STATE POTATO INDUSTRY COMMISSION
Act 29 of 1970

AN ACT relating to potatoes; to create a potato commission; to prescribe its powers and duties and authority; to impose an assessment on the privilege of introducing potatoes into the channels of trade and commerce; to provide for the collection of the assessment; to provide for penalties; and to repeal certain acts and parts of acts.

History: 1970, Act 29, Imd. Eff. June 10, 1970.

The People of the State of Michigan enact:

290.421 Definitions.

Sec. 1. As used in this act:

(a) "Commission" means the potato industry commission.

(b) "Department" means the department of agriculture and rural development.

(c) "Director" means the director of the department.

(d) "Grower" means any business unit, including a family operation, sole proprietorship, partnership, corporation, company, association, trust, or other business organization engaged in the business of growing potatoes for market.

(e) "Shipper" means a person engaged in the shipment of potatoes, whether as owner, agent, or otherwise; or engaged in the processing of potatoes for human or animal consumption in any form or for any other commercial use.

(f) "Shipment of potatoes" means, and a shipment of potatoes shall be considered to take place, when potatoes are loaded within this state in a rail car, truck, or other conveyance in which the potatoes are to be transported for sale or otherwise put into the channel of trade and commerce.

(g) "Hundredweight" means a 100-pound unit or a combination of packages making a 100-pound unit, or the equivalent in metric units, of any shipment of potatoes.

(h) "Retailer" means a person who sells directly to the consumer in small quantities or broken lots.

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

(j) "Processor" means a person engaged in canning, freezing, dehydrating, chipping, fermenting, distilling, extracting, preserving, or changing the form of potatoes for the purpose of consumption or for any other commercial use.

(k) "Person" means an individual, partnership, corporation, association, cooperative, or any other business unit.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980;—Am. 2013, Act 202, Eff. Mar. 14, 2014.

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290.422 Potato industry commission; creation; appointment, qualifications, and terms of members; vacancies; meetings; chairperson; quorum; conducting business at public meeting; notice of meeting; special meetings; compensation and expenses; handling, use, and disposition of funds; annual fee; gifts, grants, and items of value; books, records, and accounts; availability of documents to public; borrowing money; assessment of outstanding loans; financial report.

Sec. 2. (1) The potato industry commission is created within the department. The commission shall be composed of all of the following:

(a) The director or a person designated by the director from the director's staff, who shall serve ex officio, without vote.

(b) A staff member of Michigan state university appointed by the dean of the college of agriculture and natural resources of that university to serve at the pleasure of the dean, ex officio, without vote.

(c) The following members appointed by the governor with the advice and consent of the senate:

(*i*) Two individuals representing the snack potato manufacturing industry.

(*ii*) Two individuals representing the seed potato industry.

(*iii*) Two individuals representing the fresh potato industry.

(*iv*) One individual representing shippers.

(*v*) One individual representing shippers or retailers.

(*vi*) One individual from any of the categories listed in subparagraphs (*i*) through (*v*).

(2) A member appointed by the governor under subsection (1) shall be a citizen and resident of this state

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who is 18 years of age or older. A commission member who is a grower shall be engaged and have been engaged in growing potatoes within this state for a period of not less than 2 years immediately before appointment, and shall have derived a substantial portion of his or her income from this activity.

(3) The term of office of a commission member appointed under subsection (1)(c) shall be 3 years. The term of an appointed member shall expire on July 1, except that a term shall continue until a successor is appointed and qualified. If during a term a member ceases to possess any of the qualifications prescribed in this act, that member's office shall be vacated. A person appointed to fill a vacancy shall serve for the remainder of the unexpired term and until a successor is appointed and qualified.

(4) The commission shall conduct a meeting of growers and shippers annually.

(5) Annually, the commission members shall elect a chairperson from among its appointed members. A majority of the voting members of the commission constitutes a quorum for the transaction of business and the carrying out of the duties of the commission. The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Meetings of the commission shall be called by the chairperson, except that special meetings shall be called by the chairperson on petition of 5 or more members not later than 7 days after receiving the petition.

(6) The per diem compensation of the members of the commission appointed under subsection (1)(c) shall not exceed $75.00 plus the reimbursement of expenses incurred in attending a commission meeting.

(7) All funds of the commission shall be handled by the commission and all funds received by the commission shall be used to implement this act. Money received by the commission shall be deposited in banks or other forms of security as may be designated by the commission.

(8) Retailers, processors, and others may support the programs of the commission by paying an annual fee of $100.00.

(9) The commission may accept gifts, grants, royalties, license fees, interest, income, or other items of value that enhance the programs established under this act.

(10) The commission shall maintain accurate books, records, and accounts of its transactions, which books, records, and accounts shall be open to inspection by the public and shall be subject to audit by the auditor general or a certified public accountant. A document prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except as otherwise provided in section 4a.

(11) The commission may borrow money in anticipation of the receipt of assessments if all of the following conditions are met:

(a) The loan will not be requested or authorized, or will not mature, within 90 days before a resubmittal or termination referendum regarding an assessment under this act.

(b) The amount of the loan does not exceed 50% of the annual average assessment revenue during the previous 3 years.

(c) The loan repayment period does not exceed the time period during which the assessment is made or the time period during which the assessment can reasonably be expected to be imposed.

(d) The loan has the prior written consent of the director. The director may request an audit of the commission by the auditor general before approving the loan.

(12) The director shall assess against the growers and shippers all outstanding loans approved under subsection (11), including interest, if the assessment is terminated.

(13) The commission shall annually prepare a financial report and shall make that financial report available upon request.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1972, Act 292, Imd. Eff. Oct. 30, 1972;—Am. 1975, Act 64, Imd. Eff. May 20, 1975;—Am. 1978, Act 200, Imd. Eff. June 4, 1978;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980;—Am. 1992, Act 135, Imd. Eff. July 15, 1992;—Am. 2000, Act 5, Imd. Eff. Feb. 22, 2000;—Am. 2005, Act 59, Imd. Eff. July 7, 2005;—Am. 2013, Act 202, Eff. Mar. 14, 2014.

290.423 Powers and duties of commission; rules.

Sec. 3. (1) The commission shall foster, develop, and promote the potato industry through research, promotion, advertising, market expansion, development of new markets, education, and the development and dissemination of market and industry information. The commission may develop procedures and carry out any other activity necessary to accomplish the purposes of this act.

(2) To accomplish its purpose, the commission shall collect, prepare, and disseminate information relating to all of the following:

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(a) The importance of potatoes in human nutrition.

(b) The manner, method, and means used and technology employed in the production, transportation, marketing, processing, and grading of potatoes.

(c) The laws of this state relating to the production, transportation, marketing, processing, and grading of potatoes, to insure a pure and wholesome product.

(d) Factors affecting the potato industry, such as unbalanced production, effect of the weather, influence of consumer purchasing power, and price relative to the cost of other foods.

(e) Branding, labeling, stenciling, sealing, or packaging potatoes to protect their identity.

(f) Other information as may be necessary to promote increased consumption of potatoes, and a better understanding and more efficient cooperation between producers, dealers, and the consuming public.

(3) The commission may promulgate rules to implement this act.

(4) The commission may appoint committees to carry out the various projects covered under this act.

(5) The commission may employ personnel and incur other expenses necessary to carry out this act. A member, employee, or agent of the commission is not liable personally for the contracts of the commission. All salaries, expenses, obligations, and liabilities incurred by the commission are payable only from the funds collected under this act.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1976, Act 13, Imd. Eff. Feb. 20, 1976;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980;—Am. 2013, Act 202, Eff. Mar. 14, 2014.

290.424 Assessment on growers and shippers; rates; exemption; shipper application and certificate; records; inspection; reports; payment of assessment by shipper; limitation on assessment increase.

Sec. 4. (1) An assessment at the rate of not more than 5-1/2 cents per hundredweight on potatoes grown in the state shall be levied upon each particular lot or quantity of potatoes and imposed upon each grower with 20 or more acres in the production of potatoes and not more than 1-1/2 cents per hundredweight shall be levied on each particular lot or quantity of potatoes shipped by each shipper within this state as provided by this act. Not later than July 1 of each year, the commission shall determine the assessment rates for that year and shall notify each grower and shipper of the applicable rate.

(2) A grower with less than 20 acres in the production of potatoes is considered to be in full compliance with this act and may participate in the programs established under this act if the grower pays an assessment based upon his or her production over 3 of the last 5 years.

(3) Each grower shall pay the grower assessment on all potatoes grown in the state by the grower. The shipper shall deduct the grower assessment from money due the grower and remit the grower assessment to the commission. In addition, each shipper shall pay to the commission the shipper assessment on all potatoes purchased, sold, or shipped in the state by the shipper.

(4) The assessment shall not be imposed upon potatoes retained by a grower and used for the grower's own seed purposes or own home consumption.

(5) Every shipper of potatoes shall file an application with the commission on forms prescribed and furnished by the commission which shall contain the name under which the shipper is transacting business within the state, the place or places of business and location of loading and shipping places and agents of the shipper, the names and addresses of the persons constituting a firm or partnership and, if a corporation, the corporation name and the names and addresses of its principal officers and agents within the state. The commission shall issue a certificate to the shipper and a shipper shall not sell or ship potatoes until the certificate is furnished as required by this section.

(6) Each shipper and grower shall keep, as a part of his or her permanent records, a record of all purchases, sales, and shipments of potatoes, which records shall be open for inspection at all times. Each shipper and grower shall file a report with the commission stating the quantity of potatoes received, sold, or shipped by him or her, on forms to be furnished by the commission. The report to be prepared by each shipper is due not later than 15 days after the end of the calendar quarter. The report to be prepared by each grower is due not later than July 15 of each year. Both shippers and the growers shall report further pertinent information as the commission prescribes. With the filing of the report, each shipper shall pay to the commission the assessment provided by this act.

(7) An assessment under this section shall not be increased above the rate assessed on the effective date of the amendatory act that added this subsection unless authorized by a referendum pursuant to section 8.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1972, Act 292, Imd. Eff. Oct. 30, 1972;—Am. 1976, Act 13, Imd. Eff. Feb. 20, 1976;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980;—Am. 1996, Act 99, Imd. Eff. Mar. 5, 1996;—Am. 2013, Act 202, Eff. Mar. 14, 2014.

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290.424a Exemption of certain information from freedom of information act.

Sec. 4a. (1) Information relating to any assessments paid or quantities of potatoes shipped by an individual processor, grower, or shipper which has been disclosed pursuant to this act is exempt from the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. This exemption does not include information regarding any penalties levied under this act.

(2) The director may obtain information necessary to confirm compliance with this act and may disclose statistical information as long as information of the type described in subsection (1) is not disclosed.

History: Add. 1992, Act 135, Imd. Eff. July 15, 1992.

290.425 Failure to pay assessment; penalty.

Sec. 5. Any shipper or grower who fails to pay the assessment pursuant to this act shall pay to the commission the amount due plus a penalty of 10% of the amount due, plus 1% of the amount due for each month of delay.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980.

290.426 Failure to pay assessment or file report; false information; penalty.

Sec. 6. A grower or shipper who fails to pay an assessment or file a report in accordance with this act, or falsifies an affidavit, record, receipt, voucher, or other information required to be maintained by this act, is guilty of a misdemeanor.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1976, Act 13, Imd. Eff. Feb. 20, 1976;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980.

290.427 Enforcement; reimbursement for costs; appropriation.

Sec. 7. Employees and agents of the department shall enforce the provisions of this act. The commission shall reimburse the department for costs incurred by the department in holding referenda, reviewing petitions, and enforcing this act. The funds received by the department are appropriated for the department's use.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980.

290.428 Referendum; votes; rules; petition to terminate shipper assessments; referendum by mail; conditions for termination of shipper assessments; adoption of assessment increase; public hearing; findings and recommendations; assent to proposal.

Sec. 8. (1) Within 60 days after the effective date of the 2013 amendments to this section, the department shall hold a referendum. For the purpose of the referenda under this act, each grower and shipper who is in compliance with section 4 is entitled to 1 vote. The director may promulgate rules for conducting a referendum under this act.

(2) Notwithstanding any other provision of this act, if the director receives a petition, bearing the signatures of not less than 33-1/3% of all shippers, to terminate the shipper assessments, the director shall conduct a referendum by mail. The shipper assessments shall be terminated if more than 50%, by number, of the shippers voting representing more than 50% of the volume of potatoes purchased, sold, or shipped the previous year, vote in favor of terminating the assessment.

(3) Notwithstanding any other provision of this act, if the director receives a petition signed by 25% of the growers for the adoption of an assessment increase above that provided for in section 4(1), he or she shall give notice of a public hearing on the proposed assessment increase. The director may require all shippers as individuals or through their trade associations to file with him or her within 30 days a report, properly certified, showing the correct names and addresses of all growers from whom the shipper received potatoes in the marketing season next preceding the filing of the report. The information contained in the individual reports of shippers filed with the director pursuant to this subsection shall not be made public by the director and shall not be made available to anyone for private use.

(4) The director shall issue a decision within 45 days after the close of the public hearing required under subsection (3) based upon his or her findings, and deliver, by mail or otherwise, copies of the findings and recommendation, approving or disapproving of the proposed assessment increase to all parties of record appearing at the hearing and any other interested parties. The recommendation shall contain the text in full of any proposed assessment increase. The recommendation shall be substantially within the purview of the notice of hearings and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice.

(5) After recommending the increase of an assessment, the director shall determine by a referendum whether the affected growers assent to the proposed action. The director shall conduct the referendum by mail

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within 45 days after the issuance of the recommendation. The affected growers shall be considered to have assented to the proposal if more than 50% by number of those voting representing more than 50% of the volume of potatoes produced by those voting assent to the proposal. The director shall establish procedures for determination of volume for the conduct of referenda and other necessary procedures.

(6) For the purpose of referenda under this act, a grower is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, or husband-wife or family ownership.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980;—Am. 1996, Act 99, Imd. Eff. Mar. 5, 1996;—Am. 2013, Act 202, Eff. Mar. 14, 2014.

290.429 Petition to terminate commission; referendum by mail; conditions for termination of commission.

Sec. 9. (1) If the director receives a petition, bearing the signatures of not less than 33-1/3% of all growers, to terminate the commission, the director shall conduct a referendum by mail. The commission shall be terminated if 1 of the following occurs:

(a) If more than 50%, by number, of those voting, representing more than 50% of the volume of potatoes sold by those voting, vote to terminate the commission.

(b) If more than 50%, by number, of those voting, representing more than 50% of the volume of potatoes sold by those voting, vote to terminate the commission.

(2) If the referendum in subsection (1) passes, the commission shall request repeal of this act and phase out operations within the ensuing 6 months. Any funds remaining in the commission fund shall be made available to the director for potato research.

History: 1970, Act 29, Imd. Eff. June 10, 1970;—Am. 1980, Act 304, Imd. Eff. Nov. 26, 1980.

290.429a Referendum; vote as to whether commission shall levy assessments and carry out act.

Sec. 9a. Except as otherwise provided in this act, a referendum under this act shall be valid for 5 years. Every 5 years, the department shall conduct a referendum at which growers shall vote whether or not the commission shall continue to levy the assessments and otherwise carry out this act. If a majority of the growers voting who represent a majority of the hundredweight sold in the previous year vote against having the commission continue to function, the commission shall cease its operations and deliver its assets to the director who shall transfer the assets to Michigan state university for potato research. A grower is entitled to 1 vote and the grower must be able to verify the hundredweight claimed as being sold on the ballot.

History: Add. 1996, Act 99, Imd. Eff. Mar. 5, 1996;—Am. 2013, Act 202, Eff. Mar. 14, 2014.

290.430 Repeal.

Sec. 10. Act No. 208 of the Public Acts of 1961, as amended, being sections 290.181 to 290.192 of the Compiled Laws of 1948, is repealed.

History: 1970, Act 29, Imd. Eff. June 10, 1970.

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