

Act No. 94
Public Acts of 2018
Approved by the Governor
March 26, 2018
Filed with the Secretary of State
March 26, 2018
EFFECTIVE DATE: June 24, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

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

ENROLLED HOUSE BILL No. 5227

AN ACT 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:

Sec. 1. This act shall be known and may be cited as the “seed potato act”.

Sec. 2. As used in this act:

- (a) “Advisory committee” means the seed potato advisory committee created in section 6.
- (b) “Certified seed” means a class of seed that meets the requirements of 1959 PA 221, MCL 286.71 to 286.75, and the rules promulgated under that act.
- (c) “Certifying authority” means the official seed-certifying agency of this state or the authorized seed potato certifying agency of another state, territory, or country.
- (d) “Cultivar” means unique variety.
- (e) “Department” means the department of agriculture and rural development.
- (f) “Director” means the director of the department.
- (g) “Distribute” means to offer for sale, sell, barter, deliver, supply, furnish, or otherwise provide seed potatoes.
- (h) “Field year” means the number of years a particular seed lot has been grown in the field after greenhouse propagation.
- (i) “Fund” means the agriculture licensing and inspection fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.
- (j) “Hundredweight” means a unit of weight equal to 100 pounds.
- (k) “Person” means an individual, partnership, association, corporation, governmental entity, or other legal entity.
- (l) “Rule” means a rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (m) “Seed lot” means all 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.
- (n) “Seed potato” means the tuber that is used for the reproduction of the potato.

(o) “State national harmonization program” means the state national harmonization 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.

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

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

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

(b) A certificate of shipping point inspection.

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

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

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

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

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

(c) The field year of the seed potatoes.

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

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

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

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

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

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

Sec. 5. (1) Beginning January 1, 2021, each person growing potatoes in this state in combined seed lots of 1 acre or greater shall notify the director of this fact by January 1 of each year and shall keep and maintain records as described in this section. The records must contain the information required for an independent records review conducted under subsection (2). Growers shall maintain the records for a period of at least 2 years at the grower’s business address.

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

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

(a) Acreage planted by cultivar.

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

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

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

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

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

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

- (a) Two commercial potato growers who do not grow seed potatoes.
- (b) The current chair of the Michigan Seed Potato Association.
- (c) One person employed by Michigan State University.
- (d) One person employed by the department.

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

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

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

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

(7) The advisory committee shall advise the director in establishing rules under this 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 under section 5, and consult with the director regarding the administration and enforcement of this act.

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

(a) Administer and enforce this act.

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

(i) Establish requirements for compliance.

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

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

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

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

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

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

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

(a) Administer oaths.

(b) Take statements.

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

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

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

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

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

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

(2) Beginning January 1, 2021, a person who plants or distributes potatoes in violation of this act or a rule promulgated under this act is subject to an administrative fine, as determined by the director. An administrative fine imposed by the director under this subsection must be at least \$20.00 per acre but may not exceed \$100.00 per acre per violation.

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

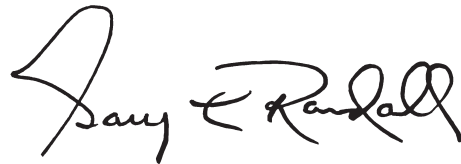
(4) An administrative fine may not be imposed under this section unless the person charged with the violation is given notice and an opportunity for a hearing held under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor