



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 5227 (Substitute H-1 as passed by the House)  
Sponsor: Representative Roger Victory  
House Committee: Agriculture  
Senate Committee: Agriculture

Date Completed: 2-27-18

**CONTENT**

The bill would enact the "Seed Potato Act" to do the following, beginning January 1, 2021:

- Require a person who distributed combined seed lots sufficient to plant one or more acres in the State to distribute only certified seeds potatoes, except under certain circumstances.
- Specify that all seed lots of seed potatoes required to be certified would have to be accompanied by certain documents, including an official tag or bulk certificate indicating their status as certified seed and a certificate of shipping point inspection.
- Specify that seed potatoes in combined seed lots sufficient to plant one or more acres could be planted only if the seed potatoes were certified seed.
- Allow a potato grower to plant uncertified potatoes only if the potatoes were grown and stored as part of that grower's farm operations and were no more than one field year from certified potatoes, or if authorized to do so by the Director of the Michigan Department of Agriculture and Rural Development due to an insufficient volume of a variety of certified seed potatoes.
- Require a person growing potatoes in combined seed lots of one or more acres in the State to notify the Director accordingly by January 1 of each year, and to maintain certain records for at least two years.
- Require the Director to select a qualified Department employee or independent auditor to perform a records review on at least 10% of potato growers subject to the proposed Act once every seed potato crop cycle.
- Create the Seed Potato Advisory Committee and provide for the appointment of its members.
- Specify the Committee's responsibilities, such as advising the Director in establishing rules under the proposed Act and assisting in the determination of availability of seed potatoes.
- Require the Director to promulgate rules to administer and enforce the Act, as well as set a schedule of fees for services performed by the Department.
- Authorize the Director to conduct an investigation to determine compliance with the Act.
- Allow the Director to impose an administrative fine on a person who violated the Act or a rule promulgated under it.

The bill would take effect 90 days after its enactment.

## Definitions

"Certified seed" would mean a class of seed that meets the requirements of the seed certification Act, and the rules promulgated under it.

"Seed lot" would mean all of the seed potatoes of the same variety that are of a single class and specific seed source and are harvested from a field or stored together in a specific storage facility."

"Seed potato" would be defined as the tuber that is used for the reproduction of the potato.

## Certified Seed Distribution

Beginning January 1, 2021, a person who distributed combined seed lots sufficient to plant one or more acres in the State as determined by the Director by rule would have to distribute only certified seed potatoes, except that the person could distribute uncertified seed potatoes to a grower that had been granted permission to plant uncertified seed potatoes by the Advisory Committee, as described below.

All seed lots of seed potatoes required to be certified seed would have to be accompanied by all of the following documents at the time of distribution:

- An official tag or bulk certificate indicating their status as certified seed.
- A certificate of shipping point inspection.
- A North American plant health certificate issued by the certifying authority for seed potatoes imported from outside Michigan.
- Any other documentation necessary to provide the information required below.

The documents would have to provide the following:

- 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 Michigan, packed and sealed under the certification standards of the state, territory, or country in which they were grown.

"Field year" would mean the number of years a particular seed lot has been grown in the field after greenhouse propagation.

## Certified Seed Planting

Under Section 4 of the proposed Act, beginning January 1, 2021, and except as otherwise permitted, seed potatoes in combined seed lots sufficient to plant one or more acres as determined by the Director by rule could be planted only if the seed potatoes were certified seed. Seed potatoes imported into the State would have to meet the minimum standards in the state national harmonization program and in any active applicable quarantine or rule. ("State national harmonization program" would mean the program for seed potatoes developed by the plant protection and quarantine program of the Animal and Plant Health Inspection Service in the United States Department of Agriculture.)

Beginning January 1, 2021, a potato grower could plant uncertified potatoes if both of the following conditions were met: a) the potatoes were grown and stored as part of that grower's

farm operations; and b) the uncertified potatoes were no more than one field year from certified potatoes.

Also, beginning on that date, in any year in which there was an insufficient volume of any cultivar (unique variety) of certified seed potatoes and seed potatoes meeting the requirements of Section 4, potato growers could apply to the Advisory Committee for permission to plant uncertified seed potatoes. On recommendation from the Committee, the Director could grant growers permission to plant uncertified potatoes only for that growing season.

#### Records & Records Review

Under Section 5 of the proposed Act, beginning January 1, 2021, each person growing potatoes in the State in combined seed lots of one or more acres would have to notify the Director accordingly by January 1 of each year and would have to keep records as described below. The records would have to contain the information required for an independent records review. A grower would have to maintain the records for at least two years at the grower's business address.

Beginning January 1, 2021, the Director would have to select a qualified Department employee or independent auditor to perform a records review on at least 10% of potato growers subject to the proposed Act once every seed potato crop cycle. The Director would have to determine a method for the annual random selection of growers.

A records review would have to verify records that traced back the grower's potatoes, including those that evidenced acreage planted by cultivar, and hundredweight (a unit of weight equal to 100 pounds) and source of seed potatoes used to plant the acreage, with verifiable documents related to the following: a) for seed potatoes purchased, the documents required for seed lots; or b) for seed potatoes planted as provided under Section 4, the testing history and seed potatoes used to replant the grower's own operations.

If the independent auditor believed that a violation of Section 5 occurred, he or she would have to notify the Director within five business days. The Director would have to investigate the alleged violation as described below.

#### Seed Potato Advisory Committee

The Committee would consist of five members appointed by the Director as follows:

- 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 (MSU).
- When person employed by the Department.

Whenever possible, the Committee members employed by MSU and the Department would have to have knowledge of or experience with seed potatoes.

Members appointed to the Committee would serve three-year terms, and could be appointed for an unlimited number of terms. However, an appointed commercial potato grower could not serve more than two consecutive terms. In the event of a vacancy before the completion of a member's term, the Director would have to appoint a person to complete the remainder of that term. The person appointed to the vacancy would have to represent the same group as the member he or she was replacing. Committee members would receive no compensation or reimbursement for any expenses incurred in the exercise of their duties.

The Advisory Committee would have to advise the Director in establishing rules under the proposed Act, assist in the determination of 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 Act's administration and enforcement.

#### Duties of the Director

In addition to any other duties provided in the proposed Act, the Director would have to administer and enforce the Act. The Director also would have to promulgate rules necessary for the Act's administration and enforcement, including rules that did all of the following:

- Established requirements for compliance.
- Allowed for the random selection of 10% of potato growers subject to annual records review.
- Established methods for determining whether there were unacceptable levels of disease beyond the tolerance level established under the seed certification Act, and the rules promulgated under that Act, for the planting of uncertified seed potatoes.
- Set a schedule of fees for services performed by the Department.

#### Investigation of Violation

Beginning January 1, 2021, the Director, on his or her own motion or on the recommendation of an independent auditor, would be authorized to investigate as necessary to determine compliance with the proposed Act.

For an inspection, the Director would have to have free and unimpeded access during regular business hours, either with the owner's consent or after obtaining an administrative search warrant, to inspect records required to be kept under the Act. The Director could make copies of inspected records. The Director also could administer oaths, take statements, or issue subpoenas to compel the attendance of witnesses or for the production of books, memoranda, papers, or other documents, articles, or instruments.

If a person failed or refused to obey a subpoena, the Director could petition the district court to enter an order compelling that person to comply with the subpoena. Failure to obey the court order could be punished as contempt of court.

A complaint made to the Director, and the results of an investigation, would be closed to public inspection unless disclosed pursuant to court order, during the investigatory period and until the complaint was dismissed or the notice of hearing and charges were served.

#### Administrative Fines

Beginning January 1, 2021, and except as otherwise provided, the Director could impose an administrative fine on a person who violated the Act or a rule promulgated under it. The fine could not exceed \$2,500 per violation.

A person who planted or distributed potatoes in violation of the Act or a rule promulgated under it would be subject to an administrative fine, as determined by the Director. An administrative fine for this violation would have to be at least \$20 per acre, but could not exceed \$100 per acre, per violation.

A person who failed to maintain complete and accurate records under Section 5 or a rule promulgated under the Act regarding records or fees would be subject to an administrative fine. The administrative fine would have to be at least \$500, but could not exceed \$1,000.

An administrative fine could not be imposed unless the person charged with the violation was given notice and an opportunity for a hearing held under the Administrative Procedures Act.

If the Director were unable to collect a fine, or if any person failed to pay all or a portion of a fine, the Director could bring suit in any court of competent jurisdiction to recover the fine plus costs and attorney fees.

Money collected from any administrative fine would have to be paid to the State Treasurer, who would have to credit it to the Agriculture Licensing and Inspection Fees Fund.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would create additional regulatory authority and responsibilities for the Michigan Department of Agriculture and Rural Development, to begin January 1, 2021. It would authorize the Department Director to set a schedule of fees for services performed by the Department. The bill also would create administrative fines for violation of the proposed provisions. Funds collected from fines would have to be credited to the Agriculture Inspection and Licensing Fee Fund established in the Insect Pest and Plant Disease Act, but revenue from proposed fees would not have to be credited to that Fund.

According to the Department, though the exact costs of its new responsibilities under the bill are not known, those costs would most likely be met under existing departmental fiscal resources, potentially enhanced by any fees collected under the bill.

Fiscal Analyst: Bruce Baker

SAS\S1718\s5227sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.