§1017. Violations

1. Acts enumerated. The commissioner or the commissioner's duly authorized agent may refuse to grant or renew a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory proceedings, upon a finding that any of the following acts have existed within 2 years of the date of the filing of an application for license:

A. That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of potatoes or rotation crops, or for the rendering of any service in connection with the handling, sale or storage of potatoes or rotation crops; [PL 1997, c. 606, §10 (AMD).]

B. That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this Article, or has failed or refused to pay for potatoes or rotation crops purchased by the applicant or licensee within 30 calendar days after acceptance of the potatoes or rotation crops; [PL 1997, c. 606, §10 (AMD).]

C. That the applicant or licensee has knowingly made any false material statement as to the condition, quality or quantity of potatoes or rotation crops received, handled, sold, purchased or stored by the applicant or licensee; [PL 1997, c. 606, §10 (AMD).]

D. That the applicant or licensee directly or indirectly has purchased for that applicant's or licensee's own account, potatoes or rotation crops received by the applicant or licensee upon consignment without prior authorization from consignor together with price fixed by consignor or without promptly notifying the consignor of such purchase. This does not prevent any dealer, processor, broker, agent or retailer, in order to close the day's business, from taking into account in the record of sales miscellaneous lots or parcels of potatoes or rotation crops remaining unsold, if such dealer, processor, broker, agent or retailer on the business day next following properly enters any such transaction in that applicant's or licensee's accounts; [PL 1997, c. 606, §10 (AMD).]

E. That the applicant or licensee has made any substantial misrepresentation as to the conditions of the market for potatoes or rotation crops; [PL 1997, c. 606, §10 (AMD).]

F. That the applicant or licensee has made fictitious sales or has defrauded or attempted to defraud a producer; [PL 1997, c. 606, §10 (AMD).]

G. That a dealer, processor, broker, agent or retailer to whom any consignment is made has reconsigned such consignment to another dealer, processor, broker, agent or retailer and has received, collected or charged by such means more than one commission for making the sale therefor for the consignor without written consent of such consignor; [PL 1975, c. 555, §5 (AMD).]

H. That the licensee knowingly made any false material statements in the procurement of such license; [PL 1971, c. 366 (NEW).]

I. That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by the applicant or licensee for such producer; [PL 1997, c. 606, §10 (AMD).]

J. That the applicant or licensee has failed or refused, upon demand, to permit the commissioner or the commissioner's agents to make the investigations, examinations or audits as provided in this Article or that the applicant or licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits, or has otherwise obstructed the same; [PL 1997, c. 606, §10 (AMD).]

K. That the licensee has failed or refused to keep and maintain the records as required by this Article; [PL 1971, c. 366 (NEW).]

L. That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of potatoes or rotation crops whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealings; [PL 2005, c. 333, §2 (AMD).]

M. That the applicant or licensee has failed to deliver to the seller the confirmation required by section 1022 within the time specified; or [PL 2005, c. 333, §2 (AMD).]

N. That the applicant or licensee has failed to maintain a bond to ensure financial responsibility to producers or other licensees as required under section 1015. [PL 2005, c. 333, §2 (NEW).]

The District Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding any of the enumerated violations within 2 years of the date of the filing of a complaint.
[PL 2005, c. 333, §2 (AMD).]

1-A. Mandatory nonrenewal.
[PL 1983, c. 829, §15 (RP).]

2. Conditional. Any order revoking or suspending a license may, within the discretion of the District Court be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the District Court of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final.
[PL 1977, c. 694, §105 (AMD); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

3. Effective date. The commission of the acts enumerated in this section after September 23, 1971 constitutes a violation of this Article.
[PL 1975, c. 555, §§4, 5 (AMD).]

4. Notification of insufficient or no payment. Producers may notify the Department of Agriculture, Conservation and Forestry of insufficient or no payment for potatoes or rotation crops after acceptance by any processor, dealer, broker, agent or retailer in the State in violation of subsection 1, paragraph B.

A. The Commissioner of Agriculture, Conservation and Forestry or the commissioner's agent, upon notification by producers of insufficient or no payment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act as to adjudicatory proceedings, hold a hearing, unless such hearing is waived by the processor, dealer, broker, agent or retailer against whom the charge has been made. The processor, dealer, broker, agent or retailer accused of nonpayment shall provide the commissioner with a copy of the contract, if any, and all other materials and information to enable the commissioner to carry out the provisions of this section. Upon finding after investigation that the processor, dealer, broker, agent or retailer has violated the contract, express or implied, the commissioner may recover the proceeds of the bond required by section 1015 and apply those proceeds against the amounts owed producers. In the event the bond proceeds are inadequate to cover the debts owed producers, the commissioner shall require the processor, dealer, broker, agent or retailer to post an additional bond sufficient to cover the remaining debt owed to the producer or producers.

(1) The commissioner, after determination upon a hearing of insufficient payment or nonpayment of debts owed to a producer, may require the licensee to formulate a schedule of payments to the producer that is satisfactory to the commissioner. The schedule of payments may not exceed a 30-day period.

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

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

(4) Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim owed the producer on the date on which the complaint is filed. The bond required for an appeal procedure may be waived by the District Court in the event that the bond required by the commissioner under section 1015 or this paragraph is valid and sufficient to cover the total claim owed the producer.

(5) Nothing in this section may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any federal procedure established to obtain redress. [PL 2011, c. 657, Pt. W, §6 (REV); PL 2011, c. 691, Pt. D, §2 (AMD).]

[PL 2011, c. 657, Pt. W, §§5, 6 (REV); PL 2011, c. 691, Pt. D, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 366 (NEW). PL 1971, c. 622, §22 (AMD). PL 1975, c. 555, §§4,5 (AMD). PL 1975, c. 713, §2 (AMD). PL 1977, c. 694, §§103-108 (AMD). PL 1983, c. 336, §§1,2 (AMD). PL 1983, c. 582, §§2,4 (AMD). PL 1983, c. 829, §15 (AMD). PL 1991, c. 837, §A20 (AMD). PL 1997, c. 606, §§10,11 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2005, c. 333, §§2,3 (AMD). PL 2007, c. 499, §1 (AMD). PL 2011, c. 657, Pt. W, §§5, 6 (REV). PL 2011, c. 691, Pt. D, §2 (AMD).

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