

HOUSE BILL No. 5227

November 8, 2017, Introduced by Reps. Victory, Lower, Pagel, Hoadley, Miller, Cole, Sheppard, Rendon, Whiteford, Sabo, Elder, Cochran, Robinson, LaGrand, Sneller, Ellison, Brinks, Faris, Phelps, Green, Dianda, Leutheuser, Canfield, LaFave, Bellino and Glenn and referred to the Committee on Agriculture.

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; to create a fund; to provide remedies and prescribe penalties; and to repeal acts and parts of acts.

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.

1 (c) "Certifying authority" means the official seed-certifying
2 agency of this state or the authorized seed potato certifying
3 agency of another state, territory, or country.

4 (d) "Cultivar" means unique variety.

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

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

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

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

12 (i) "Fund" means the seed potato fund created in section 10.

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

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

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

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

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

26 (o) "State national harmonization program" means the state
27 national harmonization program for seed potatoes developed by the

1 plant protection and quarantine program of the Animal and Plant
2 Health Inspection Service in the United States Department of
3 Agriculture.

4 Sec. 3. (1) Beginning January 1, 2021, a person who
5 distributes combined seed lots sufficient to plant 1 or more acres
6 in this state as determined by the director by rule must distribute
7 only certified seed.

8 (2) All seed lots of seed potatoes subject to subsection (1)
9 must at the time of distribution, be accompanied by all of the
10 following documents:

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

13 (b) A certificate of shipping point inspection.

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

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

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

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

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

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

25 (d) Evidence that the seed potatoes were tagged and, if
26 imported from outside this state, packed and sealed under the
27 certification standards of the state, territory, or country in

1 which they were grown.

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

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

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

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

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

22 Sec. 5. (1) Beginning January 1, 2021, each person growing
23 potatoes in this state in combined seed lots of 1 acre or greater
24 shall notify the director of this fact by January 1 of each year
25 and shall keep and maintain records as described in this section.
26 The records must contain the information required for an
27 independent records review conducted under subsection (2). Growers

1 shall maintain the records for a period of at least 2 years at the
2 grower's business address.

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

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

11 (a) Acreage planted by cultivar.

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

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

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

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

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

26 (2) The advisory committee shall consist of 5 members
27 appointed by the director as follows:

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

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

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

5 (d) One person employed by the department.

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

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

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

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

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

1 enforcement of this act.

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

4 (a) Administer and enforce this act.

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

8 (i) Establish requirements for compliance.

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

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

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

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

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

27 (3) The director may make copies of any records inspected

1 under subsection (2).

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

3 (a) Administer oaths.

4 (b) Take statements.

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

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

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

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

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

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

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

1 under this subsection must be at least \$20.00 per acre but may not
2 exceed \$100.00 per acre per violation.

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

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

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

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

22 Sec. 10. (1) Beginning January 1, 2021, the seed potato fund
23 is created within the state treasury.

24 (2) The state treasurer may receive money or other assets from
25 any source for deposit into the fund, including all fees and
26 administrative fines collected under this act. The state treasurer
27 shall direct the investment of the fund. The state treasurer shall

1 credit to the fund interest and earnings from fund investments.

2 (3) Money in the fund at the close of the fiscal year must
3 remain in the fund and may not lapse to the general fund.

4 (4) The department shall be the administrator of the fund for
5 auditing purposes.

6 (5) The department shall expend money from the fund, upon
7 appropriation, only to implement this act.

8 Sec. 11. This act is repealed effective January 1, 2023.

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