

MAINE STATE LEGISLATURE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON AGRICULTURE

February 10, 1976

Senator Jerrold B. Speers, Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Senator Speers:

In accordance with Senate Paper 530, directing the Committee on Agriculture to study the subject matter of L.D. 967, "AN ACT Making Potato Processors Subject to Certain Provisions of the Licensing and Bonding Statutes for the Bonding of Potatoes", we enclose herein the final report of the Committee.

Respectfully submitted,

Walter W. Hichens

Walter W. Hichens, Senate Co-Chairman,
Agriculture Committee

Luman P. Mahany

Luman P. Mahany, House Co-Chairman,
Agriculture Committee

enclosure
TP/sym

Report of the Committee
on Agriculture
On Its Study Of
Maine's Potato Licensing And
Bonding Laws

Senate

Water W. Hichens, Chairman
Philip C. Jackson
Peter W. Johnston

House

Luman P. Mahany, Chairman
Thomas P. Albert
Philip P. Berry
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Donald E. Dyer
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James F. Wilfong

During the Regular Session of the 107th Legislature the Joint Standing Committee on Agriculture was directed by the Legislative Council through the State Legislature to study Maine's potato licensing and bonding laws and the effect of the laws on the Maine potato industry (SP 530). The Committee on Agriculture was also directed to report any recommendations or necessary implementing legislation to the State Legislature by the Special Session in 1976 or by the Regular Session in 1977.

The Joint Standing Committee on Agriculture sent questionnaires to potato producers, shippers, and processors in Maine and in 10 other leading potato producing states. The questionnaires requested information concerning the structure of the potato industry, the administration of State laws pertaining to the industry, specific laws, as well as rules and regulations regulating the industry, and problems within or confronting the industry. A subcommittee of the Agriculture Committee also held public hearings in Presque Isle, Maine on October 28,29, 1975 and in Fryeburg, Maine on November 17, 1975 to obtain testimony from potato producers, shippers and processors.

I. The Potato Industry in Maine

Maine's potato industry is composed of roughly 1300 potato producers representing 1000 individual farming operations, 105 shippers and dealers, 6 major processors and several smaller processors. The State harvests roughly 135,000 acres of potatoes and produces approximately 33,000,000 cwt of potato of which 1/3 are processed, 1/3 are seed potatoes, and 1/3 are sold as table stock or fresh. In 1974, 50 percent of the crop was sold as table stock, 40 percent was processed, and 10 percent was sold as seed.

Comparing Maine to the nation, Maine is the fourth largest producer of potatoes in the country and markets the crop primarily on the East Coast. Unlike the nation, generally, in which more and more of the crop is being processed, Maine's percentage of the crop that is processed annually is declining slightly. Most of the fresh table stock (75%) is sold to chain stores, and the remainder is sold to wholesalers.

Maine's potato industry has experienced many problems in the last 10-20 years. Although there are a variety of problems affecting the industry; growers, shippers, and processors, for the most part, believe that the absence of an active regulatory body that can take immediate action toward resolving industry problems in their early stage is responsible for the magnitude and extent of some of the problems confronting Maine's potato industry. Some problems are the result of the market system and inflation, some are the result of individual farm operations and general marketing practices, and other problems stem from intra-industry conflicts.

The Market System and Inflation: Effect on the Industry

Inflation and the vagaries of the potato market have been more injurious to the Maine farmer than to the average United States farmer. A cursory comparison of the value of the Maine potato crop with the national crop indicates that between 1970 and 1973, the former increased 100 percent and the latter rose 66 percent. The figures are very misleading, however. While personal income of farm operators increased 58.5 percent in the United States between 1970 and 1973, personal farm income in Maine rose only 39.5 percent in the same period. Furthermore, farm expenditures throughout the nation rose at a greater rate (60 percent) than personal income. In addition to reduced income, yield per area has dropped. Accordingly to Statistical abstract, the yield per area of potatoes in Maine has dropped nearly 20% between 1971 and 1973.

There are very few reliable statistics that have been recorded concerning income and expenditures of the potato farmer as well as the value of the potato crop during the years 1973 and 1975. It may be safe to assume, that the accelerated rate of inflation between 1973 and the present has reduced farm income more than it did prior to 1973.

It is evident that the potato industry in Maine is limited in its ability to reduce inflation or to have much impact on the market system. On the other hand, the industry and the Maine Department of Agriculture can have significant impact upon intra-industry conflicts which is another problem.

Individual Farm Operations and General Marketing Practices

The College of Agriculture of the University of Maine in conjunction with the Maine Department of Agriculture, produced a report in 1972 entitled "A Joint Proposal for the Maine Potato Industry", Miscellaneous Report 141. The Report pointed out that individual farm operators and general marketing practices of producers are responsible for a serious decline in the industry. According to Agriculture officials at the University and in the State Department of Agriculture, potato stock from other Eastern producing areas in the United States is replacing Maine stock because of lower freight charges, shorter delivery time, better quality and sizing, and better washing, packaging and appearance of the eastern stock compared to Maine potatoes. Agricultural officials in the State also point out that the decline in the quality of Maine potatoes accompanied the phasing out of the federal marketing order which established compulsory inspection at the shipping point. As a result, Maine has lost its image as a producing area of quality potatoes, and the attempts of producers to overcome the poorer images by advertising is a great waste of resources.

Another problem, underlined by the Report, concerns seasonal marketing of potatoes. Maine growers, in order to obtain higher prices, "backed away from efforts to actively maintain early season markets". The result has been that ... "our competition moved in and successfully overcame a long standing image that the Maine potato could demand priority in the market whenever they were available".

Agriculture officials show that Maine's F.O.B. farm price improved during the federal order market period and declined prior to and following the termination of the market order. As a result agricultural experts in the State attribute better potato prices to consistently high quality potatoes that was created and enforced by a federal market order.

Intra-Industry Conflicts and Problems

Intra-industry conflicts and problems stem, in part, from the market system and inflation. Supply and demand determine the price of potatoes. Forces which affect supply and demand also affect the shipper, grower, and processor. Thus, an oversupply of potatoes reduces the price and places the shipper and processor in a better bargaining position than the grower. A short supply increases both the price of potatoes and the bargaining position of the growers. Therefore, the group that is adversely affected seeks redress on occasions in which it perceives itself to be the victim of unlawful or unethical designs of another group.

While all three groups (growers, shippers, and processors) have been guilty of misusing their bargaining position or power, state and federal law are based on the theory that processors and shippers are more susceptible of misusing their bargaining position than growers. The reason for protective legislation for potato growers on the state and federal levels is based upon the assumption that no matter how high the price of potatoes climbs, the perishable nature of the product substantially weakens the bargaining power of producers. According to this theory, the producer is dependent upon a small number of shippers and processors for the sale of his product which must reach the market shortly

after it has been harvested. It is possible for the small group of potato buyers, in the opinion of the growers, to take advantage of the perishable nature of the crop to enhance their bargaining power.

Shippers and processors, on the other hand, are supplied by a very large number of growers and are not dependent upon a very small group of the raw product. In addition, potato producers argue that processing firms have much greater resources to protect and defend themselves compared to the growers.

Thus, state and federal law are designed to give growers with limited resources an opportunity to defend their interest, and processors are required to rely exclusively on their own financial resources to protect themselves. The laws are based upon the premise that grew out of the Populist movement in the 1870's that individuals must be protected by law against corporations which, by nature, exploit people with limited resources.

Each group (growers, shippers, and processors) points out that it has been seriously injured, at times, by the practices of other groups in the industry. Growers complain that some shippers have violated the law and violated contracts by not paying the price upon which they mutually agreed. Potato producers agree that shippers sometimes do not inform producers about the quality and size potatoes ordered by the buyer, and will ship any quality of potato to fill the order... as a result, the load meet problems when it reaches the market, and the grower must absorb the loss.

Growers indicate that they have greater problems with processors than shippers. According to the producers, there are such a small number of processors that they are able to control the market. In addition, the producers point out that they are the victims of a poor payment system of some processors. While some processors pay according to an established, regular schedule, there are two processors which have not paid the growers on a regular basis. One processor with 2 plants has owed more than \$4,000,000 to growers for more than one year, and the unpaid growers have found it difficult to plant their crop without their due funds. Another processor has not paid growers according to the schedule mutually agreed upon, and the "slow payment" system has hurt some of the producers.

Although growers point out that they have been exploited by shippers and processors in the past, the latter indicate that they have been victims of illegal and unethical practices of the growers. Shippers complain that some growers have cleaned and packaged their crop very poorly, and it meets problems at the destination point. In addition, some growers provide a lower quality product that does not meet the buyer's specifications which violates the contract between producer and shipper.

Processors point out that some growers have reneged on their contracts in order to take advantage of a sudden price rise in the market. According to the processing firm which owes more than \$5,000,000 to 309 Maine Growers, 179 producers failed to deliver their contracted crop to the processor between 1972 and 1974, and 67 producers reneged on their contracts in 1974-1975. Roughly,

1,500,000 cwt of potatoes valued at \$2,650,000 were not delivered to the processor in 1972-74, and the processor was forced to purchase potatoes at a cost of \$7,175,332.50 to replace the undelivered crop. In 1974-75, 129,491 cwt of potatoes valued at \$502,425 were not delivered to the processor which was forced to replace them at an additional cost of \$194,236.

Processors also point out that some growers deliver a lower quality product than was contracted. As a result, the processor must purchase other potatoes at higher cost, or produce a smaller quantity of the processed product.

The federal government passed the Perishable Agricultural Commodities Act to protect the growers, and the State has passed licensing and bonding laws that require shippers and processors to be licensed and bonded before they can do business in Maine. By licensing and bonding potato processors and shippers, the State seeks to pressure shippers and processors to conform to ethical business practices. Maine has also enacted the Agricultural Bargaining Commission Act, composed of growers and their representatives, to negotiate contracts for growers to give them greater bargaining power.

Maine is not unlike other states which have very similar laws to protect growers, but none to protect shippers and processors. In addition, California and Oregon have producer lien laws that are placed on the inventories of processors to protect growers who receive "no or slow pay" from processors.

In order to measure the effectiveness of the licensing and bonding laws, it is necessary to study the following:

1. The extent to which the laws have been utilized to remedy the intra-industry problems.
2. The results of utilizing the laws.
3. The spirit of administration of the laws.

1. Utilization of the Licensing and Bonding Laws and the PACA.

Maine's potato growers have not utilized the licensing and bonding laws to obtain redress for their grievances to the extent that they have utilized the PACA. Since the enactment of the licensing and bonding laws in 1971, 5 cases have been brought before the Board against potato shippers. Each case has been resolved in favor of the growers.

Very few growers, however, are knowledgeable of the provision of the laws because very few (10-15%) have had to utilize the laws. According to shippers, growers, and the Maine Department of Agriculture (MDA) most growers and shippers (85-90%) have no problems in their relationship. According to some MDA individuals, the growers and shippers who have utilized the laws and who file complaints with the Department, tend to be individuals who have "questionable" business practices. In addition, the plaintiffs who use the law or file complaints over time tend to be the same individuals.

A number of shippers support this analysis. They point out that the "better growers do business with the better shippers" and most shippers try to avoid this small group of growers who have a history of failing to comply with their contracts.

Growers, on the other hand, disagree that a small group of producers with questionable business practices are the ones who file most of the complaints with the Department of Agriculture. According to the Maine Potato Council, an organization representing Maine Potato Producers, all producers are affected by the practices of potato shippers, and the small group of plaintiffs represents a cross section of the potato growers.

Potato producers are more accustomed to the PACA which they began to use in the 1960's to obtain redress for their grievances. A survey of the calendar years 1971-1974 and the calendar year 1975 (to September 30) reveals that 103 cases involving 644 growers were filed against Maine processors and shippers. Of the 103 cases, 96 were claims against processors. The United States Department of Agriculture has settled approximately one-half of the 103 cases which has resulted in the payment of nearly \$4,000,000 to growers. Presently, there are 49 cases pending against Maine processors involving \$2,300,000 in claims.

Processors and shippers point out that potato producers have a measure of protection that the shippers and processors do not possess. The latter argue that their license can be revoked or suspended for using unethical or illegal practices which can close their operations. Growers, on the other hand, do not have to fear that their businesses will be closed because of unethical or illegal activities.

It must be pointed out, however, that the processors and shippers can appeal decisions under the licensing law to Superior Court. Therefore, no licenses would be suspended or revoked until a court decision was rendered.

2. Results of Utilizing the Laws.

While the licensing and bonding laws have not been used by growers to much of an extent, the growers and some shippers indicate that the mere existence of the laws has prevented abuses which existed prior to passage of the laws. One shipper indicated that prior to enactment of the laws, shippers could easily take advantage of growers because business between growers, shippers, and buyers was conducted, for the most part, on a verbal basis with no written confirmation of the transaction. A legitimate \$50 price adjustment was often expanded into a \$500 price reduction to the grower.

As a result of the licensing and bonding laws, all transactions must be confirmed in writing and any price adjustments must be justified by an inspection. Thus, the problems that formerly existed between growers and shippers have been alleviated to a great extent.

Although potato shippers are divided in regard to the necessity for a licensing law, they unanimously oppose the bonding law. According to the shippers, the bond requirement is unnecessary. Annual bonding costs for all of Maine's shippers range between \$50,000 and \$100,000, and the funds are sent to out-of-state firms to the disadvantage of the State. Since the bonds have not been

"called", they have not proved to be effective. Furthermore, the shippers argue that the bonds would never cover the liabilities of the shippers who do more business with one grower than the cost of the bond which is divided between all creditors in case of bankruptcy or debt.

The growers argue that the amount of the bond, per se, is not important. The important feature of the bond, according to the Growers, is that it will indicate the financial situation of the shipper which will enable the growers to make decisions about shipping potatoes. One bonding company points out, however, that a near bankrupt firm can get a bond by placing the full amount of the bond in escrow.

Many shippers dislike the licensing and bonding laws, and, according to the growers and shipper, a shipper will often refuse to do business with growers who file complaints against them. The reason for the unwillingness of the shippers to do business with growers who make complaint against shippers is that the complainants tend to be the poorer businessmen who give everyone problems. Shippers prefer to do business with individuals who will not take advantage of them.

The 1975 amendment to the State's licensing and bonding laws which requires processors to be licensed and bonded cannot be measured in terms of effectiveness because the law did not take effect until October 1, 1975. The processors are opposed to the amendment, and argue that the PACA, a federal law, has already established a procedure for growers to use to protect themselves.

One point that the processors emphasize is the problem posed by the bonding provisions. They point out that the bond will never cover the amount of business they do with the growers. One firm which does more than \$4,000,000 with growers per year, will not protect growers with a \$50,000 bond. The processors also point out that they should be protected from illegal or unethical practices of growers by licensing and bonding growers.

The potato producers consider the PACA a slow working system. They point out that some complaints are not settled by the PACA for a few years. In addition, a processor can appeal a PACA decision to the courts and the case will take another few years to resolve. The growers cite the Valsing case in which a formal complaint was made three years ago and there has been no oral hearing scheduled to this date. The growers also cite the case against a processor which owes Maine producers more than \$4,000,000. The complaint was lodged one year ago, and no oral hearing has been scheduled to the present time. The Maine Department of Agriculture discloses that the St. John Valley potato producers' case has been in the courts for more than two years. Thus, the limited resources of the producers and the length of time required for a decision from the PACA reduces the effectiveness of the PACA for some growers.

The effectiveness of the PACA may also be measured by the degree of federal control over processors and shippers and the ability of the United States Department of Agriculture to enforce its decisions. According to PACA officials, Jack Gardner and

Eugene Carlucci of the Central office in Washington, the PACA is limited, in some circumstances, in its ability to enforce PACA decisions with respect to shippers and processors. A processor, for example, which utilizes Maine potatoes exclusively, produces french fries and potato chips, and sells the products out-of-state, does not fall within the jurisdiction of the PACA licensing laws. A firm which utilizes out-of-state potatoes or processes a variety of vegetables is covered by PACA licensing law.

It is possible, therefore, for some types of potato processing firms which process Maine potatoes into french fries and potato chips to violate PACA regulations without fear of federal punitive action.

3. Spirit of Administration of the Law.

According to all groups within the industry, there is no agency or regulatory body that actively administers regulatory law or polices the industry. Remedial action is taken only after a crisis has occurred, and is more aptly described as reaction. An organization that is aware of all industry activity and can take action to resolve problems before they reach a crisis is the answer to many of the problems, plaguing Maine's potato industry.

The most logical regulatory agency to oversee the activities of the potato industry is the Maine Department of Agriculture (MDA). Some processors and shippers point out that MDA lacks the authority to take decisive action, and they suggest that the industry police itself.

Some growers, on the other hand, point out that the State Department of Agriculture could play a more active role in the potato industry and prevent problems before they occur by enforcing existing laws. The growers suggest the Department of Agriculture personnel pursue their regulatory role by more frequent on-sight supervision of industrial activities. By investigating the business practices of each group in the industry and by maintaining a careful watch over the activities of each group, the Department of Agriculture, in the opinion of many growers, could substantially reduce the problems that exist between the several groups.

Maine law clearly provides the State Department of Agriculture with the power to investigate the potato industry and to maintain a careful watch over the activities of the industry. According to 7 MRSA § 1016, the Commissioner of Agriculture or his agent may conduct an investigation "upon the verified complaint of any interested persons, or on his own motion (of) conduct and activities of any person applying for or holding a license.....".

While statutory law grants the power to the MDA that the potato growers urge the Department to use, economics may limit the ability of the Department to pursue an active regulatory role. The law requires the Commissioner of Agriculture to hold a public hearing everytime that a license is issued, but the cost in time and money has made the provision impossible to implement.

II. The Potato Industry in Other States: The Washington and Oregon Experience.

Maine's experience in the potato industry has not been unlike that of the potato producing states of New York, Wisconsin, and several Western states. Inflation as well as cyclical supply and demand, inefficient farming operations, predatory business practices, and intra-industry conflicts have plagued most of the leading potato producing states. Some states such as New York, Wisconsin, Michigan and Minnesota have not experienced these problems to the extent that the potato industry has been seriously hurt. Other states such as Washington and Oregon experienced very serious problems in the potato industry and in agriculture in general. As a result, Washington and Oregon pursued a bold new approach to agriculture compared to previous policy.

Prior to 1965, the agricultural sector of the northern Pacific coastal states substantially outvalued the manufacturing sector in regard to goods produced. The manufacturing sector has increased dramatically since the mid 1960's and has surpassed the agricultural sector in terms of the value of goods produced. Nevertheless, the agricultural sector has not declined in regard to actual production and value of goods produced, and is a very substantial segment of the economies of the two states.

During the 1950's the agricultural sector of the economies of Washington and Oregon were plagued by a multitude of problems including serious intra-industry conflicts. Producers, commission merchants, processors, shippers, etc. finally realized the need for a strong regulatory and enforcement policy that would force the various groups to comply with the law and cooperate with each

other. The outcome has been that the Department of Agriculture in Washington State, for example, has substantial regulatory and enforcement powers which the department readily uses.

The desire for a strong regulatory body and rigorous law enforcement has created great respect among all agricultural groups for the Washington State Department of Agriculture (WSDA). As a result, many problems have been resolved, and there is much more harmony within the agricultural sector than existed in the 1950's. There are still problems and conflicts, but they have been kept to a minimum.

The Washington State Commission Merchants Law does not differ significantly from Maine's Agricultural laws governing the potato industry. Chart A compares the powers of the Departments of Agriculture of Oregon, Washington, and Maine. In summation, the Departments can investigate all agricultural groups, (processors, dealers, growers, etc.) suspend licenses and close down operations, bring suit against each group in court in the name of the Director or Commissioner of Agriculture, have access to all books and records of each group, and to issue subpoenas for evidence.

Washington agricultural law, unlike Maine agricultural law, provides that all employees of the Department of Agriculture have the same powers and authority as Justices of the Peace. In addition to the power of arrest granted to agriculture officials, Washington agricultural law provides that violation of the provisions of the law is a misdemeanor and carries a jail sentence and/or fine.

The key to the successful results of the Commission Merchants Law lies in the willingness of the Agriculture department to use the law and the Department's expeditious implementation of the law.

The Enforcement Division of the Washington State Department of Agriculture has a staff of 5 people and is currently allocated \$172,286 or 1 percent of the total budget and staff of the department to enforce the law in all branches of agriculture. Most problems are resolved without punitive action because all groups respect the powers of the Department. Some problems require punitive action which the Department readily uses when no other action is successful.

Another aspect of enforcement concerns quality control. The northwest Pacific states devote considerable attention to quality control over agricultural production. State law requires that all potatoes (and other produce) be inspected prior to shipment. Strict enforcement of quality control has created substantially greater harmony within the potato industry, and the markets for Washington's agricultural production have increased significantly.

In addition to compulsory inspection, Washington State is part of the Federal Marketing Order. According to Stuart Bledsoe, Director of the Department of Agriculture, the Federal marketing order has produced positive results for Washington State agriculture.

Agriculture producers are protected by the WSDA in regard to payment for the product purchased. A standardized contract requires that payments for crops purchased must be made within 30 days following delivery of the product unless otherwise specified in the contract. In the event that a commission merchant or cash

buyer fails to pay for the crop in the specified period of time, the grower is required to notify the WSDA within 30 days. If the grower delays notifying the department and reports "no or slow payments" after the 30 day period, the grower is fined a specified percent of the amount due. The reason for the provision is that a commission merchant or processor in default of payment to one grower will probably have problems paying other growers, and the Department must be notified immediately before the problem becomes critical.

Upon notification, WSDA officials investigate the situation and try to resolve the problem as expeditiously as possible. If all means fail, the Department can revoke licenses and close operations of firms or individuals purchasing agricultural production.

In order to carry out the enforcement phase of the state's agricultural policy, the Washington State Department of Agriculture uses the monies it receives from the licenses it issues. License fees are much greater in Washington than in Maine which enables the Department of Agriculture in the former state to implement a more comprehensive and aggressive policy compared to the Maine Department of Agriculture. Annual license fees in Washington are \$80 and there are no reduced rates for renewal of licenses. In Maine, the initial fee is \$50 for a potato license and the renewal fee is \$25. In addition to higher license fees in Washington State compared to Maine the west coast state charges the same license fee (\$80) for each subsidiary operation of an agricultural firm. In Maine, each subsidiary operation pay a li-

cense fee of \$2.

The potato producing states in the West are not only concerned with regulation and enforcement. There has been close cooperation between the Executive, the Legislature, and the Department of Agriculture in each state to develop new agricultural markets. States such as Washington, Oregon, Idaho, and California have been promoting agricultural production of their respective states in Asia, Latin America, and in other parts of the United States.

Washington State budgets roughly \$420,000 per year for agricultural development. Roughly 2 percent of the total budget and manpower are devoted to agricultural development. The Agricultural Development section assists the entire agricultural community to develop new markets, look into new directions in agriculture, and acts primarily as a research and guiding agency. The agency publishes current market news on a monthly basis that includes prices and production for all agricultural products.

CHART A

PROVISIONS OF THE AGRICULTURAL STATUTES IN
 MAINE, OREGON, AND WASHINGTON
 IN REGARD TO POTATOES

	<u>Maine</u>	<u>Oregon</u>	<u>Washington</u>
<u>Powers and Duties of the Departments of Agriculture</u>			
1. Deny, suspend, revoke licenses	yes 7 MRSA § 1017	yes	yes
2. Issue subpoenas	yes	yes	yes
3. Investigate books and records upon complaint or on own motion	yes 7 MRSA § 1018 7 MRSA § 1015 7 MRSA § 1016	yes	yes
4. Unimpeded access to all facilities and vehicles in which potatoes are stored, handled, processed or transported	conditional 7 MRSA § 956	yes	yes
5. Take assignments of claims from growers and sue dealers, processors, etc.	yes 7 MRSA § 1026 7 MRSA § 13	yes	yes
6. Make complaint in any criminal action of any violation of any provision	no Civil Action Only	yes	yes
7. Petition the courts to issue injunctions or restraining orders	yes 7 MRSA § 1018	yes	yes

	<u>Maine</u>	<u>Oregon</u>	<u>Washington</u>
8. Bring suits in several state courts	yes 7 MRSA § 1027	yes	yes
9. Powers of Justices of the Peace. Power to arrest	no	yes	yes
10. Violation of laws considered a misdemeanor	no	yes	yes
<u>License and Bonding</u>			
1. All dealers, retail peddlers, cash buyers, and processors must be licensed.	yes 7 MRSA § 1014	yes	yes
2. Costs of licenses	Initial cost - \$50 Renewal fee - \$25 fee for subsidiary operations - \$ 2	- \$50 - \$50 - \$50	- \$80 - \$80 - \$80
3. Bond provision	\$5,000-50,000	\$2,000	\$7,500
4. Producers Lien Law	no	yes	no
<u>Enforcement</u>			
1. Full time enforcement division-inspecting and supervising entire industry	no	yes	yes
2. Full time legal staff	assigned from Attorney-General's office as needed	yes	yes

	<u>Maine</u>	<u>Oregon</u>	<u>Washington</u>
3. Compulsory inspection at time of shipment	no	yes	yes
<u>Records of Transactions</u>			
1. Names of growers, buyers, shippers, etc.; purchase price, grade and condition, etc.	yes 7 MRSA § 1022	yes	yes
<u>Quality Control</u>			
Part of the Federal Marketing order	no	yes	yes
<u>Protection for Grower</u>			
1. Processor cannot beyond capacity	no provision	provision disallows it	provision disallows it
2. Uniform contract	no	yes	yes
3. No price discrimination between buyers	no provision	provision disallows it	provision disallows it

III. Alternatives to Remedy Problems

There are a number of alternatives to remedy the problems confront Maine's potato industry. The alternatives are presented below:

1. Create a Maine Marketing Order.
2. Create an Industrial Regulatory Agency.
3. Intensify the role of the Department of Agriculture as a Regulatory Agency.
4. Establish a Producer's Lien Law.
5. Increased regulation of packaging and grading of Maine potatoes.
6. Establish the Potato Commission as an Advisory Group.
7. License and bond growers who package potatoes.
8. License growers.
9. Legislative cooperation with the Department of Agriculture.

1. Maine Marketing Order

One possible alternative is to establish a potato marketing order in Maine. The marketing order could be either a federal or State order. A federal market order must be approved by a 2/3 vote of all growers. Traditionally, potato growers in the State have opposed the federal order market since it was terminated in the early 1960's. A State marketing order could be imposed but grower cooperation or compliance could be limited. State statutes may empower the Commissioner of Agriculture to establish a State market order.

A marketing order could help improve the quality of product which would indirectly improve relationships between growers, shippers, and processors. By being assured of a consistently high quality product, shipper, processors, and fresh table stock buyers may not have as many marketing problems. Hopefully, the growers would benefit, by higher product prices.

2. Industrial Regulatory Agency

An industrial regulatory agency to police the industry and to enforce all groups within the industries to comply with the law, is a second alternative. According to one processor, the Agricultural Bargaining Commission, representing all groups, could act as the enforcing agent. Compulsory inspection, enforcement of contracts, disciplinary action, and other powers could be granted to the Commission.

An industrial regulation agency has several advantages and disadvantages. On the positive side, it would force all groups to work together. The industrial regulatory body could assess each member a fee in order to provide the agency with funds to enforce its power, which the Department of Agriculture has not been able to do at this point.

On the negative side, industrial regulatory authorities have become increasingly unpopular across the nation. One outcome is that the regulated firms eventually control the regulation authority, and little regulatory action is undertaken. In addition, desperate groups within an industry can grow further apart as one group perceives that a rival group is gaining in power or influences decision that are injurious to a particular group. Another problem associated with regulatory authorities within an industry such as the potato industry is the opposition that maybe created in unregulated industries such as poultry, etc.

3. Department of Agriculture as a Regulatory Agency

The most logical regulatory body would appear to be the Maine Department of Agriculture which is supposed to represent all groups in agriculture without having personal financial involvement in the industry. Acting as an impartial judge, the Department of Agriculture can enforce the law and render decisions that might not be considered to be as prejudicial, in the opinion of the regulated groups, as decisions rendered by an industrial regulatory authority.

In order to develop a rigorous regulatory policy and approach within the Maine Department of Agriculture toward the potato industry, additional manpower and funds may be required. According to some Department officials one or two more people would be required to actively supervise industrial activities. Furthermore, there would probably be additional funds required to fund the expected increase in the number of public hearings that would be held.

The required funds could be derived by increasing license fees and/or the potato tax. Another possible source of income might be for the Department (MDA) to shift its emphasis from potato brand enforcement to general enforcement within the entire industry. Another possibility is to appropriate funds for stricter enforcement.

4. A Producers' Lien Law

The growers argue that there is no protection for the potato producers in cases in which processors encounter serious financial problems. According to the Maine Potato Council, one processor which owes growers in excess of \$5,000,000 could have a serious economic effect on many producers. A \$50,000 bond is insufficient to cover the contract negotiated by the processors.

California and Oregon have producer lien laws that are levied on the finished product of the processor. According to the California law, the producer's lien takes priority over any other debts of the processor excluding the lien of a warehouseman.

and the lien of labor. In addition, the processor cannot sell the finished product for 60 days unless the processor has paid the producers for their potatoes. Following the 60 day period or payment to the producer, the lien is ineffective.

According to the Maine Bureau of Banks and Banking, many banks will not extend loans to processors based on their inventory unless the lien of a warehouseman has priority over all other liens. The warehouseman lien provision assures the bank that it will recover its funds in case of a firm's default in payment of debts. Some banks may loan funds secured by the inventory without a warehouseman lien, but the interest rate would be significantly higher and the loan would be less compared to a loan with a warehouseman lien provision.

According to the Maine Potato Council, a producer lien law attached to 50 percent of the value of the inventory would allow the processor to continue to borrow money based on the inventory.

A problem that may arise from the passage of a potato producers lien law is the criticism that may be generated among other agricultural groups. Representatives of the poultry, dairy, and fruit industries may consider the potato producers lien law as a special interest law designed to protect the potato growers and not all agricultural producers in Maine. Consequently, a producers lien law levied on the inventory of all processors might remove the charge that the law discriminates between agricultural producers.

5. Increased Regulation of Packaging and Grading of Maine Potatoes

Several western potato producing states have concentrated on improving the quality of their potato products as a means of capturing a greater share of the national and international markets. By means of increased regulation and inspection of the packaging and grading of potatoes, these states have succeeded in achieving their objective. Washington State, for example, requires potatoes to be inspected before shipment.

There are a number of alternatives that can be utilized to improve the quality and marketability of Maine potatoes. One approach is to provide for compulsory inspection prior to the shipment of table stock potatoes. Another alternative is to require the Commissioner of Agriculture to establish more grades of potatoes for sale on the market. Since U.S. #1 potatoes include a large variety of sizes, other grades of potatoes limiting the size variations in each grade may improve the image and marketability of Maine potatoes. A third option open to the Committee is to require that each package of potatoes (5 lb., 10 lb., 20 lb., 50 lb., 100.) contain the name and address of the grower as well as the name and address of the packager. A fourth alternative is an extension of the third and would require all individuals or firms which package potatoes to be licensed and bonded.

6. The Potato Commission As An Advisory Group.

The Potato Commission along with a representative of the banking industry and a labor representative from the potato industry could act as an advisory group to the Commission of Ag-

culture. The advisory group could be required by statute to prepare an annual report describing the potato industry in Maine, the problems affecting the industry, the measures used to resolve the problems along with an evaluation of the measures, and proposals to strengthen the industry.

The advantage of broadening the Potato Commission into a more active body concerns the present role of the Commission. The Commission has been created to promote the potato industry, and an increase in its function would be viewed as a logical extension of its present duties. As a result there would probably be less opposition from other agricultural groups to the potato advisory commission.

7. License and Bond Growers Who Package Potatoes.

One suggestion proposed by some of the potato dealers at the Presque Isle hearing concerned licensing and bonding potato growers who package potatoes to be transported by a dealer shipper. The dealers supporting the proposal pointed out that the growers should bear the responsibility for the grade and quality of potatoes that they have packaged. Some growers package a poor quality product which hurts the shipper in both the long and short run. In the long run out-of-state buyers may not do business with shippers-dealers who ship a poor quality product which may have been packaged by a grower.

The growers, on the other hand, point out that a law requiring growers who package potatoes to be licensed and bonded could create a situation whereby growers would become the scapegoats for poor quality shipments whether or not they were responsible

for packaging the product. In addition, the growers pointed out that it is easier to enforce the present law than it would be in the event that growers were required to be licensed to package potatoes. The present law faces the shipper to take responsibility and to inspect the potatoes that he is shipping.

8. Licensing Growers

Maine's potato growers, according to the processors and to most shippers, should be licensed because every other group in the industry is required to be licensed. Present licensees argue that they are liable for any illegal or unethical practices that they commit which could entail a suspension or revocation of their license. As a result, the licenses can be forced to close their business operations. Potato growers, on the other hand, are not subject to such punitive action.

While potato processors and shippers are subject to plant closure by the State of Maine, the decision can be appealed to Superior Court which would stay the closure directive until the courts made a decision.

No other State has subjected growers to licensing laws. The major premise behind the discrepancy is that processors and shippers have much more bargaining power and economic control over the industry than the growers. As a result, the processors and shippers must be held more accountable for their actions.

According to MDA officials, it would be administratively difficult to license 1300 growers. It would be illegal to license producers to grow potatoes, but producers could be licensed to sell their crop to a commercial operator or on a commercial basis. There are many ways to circumvent the law. The only feasible grower licensing law would be to require processors and shippers by law to purchase potatoes exclusively from licensed growers.

Another possibility is to remove processors and shippers from the licensing requirements in order to maintain an equitable number of protective legal means for all groups in the potato industry. According to the Maine Potato Council, the disadvantage of such a policy is that processors and shippers could engage in business practices that created the necessity for enacting the licensing and bonding laws.

9. Legislative Cooperation With The Department of Agriculture

The Committee on Agriculture or some members of the Committee could be selected along with representatives of the banking community, labor, producers, and processors, and the Commissioner of Agriculture to study the potato industry and to investigate feasible directions in which the potato industry can develop.

A second alternative is to establish a task force to include members of the Agriculture Committee and the Commissioner of Agriculture to study Maine agriculture, in general. The task force would be required to study the entire field of agriculture to include the problems, strengths, and weaknesses, of Maine Agriculture, as well as an analysis of various direction in which Maine

agriculture can develop.

Conclusion and Recommendations

In order for the Maine potato industry to grow and develop, it is necessary to improve the image of the product and to promote greater cooperation in the industry. The Joint Standing Committee on Agriculture perceives that the Commissioner of Agriculture, by assuming a dynamic role, can promote the development of Agriculture with a minimum of new legislation. The goal of legislation should be to facilitate the Commissioner of Agriculture in his attempts to develop the agricultural sector of the economy.

There are three significant types of legislation that can achieve, in part, the goal to promote the development of Maine agriculture.

1. A producer lien law.
2. Improved product.
3. Notice to the Commission of financial problems between processors and producers.

Producer Lien Law

A producer lien law in which the producer is given a preferred lien on the inventory of a processor after the preferred lien of labor and banking institutions, will provide limited protection for the producer, reduce producer suspicion of processors, and thereby promote greater cooperation. Furthermore, by limiting the borrowing capacity of processors to 50 percent of the value secured by their inventory the producers will be assured of a sufficient guarantee for their product.

Improved Product

An improved product will eventually increase the sales of the product and thereby generate more income and higher employment. One means to improve the quantity of the product is to require the names and addresses of persons or firms actually doing the packing of potatoes to be included on the labels of packaged potatoes. Another means is to increase the penalties for the sale of misbranded potatoes. As a result, an improved product will be marketed in and out-of-State which will generate increased demand for Maine potatoes.

Knowledge of Financial Problems Between

Producers and Processors

In order to prevent major problems from arising in regard to financial failure or economic distress of processors, a process must be established to provide that information as soon as possible to the Department of Agriculture. Notification from the producer to the Commissioner of Agriculture in regard to payment problems with processors may inform the Commissioner of a financial problem that may be resolved before it "snowballs" into a major catastrophe for several hundred people.

AN ACT To Establish An Agriculture Lien Law.

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

Sec. 1. 10 MRSA, C. 605 is repealed and replaced to read:

CHAPTER 605

AGRICULTURE LIEN LAW

§ 3301. Purpose

The Legislature finds that agriculture has a substantial and unique effect on the economy of the entire State and Aroostook County in particular. A large number of people in Maine are directly or indirectly dependent upon agriculture. In the recent past, a number of agricultural producers, particularly in the potato industry, have been very adversely affected by the failure of processors of agricultural raw products to compensate producers for the raw product contracted and delivered to the processor. As a result, some producers have been forced out of business as a way of life and as a means of earning a livelihood.

The Legislature intends through this legislation to provide producers of farm products with a limited guarantee of payment for the raw product contracted by and delivered to a processor. This legislation is designed to afford limited protection for producers and thereby promote the general welfare of the State which is dependent upon agriculture and the producer.

§ 3302. Definitions

1. Average Monthly Inventory. "Average monthly inventory" shall mean the total value of the inventory of a processor for one year divided by 12.

2. Commissioner. "Commissioner" shall mean the Commissioner of Agriculture.

3. Farm product or raw product. "Farm product" or "raw product" shall mean any agricultural product grown or harvested on the land for sale to a processor or manufacturer except logs and lumber.

4. Finished product. "Finished product" shall mean any manufactured or processed form of a raw agricultural product except wood products.

5. Inventory. "Inventory" shall have the same meaning as defined in 11 MRSA § 9-109, sub-§ 4, except that timber and wood products shall not be considered inventory in this chapter.

6. New processor. "New processor" shall mean and is exclusively limited to a firm, person, or corporation that has not operated as a processor in the previous 3 years or has : purchased an already existing plant that has not been operating for 3 years in Maine immediately prior to the purchase or the plant.

7. Processor. "Processor" means any person other than a consumer who purchases or contracts to purchase agricultural raw products produced or harvested from the land for processing or manufacturing which changes the physical form that the raw product possessed when harvested. The effects of the following operations shall be considered as changing the physical form possessed by such raw products when harvested: Chopping, slicing, cutting, dicing, mashing, removing skin or peel, frying or otherwise cooking, freezing, canning, dehydrating or comparable methods of pre-

paration for marketing in what is generally considered to a processed form.

§ 3303. Producer's Lien attached to processed Agricultural Goods

Every producer of any farm product which the producer grows and harvests and sells to any processor under contract, express or implied, has a lien upon such product and upon all processed or manufactured forms of such farm product for his labor, care, and expense in growing and harvesting the raw product. The producer's lien attached to the finished product shall be the full extent of the agreed price, if any, of the raw product delivered to the processor. If there is no agreed price or a method for determining it which is agreed upon, the extent of the lien shall be the full value of the raw product as of the date of delivery and shall be determined by the Commissioner of Agriculture.

1. The producer's lien is attached to the finished product manufactured or processed by a processor at the time of delivery of the producer's raw product to the processor.

§ 3304. Priority of Liens.

1. The producer's lien is a preferred lien attached to the total value of the finished product in inventory and prior in dignity to all other liens, claims, or encumbrances except for labor claims for wages and salaries for personal services which are rendered by any person to any processor in connection with the processing business and except for the claims of financial institutions as defined in 9-B MRSA § 131 for loans or debts outstanding which are secured by the inventory of a processor.

A. In the event that several producers have delivered raw product to the processor or that one producer has made several deliveries to a processor, the preference of the producer liens shall be based on the date of delivery, and the first delivery shall have preference over the last delivery.

2. No processor of agricultural raw products as defined in § 3302 shall pledge or have pledged more than a total of 50 percent of its average monthly inventory as computed according to § 3304, sub-§ 2, ¶A as collateral for credit, cash, securities, or any other type of loan from any person, firm, corporation, State agency or Federal agency. Any credit, cash, security, or other type of loan that exceeds the limit established in this section shall be deemed unsecured and a last priority for repayment purposes.

A. The average monthly inventory shall be computed by the Processor and the Commissioner or his agent by June 30, of each year to determine for the next fiscal year, July 1 - June 30, the maximum amount that a processor may borrow as established in this section.

B. A new processor as defined in § 3302, and the Commissioner or his agent shall estimate the average monthly inventory for purposes established in this chapter, and said inventory shall be based on the anticipated volume of production and sales.

§ 3305. Duration of Lien

Except as otherwise provided in Section 3306 the lien of a producer, unless sooner released by payment or by security which is given for such payment as provided in this article, is complete from the date of delivery of such product, or if there is a series of deliveries, it is complete from the date of the last delivery. The lien shall remain in effect for 60 days thereafter at which time it shall cease unless proceedings are commenced in a proper court within that time to enforce the lien.

§ 3306. Effect of Lien During Foreclosure Proceeding

If suit is commenced by any such producer to enforce any lien, as provided in Section 3303 and Section 3304 such lien shall remain in effect until one of the following occurs:

1. The payment of the agreed price of the value of such product.
2. Deposit of the amount of the lien or claims with the court in which any such action is pending.
3. The final determination of such court proceeding.

§ 3307. Release from the Lien

Any processor that desires to secure a release of any or all of such liens on any product or processed product may do so in the following way:

1. By paying the agreed or actual value of any farm product which is purchased by such processor within 20 days from the date of delivery of the farm product unless the date of payment is otherwise agreed upon in writing or such payment is secured other than by lien.

2. By depositing with the Commissioner of Agriculture a surety bond which is executed by such processor as principal and by a surety company which is qualified and authorized to do business in this State as surety in an amount which equals the current market value of the product or processed product which is intended by such processor to be sold or otherwise disposed of, as such value may appear by the sworn statement of such processor in accordance with quotations from the federal-state market news service or other evidence which is satisfactory to the Commission of Agriculture. The bond shall be conditioned that if the processor fails to pay up to the amount of such bond the lawful claims of all producers whose liens have been released by the bond, within 30 days after date of the bond, the surety shall be liable to and shall pay to the State on behalf of such claimants all such lawful claims as may be covered by the amount of the bond, together with costs of suit if an action is filed on the bond.

3. By depositing with the Commissioner of Agriculture a cash sum in lawful money of the United States which is expressly set apart by an instrument in writing that is signed by the processor for the purpose of guaranteeing to the extent of such sum, payment of all existing claims of producers whose liens are released by the deposit within 30 days from the date of such deposit. The Commissioner shall be named in such instrument as trustee to carry out the purpose and intent of the instrument.

4. By securing a release from the Commissioner after payment in full for such farm product.

§ 3308. Disposition of product

If all lawful claims of the producers have been secured as defined in § 3307, any product which is released by such action may be sold, transported or otherwise disposed of.

§ 3309. Claim Payment from bond filed with the Commissioner of Agriculture

The Commissioner of Agriculture may accept such bond, if approved by him, and such other security. If the claims or any of them are not paid in accordance with the condition of such security, the Commissioner of Agriculture may, on proof being made to his satisfaction of the amounts which are due such claimants, pay all such unpaid claims insofar as possible out of the deposit money or proceeds from any sale made by him of any securities or processed products which are given as security.

1. If a bond has been given as security, the Commissioner of Agriculture shall notify the principal and surety of any default on the part of the principal under the bond, and make demand for payment on behalf of such unpaid claimants. If payment is not made, the Commissioner may take any legal action he may deem necessary to enforce payment under such bond.

2. If the Commissioner of Agriculture has received warehouse receipts for any processed product as security, and the processor giving them has failed to pay the claims in accordance with the terms of such security, the Commissioner may sell such security with or without notice, and in such manner as he shall determine.

3. All claims in relation to payment shall be based on the date of delivery, and the first delivery shall have priority over the last delivery.

4. This article does not prevent the Commissioner if in his opinion the rights of all of the claimants are fully protected, as provided for in this article, from issuing a certificate in the name of the department and signed by him which releases any specific lot or quantity of any product or processed product from all liens of the claimants. No security which is held by the Commissioner shall, however, be released by him to any processor unless and until the Commissioner is satisfied that all claims have been fully paid, or that the rights of all of the claimants are fully protected.

A fee of five dollars (\$5) shall be paid to the Commissioner for issuing any certificate or release which is provided for in this section.

§ 3310. Personal action to recover debt

This article does not impair or affect the right of any claimant that possesses a lien to maintain a personal action to recover such debt against a processor, either in an action to foreclose his lien or in a separate action. He is not required to state in his affidavit to procure an attachment that his demand is not secured by a lien.

1. The judgement, if any, which is obtained by the plaintiff in such personal action, or personal judgment which is obtained in such lien action, does not impair or merge any lien right or claim which is held by such plaintiff. Any money, however, which is collected on the judgment shall be credited on the amount of such lien or claims in any action which is brought to enforce the lien or in

any action which is filed pursuant to this article by the Commissioner.

2. In an action that is filed by any such lien claimant, the defendant processor may file with the court in which the action is pending a surety bond which is approved by such court in an amount that is sufficient to cover the demand of plaintiff's complaint, including the costs, whereupon the court may order the release of a portion or the whole of any product or processed product upon which the lien of plaintiff has attached.

3. Such processor may also, on motion duly noticed, introduce evidence to the court before whom any such action is pending to the effect that he has sufficient security or money on deposit with the Commissioner to protect the lien or other rights of plaintiff. If he does so, the court may order the release of a portion or the whole of such product upon which the lien of plaintiff is attached, and deny to plaintiff any recovery in such action. Such action by the court does not, however, prejudice any other rights or remedies which are possessed by the plaintiff.

§ 3311. Request for an injunction

The plaintiff in an action which is brought to foreclose any of the liens which are provided for in this article may, in a proper case, and upon proper allegations, secure an injunction against the processor to restrain the doing of any acts on the part of such processor which are designed to or which would, in effect, remove any processed product in his possession or under his control and upon which valid liens exist, beyond the process of the court, to plaintiff's injury.

§ 3312. Insufficient Security

If in a court proceeding to foreclose such lien, it is found and determined by the court that there is no cash, bond, or other deposit placed with the Commissioner as security for the payment of any of the lien claims as set out in the complaint, the judgment of foreclosure shall be against a sufficient quantity in value quantity in value of such farm product or processed product in the possession or under the control of the defendant processor, as may be necessary to satisfy such claim or render judgment and declare forfeited any bond which is deposited in the court by such processor to secure the lawful claims of the plaintiff as determined by the court.

§ 3313. Consolidation of liens

All actions filed by the Commissioner or producers against any processor for the foreclosure of the liens or other security which are provided for in this article may be consolidated by the court and all persons that are necessary to a determination of such action may be made parties to such actions. Any judgment which is rendered shall determine the lawfulness of the amount of each claim as represented by the pleadings.

§ 3314. Violations and Penalty

It is unlawful for any processor to remove any farm product which is delivered to him, or any processed form of the farm product, from this State or beyond his ownership or control upon which such a lien or any of the liens which are provided for in this chapter, are attached, except any of such product or processed product as may be in excess of a quantity which is on hand of a value that is sufficient to satisfy all existing liens.

Any violation of any provision of this chapter is a class E crime as defined in 17-A MRS § 4.

Sec. 2. 9 MRS § 466-A is enacted to read:

§ 466-A. Unlawful Acts - Civil Offenses

The action set forth in this section shall be unlawful and shall be deemed a civil offense.

1. Any financial institution, financial institution holding company, or any other type of financial institution as defined in 9-B MRS § 131 that provides credit, cash, securities, or any other type of loan secured by the inventory of the processor beyond 50 percent of the total value of the average annual inventory of such processor at any one time as defined in 10 MRS § 3301 shall be deemed an unlawful act. Any credit, cash, security, or loan secured by the inventory of a processor that exceeds the limit established in this section shall be deemed unsecured and a last priority debt for purposes of repayment.

STATEMENT OF FACT

The intent of this legislation is to provide limited protection to producers of agricultural raw products grown and harvested on the land who receive no payment or only partial payment for the raw product delivered to a processor. This legislation gives agricultural producers a preferred lien on the inventory of a processor to follow the lien of labor and banking institutions. Processors

are limited to 50 percent of the value of their inventory which can be used as collateral for loans. This limitation will ensure sufficient finished product value to cover producer claims. Presently one processor owes producers more than \$5,000,000 for raw product deliveries, and this legislation will prevent future difficulties in payment.

TP/sym

AN ACT To Promote The Sale Of Maine Potatoes

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

Sec. 1 7MRSA § 952, first two sentences as last amended by P.L. 1966, C. 469
is further amended to read:

§ 952. Branding

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, at wholesale or retail, to ship, deliver or consign or have in possession potatoes prepared for market unless in containers which have been legibly and conspicuously tagged, branded, labeled or stenciled with the name and address of the person, ~~or persons~~ firm or corporation responsible for packing and the name of the grade, net weight and the word "potatoes." The person ~~or persons~~, firm or corporation packing potatoes shall be responsible for the grading.

Sec. 2 7MRSA § 954, as last amended by P.L. 1965, C. 219, § 5 is further amended to read:

No provision of sections 951 to 957 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; and the name and address of the person, firm or corporation doing the packing and the information required in § 952 shall appear on the container. ~~No nor shall any~~ provision of said sections shall 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.

Sec. 3. 7MRSA § 954-A, as enacted by P.L. 1965, C. 219, § 6, is amended to read:

Sec. 954-A. Seizure of misbranded, mislabeled or misrepresented product. Whenever the commissioner or his duly authorized representative shall find from inspection, as authorized in section 956, that potatoes are being sold, exposed for sale, or shipped for sale in containers, and the containers bear any statements, design or device regarding such potatoes which shall be false or misleading, in any particular, or if potatoes are packed in such manner that the face or shown surface is not an average of the contents of the package, or if such potatoes fail to meet the minimum grade requirements established as a state grade by the Commissioner of Agriculture, or if the potatoes are not accompanied by a proper bill of lading or invoice as provided by section 952, then the commissioner or his duly authorized representative, may seize such potatoes so that they cannot be sold, offered, exposed for sale or transported, ~~until such potatoes have been regraded or relabeled and accompanied by a federal state inspection certificate showing that the potatoes in such containers conform in every particular to the~~

Markings on such containers or until a proper bill of lading or invoice is produced. Any potatoes seized by the Commissioner or his duly authorized representative for failure to meet the minimum grade requirements established by the Commissioner shall be returned to the licensee at the point of origin. Misbranded potatoes shall not be exposed or offered for sale or transported until said potatoes have been regraded and are accompanied by a federal-state inspection certificate showing that the potatoes meet the minimum grade requirements specified on the container.

Sec. 4. 7MRSA § 957, as amended by P.L. 1965, C. 219, §8 is repealed and the following enacted in place thereof:

Any person, firm or corporation who shall violate any of the provisions of sections 951 to 957 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 less than \$100 or more than \$200 for the first offense, and a fine of not less than \$400 or more than \$500 for the second offense, and a fine of \$1,000 and a ten-day license suspension for the third and subsequent offenses committed during the year September 1 to August 31.

STATEMENT OF FACT

The intent of this legislation is to increase the quality of Maine potatoes sold as fresh stock on the open market. This bill will increase the penalties for selling misbranded potatoes and will require persons, firms, or corporations actually doing the packaging of potatoes to place their name and address on the container to indicate the actual packer responsible for packing the potatoes.

AN ACT To Revise The Potato Licensing Law.

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

Sec. 1 7MRS § 1015, 5th Paragraph, as enacted by P.L. 1971 C. 366 is amended to read:

Each license shall plainly state the name and business address or addresses of the licensee and shall be posted in a conspicuous place in each office where the business is transacted. The initial fee for each license shall be ~~\$50~~ \$80. Such license shall be automatically renewed for successive periods of one year each upon payment of the renewal fee which shall be ~~\$25~~ \$80. If the licensee desires to carry on business in more than one place within the State, he shall procure additional copies of the license, certified by the Commissioner, for each place where the business is to be conducted. The fee for each such certification shall be ~~\$2~~ \$80.

Sec. 2 7MR SA § 1017, Sub §3 is repealed and the following enacted in place thereof:

3. Notification of insufficient or no payment.

A. Producers may notify the Department of Agriculture of insufficient or no payment for potatoes delivered to any processor in the State in violation of § 1017, Sub§§1, Par. B.

Upon notification in regard to insufficient payment or nonpayment to producers the Commissioner of Agriculture shall investigate the complaint and shall hold a hearing within 40 days from date the complaint was filed in accordance with the procedures established in § 1018-1020, unless such hearing is waived by the processor against whom the charge has been made.

The Commissioner may require the licensee who has been accused or found guilty after a hearing of insufficient payment or nonpayment of debts owed a producer to formulate a schedule of payments to the producer that is satisfactory to the Commissioner.

The licensee accused of or found by a hearing to be in default of payment to a producer shall submit a payment schedule to the Commissioner within 1 week from the Commissioner's request for a payment schedule. In the event that the schedule of payment is not satisfactory to the Commissioner, the Commissioner shall establish the schedule of payment.

A licensee found guilty of insufficient payment or non-payment of debts owed a potato producer may appeal the decision in accordance with the procedure defined in §1021 of this Title.

Nothing in this section shall be construed to prohibit a producer from seeking redress for insufficient payment or non-payment from licensees in any court or in accordance with any federal procedure established to obtain redress.

STATEMENT OF FACT

The intent of this legislation is to encourage producers to notify the Commissioner of Agriculture in regard to no payment or insufficient payment from processors. This bill also provides for additional revenues to enforce the present law.