting the investigation provided for in section 49, regarding the existence of said contagious diseases; for ascertaining, entering and searching places where such diseased animals are supposed to exist; for ascertaining what animals are so diseased or have been exposed to contagious diseases; for making, reporting and recording descriptions of said animals so diseased, exposed and destroyed and for appraising the same, and for making payment therefor; and shall make all other needful rules and regulations, which may in his judgment be deemed requisite, to the full and due execution of the provisions of sections 49 to 80, inclusive. All such rules and regulations before they shall become operative shall be approved by the governor, and thereafter published in such manner as may be provided in such rules and regulations; after such publication, said rules and regulations shall have the force and effect of law, so far as the same are not inconsistent with the laws of this state or of the United States. (R. S. c. 27, § 54. 1945, c. 378, § 24. 1951, c. 288, § 3.)

Sec. 52. Obstructing commissioner in performance of his duties.—Any person who knowingly and willfully refuses permission to the commissioner or his duly constituted agent to make, or who knowingly or willfully obstructs said commissioner or his duly constituted agent in making necessary examination of, and as to animals supposed by the commissioner or his agent to be diseased as aforesaid, or in destroying the same, or who knowingly attempts to prevent the commissioner or his duly constituted agent from entering upon the premises and other places hereinbefore specified, where any of said diseases are by the commissioner supposed to exist, and any person who shall knowingly or willfully change, remove, conceal or substitute any tag, brand, label or mark, fixed, fastened or set by the chief of the division of animal industry or his agent or by any of the duly authorized inspectors, agents or representatives of the commissioner of this state or by any duly authorized inspector or official of any other state, upon any animal, place or premises in this state shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 27, § 55.)

See § 61, re rules and regulations as to livestock community or commission auctions.

Sec. 53. Knowingly concealing existence of disease. — Any person

who is the owner of, or who is possessed of any interest in any animal affected with any contagious or infectious disease, or any person who is agent, common carrier, consignee or is otherwise charged with any duty in regard to any animal so diseased or exposed to the contagion of such disease, or any officer or agent charged with any duties under the provisions of sections 49 to 80, inclusive, who shall knowingly conceal the existence of such contagious disease or the fact of such exposure to contagion, and who shall knowingly and willfully fail within a reasonable time to report to the commissioner the knowledge of their information in regard to the existence and location of such disease, or of exposure thereto, shall be punished as provided in section 52. (R. S. c. 27, § 56. 1945, c. 378, § 25. 1951, c. 288, § 4.)

See c. 137, § 4, re possession of diseased meat or milk for human food.

Sec. 54. Quarantine declared when owner refuses to accept sum to be paid under appraisal.—When the owner of animals adjudged under the provisions of sections 49 to 80, inclusive, by the proper authority to be diseased or to have been exposed to contagion, refuses to accept the sum authorized to be paid under the appraisement provided for in sections 49 to 80, inclusive, the commissioner shall declare and maintain a rigid quarantine for 30 days as to the animals adjudged as aforesaid to be diseased or exposed to any contagious or infectious disease, and of the premises or places where said domestic animals or poultry may be found, according to the rules and regulations prescribed by said commissioner, approved by the governor and published as provided in section 51. (R. S. c. 27, § 57. 1945, c. 378, § 26. 1951, c. 288, § 5.)

Sec. 55. Transporting affected animals.—No person owning or operating a railroad, nor the owner or owners or masters of any steam, sailing or other vessel within the state, shall receive for transportation, or transport from one part of the state to another part of the state, or bring from any other state or foreign country, any animal affected with any contagious or infectious disease, or that has been exposed to such diseases, especially the disease known as tuberculosis, knowing such animal to be affected or to have been so exposed; nor shall any person or persons, company or corporation, drive on foot or transport in private conveyance, from one part of the state to another part of the state, any animal knowing the same to be affected with, or to have been exposed to, any contagious or infectious disease; the proper movement of these animals under the direction of the commissioner for purposes of slaughter and disposal, excepted. Any person or persons violating any provision of this section shall be punished by a fine of not more than $100, or by imprisonment for not more than 3 months, or by both such fine and imprisonment. (R. S. c. 27, § 58. 1951, c. 288, § 6.)

Sec. 56. Permits for bringing horses in state.—Any person or persons bringing horses into the state must have a permit and shall notify the commissioner within 48 hours after their arrival; the said commissioner shall at once cause the same to be examined by a physical examination, or to be tested with mallein or cause the blood test to be used at the expense of the owner, or the commissioner may accept a certificate of health showing satisfactory mallein test or physical examination made by an inspector of the bureau of animal industry of the United States or by a veterinarian whose certificate is approved by the state official having authority to approve same under the laws of the state from which the animal is shipped. If an animal is found to be glandered, no compensation shall be allowed. No permit or examination will be required for horses used in circuses and to perform on the stage. Whoever violates the provisions of this section shall be punished by a fine as provided in section 67. (R. S. c. 27, § 60.)

Sec. 57. Dairy, breeding and show cattle to meet certain require-

ments.—All cattle that are to be shown or exhibited in any agricultural show within the state shall meet the requirements of the rules and regulations of the commissioner. (R. S. c. 27, § 61.)

Livestock Community or Commission Auctions.

Sec. 58. Purpose.—Whereas community or commission auctions are increasing throughout the country, and if properly controlled are a benefit to the livestock industry, it is desirable to set up legislation to prohibit the spread of disease and protect the public. (1949, c. 315. 1953, c. 308, § 45.)

Sec. 59. Permit.—No person, partnership, association or corporation shall hold or conduct community and commission livestock auctions or sales rings without obtaining a permit from the commissioner or his duly authorized agent. No permit shall be granted unless the buildings are so constructed that they can be readily cleaned and disinfected between each sale, and are so arranged that the chances of spread of disease are held at a minimum. (1949, c. 315. 1953, c. 308, § 45.)

Sec. 60. Bond.—The operator shall furnish bond of sufficient size to protect the consignors of the sale; provided, however, the aggregate liability of the surety to all such consignors shall in no event exceed the sum of said bond. The operator shall keep complete records of all sales transactions which shall be available for inspection by the commissioner or his agent. (1949, c. 315. 1953, c. 308, § 45.)

Sec. 61. Rules and regulations.—The commissioner shall make rules and regulations necessary to protect the health of animals going through such sales rings which shall have the power of law as outlined under section 51. (1949, c. 315. 1953, c. 308, §§ 45, 46.)

Sec. 62. Permit canceled.—The permit to operate such sales rings can be canceled by the commissioner or his agent upon due cause after notice and hearing. (1949, c. 315. 1953, c. 308, § 45.)

Sec. 63. Definition.—Any place where livestock is offered for private or public auction, the health status of which would not qualify the livestock as originating in clean herds under supervision for tuberculosis and Bang's disease, would be deemed to be a community or commission auction. (1949, c. 315. 1953, c. 308, § 45.)

Eradication of Diseases. Miscellaneous Provisions.

Sec. 64. Rules and regulations for investigation of tuberculosis.—The commissioner shall make all needful rules and regulations as to the manner in which application shall be made to him for the investigation of tuberculosis in the herds of the state; provided, however, that he employ regular skilled veterinarians and shall regulate the way and manner in which the test shall be applied and the state shall not be made responsible for any private test made. (R. S. c. 27, § 62.)

Sec. 65. Certificate.—There shall be left with the owner of all condemned animals a proper certificate, duly authenticated, showing the number condemned and the value at which they are appraised, which shall be transferable only with the consent and acceptance of the commissioner. (R. S. c. 27, § 63.)

Sec. 66. Stables disinfected.—The commissioner shall thoroughly disinfect all stables and premises where condemned animals are found or cause the same to be done by a competent agent in the employ of such commissioner, and the expense incurred on account of such disinfectant shall be paid by the owner or person in control of such stable and premises; provided, however, that the commissioner may pay ½ of the expense from the appropriation allowed for the

use of the division of animal industry. (R. S. c. 27, § 64. 1945, c. 138. 1953, c. 308, § 47.)

Sec. 67. Permit for bringing cattle in state.—No cattle shall be allowed to enter this state from any other state or country, either for dairying purposes, breeding purposes or for slaughter, except cattle in transit under the control of the federal government, without a permit duly authorized by the chief of the division of animal industry, which permit shall accompany the shipment. All such cattle must meet the requirements of the rules and regulations of the commissioner. Whoever violates any provision of this section shall be punished by a fine of not less than $25, nor more than $50, for each offense.

The commissioner is authorized to enter into agreements in the name of the state of Maine with other states for the purpose of controlling the transportation of cattle into, and out of, this state in order to effect the eradication of any infectious or communicable disease. The rules and regulations contained in such agreements are to be promulgated by the commissioner with the approval of the governor. (R. S. c. 27, § 66.)

Sec. 68. County attorneys to prosecute violations.—The several county attorneys shall prosecute all violations of the provisions of sections 49 to 80, inclusive, which shall be brought to their notice or knowledge by any person making the complaint under oath; trial justices within their counties shall have, upon complaint, original and concurrent jurisdiction with municipal courts and the superior court in all prosecutions arising under the provisions of said sections. (R. S. c. 27, § 67. 1949, c. 349, § 54. 1951, c. 288, § 8.)

Sec. 69. Agents employed.—The commissioner may employ skilled veterinarians in all tuberculin tests and such other agents and employees as he may deem necessary to carry into effect the provisions of sections 49 to 80, inclusive, subject to the provisions of the personnel law. (R. S. c. 27, § 68. 1945, c. 378, § 27. 1951, c. 288, § 9.)

Sec. 70. Expenses.—The actual and necessary traveling expenses of the commissioner and his employees, the expense of disinfecting premises, cars, vessels and other places, destroying diseased animals and those exposed to disease, and paying for the same, and all other expenses necessary to properly carry out the provisions of sections 49 to 80, inclusive, shall be paid out of such amounts as the legislature may appropriate. All money received from the sale of hides and carcasses of condemned animals shall be credited to the general fund. (R. S. c. 27, § 69. 1945, c. 297, § 7; c. 378, § 28. 1951, c. 288, § 10.)

Quarantine Powers.

Sec. 71. Premises entered; quarantine; animals disposed.—For the protection of the public health and to prevent the infection of the livestock of the state with contagious disease, the commissioner, the chief of the division of animal industry or any of their duly authorized agents are empowered to enter upon any premises at any time where domestic animals are or may be kept and may test for tuberculosis or other contagious disease, by any reputable method, any animal found thereon; and should any such animal be found to be infected with tuberculosis or other contagious disease, the commissioner or his agent shall have power to quarantine such animal and all premises and such other animals as the commissioner or his agent may deem necessary in order to prevent the spread of the disease. The commissioner or his agent is empowered to require the slaughter and disposal of any animals found to be infected with tuberculosis or other contagious disease as provided in section 50. (R. S. c. 27, § 70. 1951, c. 288, § 11.)

See § 70, re payment of expenses.

Sec. 72. Livestock and poultry moved to and from quarantined

areas; animals and poultry tested.—The commissioner or his agent in charge of livestock sanitary work is empowered to prohibit the movement of livestock or poultry of every description into or from any area where bovine tuberculosis or other contagious disease is known to exist and where the commissioner or his agent has assumed charge of such disease eradication. If any animals or poultry are brought into any such area in violation of this regulation, the commissioner or his agent shall be further empowered to quarantine such animals or poultry until they shall be tested by an accredited veterinarian at the expense of the owner. The owner or his agent shall so secure animals or poultry to be tested as to make it possible for the inspector of the department, or the agent in charge of livestock sanitary work, to apply in an expeditious manner the test that is deemed necessary. (R. S. c. 27, § 71. 1953, c. 184.)

Sec. 73. Violation of sections 71 and 72.—Any owner or owners of cattle who shall refuse or neglect to comply with the provisions of the 2 preceding sections or who shall violate any of the provisions of the said sections shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 52. (R. S. c. 27, § 72.)

Bang's Disease.

Sec. 74. Cattle tested.—For the eradication of Bang's disease, the commissioner or his agent in charge of livestock sanitary work shall continue to have blood drawn from the animals over 6 months of age in all herds in the state by a regularly employed federal or state veterinarian or technician or an authorized, accredited veterinarian and tested at the state laboratory by what is known as the blood agglutination test, and all animals showing a positive reaction to this test shall be identified by a "reactor" eartag and brand and shall be slaughtered, or quarantined and handled under direct supervision of the commissioner or his agent as provided under Plan C, except vaccinated animals under 36 months of age. Officially vaccinated animals over 36 months of age may be retested before being classified as reactors. Animals not officially vaccinated, showing a suspicious reaction to the blood agglutination test, must be held on premises where found and retested or sold for slaughter only. The movement of officially vaccinated animals not over 24 months of age shall not be restricted. The movement of officially vaccinated animals between the ages of 24 and 36 months shall be restricted if the agglutination is higher than incomplete in 1-100. (R. S. c. 27, § 73. 1945, c. 275, § 2. 1949, c. 422. 1951, c. 325, § 1.)

Sec. 75. Control and eradication.—The commissioner shall formulate the following methods of procedure for controlling and eradicating Bang's disease:

Plan A—TEST AND ERADICATION. A Brucellosis-free herd without calfhood vaccination.

This plan aims to establish a herd in which all animals over 6 months of age are negative to the official blood test and in which calfhood vaccination is not being used.

A certificate of certification indicating freedom from Bang's disease, valid until the owner or the herd fails to comply with the requirements of certification, will be issued annually by the commissioner.

Certified herds shall be tested annually. The blood samples must be taken by officially approved veterinarians or technicians and tested by the state laboratory. No Bang's vaccine is used in this herd.

Plan B—CERTIFIED VACCINATED HERDS. Brucellosis-free herds using calfhood vaccination.

This plan aims at increasing the resistance of calves so that they will be better protected against Bang's disease as adult animals. It combines the advantages of calfhood vaccination with eradication.

Officially vaccinated calves shall be vaccinated between the ages of 4 and 8 months.

A certificate of certification indicating freedom from Bang's disease, valid until the owner or the herd fails to comply with the requirements of certification, will be issued annually by the commissioner.

Officially vaccinated animals over 36 months of age may be retested before being classified as reactors.

The requirements for certification under Plans A and B are as follows:

A "herd" shall be considered as including all animals over 6 months of age except steers, spayed heifers and officially vaccinated animals not more than 24 months of age except vaccinates not over 36 months old with blood titer not over incomplete in 1-100 dilution.

A herd may be placed under supervision, for certification as Brucellosis-free, upon compliance with provisions governing the testing requirements of the cooperative state-federal program.

Herds which have adopted practices leading to certification through the elimination of reactors shall be retested at intervals of not more than 60 days until negative, and again within 3 to 4 months following the date of the first clean test. Such herds may be certified as Brucellosis-free when they have passed at least 3 consecutive tests, with the 1st clean test and the certifying test not less than 12 months apart, provided the animals under 30 months of age vaccinated as calves shall not be required to be negative to the test.

Plan C—CALFHOOD VACCINATION IN REACTOR HERDS UNDER OFFICIAL SUPERVISION AND QUARANTINE.

This is a plan of control by quarantine and calfhood vaccination for herds not yet in a position to meet the requirements of Plan B. A herd owner who fails to remove, or cause to be removed, a reactor animal within 15 days after such animal has been branded as such by the chief of the division of animal industry or his authorized agent shall be deemed to be operating under Plan C.

The owner's herd shall be tested at least 2 times a year or as often as the state and federal officials deem necessary by an approved veterinarian or technician without expense to the owner, and reported to the department of agriculture.

All calves shall be vaccinated between the ages of 4 to 8 months. Such vaccinations may be taken care of at the owner's discretion when a state or federal veterinarian is on the premises in connection with this program. Calves not so vaccinated must be vaccinated at the proper age at the expense of the owner. All replacements shall be properly vaccinated and under 6 years of age.

All reactors in this herd must be tagged and branded. If the reactor tag is lost, the division of animal industry must be notified so that the tag can be replaced.

This reactor herd shall be under official quarantine and must be satisfactorily and carefully managed so that it will in no way menace human health or the health of other herds and the fact of quarantine must be conspicuously posted on the outside of the barn and milk room with at least 2 signs supplied by the department.

No milk or milk products shall be distributed from this herd unless the milk has been properly pasteurized at the farm or at the milk plant.

The owner is personally responsible for keeping the cattle in this Plan C herd away from all physical contact with other cattle and is required to construct a double fence 6 feet apart where the pasture of this reactor herd is adjacent to a pasture harboring cattle of another herd.

No cattle shall be removed from this herd, except veal calves for immediate slaughter, without permission from the chief of the division of animal industry. All reactor animals removed from the herd must be slaughtered and their slaughter must be witnessed and reported by a state or federal official or other authorized agent. No indemnity shall be paid for cattle slaughtered from such Plan C herd

unless, at the time of slaughter, the herd shall have had a clean test at least 60 days prior thereto.

No herd owner shall be allowed to operate under Plan C for a longer period than 36 months, at the end of which time the owner of such herd shall cause all natural reactors and all officially vaccinated reactors over 36 months of age to be removed and slaughtered. The owner then must continue under Plan B. If the owner does not so continue, the department or its authorized agent is authorized to remove and cause to be slaughtered the reactor animals in the herd without payment of indemnity.

The owner or operator of a herd under Plan C who willfully or diliberately violates any of the above provisions shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 60 days, or by both such fine and imprisonment. (1949, c. 429, § 1. 1951, c. 325, § 2.)

Sec. 76. Vaccination of cattle over 8 months of age.—Vaccination of cattle over 8 months of age with brucellosis vaccine is prohibited, except by special written permit from the chief of the division of animal industry, and shall be identified as directed by him. Any person, partnership, association or corporation which shall violate the provisions of this section shall be punished by a fine of not more than $25 for the 1st offense and not more than $50 for each subsequent offense. (1953, c. 82.)

Sec. 77. Livestock to be tested for Bang's disease before sale; penalty for violation.—It shall be unlawful for any person, firm, partnership or corporation to sell, bargain or convey any bulls or female cattle 6 or more months of age, to any person, firm, partnership or corporation within the state, except to a licensed livestock dealer or to a recognized slaughtering establishment for immediate slaughter, unless such cattle have been tested for Bang's disease within 30 days and are accompanied by a health certificate to be issued by the commissioner, except that the provisions of this section shall not apply to certified (accredited) or certified vaccinated herds. Any person, partnership, association or corporation which shall violate the provisions of this section shall be punished by a fine of not more than $200 for the 1st offense and not more than $500 for each subsequent offense. (1951, c. 324.)

Sec. 78. Indemnities.—Any animal condemned for Bang's disease shall be appraised, slaughtered and marketed by direction of the commissioner or his duly appointed agent in charge of livestock sanitary work. Such appraisal shall be made in accordance with the market value of the animal by a person designated by the department. The indemnity shall be paid out of any funds designated for that purpose but shall not exceed $20 for a grade animal or $50 for a registered purebred animal. The salvage obtained from the sale of hides and carcasses of these condemned animals shall in all cases revert to the owner. The balance of the appraisal, not exceeding the indemnity limit, shall be paid by the state.

The indemnities provided by this section shall be paid by the state. (R. S. c. 27, § 74. 1949, c. 429, § 2. 1951, c. 411, § 1.)

Sec. 79. Cleaning and disinfecting.—The owner shall clean and disinfect the premises, where reactors to the agglutination test for Bang's disease have been found and removed, at his own expense in accordance with instructions from the representative of the department who shall inspect the said premises. The provisions of this section shall apply to all vehicles which have transported any cattle known to be reactors to the test mentioned in section 74. (R. S. c. 27, § 75. 1945, c. 275, § 3.)

Sec. 80. Quarantine.—If it is shown by recognized tests that Bang's disease exists in a herd, the commissioner or his duly appointed agent in charge of

livestock sanitary work may place such premises under quarantine by written notice, and no cattle shall be allowed to be removed from the herd while it is under such quarantine, except in accordance with the quarantine terms.

Any person violating the provisions of this section shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (1945, c. 275, § 4.)

Vesicular Exanthema.

Sec. 81. Definitions.—As used in sections 81 to 87, inclusive, the following words shall have the following meanings:

"Garbage" shall mean putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods including animal carcasses or parts thereof. This does not include fruits and vegetables which have not come in contact with any other products.

"Person" shall mean the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership or other entity. (1953, c. 397, § 1.)

Sec. 82. License to feed garbage; heating; inspection.—No person shall feed garbage to swine without first securing a license therefor from the commissioner or his duly authorized agent. Such licenses shall be secured annually for a fee of $1 and shall be renewed on the 1st day of June of each succeeding year. The provisions of this section shall not apply to any person who feeds his own household garbage only to swine which are raised for such person's own use.

Garbage, regardless of previous processing, shall before being fed to swine be thoroughly heated to at least 212 degrees F. for at least 30 minutes, unless treated in some other manner which shall be approved in writing by the commissioner or his duly authorized agent.

The commissioner or his duly authorized agent shall have the power to enter at reasonable times any private or public property for the purpose of investigating conditions relating to the treating or feeding of garbage. (1953, c. 397, § 1.)

Sec. 83. Animals infected.—Any animal infected with or exposed to foot and mouth disease shall be killed, buried, destroyed, rendered, processed or otherwise disposed of under the direct supervision of the commissioner or his duly authorized agent. (1953, c. 397, § 1.)

Sec. 84. Suppression and eradication.—The commissioner or his agent is authorized to conduct approved diagnostic tests, procure necessary animals, personnel, equipment and facilities and take other necessary precautions for the suppression and eradication of any vesicular disease. (1953, c. 397, § 1.)

Sec. 85. Agreements with United States Department of Agriculture.—The commissioner or his agent is authorized to enter into agreements of cooperation in the name of the state of Maine with the United States Department of Agriculture. (1953, c. 397, § 1.)

Sec. 86. Rules and regulations.—The commissioner is authorized to promulgate necessary rules and regulations to carry out the provisions of sections 81 to 87, inclusive. Such rules and regulations shall become effective when approved in writing by the governor and council. (1953, c. 397, § 1.)

Sec. 87. Penalty.—Whoever violates any provision of sections 81 to 87, inclusive, or any rule and regulation promulgated thereunder, shall be punished by a fine of not less than $50 nor more than $100 for the 1st offense; and shall, for the 2nd and subsequent offenses, be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 30 days nor more than 6 months, or by both such fine and imprisonment. (1953, c. 397, § 1.)

Production and Sale of Milk.

Sec. 88. Investigation; access to business places; agents. — The commissioner shall inquire into and investigate the production, manufacture, transportation, storage and sale of milk, cream, butter and all other dairy products, substitutes therefor or imitations thereof. The said commissioner shall have access at all reasonable hours to all places of business, factories or carriages, cans or other vessels used or which he believes to be used in the production or handling of milk or any other dairy product, substitute therefor or imitation thereof; and upon tendering the market price of a sample of milk or other dairy product, substitute therefor or imitation thereof, may take such sample from any person, firm, corporation, association or society; and shall cause all samples so taken to be analyzed.

The commissioner shall enforce the laws relating to the production, manufacture, transportation, storage and sale of milk and all other dairy products, substitutes therefor or imitations thereof, including oleomargarine and renovated butter, and the laws relating to the sealing of cans, bottles and other vessels used in the purchase and sale of milk and cream, the protection thereof against mutilation and the cleansing and sterilizing thereof before use or before being forwarded to producers or distributors of milk. The said commissioner may seize without warrant such cans, bottles or other vessels used in the purchase or sale of milk or cream, as may, in his judgment, be needed as evidence of violation of the laws referred to above.

For the purposes of this chapter in relation to milk, cream and other dairy products, the commissioner may act in person or by his duly authorized agents or assistants; and may employ such agents, assistants, chemists, counsel and clerks, and may purchase such samples of milk, cream and other dairy products, substitutes therefor or imitations thereof, and such stationery, postage, printed matter and other supplies incidental thereto, as may be necessary. (R. S. c. 27, § 77.)

See c. 25, § 146, re sale of milk; c. 137, §§ 3, 5-8, re unwholesome provisions and drinks.

Sec. 89. Obstructing commissioner in performance of duty.—Whoever hinders, obstructs or in any way interferes with the commissioner, his agents or assistants in the performance of his or their duty by refusing entrance to any place where he is authorized to enter, or access to any receptacle to which he is authorized to have access, or by refusing to deliver to him, his agents or assistants, a sample of milk or any other dairy product, substitute therefor or imitation thereof, sold, offered or exposed for sale by the person to whom such request is made if the value thereof is tendered, or in any other manner hinders, obstructs or interferes with said commissioner, his agents or assistants in the performance of any of their said duties shall be punished by a fine of not more than $100 for the first offense, and not more than $200 for each subsequent offense. (R. S. c. 27, § 78. 1945, c. 222, § 2.)

Sec. 90. Analyses published.—The commissioner may, in his discretion, publish the results of all analyses with the names of the persons, firms, corporations, associations and societies from which the samples analyzed were taken, together with such suggestions as he may deem advisable, in the regular or special bulletins issued by the department. He may also, in his discretion, issue each month a report of the results of all analyses for distribution to such newspapers in the state as may request a copy. (R. S. c. 27, § 79.)

Sec. 91. Rules and regulations.—The commissioner shall promulgate uniform rules and regulations governing the production, sale and distribution of milk and cream for sale within the state. (1945, c. 298, § 1.)

Milk Dealers.

Sec. 92. Milk dealers; registration; refusal to register or post certificate. — Any person, firm, corporation, association or society, who shall sell or deliver milk or cream as a business to any person from a wagon or other conveyance, depot or store, or who shall sell or deliver milk to a hotel, restaurant, boardinghouse or any public place, shall be considered a milk dealer within the meaning of this section and shall, on or before the 1st day of January in each year, apply to the commissioner for registration, furnishing such information as may be required upon blanks issued and furnished by the said commissioner to such person as may request the same. Every such registration shall expire on the 1st day of January, next after its issue, and shall be granted only to the milk dealer owning or leasing the vehicle or place from which sales or supplies are to be made, and shall not be transferred. Upon receipt of the application for registration, containing the information required, and upon being satisfied that all milk is being produced and handled in accordance with the provisions of section 91 and is from cows free from disease, the said commissioner shall issue to the applicant a certificate of registration, which certificate shall be posted in a conspicuous place in the store or depot from which sale or supply is made, and the number of the certificate of registration for each wagon or other vehicle shall be placed in a conspicuous place on said wagon or other vehicle. The commissioner may cancel the certificate of any dealer, who, after due hearing on complaint by the said commissioner or his authorized agent, is found to be selling milk produced or handled in violation of the provisions of section 91 or milk from diseased cows. If any person, firm, corporation, association or society desires to become a milk dealer, as provided by this section, before the 1st day of January in any year, he or they shall, prior to engaging in the business, register with the commissioner in the manner hereinbefore provided, for each place or vehicle from which sale or supply is to be made. Any dealer who neglects or refuses to register with the commissioner, or to post certificates of registration in the store or depot from which sale or supply is made, or to post the number of the certificate of registration on the wagon or other vehicle from which sale or supply is made, as provided in this section, or to surrender his certificate to the said commissioner when notified in writing that the same has been canceled, and the reason given for cancellation, or who himself or by his servant or agent, sells or delivers, or has in his custody or possession with intent to sell or deliver any milk after having been refused the aforesaid certificate of registration by the commissioner, shall be punished by a fine of not more than $50. No certificate of registration shall be required of producers selling only to licensed milk pasteurizing plants. (R. S. c. 27, § 80. 1945, c. 298, § 2.)

See c. 100, § 153, re municipal officers to prosecute violations.

Sec. 93. Fees.—Each milk dealer when applying for registration as provided for by section 92 shall pay to the commissioner a fee of $1 for each milk depot, vehicle and place from which sales are made. All money received by the commissioner under the provisions of this section shall be paid by him to the treasurer of state for deposit in the general fund. (R. S. c. 27, § 81. 1945, c. 297, § 8.)

See c. 100, § 153, re municipal officers to prosecute violations.

Sec. 94. License.—No person, firm, corporation, association or society, either by themselves or by their servants or agents, shall produce grade A milk for sale without having first filed with the commissioner an application for a license to so produce said grade A milk, and no person, firm, corporation, association or society, either by themselves or by their servants or agents, shall pasteurize milk for sale without having first filed with the commissioner an application for a license to

so pasteurize said milk. Upon receipt of such application, the commissioner shall issue said person, firm, corporation, association or society making such application, a license to produce grade A milk and a license to pasteurize the milk as hereinafter provided. Each such license shall cover each group of buildings constituting a dairy farm or dairy plant in one location. Such license shall expire on the 1st day of January next after its issue, and shall be granted only to milk dealers owning or leasing the vehicles or places from which sales or supplies are to be made and shall not be transferred. The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 95 to 99, inclusive. (R. S. c. 27, § 82.)

Sec. 95. Inspection.—The commissioner shall by adequate inspection see that grade A milk and pasteurized milk and grade A pasteurized milk are produced and processed in conformity with the following requirements:

I. Grade A milk. Grade A milk shall be milk which at the time of its delivery shall not contain more than 25,000 bacteria per c. c. by the A. P. H. A. official plate count method and which shall contain at least 3.75% butter fat, and shall be procured under the following conditions and handled in the following prescribed manner:

A. Cows; tuberculosis and other diseases. A physical examination and tuberculin test of all cows and heifers 6 months old or more shall be made at least once every 12 months by a licensed, accredited veterinarian approved by the department, the expense thereof to be borne alternately by the state and the owner of the cattle. Said tests shall be made and any reactors disposed of, in accordance with the current requirements approved by the United States department of agriculture, bureau of animal industry, for accredited herds.

For diseases other than tuberculosis such tests and examinations as the commissioner may require shall be made at intervals and by methods prescribed by him, and any diseased animals or reactors shall be disposed of as he may require.

B. Dairy barn; requirements. A dairy or milking barn shall be required, and such sections thereof where cows are kept or milked shall have at least 3 square feet of window area for each stanchion.

Such sections of all dairy barns where cows are kept shall have at least 300 cubic feet of air space per stanchion and shall be well ventilated.

The walks and gutters of such parts of all dairy barns in which cows are kept or milked shall be constructed of concrete or other easily cleaned material approved by the commissioner and shall be graded to drain properly, and shall be kept clean and in good repair. No horses, pigs, fowls, etc., shall be permitted in parts of the barn used for dairy purposes.

The walls and ceilings of all dairy barns shall be whitewashed twice each year or painted once every 2 years or oftener if necessary, or finished in a manner approved by the commissioner and shall be kept clean and in good repair. In case there is a second story above that part of the barn in which cows are milked, the ceiling shall be tight.

C. Cow yard. All cow yards shall be graded and drained as well as practicable and kept clean.

D. Manure disposal. All manure shall be stored or disposed of in such manner as best to prevent the breeding of flies therein, or the access of cows to piles thereof.

E. Milk house or room; construction, etc. There shall be provided a separate milk house or milk room for the handling and storage of milk and the washing and sterilization of milk apparatus and utensils, provided with

a tight floor. The walls and ceiling of the milk house or room shall be of such construction as to permit easy cleaning and shall be painted at least once each year, or finished in a manner approved by the commissioner. The milk house or room shall be well lighted and ventilated and all openings effectively screened to prevent the entrance of flies, and shall be so located and conducted as to prevent any contamination to the milk or to cleaned equipment. The milk room shall not open directly into a stable or into any room used for domestic purposes and must be at least 25 feet away from the privy. Each milk house shall be provided with adequate facilities for the heating of water for the cleaning of utensils. The milk house shall be equipped with stationary wash and rinse vats.

The floors, walls, ceiling and equipment of the milk house or room shall be kept clean at all times. All means necessary for the elimination of flies shall be used.

F. Toilet. Every dairy farm shall be provided with one or more sanitary toilets conveniently located, and constructed, operated and maintained in accordance with the recommendations of the department of health and welfare, so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

G. Water supply. The water supply for the milk room and dairy barn shall be properly located, constructed and operated, and shall be easily accessible, adequate and of a safe, sanitary quality.

H. Utensils; construction, etc. All containers or utensils used in the handling or storage of milk must be made of nonabsorbent material and of such construction as to be easily cleaned, and must be in good repair. Joints and seams shall be soldered flush. All milk pails shall be of a small mouth design approved by the commissioner. All strainers shall be equipped with sterilized single service filter pads.

All containers and other utensils used in the handling, storage or transportation of milk shall between each usage be treated with steam or dry heat or in a manner approved by the commissioner.

All containers and other utensils used in the handling, storage or transportation of milk shall be stored so as not to become contaminated before again being used.

After sterilization, no container or other milk utensils shall be handled in such manner as to permit any part of the person or clothing to come in contact with any surface with which milk comes in contact.

I. Milking; udder, teats and flanks. The udders and teats of all milking cows shall be clean at the time of milking. The flanks, bellies and tails of all milking cows shall be free from visible dirt at the time of milking.

J. Clean clothing. Milkers and milk handlers shall wear clean outer garments while working.

K. Milk stools. Milk stools shall be made of metal or wood and shall be kept clean.

L. Removal of milk. Each pail of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the dairy barn.

M. Cooling. Milk must be cooled immediately after milking to 50° F., or less and maintained at or below that temperature until delivered to the consumer.

N. Bottling and capping. Milk shall be bottled from a container with a readily cleanable valve, or by means of a bottling machine approved by the commissioner. Milk shall be bottled and capped on the farm where it is

produced. Bottles shall be capped by machine. The machine shall be cleaned and sterilized before each usage. Caps shall be purchased in sanitary tubes and kept therein until used.

O. Personnel; health. Every person connected with a dairy or milk plant whose work brings him in contact with the production, handling, storage or transportation of milk, containers or equipment shall pass such medical examinations as may be deemed necessary by the commissioner, and every such person shall submit such specimens of bodily discharges as the commissioner may require. Such examinations may be made by the local health officer or by a licensed physician approved by the health officer.

II. Pasteurized milk. Pasteurized milk is milk, every particle of which has been heated in equipment of a type and design approved by the commissioner to a temperature of 143° to 145° F., and held at this temperature for 30 minutes, or to such higher temperature for such time intervals as the commissioner may from time to time determine, after which it shall be immediately cooled to below 50° F., and held at this temperature until delivered to the consumer. The bacterial count shall not exceed 25,000 per c. c. (1949, c. 282)

III. Grade A pasteurized milk. Grade A pasteurized milk is defined as milk produced under the above specifications for the production of grade A milk and said milk pasteurized under the specifications as outlined for the processing of pasteurized milk as herein contained. The following provisions shall apply to the handling of all pasteurized milk.

A. Floors. Floors of all rooms in which milk is handled shall be constructed of concrete or other equally impervious and easily cleaned material. They shall be smooth, properly drained and provided with trapped drains and kept clean.

B. Walls and ceilings. Walls and ceilings of rooms in which milk is handled or stored shall have a smooth and washable light-colored surface and be kept clean.

C. Doors and windows. All openings into the outer air shall be effectively screened to prevent the access of flies. Doors shall be self-closing.

D. Lighting and ventilation. All rooms shall be well lighted and ventilated.

E. Protection from contamination. The various milk plant operations shall be so located and conducted as to prevent any contamination of the milk or to the cleaned equipment. There shall be a separate room for pasteurizing, cooling and bottling operations and a separate room for washing and sterilizing bottles, cans and equipment. Raw milk shall not be unloaded directly into the pasteurizing room and the same equipment shall not be used for both raw and pasteurized milk. Rooms in which milk is handled, stored or processed shall not open directly into any stable, living quarters or any undesirable or unsanitary place.

F. Toilet facilities. Every plant shall be provided with toilet facilities. This room shall be kept in a clean condition, good repair and well ventilated. All privies or earth closets shall be of a sanitary type and shall be located at least 50 feet from the milk plant.

G. Water supply. The water supply shall be easily accessible, adequate and of a safe, sanitary quality.

H. Equipment. All equipment with which milk comes in contact shall be constructed in a manner as to be easily cleaned. Only sanitary milk piping of a type which can be easily cleaned with a brush shall be used. The construction and operation of all pasteurizing vats and other equipment shall meet with the approval of the commissioner.

I. Bottle caps. Bottle caps shall be purchased and stored only in sanitary tubes and shall be kept therein until used.

J. Bottling. Bottling and capping shall be done at the place of pasteurization in automatic machinery approved by the commissioner, in such manner as to prevent any part of the person or clothing from coming in contact with any surface with which the milk comes in contact. Overflow milk shall not be sold for human consumption.

K. Repasteurization prohibited. No milk shall be pasteurized more than once, except as may be especially permitted by the commissioner or his agents thereto duly authorized. (1945, c. 110)

IV. Homogenized milk. Homogenized milk is milk which has been treated in such manner as to insure breakup of the fat globules to such an extent that after 48 hours' storage no visible cream separation occurs on the milk and the fat percentage of the top 100 c. c. of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than 10% of itself from the fat percentage of the remaining milk as determined after thorough mixing. [1949, c. 284]. (R. S. c. 27, § 83. 1945, c. 110. 1949, cc. 282, 284.)

Sec. 96. Grades of milk.—Any person, firm, corporation, association or society, either by themselves or by their servants or agents, who have complied with the specifications set forth in the preceding section, shall use in connection with the sale of his or its product, thus produced, according to the specifications herein outlined for the production of grade A milk, and the processing and production of pasteurized milk and the processing and production of pasteurized grade A milk as approved by the commissioner, the words "grade A milk," "pasteurized milk" and "grade A pasteurized milk" in accordance with the quality or grade thus produced, processed and offered for sale. The name or trade name of the dealer shall appear on all bottle caps. (R. S. c. 27, § 84. 1945, c. 298, § 3.)

Sec. 97. Restrictions.—No milk shall be sold or offered for sale in the state as grade A milk or as pasteurized milk or as pasteurized grade A milk unless such milk has been produced according to the specifications outlined herein for the production of such specified type of milk. (R. S. c. 27, § 85.)

Sec. 98. Penalty. — Any person, firm, corporation, association or society who shall produce grade A milk, or pasteurized milk or pasteurized grade A milk, for sale in the state without the license provided in section 94 or who shall violate any of the provisions of sections 94 to 97, inclusive, providing for the production of grade A milk, or pasteurized milk or pasteurized grade A milk, or neglects or refuses to comply with any of the provisions of said sections or any of the other provisions or in any way violates any of the foregoing provisions shall be punished by a fine of not more than $100 for the first offense and by a fine of not more than $200 for each subsequent offense. (R. S. c. 27, § 86.)

Sec. 99. Jurisdiction.—Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court of actions brought for the recovery of penalties imposed by the provisions of sections 94 to 98, inclusive, and of prosecutions of violations thereof. (R. S. c. 27, § 87.)

Standard Measure of Milk and Containers; Cleansing, Testing, Grading, Etc.

Sec. 100. Standard measure.—All milk and cream bought and sold by measure for consumption within this state shall be bought and sold by wine measure, the standard for which shall be 231 cubic inches to the gallon, and for subdivisions of the gallon in the same proportion. (R. S. c. 27, § 88.)

History of section.—See Old Tavern Farm v. Fickett, 125 Me. 123, 131 A. 305.

Sec. 101. All measures, cans, etc., proved and plainly marked.—All measures, cans or other vessels used in the purchase or sale of milk or cream, except glass bottles and jars sealed in accordance with the provisions of sections 106 and 107, shall be tried and proved by the standard mentioned in the preceding section, by the sealer of weights and measures of the city or town in which the person, firm or corporation purchasing or selling such milk or cream resides or has a place of business. The sealer of weights and measures shall, agreeably to such a standard, plainly stamp thereon the quantity which such measures, cans or other vessels hold, together with the year in which such measures, cans or other vessels are sealed. Whoever by himself, clerk, servant or agent sells by measure any milk or cream by any other than the measure so tried, sealed and marked shall forfeit for each offense the sum of $10. Any measure, can or other vessel used in the purchase or sale of milk or cream, lawfully sealed as aforesaid, shall be deemed to be lawfully sealed under the provisions of this section. (R. S. c. 27, § 89.)

Cross references.—See c. 100, § 155, re inspectors to prosecute for violations; c. 100, § 223, re penalty for using weights, etc., not sealed.

Capacity must be expressed in terms of wine measure.—The capacity of a bottle other than the sizes mentioned in § 106 must now be expressed, when sealed, in terms of one of the units of wine measure or fractional parts thereof, viz., gills, pints, quarts, or gallons. Old Tavern Farm v. Fickett, 125 Me. 123, 131 A. 305.

Sec. 102. Milk cans cleansed and sterilized; storage room kept in sanitary condition.—All persons, firms and corporations who shall purchase milk or cream for the purpose of reselling the same, either at wholesale or retail, shall thoroughly cleanse and sterilize, by the use of boiling water, steam or sterilizing agent, all cans, vessels and other utensils prior to their being used in the manufacture, transportation, storage and sale of said milk or cream. All persons, firms and corporations engaged in the business of retailing milk or cream shall thoroughly cleanse and sterilize, by the use of boiling water, steam or sterilizing agent, all vessels, jars, cans and other utensils used in the manufacture, storage and sale of milk or cream before such vessels, jars or cans are filled for distribution. The place or room in which milk or cream is stored, bottled or otherwise handled shall be kept in a clean and sanitary condition. Any person, firm or corporation violating the provisions of this section shall be punished by a fine of not more than $50. (R. S. c. 27, § 90.)

Sec. 103. Receptacles transporting milk or cream cleansed and sterilized.—All cans or other receptacles used in the transportation of milk or cream shall be cleansed and sterilized before being forwarded to the producer or distributor of milk or cream for use. All cans or other receptacles used in the transportation of ice cream, sherbet or frozen milk products shall be washed and cleansed with warm or cold water immediately upon the contents thereof being used, and before being returned and forwarded to the producer or distributor of such ice cream, sherbet or frozen milk products for use. Whoever by himself, clerk, servant or agent ships or transports or causes to be shipped or transported any cans or other receptacles used in the transportation of milk or cream not cleansed and sterilized, or any cans or other receptacles used in the transportation of ice cream, sherbet or frozen milk not washed or cleansed as provided in this section shall be punished by a fine of not more than $50 for each offense. (R. S. c. 27, § 91.)

Sec. 104. Testing milk containers.—All cans or containers sold for use in the purchase or sale of milk or cream at wholesale shall have their capacity plainly, conspicuously and indelibly marked thereon in terms of liquid quarts. They shall be sealed by the manufacturer thereof, as hereinafter provided, or by a sealer of the town where the user resides or has a usual place of business. The sealer of weights and measures shall, agreeably to such a standard, plainly stamp

thereon the quantity which such measures, cans or other vessels hold, together with the year in which such measures, cans or other vessels are sealed. The commissioner shall prescribe regulations governing the sealing of such cans or containers by the manufacturer and may authorize such sealing by any manufacturer upon his agreement to conform to said regulations. The commissioner may at any time, for cause, revoke the authority so given by him to any manufacturer. When sealed by the manufacturer, such cans or containers shall be marked with his name, initials or trade-mark and with any other designating marks which the commissioner may require. The sealing of such containers by the manufacturer shall not exempt the user from the laws relative to giving a false or insufficient measure, using a false measure or having the same in possession with intent to use. Sealers of the town where the user resides or has a usual place of business may at least annually inspect all cans or containers marked and sealed in accordance with this section and shall make a record of such inspections. When once sealed as herein required, a can or container need not again be sealed while in the same condition as when first sealed. The words "container" and "containers" as used in this and the following section shall not apply to bottles or jars. (R. S. c. 27, § 92.)

Sec. 105. Penalty for violation of § 104.—Whoever, by himself or by his servant or agent, or as the servant or agent of another person, sells any can or container to be used in the purchase or sale of milk or cream at wholesale that is not marked and sealed as required by the preceding section, shall be punished by a fine not exceeding $10 for each can or container so sold. Whoever, by himself or by his servant or agent, or as the servant or agent of another person, uses any can or container in the purchase or sale of milk or cream at wholesale that is not marked and sealed as required by the preceding section, shall be punished by a fine not exceeding $10 for each offense. The commissioner, his deputies and sealers shall enforce the provisions of this and the preceding section. (R. S. c. 27, § 93.)

Sec. 106. Capacity of milk bottles and jars.—Glass bottles and jars used for the sale of milk or cream shall be of one of the following capacities only: 1 gallon, a multiple of the gallon, 2 quarts, 1 quart, 1 pint, ⅝ of 1 pint, ½ of 1 pint or 1 gill and shall be sealed as full measure under the provisions of section 208 of chapter 100 or by the manufacturer, as provided in section 107. The use, for the distribution of milk or cream to the consumer, of glass bottles or jars of any other capacity than as herein provided is prohibited and declared to be illegal. All dealers in milk or cream who use, for the distribution of milk or cream to consumers, glass bottles or jars which have not been sealed by the manufacturer, shall bring such bottles or jars to the office of their city or town sealer to be sealed as aforesaid. If a bottle or jar has once been sealed by a sealer of weights and measures, or by the manufacturer, it shall not in any case be necessary to have it sealed again at any time while it is used for the distribution of milk or cream to consumers. Glass bottles or jars sealed under the provisions of this section shall not be legal measures except for the distribution of milk or cream. (R. S. c. 27, § 94. 1947, c. 268, § 1.)

For a case holding that this section, as it formerly read, did not prohibit the use of containers other than those then listed in the section, see Old Tavern Farm v. Fickett, 125 Me. 123, 131 A. 305.

Sec. 107. Marking of bottles and jars sealed by manufacturer; bond of manufacturer.—Such bottles or jars as are sealed by the manufacturer shall be clearly and permanently marked with their capacity, with word "Sealed" and for purposes of identification, with the name, initials or trade-mark of the manufacturer, and the manufacturer's mold designation which identifies the pattern or design of the bottle; the capacity designation and the word "Sealed" shall not be on the bottom of the bottle. The manufacturer's mark of

the mold designation which identifies the pattern or design of the bottle shall be approved by the state sealer of weights and measures upon application by the manufacturer, and upon filing by the manufacturer, with the treasurer of state, of a bond payable to the state in the sum of $1,000, with sureties to be approved by the attorney general, conditioned upon his conforming to the requirements of this section. A record of the bonds furnished, and of each manufacturer's mark of the mold designations shall be kept in the office of the state sealer of weights and measures. (R. S. c. 27, § 95. 1947, c. 268, § 2.)

Stated in Old Tavern Farm v. Fickett, 125 Me. 123, 131 A. 305.

Sec. 108. Selling or using bottles not complying with law. — Any manufacturer who sells milk or cream bottles to be used in this state that do not comply as to size and markings with the provisions of the 2 preceding sections shall forfeit $500, to be recovered by the attorney general in an action upon the bond of such manufacturer. Any dealer who uses, for the purpose of selling milk or cream, jars or bottles that do not comply with the requirements of section 106 as to markings and capacity shall be punished by a fine of not more than $50 for each offense. (R. S. c. 27, § 96.)

See c. 100, § 224, re jurisdiction of courts in offenses pertaining to weights and measures.

Sec. 109. Milk weighed and tested by Babcock test. — All milk or cream purchased by any person, firm or corporation for use in or to be resold by any creamery in this state, at the option of the seller or producer, shall be weighed and shall be tested by the Babcock test to ascertain the amount of butterfat per pound therein contained; and the value of the cream or milk thus purchased shall be determined by the amount of butterfat per pound as thus ascertained. Sellers or producers as aforesaid, who are making regular or daily delivery of milk or cream to the same purchaser that desire to sell said products as herein provided, shall give to the purchaser 10 days' written notice of their desire to make future sales in accordance with the provisions hereof. The test herein provided shall be made by the owners or operators of the creamery purchasing as aforesaid or by the commissioner or his deputies; but upon petition in writing, signed by 25% or more of the patrons of any creamery and addressed to the commissioner, or upon petition in writing signed by the owner or operator of any creamery and addressed to said commissioner, one or more tests shall be made by or under the direction of said commissioner, and the finding of said commissioner shall be conclusive upon all parties therein concerned; provided, however, that when the total number of patrons of any one creamery exceeds 100, then the number of petitioners herein required need not exceed 30. All samples of cream tested by said test shall be weighed and the standard unit for testing shall be 18 grams. Any person, firm or corporation, or the servant or agent of any person, firm or corporation, who violates the provisions of this section, shall be punished by a fine of not more than $50, or by imprisonment for not more than 30 days. (R. S. c. 27, § 97.)

Sec. 110. Bottles and glasses measuring milk or cream tested for accuracy and marked.—All bottles, pipettes or other measuring glasses used by any person, firm or corporation, or their agents or employees, at any creamery, butter factory, cheese factory, condensed milk factory or elsewhere in this state, in determining by the Babcock test or any other test the value of milk or cream received from different persons at such creameries or factories, shall be tested before such use for accuracy of measurement and for accuracy of the per cent scale marked thereon. Such bottles, pipettes or measuring glasses shall bear in marks or characters ineffaceable the evidence that such test has been made by the

authority named in the following section. No inaccurate bottles, pipettes or other glasses shall bear such marks or characters. (R. S. c. 27, § 98.)

See § 113, re penalty; § 123, re inspection by commissioner; c. 100, § 155, re inspectors to prosecute for violations; c. 182, § 2, re use of another's trade-mark prohibited.

Sec. 111. Director of Maine Agricultural Experiment Station to test and mark all bottles, etc.—The director of the Maine Agricultural Experiment Station, or some competent person designated by him, shall test the accuracy of all bottles, pipettes or other measuring glasses used by persons, firms or corporations in the state buying or pooling milk or cream, or apportioning butter or cheese made from the same, by the contents of butterfat contained therein. The said director or the person designated by him shall mark such bottles, pipettes or other measuring glasses as are found correct, with marks or characters which cannot be erased, and which marks or characters shall stand as proof that they have been so tested. The said director shall receive for such service no more than the actual cost incurred, which shall be paid by the persons or corporations for whom it is done. (R. S. c. 27, § 99.)

See § 123, re inspection by commissioner.

Sec. 112. Persons who test certified by superintendent of dairy school.—Any person, either for himself or in the employ of any other person, firm or corporation, who manipulates the Babcock test or any other test, whether mechanical or chemical, for the purpose of measuring the contents of butterfat in milk or cream for a basis of apportioning the value of such milk or cream or of the butter or cheese made from the same, shall secure a certificate from the superintendent of the dairy school at the University of Maine that he is competent and well qualified to perform such work. The rules and regulations in the application for such certificate and in the granting of the same shall be such as the superintendent of that school may arrange, and the fee for issuing a certificate shall not exceed $1 and shall be paid by the applicant. (R. S. c. 27, § 100.)

See § 113, re penalty; § 123, re inspection by commissioner.

Sec. 113. Use of sulphuric acid of less than required specific gravity; penalty for violation of §§ 110, 112. — Whoever uses or has in his possession with intent to use at any creamery, butter factory, cheese factory or condensed milk factory any sulphuric acid of less than 1.82 of specific gravity in the process known as the Babcock test or any other test for determining the butterfat contents of milk or cream shall be punished by a fine of not more than $25 for the 1st offense and for a 2nd offense of not more than $50. Any person, firm or corporation violating the provisions of section 110, shall be punished by a fine of not more than $50 for the 1st offense and for a 2nd offense by a fine of not more than $100; and any person violating the provisions of section 112 shall be punished by a fine of not more than $10. Every inspector of milk, sheriff, deputy sheriff and constable shall institute complaint against any person violating said provisions, and ½ of the fines shall go to the complainant and the balance to the state. (R. S. c. 27, § 101.)

See § 123, re inspection by commissioner.

Protection of Milk Dealers in the Use of Containers.

Sec. 114. Dealers may file and publish description of name and devices.—All persons and corporations engaged in buying, selling or dealing in milk or cream in cans, jugs, bottles or jars with their names or other marks or devices, together with the word "Registered," branded, engraved, blown or otherwise produced in a permanent manner in or upon such cans, jugs, bottles or jars

may file in the office of the clerk of the city or town in which their principal place of business is situated, and in the office of the secretary of state, a description of the name or names, mark or marks, device or devices so used by them, and cause such description to be published once each week for 4 weeks successively in a newspaper published in the city or town in which said description has been filed aforesaid; if there is no newspaper published in such city or town, then such publication may be made in any newspaper published in the county in which such city or town is situated. (R. S. c. 27, § 102.)

See c. 100, § 229, re protection of marks on containers used for soda water, etc.

Sec. 115. Using any milk can, without consent of owner; possession prima facie evidence.—Whoever without the consent of the owner takes, detains or uses in his business, sells, disposes of, buys, conceals or traffics in any milk can, jug, bottle or jar, the owner of which has complied with the provisions of the preceding section, shall be punished for the first offense by a fine of not more than $5, or by imprisonment for not more than 60 days for each can, jug, bottle or jar so taken, detained or used in his business, sold, disposed of, bought, concealed or trafficked in; and for any subsequent offense by a fine of not more than $10, or by imprisonment for not more than 6 months for each can, jug, bottle or jar so taken, detained or used in his business, sold, disposed of, bought, concealed or trafficked in as aforesaid. Possession by any person in the transaction of his business of any such article, the owner of which has complied with the provisions of the preceding section, shall constitute prima facie evidence of the unlawful taking, use, detention, possession of or traffic in the same within the meaning of this section. (R. S. c. 27, § 103.)

See § 118, re search warrants.

Sec. 116. Defacing or mutilating any can, jug, etc.—Whoever without the consent of any owner who has complied with the provisions of section 114 willfully destroys, mutilates or defaces any can, jug, bottle or jar bearing such owner's name, mark or device, or willfully erases, mars, covers or changes any word or mark branded, engraved, blown or otherwise produced in a permanent manner in or upon any such can, jug, bottle or jar, shall be punished for the first offense by a fine of not more than $5, or by imprisonment for not more than 60 days for each can, jug, bottle or jar so destroyed, mutilated or defaced, or for each can, jug, bottle or jar upon which any word or mark has been erased, marred, covered or changed as aforesaid; and for any subsequent offense by a fine of not more than $10, or by imprisonment for not more than 6 months for each can, jug, bottle or jar so destroyed, mutilated or defaced, or for each can, jug, bottle or jar upon which any word or mark has been erased, marred, covered or changed as aforesaid. (R. S. c. 27, § 104.)

See § 118, re search warrants.

Sec. 117. Placing any foul substance into any can, jug, etc.—Whoever by himself, or by his servant or agent, or as a servant or agent of any other person, firm or corporation, sends, ships, returns or delivers, or causes or permits to be sent, shipped, returned or delivered to any producer of or dealer in milk and cream, any can, jar, bottle, measure or other vessel used as a container for milk and cream, containing any offal, swill, kerosene, vegetable matter, rotten or putrid milk or any other offensive material shall be punished for the first offense by a fine of not less than $1, nor more than $5, for each can, jug, bottle or jar so defiled; and for any subsequent offense by a fine of not less than $2, nor more than $20, for each can, jug, bottle or jar so defiled. (R. S. c. 27, § 105.)

See § 118, re search warrants.

Sec. 118. Search warrant for vessels held in wrongful possession.—Whenever any person or corporation having complied with the provisions of

section 114 or the agent of any such person or corporation shall make oath before the judge of any municipal court or before any trial justice that he has reason to believe and does believe that any person or corporation has wrongfully in possession or is secreting any of his or its milk cans, jugs, bottles or jars, marked and described as provided in section 114, said judge or trial justice shall, if satisfied that there is reasonable cause for such belief, issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person or an agent or employee of the corporation in whose possession such cans, jugs, bottles or jars are found, and shall thereupon inquire into the circumstances of such possession; if said judge or trial justice finds that such person or corporation has been guilty of a willful violation of the provisions of sections 115, 116 or 117, he shall impose the penalty prescribed in the section or sections so violated, and shall also award to the owner possession of the property taken upon such search warrant. (R. S. c. 27, § 106.)

See c. 146, § 16, re cases in which search warrants may be issued.

Sec. 119. Sale of condensed or evaporated milk not conforming to certain standards; name of manufacturer or jobber on can.—No person, firm or corporation shall, by himself, his servant or agent or as the servant or agent of another, manufacture, sell, exchange, distribute, offer or expose for sale or distribution in the state any condensed or evaporated milk which shall not conform at least to the minimum standards established by regulation by the commissioner or established by statute and which, if contained in hermetically sealed cans, does not bear, stamped or labeled thereon, the name and address of the manufacturer or jobber thereof. (R. S. c. 27, § 107.)

Sec. 120. Sale of milk, cream, condensed milk, etc., to which has been added any fat or oil other than milk fat.—No person, firm or corporation shall, by himself, his servant or agent or as the servant or agent of another, manufacture, sell, distribute, offer or expose for sale or distribution in the state or have in possession with intent to sell or exchange any milk, cream, skim milk, buttermilk, condensed or evaporated milk, powdered milk, condensed skim milk or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever. (R. S. c. 27, § 108.)

Sec. 121. Enforcement of §§ 119 and 120.—The commissioner shall be charged with the enforcement of the preceding 2 sections. (R. S. c. 27, § 110.)

Sec. 122. Samples from creameries, cheese or condensed milk factories, for purpose of testing butterfat contents; duplicate test.—The commissioner or his deputy may enter upon the premises of any creamery, cheese factory, condensary or receiving station for milk or cream, and may take possession of any or all samples of milk or cream drawn for the purpose of testing their butterfat contents which are on the premises or in the possession of any employee, or may take samples from patrons' deliveries and then and there test the same. The owner, operator or manager of any creamery, cheese factory, condensary or receiving station for milk or cream shall, if requested by said commissioner or his deputy, give him full access to all creamery records appertaining to the tests thereof, and said commissioner or his deputy may make transcripts therefrom. The results of the tests made by said commissioner or his deputy may, at the discretion of said commissioner, be communicated to the owner, operator or manager or to any of the patrons of the creamery, cheese factory, condensary or receiving station for milk or cream from which such samples have been taken and tested or to all of them. The owner, operator or manager of any creamery, cheese fac-

tory, condensary or receiving station for milk or cream at which tests under the provisions of this section are made by said commissioner or his deputy may require said commissioner or his deputy to take duplicate sealed subsamples of all samples thus tested and to promptly forward the same to the Maine Agricultural Experiment Station for further test, in which case no communication of the results of the tests made by said commissioner or his deputy shall be made to the patrons of the creamery, cheese factory, condensary or receiving station for milk or cream, unless the same shall substantially agree with the results of the test made by said Maine Agricultural Experiment Station, or unless the commissioner is notified by the Maine Agricultural Experiment Station that the samples were received in a condition unfit to analyze. The owner, operator or manager of a creamery, cheese factory, condensary or receiving station for milk or cream, who shall require the taking and forwarding of subsamples, shall pay in advance all the carriage charges thereon and said Maine Agricultural Experiment Station for all tests made under the provisions of this section at the rate of 10¢ for each milk sample and 15¢ for each cream sample. The money thus received shall be used to defray the expenses incurred by said agricultural experiment station in connection with this section, but any balance that may remain after paying said expenses shall be paid by the director of said Maine Agricultural Experiment Station to the treasurer of state. Said Maine Agricultural Experiment Station shall report in duplicate to the commissioner and to the owner, operator or manager of any creamery, cheese factory, condensary or receiving station for milk or cream, the results of all tests made by it. If samples are received in poor condition said Maine Agricultural Experiment Station shall not be required to analyze the same, but in such case the advance payments required by this section shall be returned to the persons making the same. (R. S. c. 27, § 111.)

Sec. 123. Inspection of weighing, testing and sampling apparatus. —The commissioner or his deputy may enter the premises of any creamery, cheese factory, condensary or receiving station for milk or cream, and may inspect all apparatus and materials used for making tests for the purpose of determining the accuracy of the same, and for ascertaining whether the provisions of sections 110, 111, 112, and 113 are being complied with. Said commissioner may order any weighing, testing and sampling apparatus to be repaired or may condemn the same or any part thereof or any materials used in making tests, and may give such instructions regarding weighing, sampling and the making of tests as he deems proper. (R. S. c. 27, § 112.)

Sec. 124. False tests or impeding officer. — Any owner, operator or manager of a creamery, cheese factory, condensary or receiving station for milk or cream, wherein milk or cream are bought and paid for on the basis of their butterfat contents, who credits any patron or patrons delivering milk or cream with a greater or less percentage of fat than is actually contained in the milk or cream so delivered, or who hinders, impedes or obstructs said commissioner or his deputy in the discharge of his duty under the preceding 2 sections, or who refuses him access to his testing apparatus or his records of tests, or who neglects to follow the instruction given him by said commissioner in accordance with the provisions of said sections, shall be punished by a fine of not less than $25, nor more than $100, for each offense. (R. S. c. 27, § 113.)

Sec. 125. County attorneys to aid.—The county attorney for the county in which any violation of the provisions of this chapter has occurred shall, when called upon to do so by the commissioner or either of his duly authorized agents or assistants, give all the aid in his power to secure the enforcement thereof, and shall prosecute cases arising thereunder or under other provisions relating to dairy products, substitutes therefor or imitations thereof. (R. S. c. 27, § 114.)

Sec. 126. Jurisdiction. — Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court, of all laws relating to the production, manufacture, transportation, storage and sale of milk, cream, butter, cheese and all other dairy products, substitutes therefor or imitations thereof. (R. S. c. 27, § 115.)

See c. 137, § 3, re sale of impure or adulterated milk or cream; c. 137, § 4, re possession of milk for human food; c. 137, §§ 5-10, re unwholesome provisions and drinks.

Poultry.

Sec. 127. License for buyers and sellers of poultry. — Any person, firm or corporation engaged in the business of buying or selling live poultry, the meat or product of which is to be sold or used for food, except such person, firm or corporation that raises the poultry by himself or itself or his or its agents, shall annually apply for a license to the commissioner or his duly authorized agent upon a form to be prescribed by the commissioner; and said commissioner or his duly authorized agent may make suitable rules and regulations governing such licenses. The fee for such licenses shall be fixed by the commissioner but shall not exceed the sum of $2, and such licenses shall be issued for the period of 1 year and may be revoked for cause. If, in the judgment of the commissioner or his duly authorized agent, any provision of this section or any rule and regulation made thereunder, appears to have been violated by any licensee, the commissioner or his duly authorized agent shall send a notice by registered mail to the licensee, giving reasonable notice of a hearing to be held at such time and place as the commissioner or his duly authorized agent may determine. If the commissioner or his duly authorized agent is satisfied that the licensee has violated any of the provisions of this section or any of the said rules and regulations, he shall revoke the license. Whoever violates any of the provisions of this section shall be punished by a fine of not less than $50, nor more than $100, for each offense. (R. S. c. 27, §§ 116, 120.)

Sec. 128. Transportation of poultry. — No person, firm or corporation shall transport poultry from place to place within this state upon any way unless possessed of a license duly issued by the commissioner or his duly authorized agent. This section shall not apply to the transportation of dressed poultry by merchants, the transportation of live or dressed poultry by the actual producer, the transportation of poultry by householders for immediate consumption, the transportation of live poultry for egg production or breeding purposes or the transportation of poultry by common carriers or contract carriers under the authority of the public utilities commission or interstate carriers operating under authority of the interstate commerce commission. (R. S. c. 27, § 117. 1949, c. 349, § 55. 1951, c. 209.)

See § 131, re penalty.

Sec. 129. Bill of lading, etc., to accompany poultry transported by common carriers.—All live and dressed poultry, transported by common carriers that are exempt from being licensed under the provisions of section 128, must be accompanied by a bill of lading, signed statement by the consignor or bill of sale giving the name and address of the consignor and name of consignee and place of delivery. A copy of such bill of lading, statement or bill of sale must be kept on file by the common carrier for a period of 6 months. The consignor must be known by the agent or representative of the common carrier or be properly identified before the consignment of poultry is received by him. (R. S. c. 27, § 118.)

See § 131, re penalty.

Sec. 130. Record. — No person, firm or corporation shall purchase any dressed poultry for resale without keeping a record, in duplicate on forms furnished by the department, of the transaction, which record shall include the date, description, identifying marks of such poultry if any and the name and automobile registration number if any of the seller, 1 copy of which said record shall be sent by mail the same day on which the purchase was made to the chief of the state police. (R. S. c. 27, § 119.)

See § 131, re penalty.

Sec. 131. Penalty.—Whoever violates any of the provisions of sections 128, 129 or 130 shall be punished by a fine of not less than $50, nor more than $100, for the 1st offense; and shall, for the 2nd and subsequent offenses, be punished by a fine of not less than $100, nor more than $500, or by imprisonment for not less than 30 days, nor more than 6 months, or by both such fine and imprisonment. (R. S. c. 27, § 120.)

Sec. 132. Poultry included in provisions of this chapter.—The provisions of this chapter relating to the regulations of cattle for the prevention of disease, including the duties and powers of the commissioner, the obligations imposed on owners and the penalties imposed for nonconformity thereto shall apply in the same manner to poultry. (R. S. c. 27, § 121.)

See c. 100, §§ 9-15, re animal husbandry specialist and his duties.

Dealers in Livestock.

Sec. 133. Intent.—The purposes of sections 133 to 140, inclusive, are to maintain fair and equitable practices in the buying and selling of livestock within this state, and to suppress practices in such transactions which tend against the elimination of diseased and unfit livestock. In respect to dealers in livestock the provisions of sections 133 to 140, inclusive, supplement and do not supersede other provisions of the laws relating to the control of livestock diseases under the provisions of this chapter. (1949, c. 417.)

Sec. 134. Definitions.—As used in sections 133 to 140, inclusive:

I. The term "livestock" shall include all cattle, dairy, feeding, beef or breeding animals, sheep, goats, swine and horses.

II. The term "dealer" means any person, copartnership, association or corporation engaged in the business of buying or selling livestock, whether such purchase or sale be completed by cash, delayed payment, transfer, exchange, barter or shipment on commission. A person who receives livestock exclusively for slaughter on his own premises shall not be termed a dealer. The term "dealer" shall also apply to nonresidents of the state who carry on business of buying and selling livestock in the state, whether such dealer is licensed in the state of his residence or not.

III. The term "agent" means any person acting for or in behalf of another in any of the transactions which constitute being a dealer as above defined. (1949, c. 417.)

Sec. 135. License; agents.—No person, firm, partnership or corporation shall act as a dealer of livestock unless duly licensed as hereinafter provided; and no agent shall act for any dealer unless he and the dealer are duly licensed and the dealer has designated such agent to act in his behalf. A dealer shall be accountable and responsible for acts of his agents. (1949, c. 417.)

Sec. 136. Applications and license fees; certificates; dealer license

plates.—Application for a license as a dealer in livestock or as an agent shall be made upon a form prescribed by the commissioner or his duly constituted agent. The commissioner or his duly constituted agent, if satisfied with the applicant's qualifications, shall issue to such applicant a license entitling the applicant to act as a dealer or as an agent for a period of 1 year from July 1 of the year in which the application was made. The license fee for a dealer shall be $5 and for an agent, 50¢. Each dealer and agent shall also receive from the commissioner certificates as such, which certificates shall be carried in the motor vehicle or truck owned or used by such dealer or agent. Each dealer shall also receive from the commissioner, dealer license plates to be attached to each motor vehicle or truck owned or used by such dealer. (1949, c. 417.)

Sec. 137. Refusing, revoking and suspending licenses; appeals; hearing.—The commissioner or his duly constituted agent shall have the power to revoke or suspend any license issued under the provisions of sections 133 to 140, inclusive, whenever it is determined by himself or any of his deputies that any of the provisions of this chapter and rules and regulations have been violated. Before any license shall be revoked, the commissioner or his duly constituted agent shall give the licensee 10 days' notice, personally or by mail, of the time and place of hearing. At such hearing the commissioner or his duly constituted agent shall receive evidence and hear the licensee and shall thereafter file an order either dismissing the proceeding or revoking such license. Any licensee who feels aggrieved or dissatisfied with the decision of the said commissioner may appeal from said decision within 10 days to the superior court in the county where the licensee resides, or in the case of a nonresident, to the superior court in the county of Kennebec. (1949, c. 417. 1951, c. 266, § 34.)

Sec. 138. Records; health certificates; sanitation of trucks and premises. — Licensed livestock dealers shall keep records of transactions of cattle over 6 months of age by eartag number, or if not eartagged, by description; or by both eartag and description. They shall furnish a health certificate on all bulls and female cattle over 6 months of age sold to any person in the state except to recognized slaughtering establishments for immediate slaughter or to another licensed dealer.

Licensed dealers selling cattle over 6 months of age except as provided above shall furnish the purchaser with a health certificate showing the date of the last known test for Bang's disease and tuberculosis. If the last Bang's disease test was made over 30 days previously, he shall cause the cattle to be retested. If the last tuberculosis test is unknown or was made before 3 years previous to the time of the transaction, he shall cause the cattle to be retested by an accredited veterinarian. The form of health certificate and the issuance of the same shall be at the direction of the commissioner or his duly authorized agent.

A licensed dealer shall at all times keep his motor vehicles or trucks and premises in a sanitary condition. No cattle known to be affected with tuberculosis or Bang's disease shall be transported in any vehicle with other cattle except those going directly for slaughter.

All motor vehicles, trucks or other conveyances used to transport known reactors to tuberculosis and Bang's disease shall be cleaned and disinfected before being used for the transportation of any other livestock. (1949, c. 417. 1951, c. 295.)

Sec. 139. Rules and regulations.—The commissioner shall make uniform rules and regulations for carrying out the provisions of sections 133 to 140, inclusive, which shall be consistent with the rules and regulations for livestock disease control provided for under this chapter. (1949, c. 417.)

Sec. 140. Penalties.—Any person, copartnership, association or corporation engaged in the business of buying or selling livestock as defined in sections 133 to 140, inclusive, without a license provided for in section 135, or who shall violate any of the provisions of sections 134 to 139, inclusive, or neglect or refuse to comply with any of the provisions thereof, shall be punished by a fine of not more than $200 for the 1st offense and not more than $500 for each subsequent offense. (1949, c. 417.)

Breeding and Raising Mink.

Sec. 141. Breeding and raising mink. — Mink that have been propagated in captivity for 2 or more generations shall be considered domesticated animals subject to all the laws of the state with reference to possession, ownership and taxation as are at any time applicable to domesticated animals. Such domesticated mink, the pelts or products thereof, shall be deemed agricultural products and the breeding, raising, producing in captivity and marketing thereof shall be deemed an agricultural pursuit. Provided that any person, firm or corporation engaged in breeding and raising mink shall be licensed under the provisions of section 15 of chapter 37. (1951, c. 132.)

DIVISION OF PLANT INDUSTRY.

Certified Seed.

Cross References.—See § 4, re hearings after violations; § 215, re exemption from prosecution.

The statute (§§ 142-145) had as one of its objectives the protection of the purchases of certified seed. Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

Statute does not create new rule of civil liability for breach of warranty.—The language of statute (§§ 142-145) clearly shows that it was intended to be regulatory and penal only if the act is knowingly or wilfully violated. It does not purport to establish any new rule of civil liability for the breach of an express or implied warranty in the sale of certified seed. Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

Nor provide remedy for buyer.—The statute (§§ 142-145) does not provide any remedy for the buyer if the seeds are not as represented by the certificate or tag. Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

But neither does it deprive buyer of common-law right of action.—Sections 142 to 145 will not deprive a buyer of his long-established common-law right of action to recover damages if the seed bought was not as certified, and a warranty, express or implied, exists. The legislature, by these sections, did not intend to deprive the buyer of his common-law rights. Rather, the consideration of the various sections in their relation to each other leads to the conclusion that it was the intent to establish protection for the purchaser of certified seed, and for the seller, the certificate provides prima facie evidence that the goods sold were certified seed of the variety described on the tag or certificate within the varietal tolerance allowed, and grown according to the regulations of the commissioner of agriculture. The inspection, issuance and affixing of the certificate to the container are official acts. The law raises the presumption that the public officers have acted with fidelity and properly discharged their duties, but this presumption, like the presumption of innocence, is undoubtedly a legal presumption, and it does not supply proof of independent and substantive facts, and when met by competent evidence it is destroyed. Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

The seller of seed is not protected against liability for breach of warranty of variety although in good faith he grew and prepared for sale seed in accordance with the rules and regulations of the commissioner of agriculture for the growing and selling of certified seed, if there was a warranty either express or implied. Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

Sec. 142. Definition.—The term "certified seed" as used in this chapter

shall be deemed to mean potato, vegetable, forage crop or grain seeds as shall have been grown and prepared for sale in accordance with regulations laid down by the commissioner and for which a certificate or tag has been issued as provided in section 144. Authority to make all reasonable rules and regulations hereunder is given the said commissioner. (R. S. c. 27, § 124. 1951, c. 49, § 1.)

Cross references.—See § 145, re privileges denied until payment made, § 300, re exemptions as to branding.

Quoted in Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

Sec. 143. Certification; fee for inspection. — Any grower of potato, vegetable, forage crop or grain seeds may make application to the commissioner for inspection and certification of his crop growing or to be grown in this state, giving description of his land and such information as the said commissioner may require. He shall also enter into an agreement to pay such fee into the state treasury for said inspection and certification as the said commissioner shall deem necessary to cover the cost of inspection and certification. Thereupon his crops shall be listed for inspection and inspected and certified by the said commissioner or his agents under such rules and regulations as the said commissioner may provide. Authority to make all reasonable rules and regulations hereunder is given the commissioner. (R. S. c. 27, § 125. 1951, c. 49, § 2.)

Cross references.—See note to § 144, re necessity for compliance with this section; § 145, re privileges denied until payment made; § 300, re exemptions as to branding.

Quoted in Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

Sec. 144. Certificate; counterfeit and false tags.—The commissioner may issue a certificate or tag which shall be attached to each container or package in which certified seed shall be offered or exposed for sale. Such tag or certificate shall indicate the name of the grower, the shipping station or depot, the name of the inspector making the final inspection, the variety of the seed and shall bear the imprint of the seal of the state. Any tag having the words "inspected" or "certified seed" thereon, attached to the container or package in which certified seed shall be offered or exposed for sale, shall be so attached thereto that the whole of said certificate or tag shall be in full view. Any person who shall knowingly or willfully misuse any such tag or certificate or who shall attach to any package or container of seed which has not been duly inspected and certified, any such tag or certificate which shall have printed thereon the words "certified seed" or which by reason of color, size, shape or otherwise may convey the impression that such seed has been certified by the said commissioner or his agents shall be punished by a fine of $50 for each offense and shall be thenceforth denied the privileges of sections 142 to 144, inclusive, and section 145. (R. S. c. 27, § 127.)

Cross references.—See § 145, re privileges denied until payment made; § 300, re exemptions as to branding.

Compliance with statute necessary for certification.—When the grower has complied with this section and § 143 the seeds appear in commerce as certified seeds. Without performing the conditions set forth in these sections, the seeds do not qualify for certification. Knowingly and wilfully disregarding these sections subjects the seller to a fine and denial of the privileges of the statute. Henderson v. Berce, 142 Me. 242, 50 A. (2d) 45.

Sec. 145. Privileges denied to those in arrears.—No person who is in arrears as to payment for past services of the department under the provisions of sections 142, 143 and 144 shall be entitled to further services until payment of all such arrears shall have been made. (R. S. c. 27, § 129. 1953, c. 308, § 48.)

See § 4, re hearings after violations; § 215, re exemption from prosecution; § 300, re exemptions as to branding; c. 79, § 14, re deposit of potatoes into streams, etc.

Seed Potato Board.

Sec. 146. Creation; members; chairman; qualifications. — A seed potato board, as heretofore established in the department of agriculture, shall consist of 7 members.

The commissioner shall be a member of the board and its chairman. The remaining 6 members shall be appointed by the governor with the advice and consent of the council. Of the 6 members appointed, other than the commissioner, 5 shall be chosen from representatives of the potato industry in Aroostook county and 1 from elsewhere in the state of Maine. (1945, c. 153.)

Sec. 147. Term; vacancy; removal; salary.—Each appointed member shall serve for a term of 3 years and until his successor has been appointed and qualified.

Upon the expiration of the term of office of any member of the board, said member's successor shall be appointed by the governor by and with the consent of the council in like manner as said member.

In case of a vacancy for any reason in the office of any member, the governor, by and with the advice and consent of the council, shall appoint a member to fill the unexpired term of such vacant office in the same manner as the regular appointment to that office was made.

Any of the appointive members may be removed from office by the governor with the advice and consent of the council for cause shown, after reasonable notice and a hearing.

The members of the seed potato board shall receive no salary, but all their expenses incurred in attending meetings shall be paid out of the state treasury, on certificate of the commissioner, upon the audit and warrant of the controller. (1945, c. 153. 1951, c. 266, § 35.)

Sec. 148. Meeting; quorum.—The seed potato board shall meet annually on such date and at such place as the board may appoint and shall meet at such other times as the board may deem necessary or when called by the chairman of the board or any 2 members thereof upon 2 days' notice. The board may by resolution provide for a shorter notice made by telegraph, telephone or otherwise.

The presence at any meeting of at least 4 members of the board shall be necessary to constitute a quorum, and the concurring votes of not less than a majority of the members present at any meeting shall be necessary to the decision of any question or issue or the authorization of any action. (1945, c. 153.)

Sec. 149. Powers; rules and regulations.—The seed potato board shall have the power and authority to produce, or cause to be produced through contract or otherwise, such acreages of foundation seed potatoes of various varieties as it may from time to time determine for distribution and sale to the potato growers of this state. Said commitments of said board shall not exceed, however, in the aggregate, the amount of funds which may be made available to it as hereinafter specified. In addition the seed potato board shall have authority to work with and through the Maine agricultural experiment station of the University of Maine, in conducting and carrying on a program of production of foundation seed potatoes annually; said board to have authority to purchase, own or otherwise acquire farm real estate and farm equipment if necessary for the purpose of producing acreages of foundation seed potatoes.

The seed potato board shall also have full power and authority to make rules and regulations not inconsistent with law pertaining to its program of production, distribution and sales of foundation seed potatoes to the potato growers of Maine, as it may from time to time determine, and to exercise any other power which may be conferred upon the board by law.

The seed potato board is authorized to pay to the town of Masardis in lieu of taxes a sum, in the discretion of the board, which will compensate said town in whole or in part for loss of real estate taxes due to state ownership of real estate now used for seed potato purposes. (1945, c. 153. 1949, c. 72, § 1.)

Sec. 150. Records and proceedings.—The seed potato board shall elect a secretary, who need not be a member of said board, and said board shall have authority to employ such agents as may be necessary to consummate any and all programs which it may institute, as authorized under the terms of sections 146 to 151, inclusive, and shall keep a record of all of its proceedings, and all expenses by it incurred shall be paid out of the state treasury, on certification of the commissioner, upon the audit and warrant of the controller and charged against any and all appropriations which may be annually made available for its use as hereinafter stipulated. (1945, c. 153.)

Sec. 151. Appropriation.—There is appropriated from the unappropriated surplus of the general fund the sum of $100,000 to be made available to the seed potato board, said sum so appropriated to be a revolving fund for the use of said board in carrying out the terms and purposes as stipulated herein.

Provided, however, that if at the end of any fiscal year the seed board cannot show total assets of $100,000, either in cash, real estate, chattels or potato contracts as determined by the state auditor, a sum sufficient to make up the $100,000 shall be taken from the tax collected under the provisions of sections 222 to 233, inclusive, of chapter 16 commonly known as the potato tax. This sum, however, shall not be larger than $10,000 in any one fiscal year. In case the assets of the said seed potato board at the end of any fiscal year exceed $100,000, then any sums which have been taken from the potato tax may be returned in an amount not to exceed the excess over $100,000.

The 10-year period shall expire June 30, 1956, at which time there shall be returned to the general fund of the state, $100,000. (1945, c. 153. 1947, c. 235.)

Dumping of Waste Potatoes.

Sec. 152. Dumping of waste potatoes.—No person, firm or corporation shall dump waste potatoes in such manner that the same shall sprout and grow, thereby permitting or in any way facilitating the spread of potato diseases to cultivated potato fields. On complaint to the department, an official of the department shall notify the offending person, firm or corporation to take care of the dump and on his failure to act the department will take measures to destroy the waste and the expense of such action must be borne by the offending person, firm or corporation. (R. S. c. 27, § 128. 1945, c. 106.)

See c. 79, § 14, re deposit of potatoes in streams.

Trees and Shrubs.

Sec. 153. State horticulturist; definitions. — The commissioner shall appoint a state horticulturist, and the division of the department of agriculture under which such officer performs his duties shall be known as the bureau of horticulture.

The term "nursery stock" as used in this chapter shall include all florist stock, trees, shrubs, vines, fruiting plants, cuttings, grafts, scions and buds, both deciduous and evergreen, grown for sale or propagation, also herbaceous perennials, bedding plants, roots, corms, bulbs, tubers, potted plants and cut flowers, and all other plant and plant products for, or capable of, propagation, excepting field crops, vegetable plants and vegetable and flower seeds.

The term "vegetation" as used in this chapter means any tree, shrub, vine,

vegetable or other plant, or the product or any other portion of the tree, shrub, vine, vegetable or other plant. (R. S. c. 27, § 130.)

See c. 36, §§ 20-27, re insects and disease of trees; § 72, et seq., re white pine blister rust; c. 91, § 102, re purposes for which towns may raise money.

Sec. 154. Inspection of nurseries.—All nurseries or places where nursery stock is grown, stored or offered for sale shall be inspected at least once a year by the state horticulturist or by some competent person acting under his direction, and all such premises shall be accessible at all reasonable times for inspection, and if no dangerous insects or fungous diseases are found therein a certificate to that effect shall be given. If such pests are found therein, the owner of the stock shall take such measures to destroy the same as the state horticulturist shall prescribe, and no certificate as aforesaid shall be given until the said horticulturist has satisfied himself that all such pests have been suppressed, during which period no stock shall be sold, exchanged or disposed of except such as is destroyed. Only sound, healthy nursery stock which will maintain its vigor shall be offered for sale. Offering for sale of dead nursery stock or of stock so seriously weakened by drying, excessive heat or cold or any other condition that makes it unable to grow or keep satisfactorily when given reasonable care is deemed a violation of the provisions of this section and sections 153, 156, 157 and 158. (R. S. c. 27, § 132.)

Sec. 155. Inspection of orchards, fields or gardens; diseased trees or shrubs destroyed.—The state horticulturist, either personally or through competent assistants, may inspect any orchard, field, garden or roadside in public or private grounds, which he or they may know or have reason to suspect to be infested with the San Jose scale or any serious pest or infectious disease, when in his or their judgment such pests or infectious diseases are a menace to adjoining owners; and the state horticulturist may in writing order the owner, occupant or person in charge thereof to properly spray or give other suitable treatment, or to cut and destroy any such diseased trees or shrubs, if in the opinion of the state horticulturist such action is necessary. If the owner of such orchard, field or garden neglects or refuses to comply with such written order, he shall be punished by a fine of not less than $10, nor more than $50, for each offense. (R. S. c. 27, § 133.)

See c. 37, § 62, re use of poison for rodents; c. 37, § 70, re trapping on agricultural lands; c. 37, § 94, re damage to orchards and crops by deer, etc.

Sec. 156. Nursery stock shipped into state to bear certificate of inspection; destruction or return of infested stock. — All nursery stock shipped into this state from any other state, country or province shall bear on each box or package a certificate that the contents of said box or package have been investigated by a duly authorized inspecting officer, and that said contents appear to be free from all dangerous insects and diseases. Nurserymen, dealers or other persons residing or doing business outside of the state, desiring to solicit orders for nursery stock through agents in this state, shall file a certified copy of their original state certificate with the state horticulturist, and shall keep on file with the state horticulturist a list of agents and representatives in the state. The state horticulturist or his competent assistants may inspect, at the point of destination, all stock coming into the state, whether under certificate or not, and if such stock is found to be infested with any injurious insects or plant diseases, the state horticulturist shall cause it to be destroyed or returned to the consignor at the consignor's expense, if he shall so elect. (R. S. c. 27, § 134.)

Sec. 157. Transportation companies not to transport uninspected stock; notice of consignments.—No transportation company, owner or owners of nursery stock, or person selling nursery stock shall bring into this state

or shall transport or cause to be transported within this state, any nursery stock, excluding therefrom cut flowers, potted plants and cut greens, unless each box or package of such nursery stock shall have affixed thereto an unexpired official certificate of inspection which shall meet the requirements specified in section 156. Whoever violates this provision shall be punished by a fine of not more than $100 for each offense. All transportation companies shall immediately, upon receiving consignments of such stock, notify the commissioner of the fact that such consignments are in their possession, or en route to some point within the state, and give the names and addresses of the consignor and consignee, destination of each shipment, the name of the transportation company bringing such stock and the road or roads over which it is brought; and shall also make such further report relative to such shipments as the commissioner may from time to time require. (R. S. c. 27, § 135.)

Sec. 158. License for agents and dealers of nursery stock; fee; revocation of license.—No person, firm or corporation shall engage in, continue in or carry on the business of selling or dealing in nursery stock or solicit purchases of nursery stock within this state, either as owner thereof or as agent of such owner, without first obtaining a license to carry on and conduct such business in this state. The form of license shall be prescribed by the state horticulturist and the licenses shall be issued by him upon proper application therefor and shall expire on December 31 of each year. The license fee shall be $1 per year, excepting that for growers of strawberry, blackberry and raspberry plants, gladiolus, dahlias and herbaceous plants out-of-doors and whose total area of land devoted to those plants does not exceed ¼ acre, there shall be no license fee. The license shall be issued in the name of the nurseryman, dealer, solicitor, salesman or agent, as the case may be, and no license shall be assigned or transferred. Licenses of salesmen, dealers, agents or solicitors shall show the name and location of nursery and place of business of the nurserymen or tree dealers whom they represent or from whom they purchase this stock. Each separate agent and each separate store acting under a general agent or store must have a license as provided in this section. Fees obtained from such licenses shall be paid to the treasurer of state for deposit in the general fund. Such license may be revoked at any time for failure to comply with the aforesaid requirements or for such other causes as may in the opinion of the commissioner be sufficient. Any violation of the provisions of this section shall be punishable by a fine of not less than $10, nor more than $50, for each offense. (R. S. c. 27, § 136. 1945, c. 297, § 9.)

As a penal statute, this section must be strictly construed. State v. Staples, 110 Me. 264, 85 A. 1063.

Former provisions of section.—For a case under this section when the sale or solicitation without a license was not expressly prohibited, see State v. Staples, 110 Me. 264, 85 A. 1063.

Sec. 159. Duties of municipal officers as to worthless trees along highways.—The municipal officers of cities and towns shall, before the 1st day of June of each year, cut, burn and destroy all dead or worthless apple trees, and all wild cherry trees within the limits of the public ways, streets and parks of their respective towns and cities. For neglect or failure to perform the aforesaid duties each of such officers shall be punished by a fine of not less than $50. (R. S. c. 27, § 140.)

See c. 91, § 102, re purposes for which towns may raise money.

Sec. 160. Jurisdiction. — Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court, of prosecutions for violations of the provisions of sections 153 to 159, inclusive. All prosecutions shall be instituted by the commissioner and shall be directed by him; all penalties re-

covered for any violation of the provisions of said sections shall accrue to the treasurer of state for deposit in the general fund. (R. S. c. 27, § 141. 1945, c. 297, § 10.)

See c. 150, § 5, re fines, costs and forfeitures to be paid to county treasurer.

European Corn Borer.

Sec. 161. European corn borer public nuisance.—The insect known as the European corn borer is in all its stages a public nuisance and the commissioner is authorized and directed to use all lawful methods for its control and suppression. He may act in cooperation with any person or organization, any other state or the United States, in conducting investigations, gathering and distributing information concerning the said corn borer and in enforcing the provisions of the following sections. (R. S. c. 27, § 142.)

See c. 16, §§ 250-259, re tax on sweet corn for suppression of European corn borer.

Sec. 162. Districts established and quarantined; notice published.—The commissioner shall have authority to establish districts comprising that portion of the state known or suspected of being infested with the European corn borer and to quarantine such districts against the further spread of the borer. He may alter the boundary lines of such district or establish new districts as conditions may require and he shall give notice of such establishment by publication in some newspaper published in such district, if any, otherwise in some paper published in Augusta. (R. S. c. 27, § 143.)

See § 164, re penalty.

Sec. 163. Stubble plowed in or burned; cornstalk fodder destroyed.—In such district or districts as the commissioner may designate as being known or suspected of being infested with the European corn borer, any person growing corn of any kind or other vegetation subject to infestation by the European corn borer shall, not later than November 1st in the year in which said corn or other vegetation is grown, plow the land on which said corn or other vegetation was grown in a manner which shall be satisfactory to the said commissioner or his duly authorized agents, or shall pull up said stubble and destroy it by burning. Any person who uses cornstalks as fodder and who stores them for that purpose shall feed or destroy all such cornstalks not later than the 10th day of April in the year following that in which the said corn shall have been grown. (R. S. c. 27, § 144.)

See § 164, re penalty.

Sec. 164. Penalty; jurisdiction.—Whoever violates any quarantine regulations established by the commissioner under the provisions of section 162 and whoever neglects or refuses to comply with the requirements of section 163 shall be punished by a fine of not less than $10, nor more than $50. Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court, of actions brought for the recovery of penalties imposed by the provisions of sections 153 to 179, inclusive, and of prosecutions for violations thereof. (R. S. 27, § 145.)

Bee Industry.

Sec. 165. Bee inspectors.—The commissioner shall employ one or more persons qualified by experience and knowledge in beekeeping as inspectors of

apiaries, who shall serve during the pleasure of the commissioner. (R. S. c. 27, § 146.)

See § 173, re penalty; c. 131, § 43, re protection of wild bees.

Sec. 166. Salary.—Bee inspectors shall be employed on a per diem basis and shall receive necessary traveling expenses while actually engaged in the performance of their duties. (R. S. c. 27, § 147. 1949, c. 410, § 1.)

See § 173, re penalty.

Sec. 167. Duties. — Bee inspectors shall make such inspection of the apiaries throughout the state as the commissioner may deem necessary to determine the presence therein of bee diseases of an infectious or contagious nature. (R. S. c. 27, § 148.)

See § 173, re penalty.

Sec. 168. Right to enter apiaries.—Such inspectors shall have the authority to enter at all reasonable times upon the premises of any keeper of bees and make such examination of the bees, equipment and appliances found thereon as he may deem necessary to determine the presence of contagious or infectious diseases. (R. S. c. 27, § 149.)

See § 173, re penalty.

Sec. 169. Certificates.—Any inspector shall within 60 days after examination thereof issue certificates that bees or bee equipment and appliances are apparently free from disease or contamination, if so found. (R. S. c. 27, § 150. 1949, c. 410, § 2.)

See § 173, re penalty.

Sec. 170. Certifying imports.—No bees or used bee equipment or appliances shall be shipped into the state without a certificate signed by a legally authorized inspector at the point of shipment that they are free from any contagious or infectious disease based on actual inspection made within 60 days of the date of such shipment. (R. S. c. 27, § 151.)

See § 173, re penalty.

Sec. 171. Public nuisance.—All bees infected with the disease known as American Foulbrood, together with the equipment and appliances contaminated thereby, are declared to be a public nuisance and may be abated as provided in section 15 of chapter 141. (R. S. c. 27, § 152.)

See § 173, re penalty.

Sec. 172. Diseased bees or equipment.—It shall be unlawful for any person to knowingly own or possess bees having any contagious or infectious disease, or bee equipment and appliances contaminated thereby. It shall be unlawful to sell, barter or give away bees, equipment or appliances from any apiary without a certificate of inspection from a bee inspector. (R. S. c. 27, § 153. 1945, c. 54, § 1. 1949, c. 410, § 3.)

See § 173, re penalty.

Sec. 173. Penalty.—Any person violating the provisions of sections 165 to 172, inclusive, shall be guilty of a misdemeanor and shall be punished by a fine of not more than $10 and costs for each offense. (R. S. c. 27, § 154.)

Sec. 174. Notification.—All persons owning bees within the state shall annually notify the commissioner of the keeping of bees and the location thereof and shall forward to the commissioner for deposit with the treasurer of state an annual license fee of 10¢ per colony for all bees in the hive on May 15 of each year. No license fee returned shall be less than $1 per beekeeper. This money

shall be used to assist in carrying out the provisions of sections 165 to 176, inclusive. (R. S. c. 27, § 155. 1945, c. 54, § 2. 1949, c. 410, § 4.)

See § 176, re penalty.

Sec. 175. Persons keeping bees listed.—The tax assessors of any city, town or plantation shall list all persons keeping bees and forward a copy of said list to the commissioner. (1945, c. 54, § 3.)

Sec. 176. Disturbing bees on land of another.—No person shall enter upon the land of another for the purpose of capturing, destroying or interfering with a swarm of bees which is already established, or removing honey from same, except by the consent of the owner of such land. Whoever violates any of the provisions of this section or of section 174 shall be punished by a fine of not less than $10, nor more than $50, for each offense. (R. S. c. 27, § 156.)

Quarantines.

Sec. 177. Authority.—The commissioner, when he shall find that there exists in any other state, territory, district or part thereof, any dangerous plant disease or insect infestation with reference to which the secretary of agriculture of the United States has not determined that a quarantine is necessary and has not established such quarantine, is authorized to promulgate and to enforce by appropriate rules and regulations, a quarantine prohibiting or restricting the transportation into or through the state, or any portion thereof, from such other state, foreign country, territory or district, of any class of nursery stock, plant, fruit, seed or other article of any character whatsoever, capable of carrying such plant disease or insect infestation. The commissioner is authorized to make rules and regulations for the seizure, inspection, disinfection, destruction or other disposition of any nursery stock, plant, fruit, seed or other article of any character whatsoever, capable of carrying any other plant disease or insect infestation, a quarantine with respect to which shall have been established by the secretary of agriculture of the United States or the commissioner, and which has been transported to, into or through this state in violation of such quarantine. (1947, c. 364.)

See § 179, re penalty.

Sec. 178. Notice.—The notice of any hearing to promulgate, and the rules and regulations promulgating any quarantine provided for in the preceding section shall be by 1 publication in 1 or more newspapers in circulation in the area to be affected or in the state newspaper. (1947, c. 364.)

Sec. 179. Penalty.—Any person violating any of the provisions of any quarantine, or rules or regulations supplemental thereto, issued by the commissioner in pursuance of section 177 shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (1947, c. 364.)

DIVISION OF INSPECTION.

Adulterated or Misbranded Goods.

Cross References.—See § 4, re hearings after violations; § 215, re exemption from prosecution.

Sec. 180. Sale of certain adulterated articles.—No person shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation, any article of commercial feeding stuff, commercial fertilizer, drug or food which is adulterated or misbranded within the meaning of this chapter. (R. S. c 27, § 157. 1951, c. 74, § 4; c. 205, § 4. 1953, c. 308, § 49.)

Quoted in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Sec. 181. Definitions.—The term "commercial feeding stuff" as used herein shall be held to include all articles of food used for feeding livestock and poultry, except hays and straws, the whole seeds and the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat, flaxseed and broom corn.

The term "commercial fertilizer" as used herein shall be held to include all materials used for fertilizing purposes except unprocessed animal manure.

The term "drug" as used herein shall be held to include all medicines and preparations recognized in the United States pharmacopœia or national formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of man or other animals. (R. S. c. 27, § 158. 1949, c. 343, § 1. 1951, c. 74, § 5; c. 205, § 5. 1953, c. 334, § 4.)

Goods held not "commercial feeding stuff" within meaning of this section.— See Guarantee Food Co. v. Consumers Fuel Co., 123 Me. 439, 123 A. 518.

Sec. 182. Marking of packages of commercial feeding stuff.—Every lot or package of commercial feeding stuff which is manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person shall have affixed, in a conspicuous place on the outside thereof, a plainly printed statement, clearly and truly giving the number of net pounds in the package; the name, brand or trade-mark under which the article is sold; the name and principal address of the manufacturer or shipper; a chemical analysis stating the maximum percentage of crude fibre, the minimum percentage of crude fat and the minimum percentage of crude protein, allowing 1% of nitrogen to equal 6¼% of protein, which it contains, all 3 constituents to be determined by the methods adopted by the association of official agricultural chemists; if the feeding stuff is a compound feed, the name of each ingredient contained therein; and if artificially colored, the name of the material used for that purpose. If the feeding stuff is sold in bulk or put up in packages belonging to the purchaser, the seller shall upon the request of the purchaser furnish him with a copy of the statements named in this section. (R. S. c. 27, § 160.)

Sec. 183. Sale and manufacture of commercial feeding stuff; registration fee.—Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation in the state, any commercial feeding stuff shall, before so doing, file with the commissioner for each and every commercial feeding stuff bearing a distinguishing name or trade-mark, a certified copy of the statements required by section 182. Said certified copy shall be accompanied, when said commissioner shall so request, with a sealed package containing not less than 1 pound of the commercial feeding stuff. The person who shall file said certificate shall pay annually to the commissioner a registration fee of $10, this fee to be assessed on any brand offered for sale, distribution or transportation in the state; provided, however, that a brand of commercial feeding stuff may be reregistered for the following year without the payment of the fee upon the establishment by the person who paid said fee that the total sales within the state during the year for which said fee was paid did not exceed 50 tons. Whenever any person shall have filed such certificate and paid such registration fee, no other person shall be required to file such statement or pay such fee. (R. S. c. 27, § 161.)

Sec. 184. Registration of commercial fertilizers.—Any person who shall manufacture, sell, distribute, cause to be transported, offer or expose for sale, distribution or transportation in the state any commercial fertilizer shall, before so doing, file with the commissioner for each and every fertilizer bearing a distinguishing name or trade-mark a statement containing the following:

I. The name, brand or trade-mark under which the fertilizer is sold;

II. The name and principal address of the manufacturer or importer;

III. A chemical analysis stating the minimum percentage of nitrogen, available as plant food, present as nitrates, as ammonium salts or as organic nitrogen; of potash soluble in water, of phosphoric acid in available form and the minimum percentage of magnesium soluble in water or total magnesium, the constituents to be determined by the methods adopted by the association of official agricultural chemists;

IV. If claim is made for the presence of any plant food in addition to nitrogen, phosphoric acid, potash and magnesium, the following information shall also be given:

A. the amount of the plant food, expressed as the element in percent, both minimum and maximum; in case of a content of an element in amount less than 0.05 percent, however, this content shall be expressed as a Trace;

B. the major fertilizer material or materials used to supply the element. Said certified statement shall be accompanied when said commissioner shall so request with a sealed package containing not less than 2 pounds of the commercial fertilizer. The person who shall file said certificate shall pay annually to the commissioner a registration fee as follows: $14 each for the nitrogen and the phosphoric acid and $7 each for the potash and magnesium contained or said to be contained in the fertilizer, this fee to be assessed on any brand offered for sale, distribution or transportation in the state. Whenever any person shall have filed said certificate and paid said registration fee, no other person shall be required to file such statement or pay such fee. (R. S. c. 27, § 162. 1949, c. 343, § 2.)

Cross reference.—See c. 16, §§ 234-237, re fertilizer tax.

Stated in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Sec. 185. Lime, marl or wood ashes as commercial fertilizer; statement of percentages; fee for certificate.—Lime, marl or wood ashes intended for fertilizing purposes, and without regard to the price at which it is sold or offered for sale, shall be classed as a commercial fertilizer within the meaning of this chapter. All the requirements and penalties relative to commercial fertilizers named in this chapter shall apply to any and every lot of lime, marl or wood ashes intended for fertilizing purposes. In addition to the requirements of section 186, the label and certificates shall truly state the minimum and maximum percentage of total lime (calcium oxide), the minimum and maximum percentage of total magnesia (magnesium oxide), the minimum and maximum percentage of lime combined as carbonate (calcium carbonate), and magnesium combined as carbonate (magnesium carbonate) and minimum percentage of lime sulphur (calcium sulphate) in gypsum or land plaster. The person filing the certificate shall annually pay to the commissioner a registration fee of $10 for each brand of lime intended for fertilizing purposes. (R. S. c. 27, § 163. 1951, c. 266, § 36.)

Sec. 186. Markings of packages of commercial fertilizer.—Every lot or package of commercial fertilizer, which is manufactured, sold, distributed, caused to be transported, offered or exposed for sale, distribution or transportation in the state by any person shall have affixed, in a conspicuous place on the outside thereof, a plainly printed statement clearly and truly giving the number of net pounds in the package, together with all other information specified in section 184. In case a commercial fertilizer contains plant foods or other compounds which may cause injury to plant growth unless special precautions are taken, these precautions shall be clearly stated on the container. If the fertilizer is sold in bulk or put up in containers furnished by the purchaser, the seller shall,

upon request of the purchaser, furnish the latter with a copy of the statements named in this section. (R. S. c. 27, § 164. 1949, c. 343, § 3.)

Cross reference.—See c. 16, §§ 234-237, re fertilizer tax.

Printed statement not guaranty of suitableness or results.—The printed statement required by this section to be affixed before sale to lots or packages of commercial fertilizer, giving a chemical analysis stating the information required in § 184, is a guaranty of the analysis as printed in the statement, but it is not a guaranty of suitableness, nor of results. Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

And evidence of crop failure not admissible to show statement misleading. — When, in an action to recover the price of commercial fertilizer sold, the defense set up is a breach of the guaranty as to percentages of nitrogen, potash and phosphoric acid stated in the printed statement affixed to the packages as required by this section, evidence of crop failure following the use of the fertilizer is not admissible for the purpose of showing that the percentages were less than those stated in the guaranty. Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Cited in Libby v. Woodman Potato Co., 135 Me. 305, 195 A. 569.

Sec. 187. Marking of pressed hay; action for price of hay not marked. —All hay pressed and put up in bales, except hay pressed by farmers and retailed from their own barns, shall have the first letter of the Christian name and the whole of the surname of the person putting up the same, written, printed or stamped on bands or boards made fast thereto, with the name of the state and the place where such person lives. Whoever offers for sale or shipment any pressed hay not marked as aforesaid, except hay pressed by farmers and retailed from their own barns, forfeits $1 for each bale so offered, to be recovered by complaint. No person who has received hay not marked as provided in this section shall defend any action for the price thereof upon that ground, unless he shall prove that, before the delivery of said hay to him, he requested the person from whom he bought the same to comply with the provisions of this section. (R. S. c. 27, § 41. 1945, c. 378, § 30.)

Name must be that of person putting up hay.—This section requires the name, to be branded on the bands or boards enclosing the hay, to be that of the person putting it up and not that of any other person, by his consent and authority. Any other interpretation of the section would have little if any tendency to prevent such frauds as the section was designed to suppress, but, on the contrary, would tend to deceive, by holding out to the purchaser or shipper that the hay was actually put up by the person whose name should happen to be branded thereon. Pickard v. Bayley, 46 Me. 200.

Former provisions of section.—Prior to the addition of the last sentence to this section, and at a time when hay sold in violation of the section was forfeited, it was held that a contract for the sale of pressed hay not branded as the section required, at the time of its delivery, could not be enforced, and no damages could be recovered for its nonfulfillment. See Buxton v. Hamblen, 32 Me. 448; Pickard v. Bayley, 46 Me. 200.

For a case under a former statute prohibiting the carriage of unbranded hay, see Pickard v. Bayley, 46 Me. 200.

Sec. 188. Registration refused when name or trade-mark misleading.—The commissioner may refuse to register any commercial feeding stuff or commercial fertilizer bearing a name, brand or trade-mark which is misleading or deceptive or which would tend to mislead or deceive as to materials of which it is composed, and in the case of commercial feeding stuff when the specific names of each and all of the ingredients used in its manufacture are not stated. He may also cancel the registration of any feeding stuff or commercial fertilizer that he deems to be manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in violation of any of the provisions of this chapter. The registration of each brand of commercial feeding stuff or commercial fertilizer shall terminate on the 31st day of December of each year. (R. S. c. 27, § 167. 1951, c. 205, § 8.)

Sec. 189. When goods deemed adulterated.—For the purpose of this chapter an article shall be deemed to be adulterated:

I. In case of **commercial feeding stuff**:

A. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty.

Applied in Libby v. Woodman Potato Co., 135 Me. 305, 195 A. 569.

B. If it be colored, coated or stained in a manner whereby damage or inferiority is concealed.

C. If it contains any poisonous or deleterious ingredients which may render such article injurious to the health of livestock or poultry.

D. If any milling or manufactured offals or any foreign substance whatever have been added to any whole or ground grain or other commercial feeding stuff, unless the true composition, mixture or adulteration is plainly marked or indicated upon the container thereof.

E. If it contains more than 1% of weed seeds considered injurious to livestock or more than 15 viable weed seeds in the aggregate per ounce. (1951, c. 52)

II. In case of **commercial fertilizer**:

A. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty.

Applied in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

B. If it contains any material in sufficient amount to be deleterious to growing plants. (1949, c. 343, § 4)

This paragraph is malum prohibitum. Rogers v. Kendall, 122 Me. 248, 119 A. 616.

Deleterious, as used in this paragraph, means deleterious matter in such a quantity as to be deleterious to growing plants. Rogers v. Kendall, 122 Me. 248, 119 A. 616.

Fertilizer so debased with borax as to render it poisonous and harmful to growing potato plants is adulterated fertilizer within the meaning of this paragraph. Heal v. International Agricultural Corp., Buffalo Fertilizer Works, 124 Me. 138, 126 A. 644.

C. If it is found to contain any pulverized leather, hair, ground hoofs, horns, wool waste, peat, garbage tankage, cyanamid or any nitrogenous ingredients derived from any inert material whatsoever, unless the same has been so treated as to be available as plant food as determined by the methods adopted by the association of official agricultural chemists, without an explicit printed statement of the fact, conspicuously affixed to the package of such fertilizer and accompanying and going with every lot or package of the same, in which fertilizer the above named materials aid in making up the required or guaranteed analysis. (1949, c. 343, § 4. 1953, c. 308, § 50)

III. In case of a **drug**:

A. If, when a drug is sold under or by a name recognized in the United States pharmacopœia or national formulary, it differs from the standard of strength, quality or purity as laid down in the United States pharmacopœia or national formulary official at the time of investigation, or as fixed by the commissioner: provided that no drug defined in the United States pharmacopœia, the national formulary or by said commissioner shall be deemed to be adulterated under the provision if the standard of strength, quality or purity be plainly stated, so as to be understood by the nonprofessional person, upon the bottle, box or other container thereof, although the standard

may differ from that laid down in the United States pharmacopœia, national formulary or that fixed by said commissioner.

Cited in State v. Hollard, 117 Me. 288, 104 A. 159.

B. If its strength or purity differs from the professed standard or quality under which it is sold.

IV. In case of **meat or meat products**:

If any sodium sulphite, sodium bisulphite or any drug, chemical, chemical compound or preservative from which sulphur dioxide can be liberated has been added thereto or mixed therewith. [1951, c. 220. 1953, c. 308, § 50]. (R. S. c. 27, § 168. 1949, c. 343, § 4. 1951, c. 52; c. 74, § 7; c. 205, § 9; c. 220. 1953, c. 308, § 50; c. 334, § 5.)

Sec. 190. "Misbranded" defined. — The term "misbranded" as used herein shall apply to all articles of commercial feeding stuff, commercial fertilizer, drug or food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, or which is falsely branded in any particular.

For the purpose of this chapter an article shall also be deemed to be misbranded:

I. In case of **commercial feeding stuff**:

A. If any package fails to bear all of the statements required by section 182.

B. If the printed statements required by section 182 to be affixed to the package differ from the statements required by section 183.

C. If any brand is manufactured, transported, distributed, sold, offered or exposed for sale, distribution or transportation upon which the registration fee required by section 183 has not been paid.

II. In case of **commercial fertilizer**:

A. If any package fails to bear all the statements required by section 184.

B. If the printed statements required by section 184 to be affixed to the package differ from the statement required by section 186.

C. If any brand is manufactured, transported, distributed, sold, offered or exposed for sale, distribution or transportation upon which the registration fee required by section 184 has not been paid. (1953, c. 308, § 51)

Subsection cited in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

III. In case of a **drug**:

A. If it be an imitation of or offered for sale under the name of another article.

B. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or except in the case of a physician's prescription compounded by a physician or a registered pharmacist, if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or any preparation of any such substances contained therein. (R. S. c. 27, § 169. 1951, c. 74, § 8; c. 205, §§ 10, 11. 1953, c. 308, §§ 51, 52; c. 334, § 6.)

Sec. 191. "Mineral oil" defined.—The term "mineral oil" as used in sections 191 to 193, inclusive, shall be held to mean a mixture of liquid hydrocarbons obtained from petroleum, liquid petrolatum or mineral oil. (1947, c. 176.)

Sec. 192. Sale of mineral oil in food.—No person shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation any article of food which contains any mineral oil, except liquid food flavorings and the final products containing them. (1947, c. 176.)

Sec. 193. Penalty.—Any person, firm, corporation, association or society who manufactures, sells, distributes, transports, offers or exposes for sale, distribution or transportation any article of food containing mineral oil shall be punished by a fine of not more than $100 for the 1st offense or for not more than $200 for the 2nd offense. (1947, c. 176.)

Sec. 194. Definitions; limitation.—When used in sections 194 to 198, inclusive, unless the context otherwise requires, the following words shall have the following meanings:

I. "Flour" includes and shall be limited to the foods commonly known in the milling and baking industries as:

A. White flour, also known as wheat flour or plain flour;

B. Bromated flour;

C. Self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

D. Phosphated flour, also known as phosphated white flour or phosphated wheat flour;

but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake, pancake and pastry flours.

II. "Persons" means an individual, a corporation, a partnership, an association, a joint stock company, a trust or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls.

III. "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls and hard rolls, such as Vienna rolls and Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

IV. "White bread" means any bread made with flour, as defined in subsection I, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread and Italian bread.

The provisions of sections 194 to 198, inclusive, shall not apply to any flour manufactured in the state of Maine or to any breadstuff made therefrom. (1945, c. 349.)

Sec. 195. Reinforcement of flour.—It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale for human consumption in this state flour, as defined in section 194, unless the following vitamins and minerals are contained in each pound of such flour: not less than 2.0 mg. and not more than 2.5 mg. of thiamine; not less than 1.2 mg. and not more than 1.5 mg. of riboflavin; not less than 16.0 mg. and not more than 20.0 mg. of niacin or niacin-amide; not less than 13.0 mg. and not more than 16.5 mg. of iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 mg. and not more than 1,500 mg. of calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to bakers or to manufacturers or processors who will use such flour to manufacture products other than white bread or rolls. (1945, c. 349. 1947, c. 344.)

Sec. 196. Vitamins and minerals required in bread or rolls.—It shall be unlawful for any person to manufacture, bake, sell or offer for sale for human consumption in this state any white bread or rolls, as defined in section 194, unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than 1.1 mg. and not more than 1.8 mg. of thiamine; not less than 0.7 mg. and not more than 1.6 mg. of riboflavin; not less than 10.0 mg. and not more than 15.0 mg. of niacin; not less than 8.0 mg. and not more than 12.5 mg. of iron (Fe). (1945, c. 349.)

Sec. 197. Enforcement.—The commissioner is charged with the duty of enforcing the provisions of sections 194 to 198, inclusive, and he is authorized and directed to make, amend or rescind rules, regulations and orders for the efficient enforcement of said sections.

Whenever the vitamin and mineral requirements set forth in sections 194 to 198, inclusive, are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the commissioner, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of sections 194 to 198, inclusive, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments. Any revisions in vitamin and mineral requirements established by the commissioner shall be reported to the legislature.

In the event of findings by the commissioner that there is an existing or imminent shortage of any ingredient required by sections 195 or 196, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of the provisions of sections 194 to 198, inclusive, the commissioner shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if he finds it necessary or appropriate, excepting such foods from labeling requirements until he issues a further order relative thereto. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. The commissioner on his own motion may, and upon receiving the sworn statements of 10 or more persons subject to the provisions of sections 194 to 198, inclusive, that they believe such a shortage exists or is imminent shall, within 20 days thereafter, hold a public hearing with respect thereto, at which any interested person may present evidence; and shall make findings based upon the evidence presented. The commissioner shall publish notice of any such hearing at least 10 days prior thereto.

Whenever the commissioner has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least 10 days' notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue an order to become effective not less than 30 days after the publication thereof, revoking such previous order; provided, however, that undisposed floor stocks of flour on hand at the effective date of such revocation order, or flour manufactured prior to such effective date for sale in this state, may thereafter be lawfully sold or disposed of.

All orders, rules and regulations adopted by the commissioner pursuant to the provisions of sections 194 to 198, inclusive, shall be published in the manner hereinafter prescribed, and within the limits specified in said sections shall become effective upon such date as the commissioner shall fix.

Whenever, under the provisions of sections 194 to 198, inclusive, publication of any notice, order, rule or regulation is required, such publication shall be made at least twice in at least 1 daily newspaper of general circulation printed and published in this state.

For the purpose of sections 194 to 198, inclusive, the commissioner, or such

officers or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling. (1945, c. 349.)

See c. 100, § 157 et seq., re inspection of flour.

Sec. 198. Penalty.—Any person who violates any of the provisions of sections 194 to 198, inclusive, or the orders, rules or regulations promulgated by the commissioner under authority thereof shall be punished by a fine of not more than $100. (1945, c. 349.)

Sec. 199. Sale of adulterated or misbranded vinegar.—No person shall within this state, manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation any product known as vinegar which is adulterated or misbranded within the meaning of this chapter. (R. S. c. 27, § 171.)

Sec. 200. Vinegars defined.—The terms "cider vinegar" and "apple vinegar" shall be construed to mean the product made exclusively from the expressed juice of clean whole apples, by alcoholic and subsequent acetous fermentations, the acidity, solids and ash of which have been derived exclusively from the apples from which it was fermented.

The term "sugar vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, syrup, molasses or refiner's syrup.

The term "malt vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of an infusion of barley malt.

The terms "wine vinegar" and "grape vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes.

The term "glucose vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of corn sugar or glucose.

The terms "spirit vinegar," "distilled vinegar" and "grain vinegar" shall be construed to mean the product made by the acetous fermentations of dilute distilled alcohol. (R. S. c. 27, § 172.)

Sec. 201. Adulterations of vinegars defined.—For the purpose of this chapter vinegar shall be deemed to be adulterated:

I. If it contains any drugs, acids, coloring matter or ingredients not derived exclusively from the substances from which they were respectively made.

II. If it contains less than 4 grams of acetic acid in 100 cubic centimeters of the vinegar at 70° Fahrenheit.

III. If manufactured by the destructive distillation of wood, known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, vegetables, sugar or syrup.

IV. If it is found to contain any preparation of lead, copper, sulphur dioxide, sulphuric acid, other mineral acids, any substitute for vinegar produced other than by alcoholic and subsequent acetous fermentation or other ingredients injurious to health. (R. S. c. 27, § 173.)

Sec. 202. Misbranding of vinegars defined.—For the purposes of this chapter vinegar shall be deemed to be misbranded:

I. If packages containing vinegar made from wine or fruits which have been

reduced with water are not plainly marked or branded "Reduced to 4% Acid Strength" or "Reduced to 40 Grains," indicating the acidity to which it has been so reduced.

II. If a product made from dried apples, or from apple skins, apple cores and chops by the process of grinding and soaking with subsequent alcoholic and acetous fermentations of the solution thus obtained is not plainly marked to show the material from which it is produced.

III. If the package containing said vinegar or its label is not plainly branded with the name of the manufacturer or distributor and his place of business.

IV. If every container or receptacle which contains any vinegar other than pure cider or apple vinegar, except delivered to the purchaser in the unbroken package, does not bear plain or conspicuous marks or brands, showing the kind of vinegar so delivered and the substance or substances from which it was made.

V. If mixtures of two or more of the vinegars above defined are not plainly and conspicuously branded with the word "compound" together with the proportions of the vinegars so mixed. (R. S. c. 27, § 174.)

Sec. 203. Application of §§ 199-203 to common carriers.—The provisions of sections 199 to 203, inclusive, shall not apply to railroad companies, steamboat companies, express companies or other common carriers of property coming under the jurisdiction of the interstate commerce commission or the public utilities commission of this state unless they knowingly violate such provisions. (R. S. c. 27, § 175.)

Sec. 204. "Storage" and "processed" eggs defined.—The term "storage eggs" as used in this chapter shall be held to mean any shell eggs that for a period of 30 days or over have been held in storage at a temperature of 45° Fahrenheit, or less.

The term "processed eggs" shall be held to mean any shell eggs which in a way other than storage have been so treated as to keep them from natural deterioration. No person, firm or corporation, selling or exposing for sale any shell eggs which have been in storage or in any way processed, shall use the word "fresh" in any combination of words to describe the character or value of such eggs. (R. S. c. 27, § 176.)

See § 40, re standards of quality for shell eggs; § 42, re definition of "fresh eggs"; § 43, re definition of "candling", "retail", "wholesale".

Sec. 205. Receptacles of storage or processed eggs so marked; purchaser of such eggs informed.—Any person, firm or corporation who exposes or offers for sale, either in any public place or elsewhere, any shell eggs which have been in storage or which in any way have been processed, shall conspicuously display upon the receptacle in which such shell eggs are offered for sale, or upon the package in which they are delivered to the purchaser, a notice containing the words "cold storage eggs" or "processed eggs" in accordance with the fact; and in case any shell eggs which have been in storage or which have been processed are exposed for sale or offered for sale, in a manner which does not require a receptacle or package, the purchaser shall be informed definitely that such shell eggs are either cold storage or processed eggs, to the end that the purchaser may have knowledge of the facts with reference to the storage or processing of such eggs. (R. S. c. 27, § 177.)

Sec. 206. Invoice of storage eggs to state character; containers dated with date of receipt and withdrawal from storage.—Whenever any person, firm or corporation within this state ships or delivers to a purchaser within this state any shell eggs which have been in storage or processed, such person,

firm or corporation shall deliver to the purchaser an invoice or bill showing thereon the character of such eggs. All containers of shell eggs deposited in cold storage shall be marked plainly with date of receipt and date of withdrawal by the officer, or his agents, in charge of the cold storage plant. (R. S. c. 27, § 178.)

Sec. 207. Penalty.—Any person, firm or corporation who violates any provision of sections 204 to 206, inclusive, shall, upon conviction, be liable to a fine of not more than $50 or imprisonment for not more than 60 days, or by both such fine and imprisonment, and the commissioner is expressly empowered to enforce the provisions of said sections and to be vigilant in discovering violations thereof, and making complaint to the proper authorities. (R. S. c. 27, § 179.)

Sec. 208. Annual analysis; results published.—The director of the Maine Agricultural Experiment Station shall annually analyze, or cause to be analyzed, samples of articles of agricultural or vegetable seed, commercial feeding stuff, commercial fertilizer, drugs, foods and economic poisons at such time and to such extent as the commissioner may determine. Said commissioner, in person or by deputy, shall have free access, ingress and egress at all reasonable hours to any place or any building wherein articles of agricultural or vegetable seed, commercial feeding stuff, commercial fertilizer, drugs, food or economic poisons are manufactured, stored, transported, sold, offered or exposed for sale. He may also, in person or by deputy, open any case, package or other container, and may, upon tendering the market price, take samples for analysis. The results of all analyses of agricultural or vegetable seed, commercial feeding stuff, commercial fertilizer, drugs, food and economic poisons made by said director shall be published by him in the bulletins or reports of the experiment station, together with the names of the persons from whom the samples were obtained, the names of the manufacturers thereof, and such additional information as to him may seem advisable. (R. S. c. 27, § 180. 1951, c. 74, § 9; c. 205, § 12. 1953, c. 308, § 53.)

Cross reference.—See § 261, re inspection of sardines.

Stated in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Sec. 209. Samples of commercial fertilizer analyzed.—Any person within the state may send to the commissioner samples of commercial fertilizers sold or offered for sale within the state for the purpose of analysis under the following conditions: said samples shall be taken in the presence of a witness, from not less than 5 packages of properly stored commercial fertilizer in accordance with directions to be furnished by said commissioner; a copy of all marks upon or affixed to the package, including the brand or trade-mark, the name of the manufacturer and the guaranteed chemical analysis shall accompany the sample or be deposited with the secretary of the grange or the selectmen of the town where the sample is taken. (R. S. c. 27, § 181.)

Stated in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Sec. 210. Analysis and fees.—On receipt of a sample of commercial fertilizer accompanied with:

I. A certified statement signed by the witness that the sample was taken as provided in the preceding section,

II. A copy of the marks on or affixed to the package from which the sample was procured or a signed statement from the secretary of a grange or a selectman that the copy of the marks upon the package has been deposited with him, and

III. An analysis fee of $10 for each sample, the commissioner shall make or

cause to be made an analysis of the fertilizer and shall forthwith report the results of said analysis to the sender. (R. S. c. 27, § 182.)

Sec. 211. Fees returned when analysis deemed public importance.—If, on receipt of the copy of the marks upon the package from which the sample of commercial fertilizer was taken, it shall be found that not more than 1 sample of the same brand has been analyzed as aforesaid within the year, or if the actual analysis shall differ materially from the guaranteed analysis, the said actual analysis shall be deemed of public importance, and the analysis fee shall be returned to the person who sent the sample. If the actual analysis agrees reasonably with the guaranteed analysis and more than 1 sample of the brand from which said sample was taken shall have been examined within the year, the commissioner shall pay said analysis fee to the treasurer of state. (R. S. c. 27, § 183.)

Stated in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Sec. 212. Analysis of commodities.—The commissioner shall have all analyses of commodities, except milk and cream, examined under the inspection laws of which he is the executive, made at the Maine Agricultural Experiment Station. The director of said station shall analyze or cause to be analyzed all samples submitted to him by said commissioner. Said station shall be compensated to cover the expense of said analyses by said commissioner. (R. S. c. 27, § 184.)

Sec. 213. Certificate, presumptive evidence.—Every certificate duly signed and acknowledged by the director of the Maine Agricultural Experiment Station, relating to the collection and analysis of any sample of agricultural or vegetable seed, commercial feeding stuff, commercial fertilizer, drug, food or economic poison, shall be presumptive evidence of the facts therein stated. (R. S. c. 27, § 185. 1951, c. 74, § 10; c. 205, § 13. 1953, c. 308, § 54.)

Sec. 214. Adulteration or misbranding.—No person shall adulterate or misbrand, within the meaning of this chapter, any commercial feeding stuff, commercial fertilizer, drug, food or vinegar, or manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation any article of commercial feeding stuff, commercial fertilizer, drug, food or vinegar in violation of any of the provisions of this chapter. Whoever violates said provisions shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $200 for each subsequent offense. (R. S. c. 27, § 186. 1951, c. 74, § 11; c. 205, § 14. 1953, c. 308, § 55.)

Stated in Armour Fertilizer Works v. Logan, 116 Me. 33, 99 A. 766.

Sec. 215. Exemption from prosecution.—No person shall be prosecuted under the provisions of sections 142 to 145, inclusive, and sections 180 to 214, inclusive, when he can establish proof of purchase, and a guaranty signed by the person residing in the United States from whom the purchase was made, to the effect that the article in question is not adulterated or misbranded within the meaning hereof. (R. S. c. 27, § 187. 1949, c. 349, § 56. 1953, c. 334, § 1.)

Maine Food Law.

Sec. 216. Short title.—Sections 216 to 228, inclusive, shall be known and may be cited as the "Maine food law." (1953, c. 334, § 2.)

Sec. 217. Definitions.—As used in sections 216 to 228, inclusive, the following words and phrases shall have the following meanings:

The term "food" means articles used for food or drink for man or other animals, chewing gum and articles used for components of any such article.

The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of sections 216 to 228, inclusive, that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

The term "immediate container" does not include the package liners but in the case of bottles shall include crowns or caps affixed thereto.

The term "labeling" means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

The term "contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

The provisions of sections 216 to 228, inclusive, regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale; and the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food establishment.

The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U. S. C. 301 et seq.; 52 Stat. 1040 et seq.). (1953, c. 334, § 2.)

Sec. 218. Prohibitions.—The following acts within this state are prohibited:

I. The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.

II. The adulteration or misbranding of any food.

III. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

IV. The dissemination of any false advertisement.

V. The refusal to permit entry or inspection, or to permit the taking of a sample as authorized in section 228.

VI. The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food.

VII. The removal or disposal of a detained or embargoed article in violation of section 221.

VIII. The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect

to a food, if such act is done while such article is held for sale and results in such article being misbranded.

IX. Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of sections 216 to 228, inclusive. (1953, c. 334, § 2.)

See § 220, re penalty.

Sec. 219. Injunctions.—In addition to the remedies hereinafter provided, the commissioner is authorized to apply to any justice of the superior court or any justice of the supreme judicial court in term time or vacation and such justice shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 218. (1953, c. 334, § 2.)

Sec. 220. Penalty.—Any person who violates any of the provisions of section 218 shall be punished by a fine of not more than $100 for the 1st offense and a fine of not more than $200 for each subsequent offense; provided that carriers subject to jurisdiction of the Maine public utilities commission or the interstate commerce commission shall not be subject to the provisions of subsection III of section 218 by reason of their receipt, carriage, holding or delivery of foods in the usual course of business as carriers.

No person shall be subject to the penalties prescribed in the preceding paragraph for having violated the provisions of subsections I or III of section 218 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of sections 216 to 228, inclusive, designating said sections.

No publisher, radio-broadcast licensee or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, shall be liable under the provisions of this section by reason of the dissemination by him of such false advertisement, unless he has refused or neglected on the request of the commissioner to furnish the commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in this state who caused him to disseminate such advertisement. (1953, c. 334, § 2.)

Sec. 221. Articles detained, embargoed and condemned.—Whenever a duly authorized agent of the commissioner finds or has probable cause to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of sections 216 to 228, inclusive, he shall affix to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

When an article detained or embargoed under the provisions of the preceding paragraph has been found by such agent to be adulterated or misbranded, he shall petition the judge of a municipal or superior court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant

of such article or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the commissioner that the article is no longer in violation of the provisions of sections 216 to 228, inclusive, and that the expenses of such supervision have been paid.

Whenever the commissioner or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound or contain any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being declared to be a nuisance, the commissioner or his authorized agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. In the event that any food found on any vehicle of transportation is detained, embargoed, condemned or destroyed under any of the provisions of this section by the commissioner or his authorized agents, the commissioner shall forthwith notify the consignor, consignee and the carrier of the action taken and the amount and kind of goods detained, embargoed, condemned or destroyed. (1953, c. 334, § 2.)

Sec. 222. Notice.—Nothing in sections 216 to 228, inclusive, shall be construed as requiring the commissioner to report for the institution of proceedings under said sections, minor violations of said sections, whenever the commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1953, c. 334, § 2.)

Sec. 223. Regulations.—Whenever in the judgment of the commissioner such action will promote honesty and fair dealing in the interest of consumers, the commissioner shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the commissioner shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act. (1953, c. 334, § 2.)

Sec. 224. Adulteration.—A food shall be deemed to be adulterated:

I.

A. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

B. If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 226; or

C. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance or if it is otherwise unfit for food; or

D. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby

it may have been rendered diseased, unwholesome or injurious to health; or

Cited in State v. Long, 121 Me. 365, 117 A. 303.

E. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse; or

F. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

II.

A. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

B. If any substance has been substituted wholly or in part therefor; or

C. If damage or inferiority has been concealed in any manner; or

D. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

III. If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinuous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin; provided that this subsection shall not apply to any confectionery by reason of its containing less than ½ of 1%, by volume of alcohol derived solely from use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

IV. If it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act. (1953, c. 334, § 2.)

Section cited in Pelletier v. Dupont, 124 Me. 269, 128 A. 186.

Sec. 225. Misbranded food.—A food shall be deemed to be misbranded:

I. If its labeling is false or misleading in any particular.

II. If it is offered for sale under the name of another food.

III. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

IV. If its container is so made, formed or filled as to be misleading.

V. If in package form, unless it bears a label containing:

A. The name and place of business of or sufficient information to identify the manufacturer, packer or distributor;

B. An accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the commissioner.

VI. If any word, statement or other information required by or under authority of sections 216 to 228, inclusive, to appear on the label or labeling, is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

VII. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 223 unless it conforms to such definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food.

VIII. If it purports to be or is represented as:

A. A food for which a standard of quality has been prescribed by regulations as provided by section 223 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standards; or

B. A food for which a standard or standard or fill of container has been prescribed by regulations as provided by section 223, and it falls below the standard or fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

IX. If it is not subject to the provisions of subsection VII, unless it bears labeling clearly giving:

A. The common or usual name of the food, if any there be, and

B. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavoring and colorings, other than those sold as such, may be designated as spices, flavoring and colorings without naming each; provided that to the extent that compliance with the requirements of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner; provided further, that the requirements of this paragraph shall not apply to a carbonated beverage, the ingredients of which have been fully and correctly disclosed in an affidavit subscribed and sworn to by the manufacturer or bottler thereof and filed with the commissioner.

X. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the commissioner determines to be, and by regulation prescribed as necessary in order to fully inform purchasers as to its value for such uses.

XI. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the commissioner. (1953, c. 334, § 2.)

Sec. 226. Addition of certain substances limited.—Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of paragraph B of subsection I of section 224; but when such substance is so required or cannot be avoided, the commissioner shall promulgate regulations limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of paragraph B of subsection I of section 224. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of paragraph A of subsection I of section 224. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent

to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (1953, c. 334, § 2.)

Sec. 227. Powers of commissioner.—The authority to promulgate regulations for the efficient enforcement of sections 216 to 228, inclusive, is vested in the commissioner. The commissioner is authorized to make the regulations promulgated under the provisions of said sections conform in so far as practicable with those promulgated under the federal act.

Hearings authorized or required by the provisions of sections 216 to 228, inclusive, shall be conducted by the commissioner or such officer, agent or employee as the commissioner may designate for the purpose.

Before promulgating any regulations contemplated by section 223 and subsection X of section 225, the commissioner shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the commissioner, which date shall not be prior to 30 days after its promulgation. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the commissioner, to such an extent as he deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing or effective date. (1953, c. 334, § 2.)

Sec. 228. Access to factories, etc.—The commissioner or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce for the purpose:

I. Of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of sections 216 to 228, inclusive, are being violated; and

II. To secure samples or specimens of any food after paying or offering to pay for such sample. It shall be the duty of the commissioner to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of sections 216 to 228, inclusive, is being violated.

III. In the event that any samples or specimens of food are removed from any vehicle of transport, it shall be the duty of the commissioner to notify the consignor, consignee and the carrier of the action taken and of the amount and kind of sample or specimen taken. (1953, c. 334, § 2.)

Maine Seed Law.

Sec. 229. Title.—Sections 229 to 236, inclusive, shall be known and may be cited as the "Maine seed law." (1951, c. 74, § 1.)

Sec. 230. Definitions.—As used in sections 229 to 236, inclusive, the following words and phrases shall have the following meanings:

"Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the meaning of sections 229 to 236, inclusive.

"Agricultural seeds" shall include the seeds of grass, forage, cereal and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural or field seeds, and mixtures of such seeds, except seeds of cereals grown in Maine and sold directly from grower to grower and not labeled as seed.

"Labeling" includes all labels and other written, printed or graphic representa-

tions, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

"Noxious-weed seeds" shall be divided into 2 classes, primary noxious-weed seeds and secondary noxious-weed seeds, as hereinafter defined in this section; provided, however, that the commissioner may, through promulgation of regulations, add to or subtract from the list of seeds included under either definition whenever he finds, after public hearing, that such additions or subtractions are within the respective definitions.

"Person" shall include any individual, partnership, corporation, company, society or association.

"Primary noxious-weed seeds" are the seeds of perennial weeds such as not only reproduce by seed, but also spread by underground roots or stems, and which, when established, are highly destructive and difficult to control by ordinary good cultural practice. In this state they are the seeds of Bindweed (Convolvulus arvensis), Quackgrass (Agropyron repens), Canada Thistle (Cirsium arvense), Nut Grass (Cyperus esculentus) and Wound Wort (Stachys polustris).

"Secondary noxious-weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns or gardens, but can be controlled by good cultural practice. In this state they are the seeds of Dodder (Cuscuta spp.), Horsenettle (Solanum carolinense), Wild Mustard (Brassica spp.), Wild Garlic (Allium vineale), Wild Onion (Allium canadense), Wild Radish (Raphanus raphanistrum), Perennial Sowthistle (Sonchus arvensis), Corncockle (Agrostemma githago), Buckhorn Plantain (Plantago lanceolata) and Yellow Rocket (Barbarea vulgaris).

"Vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this state.

"Weed seeds" shall include the seeds of all plants other than other crop seed and pure seed and shall include noxious-weed seeds. (1951, c. 74, § 1.)

Sec. 231. Label requirements.—Each container of agricultural or vegetable seed which is sold, offered for sale or exposed for sale within the state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

I. For **Agricultural Seeds:**

A. Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of 5% of the whole and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label.

B. Lot number or other lot identification.

C. Origin, if known, of alfalfa, red clover and field corn, except hybrid corn. If the origin is unknown, that fact shall be stated.

D. Percentage by weight of all weed seeds.

E. The name and approximate number of each kind of secondary noxious-weed seed:

1. Per ounce in Agrostis spp., Poa spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallis grass, ryegrass, foxtail millet, alfalfa, red clover, sweet-clovers, lespedezas, smooth brome, crimson clover, Brassica spp., flax, Agropyron spp. and other agricultural seeds of similar size and weight or mixtures within this group; and

2. Per pound in proso, Sudan grass, wheat, oats, rye, barley, buckwheat,

sorghums, vetches and other agricultural seeds of a size and weight similar to or greater than those within this group or any mixtures within this group.

All determinations of noxious-weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations promulgated by the commissioner under the provisions of sections 229 to 236, inclusive.

F. Percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label.

G. Percentage by weight of inert matter.

H. For each named agricultural seed:

1. Percentage of germination, exclusive of hard seed;

2. Percentage of hard seed, if present;

3. "Total germination and hard seed" may be stated as such, if desired;

4. The calendar month and year the test was completed to determine such percentages.

I. Name and address of the person who labeled said seed or who sells, offers or exposes said seed for sale within this state.

II. For **Vegetable Seeds:**

A. Name of kind and variety of seed.

B. For seeds which germinate less than the standard last established by the commissioner:

1. Percentage of germination, exclusive of hard seed;

2. Percentage of hard seed, if present;

3. The calendar month and year the test was completed to determine such percentages;

4. The words "Below Standard" in not less than 8-point type.

C. Name and address of the person who labeled said seed or who sells, offers or exposes said seed for sale within this state. (1951, c. 74, § 1.)

Sec. 232. Prohibitions.—

I. It shall be unlawful for any person to sell, offer for sale or expose for sale any agricultural or vegetable seed within this state:

A. Unless the test to determine the percentage of germination required by section 231 shall have been completed within a 9-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation.

B. Not labeled in accordance with the provisions of sections 229 to 236, inclusive, or having a false or misleading label.

C. Pertaining to which there has been a false or misleading advertisement.

D. Containing primary noxious-weed seeds not in accordance with tolerances and methods of determination prescribed in the rules and regulations promulgated by the commissioner.

E. If noxious-weed seeds are present singularly or collectively in excess of 500 per pound.

II. It shall be unlawful for any person within this state:

A. To detach, alter, deface or destroy any label provided for in sections 229 to 236, inclusive, or the rules and regulations promulgated by the com-

missioner thereunder, or to alter or substitute seed in any manner that may defeat the purposes of said sections.

B. To disseminate any false or misleading advertisement concerning agricultural or vegetable seed in any manner or by any means.

C. To hinder or obstruct in any way any authorized person in the performance of his duties under the provisions of sections 229 to 236, inclusive.

D. To fail to comply with a "stop-sale" order. (1951, c. 74, § 1.)

Sec. 233. Exemptions and penalties.—The provisions of sections 231 and 232 shall not apply to seed or grain not intended for sowing purposes, nor to seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing; provided, however, that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to the provisions of sections 229 to 236, inclusive.

No person shall be subject to the penalties of sections 229 to 236, inclusive, for having sold or offered or exposed for sale in this state any agricultural or vegetable seeds which were incorrectly labeled or represented as to kind, variety, type or origin, which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, or kind and type, and origin if required, and to take such other precautions as may be necessary to insure the identity to be that stated.

Every violation of the provisions of sections 229 to 236, inclusive, shall be deemed to be a misdemeanor and shall be punished by a fine of not more than $100 for the 1st offense and not more than $250 for each subsequent similar offense. (1951, c. 74, § 1.)

Sec. 234. Duties of commissioner.—It shall be the duty of the commissioner, who may act through his authorized agents:

I. To sample, inspect, cause to be analyzed or tested, agricultural and vegetable seeds transported, sold or offered or exposed for sale within this state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural or vegetable seeds are in compliance with the provisions of sections 229 to 236, inclusive, and to notify promptly of any violation, the person who transported, sold, offered or exposed the seed for sale.

II. To prescribe and, after public hearing following due public notice, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, test and examination of agricultural and vegetable seed, and the tolerances to be followed, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of sections 229 to 236, inclusive. (1951, c. 74, § 1.)

Sec. 235. Powers.—For the purpose of carrying out the provisions of sections 229 to 236, inclusive, the commissioner or his duly authorized agents shall have authority:

I. To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the commissioner finds is in violation of any of the provisions of sections 229 to 236, inclusive, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with; provided, however, that no "stop-sale" order shall be issued or attached to any lot of seed without first giving the owner or custodian of such seed an opportunity to comply with the law. The owner or custodian of seeds which have been denied sale by a "stop-sale" order shall have the right to appeal from such order to a court of competent

jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of sections 229 to 236, inclusive.

II. To employ qualified persons under the provisions of the personnel law and to incur such expenses as may be necessary to carry out the provisions of sections 229 to 236, inclusive.

III. To cooperate with the federal government in seed law enforcement. (1951, c. 74, § 1.)

Sec. 236. Seizure.—Any lot of agricultural or vegetable seed not in compliance with the provisions of sections 229 to 236, inclusive, shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the locality in which the seed is located. In the event that the court finds the seed to be in violation of the provisions of sections 229 to 236, inclusive, and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of as provided in sections 229 to 236, inclusive; provided, however, that in no instance shall the court order such disposition of seed without first having given the claimant an opportunity to apply to the court for the release of said seed or permission to process or relabel it to bring it into compliance with the provisions of sections 229 to 236, inclusive. (1951, c. 74, § 1.)

Maine Economic Poisons Law.

Sec. 237. Title.—Sections 237 to 247, inclusive, shall be known and may be cited as the "Maine economic poisons law." (1951, c. 205, § 1.)

Sec. 238. Definitions.—As used in sections 237 to 247, inclusive, the following words and phrases shall have the following meanings:

"Active ingredient" means an ingredient which will prevent, destroy, repel or mitigate insects, fungi, rodents, weeds or other pests.

"Adulterated" shall apply to economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

"Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

"Economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest.

"Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

"Inert ingredient" means an ingredient which is not an active ingredient.

"Ingredient statement" means either a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients in the economic poison, which ingredient statement must be used if the preparation is highly toxic to man; or a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients if there are any in the economic poison; and in addition, in case the economic poison

contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, as spiders, mites, ticks, centipedes and wood lice.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

"Label" means the written, printed or graphic matter on, or attached to, the economic poison or the immediate container thereof, and the outside container or wrapper of the retail package of the economic poison.

"Labeling" means all labels and other written, printed or graphic matter upon the economic poison or any of its containers or wrappers accompanying the economic poison at any time to which reference is made on the label or in literature accompanying the economic poison, except when accurate, non-misleading reference is made to current official publications of the federal government, state experiment stations or any other similar federal or state institutions or official agencies authorized by law to conduct research in the field of economic poisons.

"Misbranded" shall apply to any economic poison if:

I. Its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

II. It is an imitation of or is offered for sale under the name of another economic poison;

III. The labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

IV. The labeling bears any reference to registration under the provisions of this chapter;

V. The label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;

VI. The label of the retail package which is presented or displayed under customary conditions of purchase does not bear an ingredient statement, unless the outside container or wrapper is of such material that the ingredient statement on the immediate container can be clearly read;

VII. Any required word, statement or other information is not prominently placed on the label with such conspicuousness as compared with other words, statements, designs or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

VIII. In the case of an insecticide, rodenticide, fungicide or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison.

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vetebrate animal which the commissioner shall declare to be a pest.

"Weed" means any plant which grows where not wanted. (1951, c. 205, § 1.)

Sec. 239. Registration.—The registrant shall file with the commissioner a statement including the name and address of the registrant and the name and

address of the person whose name will appear on the label if other than the registrant; the name of the economic poison; a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including directions for use; and, if requested by the commissioner, a full description of the tests made and the results thereof upon which the claims are based.

Whenever he deems it necessary, the commissioner may require the submission of the complete formula of any economic poison. If it appears to the commissioner that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, he shall register the article. (1951, c. 205, § 1.)

Sec. 240. Corrections before registration; registration under protest.—If it does not appear to the commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall so notify the registrant and afford him an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the article be registered, the commissioner shall register the article, under protest, and such registration shall be accompanied by a warning, in writing, to the registrant of the apparent failure of the article to comply with the provisions of this chapter. In order to protect the public, the commissioner, on his own motion, may at any time cancel the registration of an economic poison and, in lieu thereof, issue a registration under protest in accordance with the foregoing procedure. In no event shall registration of an article, whether or not protested, be construed as a defense for the commission of any offense prohibited under the provisions of this chapter. (1951, c. 205, § 1.)

Sec. 241. Registration; exception, renewal, fees.—Every economic poison which is distributed, sold or offered for sale within this state, or delivered for transportation or transported in intrastate or interstate commerce, shall be registered in the office of the commissioner; provided, however, that registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

The registrant shall pay to the commissioner an annual registration fee of $5 for each economic poison registered. Such registration shall expire on December 31 and shall be renewed annually. (1951, c. 205, § 1.)

Sec. 242. Powers of commissioner; rules and regulations.—The commissioner is authorized to make necessary rules and regulations for carrying out the provisions of sections 237 to 247, inclusive, including rules and regulations providing for the collection and examination of samples of economic poisons; and, after opportunity for a hearing, to declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles or substances; to determine whether economic poisons are highly toxic to man; to determine standards of coloring or discoloring for economic poisons; and to subject economic poisons to all the requirements of this chapter. (1951, c. 205, § 1.)

Sec. 243. Prohibitions.—It shall be unlawful for any person to distribute, sell or offer for sale within this state or deliver for transportation or transport in intrastate or interstate commerce:

I. Any economic poison which has not been registered pursuant to the provisions of sections 237 to 247, inclusive, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the com-

position of an economic poison differs from its composition as represented in connection with its registration; provided, however, that in the discretion of the commissioner a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product;

II. Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the name and address of the manufacturer, registrant or person for whom manufactured; the name, brand or trade-mark under which said article is sold; and the net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit;

III. Any economic poison which contains any substance in quantities highly toxic to man as determined by the commissioner, unless the label shall bear, in addition to any other required matter: the skull and crossbones; the word "POISON" in red, prominently displayed on a background of distinctly contrasting color; and a statement of an antidote for the economic poison;

IV. The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate or barium fluosilicate, unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder economic poison which the commissioner, after investigation and public hearing, by regulation requires to be colored or discolored, unless it has been so colored or discolored; provided, however, that the commissioner may exempt from such coloring or discoloring any economic poison intended for a particular use or uses when he deems the same is not necessary for the protection of the public health;

V. Any economic poison which is adulterated or misbranded.

It shall be unlawful for any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for herein or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of sections 237 to 247, inclusive.

It shall be unlawful for any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state, or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired under the provisions of sections 237 to 247, inclusive. (1951, c. 205, § 1.)

Sec. 244. Exemptions.—The penalties provided for violations of sections 237 to 247, inclusive, shall not apply to:

I. Any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the commissioner or his duly authorized agent to copy all records showing the transactions in and movement of the articles;

II. Public officials of this state and the federal government engaged in the performance of their official duties;

III. The manufacturer or shipper of an economic poison for experimental use only by or under supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons, or by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "FOR EXPERIMENTAL USE ONLY

—NOT TO BE SOLD," together with the manufacturer's name and address; provided, however, that if a written permit has been obtained from the commissioner, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

IV. The manufacturer or shipper of an economic poison intended solely for export to a foreign country, when the same is prepared or packed according to the specifications or directions of the purchaser. If not so exported, such penalties shall apply. (1951, c. 205, § 1.)

Sec. 245. Penalties.—Any person violating any of the provisions of sections 237 to 247, inclusive, shall be punished by a fine of not more than $100 for the 1st offense and for 2nd offense within a period of 3 years by a fine of not less than $100 nor more than $500.

Notwithstanding any other provision of this section, any person, with intent to defraud, who uses or reveals information relative to formulas or products acquired under authority hereof shall be punished by a fine of not more than $100, or by imprisonment for not more than 1 year, or by both such fine and imprisonment. (1951, c. 205, § 1.)

Sec. 246. Seizure; forfeiture.—Any economic poison that is distributed, sold, offered for sale within this state, or delivered for transportation or transported in intrastate or interstate commerce, not in compliance with the provisions of sections 237 to 247, inclusive, shall be subject to seizure on complaint of the commissioner to any court of competent jurisdiction in the locality where it may be found. If the court finds the economic poison to be in violation of the provisions of sections 237 to 247, inclusive, and orders its condemnation, it shall be denatured, processed, relabeled, destroyed or otherwise disposed of as provided in sections 237 to 247, inclusive; provided, however, that in no instance shall the court order such disposition of economic poisons without first having given the claimant an opportunity to apply to the court for the release of said economic poisons or permission to process or relabel them to bring them into compliance with the provisions of sections 237 to 247, inclusive. (1951, c. 205, § 1.)

Sec. 247. Cooperation with federal government and other states.—In order to avoid confusion endangering the public health resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons; to avoid increased costs to the people of this state due to the necessity of complying with diverse requirements in the manufacture and sale of such poisons; and to secure uniformity between the requirements of the several states and the federal government relating to such poisons, the commissioner is authorized to cooperate with and, after due public hearing, to adopt such rules and regulations, applicable to and in conformity with the primary standards established, as have been or may be prescribed by the federal government or any other state, or agency thereof, with respect to economic poisons. (1951, c. 205, § 1.)

Slaughterhouses and Meat Processing Plants.

Sec. 248. Licenses for slaughterhouses and meat processing plants; carcasses stamped.—No person, firm, partnership or corporation shall operate a slaughterhouse, abattoir or other place or establishment where animals are slaughtered or where meat or meat products are prepared or processed for food within the state unless such person, firm, partnership or corporation is licensed by the commissioner. An application for a license shall be made upon a form prescribed by the commissioner each year for the license commencing upon the 1st day of August. With the application, there shall be paid to the commissioner a license fee of $5. Each such license shall cover 1 group of buildings

constituting a slaughterhouse or meat or meat products processing plant in one location. Said license shall run for 1 year from the 1st day of August in each year and, unless sooner revoked as herein provided, shall be renewed annually thereafter.

All carcasses of meat from animals that are slaughtered in a licensed slaughterhouse in Maine and which are to be used for human consumption shall be stamped with the license number issued by the commissioner to the licensed establishment, type and design of stamp to be approved by the commissioner. The meat shall be stamped on all parts that are to be portioned in wholesale cuts and the edible meat by-products shall be so stamped. The provisions of this paragraph shall not apply to meat or meat by-products bearing a federal stamp. (R. S. c. 27, § 188. 1951, c. 219.)

Sec. 249. Revocation and suspension of license; appeals; hearing.—The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 248 to 254, inclusive, whenever it is determined by himself or any of his deputies that any of said provisions have been violated. Any person, firm, partnership, corporation, association or society whose license has been revoked or suspended shall discontinue slaughtering, butchering, operating and processing until the provisions of said sections have been complied with and a new license issued or the suspension removed. The commissioner may revoke or suspend such license temporarily until there is a compliance with the provisions of sections 248 to 254, inclusive, as hereinafter provided, or permanently for the unexpired period of such license. Before revoking or suspending any license, the commissioner shall give written notice to the licensee affected stating that he contemplates the revocation or suspension of the same and giving his reasons therefor; such notice shall appoint a time for hearing before said commissioner. On the date of hearing the licensee may present such evidence to the commissioner as he deems fit, and after hearing all the testimony, the said commissioner shall decide as to whether the license shall be revoked or not. Any licensee who is aggrieved by the decision of the commissioner may within 10 days thereafter appeal to any justice of the superior court, by presenting to him a petition therefor, in term time or vacation. Such justice shall fix a time and place for hearing, which may be in term time or vacation, and cause notice thereof to be given to the said commissioner; and after hearing, such justice may affirm or reverse the decision of said commissioner and the decision of such justice shall be final. Pending judgment of such justice, the decision of such commissioner shall remain in full force and effect. The commissioner shall, within 3 days after notice of such appeal, forward to such justice a certified copy of the proceedings. (R. S. c. 27, § 189.)

Sec. 250. Definition.—The term "slaughterhouse" shall be held to include any establishment wherein animals or fowl are slaughtered for human consumption; or where meat or meat products for human food are processed or prepared; provided, however, that the provision of sections 248 to 254, inclusive, requiring a license shall not apply to any bona fide farmer who butchers, or has butchered for him, his own domestic animals or fowl on his farm or elsewhere for consumption or sale, as incidental to and in the general conduct of his business of farming; nor shall it apply to persons who raise and kill or have killed for them their own animals and fowl on their own premises or elsewhere for their own consumption or sale. (R. S. c. 27, § 190.)

Sec. 251. Inspection; rules.—The commissioner shall by adequate inspection see that animals are slaughtered, and licensed slaughterhouses are constructed, maintained and operated in a manner satisfactorily sanitary to protect meat and meat products from contamination and adulteration according to the laws of this state. He shall make uniform rules and regulations for carrying out the provi-

sions of sections 248 to 254, inclusive, and shall fix standards of quality for the meat and meat products prepared in licensed slaughterhouses and meat processing plants and for the sanitation of said slaughterhouses and meat processing plants. (R. S. c. 27, § 191.)

Sec. 252. Inspectors and authority. — The commissioner shall have authority to employ inspectors in sufficient numbers so that adequate inspection can be performed. The compensation of the inspectors shall be fixed by said commissioner, and it shall be the duty of said inspectors to inspect all slaughterhouses and processing plants where meat and meat products are manufactured and prepared for food; and for this purpose the commissioner and all of his inspectors and agents shall have free access, ingress and egress at all reasonable hours to any slaughterhouse or meat processing plant. (R. S. c. 27, § 192.)

Sec. 253. Disposition of fees.—All license fees and all money received under the provisions of sections 248 to 254, inclusive, and all fines which shall be collected in any proceeding or proceedings to enforce the provisions of said sections shall be paid over to the commissioner or his agent, and by him deposited with the treasurer of state to be credited to the general fund. (R. S. c. 27, § 193. 1945, c. 297, § 11.)

Sec. 254. Penalty.—Any person, firm, partnership, corporation, association or society who shall conduct, operate or manage a slaughterhouse or slaughter animals in a slaughterhouse in this state without the license provided for in section 248, or who shall violate any of the provisions of sections 248 to 254, inclusive, or neglect or refuse to comply with any of the provisions thereof, shall be punished by a fine of not more than $100 for the first offense, and not more than $200 for each subsequent offense.

Any bona fide farmer or other person not operating a slaughterhouse as defined in section 250, who sells, offers for sale, keeps with intent to sell, transports or gives away any carcass or part thereof, or any meat product, for human food that is not sound, healthful, wholesome and fit for human food according to the standards provided for in sections 248 to 254, inclusive, shall be subject to the same penalties as provided for in the above paragraph.

Whoever hinders, obstructs or in any way interferes with the commissioner or his agents or assistants in the performance of his or their duty, by refusing entrance to any slaughterhouse or meat processing plant or any place where he is authorized to enter, or access to any place, or by refusing to deliver to him or his agents or assistants a sample of meat or meat products if the value thereof is tendered, or in any other manner hinders, obstructs or interferes with said commissioner or his agents or assistants in the performance of any of said duties, shall be punished by a fine of $100 for the first offense, and $200 for each subsequent offense. (R. S. c. 27, § 194.)

Horse Meat.

Sec. 255. Sale of horse meat.—No person, firm, corporation or officer, agent or employee thereof within the state shall transport, receive for transportation, sell or offer for sale or distribution any equine meat or food products thereof unless said equine meat is plainly and conspicuously labeled, marked, branded and tagged "horse meat" or "horse-meat products"; or shall serve, expose or offer for sale or distribution either in any public place or elsewhere, any equine meat or products containing equine meat unless such equine meat is conspicuously branded and labeled and a notice containing the words "horse meat and horse-meat products sold here" is conspicuously displayed in said place of business to the end that the purchaser may have knowledge of the facts of the article purchased.

Whenever any person, firm or corporation within the state sells, ships or delivers to a purchaser within the state any equine meat or food products thereof, such person, firm or corporation shall deliver to the purchaser an invoice or bill showing thereon the character of such meat. The provisions of this paragraph shall not apply to sales made at retail.

The commissioner shall by adequate inspection see that the requirements of this section are carried out.

Any person, firm or corporation who shall violate any of the provisions of this section shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $200 for each subsequent offense, and the municipal and superior courts shall have concurrent jurisdiction of the offense. (R. S. c. 27, § 195.)

Packing of Food.

Cross Reference.—See § 4, re hearings after violations.

Sec. 256. Packing of food in tin or glass; permit; fee; inspection.—Any person intending to pack food in tin or glass within this state may annually file with the commissioner an application for a permit. Said application shall state the location of the factory, the kind of food to be packed, the name of the packer and the date on which it is expected that packing will begin. Within 60 days after the filing of such application for permit, the commissioner shall, upon receipt of $100, issue to such applicant a permit for packing said food in conformity with the requirements of this chapter for the calendar year. Such packer shall also pay monthly, not later than the 10th day of each month, the cost of maintaining the inspection of the food packed during the previous month. The $100 paid by a person for a permit, as aforesaid, shall be credited to him at the close of the calendar year as a payment toward the cost of inspecting his product. Said commissioner may, however, cancel any permit whenever the provisions of law in this state relating to the packing of food in tin or glass have not been complied with. (R. S. c. 27, § 196.)

Sec. 257. Food packed in conformity with law; false marking.—The commissioner shall, by adequate inspection, see that the food packed hereunder is in conformity with the requirements of this chapter; and he shall authorize the persons packing a food in conformity herewith to mark the container of said food with a statement certifying that the food contained therein was packed, inspected and passed under the provisions of sections 216 to 228, inclusive. Whoever shall falsely mark any container as having been packed in conformity with the requirements of this chapter shall be punished by a fine of not more than $500 for each container thus falsely marked. (R. S. c. 27, § 197.)

Packing of Sardines.

Cross References.—See § 4, re hearings after violations; § 267, re penalty.

Sec. 258. Packers licensed.—No person, firm, corporation, association or society shall pack sardines within the state for sale without having first filed with the commissioner an application for license, accompanied with a fee of $50, upon receipt of which application the commissioner shall issue to the person, firm, corporation, association or society making such application a license to pack sardines as hereinafter provided. Each such license shall cover 1 group of buildings constituting a packing plant in one location. Said license shall run from April 15th to December 1st of each year, unless sooner revoked as herein provided and shall be renewed annually thereafter. (R. S. c. 27, § 198. 1945, c. 66, § 2. 1947, c. 42, § 1. 1949, c. 248, § 1. 1953, c. 171, § 1.)

See c. 16, §§ 260-269, re sardine tax; c. 16, § 265, re delegation of powers by state tax assessor to commissioner of agriculture.

Sec. 259. Repeal or revocation of license; appeal.—The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 258 to 267, inclusive, whenever it is determined by himself or any of his deputies that any of the provisions of said sections have been violated. Any person, firm, corporation, association or society whose license has been so revoked or suspended shall discontinue the packing of sardines until the provisions of said sections have been complied with and a new license issued or the suspension removed. The commissioner may revoke or suspend such license temporarily until there is a compliance with the provisions of said sections as hereinafter provided, or permanently for the unexpired period of such license. Before revoking or suspending any license, the commissioner shall give written notice to the licensee affected stating that he contemplates the revocation or suspension of the same and giving his reasons therefor; such notice shall appoint a time of hearing before said commissioner. On the date of hearing, the licensee may present such evidence to the said commissioner as he deems fit and after hearing all the testimony, the said commissioner shall decide whether the license shall be revoked or not. Any licensee who feels aggrieved or dissatisfied with the decision of the commissioner may appeal from said decision within 10 days to the superior court. (R. S. c. 27, § 199.)

Sec. 260. "Sardine" defined.—For the purposes of sections 258 to 267, inclusive, the term "sardine" shall be held to include any canned, clupeoid fish, being the fish commonly called herring, particularly the clupea harengus. (R. S. c. 27, § 200. 1947, c. 248, § 1. 1949, c. 270.)

Sec. 261. Inspection; conformity with food and drug acts; branding of cans.—The commissioner shall by adequate inspection see that sardines are packed in conformity with the requirements of the federal food and drug act and the laws of this state, and the provisions of sections 258 to 267, inclusive. He shall make uniform rules and regulations for carrying out the provisions of said sections and shall fix standards of quality when such standards are not fixed by law; and he shall authorize the persons packing sardines in conformity with the requirements of said sections to mark the container of said sardines with a statement certifying that the food contained therein was packed, inspected and passed under the provisions of sections 216 to 228, inclusive. Any sardines falsely marked shall be deemed to be misbranded, and any person, firm, corporation, association or society who shall misbrand or falsely mark any container of sardines or sell or offer for sale such misbranded containers shall be punished by a fine of not more than $500 for each container thus falsely marked.

The commissioner shall select and employ an assistant chief of the division of inspection for sardines. He shall also employ subordinate inspectors, sufficient in numbers, so that adequate inspection can be performed; and it shall be the duty of said inspectors to make adequate and uniform and impartial inspection of all the places, shops and factories in the state, wherever sardines are packed for sale, and for this purpose such inspectors shall have free access, ingress and egress at all reasonable hours to any sardine packing plant, may open any case or container and may, upon tendering the market price, take samples therefrom.

The assistant chief of the division of inspection for sardines shall vigilantly enforce all the provisions of sections 258 to 267, inclusive, and all provisions of the law and all regulations relating to sardine packing.

During the packing season, he shall not be assigned to perform or perform any inspection work, other than that pertaining to the packing of sardines. (R. S. c. 27, § 201. 1951, c. 266, § 37. 1953, c. 171, § 2.)

Sec. 262. Fees; disposition.—Each packer shall pay monthly, not later than the 10th day of each month, 3¢ per case on the amount of sardines packed during the previous month, toward the cost of maintaining the inspection provided for

in section 261 and as a part of the fee for obtaining and retaining his license. All license fees and all money received under the provisions of sections 258 to 267, inclusive, by the commissioner shall be paid by him to the treasurer of state and the same are hereby appropriated for carrying out the provisions of sections 258 to 267, inclusive, and for no other purpose. (R. S. c. 27, § 202. 1945, c. 78, § 1. 1953, c. 171, § 3.)

Sec. 263. Standards of contents of cans; misbranding. — The minimum count of fish per ¼ size keyless can, whether packed in oil, mustard sauce, tomato sauce or other packing medium, shall be 4 fish, and in all such cans the heads of all fish shall be removed by cutting. No broken fish shall be packed. The minimum quantity of oil shall be not less than 4 pounds per case of 100 ¼ size cans. The minimum count of fish for ¾ size cans shall be 4 fish, and the minimum quantity of mustard or tomato sauce shall be not less than 6 pounds per case of 48 ¾ size cans. For all ¼ size cans of sardines packed with tomato or mustard sauce, there shall be not less than 6 pounds of tomato or mustard sauce per case of 100 ¼ size cans. The fish in the cans shall be free from defects, no detached heads or tails present.

The minimum count of fish per ¼ size key can, whether packed in oil, mustard sauce, tomato sauce or other packing medium, shall be 5 fish. In all key cans the heads of all fish shall be removed by cutting, and in all key cans packed with less than 8 fish the tails shall be removed by cutting or shall be neatly trimmed. No broken fish shall be packed. The minimum quantity of oil shall be not less than 5 pounds per case of 100 ¼ size key cans. The minimum quantity of mustard or tomato sauce shall be not less than 6 pounds per case of 100 ¼ size key cans. The minimum count for ¾ size cans shall be 4 fish and the minimum quantity of mustard or tomato sauce shall be not less than 6 pounds per case of 48 ¾ size cans. The fish in the cans shall be free from defects, no detached heads or tails present.

For "fancy grade" sardines, the minimum count of fish per ¼ size can shall be 5 fish. All fish shall have heads removed by cutting, and in all cans packed with less than 8 fish the tails shall be removed by cutting or shall be neatly trimmed. The minimum quantity of oil shall be not less than 5½ pounds per case of 100 ¼ size cans. The fish in the cans shall be free from defects, no detached heads or tails present.

In packing all grades of sardines, the quality of the oil shall be for cottonseed a "prime winter yellow" sweet in flavor and odor and shall not contain more than 1/10 of 1% of free fatty acid, or a pure unadulterated soya-bean oil, peanut oil, olive oil or any vegetable oil not below the grade of "prime winter yellow" cottonseed oil. The quality of the tomato sauce shall be of not less than 1.06 specific gravity.

The minimum count of fish, which may be any size, per No. 1 oval can, commonly known as a 1 pound or 15-ounce oval can, whether packed in tomato sauce, mustard sauce or other packing medium, shall be not less than 4 fish. The heads of all fish shall be removed by cutting. No broken fish shall be placed in cans. The minimum quantity of mustard sauce, tomato sauce or other packing medium shall be not less than 2 ounces per can. The quality of tomato sauce shall be not less than 1.06 specific gravity.

The minimum count of fish per 8-ounce oval can, whether packed in tomato sauce, mustard sauce or other packing medium, shall be not less than 4 fish. The heads of all fish shall be removed by cutting. No broken fish shall be packed. The minimum quantity of mustard sauce, tomato sauce or other packing medium shall be not less than 1 ounce per can. The quality of tomato sauce shall be not less than 1.06 specific gravity. Sardines thus packed shall be plainly and conspicuously marked "MAINE SARDINES."

Provided, however, that less than the minimum count of fish per can as above

specified may be packed if the cases in which they are contained and each can in said cases are plainly and conspicuously marked with the word "herring" but the word "sardine" nor "sardines" shall not appear either on the case or on the cans that contain less than the minimum count of fish per can as above specified. It is further provided that less than the minimum quantity of oil or mustard sauce or tomato sauce as above specified may be packed if the cases in which they are contained and each can in said cases are plainly and conspicuously marked with a legend indicating that the contents of the cans are not in accord with the standard of quality established in this section. Such cases and cans so marked as "herring" and not marked "sardine" or "sardines" and such cans as contain less than the minimum quantity of oil or mustard sauce or tomato sauce as above specified and marked in accord with the fact shall not be deemed to be misbranded. (R. S. c. 27, § 203. 1945, c. 78, § 2; c. 376. 1949, c. 248, §§ 2, 3. 1951, c. 63, §§ 1, 2. 1953, c. 171, §§ 4, 5, 6, 7.)

Cited in State v. Vogl, 149 Me. 99, 99 A. (2d) 66.

Sec. 264. "Cutting" and "broken fish" defined.—For the purpose of this chapter, the term "cutting" shall be held to mean removing the heads of the fish packed, either before or after flaking and steaming, by some implement or device operated by hand or by a machine or mechanical device operated by power. The operation of "cutting" does not mean the practice of beheading the fish by "snipping" or "pinching" the heads off the fish with the fingers.

The term "broken fish" shall be held to include fish that are shattered, belly blown, or blown or broken from any cause. No fish is free from defects, within the meaning of section 263, which is broken, decomposed, contains foreign material, is unfit for food or is not in good condition from any cause. (1945, c. 78, § 3. 1953, c. 171, § 8.)

Sec. 265. Cans hermetically sealed and enamel lined.—On all cans used for packing sardines there shall be used a compound lined gasket or other adequate gasket as will hermetically seal the container. All cans used for packing sardines shall be enamel lined. (R. S. c. 27, § 204.)

Sec. 266. Sale or packing of herring. — It shall be unlawful for any person, firm or corporation to sell, offer for sale or transfer in any manner herring taken in the coastal waters of Maine, which are less than 7 inches long measured from one extreme to another, to any person, firm or corporation, other than for human consumption or bait purposes, unless such herring are not desirable for processing for human consumption; provided, however, there is a buyer of herring for processing for human consumption within a reasonable distance of the place where such herring are caught and available at the time they are offered for sale, ready and willing to purchase at a price acceptable to the seller; and no person, firm or corporation shall can, pack or otherwise process such herring except for human consumption; and provided further, that where herring under the size of 7 inches in length are mixed with larger herring and the herring of prohibited size represent less than 25% by weight of the total catch, sale or purchase, the foregoing provisions shall not be applicable. (1949, c. 273.)

Sec. 267. Penalty.—Any person, firm, corporation, association or society who shall pack sardines in the state for sale without the license provided for in section 258, or who shall violate any of the provisions of sections 258 to 267, inclusive, or neglect or refuse to comply with any of the provisions required in said sections or in any way violate any of their provisions shall be punished by a fine of $500 and imprisonment for not more than 6 months for each and every offense. (R. S. c. 27, § 205.)

Packing of Apples.

Cross Reference.—See § 4, re hearings after violations.

Sec. 268. Standard box for apples.—The standard box for apples shall have the following inside dimensions when measured without distention of parts: length, 17 inches; width, 13 inches; height, 11 inches; provided, however, that a box having a capacity of 2,431 cubic inches shall be a lawful box. (R. S. c. 27, § 206. 1953, c. 206, § 1.)

Sec. 269. Standard grades established.—The grades for apples recommended by the United States Department of Agriculture and recognized in the central markets of the country as government grades are made the official state grades for apples of the state presented for intrastate or interstate shipment; and all containers as presented for shipment whether by truck, train or boat shall have written, stamped or attached thereon the provisions required in section 270. (R. S. c. 27, § 208. 1949, c. 312, § 1. 1953, c. 206, § 3.)

Cited in Look v. Watson, 118 Me. 339, 108 A. 106.

Sec. 270. Marks required on outside of package; sale in bulk or in open packages.—Every closed package or container of apples, which is packed, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the name and address of the owner or shipper of the apples at the time of packing, the name of the variety, the class or grade of the apples contained therein and the minimum size of the fruit in the packages, together with the minimum volume or the numerical count of the apples in the container; and if the apples were grown in Maine, that fact shall be plainly designated.

All apples sold, offered, exposed or advertised for sale at retail in bulk or in open packages or containers shall be plainly and conspicuously marked and identified as to variety and grade. (R. S. c. 27, § 209. 1949, c. 312, § 2. 1953, c. 206, § 4.)

Sec. 271. Misbranded or adulterated apples not packed.—No person shall, within this state, pack, sell, distribute, transport, offer or expose for sale, distribution or transportation apples which are adulterated or misbranded within the meaning of section 272. (R. S. c. 27, § 210.)

Section not violated if apples graded by Maine standard.—If apples, when packed, were graded according to the Maine standard, this section is not violated, even if that standard might be below the local standard in a foreign market. Look v. Watson, 118 Me. 339, 108 A. 106.

Sec. 272. Terms "adulterated" and "misbranded" defined.—For the purpose of sections 268 to 276, inclusive, apples packed in a closed package or container or sold at retail in bulk or in an open package or container shall be deemed to be adulterated if their measure, quality, grade or purity do not conform in each particular to the claims made upon the affixed guaranty, and shall be deemed to be misbranded:

I. If the package or container, whether open or closed, fails to bear all statements required by section 270; (1949, c. 312, § 3)

II. If the package or container, whether open or closed, bears any statement, design or device regarding such article or its contents which shall be false or misleading in any particular or is falsely branded in any particular. [1949, c. 312, § 3]. (R. S. c. 27, § 211. 1949, c. 312, § 3.)

Sec. 273. Sale of unclassified apples.—No person, firm or corporation shall within this state sell, distribute, transport, offer or expose for sale, distribu-

tion or transportation any apples that were grown outside of the state, which do not conform to the apple grades established in section 269; provided, however, nothing in this section shall apply to any person, firm or corporation supplying apples consigned to a processing plant for use therein. The commissioner shall diligently enforce the provisions of this section and in person or by deputy shall have free access, ingress and egress at all reasonable hours to any place or any building wherein apples are stored, transported, sold, offered or exposed for sale or for transportation. He may also in person or by deputy upon tendering the market price take samples of apples therefrom. (R. S. c. 27, § 212.)

Sec. 274. Access to places where apples packed.—The commissioner, in person or by deputy, shall have free access, ingress and egress at all reasonable hours to any place or any building wherein apples are packed, stored, transported, sold, offered or exposed for sale or for transportation. He may also, in person or by deputy, open any box or other container and may, upon tendering the market price, take samples therefrom. (R. S. c. 27, § 213. 1953, c. 206, § 5.)

Sec. 275. Penalty.—Whoever adulterates or misbrands apples within the meaning of section 272, or whoever packs, sells, distributes, transports, offers or exposes for sale, distribution or transportation apples in violation of any provision of sections 268 to 276, inclusive, shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $200 for each subsequent offense. (R. S. c. 27, § 214.)

Sec. 276. Guaranty as bar to prosecution.—No person shall be prosecuted under the provisions of the 8 preceding sections if he can establish a guaranty, signed by the person from whom he received any such article, to the effect that the same is not adulterated or misbranded within the meaning of section 272. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of the 8 preceding sections. (R. S. c. 27, § 215. 1953, c. 206, § 6.)

Beverages.

Cross Reference.—See § 4, re hearings after violations.

Sec. 277. Manufacturers and bottlers for sale at wholesale of nonalcoholic beverages licensed; fee.—No person, firm or corporation within this state shall manufacture or bottle for sale at wholesale any drink product or other nonalcoholic beverage without first having filed with the commissioner an application for license accompanied with a fee of $15 and having been issued such license. No person, firm or corporation manufacturing drink product or other nonalcoholic beverage outside this state for retail sale within this state shall sell or offer for sale such drink product without first having filed with the commissioner an application for license accompanied with a fee of $15 and having been issued such license. Upon receipt of such application, containing information required by the commissioner and upon being satisfied that the applicant has complied with sections 277 to 285, inclusive, the commissioner shall issue to the applicant a license to manufacture and sell soft drinks or other nonalcoholic beverages as hereinafter provided. Said license shall run for the current year until the 30th day of June following the date of the application, on which date it shall terminate unless sooner revoked as herein provided; and it shall be renewed annually thereafter. No person, firm or corporation within this state shall sell or offer for sale any drink product or nonalcoholic beverage at retail unless this drink product or nonalcoholic beverage has been protected by registration and a license fee paid therefor. Notwithstanding anything herein contained to the con-

trary, the provisions of this section shall not apply to out-of-state manufacturers, bottlers or distributors of nonalcoholic cereal beverages or nonalcoholic fruit juices nor to any person within this state with respect to the manufacture of sweet cider. (R. S. c. 27, § 216. 1953, c. 136.)

Cross reference.—See § 280, re definition of "drink product."

License not contract, property, etc.—In accepting a license and acting under it, a bottler consents to all conditions imposed thereby. He takes it subject to such conditions as the legislature has seen fit to impose. Such license is in no sense a contract, property, immunity or privilege. Appeal of Bornstein, 126 Me. 532, 140 A. 194.

Requirements of § 281 read into license.—See notes to § 281.

Sec. 278. Revocation or suspension of licenses; rules and regulations.—The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 277 to 284, inclusive, whenever it is determined by himself or any of his deputies or other properly qualified official that any of the provisions of said sections have been violated. Any person, firm or corporation whose license has been so revoked or suspended shall discontinue the manufacture and sale within the state of soft drinks and other nonalcoholic beverages until the provisions of said sections have been complied with and a new license issued or the suspension removed. The commissioner may revoke or suspend such license temporarily until there is a compliance with the provisions of said sections as hereinafter provided or permanently for the unexpired period of such license. The commissioner is given the right to make such rules and regulations as he may deem necessary for the enforcement of the provisions of said sections. (R. S. c. 27, § 217.)

Applied in Appeal of Bornstein, 126 Me. 532, 140 A. 194.

Sec. 279. Notice prior to revoking license; procedure; appeal.—Before revoking or suspending any license, the commissioner shall give written notice to the licensee affected stating that he contemplates the revocation or suspension of the same and giving his reasons therefor. Such notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of the hearing the licensee may, by himself or counsel, present such evidence to the said commissioner as he deems fit and after hearing all the testimony the said commissioner shall decide the question in such manner as to him appears just and right. Any licensee who feels aggrieved or dissatisfied with the decision of the said commissioner may appeal from said decision within 10 days to the superior court in the county where the licensee resides, or in the case of a nonresident, to the superior court in the county of Kennebec. (R. S. c. 27, § 218.)

Applied in Appeal of Bornstein, 126 Me. 532, 140 A. 194.

Sec. 280. "Drink product" defined. — For the purpose of this chapter the term "drink product" as used herein shall be held to include all nonalcoholic beverages, nonalcoholic cereal beverages, nonalcoholic fruit juices and carbonated beverages, except sweet cider. (R. S. c. 27, § 219.)

Sec. 281. Labeling of bottles where artificial coloring used; kind of coloring matter permitted; prohibited ingredients.—Whenever artificial colors or flavors are used in the manufacture of drink products or other nonalcoholic beverages, the bottle or other container shall be distinctly labeled or crowned "Artificially colored and flavored". Whenever artificial coal-tar colors are used, nothing but the certified colors as approved by the United States bureau of chemistry shall be allowed. All nonalcoholic ciders, nonalcoholic fruitades, nonalcoholic fruit juices or other similar drinks that are artificially colored or

flavored shall be so labeled or crowned. All drink products and other nonalcoholic beverages sold in bulk or from open containers or receptacles that contain artificial coloring or artificial flavors of any character shall be so labeled and said labels shall be prominently displayed on all stands, booths or other places where said drink product or other nonalcoholic beverages are sold or dispensed. The use of saccharine, salicylic acid, sulphites or other artificial or nonnutritive sweetening agents in the manufacture of drink products and other nonalcoholic beverages is prohibited. Except that the commissioner shall have the power to issue a special permit and promulgate regulations for the manufacture, labeling and sale of special dietary beverages containing such artificial or nonnutritive sweetening agents. (R. S. c. 27, § 220. 1953, c. 217.)

The requirements of this section as to labeling or crowning bottles and containers must be read into the license as a condition to which the licensee consented. Appeal of Bornstein, 126 Me. 532, 140 A. 194.

Sec. 282. Manufacturing plants well lighted, ventilated and kept clean; machines and containers kept sanitary.—All buildings, stores, factories or other places where drink products or other nonalcoholic beverages are manufactured or bottled shall be well lighted and ventilated and shall be kept at all times in a clean and sanitary condition. All machines, bottles, jars, jugs, crocks or other utensils or containers used in the manufacture of drink products or other nonalcoholic beverages shall be kept in a clean and sanitary place and in a sanitary condition. (R. S. c. 27, § 221.)

Sec. 283. Containers cleaned and sterilized before filling; regulations followed.—No person, firm or corporation having custody of any bottle, jar, jug or other container used for drink product or other nonalcoholic beverages, the owner of which has complied with the provisions of the preceding section, shall place or cause to be placed in any such bottle, jar or jug, any turpentine, varnish, wood alcohol, bleaching water, bluing, kerosene, oils or any unclean or foul substance or other offensive material, or send, ship, return or deliver, or cause to be sent, shipped, returned or delivered to any bottler of drink products or nonalcoholic beverages any bottle, jar, jug or other receptacle used as a container for drink products or other nonalcoholic beverages containing any turpentine, varnish, wood alcohol, bleaching water, bluing, kerosene, oil or any unclean or foul substance and other offensive material.

All bottles, jars, jugs or other containers used by manufacturers and bottlers of drink products and other nonalcoholic beverages before being filled or refilled shall be thoroughly cleaned and sterilized by then and there being washed in an automatic washing machine in a solution of not less than 3% caustic alkali at a temperature not lower than 110° Fahrenheit to be followed by rinsing in pure water, and all said bottles, jars, jugs and other containers, while empty and during the process of filling or refilling, shall be carefully protected from flies, dust and other contamination. (R. S. c. 27, § 222.)

Sec. 284. Penalty.—Any person, firm or corporation who shall violate any of the provisions of sections 277 to 284, inclusive, or shall neglect or refuse to comply with the provisions thereof shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $200 for each subsequent offense. (R. S. c. 27, § 223.)

Sec. 285. Disposal of fees and fines.—All fees received by the commissioner under the provisions of sections 277 to 284, inclusive, and all money and fines received by him under the provisions of sections 277 to 284, inclusive, by virtue of sections 5 and 9 shall be paid by him to the treasurer of state for deposit in the general fund. (R. S. c. 27, § 224. 1945, c. 297, § 12.)

Maine Frozen Dairy Products Law.

Sec. 286. Title.—Sections 286 to 294, inclusive, shall be known and may be cited as the "Maine frozen dairy products law." (1951, c. 184.)

Sec. 287. Definitions.—As used in sections 286 to 294, inclusive, the following words and phrases shall have the following meanings:

"Frozen dairy product mix" shall mean any unfrozen mixture to be used in the manufacture of frozen dairy products for sale or resale and shall contain in whole or in part the ingredients enumerated under the definition of frozen dairy products.

"Frozen dairy products" shall mean the frozen products made from cream or a mixture of milk and cream or a combination of dairy products of equivalent composition, sweetened with sugar or other suitable sweetening agent and containing natural or imitation flavoring. Frozen dairy products shall include ice cream, frozen custard, ice milk, sherbet, ices and related food products, and frozen dairy product mix. They may or may not contain egg-yolk solids and may be frozen with or without agitation. They shall contain no fats or oils other than butter fat except those necessarily contained in the flavoring.

"Frozen dairy products plant" shall mean any place, premises or establishment and any part thereof where frozen dairy products, such as ice cream, frozen custard, ice milk, sherbet, ices and related food products are assembled, processed, manufactured or converted into form for distribution or sale, and rooms or premises where such frozen dairy products manufacturing equipment is washed, sterilized or kept.

"Home made" or "home maid" or similar terminology applied to these frozen dairy products shall mean frozen dairy products manufactured and frozen under conditions normally found in the home.

"Retail manufacturer" shall mean any manufacturer of frozen dairy products who is not defined as a wholesale manufacturer.

"Wholesale manufacturer" shall mean any person, firm, corporation, association or society who manufactures frozen dairy products, any of which are sold to another for resale, or who manufactures frozen dairy products mix within the state, or for sale within the state. (1951, c. 184.)

Sec. 288. Application for license.—Each manufacturer of frozen dairy products and frozen dairy product mix for sale shall, during the month of June in each year, file with the commissioner an application for a license, upon a form prescribed by the commissioner. The application shall show the location of the plant at which frozen dairy products or frozen dairy product mix are to be manufactured and the name of the brand or brands, if any, under which the same are to be sold. The license shall be for 12 months, beginning July 1. Each such license shall cover 1 group of buildings constituting a frozen dairy products plant in one location.

The provisions of this section shall not apply to frozen dairy products:

I. Manufactured by any state institution or boardinghouse, such as homes for the aged and children, and served to patrons thereof for consumption on the premises where manufactured;

II. Manufactured and sold by any church or religious organization, grange or similar fraternal order solely for the benefit of such organization;

III. Manufactured and commonly called "home made" or "home maid," all the dairy products of which are produced on the premises where manufactured and sold;

provided that in the above cases the milk products shall be produced from blood tested herds found to be free from Bang's disease and tuberculosis. (1951, c. 184.)

Sec. 289. License; fees.—The commissioner, if satisfied that the frozen dairy products plant named in the application is maintained in accordance with the standards of sanitation and that only pure and wholesome ingredients produced under sanitary conditions are used as prescribed in the rules and regulations promulgated under the provisions of sections 286 to 294, inclusive, shall issue a license for the manufacture of frozen dairy products and frozen dairy product mix. No license shall be issued if any statement in the application shall be false or misleading, or if the brand name or label or advertisement of the frozen dairy product and frozen dairy product mix involved in the application shall give a false indication of origin, character, composition or place of manufacture or shall be otherwise false or misleading in any particular.

The license fee for a retail manufacturer of frozen dairy products shall be $2. The license fee for a wholesale manufacturer to manufacture frozen dairy products or frozen dairy product mix within the state, or to sell within the state, as the case may be, shall be $10. (1951, c. 184.)

Sec. 290. Disposition of fees, etc.—All fees received by the commissioner under the provisions of sections 286 to 294, inclusive, shall be paid by him to the treasurer of state. All fines, penalties and costs recovered under the provisions of sections 286 to 294, inclusive, shall accrue to the treasurer of state and shall be paid into the treasury of the county where the offense is prosecuted. All fines and penalties recovered, and money received or collected, shall be paid to the treasurer of state and all such fines and penalties, together with all fees, shall be credited to the department of agriculture and shall be expended by the commissioner for the purposes of sections 286 to 294, inclusive. (1951, c. 184.)

Sec. 291. Revocation or suspension of license. — The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 286 to 294, inclusive, when it appears that any statement upon which it was issued was false or misleading or that any frozen dairy product manufactured, sold, offered or exposed for sale, or held for sale by the licensee is adultered or misbranded or is manufactured in a plant or transported in a vehicle or stored in equipment not maintained in accordance with the standards of sanitation prescribed by the rules and regulations promulgated by the commissioner or that the brand name or any label or advertising of any frozen dairy product manufactured, sold, offered or exposed for sale or held for sale with the licensee gives a false indication of origin, character, composition or place of manufacture or is otherwise false or misleading in any particular.

Any person, firm, corporation, association or society whose license has been revoked or suspended shall discontinue the manufacture of frozen dairy products or frozen dairy product mixes until the provisions of sections 286 to 294, inclusive, have been complied with and a new license issued or the suspension removed. Before revoking or suspending any license, the commissioner shall give written notice to the licensee affected, stating that he contemplates the revocation or suspension of the same and giving his reasons therefor and appointing a time for hearing.

At the hearing the licensee may present such evidence to the commissioner as he deems fit, and after hearing all the testimony, the said commissioner shall decide whether the license shall be revoked or suspended or not. Any licensee who is aggrieved by the decision of the commissioner may, within 10 days thereafter, appeal to any justice of the superior court by presenting to him a petition therefor, in term time or vacation. Such justice shall fix a time and place for hearing, which may be in term time or vacation, and cause notice thereof to be given to the said commissioner; and after hearing, such justice may affirm or reverse the decision of the commissioner and the decision of such justice shall be final. Pending judgment of such justice, the decision of the commissioner

shall remain in full force and effect. The commissioner shall, within 3 days after notice of such appeal, forward to the justice a certified copy of the proceedings. (1951, c. 184.)

Sec. 292. Prohibition of sale. — No person shall sell, advertise or offer or expose for sale any frozen dairy product or frozen dairy product mix unless the manufacturer thereof shall be licensed under the provisions of sections 286 to 294, inclusive. No person shall sell, offer for sale or advertise for sale any frozen dairy product or frozen dairy product mix if the label upon it or the advertising accompanying it shall give a false indication of the origin, character, composition or place of manufacture, or shall be otherwise false or misleading in any particular. No person shall sell, advertise or offer or expose for sale any frozen dairy product for which a standard has not been established by the commissioner, regardless of trade name or brand or coined name. No person shall sell or offer, advertise or expose for sale any frozen dairy product or frozen dairy product mix which does not conform to the standards of strength, quality, purity and identity now or hereafter to be fixed by the commissioner. (1951, c. 184.)

Sec. 293. Rules and regulations.—The commissioner shall, after investigation and public hearing, adopt and promulgate rules and regulations to supplement and give full effect to the provisions of sections 286 to 294, inclusive. Such rules and regulations shall establish sanitary regulations pertaining to the manufacture and distribution of frozen dairy products, including the construction, sanitary conditions of buildings, grounds and equipment where frozen dairy products are manufactured; sanitary conditions of persons in direct physical contact with frozen dairy products during manufacture; sanitary condition of containers in which frozen dairy products are held or shipped and the sanitary conditions of premises, buildings, surroundings and equipment where frozen dairy products are sold; and among other things, shall establish standards of strength, quality, purity and identity for frozen dairy products, including ice cream, frozen custard, ice milk, sherbet, ices and related food products. Such rules and regulations shall be filed and open for public inspection at the office of the commissioner and shall have the force of law. (1951, c. 184.)

Sec. 294. Penalties.—Any person, firm or corporation violating any of the provisions of sections 286 to 294, inclusive, or any rule or regulation duly promulgated thereunder, or neglecting or refusing to comply with the provisions thereof shall be punished by a fine of not more than $100 for the 1st offense nor more than $200 for each subsequent offense. (1951, c. 184.)

Branding of Potatoes.

Cross Reference.—See §§ 320 et seq., re Maine Potato Marketing Act.

Sec. 295. Grades.—The grades for potatoes recommended by the Bureau of Agricultural Economics of the United States Department of Agriculture and recognized in the central markets of the country as government grades and such other grades as may be promulgated by the commissioner under the provisions of sections 32 to 38, inclusive, are made the official state grades for potatoes of the state presented for intrastate or interstate shipment and all containers as presented for shipment, whether by truck, train or boat, shall have written, stamped or attached thereon the name and address or serial number of the person producing or marketing the product, as well as the name and grade of the product contained therein. No potatoes shall be offered for sale, had in possession for sale, prepared for sale, exposed for sale, sold, shipped, delivered for sale or consigned unless and until said potatoes shall have been graded or packed in conformity with the provisions of sections 295 to 301, inclusive. Potatoes purchased under

the government support program shall be exempted from the provisions of sections 295 to 301, inclusive. (R. S. c. 27, § 225. 1949, c. 302, § 1.)

Sec. 296. Branding mandatory. — It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation to expose for sale, or sell, ship, deliver or consign or have in possession potatoes prepared for market unless such container has been legibly and conspicuously tagged, branded, labeled or stenciled before being removed from the premises where prepared for market with the name and address of the person or persons responsible for the grading and packing, and the name of the grade, together with true net contents. When tags are used, U. S. No. 1 grade shall be declared on a white tag, U. S. commercial on a yellow tag and U. S. No. 2 on a red tag. Bulk shipments shall be accompanied by 2 cards not less than 4 by 6 inches in size, placed on the inside of car near each door. Likewise cards in size as herein described shall be prominently displayed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that potatoes are for sale when contained in containers intended for delivery or transit, or when same are exposed for sale, or when the same are in the process of delivery or transit, or are located at a depot, station, boat dock or any place where potatoes are held in storage or for immediate or future sale or transit. (R. S. c. 27, § 226.)

Sec. 297. False or misleading branding.—No person shall sell, expose for sale or ship for sale potatoes in open or closed packages if the packages containing them or the label on them shall bear any statement, design or device regarding such potatoes which shall be false or misleading in any particular or if such potatoes are packed in such a manner that the face or shown surface shall not be an average of the contents of the package. This provision shall be construed to also prohibit the repeated use of any container or sub-container, bearing any markings required by the provisions of sections 295 to 301, inclusive, or any designation of brands, quality or grade unless all such markings which do not properly and accurately apply to the potatoes repacked or replaced shall first be completely removed, erased or obliterated. Nothing in sections 295 to 301, inclusive, shall be construed to conflict with any Maine or federal law or regulations regarding net weight markings on containers or sub-containers. (R. S. c. 27, § 227.)

Sec. 298. Sale without grading by grower; culls. — No provisions of sections 295 to 301, inclusive, shall be construed to prevent a grower or shipper of potatoes from selling or delivering the same within the state unpacked, or selling his crop in bulk, or any part thereof, to a packer for grading, packing or storage within the state; nor shall any provision of said sections prevent any person from manufacturing the same into any by-product, or from selling the same unpacked to any person actually engaged in the operation of a commercial by-products factory for the sole and express purpose of being used within the state in the manufacture of a by-product for resale.

Potatoes which do not meet the established grades as provided by section 295 may be sold as "culls" provided the package or container is conspicuously marked with the word "culls" in 3-inch red blocked letters. (R. S. c. 27, § 228. 1949, c. 302, § 2.)

Sec. 299. Enforcement; jurisdiction. — The commissioner shall diligently enforce all of the provisions of sections 295 to 301, inclusive. He, either in person or by a duly authorized representative, shall have free access, ingress and egress

during business hours to any place or any building wherein potatoes are packed, stored, transported, sold, offered or exposed for sale or for transportation. He may also, in person or by duly authorized representative, open any box, barrel or other container and may, upon tendering market price, take samples therefrom. He may recover penalties imposed for violation of the provisions of said sections in an action of debt brought in his own name and if he prevails in such action shall recover full costs; or he may prosecute for violations thereof by complaint or indictment.

Trial justices shall have original jurisdiction, concurrent with municipal courts and the superior court, of actions brought for the recovery of penalties imposed by the provisions of sections 295 to 301, inclusive, and of prosecutions for violations thereof. All fees received under the provisions of sections 295 to 301, inclusive, by the commissioner and all money and fines received by him under the provisions of said sections shall be paid by him to the treasurer of state and the same are appropriated for carrying out the provisions of said sections. The commissioner shall establish such rules and regulations as may be needed for the proper enforcement of the provisions of sections 295 to 301, inclusive. (R. S. c. 27, § 229.)

Sec. 300. Exemptions.—Certified seed potatoes as defined by sections 142 to 145, inclusive, are exempted from the provisions of sections 295 to 301, inclusive, except as may otherwise be promulgated by the commissioner. (R. S. c. 27, § 230.)

Sec. 301. Penalty.—Any person, firm or corporation who shall violate any of the provisions of sections 295 to 301, inclusive, or neglect or refuse to comply with any of the provisions required therein or in any way violate any of said provisions shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $200 for each subsequent offense. (R. S. c. 27, § 231.)

Agricultural Experiment Station.

Sec. 302. Agricultural Experiment Station.—The department of the University of Maine known and designated as the Maine Agricultural Experiment Station, heretofore established at said university in connection therewith and under its direction, for the purpose of carrying into effect the provisions of an act of the congress of the United States, approved March 2, 1887, to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, shall be maintained in accordance with the purposes for which it was originally established. (R. S. c. 27, § 232.)

Sec. 303. Scientific investigations in orcharding and crops.—The Maine Agricultural Experiment Station shall conduct scientific investigations in orcharding, corn and other farm crops and, to this end, shall maintain the farm heretofore purchased in the name of the state, and stocked and equipped for the use and benefit of said station. The director of the Maine Agricultural Experiment Station shall have the general supervision, management and control of said farm and of all investigations thereon. (R. S. c. 27, § 233.)

Sec. 304. Investigations in animal husbandry.—The Maine Agricultural Experiment Station shall also conduct scientific investigations in animal husbandry, including experiments and observations on dairy cattle and other domestic animals, and such investigations shall be under the control of the director of said station. The experiments in animal husbandry may be conducted at any of the farms owned by the state. (R. S. c. 27, § 234.)

Sec. 305. Expenditure of appropriation. — Such sums as shall be ap-

propriated in favor of the Maine Agricultural Experiment Station shall be expended by the director of said station in executing the provisions of the preceding section. (R. S. c. 27, § 235.)

See § 111, re testing and marking milk bottles; c. 68, § 21, re director of experiment station to make analyses of poisonous drugs.

Extension Work with U. of M. College of Agriculture.

Sec. 306. Extension work in agriculture.—In order to aid in diffusing among the people of this state useful and practical information on subjects relating to agriculture, home economics and rural life and to encourage the application of the same, there may be inaugurated in each of the several counties of the state extension work which shall be carried on in cooperation with the University of Maine, College of Agriculture. (R. S. c. 27, § 236.)

Sec. 307. Manner of carrying on work. — Cooperative agricultural extension work shall consist of the giving of practical demonstrations in agriculture and home economics and imparting information on said subjects through field demonstrations, publications and otherwise; and this work shall be carried on in each county in such manner as may be mutually agreed upon by the executive committee of the county extension association provided for in section 308, and the trustees of the University of Maine, College of Agriculture or their duly appointed representatives. (R. S. c. 27, § 237. 1951, c. 240, § 1.)

Sec. 308. "County extension associations."—For the purpose of carrying out the provisions of sections 306 to 310, inclusive, there may be created in each county or combination of 2 counties within the state an organization to be known as a "county extension association," and its services available to all residents of a county. Such county extension association shall have adopted a constitution and set of by-laws acceptable to the University of Maine, College of Agriculture and they shall be recognized as the official body within said county or counties for carrying on extension work in agriculture and home economics within said county or counties in cooperation with the University of Maine, College of Agriculture. Such organization may make such regulations and by-laws for its government and the carrying on of its work as are not inconsistent with the provisions of said sections; provided that but one such organization shall be formed in each county. (R. S. c. 27, § 238. 1951, c. 240, § 2.)

Sec. 309. County extension association to prepare budget; county commissioners may levy tax.—The executive committee of each county extension association shall annually prepare an annual financial budget for the 12 months beginning January 1st next thereafter, showing in detail its estimate of the amount of money to be expended under the provisions of sections 306 to 310, inclusive, within the county or counties for such 12 months; shall submit the same to a vote of the association at the regular annual meeting and, if the budget is approved by a majority vote of the members of the association present at such meeting, the executive committee shall submit the same to the board of county commissioners on a date in December approved by said county commissioners, and the county commissioners may, if they deem it justifiable, include the amount of this budget in the appropriations by them annually recommended, and levy a tax therefor; provided, however, that the amount thus raised by direct taxation within any county or combination of counties for the purposes of sections 306 to 310, inclusive, shall be not less than $1,000 annually per county extension agent; provided further, that at the request of the county extension association made on the said date in December, the county commissioners of the county may allow an amount in excess of the minimum specified, which shall also be included in the budget and for which a tax shall be levied. These funds shall be used for the

maintenance of the county extension service, including salaries of agents and clerks, office rental, supplies, equipment, postage, telephone and for such other expenses as necessary to maintain an efficient and effective county extension service. Whenever the inhabitants of 2 counties shall unite for organization in one association, the amount of the tax assessed upon each county shall be in the proportion which the last state valuation in that county bears to the total of the last state valuation in the 2 counties so united. (R. S. c. 27, § 239. 1947, c. 28, §§ 1, 2. 1951, c. 240, § 3.)

Sec. 310. Annual report.—It shall be the duty of each said county extension association, annually, on or before the 10th day of December, to present its plan of extension work for the ensuing year and to render to both the trustees of the University of Maine, College of Agriculture and the county commissioners a full detailed report of its extension activities for the preceding fiscal year, including a detailed report of its receipts and expenditures from all sources; and the financial report of such county extension association shall be on such forms as may be prescribed by the trustees of the University of Maine, College of Agriculture. (R. S. c. 27, § 240. 1951, c. 240, § 4.)

State Sealer of Weights and Measures.

Cross Reference.—See c. 100, §§ 202 et seq., re local sealers of weights and measures.

Sec. 311. State sealer of weights and measures; standards.—The commissioner shall be the state sealer of weights and measures.

The standard weights and measures furnished by the government of the United States in accordance with the joint resolution of congress approved June 14, 1836, and any additions thereto and renewals thereof certified to by the United States bureau of standards, and weights, measures, balances and apparatus added by the state sealer of weights and measures and verified by the United States bureau of standards shall be the standards of weights and measures throughout this state. (R. S. c. 27, § 241.)

Sec. 312. Standards adopted, kept and certified. — The standards adopted by the state shall be kept at the state house under the supervision of the state sealer and shall not be removed or used except for the adjustment of a set of working standards that are copies of the original standards or for scientific purposes or to be verified by the national bureau of standards. The state sealer shall maintain the state standards in good order and shall submit them at least once in 10 years to the national bureau of standards for certification. He shall at least once in 5 years cause the standards of the several cities and towns to be compared and corrected to conform with the state standards. (R. S. c. 27, § 242.)

Sec. 313. Tolerances, etc.; duties of state sealer.—The state sealer of weights and measures shall after consultation with, and with the advice of, the national bureau of standards, establish specifications, tolerances and regulations for use in this state and said specifications, tolerances and regulations shall be the legal requirements of the state. He shall have general supervision of the weights and measures, and weighing and measuring devices of the cities and towns of the state, and cause the enforcement of all laws pertaining to weights and measures in use in the state and may appoint such agents as he desires to assist in the enforcement. He shall make rules and regulations for the enforcement of the provisions of sections 311 to 318, inclusive, of this chapter, and sections 89 to 94, inclusive, of chapter 89 and sections 202 to 228, inclusive, of chapter 100. (R. S. c. 27, § 243. 1947, c. 268, § 3.)

Cited in Old Tavern Farm **v. Fickett,** 125 Me. 123, 131 A. 305.

Sec. 314. Enforcement; deputy and inspectors. — The state sealer shall enforce the provisions of law requiring municipal officers to procure and maintain standards of weights and measures, and the appointing of a sealer of weights and measures. He may appoint a deputy who shall have the authority conferred by the 3 following sections, and may appoint inspectors with authority to perform any part or all of the duties provided in sections 315 and 317. (R. S. c. 27, § 244. 1953, c. 308, § 56.)

Sec. 315. Work of local sealers inspected; gasoline measuring devices. —The state sealer or his duly appointed deputy shall visit the various cities and towns in the state in order to inspect the work of the local sealers, and may at all times inspect and test the weights, measures and balances of any person, firm, association or corporation used, or to be used, in purchasing from or selling to the public any goods, wares, merchandise or other commodities; if any such weights, measures or balances are found to be inaccurate or defective, he shall forthwith cause the same to be corrected or condemned. He may charge a reasonable fee for adjusting any weighing and measuring device when there is neglect by the local sealer or when a complaint or request for performing this service has been received. The state sealer of weights and measures or his duly appointed deputy is authorizd to purchase, maintain and use a 100-gallon portable test measure for the purpose of testing the capacity of measuring devices used in the sale, purchase and distribution of gasoline. The expense of purchasing this 100-gallon portable test measure shall be provided for by proceeds from the tax on gasoline as provided in section 160 of chapter 16. (R. S. c. 27, § 245. 1947, c. 224. 1951, c. 263, § 1.)

Sec. 316. Fees.—The fees of the state sealer of weights and measures for testing and adjusting scales, weights and measures, to be paid by the persons for whom the service is rendered, is as follows: for testing fuel oil or gasoline meters mounted on tank trucks used in the sale, purchase and distribution of gasoline or fuel oil, $3; for adjusting such meters, $2; for testing each platform scale with a weighing capacity of more than 10,000 pounds capacity, $6; for testing each platform scale with a weighing capacity of 5,000 pounds to 10,000 pounds capacity, $4; for testing each platform scale with a weighing capacity of 100 pounds to 5,000 pounds capacity, $1.

The state sealer is authorized to charge fees for testing other weighing and measuring devices in accordance with the fee schedule set forth under the provisions of section 219 of chapter 100. He shall not charge a fee for the testing or calibrating of weighing and measuring devices which have been tested or calibrated and approved by the local sealer of weights and measures within the period of 3 months immediately following such test or calibration and approval by the local sealer.

All fees collected under the provisions of section 315 and this section shall be credited to the department of agriculture and expended to carry out the provisions of sections 311 to 319, inclusive. (1951, c. 263, § 2.)

Sec. 317. Commodities offered for sale tested; access to buildings. —The state sealer or his duly appointed deputy may, at irregular intervals, examine commodities sold or offered for sale and test them for correct weight, measure or count, and bring complaint for violations of sections 202 to 223, inclusive, of chapter 100. He or his duly appointed deputy may, for the purpose stated above, and in the general performance of his or their official duties, have access without formal warrant to any stand, place, building or premises, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon or any person for the purpose of making the proper tests. (R. S. c. 27, § 246.)

Sec. 318. Record and annual report.—The state sealer shall keep a record in detail of the work of his office and shall annually, on or before the 1st day

of July, make a written report of the work of his office to the governor and council. (R. S. c. 27, § 247.)

Sec. 319. Manufacture and sale of oil bottles. — The state sealer of weights and measures shall make rules and regulations governing the manufacture and sale of lubricating oil bottles and may authorize the sealing of such lubricating oil bottles by any manufacturer thereof upon his agreeing to conform to such rules and regulations, and may revoke such authority on the failure of any manufacturer to conform with the said rules and regulations. (R. S. c. 27, § 248.)

Maine Potato Marketing Act.

Sec. 320. Title.—Sections 320 to 335, inclusive, shall be known and may be cited as the "Maine Potato Marketing Act." (1953, c. 356.)

Sec. 321. Purposes.—The purposes of sections 320 to 335 are:

I. To enable potato producers of this state, with the aid of the state, more effectively to correlate the marketing of their potatoes with market demands therefor.

II. To provide for uniform grading and proper preparation of potatoes for market.

III. To provide methods and means for the development of new and larger markets for potatoes grown within this state.

IV. To establish orderly marketing of potatoes grown within this state.

V. To eliminate or reduce economic waste in the marketing of potatoes. (1953, c. 356.)

Sec. 322. Definitions.—As used in sections 320 to 335, inclusive, the following terms shall have the following meanings:

"Committee" means the administrative committee, called the "Maine Potato Marketing Committee," established pursuant hereto.

"Consumer pack" means a unit of less than 50 pounds net weight of potatoes contained in a bag, crate or any other type of container.

"District" means each one of the geographical divisions of the production area established as follows:

District No. 1. Township 11, Range 8, Townships 11, 12, 13 and 14, Range 7, Township 14, Range 6, Townships 14, 15, 16, Range 5, Townships 16, 17, Range 4, Township 17, Range 3, the towns of Van Buren, Cyr, Connor, Caswell, Hamlin and all towns and townships north and west thereof in Aroostook county;

District No. 2. All the towns and townships in Aroostook county not included in Districts Nos. 1 and 3;

District No. 3. Mount Chase Plantation, Stacyville Plantation, the town of Patten and Township 2, Range 6, in Penobscot county, and Township 8, Range 5, Township 8, Range 4, Township 8, Range 3, Township C, Range 2, the town of Monticello and all the towns and townships south thereof in Aroostook county;

District No. 4. All the remaining counties, towns and townships in the state not included in Districts 1, 2 and 3.

"Export" means shipment of potatoes beyond the boundaries of continental United States.

"Fiscal year" means the period beginning July 1 of each year and ending June 30 of the following year.

"Grade" means one of the officially established grades of potatoes and "size" means any one of the officially established sizes of potatoes, as defined and set forth in:

I. The United States Standards for Potatoes issued by the Department of Agriculture on September 10, 1941, effective June 1, 1942 (12 F. R. 3651), or amendments thereto, or modifications thereof, or variations based thereon;

II. United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture on November 3, 1947, effective December 8, 1947 (12 F. R. 7281), or amendments thereto, or modifications thereof, or variations based thereon;

III. State of Maine Standards for potatoes issued by the State of Maine Commissioner of Agriculture on November 26, 1935, or amendments thereto, or modifications thereof, or variations based thereon.

"Handler" is synonymous with shipper and means any person, except a common or contract carrier of potatoes owned by another person, who ships potatoes in fresh form or packs or prepares potatoes for market.

"Person" means an individual, partnership, corporation, association, legal representative or any organized group or business unit.

"Potatoes" means all varieties of Irish potatoes grown within the state.

"Potatoes prepared for market" means and includes all potatoes packed in containers and intended for delivery or in transit or exposed for sale or in the process of delivery or in transit or located at a depot, station, boat dock or any place where potatoes are held in storage or for immediate or future sale or transit.

"Producer" means any person engaged in the production of potatoes for market.

"Seed potatoes" means and includes all potatoes officially certified and tagged, marked or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the state.

"Ship" or "handle" means to transport, sell or in any other way to pack or prepare potatoes for market.

"Table stock potatoes" means and includes all potatoes not included within the definition of "seed potatoes."

"Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States department of agriculture.

"Wholesale pack" means a unit of 50 pounds net weight or more of potatoes contained in a bag, crate or any other type of container. (1953, c. 356.)

Sec. 323. Administration. — The commissioner shall administer and enforce the provisions of sections 320 to 335, inclusive, and shall have and may exercise any or all of the administrative powers conferred upon the head of a department of the state. In order to effectuate the declared purposes of said sections, the commissioner is authorized to issue, administer and enforce the provisions of marketing orders regulating the marketing of potatoes within the state.

Whenever the commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of sections 320 to 335, inclusive, he shall, either upon his own motion or upon application of any producer or handler of potatoes, give due notice of and an opportunity for a public hearing upon a proposed marketing order.

Due notice of any hearing called for such purpose shall be given to all persons who may be directly affected by any action of the commissioner pursuant to the provisions of sections 320 to 335, inclusive, and whose names appear upon lists to be filed with the commissioner. Such hearing shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the commissioner at his office.

In order to effectuate the declared policy of sections 320 to 335, inclusive, the commissioner shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with handlers, producers and others engaged

in the handling of potatoes, regulating the preparation, sale and handling of potatoes, which said marketing agreement shall be binding upon the signatories thereto exclusively. The execution of such marketing agreement shall in no manner affect the issuance, administration or enforcement of any marketing order provided for in sections 320 to 335, inclusive. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same subject matter. The commissioner, in his discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in sections 320 to 335, inclusive.

After such notice and hearing, the commissioner may issue a marketing order if he finds it will tend to effectuate the declared policy of sections 320 to 335, inclusive, subject, however, to the following:

I. No marketing order or amendment thereto issued pursuant to sections 320 to 335, inclusive, shall become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least 2/3 of the producers who participated in a referendum on the question of its approval and who, during the preceding fiscal year, have been engaged in the production of potatoes for market within the production area specified in such marketing order, and who, during such year, have produced at least 2/3 of the volume of potatoes produced for market within such production area.

II. No marketing agreement or amendment thereto, directly affecting handlers, issued pursuant to sections 320 to 335, inclusive, shall become effective unless and until the commissioner finds that such agreement has been assented to in writing by the handlers who handle not less than 50% of the volume of the potatoes handled within the area defined in such agreement and by not less than 50% of the number of handlers engaged in handling potatoes within such area. (1953, c. 356.)

Sec. 324. "Maine Potato Marketing Committee"; establishment, terms, vacancies, duties, expenses and compensation.—

I. Membership of committee. Any marketing order issued pursuant to sections 320 to 335, inclusive, shall provide for the establishment of an administrative committee to administer such order in accordance with its terms and provisions. This committee shall be known as the "Maine Potato Marketing Committee" and shall consist of 8 members, of whom 5 shall be producers and 3 shall be handlers. For each member of the committee there shall be an alternate who shall have the same qualifications as the member. Persons selected as committee members or alternates to represent producers shall be individuals who are producers in the respective district for which selected or officers or employees of a corporate producer in such district and such persons shall be residents of the respective district for which selected. Persons selected as committee members or alternates to represent handlers shall be individuals who are handlers in the state or officers or employees of a corporate handler in this state and such persons shall be residents of the state.

II. Term of office. The term of office of committee members and alternates shall be for 1 year, beginning on the 1st day of July and continuing until the end of the then current fiscal year, and until their successors are selected and have qualified. Committee members and alternates shall serve during the fiscal year for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the fiscal year and continuing until the end thereof, and until their successors are selected and have qualified.

III. Selection. The commissioner shall select 2 producer members of the

committee, with their respective alternates, from District No. 2 and 1 producer member, with his respective alternate, from each of the other districts, which members and alternates shall represent the respective district from which they are selected. The commissioner shall also select 3 handler members of the committee, with their respective alternates, from the production area at large.

IV. Nomination. The commissioner may select the members of the "Maine Potato Marketing Committee" and their respective alternates from nominations which may be made in the following manner:

A. In order to provide nominations for committee members and alternates:

1. The Maine Potato Marketing Committee shall hold or cause to be held prior to May 1 of each year, a meeting or meetings of producers in each of the districts and a meeting or meetings of handlers in the production area;

2. In arranging for such meetings the committee may, if it deems desirable, utilize the services and facilities of existing organizations and agencies;

3. At such meeting at least 2 nominees shall be designated for each position as member and for each position as alternate member on the committee;

4. Nominations for committee members and alternate members shall be supplied to the commissioner in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal year;

5. Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

6. Each person who is both a handler and a producer may vote either as a handler or as a producer and may elect the group in which he votes; and

7. Regardless of the number of districts in which a person produces potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates and representatives in designating nominees for committee members and alternates; provided that in the event a person is engaged in producing in more than 1 district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and provided further, that an eligible voter's privilege of casting only 1 vote, as aforesaid, shall be construed to permit a voter to cast 1 vote for each position to be filled in the respective district in which he elects to vote.

V. Failure to nominate. If nominations are not made within the time and in the manner specified by the commissioner pursuant to subsection IV, the commissioner may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for herein.

VI. Acceptance. Any person selected by the commissioner as a committee member or as an alternate shall qualify by filing a written acceptance with the commissioner within 10 days after being notified of such selection.

VII. Vacancies. To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the commissioner from nominations made in the manner specified in subsection IV, or the commissioner may select such committee member or alternate from

previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the commissioner within 30 days after such vacancy occurs, the commissioner may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for herein.

VIII. Alternate members. An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of the death, removal, resignation or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

IX. Procedure. Six members of the committee shall be necessary to constitute a quorum and 6 concurring votes shall be required to pass any motion or approve any committee action.
The committee 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; provided that if any assembled meeting is held, all votes shall be cast in person.

X. Expenses and compensation. No committee member shall receive a salary, but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized. The commissioner may authorize such board to employ necessary personnel, including an attorney, fix their compensation and terms of employment, and to incur such expenses, to be paid by the commissioner from moneys collected as herein provided, as the commissioner may deem necessary and proper to enable such board properly to perform such of its duties as are authorized herein.

XI. Duties. It shall be the duty of the committee:

A. Subject to the approval of the commissioner, to administer such marketing agreement or order.

B. To recommend to the commissioner administrative rules and regulations relating to the marketing agreement or order.

C. To receive and report to the commissioner complaints of violations of the marketing agreement or order.

D. To recommend to the commissioner amendments to the marketing agreement or order.

E. To submit to the commissioner for his approval an estimated budget of expense necessary for the operation of any marketing agreement or order established by authority of sections 320 to 335, inclusive, and also submit for approval a method of assessing and collecting such funds as the commissioner may find necessary for the administration of such marketing agreement or order.

F. To assist the commissioner in the collection of such information and data as the commissioner may deem necessary to the proper administration of sections 320 to 335, inclusive. (1953, c. 356.)

Sec. 325. Expenses and assessments.—

I. Expenses. The committee is authorized to incur such expenses as the commissioner finds may be necessary to perform its functions hereunder during each fiscal year and for such other purposes as the commissioner may determine to be appropriate pursuant to the provisions hereof. The funds to cover such expenses shall be acquired by the levying of assessments, as herein provided, upon handlers.

II. Assessments. Each handler who first ships potatoes shall pay to the

committee, upon demand, such handler's pro rata share of the expenses as the commissioner finds will be incurred by the committee for its maintenance and functioning during each fiscal year, and for such purposes as the commissioner may determine to be appropriate pursuant to the provisions hereof. Such handler's pro rata share of such expense shall be equal to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers as the first handlers thereof during the same fiscal year. The commissioner shall fix the rate of assessment to be paid by such handlers.

At any time during a fiscal year, the commissioner may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the commissioner relative to the expense of the committee. Such increase shall be applicable to all potatoes handled during the given fiscal year. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

III. Accounting. If, at the end of a fiscal year, it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of the excess assessments shall be credited with such refund against the operations of the following fiscal year, unless he demands payment thereof, in which event such proportionate refund shall be paid to him.

If, after reasonable effort by the committee, it is found impossible to return excess funds to handlers, such funds shall, with the approval of the commissioner, be turned over to an appropriate agency serving potato producers in the production area.

The committee may, with the approval of the commissioner, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses of the committee.

IV. Funds. All funds received by the committee pursuant to any provision hereof shall be used solely for the purposes herein specified and shall be accounted for in the following manner:

A. The commissioner may at any time require the committee and its members to account for all receipts and disbursements; and

B. Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the commissioner may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds or claims vested in such member or alternate. (1953, c. 356.)

Sec. 326. Regulation.—

I. Marketing policy. At the beginning of each fiscal year the committee shall prepare and submit to the commissioner a report setting forth its proposed policy for the marketing of potatoes during such fiscal year. In the event it becomes advisable to deviate from such marketing policy because of changed demand and supply conditions, the committee shall formulate a new marketing policy and shall submit a report thereon to the commissioner. The committee shall notify producers and handlers of the contents of such reports.

II. Recommendation for regulations.

A. It shall be the duty of the committee to investigate supply and demand conditions for grade, size and quality of potatoes of all varieties. In such investigations, the committee shall give due consideration to the following factors:

1. Market prices of potatoes, including prices by grade, size and quality in wholesale or in consumer packs or any other shipping unit;

2. Potatoes on hand in the market areas as manifested by supplies en route and on track at the principal markets;

3. Supply of potatoes, by grade, size and quality, in this state and other production areas;

4. The trend and level of consumer income; and

5. Other relevant factors.

B. The committee shall recommend regulation to the commissioner, in accordance herewith, whenever it finds, on the basis of the foregoing investigation, that such conditions make it advisable:

1. To regulate, in any or all portions of the production area, the preparation for market of particular grades and sizes of any or all varieties of tablestock or seed potatoes, or both, during any period; or

2. To regulate the preparation for market of particular grades and sizes of potatoes differently for different varieties, for different portions of the production area, for consumer or wholesale packs or any other shipping unit, for tablestock and seed, or any combination of the foregoing, during any period; or

3. To regulate the preparation for market of potatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality.

III. Issuance of regulation.

A. The commissioner shall regulate the preparation for market of potatoes as hereinafter set forth, whenever he finds from the recommendations and information submitted by the committee or from other available information, that it would tend to effectuate the declared policy of sections 320 to 335, inclusive:

1. To regulate, in any or all portions of the production area, the preparation for market of particular grades and sizes of any or all varieties of tablestock or seed potatoes, or both, during any period; or

2. To regulate the preparation for market of particular grades and sizes of potatoes differently for different varieties, for different portions of the production area, for consumer or wholesale packs, for tablestock and seed, or any combination of the foregoing, during any period; or

3. To regulate the preparation for market of potatoes by establishing, in terms of grade, size or both, minimum standards of quality.

B. The commissioner shall notify the committee of any such regulation and the committee shall give reasonable notice thereof to handlers.

IV. Inspection. During any period in which the commissioner regulates the preparation for market of potatoes pursuant to the provisions of this section, he may require each handler who first ships potatoes, prior to making shipment, to cause each shipment to be inspected by an authorized representative of the Federal-State Inspection Service.

V. Exemptions.

A. The committee may adopt, subject to approval of the commissioner, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

B. The committee may issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee:

1. That by reason of a regulation issued pursuant to this section he will

be prevented from shipping as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate production area; and

2. That the grade, size or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation.

Each certificate shall permit the producer to ship the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of sale.

C. The committee may issue certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee:

1. That by reason of a regulation issued pursuant to this section he will be prevented from shipping as large a proportion of his storage holdings of ungraded potatoes, acquired during or immediately following the digging season, as the average proportion of ungraded storage holdings shipped by all handlers in said applicant's immediate shipping area; and

2. That the grade, size or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation.

Each certificate shall permit the handler to ship the amount of potatoes specified thereon. Such certificate may be transferred with such potatoes at time of sale.

D. The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

E. If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence and make a final determination concerning the application. The committee shall notify the appellant of the final determination and shall furnish the commissioner with a copy of the appeal and a statement of considerations involved in making the final determination.

F. The commissioner shall have the right to modify, change, alter or rescind any procedure and any exemptions granted pursuant to this section.

G. The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes shipped under exemption certificates, a record of appeals for reconsideration of applications and such information as may be requested by the commissioner. Periodic reports on such records shall be compiled and issued by the committee upon request of the commissioner. (1953, c. 356.)

Sec. 327. Regulation of surplus.—

I. Recommendations. It shall be the duty of the committee to investigate supply and demand conditions of potatoes. Whenever the committee finds that a surplus of potatoes exists, it shall determine the extent of such surplus of potatoes of any grade, size or quality thereof. If it is deemed advisable, the committee shall recommend the control and distribution of surplus potatoes and plans for equalizing the burden of surplus elimination or control among the

producers and handlers thereof under uniform rules recommended by the committee and established by the commissioner.

II. Issuance of regulations. Whenever the commissioner finds from the recommendations and information submitted by the committee or from other available information that the control and disposition of surplus potatoes will tend to effectuate the declared policy of sections 320 to 335, inclusive, he shall control and dispose of such surplus potatoes and shall further provide for equalizing the burden of such surplus elimination or control among producers and handlers thereof. At any time during which the commissioner provides for the control and disposition of surplus potatoes, the committee is authorized to enter into contracts or agreements with any person, agency or organization for the purpose of facilitating the disposal of surplus potatoes. (1953, c. 356.)

Sec. 328. Preparation for market for specified purposes.—The commissioner, upon the basis of recommendations of the committee or upon the basis of other available information, may modify, suspend or terminate regulations issued pursuant hereto in order to facilitate preparation for market of potatoes for certain specified purposes, whenever he finds that such actions tend to effectuate the declared policy of sections 320 to 335, inclusive, and that adequate safeguards may be established to prevent such shipments from entering channels of trade for other than the specified purposes. (1953, c. 356.)

Sec. 329. Reports.—Upon the request of the committee, with approval of the commissioner, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties hereunder. The commissioner shall have the right to modify, change or rescind any requests for reports pursuant to this section. (1953, c. 356.)

Sec. 330. Compliance.—Except as provided herein, no handler shall have in his possession potatoes prepared for market except in conformity to the provisions of any effective marketing order or agreement issued hereunder. (1953, c. 356.)

Sec. 331. Termination.—The commissioner may terminate, suspend or amend the operation of any or all of the provisions of any marketing order, whenever he finds that such provisions do not tend to effectuate declared policy of sections 320 to 335, inclusive.

The commissioner shall terminate the provisions of any marketing order at the end of any fiscal year, whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes; provided that such majority has, during such year, produced for market more than 50% of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before June 30 of the then current fiscal year.

Upon the termination of the provisions hereof, the then functioning members of the committee shall continue as trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

The said trustees shall continue in such capacity until discharged by the commissioner; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the commissioner may direct; and shall, upon request of the commissioner, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant thereto.

Any person to whom funds, property or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustee. (1953, c. 356.)

Sec. 332. Effect of termination or amendment.—Unless otherwise expressly provided by the commissioner, the termination of any regulation issued pursuant hereto, or the issuance of any amendment thereto, shall not affect nor waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision hereof or any regulation issued hereunder, or release or extinguish any violation hereof or of any regulation issued hereunder, or affect or impair any rights or remedies of the commissioner or of any other person with respect to any such violation. (1953, c. 356.)

Sec. 333. Duration of immunities.—The benefits, privileges and immunities conferred upon any person by virtue hereof shall cease upon the termination hereof, except with respect to acts done under and during the existence hereof. (1953, c. 356.)

Sec. 334. Personal liability.—No member or alternate of the committee, nor any employee or agent thereof, shall 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. (1953, c. 356.)

Sec. 335. Penalty. — Every person, who violates any provision of sections 320 to 335, inclusive, or any provision of any marketing order duly issued by the commissioner thereunder, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $50 nor more than $500, or by imprisonment for not less than 10 days nor more than 6 months, or by both such fine and imprisonment. Each day during which any of the violations above referred to continues shall continue a separate offense. (1953, c. 356.)