

SEED POTATO ACT

Phone: (517) 373-8080
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House Bill 5227 (H-1) as adopted and amended

Sponsor: Rep. Roger Victory

Committee: Agriculture

Complete to 1-11-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 94 of 2018)

BRIEF SUMMARY: House Bill 5227 would create the Seed Potato Act to provide that those selling or providing seed potatoes in lots sufficient to plant 1 or more acres must use only certified seed. The bill would also specify exceptions to that rule, require record-keeping and reviews to ensure compliance, and assess administrative fines for violation. The bill would take effect 90 days after its enactment, but many provisions of the proposed Act only apply beginning January 1, 2021.

FISCAL IMPACT: House Bill 5227 would establish new regulatory authority and responsibilities for the Michigan Department of Agriculture and Rural Development (MDARD). The department had not yet estimated the additional costs associated with the new responsibilities but did not believe that the work would require additional staffing. Support for this additional work could come, at least in part, from fees authorized in the bill. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

According to the Potato Growers of Michigan, potatoes are highly susceptible to blight and disease, which can spread through an entire field merely through the air. A potato seed is actually living tissue, giving it a high likelihood of disease. The vulnerability of potatoes is what helped contribute to the Irish Potato Famine, plus other similar events right here in Michigan. A certification of seeds could help protect against disease spreading among potato crops and decimating entire fields.

THE CONTENT OF THE BILL:

Certified seed distribution

Beginning January 1, 2021, the bill would require a person who *distributes* combined seed lots sufficient to plant 1 or more acres to distribute only certified seed. Seed potatoes imported into the state must meet the minimum standards in the State National Harmonization Program and in any applicable quarantine or rule, as provided by the Animal and Plant Health Inspection Service of the United States Department of Agriculture. As used in the proposed Act:

Certified seed would mean a class of seed that meets the requirements of Public Act 221 of 1959 (MCL 286.71 et seq.) and the rules promulgated under that act. Public Act 221 of 1959 regulates the certification of seed; it defines “certified seed” as the progeny of foundation, registered, or certified seed if designated foundation and plant propagating materials that are so handled as to maintain satisfactory genetic identity and purity and that have met certification standards required by Public Act 221 and been approved and certified by the director of the Michigan Department of Agriculture and Rural Development (MDARD) upon the advice of official seed certifying agencies.

Seed lot would mean all the seed potatoes (the tuber used for the reproduction of the potato) of the same variety that are of a single class and specified seed source and are harvested from a field or stored together in a specific storage facility.

An exception would be available to distributors of potato seed to allow for the distribution of uncertified seed to a grower that has been granted permission to plant uncertified seed. (The exception for planting uncertified seed potatoes is described in **Certified seed planting**, below.)

At the time of distribution, seed lots of seed potatoes subject to the above restriction would have to be accompanied by the following documents:

- Official tag or bulk certificate indicating their status as certified seed.
- Certificate of shipping point inspection.
- North American plant health certificate issued by the certifying authority for seed potatoes imported from outside of Michigan.
- Any other documentation necessary to provide the following required information, if the information is not provided by the above documents:
 - A description of the grade of the seed potatoes.
 - The findings of field inspections and postharvest inspections conducted on each seed lot of seed potatoes.
 - The field year of the seed potatoes
 - Evidence that the seed potatoes were tagged and, if imported from outside this state, were packed and sealed under the certification standards of the state, territory, or country in which they were grown.

Certified seed planting

Beginning January 1, 2021, seed potatoes in combined seed lots sufficient to plant 1 or more acres could be *planted* only if the seed potatoes were certified seed.

However, an exception could apply, where a grower could plant uncertified potatoes if the potatoes were grown and stored as part of the grower's farming operations and the uncertified potatoes were no more than 1 field year from certified seed potatoes. (A *field year* refers to the number of years a seed lot was grown in the field after being propagated in a greenhouse).

Potato growers also could apply to the advisory committee for permission to plant uncertified seed potatoes for a single growing season if there were an insufficient volume of any type of certified seed potatoes or seed potatoes meeting the requirements of the proposed Act.

Seed potato advisory committee

The bill would create a seed potato advisory committee consisting of the following 5 members, appointed by the director of MDARD:

- Two commercial potato growers who do not grow seed potatoes.
- The current chair of the Michigan Seed Potato Association.
- One person employed by Michigan State University.
- One person employed by MDARD.

(When possible, the MSU and MDARD committee members must have knowledge or experience with seed potatoes.)

Committee members could serve an unlimited number of 3-year terms, but the potato growers on the committee could not serve more than 2 terms consecutively. Members of the committee would receive no compensation or reimbursement for expenses.

The committee would advise the director of MDARD in establishing rules under the proposed Act, assist in determining the availability of seed potatoes, recommend whether to grant permission to plant uncertified seed potatoes, recommend independent auditors to perform records reviews, and consult with the director regarding the administration and enforcement of the proposed Act.

Records review

Beginning January 1, 2021, each person *growing* potatoes in Michigan in combined seed lots of 1 acre or greater would be required to notify the director of MDARD by January 1 of each year. Persons growing potatoes also would be required to keep and maintain records containing the following information:

- Acreage planted.
- Hundredweight (a unit of weight equal to 100 pounds) and source of the seed potatoes used to plant the acreage, with verifiable documents related to the following:
 - For seed potatoes *purchased*, the required documents listed above that accompany seed potatoes during distribution (description, findings of field inspections, field year, and evidence the seed potatoes were tagged and sealed).
 - For seed potatoes *planted*, the testing history and seed potatoes used to replant the grower's own operations.

The above-listed records would be subject to an independent records review conducted by a qualified department employee or independent auditor selected by the director. The reviewer would review at least 10% of potato growers subject to the proposed Act at least once every seed potato crop cycle. The potato growers to be audited would be chosen randomly by a method determined by the director.

Under the proposed Act, if the independent auditor believed that a violation had occurred, the auditor would have to notify the director within 5 business days. The director would then investigate the alleged violation. Unless disclosed pursuant to a court order, the complaint and results of the investigation would be closed to public inspection during the investigatory period and until the complaint is dismissed or the notice of hearing and charges are served.

To facilitate investigation of the violation, the director could do the following:

- Obtain consent or an administrative search warrant to inspect the records.
- Make any necessary copies of the records.
- Administer oaths.
- Take statements.
- Issue subpoenas to compel the attendance of witnesses or for the production of any books, memoranda, papers, or other documents, articles, or instruments.

The director could petition the district court to enter an order compelling a person who fails or refuses to obey a subpoena to comply with the subpoena. Failure to then obey the court order could be punishable as contempt of court.

Violations

Beginning January 1, 2021, the director could impose an administrative fine on the following persons who violated the proposed Act or a rule created under the proposed Act:

- Any person, with a fine up to \$2,500 per violation.
- A person who plants or distributes potatoes, with a fine of \$20 to \$100 per acre per violation.
- A person who fails to maintain complete and accurate records, with a fine of \$500 to \$1,000 per violation.

Under the proposed Act, a person charged with a violation must be given notice and an opportunity for a hearing pursuant to the Administrative Procedures Act. If no notice or hearing is given, a fine may not be collected. If the director were unable to collect an administrative fine, or if any person failed to pay all or part of a fine, the director could sue to recover the fine, plus costs and attorney fees, in any court of competent jurisdiction.

Any money collected from *administrative fines* would be paid to the state treasurer, who would then be required to credit the money to the Agricultural Licensing and Inspection Fees Fund created in the Insect Pest and Plant Disease Act.

Director duties

In addition to reviewing records and administering violations, the director would be tasked with the following:

- Administering and enforcing the proposed Act.
- Promulgating rules necessary for the administration and enforcement of the proposed Act, including rules that do all of the following:
 - Establish requirements for compliance.
 - Allow for the random selection of 10% of potato growers subject to the annual records review.
 - Establish methods for determining whether there are unacceptable levels of disease.
 - Establish rules promulgated under the proposed Act for seed potatoes planted in Michigan.
 - Set a schedule of fees for services performed by the department.

FISCAL INFORMATION:

MDARD's Pesticide and Plant Pest Management (PPPM) Division performs similar licensing and inspection work for the fruit, vegetable, and nursery stock industries.

Section 7 of the bill authorizes the MDARD director to set a schedule of fees for services performed by the department. The bill also establishes various administrative fines for violation of the proposed Act, although the fines are not authorized until January 1, 2021.

The bill directs that money collected from any administrative fine be credited to the Agriculture Inspection and Licensing Fee Fund established in the Insect Pest and Plant Disease Act (MCL 286.201 et seq.). Currently, a number of MDARD PPM licensing and regulatory fees are credited to this fund and used to support MDARD PPM agriculture regulatory and inspection programs.

The bill does not specifically direct that fee revenue be credited to the fund.

ARGUMENTS:

For:

Supporters of the bill argue that Michigan is one of the last potato seed-producing states without certification requirements, leaving Michigan crops at risk for disease. The bill would allow distributors and growers time to come into compliance with the certification requirements, as well as carve out an exception for “hobby farms” (small growing operations).

Against:

No arguments were presented in opposition to the bill.

POSITIONS:

Representatives from the following organizations indicated support for the bill:

- Fresh Solution Farms (12-6-17)
- Walther Farms (12-6-17)
- Iott Seed Farms (12-6-17)
- Potato Growers of Michigan (12-6-17)
- Michigan Farm Bureau (12-6-17)
- Sklarczyk Seed Farm (12-13-17)
- Andersen Brothers, LLC (12-13-17)
- Thorlund Brothers Farm (12-13-17)
- Better Made Snack Foods (12-13-17)

A representative from the Michigan Department of Agriculture and Rural Development indicated a neutral position on the bill. (12-6-17)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.