

**SUBSTITUTE FOR
HOUSE BILL NO. 5227**

A bill to regulate the distribution and planting of seed potatoes; to prescribe the powers and duties of the department of agriculture and rural development; and to provide remedies and prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "seed
2 potato act".

3 Sec. 2. As used in this act:

4 (a) "Advisory committee" means the seed potato advisory
5 committee created in section 6.

6 (b) "Certified seed" means a class of seed that meets the
7 requirements of 1959 PA 221, MCL 286.71 to 286.75, and the rules
8 promulgated under that act.

9 (c) "Certifying authority" means the official seed-certifying

1 agency of this state or the authorized seed potato certifying
2 agency of another state, territory, or country.

3 (d) "Cultivar" means unique variety.

4 (e) "Department" means the department of agriculture and rural
5 development.

6 (f) "Director" means the director of the department.

7 (g) "Distribute" means to offer for sale, sell, barter,
8 deliver, supply, furnish, or otherwise provide seed potatoes.

9 (h) "Field year" means the number of years a particular seed
10 lot has been grown in the field after greenhouse propagation.

11 (i) "Fund" means the agriculture licensing and inspection fees
12 fund created in section 9 of the insect pest and plant disease act,
13 1931 PA 189, MCL 286.209.

14 (j) "Hundredweight" means a unit of weight equal to 100
15 pounds.

16 (k) "Person" means an individual, partnership, association,
17 corporation, governmental entity, or other legal entity.

18 (l) "Rule" means a rule promulgated pursuant to the
19 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
20 24.328.

21 (m) "Seed lot" means all the seed potatoes of the same variety
22 that are of a single class and specific seed source and are
23 harvested from a field or stored together in a specific storage
24 facility.

25 (n) "Seed potato" means the tuber that is used for the
26 reproduction of the potato.

27 (o) "State national harmonization program" means the state

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1 national harmonization program for seed potatoes developed by the
2 plant protection and quarantine program of the Animal and Plant
3 Health Inspection Service in the United States Department of
4 Agriculture.

5 Sec. 3. (1) Beginning January 1, 2021, a person who
6 distributes combined seed lots sufficient to plant 1 or more acres
7 in this state as determined by the director by rule must distribute
8 only certified seed[**potatoes, except that the person may distribute
uncertified seed potatoes to a grower that has been granted permission
to plant uncertified seed potatoes under section 4(3)**].

9 (2) All seed lots of seed potatoes [**required to be
certified seed under**] subsection (1)
10 must at the time of distribution, be accompanied by all of the
11 following documents:

12 (a) An official tag or bulk certificate indicating their
13 status as certified seed.

14 (b) A certificate of shipping point inspection.

15 (c) A North American plant health certificate issued by the
16 certifying authority for seed potatoes imported from outside of
17 this state.

18 (d) Any other documentation necessary to provide the
19 information required by subsection (3).

20 (3) The documents described in subsection (2) must provide the
21 following:

22 (a) A description of the grade of the seed potatoes.

23 (b) The findings of field inspections and postharvest
24 inspections conducted on each seed lot of seed potatoes.

25 (c) The field year of the seed potatoes.

26 (d) Evidence that the seed potatoes were tagged and, if
27 imported from outside this state, packed and sealed under the

1 certification standards of the state, territory, or country in
2 which they were grown.

3 Sec. 4. (1) Beginning January 1, 2021, and except as otherwise
4 permitted under this section, seed potatoes in combined seed lots
5 that are sufficient to plant 1 or more acres as determined by the
6 director by rule may only be planted if the seed potatoes are
7 certified seed. Seed potatoes imported into this state must meet
8 the minimum standards in the state national harmonization program
9 and in any active applicable quarantine or rule.

10 (2) Beginning January 1, 2021, a potato grower may plant
11 uncertified potatoes if both of the following conditions are met:

12 (a) The potatoes were grown and stored as part of that
13 grower's farming operations.

14 (b) The uncertified potatoes are no more than 1 field year
15 from certified seed potatoes.

16 (3) Beginning January 1, 2021, in any year that there is an
17 insufficient volume of any cultivar of certified seed potatoes and
18 seed potatoes meeting the requirements of this section, potato
19 growers may apply to the advisory committee for permission to plant
20 uncertified seed potatoes. Upon recommendation from the advisory
21 committee, the director may grant applying growers permission to
22 plant uncertified seed potatoes for only that growing season.

23 Sec. 5. (1) Beginning January 1, 2021, each person growing
24 potatoes in this state in combined seed lots of 1 acre or greater
25 shall notify the director of this fact by January 1 of each year
26 and shall keep and maintain records as described in this section.
27 The records must contain the information required for an

1 independent records review conducted under subsection (2). Growers
2 shall maintain the records for a period of at least 2 years at the
3 grower's business address.

4 (2) Beginning January 1, 2021, the director shall select a
5 qualified department employee or independent auditor to perform a
6 records review on at least 10% of potato growers subject to this
7 act once every seed potato crop cycle. The director shall determine
8 a method for the annual random selection of growers.

9 (3) A records review performed under this section must verify
10 records that trace back the grower's potatoes, including records
11 that evidence both of the following:

12 (a) Acreage planted by cultivar.

13 (b) Hundredweight and source of the seed potatoes used to
14 plant the acreage, with verifiable documents related to the
15 following:

16 (i) For seed potatoes purchased, the documents described in
17 section 3.

18 (ii) For seed potatoes planted as provided under section 4,
19 the testing history and seed potatoes used to replant the grower's
20 own operations.

21 (4) If the independent auditor who conducted the records
22 review believes that a violation of this section has occurred, he
23 or she shall notify the director within 5 business days. The
24 director must then investigate the alleged violation according to
25 section 8.

26 Sec. 6. (1) The seed potato advisory committee is created.

27 (2) The advisory committee shall consist of 5 members

1 appointed by the director as follows:

2 (a) Two commercial potato growers who do not grow seed
3 potatoes.

4 (b) The current chair of the Michigan Seed Potato Association.

5 (c) One person employed by Michigan State University.

6 (d) One person employed by the department.

7 (3) Whenever possible, the advisory committee members
8 appointed under subsection (2) (c) and (d) must have knowledge of or
9 experience with seed potatoes.

10 (4) Except as provided in subsection (5), members appointed to
11 the advisory committee shall serve for terms of 3 years. Members
12 may be appointed for an unlimited number of terms, except that a
13 member appointed under subsection (2) (a) may not serve more than 2
14 terms consecutively.

15 (5) In the event of a vacancy on the advisory committee prior
16 to the completion of a member's full term, the director shall
17 appoint a person to complete the remainder of that term. The person
18 appointed under this subsection must represent the same group as
19 the member he or she is replacing, as provided in subsection (2).

20 (6) The members of the advisory committee will receive no
21 compensation or reimbursement for any expenses incurred in the
22 exercise of their duties.

23 (7) The advisory committee shall advise the director in
24 establishing rules under this act, assist in the determination of
25 availability of seed potatoes, recommend whether to grant
26 permission to plant uncertified seed potatoes, recommend
27 independent auditors to perform records reviews under section 5,

1 and consult with the director regarding the administration and
2 enforcement of this act.

3 Sec. 7. In addition to any other duties provided in this act,
4 the director shall do both of the following:

5 (a) Administer and enforce this act.

6 (b) Promulgate rules necessary for the administration and
7 enforcement of this act, including rules that do all of the
8 following:

9 (i) Establish requirements for compliance.

10 (ii) Allow for the random selection of 10% of potato growers
11 subject to the annual records review required under section 5(2).

12 (iii) Establish methods for determining whether there are
13 unacceptable levels of disease beyond the level of tolerance
14 established under 1959 PA 221, MCL 286.71 to 286.75, and the rules
15 promulgated under that act for seed potatoes planted under section
16 4(3).

17 (iv) Set a schedule of fees for services performed by the
18 department.

19 Sec. 8. (1) Beginning January 1, 2021, the director, upon the
20 director's own motion or upon the recommendation of an independent
21 auditor under section 5(2), may make an investigation necessary to
22 determine compliance with this act.

23 (2) For an inspection under subsection (1), the director must
24 have free and unimpeded access during regular business hours,
25 either upon consent of the owner or upon obtaining an
26 administrative search warrant, to inspect any records required to
27 be kept pursuant to this act.

1 (3) The director may make copies of any records inspected
2 under subsection (2).

3 (4) The director may do 1 or more of the following:

4 (a) Administer oaths.

5 (b) Take statements.

6 (c) Issue subpoenas to compel the attendance of witnesses.

7 (d) Issue subpoenas for the production of any books,
8 memoranda, papers, or other documents, articles, or instruments.

9 (5) Upon failure or refusal of any person to obey a subpoena
10 issued under subsection (4), the director may petition the district
11 court to enter an order compelling that person to comply with the
12 subpoena.

13 (6) Failure to obey an order of the court entered under
14 subsection (5) may be punishable as contempt of court.

15 (7) A complaint made to the director and the results of the
16 director's investigations must be closed to public inspection
17 unless disclosed pursuant to court order, during the investigatory
18 period and until the complaint is dismissed or the notice of
19 hearing and charges are served.

20 Sec. 9. (1) Beginning January 1, 2021, and except as otherwise
21 provided in this section, the director may impose an administrative
22 fine on any person that violates this act or a rule promulgated
23 under this act. An administrative fine imposed under this section
24 may not exceed \$2,500.00 per violation.

25 (2) Beginning January 1, 2021, a person who plants or
26 distributes potatoes in violation of this act or a rule promulgated
27 under this act is subject to an administrative fine, as determined

1 by the director. An administrative fine imposed by the director
2 under this subsection must be at least \$20.00 per acre but may not
3 exceed \$100.00 per acre per violation.

4 (3) Beginning January 1, 2021, a person who fails to maintain
5 complete and accurate records under section 5 or a rule promulgated
6 under this act regarding records or fees is subject to an
7 administrative fine, as determined by the director. An
8 administrative fine imposed by the director under this subsection
9 must be at least \$500.00 but may not exceed \$1,000.00.

10 (4) An administrative fine may not be imposed under this
11 section unless the person charged with the violation is given
12 notice and an opportunity for a hearing held under the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328.

15 (5) If the director is unable to collect an administrative
16 fine or if any person fails to pay all or a set portion of an
17 administrative fine, the director may bring suit in any court of
18 competent jurisdiction to recover the fine plus costs and attorney
19 fees.

20 (6) Money collected from any administrative fine imposed under
21 this section must be paid to the state treasurer, who shall credit
22 the same to the fund.

23 Enacting section 1. This act takes effect 90 days after the
24 date it is enacted into law.