

## SEED POTATO ACT

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**House Bill 5227 as introduced**  
**Sponsor: Rep. Roger Victory**  
**Committee: Agriculture**  
**Complete to 12-4-17**

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

### 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 recordkeeping and reviews to ensure compliance, and assess administrative fines for violation. The provisions of the proposed Act would take effect January 1, 2021, and the Act would be repealed on January 1, 2023. The bill would take effect 90 days after enactment.

#### 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 Act:

*Certified seed* would mean 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 Act 221 of 1959 (MCL 286.71 et seq.) 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. (The Act would use the definition contained in Act 221 of 1959, which regulates the certification of seed.)

*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.

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 only be *planted* if the seed potatoes were certified seed.

However, 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 are no more than 1 field year from certificated 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 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.

(Whenever 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 the determination of the ability 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 must notify the director of MDARD by January 1 of each year.

Persons growing potatoes also must 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.

If the independent auditor believes that a violation has occurred, the auditor must 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.

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 is unable to collect an administrative fine, or if any person fails to pay all or part of a fine, the director may sue to recover the fine, plus costs and attorney fees, in any court of competent jurisdiction.

### **Seed Potato Fund**

Money collected from an administrative fine must be paid to the Michigan Treasurer. The treasurer would create the Seed Potato Fund and credit the fees to this fund. The treasurer also may receive money or other assets from any source to deposit into the fund. Any money in the fund at the end of the fiscal year would *not* lapse to the general fund.

MDARD would be the administrator of the fund for auditing purposes and would only be allowed to expend money from the fund upon appropriation to implement the proposed 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.

### **Repeal**

The proposed Seed Potato Act would be repealed effective January 1, 2023.

### **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 the work would require additional staffing. Support for this additional work could come, at least in part, from fees authorized in the bill.

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 establishes a Seed Potato Fund, again effective January 1, 2021. The fund would receive money or other assets from any source, including all fees and administrative fines collected under the act. The bill directs the department to expend money from the fund, upon appropriation, only to implement the Seed Potato Act.

MDARD's Pesticide and Plant Pest Management (PPPM) Division performs similar licensing and inspection work for the fruit, vegetable, and nursery stock industries. A number of PPPM fees are currently established in the Insect Pest and Plant Disease Act (MCL 286.201 et seq.) and shown in the budget as Agriculture licensing and inspection fees. Fee revenue is used to support MDARD agriculture regulatory and inspection programs.

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