Act No. 99
Public Acts of 1996
Approved by the Governor
February 29, 1996
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March 5, 1996

## STATE OF MICHIGAN
## 88TH LEGISLATURE
## REGULAR SESSION OF 1996

Introduced by Reps. Gnodtke, Gernaat, Randall, McManus, Harder, Wetters, Oxender, Anthony, Green, Lowe and Cropsey

# ENROLLED HOUSE BILL No. 5204

AN ACT to amend sections 4 and 8 of Act No. 29 of the Public Acts of 1970, entitled "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," as amended by Act No. 304 of the Public Acts of 1980, being sections 290.424 and 290.428 of the Michigan Compiled Laws; and to add section 9a.

*The People of the State of Michigan enact:*

Section 1. Sections 4 and 8 of Act No. 29 of the Public Acts of 1970, as amended by Act No. 304 of the Public Acts of 1980, being sections 290.424 and 290.428 of the Michigan Compiled Laws, are amended and section 9a is added to read as follows:

Sec. 4. (1) An assessment at the rate of 1 cent per hundredweight on potatoes grown in the state shall be levied upon each particular lot or quantity of potatoes and imposed upon each grower and each shipper within this state as provided by this act. The commission may, by a majority vote, raise the assessment by as much as an additional 1/2 cent per hundredweight. The increased assessment shall be continued if it is approved by a majority vote of those growers and shippers present at the next annual meeting.

(2) In addition to the assessment imposed in subsection (1), an additional assessment may be imposed upon growers upon the recommendation of the commission and the conduct of a referendum in compliance with section 8(3) through (5).

(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 shall be due not later than 15 days after the end of the calendar quarter. The report to be prepared by each grower shall be 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.

Sec. 8. (1) 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 shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for conducting a referendum under this act.

(2) 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 1 of the following occurs:

(a) 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.

(b) 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) If the director receives a petition signed by 25%, or 200, of the growers, whichever is less, 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 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.

Sec. 9a. Five years after the latest referendum held under this act, 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.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved _____

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Governor.