

HOUSE BILL No. 5693

March 12, 1992, Introduced by Reps. Gernaat, Gnodtke, Hickner, Randall, McBryde, Robertson, Bandstra, DeLange, Dalman, Bodem, London, Wozniak, Olshove, Goss, Bobier and Middleton and referred to the Committee on Agriculture, Forestry and Minerals.

A bill to amend the title and sections 1, 3, 5, 6, 8, 9, 10, 11a, 12, and 14 of Act No. 158 of the Public Acts of 1964, entitled

"An act to provide for the licensing and bonding of wholesale potato dealers; to prescribe procedure for the enforcement of bonds; to prescribe penalties for violations of the act; and to repeal certain acts and parts of acts,"

section 9 as amended by Act No. 22 of the Public Acts of 1982, being sections 290.451, 290.453, 290.455, 290.456, 290.458, 290.459, 290.460, 290.461a, 290.462, and 290.464 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 3, 5, 6, 8, 9, 10,
2 11a, 12, and 14 of Act No. 158 of the Public Acts of 1964, sec-
3 tion 9 as amended by Act No. 22 of the Public Acts of 1982, being
4 sections 290.451, 290.453, 290.455, 290.456, 290.458, 290.459,

1 290.460, 290.461a, 290.462, and 290.464 of the Michigan Compiled
2 Laws, are amended to read as follows:

3 TITLE

4 An act to provide for the licensing ~~and bonding~~ of whole-
5 sale potato dealers; TO PRESCRIBE CERTAIN POWERS AND DUTIES FOR
6 CERTAIN STATE AGENCIES; TO REQUIRE CERTAIN TYPES OF FINANCIAL
7 SECURITY FOR CERTAIN PERSONS UNDER CERTAIN CIRCUMSTANCES, AND to
8 prescribe THE procedure for ~~the~~ ITS enforcement; ~~of bonds,~~ to
9 ~~prescribe~~ PROVIDE REMEDIES AND penalties for violations of the
10 act; and to repeal certain acts and parts of acts.

11 Sec. 1. As used in this act:

12 (a) "Potatoes" means any variety of Irish potatoes in fresh
13 form included in the species solanum tuberosum.

14 (b) "Grower" means a person engaged in the business of grow-
15 ing and producing potatoes.

16 (c) "Wholesale potato dealer" means a person who buys pota-
17 toes in wholesale lots directly from a grower or grower coopera-
18 tive or who sells or handles those potatoes in wholesale lots for
19 the purpose of processing or resale to other wholesale potato
20 dealers, retailers, restaurants, hotels, institutions, or
21 hospitals.

22 (d) "Person" means a corporation, company, association,
23 cooperative organization, partnership, ~~or~~ individual, OR OTHER
24 LEGAL ENTITY.

25 (e) "Due date" in case of a sale means not more than 30 days
26 ~~from~~ AFTER the date of delivery of potatoes by a seller to a
27 wholesale POTATO dealer. In case of a consignment it means not

1 more than 30 days ~~from~~ AFTER the date the sale is made by the
2 wholesale potato dealer, unless an agreement for extension of
3 credit has been made between the seller and the purchaser at the
4 time of sale or consignment in writing ~~—~~ or unless prompt cash
5 payment on delivery is specified.

6 (f) "Director" means the director of THE DEPARTMENT OF agri-
7 culture AND HIS OR HER AUTHORIZED AGENTS AND REPRESENTATIVES.

8 (g) ~~"Cash buyer" means a person who pays for potatoes pur-~~
9 ~~chased from a grower in United States currency or a certified~~
10 ~~check at the time the person removes the potatoes from the~~
11 ~~grower's premises.~~ "FINANCIAL INSTITUTION" MEANS A COMMERCIAL
12 BANK WHOSE DEPOSITS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE
13 CORPORATION OR A NATIONAL BANK FOR COOPERATIVES SUBJECT TO THE
14 FARM CREDIT ACT OF 1971, PUBLIC LAW 92-181, 85 STAT. 583.

15 (h) "Grower cooperative" means an organization of growers or
16 a division of an organization of growers, or a federation of
17 cooperatives of growers engaged in the marketing, bargaining,
18 shipping, or processing functions of potatoes on behalf of its
19 members or nonmembers who are the producers of potatoes.

20 Sec. 3. (1) ~~An application for license~~ A PERSON REQUIRED
21 TO BE LICENSED UNDER THIS ACT shall ~~be made~~ APPLY to the direc-
22 tor in writing ~~under oath~~ before June ~~2~~ 1 of each year and
23 shall ~~set forth~~ PROVIDE THE FOLLOWING:

24 (a) The full name of the persons constituting the firm
25 including the full names and addresses of buyers or agents for
26 the firm.

1 (b) The place or places where the applicant intends to carry
2 on the business.

3 (c) The amount of business done the preceding year.

4 (d) ~~The number and date of the certificate issued by the~~
5 ~~Michigan potato industry commission pursuant to section 4 of Act~~
6 ~~No. 29 of the Public Acts of 1970, as amended, being section~~
7 ~~290.424 of the Michigan Compiled Laws.~~ THE SIGNATURE OF THE
8 APPLICANT CERTIFYING THAT THE INFORMATION PROVIDED ON THE APPLI-
9 CATION IS TRUE, CORRECT, AND COMPLETE TO THE BEST OF HIS OR HER
10 KNOWLEDGE.

11 (2) The fee for each license shall be ~~-\$15.00-~~ \$100.00 and
12 for each certified copy of the license shall be ~~-\$2.00-~~ \$5.00.

13 (3) THE DIRECTOR MAY DENY, SUSPEND, OR REVOKE THE LICENSE OF
14 A LICENSEE OR APPLICANT WHO KNOWINGLY SUBMITS FALSE INFORMATION
15 ON AN APPLICATION FOR LICENSURE.

16 (4) UPON THE REQUEST FROM AN APPLICANT MADE WITHIN 3 MONTHS
17 AFTER VALIDATED PAYMENT OF A FEE IMPOSED UNDER THIS ACT, THE
18 DIRECTOR SHALL REFUND THE FOLLOWING IF THE AMOUNT TO BE REFUNDED
19 IS AT LEAST \$10.00:

20 (A) A DUPLICATE PAYMENT.

21 (B) A PAYMENT MADE WHERE NO PAYMENT IS REQUIRED.

22 (C) A PAYMENT MADE IN EXCESS OF THE REQUIRED FEE.

23 (D) A PAYMENT OF A RENEWAL FEE IF A LICENSEE VOLUNTARILY
24 CLOSES OR TERMINATES HIS OR HER BUSINESS BEFORE THE FIRST DAY OF
25 A NEW LICENSE PERIOD.

26 (5) A LICENSE ISSUED UNDER THIS ACT EXPIRES MAY 31 OF EACH
27 YEAR.

1 Sec. 5. (1) A licensee shall secure from the director an
2 identification card for each of his OR HER buyers or agents and
3 for an individual licensee operating as his OR HER agent to place
4 the public on notice that the persons soliciting potatoes from
5 place to place are working as agents of a licensed dealer. The
6 fee for each identification card shall be ~~-\$1.00-~~ \$5.00.

7 (2) ~~All moneys~~ MONEY collected by the director as fees
8 IMPOSED under this act shall be paid into the state treasury and
9 credited to the general fund FOR THE ADMINISTRATION AND ENFORCE-
10 MENT OF THIS ACT.

11 Sec. 6. (1) The refusal to issue, cancellation or suspen-
12 sion of, a license under the perishable agricultural commodities
13 act of 1930, CHAPTER 436, 46 STAT. 531, 7 U.S.C. 499a to ~~499s-~~
14 499b AND 499c TO 499t, or a license to operate as a wholesale
15 potato dealer in any state may constitute grounds for the same
16 action in this state at the discretion of the director. If a
17 licensee or applicant for a license employs in a position as
18 buyer or agent a person who has held a license under the perish-
19 able agricultural commodities act of 1930 or a license to operate
20 as a wholesale potato dealer in any state, and this license has
21 been refused, canceled, or suspended, this action may constitute
22 a ground, at the discretion of the director, for the refusal,
23 suspension, or revocation of a license in this state.

24 (2) The director may ~~request an official~~ ORDER A hearing
25 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT
26 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
27 24.328 OF THE MICHIGAN COMPILED LAWS, to determine whether to

1 revoke or suspend a license for failure to comply with this act,
2 the act governing the grading or labeling of potatoes, Act No.
3 29 of the Public Acts of 1970, as amended, being sections 290.421
4 to 290.430 of the Michigan Compiled Laws, or any rules promul-
5 gated under this act and may revoke a license for cause following
6 a hearing.

7 ~~(3) A license issued under this act shall expire annually~~
8 ~~on May 31.~~

9 Sec. 8. (1) An applicant for a wholesale potato ~~dealers'~~
10 DEALER license ~~who buys from a grower~~ shall file with the
11 application ~~and for the period for which the license is issued~~
12 OR HAVE ON FILE WITH THE DIRECTOR AN IRREVOCABLE LETTER OF CREDIT
13 ON A FORM PROVIDED BY THE DIRECTOR AND AS FURTHER DESCRIBED IN
14 SUBSECTION (2) OR FILE OR HAVE ON FILE a surety bond in favor of
15 the director ~~—~~ ON A FORM PROVIDED BY THE DIRECTOR AND executed
16 by a surety company registered in this state. ~~—~~ THE BOND SHALL
17 BE conditioned for ALL OF THE FOLLOWING:

18 (a) Observance of laws relating to the carrying on of the
19 business of a wholesale potato dealer.

20 (b) Payment when due of the purchase price of potatoes pur-
21 chased by the WHOLESALE POTATO dealer.

22 (c) Prompt settlement and payment of claims and charges due
23 to this state for services rendered.

24 (d) Prompt reporting of sales to persons consigning potatoes
25 to the licensee for sale on commission.

1 (e) Prompt payment to persons entitled to payment of the
2 proceeds of sales, less lawful charges, disbursements, and
3 commissions.

4 (2) IN THE CASE OF AN APPLICANT FOR A WHOLESALE POTATO
5 DEALER LICENSE, THE APPLICANT MAY OBTAIN AN IRREVOCABLE LETTER OF
6 CREDIT FROM A FINANCIAL INSTITUTION. THE IRREVOCABLE LETTER OF
7 CREDIT SHALL PROVIDE THAT FUNDS BE AVAILABLE AGAINST A SIGHT
8 DRAFT DRAWN BY THE DIRECTOR IN THE MANNER DESCRIBED IN SECTION 9.

9 (3) ~~(2) A cash buyer or~~ THE DIRECTOR SHALL NOT REQUIRE a
10 grower cooperative ~~shall not be required~~ to furnish A bond OR
11 AN IRREVOCABLE LETTER OF CREDIT for potatoes BOUGHT, sold, han-
12 dled, or stored by the ~~cash buyer or~~ the grower cooperative on
13 behalf of its members. THE GROWER COOPERATIVE SHALL FURNISH A
14 BOND OR IRREVOCABLE LETTER OF CREDIT FOR POTATOES BOUGHT, SOLD,
15 HANDLED, OR STORED ON BEHALF OF ITS NONMEMBERS.

16 (4) ~~(3) An applicant for a wholesale potato dealers'~~
17 DEALER license ~~who falsifies~~ SHALL NOT FALSIFY an application,
18 statement, or record ~~violates~~ REQUIRED UNDER this act.

19 (5) ~~(4) A wholesale potato dealer who buys an aggregate~~
20 amount of less than 30,000 pounds of potatoes during each calen-
21 dar month of a calendar year is exempt from this section and sec-
22 tion 9 for the following calendar year.

23 Sec. 9. (1) The bond OR IRREVOCABLE LETTER OF CREDIT
24 DESCRIBED IN SECTION 8 shall ~~cover all~~ PROVIDE COVERAGE FOR OR
25 PAYMENT FOR AN AMOUNT REPRESENTING THE wholesale potato
26 ~~dealers'~~ DEALER'S business transacted with growers within the
27 state ~~, and the liability~~ SUBJECT TO THE LIMITS IMPOSED IN

1 SUBSECTION (7). LIABILITY for acts under ~~the~~ A bond OR PAYMENT
2 PURSUANT TO THE IRREVOCABLE LETTER OF CREDIT shall be only for
3 the period the license is in force.

4 (2) LIABILITY UNDER THE BOND OR PAYMENT PURSUANT TO THE
5 IRREVOCABLE LETTER OF CREDIT SHALL BE FOR A MINIMUM OF 1 YEAR
6 BEGINNING WITH THE EFFECTIVE DATE OF COVERAGE AND SHALL BE CON-
7 sidered CONTINUOUS OR AUTOMATICALLY EXTENDED THEREAFTER UNTIL
8 TERMINATED OR CANCELED AS PROVIDED UNDER THE TERMS OF THE BOND OR
9 LETTER OF CREDIT.

10 (3) A BOND SHALL NOT BE CANCELED AND THE AMOUNT OF A BOND
11 SHALL NOT BE REDUCED UNLESS THE SURETY COMPANY NOTIFIES THE
12 DIRECTOR IN WRITING NOT LESS THAN 60 DAYS BEFORE THE EFFECTIVE
13 DATE OF CANCELLATION OR REDUCTION.

14 (4) A LETTER OF CREDIT SHALL BE IRREVOCABLE. THE ISSUING
15 FINANCIAL INSTITUTION SHALL NOTIFY THE DIRECTOR IN WRITING NOT
16 LESS THAN 60 DAYS BEFORE THE IRREVOCABLE LETTER EXPIRES OR IF THE
17 FINANCIAL INSTITUTION HAS REFUSED TO RENEW A LETTER OF CREDIT TO
18 THE WHOLESALE POTATO DEALER IN COMPLIANCE WITH THIS SECTION.

19 (5) THE CANCELLATION OR EXPIRATION OF THE BOND OR IRREVOCA-
20 BLE LETTER OF CREDIT OPERATES AS AN AUTOMATIC SUSPENSION OF THE
21 WHOLESALE POTATO DEALER LICENSE UNLESS SECURITY HAS BEEN REPLACED
22 WITHIN THE 60-DAY PERIOD OR UNLESS THE WHOLESALE POTATO DEALER
23 HAS CEASED BUSINESS AND HAS VOLUNTARILY RELINQUISHED THE
24 LICENSE. THE WHOLESALE POTATO DEALER MAY REQUEST A HEARING WITH
25 THE DIRECTOR TO APPEAL THE AUTOMATIC SUSPENSION OF THE LICENSE IF
26 THE REQUEST IS IN WRITING AND RECEIVED BY THE DIRECTOR WITHIN 10
27 DAYS AFTER THE AUTOMATIC SUSPENSION. IF A BOND OR IRREVOCABLE

1 LETTER OF CREDIT IS OBTAINED BY THE PERSON AFTER THE 60-DAY
2 PERIOD, HE OR SHE MAY REAPPLY FOR LICENSURE AS A WHOLESALE POTATO
3 DEALER. THE DIRECTOR SHALL SUBMIT TO EXISTING STATE INDUSTRY
4 TRADE PUBLICATIONS THE NAME OF THE PERSON AND THE EFFECTIVE DATE
5 OF OCCURRENCE OF THE FOLLOWING CIRCUMSTANCES:

6 (A) LICENSES WHICH ARE REVOKED OR SUSPENDED.

7 (B) REAPPLICATIONS FOR LICENSURE UNDER THIS SUBSECTION.

8 (6) A BOND OR IRREVOCABLE LETTER OF CREDIT SHALL NOT BE
9 RELEASED BY THE DIRECTOR DURING THE CLAIM PERIOD DESCRIBED IN
10 SECTION 12(1) OR WHILE THERE ARE ANY VERIFIED CLAIMS PENDING. IF
11 THE DIRECTOR IS SATISFIED NO CLAIMS REASONABLY EXIST, THE BOND OR
12 IRREVOCABLE LETTER OF CREDIT SHALL BE RELEASED PROMPTLY.

13 (7) ~~-(2)-~~ The amount OF COVERAGE of the bond OR THE AMOUNT
14 IN WHICH THE IRREVOCABLE LETTER OF CREDIT IS ISSUED BY THE FINAN-
15 CIAL INSTITUTION shall be double the amount paid for all Michigan
16 grown potatoes purchased from or handled for growers during the
17 month in which the maximum volume of Michigan grown potatoes was
18 bought or handled during the past calendar year ~~—A~~ EXCEPT
19 THAT THE bond OR IRREVOCABLE LETTER OF CREDIT shall not be IN AN
20 AMOUNT less than \$10,000.00, ~~—not~~ OR more than \$100,000.00. THE
21 TOTAL LIABILITY OF THE SURETY ISSUING THE BOND OR THE AMOUNT
22 AVAILABLE AGAINST A SIGHT DRAFT DRAWN BY THE DIRECTOR AGAINST A
23 FINANCIAL INSTITUTION ISSUING THE LETTER OF CREDIT FOR CLAIMS OF
24 GROWERS ARISING OUT OF TRANSACTIONS INVOLVING WHOLESALE POTATO
25 DEALERS IS LIMITED TO THE AMOUNT OF THE BOND OR LETTER OF CREDIT.
26 (8) ~~-(3)-if~~ IN THE CASE OF a person ~~is~~ initially entering
27 business as a wholesale potato dealer, the director shall

1 determine the amount of the bond OR IRREVOCABLE LETTER OF CREDIT
2 from the estimated amount of business to be done annually by the
3 applicant.

4 (9) If during a licensing year the bond OR IRREVOCABLE
5 LETTER OF CREDIT filed by a licensee becomes less than required
6 by this act ~~because of~~ DUE TO an increase in the dollar volume
7 of potato purchases, the director may ~~require~~ ISSUE AN ORDER
8 REQUIRING the licensee to ~~file an additional~~ INCREASE A bond OR
9 FILE AN ADDITIONAL LETTER OF CREDIT to cover the increase in
10 gross dollar volume. Failure OF A WHOLESALE POTATO DEALER to
11 comply with an order of the director ~~shall be~~ ISSUED UNDER THIS
12 SUBSECTION IS grounds for suspension or revocation of a license.

13 Sec. 10. Upon default of a licensee in the payment of money
14 due to a grower, the grower may file with the director a verified
15 statement of the grower's claim. If the grower has reduced the
16 claim to a judgment, the grower shall file a ~~transcript~~
17 CERTIFIED COPY of the judgment with the director. Claims shall
18 be filed within ~~360~~ 90 days after the time of default.

19 Sec. 11a. (1) The director may PERIODICALLY examine the
20 records of ~~the~~ A wholesale potato dealer. THE DIRECTOR MAY
21 EXAMINE THE RECORDS OF A WHOLESALE POTATO DEALER against whom a
22 complaint ALLEGING NONPAYMENT has been made OR WHOSE LICENSE HAS
23 BEEN SUSPENDED and may inquire of other growers who have sold
24 potatoes to the wholesale potato dealer within the past 6 months
25 as to the payment for their potatoes. Inquiries may be made by
26 the director by regular mail. Based on the results of the
27 examination of records ~~—~~ or ~~those~~ OF INFORMATION obtained

1 from inquiries, the director ~~may~~ HAS STANDING TO UTILIZE ANY
2 APPROPRIATE LEGAL ACTION IN ORDER TO seize and protect in the
3 name of the state ~~—~~ AND on behalf of the claimants ~~—~~ the
4 assets of the licensee. ~~by any legal procedure necessary.~~ The
5 director may order and conduct a hearing TO DETERMINE THE ALLOW-
6 ANCE OF CLAIMS AGAINST THE WHOLESALE POTATO DEALER, giving the
7 party complained of notice of the filing of the complaint and the
8 time and place of the hearing. At the conclusion of the hearing,
9 the director shall report findings, render conclusions, and ISSUE
10 AN order upon the matter complained of to the complainant and the
11 respondent in each case, who shall have 15 calendar days follow-
12 ing THE DATE OF ISSUANCE OF THE ORDER in which to comply. ~~with~~
13 ~~the director's order.~~

14 (2) A ~~licensee who feels~~ WHOLESALE POTATO DEALER aggrieved
15 by the decision of the director may appeal from the decision
16 within 10 calendar days AFTER THE ISSUANCE OF THE ORDER by ~~writ~~
17 ~~of certiorari~~ LEAVE to the circuit court of the county where the
18 ~~licensee~~ WHOLESALE POTATO DEALER resides. THE WHOLESALE POTATO
19 DEALER SHALL NOTIFY THE DIRECTOR IN WRITING IF HE OR SHE FILES AN
20 APPEAL. If the WHOLESALE POTATO DEALER DOES NOT COMPLY WITH THE
21 order ~~is not complied with~~ within ~~the~~ 15 days AFTER ITS
22 ISSUANCE, the director shall demand PAYMENT from the surety
23 ~~payment of~~ OR DRAW UPON THE IRREVOCABLE LETTER OF CREDIT IN an
24 amount necessary to satisfy the claims determined to be due. If
25 the amount of the surety bond OR IRREVOCABLE LETTER OF CREDIT is
26 insufficient to satisfy the ALLOWED claims, the director ~~shall~~
27 MAY bring action against the seized assets of the ~~licensee~~

1 WHOLESale POTATO DEALER to further satisfy the amount of the
2 claims. If less than the total amount of the claims is obtained,
3 distribution shall be made ~~ratably~~ PRO RATA to the claimants.

4 (3) ~~If the surety does not pay the amount demanded, upon~~
5 ~~the expiration of 360 days from the date the claim was validated,~~
6 ~~the balance of the term of the bond from the date of the first~~
7 ~~valid claim against any wholesale potato dealer shall be allowed~~
8 ~~for the filing of additional claims.~~ Upon full settlement of
9 ~~valid~~ ALLOWED claims ~~by~~ FROM the ~~surety~~ BOND, PAYMENT OF A
10 SIGHT DRAFT BY THE ISSUER OF THE IRREVOCABLE LETTER OF CREDIT, or
11 ~~from~~ LIQUIDATION OF the assets of the ~~licensee~~ WHOLESale
12 POTATO DEALER, the director shall return any remaining assets to
13 the ~~licensee~~ WHOLESale POTATO DEALER.

14 (4) The director may bring an action in a court of competent
15 jurisdiction against the ~~licensee, the assets of the licensee~~
16 WHOLESale POTATO DEALER, HIS OR HER ASSETS, or THE surety on the
17 bond OR MAY TAKE ANY APPROPRIATE ACTION AGAINST THE ISSUER OF THE
18 IRREVOCABLE LETTER OF CREDIT for recovery of money due and owing
19 to a grower or growers as provided in this act.

20 Sec. 12. (1) ~~A claim not filed during the license period~~
21 ~~within 360 days from the date of default or within 360 days from~~
22 ~~the termination of the license period shall not be received,~~
23 ~~acted upon, or paid and shall not participate in the proceeds of~~
24 ~~any bond.~~ A GROWER SHALL FILE A CLAIM WITH THE DIRECTOR WITHIN
25 90 DAYS AFTER ANY OF THE FOLLOWING EVENTS:

26 (A) THE DEFAULT OF THE WHOLESale POTATO DEALER IF THE
27 DEFAULT OCCURRED DURING THE LICENSE PERIOD.

1 (B) THE SUSPENSION OR REVOCATION OF THE LICENSE OF THE
2 WHOLESALE POTATO DEALER.

3 (C) THE CEASING OF BUSINESS OF THE WHOLESALE POTATO DEALER.

4 (2) THE DIRECTOR SHALL NOT DETERMINE OR ALLOW PAYMENT OF A
5 CLAIM FILED OUTSIDE THE TIME PERIODS DESCRIBED IN SUBSECTION (1).

6 Sec. 14. ~~It shall be unlawful for a~~ A person ~~to~~ SHALL
7 NOT request a grower to sign any statement, affidavit,
8 assignment, or waiver of any kind which ~~has for its purpose or~~
9 ~~intent the relief to any extent of~~ OPERATES TO RELIEVE a whole-
10 sale potato dealer, ~~indemnitor~~ FINANCIAL INSTITUTION ISSUING A
11 LETTER OF CREDIT, or surety company of its full responsibility
12 under this act.

13 Section 2. This amendatory act shall take effect 90 days
14 after the date of its enactment.