

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 484 (Substitute S-2 as passed by the Senate)

Sponsor: Senator Nick Smith

Committee: Agriculture and Forestry

Date Completed: 8-27-90

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**RATIONALE**

As the buying habits of consumers become more sophisticated, there exists the opportunity to market effectively high quality agricultural products produced in Michigan. Marketing in the agricultural industry, however, has become increasingly competitive, with Michigan agricultural products vying against products produced in other states and nations. The Seal of Quality Act was enacted in 1961 to promote the development and encourage the consumption of Michigan agricultural products by use of a seal denoting quality. Although a number of promotional programs were established under the Act in the early 1960s, no such programs are currently in effect. Interest in establishing a seal of quality program for various Michigan products surfaced within the last couple years, and implementation of a such a program under the Act was considered. Reportedly, however, State agricultural officials were advised by the Attorney General's Office that the Act must be revised before a program that touts the premium quality of Michigan agricultural products may be established.

**CONTENT**

The bill would amend the Seal of Quality Act to:

- Revise provisions concerning duties of the Agriculture Commission as to the designation of products that would bear the Michigan Seal of Quality and the adoption of standards and programs to advance the purpose of the Act.
- Require the Director of the Department of Agriculture to hold

a public hearing on a proposed Seal of Quality program or amendments to a program, upon receipt of petitions from agricultural product or commodity producers.

- Specify additional duties of the Director in order to implement the Act, including contracting for market research and program development; inspecting, grading, testing, or sampling products; prescribing conditions for use of the seal; initiating criminal complaints; and, establishing fees for program participants to cover all or part of the cost of program implementation.
- Establish prohibitions as to the use of the seal on products.
- Revise penalties, including increasing the maximum fine, for a person who "willfully and knowingly" offered for sale a product that did not conform with certain rules, regulations, and standards.
- Permit the Director to seize a product representing the seal that did not meet certain standards and regulations.
- Repeal certain provisions on fees, market and food investigations, and establishment of commodity committees.

**Commission Duties**

The bill would revise the current provision under which the Agriculture Commission is

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required to design emblems bearing the "Michigan Seal of Quality" as a seal denoting quality for identifying products to which it may be applied, to designate the products, and to promulgate quality and grade standards for products to which it may be applied. The bill would require the Commission to adopt "standards" rather than promulgate quality and grade standards. ("Standards" would mean standards of quality applicable to products, the handling of products, or quality control procedures and programs except when used in reference to standards established by the U.S. Department of Agriculture (USDA) or another Federal department or agency. "Product" would mean food, livestock, or an agricultural commodity grown; grown and packed; or grown and processed within the State except as the Director provided by rule promulgated under the Act.)

The Commission also would be required to establish and adopt one or more "programs" that would be designed to advance the purposes of the Act. ("Program" would mean the Michigan Seal of Quality Program relative to one or more agricultural commodities or products adopted pursuant to the Act.)

If the Commission determines that it is necessary to establish quality standards for any products, the Commission is required to promulgate an order establishing quality standards for the products relating to their quality, size, and condition. The bill would require the Commission, instead, to adopt standards if it determined that establishing standards would enhance the marketing of a product. After adopting standards, the Director could enter into agreements with producers approving and establishing conditions for the use of the Michigan Seal of Quality. The bill also specifies that certain duties of the Commission already in the Act, such as establishing a seal, promulgating rules, and authorizing application of the seal, would have to be done to protect the integrity of the Michigan Seal of Quality and a program.

#### Public Hearing

The Act currently requires the Commission to call a public hearing if any commodity group of producers of agricultural products requests that quality standards be established, and to

determine if such standards are necessary.

The bill would delete this provision and require the Director to give notice of a public hearing on a proposed program or proposed amendments to a program whenever the Director had received a petition signed by 25% of the producers of an agricultural product or commodity, or 200 producers, whichever was less, for the adoption of a program or amendments to a program. After receiving a petition for the establishment of a program, the Director could appoint a temporary producer committee to develop the proposed program to be considered at the public hearing.

The Director would be required to issue a decision within 45 days after the close of the hearing, based on his or her findings, and deliver, by mail or otherwise, copies of the findings and recommendation approving or disapproving the proposed program to all persons of record appearing at the hearing and other interested parties. The recommendation would have to contain the full text of any proposed program or amendment of an existing program. The recommendation would have to be substantially within the scope of the proposals as described in the hearing notice and would have to be supported by evidence taken at the hearing or by documents of which the Director was authorized to take official notice.

#### Activities of the Director

In order to implement the Act, the Director could do all of the following:

- Enter into a contract with any person for services that included, but were not limited to, market research, advertising, program development, publication, grading, or inspection services.
- Appoint one or more advisory committees.
- Hold public hearings.
- Establish fees for program participants to cover part or all of the costs to implement the program.

The bill would delete the current provision that permits the Commission to enter into agreements with any person under terms and conditions deemed best by the Commission for the grading, or for the supervision of grading,

of products to which the seal of quality is applied.

The Director would be required to conduct investigations and inspections that he or she considered necessary for implementing the Act; cooperate with any other governmental agency or person; enter into agreements with producers or other persons for the investigation, inspection, grading, testing, or sampling of products; prescribe conditions for the use, suspension, or revocation of the use of the Michigan Seal of Quality; and, initiate criminal complaints.

In addition to the authorization for accessibility to places where products bearing the seal are marketed or transported as outlined in the Act, the Director, or an authorized representative, could obtain free access at reasonable hours to all records pertaining to compliance or noncompliance with the standards.

The Director also could require all "handlers" or "processors" of the agricultural product or commodity as individuals or through their trade associations to file with him or her, within 30 days, a report showing the correct names and addresses of all producers of the agricultural product or commodity from which the handler or processor received the product or commodity in the marketing season immediately preceding the filing of the report. The information contained in the individual reports of handlers or processors filed with the Director would be exempt from disclosure under the Freedom of Information Act. ("Handler" would mean a person engaged in the packing, grading, selling, offering for sale, or marketing of a marketable agricultural product or commodity in commercial quantities. "Processor" would mean a person engaged in canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or otherwise preserving or changing the form of an agricultural product or commodity in order to market it.)

#### Grading of Products

Agreements entered into pursuant to the Act could require the investigation, inspection, grading, testing, or sampling of Michigan Seal of Quality products. If investigation, inspection, grading, or testing were required, it

would have to be supervised by trained inspectors, as currently provided in the Act. The bill would delete the provision under which products to be sold in packages to which the seal of quality is applied must be graded by or under the supervision of trained inspectors.

#### Use of the Seal

A person could not use the Michigan Seal of Quality or imply association with or approval to use the Michigan Seal of Quality without prior written approval of the Director.

Any person authorized to use the seal could elect to use it. In deciding to use the seal, a person would have to conform with the standards, as well as rules and regulations as currently required, that were adopted or promulgated pursuant to the Act.

#### Prohibitions

A person or a person's agent or employee could not sell, offer for sale, or possess in order to sell a product represented as Michigan Seal of Quality or labeled by or otherwise identified with the Michigan Seal, under any of the following circumstances:

- The Director had not approved the product for the use of the Michigan Seal of Quality or for identification or representation as meeting the standards of the Seal.
- The product did not meet the standards adopted by the Commission.
- The product was not the subject of an agreement executed pursuant to the Act.

A person or a person's agent or employee would be required to comply with an order of the Director suspending or revoking the use of the Seal.

Upon belief that a person or a person's agent or employee was in violation of these provisions, the Director could enter into a consent agreement for the assessment of a civil fine of at least \$100 but not more than \$500 for those violations instead of further administrative action. If an alleged violator did not enter into a written consent agreement, the Director would be required to hold a hearing conducted pursuant to the

Administrative Procedures Act concerning the violation.

### Penalties

The Act currently provides for penalties for a person who holds for sale, offers for sale, or sells any product that does not conform to quality characteristics and standards. Under the Act, a person who violates this provision is guilty of a misdemeanor and must be punished by a fine of at least \$25 but not more than \$100, or by imprisonment for up to 90 days, or both.

The bill instead would impose a penalty upon a person who "willfully and knowingly" held or offered for sale or sold any product that did not conform with quality rules and regulations, as well as characteristics and standards, adopted or promulgated pursuant to the Act, or failed to comply with an order of the Director suspending or revoking the use of the Michigan Seal of Quality. The bill would increase the maximum fine from \$100 to \$1,000. Upon conviction, under the bill, the court could assess against a defendant the costs of investigation or prosecution.

### Seizure of Product

When the Director determined that products represented with the seal failed to conform to the rules, regulations, and standards adopted or promulgated pursuant to the Act, the Director could seize or embargo the products as provided by provisions on the tagging of adulterated or misbranded food in the Michigan Food Law (MCL 289.711) and provisions on enforcement and seizure of commodities in the Weights and Measures Act (MCL 290.615).

The bill would delete the provision that permits the Director, or an appointee, to seize and dispose of products bearing the seal, as provided under Public Act 211 of 1893, if it is determined that the products fail to conform to quality characteristics and standards.

### Repealer

The bill would delete provisions in the Act on: fees charged for labels, grading, and supervision of grading (MCL 289.641); permitting the Director to cooperate with the USDA and other

states and organizations in market and food investigations (MCL 289.642); and, the establishment of commodity committees (MCL 289.646).

MCL 289.631 et al.

### BACKGROUND

In the spring of 1989, the Michigan Department of Agriculture (MDA) launched a promotional campaign that was aimed at boosting Michigan consumer awareness of food products grown or processed in the State and increasing awareness of the Department's logo. Prior to the start of this campaign, the Department conducted among grocery shoppers a "statewide benchmark Attitude and Awareness Research study", which measured consumer awareness and attitudes of the logo the Department uses to identify Michigan food products and their recall of Department promotional efforts. The results of this study revealed that "top-of-mind recall" of the MDA logo was low, that shoppers found Michigan food products difficult to identify, and that shoppers felt that Michigan products were of superior taste, quality, and freshness in comparison to those products grown or processed in other states. Shoppers also indicated that they would buy more Michigan food products, if those products were more clearly identified. A follow-up research study was conducted in October 1989. That study was designed to measure changes in Michigan consumers' attitudes and awareness of Michigan food products as a result of the Department's promotional campaign. Overall, the MDA reported that the study showed improvements in consumer awareness and attitudes about Michigan food products and an increase in consumer awareness of the Department's food logo. Highlights of the survey are as follows:

- 74% of the respondents said they would buy more Michigan food products if more products were clearly identified as being from Michigan.
- 88% of the respondents said they preferred buying Michigan food products because purchasing local products supported the State and provided jobs for Michigan citizens.
- 58% of the respondents, when asked how Michigan-grown or -processed products

compared with those grown or processed in other states, perceived Michigan products to be superior in terms of quality, freshness, taste, and value.

- 45% of the respondents said they continued to rely on product-brand labels for point-of-origin information, yet only 14% of the respondents reported a "top-of-mind awareness" of the Department's logo.

## **FISCAL IMPACT**

The bill would cost the State from \$100,000 to \$300,000 GF/GP for 3.0 FTEs (for wages and salaries; retirement; contractual services, supplies and materials; and equipment). The costs would be for holding an indeterminate number of public hearings, issuing decisions and providing for investigations, inspections, gradings, testings, and samplings. The Department would be permitted to establish fees to cover all or part of the costs. There would be indeterminate indirect revenues to the State from encouraging the purchase of Michigan-grown or -manufactured products. The increased purchase of Michigan products would presumably increase the number of jobs in Michigan and, therefore, increase the number of people paying taxes, creating an increase in revenues to the State. There would be no fiscal impact on local units of government.

## **ARGUMENTS**

### **Supporting Argument**

The survey conducted by Michigan Department of Agriculture clearly shows that consumers in the State believe that Michigan products are superior to food products from other states or nations, and that Michigan consumers would prefer to buy products grown and processed in the State than food products imported into the State. Almost one-half of Michigan consumers, however, don't know how to identify Michigan products, which makes it difficult for those who want to buy Michigan products to do so consistently. There is interest in re-establishing a seal of quality program, or a similar type of premium program, to promote Michigan grown and processed food products, encourage higher standards of quality among commodity groups in the State, and stimulate sales of Michigan agricultural products by

helping consumers identify Michigan food products. Supporters of a premium program, however, have been advised that the Seal of Quality Act must be revised to accommodate the new program, such as allowing for a redesigned logo. Otherwise, it would be illegal to offer a premium program under the Act. If such a program were established, the agricultural industry could benefit from increased sales and Michigan consumers could benefit from an improvement in the standards of quality for food products. According to the Department of Agriculture, other states such as West Virginia and Maine, which implemented premium programs, have reported increases in the amount of money consumers have spent on food products.

### **Opposing Argument**

Some people have raised a number of concerns about a premium program that could be established as a result of revisions to the Seal of Quality Act proposed in Senate Bill 484 (S-2). Some people question the amount of interest among commodity groups in establishing such a program. If a premium program were established, there are doubts about whether commodity groups and the Department could achieve unanimity on standards as well as on the types of Michigan-grown food products that merit a premium designation. Development of these standards also could be perceived among growers as placing more restrictions on their operations, which could result in many growers opting not to participate in the program. Furthermore, enforcement of the standards could be difficult. It is not clear how standards would be applied in cases in which a commodity produced in Michigan may be combined with the same commodity produced in another state. A hauler of fluid milk, for example, could make a stop at a farm in Coldwater as well as farms in Indiana as part of a pick-up route. The final dairy product would be made from a combination of milk produced on farms located inside and outside of the State. It is not certain whether this product should be designated as having been made in Michigan. A situation such as this has raised concerns that products produced outside of the State but processed in Michigan could receive a Michigan premium label. Finally, some people fear that reliance on the rules process for implementing a premium program for each commodity could

be time-consuming and render the program unmanageable.

### **Opposing Argument**

Proponents of a premium program point out that the agricultural industry could benefit financially as more of the State's consumers bought Michigan products and prices increased to reflect the premium quality of the product. Higher prices, however, could have a negative effect. It is not certain whether Michigan consumers would be willing to pay higher prices for a Michigan product designated as being premium. Consumers could choose a product that was produced outside of Michigan and considered less than premium, but still met their needs and was lower in price.

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