

HOUSE BILL No. 4546

April 16, 2013, Introduced by Reps. Outman, Kelly, Rendon, VerHeulen, Johnson, Muxlow and Yonker and referred to the Committee on Agriculture.

A bill to amend 1970 PA 29, 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,"

by amending sections 1, 2, 3, 4, 8, and 9a (MCL 290.421, 290.422, 290.423, 290.424, 290.428, and 290.429a), sections 1 and 3 as amended by 1980 PA 304, section 2 as amended by 2005 PA 59, and sections 4 and 8 as amended and section 9a as added by 1996 PA 99.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Commission" means the ~~state~~-potato industry commission.

(b) "Department" means the ~~state~~-department of agriculture **AND**
RURAL DEVELOPMENT.

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

1 ~~agriculture.~~

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

6 (e) "Shipper" means a person engaged in the ~~shipping~~ **SHIPMENT**
7 of potatoes, whether as owner, agent, or otherwise; ~~into the~~
8 ~~channels of trade;~~ or engaged in the processing of potatoes for
9 human or animal consumption in any form or for any other commercial
10 use.

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

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

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

21 **(I) "RULE" MEANS A RULE PROMULGATED PURSUANT TO THE**
22 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**
23 **24.328.**

24 **(J)** ~~(i)~~—"Processor" means a person engaged in canning,
25 freezing, dehydrating, chipping, fermenting, distilling,
26 extracting, preserving, or changing the form of potatoes for the
27 purpose of consumption or for any other commercial use.

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(K) ~~(j)~~—"Person" means an individual, partnership, corporation, association, cooperative, or any other business unit.

Sec. 2. (1) The ~~state~~ potato industry commission is created within the department. The commission shall be composed of ~~the~~ **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. ~~and~~

(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. ~~and 10 growers, 2 processors, 2 shippers, and 1 retailer~~

(C) **THE FOLLOWING MEMBERS** appointed by the governor with the advice and consent of the senate: ~~and~~

(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 ~~and of the district from which appointed, shall be~~ **WHO IS** 18 years of age or older. ~~and shall be in compliance with this act.~~ A commission member ~~in the~~ **WHO IS A** grower category shall be engaged and have been engaged

1 in growing potatoes within this state for a period of not less than
 2 2 years immediately before appointment, and shall have derived a
 3 substantial portion of his or her income from this activity.

4 ~~—— (2) Eight growers shall be appointed to serve on the~~
 5 ~~commission, representing 7 districts throughout the state as~~
 6 ~~follows: District 1 Upper Peninsula counties shall be represented~~
 7 ~~by 2 members. The following districts shall be represented by 1~~
 8 ~~member each: district 2 Antrim, Manistee, Wexford, Missaukee,~~
 9 ~~Rosecommon, Mason, Lake, Osceola, Clare, Benzie, Charlevoix,~~
 10 ~~Cheboygan, Crawford, Emmet, Grand Traverse, Kalkaska, Leelanau, and~~
 11 ~~Otsego; district 3 Alcona, Alpena, Montmorency, Oscoda, Presque~~
 12 ~~Isle, Iosco, and Ogemaw; district 4 Kent, Montcalm, Newaygo,~~
 13 ~~Isabella, Mecosta, and Oceana; district 5 Bay, Arenac, Midland,~~
 14 ~~Tuscola, Huron, Sanilac, Gratiot, Gladwin, and Saginaw; district 6~~
 15 ~~Allegan, Barry, Eaton, Van Buren, Kalamazoo, Calhoun, Berrien,~~
 16 ~~Cass, Clinton, Ionia, Ottawa, Muskegon, St. Joseph, and Branch;~~
 17 ~~district 7 Ingham, Livingston, Oakland, Macomb, Jackson, Washtenaw,~~
 18 ~~Wayne, Hillsdale, Lenawee, Shiawassee, Genesee, Lapeer, St. Clair,~~
 19 ~~and Monroe. The ninth and tenth growers shall serve at large. The~~
 20 ~~other members of the commission, except the ex officio members,~~
 21 ~~shall have been associated with the potato industry for not less~~
 22 ~~than 2 years immediately before appointment.~~

23 (3) The term of office of an ~~appointed~~ **A COMMISSION** member
 24 **APPOINTED UNDER SUBSECTION (1) (C)** shall be 3 years. The term of an
 25 appointed member shall expire on July 1, except that a term shall
 26 continue until a successor is appointed and qualified. If during a
 27 term a member ceases to possess any of the qualifications

1 prescribed in this act, that member's office shall be vacated. A
2 person appointed to fill a vacancy shall serve for the remainder of
3 the unexpired term and until a successor is appointed and
4 qualified.

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

7 ~~—— (5) The commission may conduct a meeting of growers in the~~
8 ~~district where a vacancy will occur by expiration of a term, to~~
9 ~~elect nominees for appointment to the commission. Instead of a~~
10 ~~meeting, nominees may be selected by a vote of growers in the~~
11 ~~district by mail ballot, providing ballots are mailed by the~~
12 ~~commission to all growers of record, and in compliance with this~~
13 ~~act. Not more than 2 nominees for each vacancy on the commission~~
14 ~~shall be selected. The names of all nominees shall be placed on a~~
15 ~~list of nominees recommended to the governor, and the governor~~
16 ~~shall make appointments from that list. The growers at large shall~~
17 ~~be nominated by a majority of the 8 growers representing the~~
18 ~~districts. A majority of the 10 grower members shall nominate the~~
19 ~~processor, shipper, and retail candidates for appointment to the~~
20 ~~commission. Vacancies on the commission, except from the expiration~~
21 ~~of term, shall be filled by the governor from nominees selected by~~
22 ~~the commission. A person appointed as a commission member shall~~
23 ~~qualify by filing a written acceptance and oath of office within 10~~
24 ~~days after being notified by the governor of the appointment.~~

25 (5) ~~(6)~~ Annually, the commission members shall elect a
26 chairperson from among its appointed members. A majority of the
27 voting members of the commission constitutes a quorum for the

1 transaction of business and the carrying out of the duties of the
2 commission. The business which the commission may perform shall be
3 conducted at a public meeting of the commission held in compliance
4 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

5 Public notice of the time, date, and place of the meeting shall be
6 given in the manner required by the open meetings act, 1976 PA 267,
7 MCL 15.261 to 15.275. Meetings of the commission shall be called by
8 the chairperson, except that special meetings shall be called by
9 the chairperson on petition of ~~8~~**5 OR MORE** members ~~no~~**NOT** later
10 than 7 days after receiving the petition.

11 ~~—— (7) The commission, with the advice and consent of the~~
12 ~~director and the commission of agriculture, may reapportion either~~
13 ~~the number of commission members or member districts, or both.~~
14 ~~Reapportionment of the districts shall be on the basis of~~
15 ~~production or industry representation. Reapportionment may be~~
16 ~~commenced not earlier than 30 days after the effective date of the~~
17 ~~amendatory act that added this subsection. Reapportionment of~~
18 ~~either members or districts shall not occur more than twice in any~~
19 ~~5 year period and shall not occur within 6 months before a~~
20 ~~referendum. After reapportionment under this subsection, if the~~
21 ~~residence of a member of the commission falls outside the district~~
22 ~~for which he or she serves on the commission and falls within the~~
23 ~~district for which another member serves on the commission, then~~
24 ~~both members shall continue to serve on the commission for a term~~
25 ~~equal to the remaining term of the member who served for the~~
26 ~~longest period of time. After the reapportionment described in this~~
27 ~~subsection, if a district is created within which no member serving~~

1 ~~on the commission resides, then a member shall be selected in the~~
2 ~~manner as prescribed in this section. After a reapportionment or~~
3 ~~redistricting, the commission may temporarily have more members~~
4 ~~than prescribed by this section until the expiration of the term of~~
5 ~~the longest serving member from that district. In the case of a~~
6 ~~reapportionment conducted under this subsection, the provisions of~~
7 ~~this subsection prevail over any other conflicting provisions of~~
8 ~~this section.~~

9 (6) ~~(8)~~—The per diem compensation of the ~~appointed~~ members of
10 the commission **APPOINTED UNDER SUBSECTION (1) (C)** shall not exceed
11 \$75.00 plus the reimbursement of expenses incurred in attending a
12 commission meeting.

13 (7) ~~(9)~~—All funds of the commission shall be handled by the
14 commission and all funds received by ~~it~~ **THE COMMISSION** shall be
15 used to implement this act. Money received by the commission shall
16 be deposited in banks or other forms of security as may be
17 designated by the commission.

18 (8) ~~(10)~~—Retailers, processors, and others may support the
19 programs of the commission by paying an annual fee of \$100.00.

20 (9) ~~(11)~~—The commission may accept gifts, ~~and~~ grants,
21 **ROYALTIES, LICENSE FEES, INTEREST, INCOME, OR OTHER ITEMS OF VALUE**
22 **THAT ENHANCE THE PROGRAMS ESTABLISHED UNDER THIS ACT.**

23 (10) ~~(12)~~—The commission shall maintain accurate books,
24 records, and accounts of its transactions, which books, records,
25 and accounts shall be open to inspection by the public and shall be
26 subject to audit by the auditor general or a certified public
27 accountant. A document prepared, owned, used, in the possession of,

1 or retained by the commission in the performance of an official
 2 function shall be made available to the public in compliance with
 3 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
 4 except as otherwise provided in section 4a.

5 (11) ~~(13)~~—The commission may borrow money in anticipation of
 6 the receipt of assessments if all of the following conditions are
 7 met:

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

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

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

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

19 (12) ~~(14)~~—The director shall assess against the growers and
 20 shippers all outstanding loans approved under subsection ~~(13)~~—(11),
 21 including interest, if the assessment is terminated.

22 (13) ~~(15)~~ ~~A THE COMMISSION SHALL ANNUALLY PREPARE A~~ financial
 23 report ~~shall be prepared annually and made~~ **SHALL MAKE THAT**
 24 **FINANCIAL REPORT** available upon request.

25 Sec. 3. (1) The commission shall foster, develop, and promote
 26 the potato industry through research, promotion, advertising,
 27 market expansion, development of new markets, education, and the

1 development and dissemination of market and industry information.
2 The commission may develop procedures and carry out any other
3 activity necessary to accomplish the purposes of this act.

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

7 (a) The importance of potatoes in human nutrition.

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

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

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

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

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

23 (3) The commission may promulgate rules ~~pursuant to Act No.~~
24 ~~306 of the Public Acts of 1969, as amended, being sections 24.201~~
25 ~~to 24.315 of the Michigan Compiled Laws,~~ to implement this act.

26 (4) The commission may ~~select~~ **APPOINT** committees to carry out
27 the various projects covered under this act.

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

7 Sec. 4. (1) An assessment at the rate of ~~1-cent~~ **NOT MORE THAN**
8 **5-1/2 CENTS** per hundredweight on potatoes grown in the state shall
9 be levied upon each particular lot or quantity of potatoes and
10 imposed upon each grower **WITH 20 OR MORE ACRES IN THE PRODUCTION OF**
11 **POTATOES** and **NOT MORE THAN 1-1/2 CENTS PER HUNDREDWEIGHT SHALL BE**
12 **LEVIED ON EACH PARTICULAR LOT OR QUANTITY OF POTATOES SHIPPED BY**
13 each shipper within this state as provided by this act. The
14 ~~commission may, by a majority vote, raise the assessment by as much~~
15 ~~as an additional 1/2 cent per hundredweight. The increased~~
16 ~~assessment shall be continued if it is approved by a majority vote~~
17 ~~of those growers and shippers present at the next annual meeting.~~
18 **NOT LATER THAN JULY 1 OF EACH YEAR, THE COMMISSION SHALL DETERMINE**
19 **THE ASSESSMENT RATES FOR THAT YEAR AND SHALL NOTIFY EACH GROWER AND**
20 **SHIPPER OF THE APPLICABLE RATE.**

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

25 (2) **A GROWER WITH LESS THAN 20 ACRES IN THE PRODUCTION OF**
26 **POTATOES IS CONSIDERED TO BE IN FULL COMPLIANCE WITH THIS ACT AND**
27 **MAY PARTICIPATE IN THE PROGRAMS ESTABLISHED UNDER THIS ACT IF THE**

1 GROWER PAYS AN ASSESSMENT BASED UPON HIS OR HER PRODUCTION OVER 3
2 OF THE LAST 5 YEARS.

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

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

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

23 (6) Each shipper and grower shall keep, as a part of his or
24 her permanent records, a record of all purchases, sales, and
25 shipments of potatoes, which records shall be open for inspection
26 at all times. Each shipper and grower shall file a report with the
27 commission stating the quantity of potatoes received, sold, or

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1 shipped by him or her, on forms to be furnished by the commission.

2 The report to be prepared by each shipper ~~shall be~~ **IS** due not later
3 than 15 days after the end of the calendar quarter. The report to
4 be prepared by each grower ~~shall be~~ **IS** due not later than July 15
5 of each year. Both shippers and the growers shall report further
6 pertinent information as the commission prescribes. With the filing
7 of the report, each shipper shall pay to the commission the
8 assessment provided by this act.

9 **(7) AN ASSESSMENT UNDER THIS SECTION SHALL NOT BE INCREASED**
10 **ABOVE THE RATE ASSESSED ON THE EFFECTIVE DATE OF THE AMENDATORY ACT**
11 **THAT ADDED THIS SUBSECTION UNLESS AUTHORIZED BY A REFERENDUM**
12 **PURSUANT TO SECTION 8.**

13 **Sec. 8. (1) WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THE**
14 **2013 AMENDMENTS TO THIS SECTION, THE DEPARTMENT SHALL HOLD A**
15 **REFERENDUM.** For the purpose of the referenda under this act, each
16 grower and shipper who is in compliance with section 4 is entitled
17 to 1 vote. The director ~~shall~~ **MAY** promulgate rules ~~pursuant to the~~
18 ~~administrative procedures act of 1969, Act No. 306 of the Public~~
19 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
20 ~~Compiled Laws,~~ for conducting a referendum under this act.

21 **(2) ~~If~~ NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, IF** the
22 director receives a petition, bearing the signatures of not less
23 than 33-1/3% of all shippers, to terminate the shipper assessments,
24 the director shall conduct a referendum by mail. The shipper
25 assessments shall be terminated if ~~[1 of the following occurs:~~
26 ~~—— (a) If]~~ more than 50%, by number, of the shippers voting
27 representing more than 50% of the volume of potatoes purchased,

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1 sold, or shipped the previous year, vote in favor of terminating
2 the assessment.

3 ~~[(b) If more than 50%, by number, of the shippers voting,~~
4 ~~representing more than 50% of the volume of potatoes purchased,~~
5 ~~sold, or shipped the previous year, vote in favor of terminating~~
6 ~~the assessment.]~~

7 (3) ~~IF~~ **NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, IF** the
8 director receives a petition signed by 25% ~~, or 200,~~ of the growers
9 ~~, whichever is less,~~ for the adoption of an assessment increase
10 above that provided for in section 4(1), he or she shall give
11 notice of a public hearing on the proposed assessment increase. The
12 director may require all shippers as individuals or through their
13 trade associations to file with him or her within 30 days a report,
14 properly certified, showing the correct names and addresses of all
15 growers from whom the shipper received potatoes in the marketing
16 season next preceding the filing of the report. The information
17 contained in the individual reports of shippers filed with the
18 director pursuant to this subsection shall not be made public by
19 the director and shall not be made available to anyone for private
20 use.

21 (4) The director shall issue a decision within 45 days after
22 the close of the public hearing required under subsection (3) based
23 upon his or her findings, and deliver, by mail or otherwise, copies
24 of the findings and recommendation, approving or disapproving of
25 the proposed assessment increase to all parties of record appearing
26 at the hearing and any other interested parties. The recommendation
27 shall contain the text in full of any proposed assessment increase.

1 The recommendation shall be substantially within the purview of the
2 notice of hearings and shall be supported by evidence taken at the
3 hearing or by documents of which the director is authorized to take
4 official notice.

5 (5) After recommending the increase of an assessment, the
6 director shall determine by a referendum whether the affected
7 growers assent to the proposed action. The director shall conduct
8 the referendum by mail within 45 days after the issuance of the
9 recommendation. The affected growers shall be considered to have
10 assented to the proposal if more than 50% by number of those voting
11 representing more than 50% of the volume of potatoes produced by
12 those voting assent to the proposal. The director shall establish
13 procedures for determination of volume for the conduct of referenda
14 and other necessary procedures.

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

19 Sec. 9a. ~~Five years after the latest referendum held under~~
20 ~~this act,~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, A REFERENDUM**
21 **UNDER THIS ACT SHALL BE VALID FOR 5 YEARS. EVERY 5 YEARS,** the
22 department shall conduct a referendum at which growers shall vote
23 whether or not the commission shall continue to levy the
24 assessments and otherwise carry out this act. If a majority of the
25 growers voting who represent a majority of the hundredweight sold
26 in the previous year vote against having the commission continue to
27 function, the commission shall cease its operations and deliver its

1 assets to the director who shall transfer the assets to Michigan
2 state university for potato research. A grower is entitled to 1
3 vote and the grower must be able to verify the hundredweight
4 claimed as being sold on the ballot.