CHAPTER 290. WEIGHTS, MEASURES, AND STANDARDS

WEIGHTS AND MEASURES
Act 168 of 1913

290.1-290.10 Repealed. 1964, Act 283, Eff. Aug. 28, 1964.

REVISED STATUTES OF 1846

290.17,290.19 Repealed. 1964, Act 256, Eff. Aug. 28, 1964;—1968, Act 264, Eff. Nov. 15, 1968.

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FRUIT STANDARDS
Act 17 of 1929

AN ACT to define and fix standards for fruits in this state where other standards are not specifically prescribed by law.

History: 1929, Act 17, Eff. Aug. 28, 1929.

The People of the State of Michigan enact:

290.21 Legal fruit standards.

Sec. 1. That standards established by the United States secretary of agriculture for fruits shall be accepted as the legal standards, except in cases where other standards are specifically prescribed.

History: 1929, Act 17, Eff. Aug. 28, 1929;—CL 1929, 5546;—CL 1948, 290.21.

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WEIGHT PER BUSHEL
Act 223 of 1863

AN ACT to provide for the weight per bushel, of certain grain, dried fruit, coal, vegetables and products.

History: 1863, Act 223, Eff. June 22, 1863.

The People of the State of Michigan enact:

290.31 Weight per bushel.

Sec. 1. That whenever wheat, rye, shelled corn, corn on the cob, corn meal, oats, buckwheat, beans, clover seed, timothy seed, flax seed, hemp seed, millet seed, blue grass seed, red top seed, barley, dried apples, dried peaches, potatoes, potatoes (sweet), onions, turnips, peas, cranberries, dried plums, castor beans, salt, mineral coal, Hungarian grass seed, orchard grass seed, osage orange seed, beets, carrots or parsnips, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows, viz:

60 pounds for a bushel of wheat;
56 pounds for a bushel of rye;
56 pounds for a bushel of shelled corn;
70 pounds for a bushel of corn on the cob;
50 pounds for a bushel of corn meal;
32 pounds for a bushel of oats;
48 pounds for a bushel of buckwheat;
60 pounds for a bushel of beans;
60 pounds for a bushel of clover seed;
45 pounds for a bushel of timothy seed;
56 pounds for a bushel of flax seed;
44 pounds for a bushel of hemp seed;
50 pounds for a bushel of millet or Hungarian grass seed;
14 pounds for a bushel of blue grass seed;
14 pounds for a bushel of red top seed;
48 pounds for a bushel of barley;
22 pounds for a bushel of dried apples;
28 pounds for a bushel of dried peaches;
60 pounds for a bushel of potatoes;
56 pounds for a bushel of sweet potatoes;
54 pounds for a bushel of onions;
58 pounds for a bushel of turnips;
60 pounds for a bushel of peas;
40 pounds for a bushel of cranberries;
28 pounds for a bushel of dried plums;
46 pounds for a bushel of castor beans;
56 pounds for a bushel of Michigan salt;
80 pounds for a bushel of mineral anthracite coal;
60 pounds for a bushel of mineral bituminous coal;
14 pounds for a bushel of orchard grass seed;
33 pounds for a bushel of osage orange seed;
56 pounds for a bushel of beets;
50 pounds for a bushel of carrots;
50 pounds for a bushel of parsnips.

History: 1863, Act 223, Eff. June 22, 1863;—CL 1871, 1546;—How. 1568;—CL 1897, 4900;—CL 1915, 6247;—Am. 1925, Act 59, Eff. Aug. 27, 1925;—CL 1929, 5567;—CL 1948, 290.31.

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WEIGHT OF LIME
Act 84 of 1871

AN ACT to establish the weight of lime.

History: 1871, Act 84, Imd. Eff. Apr. 8, 1871.

The People of the State of Michigan enact:

290.41 Stone lime; weight of bushel.

Sec. 1. That whenever stone lime is sold, and no special agreement is made by the parties, the bushel shall consist of 70 pounds.

History: 1871, Act 84, Imd. Eff. Apr. 8, 1871;—CL 1871, 1547;—How. 1570;—CL 1897, 4901;—CL 1915, 6249;—CL 1929, 5569;—CL 1948, 290.41.

STATE APPLE COMMISSION; ASSESSMENT ON APPLES
Act 87 of 1939

290.51-290.66 Repealed. 1955, Act 274, Imd. Eff. June 30, 1955;—1984, Act 161, Imd. Eff. June 27, 1984.

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BUSHEL OF APPLES; WEIGHT
Act 63 of 1877

AN ACT to establish the weight of a bushel of apples.

History: 1877, Act 63, Eff. Aug. 21, 1877.

The People of the State of Michigan enact:

290.71 Apples; weight of bushel.

Sec. 1. That whenever apples are bought or sold by weight 48 pounds shall constitute a bushel.

History: 1877, Act 63, Eff. Aug. 21, 1877;—How. 1571;—CL 1897, 4902;—CL 1915, 6250;—CL 1929, 5592;—CL 1948, 290.71.

STANDARD GRADES FOR APPLES
Act 132 of 1937

290.81-290.90 Repealed. 1985, Act 83, Imd. Eff. July 5, 1985.

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STANDARD BARREL FOR FRUITS, VEGETABLES, AND DRY COMMODITIES
Act 88 of 1917

AN ACT to fix the standard barrel for fruits, vegetables, and other dry commodities.

History: 1917, Act 88, Eff. Sept. 1, 1917.

The People of the State of Michigan enact:

290.101 Standard barrel for fruits, vegetables and dry commodities other than cranberries.

Sec. 1. The standard barrel for fruits, vegetables, and other dry commodities other than cranberries shall be of the following dimensions when measured without distention of its parts: length of staves, 28 1/2 inches; diameter of heads, 17 1/8 inches; distance between heads, 26 inches; circumference of bulge, 64 inches, outside measurement; and the thickness of staves not greater than 4/10 of an inch: Provided, That any barrel of a different form having a capacity of 7,056 cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: length of staves, 28 1/2 inches; diameter of heads, 16 1/4 inches; distance between heads, 25 1/4 inches; circumference of bulge, 58 1/2 inches, outside measurement; and the thickness of staves not greater than 4/10 of an inch.

History: 1917, Act 88, Eff. Sept. 1, 1917;—CL 1929, 5554;—CL 1948, 290.101.

290.102 Violation; definition; penalty.

Sec. 2. It shall be unlawful to sell, offer, or expose for sale in this state, or to ship from this state, to any other state, territory, or the District of Columbia or to a foreign country, a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in the first section of this act, or subdivisions thereof known as the third, half, and three quarter barrel, and any person guilty of a wilful violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and be liable to a fine not to exceed 100 dollars, in any court of this state having jurisdiction: Provided, however, That no barrel shall be deemed below standard within the meaning of this act when shipped to any foreign country and constructed according to the specifications or directions of the foreign purchaser if not constructed in conflict with the laws of the foreign country to which the same is intended to be shipped.

History: 1917, Act 88, Eff. Sept. 1, 1917;—CL 1929, 5555;—CL 1948, 290.102.

290.103 Variations; prosecutions; commodities sold by weight or count.

Sec. 3. Reasonable variations shall be permitted and tolerance established by rules and regulations made by the director of the bureau of standards and approved by the secretary of commerce. Prosecutions for offenses under this act may be begun upon complaint of local sealers of weights and measures or other officer of the state appointed to enforce the laws of the said state, relating to weights and measures: Provided, however, That nothing in this act shall apply to barrels used in packing or shipping commodities sold exclusively by weight or numerical count.

History: 1917, Act 88, Eff. Sept. 1, 1917;—CL 1929, 5556;—CL 1948, 290.103.

290.104 Effective date.

Sec. 4. This act shall be in force and effect from and after the first day of September, 1917.

History: 1917, Act 88, Eff. Sept. 1, 1917;—CL 1929, 5557;—CL 1948, 290.104.

WEIGHTS FOR PACKAGED FLOURS, CORN MEALS, HOMINY, AND HOMINY GRITS
Act 10 of 1945

290.111-290.113 Repealed. 1978, Act 328, Eff. Mar. 30, 1979.

SIZE OF PEACH BASKETS
Act 101 of 1871

290.121 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

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STANDARD CLIMAX BASKETS, BASKETS, OR OTHER CONTAINERS
Act 74 of 1917

AN ACT to fix standards for climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and to punish violations of the same.

History: 1917, Act 74, Eff. Nov. 1, 1917.

The People of the State of Michigan enact:

290.131 Standard climax baskets for fruits and vegetables.

Sec. 1. That standards for climax baskets for grapes and other fruits and vegetables shall be the 2-quart basket, 4-quart basket, and 12-quart basket, respectively.

(a) The standard 2-quart climax basket shall be of the following dimensions: length of bottom piece, 9 1/2 inches; width of bottom piece, 3 1/2 inches; thickness of bottom piece, 3/8 of an inch; height of basket, 3 7/8 inches, outside measurement; top of basket, length 11 inches and width 5 inches, outside measurement. Basket to have a cover 5 by 11 inches, when a cover is used;

(b) The standard 4-quart climax basket shall be of the following dimensions: length of bottom piece, 12 inches; width of bottom piece, 4 1/2 inches; thickness of bottom piece, 3/8 of an inch; height of basket, 4 and 11/16 inches, outside measurement; top of basket, length 14 inches, width 6 1/4 inches, outside measurement. Basket to have cover 6 1/4 inches by 14 inches, when cover is used;

(c) The standard 12-quart climax basket shall be of the following dimensions: length of bottom piece, 16 inches; width of bottom piece, 6 1/2 inches; thickness of bottom piece, 7/16 of an inch; height of basket, 7 and 1/16 inches, outside measurement; top of basket, length 19 inches, width 9 inches, outside measurement. Basket to have cover 9 inches by 19 inches, when cover is used.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5571;—CL 1948, 290.131.

290.132 Standard containers for small fruits, berries and vegetables.

Sec. 2. That the standard basket or other container for small fruits, berries, and vegetables shall be of the following capacities: namely, dry 1/2 pint, dry pint, dry quart, or multiples of the dry quart.

(a) The dry 1/2 pint shall contain 16 and 8/10 cubic inches;

(b) The dry pint shall contain 33 and 6/10 cubic inches;

(c) The dry quart shall contain 67 and 2/10 cubic inches.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5572;—CL 1948, 290.132.

290.133 Violations of act; penalty; foreign shipments.

Sec. 3. That it shall be unlawful to manufacture for shipment, or to sell within the state any climax baskets or other containers for small fruits, berries, or vegetables, whether filled or unfilled, which do not conform to the provisions of this act; and any person guilty of a wilful violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding 25 dollars: Provided, That nothing herein contained shall apply to the manufacture, sale, or shipment of climax baskets, baskets, or other containers for small fruits, berries, and vegetables when intended for export to foreign countries when such climax baskets, baskets, or other containers for small fruits, berries, and vegetables accord with the specifications of the foreign purchasers or comply with the law of the country to which shipment is made or to be made.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5573;—CL 1948, 290.133.

290.134 Examination and test; compliance; determination by department.

Sec. 4. The examination and test of climax baskets, baskets, or other containers for small fruits, berries, and vegetables, for the purpose of determining whether those baskets or other containers comply with the provisions of this act shall be made by the department of agriculture.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5574;—CL 1948, 290.134;—Am. 2002, Act 582, Imd. Eff. Oct. 14, 2002.

290.135 Duty of prosecuting attorney.

Sec. 5. That it shall be the duty of each prosecuting attorney, to whom satisfactory evidence of any violation of the act is presented, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the state for the enforcement of the penalties as in such case herein provided.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5575;—CL 1948, 290.135.

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290.136 Guaranty relieving dealer from prosecution; liability of guarantor.

Sec. 6. That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the manufacturer, wholesaler, jobber, or other party residing within the United States from whom such climax baskets, baskets, or other containers, as defined in this act, were purchased, to the effect that said climax baskets, baskets, or other containers are correct within the meaning of this act. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of climax baskets, baskets, or other containers to such dealer, and in such case said party or parties shall be amenable to the prosecution, fines, and other penalties which would attach in due course to the dealer under the provisions of this act.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5576;—CL 1948, 290.136.

290.137 Effective date.

Sec. 7. That this act shall be in force and effect from and after the first day of November, 1917.

History: 1917, Act 74, Eff. Nov. 1, 1917;—CL 1929, 5577;—CL 1948, 290.137.

STANDARD GRADES FOR GRAPES
Act 145 of 1925

290.141-290.148 Repealed. 1985, Act 83, Imd. Eff. July 5, 1985.

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STANDARD GRADES FOR TABLE STOCK POTATOES (IRISH POTATOES)
Act 220 of 1929

AN ACT to regulate the grading and sale of table stock potatoes commonly known as Irish potatoes; to fix standard grades for potatoes; to provide for inspection and penalties for violation thereof, and to repeal inconsistent acts.

History: 1929, Act 220, Eff. Aug. 28, 1929;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—Am. 1956, Act 50, Eff. Aug. 11, 1956.

The People of the State of Michigan enact:

290.151 Standard grades for table stock potatoes; sale of unclassified potatoes.

Sec. 1. The standard grades for table stock potatoes shall be limited to U.S. extra number 1 grade, U.S. number 1 grade, U.S. commercial grade, and U.S. number 2 grade and unclassified, and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the grades herein mentioned, and thus conforming shall be accepted as the legal standards for the state. A and B size or any other size designation with the U.S. number 1 grade, U.S. commercial grade and U.S. number 2 grade shall be in accordance with the U.S. standards for potatoes. Standard grades shall also include a superior grade to be defined by rules promulgated by the commissioner of agriculture under this act and which would be entitled to a seal of quality under Act No. 70 of the Public Acts of 1961, being sections 289.631 to 289.646 of the Compiled Laws of 1948. Potatoes for table use shall not be sold that do not meet the requirements of the foregoing grades unless designated as unclassified. Unclassified potatoes may be sold in consumer size packages if the packages are color coded and marked "unclassified". The word "unclassified" shall be as large as the largest lettered word on the package and in no event be less than 1 inch in height.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5603;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—CL 1948, 290.151;—Am. 1956, Act 50, Eff. Aug. 11, 1956;—Am. 1964, Act 55, Imd. Eff. May 12, 1964;—Am. 1972, Act 278, Imd. Eff. Oct. 19, 1972.

Administrative rules: R 285.539.1 of the Michigan Administrative Code.

290.152 Potatoes; definitions.

Sec. 2. The following terms, wherever used in this act, or in rules and regulations later promulgated by the commissioner of agriculture, shall have the meaning as indicated:

1. "Mature" means that the outer skin (epidermis) does not loosen or "feather" readily during the ordinary methods of handling: Provided, That this provision shall not apply to new potatoes known and sold as such, and in other respects conforming to the provisions of this act;

2. "Bright" means free from dirt or other foreign matter or discoloration from any cause so that the outer skin (epidermis) has the attractive color normal for the variety;

3. "Smooth" means free from second growth, growth cracks and other abnormal, rough surfaces;

4. "Well-shaped" means that normal, typical shape for the variety in the district where grown and free from pointed, dumbbell shaped, successively elongated, and other ill-formed potatoes;

5. "Free from damage" means that the appearance shall not be injured to an extent readily apparent upon casual examination of the lot, and that any damage from the causes mentioned can be removed in the ordinary process of preparation for use without appreciable waste in addition to that which would occur if the potato were perfect. Loss of outer skin (epidermis) shall not be considered as an injury to the appearance;

6. "Diameter" means the greatest dimension at right angles to the longitudinal axis;

7. "Soft rot" means a soft, mushy condition of the tissues from whatever cause;

8. "Badly misshapen" means of such shape as to cause appreciable waste in the ordinary process of preparation for use in addition to that which would occur if the potato were perfect;

9. "Free from serious damage" means that any damage from the causes mentioned can be removed by the ordinary process of paring without increase in waste of more than 10 per cent, by weight, over that which would occur if the potato were perfect;

10. "Container" or "package" means cloth or fiber sack (such as is customarily used for the shipment of potatoes), barrel, box, crate, hamper or basket.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5604;—CL 1948, 290.152.

290.153 Unlawful sale or commerce in ungraded potatoes.

Sec. 3. It shall be unlawful for any person, firm, association, organization, or corporation or agent, representative or assistant of any person, firm, association, organization or corporation, to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession for sale, transport, delivery or

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consignment in interstate or intrastate commerce, potatoes prepared for market which are not graded or designated to meet the requirements of the grade or designation, which shall be 1 of the grades or designation listed in section 1.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5605;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—CL 1948, 290.153;—Am. 1964, Act 55, Imd. Eff. May 12, 1964.

290.154 Sale and transportation without required branding on container unlawful; cards; conclusive evidence.

Sec. 4. It shall be unlawful for any person, firm, association, organization or corporation or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession potatoes prepared for market unless such container has been legibly and conspicuously branded or stenciled before being removed from the premises where prepared for market with the name and address of the person or persons responsible for the grading and packing, and the name of the grade, together with true net contents. Bulk shipments shall be accompanied by 2 cards not less than 4 by 6 inches in size, placed on the inside of car near each door. Likewise cards in size as herein described shall be prominently displayed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the names and address of the consignor, the name of the grade, the name of the loading station, the date of loading, and the name and address of the consignee, if known. It shall be conclusive evidence and the potatoes deemed to be for sale, when containers are packed for delivery or transit, or when same are exposed for sale or when the same are in the process of delivery or transit or are located at a depot, station, boat dock, or any place where potatoes or other products are held in storage, or for immediate or future sale or transit.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5606;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—CL 1948, 290.154.

290.155 Inspection of potatoes in storage or in transit.

Sec. 5. Potatoes held in storage or in transit which at the time of inspection show deterioration or decay but are otherwise up to the grade declared shall be inspected as to condition and not as to grade.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5607;—CL 1948, 290.155.

290.156 Inspection of potatoes in storage or in transit; taking samples, payment.

Sec. 6. When it is deemed necessary by the person making inspection to procure a sample or samples of potatoes, the person in charge of the place where inspection is made must permit the same to be obtained upon being tendered the commercial value of the stock being procured. In the event the person in charge can not be located in a reasonable length of time a sample or samples may be taken and the cash value of same tendered at the time of the next inspection.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5608;—CL 1948, 290.156.

290.157 Enforcement; right of entry for inspection.

Sec. 7. The commissioner of agriculture is hereby charged with the enforcement of this act and is given power unto himself and his inspectors to enter into and upon any premises where potatoes are graded or packed or stored to inspect the same as to grade, pack and condition. The commissioner of agriculture shall enforce the provisions of this act through state inspectors.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5609;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—CL 1948, 290.157;—Am. 1956, Act 50, Eff. Aug. 11, 1956.

290.158 Enforcement; rules and regulations.

Sec. 8. The commissioner of agriculture may promulgate rules and regulations deemed necessary to the proper enforcement of the provisions of this act.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5610;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—CL 1948, 290.158;—Am. 1956, Act 50, Eff. Aug. 11, 1956.

Administrative rules: R 285.552.1 et seq. of the Michigan Administrative Code.

290.159 Intent of act.

Sec. 9. The intent and purpose of this act is to regulate the sale of potatoes for table use intended for intra-state and inter-state commerce when such sale is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner: Provided, however, That the provisions of this act shall not apply to the grower or his employee in the sale of potatoes grown by such grower when made direct to the consumer.

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History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5611;—CL 1948, 290.159;—Am. 1954, Act 133, Imd. Eff. Apr. 23, 1954.

290.161 Person, definition; liability for violation by employe.

Sec. 11. The word "person" as used herein, shall be construed to include any grower, dealer, shipper, corporation, society, association or their agent or representative. The act, omission or failure to act of any official or employe of any person, when such official or employe is acting within the scope of his employment of office, shall in every case be deemed also the act, omission, or failure to act of the person as well as the official or employe.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5613;—CL 1948, 290.161.

290.162 Violation of act; misdemeanor, penalty.

Sec. 12. Whosoever violates this act by not grading potatoes as herein required, or by not stenciling or branding containers as herein required or by removing any department notices placed upon said containers or by removing or altering any stencils or brands placed upon or attached to any container as in this act required, unless ordered to do so by the commissioner of agriculture or his duly appointed inspector or inspectors shall be guilty of a misdemeanor and subject to a fine of not more than 50 dollars and costs for the first offense and not more than 100 dollars and costs for each subsequent offense, or by imprisonment in the county jail for not more than 30 days in default of paying the fine and costs, or both such fine and imprisonment in the discretion of the court.

History: 1929, Act 220, Eff. Aug. 28, 1929;—CL 1929, 5614;—Am. 1937, Act 342, Eff. Oct. 29, 1937;—CL 1948, 290.162.

HANDLING AND TRANSPORTATION OF POTATOES
Act 227 of 1929

290.171-290.174 Repealed. 1964, Act 158, Eff. Aug. 28, 1964.

STATE POTATO INDUSTRY COUNCIL
Act 208 of 1961

290.181-290.192 Repealed. 1970, Act 29, Imd. Eff. June 10, 1970.

BREAD STANDARDS
Act 317 of 1941

290.201-290.203 Repealed. 1994, Act 356, Imd. Eff. Dec. 22, 1994.

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LINSEED OR FLAXSEED OIL
Act 110 of 1909

AN ACT to prevent the adulteration of linseed oil or flaxseed oil and to prevent fraud in the sale thereof and in the sale of compounds thereof, and to repeal all acts in conflict herewith.

History: 1909, Act 110, Eff. Sept. 1, 1909.

The People of the State of Michigan enact:

290.251 Linseed or flaxseed oil; raw or boiled, requirements; adulterated.

Sec. 1. No person, firm or corporation, by himself, his servant or his agent, or as the servant or agent of any other person, firm or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell in this state, under the name of raw linseed oil or raw flaxseed oil, any substance which is not wholly the product obtained from well cleaned flaxseed or linseed, and unless the aforesaid oil also fulfills the requirements of the 1900 edition of the Pharmacopoeia of the United States, which follow:

1. Specific gravity 0.925 to 0.935 at 25 deg. C. (77 deg. F.). It does not congeal at temperatures above 20 deg. C. (4 deg. F.). It is soluble in about 10 parts of absolute alcohol and in all proportions in ether, chloroform, petroleum, benzine, carbon disulphide and oil of turpentine. It should not more than slightly redden blue litmus paper, previously moistened with alcohol (limit of free acid). The oil should be completely saponifiable with alcoholic potassium hydroxide T.S. and the resulting soap should be completely soluble in water without leaving an oily residue, (absence of mineral oils and rosin oils). If 2 CC. of the oil be warmed and shaken in a test tube with an equal volume of glacial acetic acid, and if to this mixture, after cooling, 1 drop of sulphuric acid be added, a greenish color should be produced. (A violet color under these circumstances indicates the presence of rosin oils). Linseed oil saponified by alcoholic potassium hydroxide T.S. should show a saponification value of from 187 to 195. If 0.15 CC. of linseed oil be dissolved in 10 CC. of chloroform in a 250 CC. flask and 25 CC. of a mixture of equal volume of alcoholic iodine T.S. and alcoholic mercuric chloride T.S. added, and if, after standing for 16 hours, protected from the light, 20 CC. potassium iodide T.S. be introduced and the mixture diluted with 50 CC. of water, on titrating the excess of iodine with tenth normal sodium thiosulphate V.S. an iodine value of not less than 170 should be obtained. No person, firm or corporation, by himself, his servant or his agent, or as the servant or agent of any other person, firm or corporation, shall manufacture or mix for sale, sell, offer or expose for sale or have in his possession with intent to sell in this state, any substance as boiled linseed oil or as boiled flaxseed oil, unless the same shall have been prepared by heating raw linseed oil, as defined above: Provided, That if drier is used in said boiled linseed oil or boiled flaxseed oil, the same shall have been prepared by incorporating said drier with raw linseed oil, as defined above, at a temperature of not less than 225 deg. Fahrenheit, and furthermore contains not less than 96 per cent of linseed oil; and for the purpose of this act it shall also be deemed a violation thereof if said boiled linseed oil prepared either with or without drier does not conform to the following requirements: 1. Its specific gravity at 60 deg. Fahrenheit must be not less than 0.935 and not greater than 0.945; 2. Its saponification value (Koettstorfer figure) must not be less than 186; 3. Its iodine number (Huebl's method) must be not less than 160; 4. Its acid value must not exceed 10; 5. The volatile matter expelled at 212 deg. Fahrenheit must not exceed 1/2 of 1 per cent; 6. No mineral oil shall be present and the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5 per cent; 7. The film left after flowing the oil over glass and allowing it to drain in a vertical or nearly vertical position must dry free from tackiness in not to exceed 20 hours, at a temperature of about 70 deg. Fahrenheit. Linseed oil or flaxseed oil which does not conform to the foregoing requirements shall be deemed to be adulterated within the meaning of this act.

History: 1909, Act 110, Eff. Sept. 1, 1909;—CL 1915, 6321;—CL 1929, 5619;—CL 1948, 290.251.

Former law: See Act 208 of 1899.

290.252 Linseed or flaxseed oil; name on barrel or container; evidence of violation.

Sec. 2. No person, firm or corporation, either by himself or another, shall sell, offer or expose for sale, or have in his possession with intent to sell in this state any linseed oil or flaxseed oil, except under its true name, and unless each barrel, keg or can of such oil has plainly and durably painted, stamped, stenciled, labeled or marked thereon the true name of such oil in ordinary bold-faced capital letters, not less than 5 lines pica in size, together with the name and address of the manufacturer, jobber or dealer: Provided, That if the contents of the package be less than 25 gallons, the type shall not be less than 2 lines pica in size. Proof that any person, firm or corporation has or had possession of any oil or compound which is adulterated or

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misbranded within the meaning of this act shall be prima facie evidence that the possession thereof is in violation of this act.

History: 1909, Act 110, Eff. Sept. 1, 1909;—CL 1915, 6322;—CL 1929, 5620;—CL 1948, 290.252.

290.253 Linseed or flaxseed oil; compounds, branding; misbranded, definition.

Sec. 3. Linseed oil compounds or flaxseed oil compounds designed to take the place of raw or boiled linseed oil or raw or boiled flaxseed oil as defined in section 1 of this act, whether sold, offered or exposed for sale under invented proprietary names or titles or not, shall bear conspicuously upon the containing vessel, in capital letters not less than 5 lines pica in size, the word "Compound," followed immediately with the true distinctive names of the actual ingredients in the order of their greater preponderance, in the English language, in plain legible type of the same size, not less than 2 lines pica in size, in continuous list with no intervening matter of any kind, and shall also bear the name and address of the manufacturer, jobber or dealer. Any oil or compounds required to be branded by the provisions of this act and not complying with sections 2 and 3 shall be deemed to be misbranded within the meaning of this act.

History: 1909, Act 110, Eff. Sept. 1, 1909;—CL 1915, 6323;—CL 1929, 5621;—CL 1948, 290.253.

290.254 Enforcement.

Sec. 4. It is hereby made a duty of the state dairy and food commissioner to enforce the provisions of this act.

History: 1909, Act 110, Eff. Sept. 1, 1909;—CL 1915, 6324;—CL 1929, 5622;—CL 1948, 290.254.

Compiler's note: The office of dairy and food commissioner, referred to in this section, was abolished and the powers and duties thereof transferred to the food and drug commissioner by § 289.2. The office of food and drug commissioner was subsequently abolished and the powers and duties thereof transferred to the state department of agriculture by § 285.2.

290.255 Right of access; samples; duty to prosecute; hindering prohibited.

Sec. 5. The state dairy and food commissioner, his agents, assistants, inspectors, chemists or others appointed by him, shall have full rights of ingress and egress to the premises occupied by parties who manufacture, sell or deal in linseed oil or flaxseed oil, or linseed oil compounds or flaxseed oil compounds, and also shall have power and authority to open any tank, barrel, can or other vessel believed to contain such oil and inspect the contents thereof, and to take therefrom samples for analysis. In case any samples so taken shall prove on analysis to be adulterated or misbranded in violation of the provisions of this act, it shall be the duty of the state dairy and food commissioner to proceed against the offender as herein provided. No person shall obstruct the state dairy and food commissioner or any of his assistants, by refusing entrance to any place which he desires to enter in the discharge of his official duty as provided in this act, nor shall any person refuse to deliver to him a sample of oil when same is requested and when the value thereof is tendered.

History: 1909, Act 110, Eff. Sept. 1, 1909;—CL 1915, 6325;—CL 1929, 5623;—CL 1948, 290.255.

Compiler's note: The office of dairy and food commissioner, referred to in this section, was abolished and the powers and duties thereof transferred to the food and drug commissioner by § 289.2. The office of food and drug commissioner was subsequently abolished and the powers and duties thereof transferred to the state department of agriculture by § 285.2.

290.256 Penalty for violation of act.

Sec. 6. Any person, firm, or corporation convicted of violating any of the provisions of this act shall, for the first offense be punished by a fine in any sum not less than 25 dollars and not more than 100 dollars or by imprisonment not exceeding 30 days, or by both such fine and imprisonment in the discretion of the court; and for the second and each subsequent offense by a fine of not less than 50 dollars and not more than 200 dollars or by imprisonment not exceeding 1 year, or both in the discretion of the court.

History: 1909, Act 110, Eff. Sept. 1, 1909;—CL 1915, 6326;—CL 1929, 5624;—CL 1948, 290.256;—Am. 1991, Act 148, Imd. Eff. Nov. 25, 1991.

Compiler's note: The office of dairy and food commissioner, referred to in this section, was abolished and the powers and duties thereof transferred to the food and drug commissioner by § 289.2. The office of food and drug commissioner was subsequently abolished and the powers and duties thereof transferred to the state department of agriculture by § 285.2.

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STANDARD GRADES OF NAVAL STORES
Act 57 of 1925

AN ACT to establish standard grades of naval stores to conform to the official naval stores standards of the United States, and to repeal Act No. 175 of the Public Acts of 1911, being sections 6328, 6329 and 6330 of the Compiled Laws of 1915.

History: 1925, Act 57, Eff. Aug. 27, 1925.

The People of the State of Michigan enact:

290.301 Naval stores standards; definitions.

Sec. 1. That when used in this chapter;

(a) "Naval stores" means spirits of turpentine and rosin.

(b) "Spirits of turpentine" includes gum spirits of turpentine and wood turpentine.

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

(d) "Wood turpentine" includes steam distilled wood turpentine and destructively distilled wood turpentine.

(e) "Steam distilled wood turpentine" means wood turpentine distilled with steam from the oleoresin within or extracted from the wood.

(f) "Destructively distilled wood turpentine" means wood turpentine obtained in the destructive distillation of the wood.

(g) "Rosin" includes gum rosin and wood rosin.

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

(i) "Wood rosin" means rosin remaining after the distillation of steam distilled wood turpentine.

History: 1925, Act 57, Eff. Aug. 27, 1925;—CL 1929, 5626;—CL 1948, 290.301.

290.302 Standards of quality and purity.

Sec. 2. That when used in this chapter, the standards of quality and purity of gum spirits of turpentine, steam distilled wood turpentine, destructively distilled wood turpentine, gum rosin and wood rosin shall be those of the official naval stores standards of the United States, as set forth in the federal naval stores act or amendments thereto.

History: 1925, Act 57, Eff. Aug. 27, 1925;—CL 1929, 5627;—CL 1948, 290.302.

290.303 Prohibited acts.

Sec. 3. That the following acts are hereby prohibited and made unlawful:

(a) The sale in this state of any naval stores, or of anything offered for sale as such, except under or by reference to the official naval stores standards of the United States;

(b) The sale of any naval stores in this state under or by reference to the official naval stores standards of the United States, which is other than what it is represented to be;

(c) The use in this state of the word "turpentine" or the word "rosin", singly or with any other word or words or of any compound, derivative or imitation of either such word, or of any misleading word, or of any word, combination of words, letter or combination of letters, provided in the federal act to define the official naval stores standards of the United States, to be used or to designate naval stores of any kind or grade, in selling, offering for sale, advertising, or shipping, anything other than naval stores of the official naval stores standards of the United States;

(d) The use in this state of any false, misleading, or deceitful means or practice in the sale of naval stores, or of anything offered for sale as such.

History: 1925, Act 57, Eff. Aug. 27, 1925;—CL 1929, 5628;—CL 1948, 290.303.

290.304 Enforcement; rights and duties of commissioner and agents.

Sec. 4. The state commissioner of agriculture shall enforce the provisions of this chapter and the penal statutes relating thereto and the said commissioner, his assistants, experts, chemists, and agents shall have access and ingress to the places of business, stores, buildings and yards used for the sale of naval stores, and may open any package, tank car, tank, drum, barrel, can, jar, tub, or other receptacle containing any article that may be sold, offered for sale, or exposed for sale in violation of such provision or statute. The inspectors, assistants, or chemists, appointed by the state commissioner shall perform like duties and have like authority under this chapter and the penal statutes relating thereto as is provided by law in other cases.

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History: 1925, Act 57, Eff. Aug. 27, 1925;—CL 1929, 5629;—CL 1948, 290.304.

290.305 Violation of act; penalty.

Sec. 5. Whoever violates any provisions of law relating to the selling, offering or exposing for sale, or advertising of naval stores by manufacturers or distributors thereof, shall be fined not more than 50 dollars, and for each subsequent offense shall be fined not less than 50 dollars, nor more than 100 dollars, or imprisoned not less than 30 days, nor more than 90 days, or both.

History: 1925, Act 57, Eff. Aug. 27, 1925;—CL 1929, 5630;—CL 1948, 290.305.

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GALVANIZED WIRE FENCE
Act 227 of 1915

AN ACT to provide a standard test and gauge of galvanized wire fence within this state, to provide for the grading of such fence according to such test and gauge, to regulate the use of tags or labels in connection with the sale of such fence within this state, and to provide a penalty for the violation of this act.

History: 1915, Act 227, Eff. Jan. 1, 1916.

The People of the State of Michigan enact:

290.351 Galvanized wire fence; standard test gauge.

Sec. 1. The Washburn and Moen gauge is hereby declared to be the standard gauge for testing galvanized wire fence within this state.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2231;—CL 1929, 1089;—CL 1948, 290.351.

290.352 Galvanized wire fence; galvanizing test.

Sec. 2. The following test as to quality of galvanizing is hereby declared to be the standard test of the galvanizing of such fence within this state. The wire shall be thoroughly cleansed with a solution of soap, using a soft cloth or cotton waste. It shall then be immersed in a solution of copper sulphate neutralized with copper oxide and filtered, of a density of 1.186 at 65 degrees Fahrenheit. It shall be kept in this solution at a temperature of from 60 to 70 degrees Fahrenheit for 1 minute, then immersed in clear water and afterward wiped dry. After such immersion and drying, if the wire does not show a deposit of copper indicating that some portion of the zinc coating is entirely removed, it shall be considered as "1 minute wire" as hereinafter mentioned. This test shall be immediately repeated and the wire shall be graded according to the number of immersions it may be able to stand without showing a deposit of copper, and such grades shall be designated as "1 minute,""2 minute,""3 minute,""4 minute," etc. wire, in accordance with the number of minutes during which such wire respectively stood such test without showing a deposit of copper: Provided, however, That all tests shall be made on straight sections of stay or line wire and not on locks, wraps or winds of such fence.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2232;—CL 1929, 1090;—CL 1948, 290.352.

290.353 Galvanized wire fence; standard grades.

Sec. 3. The different grades of galvanized wire fence, as determined by the test provided by section 2 of this act, are hereby declared to be the standard grades of such fence within this state.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2233;—CL 1929, 1091;—CL 1948, 290.353.

290.354 Galvanized wire fence; label.

Sec. 4. Any manufacturer or dealer manufacturing or selling galvanized wire fence, whether such fence is manufactured within or without this state, shall, after complying with the provisions of this act, be permitted to attach to each and every bundle of such fence the tag or label prescribed by section 6 of this act, showing such fence so tagged or labeled to be of the standard grade and gauge as defined in this act.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2234;—CL 1929, 1092;—CL 1948, 290.354.

290.355 Galvanized wire fence; label, annexing conditions; fee.

Sec. 5. Before any person shall attach any tag or label specified in section 6 of this act to any galvanized wire fence to be sold or offered for sale within this state, he shall file with the secretary of the state board of agriculture a certified copy of each variety of tag or label proposed to be attached to such fence, and shall also deposit annually with the secretary not less than 10 feet of wire of each grade and gauge to be used in the manufacturing of any fence which is to be offered for sale in this state, and at the same time shall pay to the secretary of the state board of agriculture a fee of 10 dollars for each gauge of wire so deposited.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2235;—CL 1929, 1093;—CL 1948, 290.355.

290.356 Galvanized wire fence; test, board of agriculture; permit; label contents.

Sec. 6. It shall be the duty of the state board of agriculture to test all samples of galvanized wire fence submitted to them for that purpose and to determine whether such fence is of the standard gauge and grades provided in this act. If they shall find such fence to be of such standard gauge and grades, they shall issue to the manufacturer or dealer applying therefor a certificate good for 1 year from the date thereof, permitting such manufacturer or dealer manufacturing or selling such galvanized wire fence, to attach to each and every bundle of such fence of the same gauge and grades so tested, a tag or label bearing the following statements:

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1. Name and address of manufacturer or dealer;
2. Date of expiration of certificate;
3. Date of manufacture of such fence;
4. Galvanizing test,—Whether “1 minute,”“2 minute,”“3 minute”;
5. Gauge of top wire;
6. Gauge of bottom wire;
7. Gauge of line wire;
8. Gauge of stay wire.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2236;—CL 1929, 1094;—CL 1948, 290.356.

290.357 Galvanized wire fence; unlawful sales, penalty; civil liability.

Sec. 7. Any person who shall sell or offer for sale any galvanized wire fence tagged or labeled with the tag or label prescribed in section 6 of this act without having the same tested as prescribed in this act and without paying the required fee and procuring the certificate provided for by this act, or which is found to be of an inferior grade or gauge to that specified on such tag or label, when submitted to the test provided for in section 8 of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than 100 dollars for each offense, or by imprisonment in the county jail or house of correction for a period not exceeding 6 months or by both such fine and imprisonment in the discretion of the court, and in addition to such fine and imprisonment, such convicted person shall be liable for all damages sustained by the purchaser on account of such misrepresentation. The state board of agriculture shall have authority to institute prosecutions through the proper officers for all violations of this act: Provided, That an average maximum variation of .003 of an inch will be permitted in the gauge of such wire of which the fence is composed.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2237;—CL 1929, 1095;—CL 1948, 290.357.

290.358 Galvanized wire fence; taking samples; tests.

Sec. 8. The state board of agriculture, by any duly authorized agent, may take from any bundle of galvanized wire fence so tagged and labeled and which is being offered for sale in this state, a sample of such fence not exceeding 12 inches in length, the same to be measured along the length of the fencing and comprise the whole width thereof, such sample to be kept by said state board of agriculture and tested for the purpose of ascertaining whether the manufacturer or dealer has complied with the terms of this act: Provided, That in making all tests or measurements for the purpose of ascertaining whether or not such fence is inferior grade or gauge to that specified on the tags or labels thereof, the state board of agriculture, by its duly authorized agent or agents, shall select 5 separate samples of such fence from 5 separate bundles thereof, and if, after applying the standard gauge and test prescribed by this act, 3 or more of such samples shall not equal the gauge and grade indicated on such tags or labels, then such fence from which the 5 samples were taken shall be deemed to be of inferior gauge or grade as the case may be.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2238;—CL 1929, 1096;—CL 1948, 290.358.

290.359 Tests, accounts, publication; expenses; unexpended balance.

Sec. 9. The secretary of the state board of agriculture shall publish in his annual report a correct statement of all tests made under this act, together with a statement of all moneys received from fees and the amount of the same expended in making such tests. All expenses incurred by said board under the provisions of this act shall be paid from the funds arising from the fees provided in section 5 of this act, and any surplus from the total of such fees remaining on hand at the close of the fiscal year shall be placed to the credit of the experimental funds of the board.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2239;—CL 1929, 1097;—CL 1948, 290.359.

290.360 Effective date.

Sec. 10. The provisions of this act shall not take effect until January 1, 1916.

History: 1915, Act 227, Eff. Jan. 1, 1916;—CL 1915, 2240;—CL 1929, 1098;—CL 1948, 290.360.

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STANDARD LOG RULE
Act 208 of 1941

AN ACT to establish a standard log rule; and to declare the effect of this act.

History: 1941, Act 208, Eff. Jan. 10, 1942.

The People of the State of Michigan enact:

290.401 Standard log rule; establishment.

Sec. 1. Standard log rule. The international log rule, based upon 1/4 inch saw kerf, as expressed in the formula (D 2 x 0.22)—0.71 D) x 0.904762 for 4 foot sections (D represents top diameter of log in inches; taper allowance, 1/2 inch per 4 feet lineal), is hereby adopted as the standard log rule for determining the board foot content of saw logs and, unless some other log rule or other method of measurement is agreed upon, all contracts hereafter entered into for the purchase and sale of saw logs shall be deemed to be made on the basis of such standard rule.

History: 1941, Act 208, Eff. Jan. 10, 1942;—CL 1948, 290.401.

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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 state potato industry commission.

(b) "Department" means the state department of agriculture.

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

(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 shipping of potatoes, whether as owner, agent, or otherwise, into the channels of trade; 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) "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.

(j) "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.

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

Sec. 2. (1) The state potato industry commission is created within the department. The commission shall be composed of the director or a person designated by the director from the director's staff, who shall serve ex officio, without vote; a staff member of Michigan state university appointed by the dean of agriculture 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 appointed by the governor with the advice and consent of the senate. A member appointed by the governor shall be a citizen and resident of this state and of the district from which appointed, shall be 18 years of age or older, and shall be in compliance with this act. A commission member in the grower category 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.

(2) Eight growers shall be appointed to serve on the commission, representing 7 districts throughout the state as follows: District 1—Upper Peninsula counties shall be represented by 2 members. The following districts shall be represented by 1 member each: district 2—Antrim, Manistee, Wexford, Missaukee, Roscommon, Mason, Lake, Osceola, Clare, Benzie, Charlevoix, Cheboygan, Crawford, Emmet, Grand Traverse, Kalkaska, Leelanau, and Otsego; district 3—Alcona, Alpena, Montmorency, Oscoda, Presque Isle,

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Iosco, and Ogemaw; district 4—Kent, Montcalm, Newaygo, Isabella, Mecosta, and Oceana; district 5—Bay, Arenac, Midland, Tuscola, Huron, Sanilac, Gratiot, Gladwin, and Saginaw; district 6—Allegan, Barry, Eaton, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Clinton, Ionia, Ottawa, Muskegon, St. Joseph, and Branch; district 7—Ingham, Livingston, Oakland, Macomb, Jackson, Washtenaw, Wayne, Hillsdale, Lenawee, Shiawassee, Genesee, Lapeer, St. Clair, and Monroe. The ninth and tenth growers shall serve at large. The other members of the commission, except the ex officio members, shall have been associated with the potato industry for not less than 2 years immediately before appointment.

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

(6) 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 8 members no later than 7 days after receiving the petition.

(7) The commission, with the advice and consent of the director and the commission of agriculture, may reapportion either the number of commission members or member districts, or both. Reapportionment of the districts shall be on the basis of production or industry representation. Reapportionment may be commenced not earlier than 30 days after the effective date of the amendatory act that added this subsection. Reapportionment of either members or districts shall not occur more than twice in any 5-year period and shall not occur within 6 months before a referendum. After reapportionment under this subsection, if the residence of a member of the commission falls outside the district for which he or she serves on the commission and falls within the district for which another member serves on the commission, then both members shall continue to serve on the commission for a term equal to the remaining term of the member who served for the longest period of time. After the reapportionment described in this subsection, if a district is created within which no member serving on the commission resides, then a member shall be selected in the manner as prescribed in this section. After a reapportionment or redistricting, the commission may temporarily have more members than prescribed by this section until the expiration of the term of the longest-serving member from that district. In the case of a reapportionment conducted under this subsection, the provisions of this subsection prevail over any other conflicting provisions of this section.

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

(9) All funds of the commission shall be handled by the commission and all funds received by it 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.

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

(11) The commission may accept gifts and grants.

(12) 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

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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.

(13) 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.

(14) The director shall assess against the growers and shippers all outstanding loans approved under subsection (13), including interest, if the assessment is terminated.

(15) A financial report shall be prepared annually and made 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.

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:

(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 pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to implement this act.

(4) The commission may select 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.

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

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).

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(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.

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.

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) 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

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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.

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.

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. 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.

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History: Add. 1996, Act 99, Imd. Eff. Mar. 5, 1996.

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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WHOLESALE POTATO DEALERS
Act 158 of 1964

AN ACT to provide for the licensing of wholesale potato dealers; to prescribe certain powers and duties for certain state agencies; to require certain types of financial security for certain persons under certain circumstances, and to prescribe the procedure for its enforcement; to provide remedies and penalties for violations of the act; and to repeal certain acts and parts of acts.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

The People of the State of Michigan enact:

290.451 Definitions.

Sec. 1. As used in this act:

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

(b) "Grower" means a person engaged in the business of growing and producing potatoes.

(c) "Wholesale potato dealer" means a person who buys potatoes in wholesale lots directly from a grower or grower cooperative or who sells or handles those potatoes in wholesale lots for the purpose of processing or resale to other wholesale potato dealers, retailers, restaurants, hotels, institutions, or hospitals.

(d) "Person" means a corporation, company, association, cooperative organization, partnership, individual, or other legal entity.

(e) "Due date" in case of a sale means not more than 30 days after the date of delivery of potatoes by a seller to a wholesale potato dealer. In case of a consignment it means not more than 30 days after the date the sale is made by the wholesale potato dealer, unless an agreement for extension of credit has been made between the seller and the purchaser at the time of sale or consignment in writing or unless prompt cash payment on delivery is specified.

(f) "Director" means the director of the department of agriculture and his or her authorized agents and representatives.

(g) "Financial institution" means a commercial bank whose deposits are insured by the federal deposit insurance corporation or a national bank for cooperatives subject to the farm credit act of 1971, Public Law 92-181, 85 Stat. 583.

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

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1965, Act 88, Imd. Eff. June 28, 1965;—Am. 1967, Act 160, Eff. Nov. 2, 1967;—Am. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.452 License required; exemptions.

Sec. 2. (1) A person shall not engage in or purport to be engaged in the business of a wholesale potato dealer or advertise as a wholesale potato dealer, unless that person is licensed by the director to carry on that business.

(2) A grower or grower cooperative who buys or receives only seed potatoes from another grower or grower cooperative for the grower's or grower cooperative's own planting use is exempt from this act.

(3) A wholesale potato dealer who does not sell or handle potatoes in wholesale lots for the purpose of processing or resale to other wholesale potato dealers, retailers, restaurants, hotels, or institutions and who buys an aggregate amount of less than 30,000 pounds of potatoes during each calendar month of a calendar year is exempt from this act for the following calendar year.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978.

290.453 Application for license; contents; fee; submission of false information; expiration.

Sec. 3. (1) A person required to be licensed under this act shall apply to the director in writing before June 1 of each year and shall provide the following:

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

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

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

(d) The signature of the applicant certifying that the information provided on the application is true, correct, and complete to the best of his or her knowledge.

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(2) The fee for each license shall be $100.00 and for each certified copy of the license shall be $5.00.

(3) The director may deny, suspend, or revoke the license of a licensee or applicant who knowingly submits false information on an application for licensure.

(4) A license issued under this act expires May 31 of each year.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.454 Wholesale potato dealers; display of license, inspection.

Sec. 4. A person licensed under this act and conducting business under the license shall keep a copy thereof, to be furnished by the director, posted in a conspicuous place in or at his place of business and exposed for inspection by any person who may properly make such inspection.

History: 1964, Act 158, Eff. Aug. 28, 1964.

290.455 Wholesale potato dealers; identification card; fees.

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

(2) Money collected by the director as fees imposed under this act shall be paid into the state treasury and credited to the general fund for the administration and enforcement of this act.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.456 Grounds for refusal, suspension, or revocation of license; hearing.

Sec. 6. (1) The refusal to issue, cancellation or suspension of, a license under the perishable agricultural commodities act of 1930, chapter 436, 46 Stat. 531, 7 U.S.C. 499a to 499b and 499c to 499t, or a license to operate as a wholesale potato dealer in any state may constitute grounds for the same action in this state at the discretion of the director. If a licensee or applicant for a license employs in a position as buyer or agent a person who has held a license under the perishable agricultural commodities act of 1930 or a license to operate as a wholesale potato dealer in any state, and this license has been refused, canceled, or suspended, this action may constitute a ground, at the discretion of the director, for the refusal, suspension, or revocation of a license in this state.

(2) The director may order a hearing 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, to determine whether to revoke or suspend a license for failure to comply with this act, the act governing the grading or labeling of potatoes, Act No. 29 of the Public Acts of 1970, as amended, being sections 290.421 to 290.430 of the Michigan Compiled Laws, or any rules promulgated under this act and may revoke a license for cause following a hearing.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1967, Act 160, Eff. Nov. 2, 1967;—Am. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.457 Records; examination.

Sec. 7. A licensee shall keep accurate accounts and records of all transactions as a wholesale potato dealer and shall retain them, subject to the examination of the director, for a period of 3 years after their respective events.

History: 1964, Act 158, Eff. Aug. 28, 1964.

290.458 Irrevocable letter of credit or surety bond required; exemptions; falsification of application, statement, or record.

Sec. 8. (1) An applicant for a wholesale potato dealer license shall file with the application or have on file with the director an irrevocable letter of credit issued by a financial institution on a form provided by the director providing that funds be made available against a sight draft drawn by the director in the manner described in section 9 or file or have on file a surety bond in favor of the director on a form provided by the director and executed by a surety company registered in this state. The bond shall be conditioned for all of the following:

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

(b) Payment when due of the purchase price of potatoes purchased by the wholesale potato dealer.

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

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

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

(2) The director shall not require a grower cooperative to furnish a bond or an irrevocable letter of credit for potatoes bought, sold, handled, or stored by the grower cooperative on behalf of its members. The grower cooperative shall furnish a bond or irrevocable letter of credit for potatoes bought, sold, handled, or stored on behalf of its nonmembers.

(3) An applicant for a wholesale potato dealer license shall not falsify an application, statement, or record required under this act.

(4) A wholesale potato dealer who buys an aggregate amount of less than 30,000 pounds of potatoes during each calendar month of a calendar year is exempt from this section and section 9 for the following calendar year.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.459 Surety bond or irrevocable letter of credit generally.

Sec. 9. (1) The bond or irrevocable letter of credit described in section 8 shall provide coverage for or payment for an amount representing the wholesale potato dealer's business transacted with growers within the state subject to the limits imposed in subsection (7). Liability for acts under a bond or payment pursuant to the irrevocable letter of credit shall be only for the period the license is in force.

(2) Liability under the bond or payment pursuant to the irrevocable letter of credit shall be for a minimum of 1 year beginning with the effective date of coverage and shall be considered continuous or automatically extended thereafter until terminated or canceled as provided under the terms of the bond or letter of credit.

(3) A bond shall not be canceled and the amount of a bond shall not be reduced unless the surety company notifies the director in writing not less than 60 days before the effective date of cancellation or reduction.

(4) A letter of credit shall be irrevocable. The issuing financial institution shall notify the director in writing not less than 60 days before the irrevocable letter expires or if the financial institution has refused to renew a letter of credit to the wholesale potato dealer in compliance with this section.

(5) The cancellation or expiration of the bond or irrevocable letter of credit operates as an automatic suspension of the wholesale potato dealer license unless security has been replaced within the 60-day period or unless the wholesale potato dealer has ceased business and has voluntarily relinquished the license. The wholesale potato dealer may request a hearing with the director to appeal the automatic suspension of the license if the request is in writing and received by the director within 10 days after the automatic suspension. If a bond or irrevocable letter of credit is obtained by the person after the 60-day period, he or she may reapply for licensure as a wholesale potato dealer. The director shall submit to existing state industry trade publications the name of the person and the effective date of occurrence of the following circumstances:

(a) Licenses which are revoked or suspended.

(b) Reapplications for licensure under this subsection.

(6) A bond or irrevocable letter of credit shall not be released by the director during the claim period described in section 12(1) or while there are any verified claims pending. If the director is satisfied no claims reasonably exist, the bond or irrevocable letter of credit shall be released promptly.

(7) The amount of coverage of the bond or the amount in which the irrevocable letter of credit is issued by the financial institution shall be double the amount paid for all Michigan grown potatoes purchased from or handled for growers during the month in which the maximum volume of Michigan grown potatoes was bought or handled during the past calendar year except that the bond or irrevocable letter of credit shall not be in an amount less than $10,000.00, or more than $100,000.00. The total liability of the surety issuing the bond or the amount available against a sight draft drawn by the director against a financial institution issuing the letter of credit for claims of growers arising out of transactions involving wholesale potato dealers is limited to the amount of the bond or letter of credit.

(8) In the case of a person initially entering business as a wholesale potato dealer, the director shall determine the amount of the bond or irrevocable letter of credit from the estimated amount of business to be done annually by the applicant.

(9) If during a licensing year the bond or irrevocable letter of credit filed by a licensee becomes less than required by this act due to an increase in the dollar volume of potato purchases, the director may issue an order requiring the licensee to increase a bond or file an additional letter of credit to cover the increase in gross dollar volume. Failure of a wholesale potato dealer to comply with an order of the director issued under this subsection is grounds for suspension or revocation of a license.

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History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1965, Act 88, Imd. Eff. June 28, 1965;—Am. 1967, Act 160, Eff. Nov. 2, 1967;—Am. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1982, Act 22, Eff. Sept. 4, 1982;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

Compiler's note: Section 2 of Act 22 of 1982 provides: "This amendatory act shall take effect 6 months after it is enacted into law, and shall apply only to licenses granted or renewed after the effective date."

This amendatory act was enacted into law on March 4, 1982, and took immediate effect.

290.460 Default of licensee; filing statement of grower's claim or certified copy of judgment; time.

Sec. 10. Upon default of a licensee in the payment of money due to a grower, the grower may file with the director a verified statement of the grower's claim. If the grower has reduced the claim to a judgment, the grower shall file a certified copy of the judgment with the director. Claims shall be filed within 90 days after the time of default.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.461 Repealed. 1968, Act 63, Eff. May 31, 1968.

Compiler's note: The repealed section pertained to claims of potato growers and processes of hearing and settlement of claims against wholesaler.

290.461a Examination of records; inquiries; seizing assets of licensee; hearing; order; appeal; action against seized assets; distribution to claimants; return of remaining assets to licensee; action for recovery of money.

Sec. 11a. (1) The director may periodically examine the records of a wholesale potato dealer. The director may examine the records of a wholesale potato dealer against whom a complaint alleging nonpayment has been made or whose license has been suspended and may inquire of other growers who have sold potatoes to the wholesale potato dealer within the past 6 months as to the payment for their potatoes. Inquiries may be made by the director by regular mail. Based on the results of the examination of records or of information obtained from inquiries, the director has standing to utilize any appropriate legal action in order to seize and protect in the name of the state and on behalf of the claimants the assets of the licensee. The director may order and conduct a hearing to determine the allowance of claims against the wholesale potato dealer, giving the party complained of notice of the filing of the complaint and the time and place of the hearing. At the conclusion of the hearing, the director shall report findings, render conclusions, and issue an order upon the matter complained of to the complainant and the respondent in each case, who shall have 15 calendar days following the date of issuance of the order in which to comply.

(2) A wholesale potato dealer aggrieved by the decision of the director may appeal from the decision within 10 calendar days after the issuance of the order by leave to the circuit court of the county where the wholesale potato dealer resides. The wholesale potato dealer shall notify the director in writing if he or she files an appeal. If the wholesale potato dealer does not comply with the order within 15 days after its issuance, the director shall demand payment from the surety or draw upon the irrevocable letter of credit in an amount necessary to satisfy the claims determined to be due. If the amount of the surety bond or irrevocable letter of credit is insufficient to satisfy the allowed claims, the director may bring action against the seized assets of the wholesale potato dealer to further satisfy the amount of the claims. If less than the total amount of the claims is obtained, distribution shall be made pro rata to the claimants.

(3) Upon full settlement of allowed claims from the bond, payment of a sight draft by the issuer of the irrevocable letter of credit, or liquidation of the assets of the wholesale potato dealer, the director shall return any remaining assets to the wholesale potato dealer.

(4) The director may bring an action in a court of competent jurisdiction against the wholesale potato dealer, his or her assets, or the surety on the bond or may take any appropriate action against the issuer of the irrevocable letter of credit for recovery of money due and owing to a grower or growers as provided in this act.

History: Add. 1968, Act 63, Eff. May 31, 1968;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.462 Filing claim; time period.

Sec. 12. (1) A grower shall file a claim with the director within 90 days after any of the following events:

(a) The default of the wholesale potato dealer if the default occurred during the license period.

(b) The suspension or revocation of the license of the wholesale potato dealer.

(c) The ceasing of business of the wholesale potato dealer.

(2) The director shall not determine or allow payment of a claim filed outside the time periods described in subsection (1).

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History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1978, Act 4, Imd. Eff. Feb. 7, 1978;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.463 Repealed. 2000, Act 377, Imd. Eff. Jan. 2, 2001.

Compiler's note: The repealed section pertained to promulgation of administrative rules.

290.464 Waiver.

Sec. 14. A person shall not request a grower to sign any statement, affidavit, assignment, or waiver of any kind which operates to relieve a wholesale potato dealer, financial institution issuing a letter of credit, or surety company of its full responsibility under this act.

History: 1964, Act 158, Eff. Aug. 28, 1964;—Am. 1992, Act 171, Eff. Oct. 20, 1992.

290.465 Violation of act; misdemeanor, penalty.

Sec. 15. Any person who violates any provision of this act is guilty of a misdemeanor, punishable by a fine of not less than $25.00 nor more than $100.00, and in default in payment thereof, by imprisonment for not less than 10 days in the county jail, and for each subsequent violation by a fine of not less than $100.00 nor more than $500.00, or imprisonment in the county jail for not more than 6 months, or both.

History: 1964, Act 158, Eff. Aug. 28, 1964.

290.466 Repeal.

Sec. 16. Act No. 227 of the Public Acts of 1929, being sections 290.171 to 290.174 of the Compiled Laws of 1948, is repealed.

History: 1964, Act 158, Eff. Aug. 28, 1964.

CHERRIES
Act 228 of 1947

290.501-290.515 Repealed. 1952, Act 55, Eff. Sept. 18, 1952;—1984, Act 161, Imd. Eff. June 27, 1984.

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LIMING MATERIAL
Act 162 of 1955

AN ACT to provide for the licensing and inspection of agricultural liming material and to regulate the sale thereof; and to prescribe penalties for the violations of the provisions of this act.

History: 1955, Act 162, Imd. Eff. June 7, 1955.

The People of the State of Michigan enact:

290.531 Liming material; definition; container label, contents; exception.

Sec. 1. The term "liming material" means all or any form of limestone, lime rock, marl, slag, by-product lime, industrial or factory refuse lime, water softener lime, and any other material manufactured, prepared, sold or distributed primarily for correcting soil acidity. Every lot, package or parcel of liming material sold, offered or exposed for sale or distributed within this state shall have on each bag, package or container, in a conspicuous place on the outside, or in the case of bulk lime the vendor shall present to the purchaser a legible and plainly written statement in the English language clearly and truly certifying:

(a) The net weight of the contents of the package, lot, bag, sack, carton or container; or bulk lot;

Each vehicle transporting agricultural liming material not sold on a scale weight basis must have plainly marked thereon the ton weight capacity when level full, assuming a ton of agricultural liming material occupies 20 cubic feet. Such sale on other than a scale weight basis must have prior approval of the department of agriculture.

(b) The exact, complete name of the product;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum neutralizing value in terms of calcium carbonate;

(e) The degree of fineness expressed as:

(1) minimum percentage passing through 8-mesh screen;

(2) minimum percentage passing through 60-mesh screen;

(3) minimum percentage passing through 100-mesh screen; except that in the case of marl, beet sugar factory refuse lime, paper mill refuse lime, carbide plant refuse lime, water softener refuse lime, wood ashes and other forms of waste or refuse lime the neutralizing value shall be expressed as pounds of "calcium carbonate equivalent" per cubic yard of material as delivered, and further that no guarantee need be made relative to fineness or to the net weight.

This act shall not apply to any stocks that may be in the hands of dealers in the state at the time this act goes into effect.

History: 1955, Act 162, Imd. Eff. June 7, 1955;—Am. 1965, Act 94, Eff. Mar. 31, 1966.

290.532 Liming material; vendor's certificates of analysis and contents, samples.

Sec. 2. Before any liming material is sold or offered for sale, the manufacturer, importer or party who causes it to be sold or offered for sale within this state shall file with the director of agriculture a certified copy of the analysis and certificate referred to in section 1. The certified copy of analysis shall be accompanied, when the director of agriculture so requests, by a sealed package containing not less than 2 pounds of such liming material, with an affidavit that it is a representative sample of the liming material thus to be sold or offered for sale.

History: 1955, Act 162, Imd. Eff. June 7, 1955;—Am. 1965, Act 94, Eff. Mar. 31, 1966.

290.533 Liming material; license fee; records.

Sec. 3. The manufacturer, importer or agent of any liming material shall pay annually to the director of agriculture on or before December 31 a license fee of $20.00 for each liming material he offers for sale in this state. Whenever the manufacturer or importer shall have paid this license fee his agents shall not be required to do so. All vendors of liming materials shall keep on file subject to inspection by any authorized agent of the director of agriculture for a period of 1 year all invoices, freight bills, truckers' receipts, way bills and similar shipping data pertaining to liming materials that would establish date and origin of the shipment.

History: 1955, Act 162, Imd. Eff. June 7, 1955;—Am. 1965, Act 94, Eff. Mar. 31, 1966.

290.534 Liming material; annual analysis.

Sec. 4. All such analyses of liming materials required by this act shall be made under the director of agriculture and paid for out of the funds arising from the license fees provided for in section 3. At least 1

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analysis of each liming material shall be made annually.

History: 1955, Act 162, Imd. Eff. June 7, 1955.

290.535 Annual report of director of agriculture; surplus from license fees.

Sec. 5. The director of agriculture shall publish in his annual report a correct statement of all analyses made and certificates filed in his office; together with a statement of all moneys received for license fees, and expended for analysis. Any surplus from license fees remaining on hand at the close of the fiscal year shall be placed to the credit of the general fund.

History: 1955, Act 162, Imd. Eff. June 7, 1955.

290.536 Violation; penalty, damages for misrepresentation.

Sec. 6. Any person or persons who shall sell or offer for sale any liming material in this state without first complying with the provisions of sections 1, 2 and 3 of this act, or who shall attach or cause to be attached to any such package of liming material an analysis stating that it contains a larger percentage of any 1 or more of the constituents or ingredients named in section 1 of this act than it really does contain shall, upon conviction thereof, be fined not less than $100.00 for the first offense, and not less than $300.00 for every subsequent offense and the offender shall also be liable for all damages sustained by the purchaser of such liming material on account of such misrepresentation.

History: 1955, Act 162, Imd. Eff. June 7, 1955.

290.537 Selection of material for analysis; inspection; seizure.

Sec. 7. The director of agriculture by any duly authorized agent is hereby authorized to select from any package of liming material exposed for sale in this state a quantity not exceeding 2 pounds, for a sample, such sample to be used for the purpose of an official analysis and for comparison with the certificate filed with the director of agriculture and with the certificate affixed to the package on sale. The director of agriculture, his deputy or any authorized agent of the director, shall have free access during reasonable business hours to all premises where liming materials are manufactured, sold or stored, and is authorized at all times to seize or stop-sale any and all liming materials, that are unlicensed, misbranded, fail to meet guarantee or otherwise fail to comply with the provisions of this act.

History: 1955, Act 162, Imd. Eff. June 7, 1955;—Am. 1965, Act 94, Eff. Mar. 31, 1966.

290.538 Director; enforcement of act.

Sec. 8. The director of agriculture shall enforce this act.

History: 1955, Act 162, Imd. Eff. June 7, 1955;—Am. 2000, Act 140, Imd. Eff. June 1, 2000.

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BEANS
Act 114 of 1965

AN ACT relating to dry, edible beans; to create a bean commission and prescribe its functions; to levy and collect assessments on bean production; and to provide penalties for violation of this act.

History: 1965, Act 114, Eff. Jan. 1, 1966.

The People of the State of Michigan enact:

290.551 Definitions.

Sec. 1. As used in this act:

(a) "Beans" means Michigan dry, edible beans, except soybeans.

(b) "Commission" means the Michigan bean commission.

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

(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 producing beans for sale within 1 of the past 3 years.

(e) "Processor" means a person who cleans and grades, dries, dehydrates, cans, powders, extracts, cooks, or uses in producing or manufacturing a product or article, ships, or otherwise handles beans, including seed.

(f) "Sold or shipped for processing" means that beans are loaded by the grower, in bulk or loose in bags or other containers, or packed in any style package, in a car, boat, truck, wagon, or other conveyance to be transported to a processor.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977;—Am. 1980, Act 493, Imd. Eff. Jan. 21, 1981 ;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

Transfer of powers: See MCL 16.283.

290.552 Division of state into districts.

Sec. 2. For the purposes of this act, the state is divided into 8 districts:

(a) District 1 consists of the counties of Arenac, Bay, and Midland plus all counties north of Midland county that are not otherwise designated in a district.

(b) District 2 consists of the county of Gratiot.

(c) District 3 consists of the county of Tuscola.

(d) District 4 consists of the counties of Genesee, Lapeer, Macomb, St. Clair, and Sanilac.

(e) District 5 consists of the eastern half of the county of Huron using highway 53 as the western boundary.

(f) District 6 consists of the western half of the county of Huron using highway 53 as the eastern boundary.

(g) District 7 consists of the counties of Montcalm, Kent, Isabella, Mecosta, Eaton, Ingham, Clinton, and Shiawassee plus all counties west and south of this district not otherwise designated in a district.

(h) District 8 consists of the county of Saginaw.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1989, Act 144, Imd. Eff. June 29, 1989;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.553 Michigan bean commission; creation; appointment, qualifications, and terms of members; ex officio members; reapportionment.

Sec. 3. (1) The Michigan bean commission of 9 voting members is created, consisting of a grower from each district created under section 2 and 1 processor shipper handler member under section 4(2). The director and the dean of the college of agriculture of Michigan state university, or their designees, are ex officio members without vote. An appointed member shall be of legal voting age in this state and shall be a citizen and resident of this state. Commission members, except for the processor member, shall be or shall have been engaged in the actual growing or producing of beans within the state.

(2) The terms of office of members of the commission shall be 3 years after the date of appointment or until their successors are appointed and qualified.

(3) Not less than 5 years after June 29, 1989 and every 5 calendar years after that date, the commission may, with the advice and consent of the director and the commission of agriculture, reapportion the districts described in section 2. Reapportionment of the districts shall be on the basis of 1 or more counties with the amount of planted dry bean acreage being as nearly equal as possible between districts except that if 1 county constitutes greater than 20% of the total bean production within the state, then that county may be divided into 2 or more relatively equal districts.

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(4) After the reapportionment described in subsection (3), if the residence of a member of the commission falls outside of the district for which he or she serves on the commission and falls within the district for which another member serves on the commission, then both members shall continue to serve on the commission for a term equal to the remaining term of the member who served for the longest period of time. If after the reapportionment described in subsection (3) a district is created in which no member serving on the commission resides, then a member shall be selected in a manner described in section 4(2).

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977;—Am. 1989, Act 144, Imd. Eff. June 29, 1989 ;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.554 Michigan bean commission; procedure for appointment of members; meetings; cessation of membership; vacancies.

Sec. 4. (1) The governor shall appoint the first members of the commission within 30 days after this act takes effect with the advice and consent of the senate and without use of the nominating procedures provided in this section. The governor shall appoint subsequent members only from the lists of nominees submitted to him or her and subject to the advice and consent of the senate. If a list is not submitted to the governor at least 30 days before the term of office of a member would normally expire, or within 30 days after a vacancy otherwise occurs, the governor may appoint any person who is otherwise qualified under this act.

(2) A meeting of growers shall be held in each district in each year when a vacancy occurs. The commission shall give notice of each meeting by at least 2 insertions in a farm publication of general circulation in the district where the meeting is to be held, with the final insertion to be at least 10 days before the meeting. The commission shall supervise the conduct of the meeting. Two nominees for members of the commission shall be selected at each meeting and submitted to the governor. Appointment of a processor shipper handler member shall be made only from any list submitted to the governor by the commission with 2 names submitted for the appointment of that member.

(3) A member of the commission who fails to meet the qualifications of this act shall cease to be a member of the commission. This vacancy or a vacancy for another reason shall be filled by the governor for the unexpired term in the same manner as the original appointment.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.555 Michigan bean commission; quorum; compensation and expenses; conducting business at public meeting; notice.

Sec. 5. (1) A majority of the members of the commission constitutes a quorum for the transaction of business and for performing the duties of the commission. A member shall receive a per diem rate to be established by the commission on an annual basis which shall not exceed the rate allowed by law to state officers for each day spent in actual attendance at meetings of the commission, and traveling and other expenses incurred in connection with the business of the commission at the rate allowed by law to state officers, but shall not receive any other compensation or salary.

(2) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1975, Act 61, Imd. Eff. May 20, 1975;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977; —Am. 1978, Act 412, Imd. Eff. Sept. 28, 1978;—Am. 1980, Act 493, Imd. Eff. Jan. 21, 1981.

290.556 Michigan bean commission; election of chairman, treasurer, and other officers; appointment and compensation of executive secretary.

Sec. 6. The commission shall elect each year a chairman, a treasurer, and other officers it deems advisable. The commission, as often as it deems advisable, shall appoint an executive secretary and fix his compensation.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977.

290.557 Bean commission; deposit of money received; treasurer's bond; “financial institution” defined.

Sec. 7. (1) Money received by the commission, or any other state official, from the assessments under this act, shall be deposited in a financial institution as the commission designates, and the money shall be disbursed only by order of the commission.

(2) The treasurer of the commission shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state, in favor of the commission and the state, jointly and

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severally, for the faithful performance of his or her duties and the strict accounting of all funds of the commission. The amount of the bond shall be determined by the commission.

(3) As used in this section, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1997, Act 36, Imd. Eff. June 30, 1997.

290.558 Bean commission; body corporate, seal, records as evidence.

Sec. 8. The commission is a body corporate and may sue and be sued and contract and be contracted with. The commission shall adopt a seal. Copies of the proceedings, records and acts of the commission, when certified by the secretary and authenticated by the seal, shall be admissible in evidence in all courts of this state, and shall be prima facie evidence of the truth of all statements therein contained.

History: 1965, Act 114, Eff. Jan. 1, 1966.

290.559 Bean commission; state and employees not liable for acts; disbursements.

Sec. 9. The state is not liable for the acts of the commission or its contracts. All disbursements shall be limited to the funds collected by the commission, and no member of the commission or any employee or agent thereof is liable on the contracts of the commission. All salaries, expenses, costs, obligations and liabilities incurred by the commission are payable only from funds collected by the commission under this act, except that any moneys obtained through donations and gifts or provided by a governmental agency may be used within limits stipulated by the donor or governmental agency.

History: 1965, Act 114, Eff. Jan. 1, 1966.

290.560 Michigan bean commission; powers and duties generally; prohibitions.

Sec. 10. (1) The commission shall perform the following:

(a) Adopt, amend, or rescind rules, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the exercise of its powers and performance of its duties.

(b) Administer this act and investigate violations of this act, and perform all acts and exercise all powers reasonably necessary to implement this act.

(c) Employ and discharge employees as it considers necessary, prescribe their powers and duties, and fix their compensation.

(d) Establish offices, incur expenses, enter into contracts and agreements, and create liabilities, when reasonable, for the proper administration and enforcement of this act.

(e) Enter into in the name of the commission necessary advertising contracts and other agreements and cooperate with and support national and state associations of bean growers or processors in implementing this act.

(f) Keep accurate books, records, and accounts of all commission dealings, which shall be open to inspection by the public, and shall be audited by the auditor general or by a certified public accountant. A writing 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.

(g) Promote research on bean varieties and agronomic practices.

(h) Promote scientific research to develop and discover the health, food, therapeutic, nutritional, and dietetic value of beans and bean products.

(i) Carry out market development, market research, and promotional programs.

(j) Compile and publish commodity information.

(2) The commission may develop, publish, and dispense to growers information pertaining to markets and marketing, and shall include such items as competing production areas, practices, crop production, crop conditions, crop prices, and other factors affecting the pricing structure of dry beans throughout the world.

(3) The commission shall not be a party to a procedure which includes price setting or production quotas. The commission shall not engage in marketing or an activity which would result in the setting up of a marketing order.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977;—Am. 1978, Act 412, Imd. Eff. Sept. 28, 1978;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.561 Enforcement; reimbursement for costs.

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Sec. 11. The state department of agriculture or its agents shall enforce this act. The commission shall reimburse the department for costs incurred by the department in such enforcement. Such funds received by the department are hereby appropriated for the department's use.

History: 1965, Act 114, Eff. Jan. 1, 1966.

290.562 Grower assessment on beans grown and produced.

Sec. 12. (1) A grower assessment of 10 cents per hundredweight, when sold or shipped, is levied and imposed upon all beans grown and produced in this state in the year 2000, and annually thereafter. The grower or certified seed grower shall pay the assessment.

(2) The first receiver who purchases or receives beans from growers shall deduct the assessment from the price paid and remit it to the commission on or before the fifteenth of the following month.

(3) The commission may set a reasonable fee for the collecting of assessments from growers.

(4) Money levied and collected under this act shall be spent for purposes authorized by this act.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1974, Act 117, Imd. Eff. May 23, 1974;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977 ;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.562a Assessment on beans grown and produced; payment; report; use; research advisory board; referendum.

Sec. 12a. An assessment of 1 cent per hundredweight is levied and imposed upon all beans grown and produced in this state in the year 1974, and annually thereafter. The first receiver who purchases or receives beans from growers shall pay the assessment. The assessment paid by the first receiver shall be reported and remitted to the commission in the same manner as the grower assessment. The first receiver assessment shall be used solely for the funding of dry edible bean research by the commission in cooperation with the Michigan bean shippers association. The commission shall appoint a research advisory board to aid in administration of funding of the research. At least 1/2 of the advisory board shall be dealer members of the Michigan bean shippers association. Moneys generated by the first receiver assessment shall be deposited in such banks as the commission designates but this fund shall be kept separate from other moneys or funds received by the commission. Three years after the effective date of this section, the commission, upon receipt of a petition bearing the signatures of at least 25% of the first receivers, but with not more than 1/2 of them from 1 district, the commission shall conduct a referendum to determine whether or not the commission shall continue to levy the first receiver assessment for research. If a majority of the first receivers voting, vote against assessment of first receivers for research, the commission shall discontinue the first receiver assessment. The referendum shall be conducted by the commission within 60 days after receipt of a petition.

History: Add. 1974, Act 117, Imd. Eff. May 23, 1974.

290.562b Changing method or amount of assessment; referendum; implementation of proposed change.

Sec. 12b. (1) The commission may change the method or the amount of the assessment imposed in section 12, or both, by complying with this section.

(2) If the commission proposes a change as described in subsection (1), then it shall conduct a referendum of growers relative to any such change.

(3) After a referendum, the commission shall implement a proposed change if more than 50% of the growers voting approve any proposed change and those voters represent more than 50% of the hundredweight voting.

History: Add. 1989, Act 144, Imd. Eff. June 29, 1989.

290.563 Repealed. 1976, Act 403, Imd. Eff. Jan. 5, 1977.

Compiler's note: The repealed section pertained to election to become nonparticipating grower.

290.564 Supplemental assessment for special projects; referendum to determine rate; collection.

Sec. 14. (1) Whenever 800 of the growers, of which not more than 200 are in the same district, petition the commission, the commission shall conduct a referendum among the growers of the state to determine the rate of supplemental assessment for special projects.

(2) The supplemental assessment provided for in subsection (1) shall be collected and remitted to the commission in the same manner as provided in section 12. The referendum shall be conducted in a manner to protect the purity of the ballot.

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(3) If a majority of the growers voting upon the question vote in favor of the proposed change, the assessment shall be ineffective in the year in which it is voted unless the change is published before June 1 of that year.

(4) The total rate of supplemental assessment shall not exceed 25 cents per hundredweight.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977;—Am. 1980, Act 493, Imd. Eff. Jan. 21, 1981 ;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.565 Records of first receiver; preservation; availability; records of grower processing or retailing own production.

Sec. 15. A first receiver shall keep complete and accurate records of the number of pounds of beans purchased from each grower by the receiver during each calendar year. The records shall be preserved for 2 years, and shall be available to the commission or the commission's authorized agent upon request. A grower processing or retailing the grower's own production shall keep the records prescribed in this section.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1980, Act 493, Imd. Eff. Jan. 21, 1981.

290.566 Violation; penalties; prosecution.

Sec. 16. (1) Except as provided in subsection (2), a person who violates or aids in the violation of this act, is guilty of a misdemeanor.

(2) A member of the commission who intentionally violates section 5(2) shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976.

(3) A prosecution under this act may be instituted in a county in this state in which the violation was committed, or in which a defendant resides or has a principal place of business.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1978, Act 412, Imd. Eff. Sept. 28, 1978.

290.567 Referendum on continuation of commission functions; referendum on termination of commission; petition; notice; hearings; cessation of operations and transfer of assets; voting; submitting ballot to legislative committees for review.

Sec. 17. (1) Five years after the latest referendum held under this section, the department of agriculture 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 any 1 of the previous 3 years of those voting, 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 bean research. A grower is entitled to 1 vote and the grower must be able to verify the hundredweight claimed as being sold as indicated on the ballot.

(2) Upon written petition signed by at least 200 growers but with not more than 100 of them from any 1 district, the director shall, within 30 days, give 10 days' notice and hold a hearing on termination of the commission. Within 45 days after the close of the hearings, the director shall conduct a referendum to determine whether the growers assent to the proposed action. The commission is terminated if a majority by number of those voting, representing a majority of the hundredweight sold in any 1 of the previous 3 years of those voting, vote against its continuation. The commission shall then cease its operations and deliver its assets to the director who shall transfer the assets to Michigan state university for bean research. A referendum described in this subsection shall not be conducted within 1 year before or after any other referendum. A grower is entitled to 1 vote and the grower must be able to verify the hundredweight claimed as being sold as indicated on the ballot.

(3) Not less than 30 days before the referendum required by subsection (1), the department of agriculture shall submit for review the ballot to be used in conducting the referendum to the senate's and the house of representatives' standing committees dealing primarily with agricultural issues.

History: 1965, Act 114, Eff. Jan. 1, 1966;—Am. 1976, Act 403, Imd. Eff. Jan. 5, 1977;—Am. 1980, Act 493, Imd. Eff. Jan. 21, 1981 ;—Am. 2000, Act 484, Imd. Eff. Jan. 11, 2001.

290.568 Effective date.

Sec. 18. This act shall take effect January 1, 1966.

History: 1965, Act 114, Eff. Jan. 1, 1966.

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RENEWABLE FUELS COMMISSION ACT
Act 272 of 2006

AN ACT to create a commission to investigate alternative fuels; to define certain alternative fuels; to determine certain powers and duties of the commission; and to repeal acts and parts of acts.

History: 2006, Act 272, Imd. Eff. July 7, 2006.

The People of the State of Michigan enact:

***** *290.581 THIS SECTION IS REPEALED BY ACT 272 OF 2006 EFFECTIVE JANUARY 1, 2010* *****

290.581 Short title.

Sec. 1. This act shall be known and may be cited as the "renewable fuels commission act".

History: 2006, Act 272, Imd. Eff. July 7, 2006.

***** *290.582 THIS SECTION IS REPEALED BY ACT 272 OF 2006 EFFECTIVE JANUARY 1, 2010* *****

290.582 Definitions.

Sec. 2. As used in this act:

(a) "Alternative fuel" means a fuel composed of biomass or another fuel that does not have petroleum as a base or a blend of a nonpetroleum-based fuel and a petroleum-based fuel. Alternative fuel may include, but is not limited to, biodiesel and ethanol.

(b) "Biodiesel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and, in accordance with standards specified by the American society for testing and materials, designated B100, and meeting the requirements of D-6751, as approved by the department.

(c) "Biomass fuel" means a fuel made from plant material, vegetation, or agricultural waste.

(d) "Ethanol" means a substance that meets the American society for testing and materials standard in effect on the effective date of this act as the D-4806 specification for denatured fuel grade ethanol for blending with gasoline.

History: 2006, Act 272, Imd. Eff. July 7, 2006.

***** *290.583 THIS SECTION IS REPEALED BY ACT 272 OF 2006 EFFECTIVE JANUARY 1, 2010* *****

290.583 Renewable fuels commission; establishment; powers and duties.

Sec. 3. (1) The renewable fuels commission is established within the department of agriculture. The commission shall investigate and recommend strategies that the governor and the legislature may implement to promote the use of alternative fuels and encourage the use of vehicles that utilize alternative fuels. The commission shall also identify mechanisms that promote research into alternative fuels.

(2) The commission shall identify mechanisms that promote effective communication and coordination of efforts between this state and local governments, private industry, and institutes of higher education concerning the investigation, research into, and promotion of alternative fuels.

(3) The commission may also review any state regulation that may hinder the use, research, and development of alternative fuels and vehicles that are able to utilize them and recommend changes to the governor.

History: 2006, Act 272, Imd. Eff. July 7, 2006.

***** *290.584 THIS SECTION IS REPEALED BY ACT 272 OF 2006 EFFECTIVE JANUARY 1, 2010* *****

290.584 Membership; appointment; qualifications.

Sec. 4. The commission shall consist of the following members, appointed by the governor within 90 days of the effective date of this act:

(a) The director of the department of agriculture or his or her designee. The director of the department of agriculture shall be the chair of the commission.

(b) One member representing the Michigan economic development corporation.

(c) One member representing the department of labor and economic growth.

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(d) At least 1 member from the largest organization in this state that represents corn producers exclusively.

(e) At least 1 member from the largest organization in this state that represents soybean producers exclusively.

(f) One representative of automotive fuel blenders in this state.

(g) One representative of retail petroleum sellers in this state.

(h) One representative of petroleum suppliers in this state.

(i) One representative of biodiesel producers.

(j) One representative of ethanol producers.

(k) One representative of environmental organizations.

(*l*) Three representatives of the automotive manufacturing industry.

(m) Three representatives of colleges and universities in this state that are engaged in alternative fuel research.

(n) Any other member that the governor concludes is necessary to further the commission's purposes.

History: 2006, Act 272, Imd. Eff. July 7, 2006.

***** *290.585 THIS SECTION IS REPEALED BY ACT 272 OF 2006 EFFECTIVE JANUARY 1, 2010* *****

290.585 Report.

Sec. 5. No later than 1 year after the effective date of this act, the commission shall issue a written report on its investigation and recommendations to the legislature and the governor. Follow-up reports shall be issued at least annually and may be issued more frequently if the commission deems it advisable.

History: 2006, Act 272, Imd. Eff. July 7, 2006.

***** *290.586 THIS SECTION IS REPEALED BY ACT 272 OF 2006 EFFECTIVE JANUARY 1, 2010* *****

290.586 Repeal of act.

Sec. 6. This act is repealed effective January 1, 2010.

History: 2006, Act 272, Imd. Eff. July 7, 2006.

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WEIGHTS AND MEASURES ACT
Act 283 of 1964

AN ACT to regulate and provide standards for weights and measures, and the packaging and advertising of certain commodities; to provide for a state director and other officials and to prescribe their powers and duties; to provide a fee system for certain inspections and tests; to provide penalties for fraud and deception in the use of false weights and measures and other violations; and to repeal certain acts and parts of acts.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1975, Act 217, Imd. Eff. Aug. 26, 1975.

The People of the State of Michigan enact:

290.601 Short title.

Sec. 1. This act shall be known and may be cited as the "weights and measures act".

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.602 Definitions.

Sec. 2. As used in this act:

(a) "Automatic checkout system" means an electronic device, computer, or machine that determines the price of a consumer item by using a product identity code and may, but is not required to, include an optical scanner.

(b) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(c) "Certificate of conformance" means a document issued by the NCWM based on testing by a participating laboratory that constitutes evidence of conformance of a type.

(d) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale including an individual item or lot of any commodity not in a form as described in this subdivision but upon which there is marked a selling price based on an established price per unit of weight or of measure. Commodity in package form does not include an auxiliary shipping container enclosing packages that conform to the requirements of this act.

(e) "Consumer package" means a commodity in package form that is customarily produced or distributed for consumption by individuals or for use by individuals for the purposes of personal care or in performance of services ordinarily rendered in or about the household or in connection with personal possessions and that usually is consumed or expended in the course of that consumption or use.

(f) "Cord", when used in connection with wood intended for fuel purposes or for pulpwood, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(g) "Department" means the Michigan department of agriculture.

(h) "Director" means the director of the Michigan department of agriculture or his or her designee.

(i) "Inspector" means an employee or agent of the department authorized to enforce this act.

(j) "NCWM" means the national conference on weights and measures.

(k) "NIST" means the United States department of commerce, national institute of standards and technology.

(*l*) "NTEP" means the national type evaluation program administered by the NCWM, in cooperation with the states, the private sector, and the NIST for determining on a uniform basis conformance of a type.

(m) "Nonconsumer package" means any commodity in package form other than a consumer package and includes, but is not limited to, a package designed solely for industrial or institutional use or for only wholesale distribution.

(n) "Participating laboratory" means a state measurement laboratory that has been accredited by NCWM to conduct a type evaluation under the NTEP and determined otherwise acceptable to the director.

(o) "Placed-in-service report" means the approved form issued to registered service persons and registered service agencies for their use in accordance with the requirements of section 9b.

(p) "Registered service agency" means any agency, firm, company, or corporation that installs, services, repairs, or reconditions commercial weights and measures and that holds a registration issued by the director.

(q) "Registered service person" means an individual who installs, services, repairs, or reconditions commercial weights and measures and who holds a registration issued by the director.

(r) "Rule" means an administrative rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(s) "Sell" or "sale" means sale, barter, or exchange.

(t) "Ton" means a unit of 2,000 pounds avoirdupois weight.

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(u) “Type” means a model of a particular measurement system, instrument, element, or a field standard that positively identifies the design and that may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.

(v) “Type evaluation” means the testing, examination, and evaluation of a type by a participating laboratory.

(w) “Weight”, in connection with any commodity, means net weight.

(x) “Weights and measures” means weights and measures of every kind, instruments and devices for weighing and measuring, grain moisture meters, and any appliances and accessories associated with any or all of those instruments and devices. Weights and measures include automatic checkout systems. Weights and measures do not include meters for the measurement of electricity, natural or manufactured gas, water, or the usage of communications services when any of these meters are regulated and tested as part of a public utilities system.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1968, Act 264, Eff. Nov. 15, 1968;—Am. 1982, Act 260, Imd. Eff. Oct. 4, 1982;—Am. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.603 Recognized systems of weights and measures; use; recognized definitions, tables, and equivalents governing equipment and transactions.

Sec. 3. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and one or the other of these systems or both shall be used, for all commercial purposes in this state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the national bureau of standards, are recognized and shall govern weighing and measuring equipment and transactions in this state.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1978, Act 271, Imd. Eff. June 29, 1978.

290.604 State primary standards of weights and measures; certification; storage and maintenance; removal from laboratory; use.

Sec. 4. Weights and measures in conformity with the standards of the United States as supplied to this state by the federal government or otherwise obtained by this state for use as state primary standards, when certified as being satisfactory for use by the national bureau of standards, shall be the state primary standards of weights and measures. The state primary standards shall be kept in a safe and suitable place in the weights and measures laboratory of the department of agriculture and shall be maintained in the calibration prescribed by the national bureau of standards. The state primary standards shall not be removed from the weights and measures laboratory except for repairs or certification. The state primary standards shall be used only to verify the secondary standards and for scientific purposes.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1978, Act 117, Imd. Eff. Apr. 18, 1978.

290.605 Keeping copies of state primary standards as secondary standards; field standards and equipment; verification.

Sec. 5. In addition to the state primary standards provided for in section 4, this state shall supply at least 1 complete set of copies of the state primary standards to be kept in the weights and measures laboratory of the department of agriculture to be known as secondary standards. This state shall also supply field standards and equipment as may be found necessary to carry out this act. The secondary standards shall be verified upon their initial receipt and as often thereafter as the director considers necessary. The field standards shall be verified upon their initial receipt and at least once every 5 years thereafter. The secondary standards shall be verified by direct comparison with the state primary standards. The field standards shall be verified by direct comparison with the secondary standards.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1978, Act 117, Imd. Eff. Apr. 18, 1978.

290.606 State director of weights and measures; deputy, inspectors.

Sec. 6. The state director of agriculture by virtue of his office shall be state director of weights and measures during his term of office. His deputy shall be deputy director of weights and measures, and all inspectors appointed by the director shall be state inspectors and sealers of weights and measures.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.607 Custody and records of standards and equipment; enforcement of act; general supervision; annual report.

Sec. 7. The director shall:

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(a) Have the custody of and keep accurate records of the state primary standards of weights and measures and the other standards and equipment provided for by this act.

(b) Enforce this act.

(c) Have general supervision over the weights and measures offered for sale, sold or used in this state.

(d) After the close of the fiscal year, report to the governor on all of his or her official activities.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1978, Act 117, Imd. Eff. Apr. 18, 1978.

290.608 Rules; exemptions.

Sec. 8. (1) The director may promulgate rules necessary to administer and enforce this act. These rules may include any of the following:

(a) Standards of net weight, measure, or count.

(b) Technical and reporting procedures and the report and record forms and marks of approval and rejection to be used by inspectors in the discharge of their official duties.

(c) Exemptions from the sealing or marking requirements of section 14 with respect to weights and measures of the character or size that the sealing or marking would be inappropriate, impractical, or damaging to the apparatus in question.

(d) With respect to classes of weights and measures determined by the director to be of a character that frequent retesting is unnecessary to continued accuracy, exemptions from the requirements of sections 9 and 10 for testing and schedules fixing the frequency of required retests for classes of devices so exempted.

(e) The voluntary regulation and registration of registered service persons and registered service agencies.

(f) Standards for automatic checkout systems.

(2) The director shall promulgate rules that provide for specifications, tolerances, and regulations for weights and measures specified in section 10 that are designed to eliminate from use, without prejudice to apparatuses that conform as closely as practicable to the official standards, those apparatuses that are not accurate, that are of such construction so as not to be reasonably permanent in their adjustment or will not repeat their indications correctly, or that facilitate the perpetration of fraud. The specifications, tolerances, and regulations for commercial weights and measures, together with amendments to those specifications, tolerances, and regulations, as described in section 28c, shall be the specifications and tolerances for commercial weights and measures of this state except as specifically supplemented, updated, modified, amended, or rejected by a rule of the director. For the purposes of this act, an apparatus shall be considered to be correct when it conforms to all applicable rules adopted as specified in this section. An apparatus is considered to be incorrect if it does not conform to all applicable standards incorporated by reference in section 28c and rules adopted under this section.

(3) The director may grant exemptions to the specifications published in the standards, incorporated by reference in section 28c, if a written request for an exemption is submitted stating the reason an exemption is required or desirable. The term of any granted exemption shall be set by the director with the exemption subject to revocation if the terms of the exemption agreement are not met.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1968, Act 264, Eff. Nov. 15, 1968;—Am. 1982, Act 62, Imd. Eff. Apr. 8, 1982;—Am. 1982, Act 260, Imd. Eff. Oct. 4, 1982;—Am. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

Administrative rules: R 285.548.1 et seq.; R 285.559.1 et seq.; and R 290.1 et seq. of the Michigan Administrative Code.

290.609 State director of weights and measures; testing of standards, inspections; testing of weights and measures for state purchases.

Sec. 9. The director, at least once every 5 years, shall test the standards of weights and measures procured by any city or county for which the appointment of a sealer of weights and measures is provided by this act, and shall approve the same when found to be correct, and he shall inspect such standards at least once every 2 years. He shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, and report his findings in writing to the supervisory board and to the executive office of the institution concerned.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.609a Weighing device; measuring device; certificates of conformance; participating laboratory.

Sec. 9a. (1) A weighing device manufactured or placed in service after January 1, 1988 shall have valid certificates of conformance before use for commercial purposes or law enforcement purposes.

(2) A measuring device manufactured or placed in service 6 months after the effective date of the amendatory act that added this section shall have valid certificates of conformance before use for commercial purposes or law enforcement purposes.

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(3) The director may operate a participating laboratory as part of NTEP. The director may charge and collect fees pursuant to section 10b for services rendered by the participating laboratory.

History: Add. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.609b Service persons and agencies; registration requirements; denial, suspension, or revocation of registration.

Sec. 9b. (1) The director shall issue a registration for service persons and service agencies seeking registration under this section in accordance with the standards described in section 28c. Registration with the director under this section is voluntary.

(2) A person may apply for initial and renewal registration as a service person or service agency in competency areas. Competence in a subject matter area may be demonstrated by either submitting a certificate of completion of the NCWM training module described in section 28c for that area or by scoring at least 80% on a department-approved competency test for that area in compliance with the standards described in section 28c. Documentation of competency is not required for renewal unless documentation of competency is required as a result of changes in the NCWM training module and those changes are adopted by rule of the director or as otherwise required by law.

(3) The term of registration is 2 years from the date of issuance. A registration may be transferred to a different service agency if the registration is retained by the original service person and the new service agency pays the service agency registration fee.

(4) Subject to section 10b(1), the fee for registration under this section is $150.00 per service agency and $50.00 per service person.

(5) Certification of standards used by the registered service person or registered service agency shall be accomplished by the registrant at least biannually. The certification of standards may be done at any participating laboratory. The registrant shall submit documentation of NIST accreditation with the registration or renewal application.

(6) The director may deny, suspend, or revoke a registration for a violation of this act or rules adopted under this act. Enforcement actions include, but are not limited to, the following:

(a) Written warning.

(b) Conference with the director.

(c) Suspension of the registration.

(d) Revocation of the registration.

(7) Before the suspension or revocation of a registration, the director shall notify the registrant in writing stating the reasons for the registration being subject to suspension or revocation and advising that the registration shall be suspended or revoked 15 days after the sending of the notice unless the registrant files a request for a hearing with the department within that 15-day period. If a written request for a hearing is not filed within the 15-day period, the department shall suspend or revoke the registration.

(8) A notice under subsection (7) is considered properly served when it is personally delivered to the registrant or when it is sent by registered or certified mail, return receipt requested, to the registrant's last known address.

(9) Except as otherwise provided for in this act, the director may initiate enforcement action against a registered service person or registered service agency for any or all of the following:

(a) Failure of a weighing and measuring device during an official inspection within 30 days after being placed in service following an initial installation or following a major overhaul or repair, as the result of an official condemnation.

(b) The return to commercial use of a device tagged “not sealed”.

(c) Placing a device in service with improper or insufficient standards.

(d) Falsifying a placed-in-service report or test report.

(e) Placing in service or allowing to remain in service, without notifying the director, an incorrect weighing or measuring device. Within 5 business days after a device is restored to service or placed in service, the original of a properly executed placed-in-service report, together with any official rejection tag removed from the device, shall be mailed to the director.

History: Add. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.610 State director of weights and measures; inspecting and testing of weights and measures kept for sale or used commercially; sampling.

Sec. 10. When not otherwise provided by law, the director may inspect, and test to ascertain if they are correct, all weights and measures kept, offered or exposed for sale. He shall inspect, and test to ascertain if they are correct, all weights and measures commercially used in (1) determining the weight, measurement or

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count of commodities or things sold or offered or exposed for sale on the basis of weight or of measure or count, (2) computing the basic charge or payment for services rendered on the basis of weight or of measure or count. With respect to devices designed to be used commercially only once and to be then discarded, and with respect to devices uniformly mass-produced as by means of a mold or die and not susceptible of individual adjustment, the inspection and testing of each individual device shall not be required and the inspecting and testing requirements of this section shall be satisfied when inspections and tests are made on representative samples of such devices; and the lots, of which such samples are representative, shall be held to be correct or incorrect upon the basis of the results of the inspection and tests on such samples.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1968, Act 264, Eff. Nov. 15, 1968.

290.610a Inspection fee; fees and expenses for special services; disposition of moneys.

Sec. 10a. (1) A fee shall not be charged for the regular inspection of any weights and measures or commodity subject to this act. A fee shall be charged to the owner or responsible party of any weights and measures or commodity subject to this act under either of the following circumstances:

(a) The inspection is a reinspection of any weights and measures or a lot sample of a commodity subject to this act that has been tested and found incorrect.

(b) The inspection is performed at the request of the owner or responsible party.

(2) The department shall fix the fees and expenses for special services, including fees for voluntary registration and type evaluation. Money collected by the department for special services, fees, and penalties shall be paid into the general fund and credited to the department of agriculture for weights and measures programs.

History: Add. 1975, Act 217, Imd. Eff. Aug. 26, 1975;—Am. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.610b Fee schedules.

Sec. 10b. (1) The department may annually adjust the schedule of fees for reinspections, voluntary registrations, type evaluations, special weights and measures inspections, and other special services requested of the department to provide that each category of fee charged is sufficient to cover the cost of the activities and that the aggregate of fees collected is sufficient to pay for all salaries and other expenses connected with the activities described in this subsection.

(2) An owner or operator of weights and measures that are assessed an administrative fine, civil fine, or a fee as described in this section or section 10a, or any combination of administrative fine, civil fine, or fee, who does not pay the administrative fine, civil fine, or fee within 60 days after written notice of the assessment is sent may be subject to a stop use order, issued by the director, for those weights and measures.

History: Add. 1975, Act 217, Imd. Eff. Aug. 26, 1975;—Am. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.611 State director of weights and measures; investigation of complaints; commercial transactions.

Sec. 11. The director shall investigate complaints made to him concerning violations of the provisions of this act, and shall, upon his own initiative, conduct such investigations as he deems advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.612 State director of weights and measures; weight, measurement, or inspection of packages of commodities, sampling procedures.

Sec. 12. The director, as often as he deems advisable, shall weigh, measure or inspect packages or amounts of commodities offered or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they be offered or exposed for sale, or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, or offered or exposed for sale in violation of law, the director may order their sale discontinued and may so mark or tag them as to show them to be illegal. The director may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.613 State director of weights and measures; stop-use orders, stop-removal orders, removal orders.

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Sec. 13. The director may issue stop-use orders, stop-removal orders or removal orders with respect to weights and measures being or susceptible of being commercially used. He may issue stop-removal orders or removal orders with respect to packages or amounts of commodities kept, offered or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders. No person shall use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, package or amount of commodity contrary to the terms of any order issued pursuant to this section.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.614 State director of weights and measures; approval, rejection, condemnation, confiscation.

Sec. 14. The director shall approve for use and seal or mark with appropriate devices such weights and measures as he finds upon inspection or test to be "correct" as defined in section 8. He shall reject or condemn and seal or mark as "rejected" or "condemned" such weights and measures as he finds upon inspection or test to be "incorrect" as defined in section 8. Sealing or marking shall not be required with respect to weights and measures which are exempted by a regulation of the director issued under the authority of section 8. The director shall reject or condemn and may seize and destroy weights and measures found to be incorrect. Weights and measures that have been rejected or condemned and ordered corrected or disposed of may be confiscated and may be destroyed by the director if not corrected as required by, or if disposed of contrary to the requirements of, section 22.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.615 State director of weights and measures; enforcement, seizure without formal warrant.

Sec. 15. The director is vested with special powers with respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce. He may seize for use as evidence without formal warrant incorrect or unsealed weights and measures or amounts or packages of commodities found to be used, retained, offered or exposed for sale, or sold in violation of law. In the performance of his official duties, he may enter and go into or upon without formal warrant any structure or premises.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.616 State director of weights and measures; powers of deputy director and inspectors.

Sec. 16. The powers and duties given to and imposed upon the director by this act are hereby given to and imposed upon the deputy director and inspectors when acting under the instructions and at the direction of the director.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.617 Sealer of weights and measures, deputy sealers, supervising inspectors, city and county inspectors; appointment.

Sec. 17. A sealer of weights and measures, and such deputy sealers, supervising inspectors, and city or county inspectors of weights and measures as may be required, may be appointed in and for each city and county by the appointing authority of the city or county.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.618 Sealer of weights and measures, deputy sealers, supervising inspectors, city and county inspectors; jurisdiction; city or county ordinances.

Sec. 18. The sealer of a city or a county, and his deputy sealers, supervising inspectors, and city or county inspectors when acting under his instructions and at his direction, shall have the same powers and shall perform the same duties within the city or the county for which appointed as are granted to and imposed upon the director by this act, except that the jurisdiction of a county sealer shall not extend to any city for which a city sealer has been appointed as provided for by section 17.

No city or county shall adopt any ordinance contrary to or in any way conflicting with this act, or adopt any regulation contrary to or in any way differing from the provisions of any regulations adopted by the director under the provisions of this act.

History: 1964, Act 283, Eff. Aug. 28, 1964.

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290.619 City and county official standards; comparison with state standards.

Sec. 19. Standards of weights and measures provided by a city or county, after examination and approval by the director, shall be the official standards for such city or county. The sealer shall make, or arrange to have made, at least as frequently as once in 5 years, comparisons between his standards and appropriate standards of a higher order belonging to the state in order to maintain such standards in accurate condition.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.620 Joint county and city weights and measures jurisdiction; powers.

Sec. 20. A county and 1 or more cities situated therein, with the consent of the director, may establish a joint weights and measures jurisdiction with 1 sealer and such deputy sealers, supervising inspectors, and city or county inspectors as may be required, under an agreement between the board of county supervisors and the city or cities involved. The sealer of the joint jurisdiction, and his deputy sealers, supervising inspectors, and city or county inspectors when acting under his instructions and at his direction, shall have the same powers and shall perform the same duties within the joint jurisdiction for which appointed as are granted to and imposed upon the director by this act.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.621 State director of weights and measures; concurrent enforcement powers.

Sec. 21. The director shall have concurrent authority to enforce the provisions of this act in counties and cities for which sealers of weights and measures have been appointed as provided for in this act.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.622 Rejected or condemned weights and measures; disposition.

Sec. 22. Weights and measures that have been rejected or condemned and ordered corrected or disposed of under the authority of the director or of a sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made pursuant to this section. The owners of such rejected or condemned weights and measures shall cause the same to be made correct within a specified period authorized by the rejecting authority, or may dispose of the same but only in such manner as is specifically authorized by the rejecting authority.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.623 Commodities, liquid, nonliquid, measurement; exceptions.

Sec. 23. Commodities in liquid form shall be sold only by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, measure, or by count. However, liquid commodities may be sold by weight and nonliquid commodities may be sold by count only if such methods give accurate information as to the quantity of commodity sold. This section shall not apply to (1) commodities sold for immediate consumption on the premises where sold, (2) vegetables sold by the head or bunch, (3) commodities in containers standardized by a law of this state or by federal law, or (4) commodities in package form when there exists a general consumer usage to express the quantity in some other manner. The director may issue regulations necessary to assure that amounts of commodities sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties in interest.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1968, Act 264, Eff. Nov. 15, 1968.

Administrative rules: R 285.548.1 et seq. of the Michigan Administrative Code.

290.624 Package labels; contents; allowable variations.

Sec. 24. Except as otherwise provided in this act, any commodity in package form kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package such definite, plain, legible and conspicuous declarations of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure or count, but the term “when packed” or any words of similar import, or any term qualifying a unit of weight, measure or count, such as “jumbo”, “giant”, “full” or the like, that tend to exaggerate the amount of commodity in a package, shall not be used, and (3) the name and place of business of the manufacturer, packer or distributor in the case of any package kept, offered or exposed for sale, or sold any place other than on the premises where packed as may be prescribed by regulation promulgated by the director. The director shall, by regulation, establish reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure. Such regulations shall

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provide for exemptions for small packages and for commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1968, Act 264, Eff. Nov. 15, 1968.

290.625 Package labels; random weights, measures or counts, additional declarations.

Sec. 25. In addition to the declarations required by section 24, any commodity in package form, which package is one of a lot containing random weights, measures or counts of the same commodity and bears the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure or count.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.626 Packages; misleading wrappers.

Sec. 26. Any commodity in package form shall not be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.627 Packages; advertisement, declaration of quantity.

Sec. 27. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package, except that this section shall not apply to products for agricultural or horticultural use where the custom is to state the number of objects or amount of area which can be treated per package unit and the number or area is so stated. Where the law or regulation requires the declaration of net quantity to appear on the package in terms of more than 1 unit of weight or measure, only the smallest unit of weight or measure need be stated in the advertisement. In connection with the declaration the qualifying term "when packaged" or any other words of similar import, or any term qualifying a unit of weight, measure or count, for example, "jumbo", "giant", "full" and the like that tends to exaggerate the amount of commodity in the package, shall not be used.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1968, Act 264, Eff. Nov. 15, 1968.

290.628 Commodities; sale by weight, net weight.

Sec. 28. When any commodity is sold on the basis of weight, the net weight of the commodity shall be employed and all contracts concerning commodities shall be so construed.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.628a Meat, meat products, poultry and seafood sold by weight; food combination sold by weight, quantity representation by total weight of product or combination.

Sec. 28a. Except for immediate consumption on the premises where sold, or as 1 of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry, whole or parts, and all seafood except shellfish, offered or exposed for sale or sold, as food shall be offered or exposed for sale and sold by weight. When meat, poultry or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

History: Add. 1968, Act 264, Eff. Nov. 15, 1968.

290.628b Commodity or service; sale by weight, measure or count; misrepresentation; display of price including fraction of a cent.

Sec. 28b. Whenever any commodity or service is sold, or is offered, exposed or advertised for sale, by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted or labeled price per unit of weight, measure or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least 1/2 the height and width of the numerals representing the whole cents.

History: Add. 1968, Act 264, Eff. Nov. 15, 1968.

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290.628c Commodity sale; method; packaging and labeling requirements; certificate of conformance; compliance standards; registration for service persons and agents.

Sec. 28c. (1) The method of sale of a commodity sold in Michigan shall conform to the "uniform regulation for the method of sale of commodities" published in the 2002 edition of the NIST handbook 130, incorporated by reference, except as otherwise provided in this section or where modified by rule. Section 2.20.1 of the uniform regulation for the method of sale of commodities is not adopted.

(2) The packaging and labeling requirements for commodities sold in Michigan shall conform to the "uniform packaging and labeling regulation" published in the 2002 edition of the NIST handbook 130, incorporated by reference, except for section 13 of that publication or except as otherwise modified by rule.

(3) A certificate of conformance for a type shall comply with the requirements of NCWM publication 14, "national type evaluation program technical policy, checklists and test procedures" and the 2002 edition of the NIST handbook 44, "specifications, tolerances, and other technical requirements for weighing and measuring devices", incorporated by reference.

(4) The determination for a uniform basis conformance for a type shall comply with NCWM publication 14, "national type evaluation program technical policy, checklists and test procedures" and the 2002 edition of the NIST handbook 44, "specifications, tolerances, and other technical requirements for weighing and measuring devices", incorporated by reference.

(5) The specifications, tolerances, and regulations for commercial weights and measures shall be in compliance with the standards contained in the 2002 edition of the NIST handbook 44, incorporated by reference.

(6) Registration for service persons and service agencies and competency tests shall be in compliance with the standards contained in the 2002 edition of the NIST handbook 130, "uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices", incorporated by reference, and the NIST handbook 44, incorporated by reference.

History: Add. 2002, Act 208, Imd. Eff. Apr. 29, 2002;—Am. 2003, Act 189, Imd. Eff. Oct. 31, 2003.

290.629 Assaulting, inflicting bodily injury upon, hindering, or obstructing certain persons in performance of official duties as misdemeanor; penalties.

Sec. 29. (1) Any person who assaults or inflicts a bodily injury upon, the director, an authorized representative of the director, the deputy director, any inspector, or a sealer or deputy sealer in the performance of his or her official duties shall be guilty of a misdemeanor punishable by a fine of not more than $5,000.00, or imprisonment for not more than 2 years, or both.

(2) Any person who hinders or obstructs in any way the director, an authorized representative of the director, the deputy director, any inspector, or a sealer or deputy sealer in the performance of his or her official duties shall be guilty of a misdemeanor punishable by a fine of not more than $1,000.00, or imprisonment for not more than 1 year, or both.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1986, Act 194, Eff. Sept. 15, 1986.

290.630 Impersonation of officers.

Sec. 30. Any person who shall impersonate in any way the director, deputy director, any inspector or a sealer or deputy sealer, by the use of his seal or a counterfeit, or in any other manner, shall be guilty of a misdemeanor.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.631 Prohibited acts; penalties; fines; closure of facility; inspection; consent order; disposition of fines or recovered amounts; "intentional" defined.

Sec. 31. (1) A person who, by himself or herself or by the person's servant or agent, or as the servant or agent of another person, engages in any of the following acts is guilty of a misdemeanor and may be fined not less than $1,000.00 or not more than $10,000.00, or imprisoned for not more than 1 year, or both:

(a) Use or have in possession for the purpose of using for any commercial purpose specified in section 10, sell, offer, expose for sale or hire, or have in possession for the purpose of selling or hiring, incorrect weights and measures or any device or instrument used or calculated to falsify any weights and measures.

(b) Use or have in possession for current use in the buying or selling of any commodity or thing, for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weights and measures or in the determination of weights and measures, when a charge is made for the determination, weights and measures that have not been tested and sealed by the appropriate authority, unless 1 or more of the following conditions are met:

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(*i*) A properly executed and completed placed-in-service report has been delivered to the director as notification that the weights and measures have been placed in service by a registered serviceperson.

(*ii*) Permission to use the weights and measures has been received from the appropriate authority.

(*iii*) The weights and measures have been exempted from sealing or testing requirements by section 10 or by rule of the director issued under section 8.

(c) Dispose of rejected or condemned weights and measures in a manner contrary to law or rule.

(d) Remove from weights and measures, contrary to law or rule, a tag, seal, or mark placed on the weights and measures by the appropriate authority.

(e) Sell, offer, or expose for sale less than the quantity he or she represents of a commodity, thing, or service.

(f) Take more than the quantity he or she represents of a commodity, thing, or service when, as buyer, he or she furnishes the weight of the commodity, thing, or service or the measure of the commodity, thing, or service by means of which the amount of the commodity, thing, or service is determined.

(g) Advertise, offer, expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, weights and measures that are not so positioned that their indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be occupied by a customer.

(i) Violate a provision of this act or of the rule promulgated under this act for which a specific penalty has not been prescribed.

(j) Sell, offer, or expose for sale to licensed wholesale distributors and dealers gasoline or any middle distillate petroleum product on any basis other than a U.S. gallon of 231 cubic inches or metric equivalent unless freely requested to do so in writing by a licensed wholesale distributor, dealer, or end user for an annual period of time or for the length of the contract. This subdivision does not apply to the sale or offer for sale of number 4, 5, or 6 petroleum fuels as described as having American petroleum institute gravity at 60°F of 28 or less, a specific gravity greater than .8871 and does not apply to the sale or exchange of gasoline or any middle distillate petroleum product among petroleum refiners.

(k) Deliver or issue a weight quantity determination or a measure quantity determination upon which a commercial transaction is, or is intended to be, computed without the use of weights and measures.

(*l*) Fail to pay a fee or fine imposed under this act.

(2) A person who, by himself or herself or by the person's servant or agent, or as a servant or agent of another person, fails to disclose to the department any knowledge of information relating to, or observation of, any device or instrument added to or modifying any weight or modifying any measure for the purpose of selling, offering, or exposing for sale less than the quantity represented of a commodity or calculated to falsify the weight or measure, if the person is an owner or employee of an entity involved in the installation, repair, sale, or inspection of weights and measures, is guilty of a misdemeanor and may be fined not more than $1,000.00, or imprisoned for not more than 90 days, or both.

(3) A person who, by himself or herself or by the person's servant or agent, or as a servant or agent of another person, performs any of the following acts is guilty of a felony and may be fined not less than $1,000.00 or not more than $20,000.00, by a fine of not more than twice the amount of any money gained for each day on which a violation has been found, by imprisonment for not more than 5 years, or by all of these penalties:

(a) Adds to or modifies commercial weights and measures by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or the falsification of the weights and measures.

(b) Intentionally commits any of the acts listed in subsection (1) or (2).

(c) Violates a prohibited act as listed in this section within 24 months after 2 previous violations of this section that resulted in convictions.

(4) When a violation results in a conviction under this act, the court may assess against the defendant or his or her agent the costs of investigation and the money shall be paid to the agency that incurred the expense.

(5) In addition to any other applicable penalties prescribed in this act, the department may assess the civil fines described in this subsection. An owner of a motor fuel delivery facility that has intentionally delivered less fuel to a retail customer than indicated by the gas pump metering device is subject to the following:

(a) If the violation is a first violation, the owner is responsible for a civil fine of $5,000.00.

(b) If the violation is a second violation, the owner is responsible for a civil fine of $10,000.00.

(c) If the violation is a third violation or a violation subsequent to the third violation, the owner is responsible for a civil fine of $25,000.00.

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(6) The department may close any facility that is responsible for a violation described in subsection (5) until the owner can demonstrate to the department that the problem is corrected.

(7) The department shall inspect motor fuel facilities with 3 or more violations under subsection (5) at least annually.

(8) Any of the fines described in subsection (5) may be embodied in a consent order under section 31a.

(9) Any civil fines or recovery of any economic benefits associated with a violation of this act and collected under this section shall be paid to the general fund and credited to the department for the enforcement of this act.

(10) As used in this section, "intentional" means the presence of additional piping, electronic switches, or any other device or act that is designed to reduce the volume of motor fuel delivered as compared to the stated volume on the gas pump metering device.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1975, Act 131, Eff. Mar. 31, 1976;—Am. 1983, Act 248, Imd. Eff. Dec. 15, 1983;—Am. 1986, Act 194, Eff. Sept. 15, 1986;—Am. 2002, Act 208, Imd. Eff. Apr. 29, 2002;—Am. 2006, Act 125, Imd. Eff. May 2, 2006.

Compiler's note: Enacting section 1 of Act 125 of 2006 provides:

"Enacting section 1. It is the intention of the legislature that the department establish periodic inspection and testing of fuel delivery systems and that owners of fuel delivery systems calibrate these systems periodically."

290.631a Consent agreement; proceeding; fines.

Sec. 31a. (1) The director, upon determination that a person who, by himself or herself, his or her agent or employee, or as the agent or employee of another, has violated this act or rules promulgated under this act, may enter into a consent agreement for the assessment of a civil fine as follows:

(a) For a first violation, not less than $50.00 and not more than $1,000.00 plus the amount of any economic benefit associated with the violation.

(b) For a second violation within 2 years of the first violation, not less than $100.00 or not more than $5,000.00 plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

(c) For a third violation within 2 years from the date of the first violation, not less than $500.00 or not more than $10,000.00 plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

(2) If a person alleged to have violated this act or rules promulgated under this act does not enter into a written consent agreement as described in subsection (1), the director may do either of the following:

(a) Initiate a criminal prosecution.

(b) Commence an administrative hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the case of a person holding a registration under this act, or commence a civil violation proceeding in a court of competent jurisdiction regarding any other person.

(3) Upon finding a violation of any provision of this act or rules promulgated under this act as a result of the commencement of an action under subsection (2)(b), the director shall assess an administrative fine or a civil fine of not more than $10,000.00 plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

(4) The decision of the director pursuant to a proceeding under this section is subject to appropriate judicial review as provided by law.

(5) The director shall advise the attorney general of the failure of any person to pay an administrative fine or civil fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(6) Any civil fines or recovery of any economic benefits associated with a violation of this act and collected under this section shall be paid to the general fund and credited to the department for the enforcement of this act.

History: Add. 2002, Act 208, Imd. Eff. Apr. 29, 2002.

290.632 Temporary restraining order; preliminary or permanent injunction.

Sec. 32. The director is authorized to apply to any court of competent jurisdiction for a temporary restraining order or a preliminary or permanent injunction restraining any person from violating any provisions of this act or from conducting any commercial transaction that requires the use of a commercial weight or measure.

History: 1964, Act 283, Eff. Aug. 28, 1964;—Am. 1986, Act 194, Eff. Sept. 15, 1986.

290.633 Proof of existence of weight, measure or device; presumption.

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Sec. 33. Proof of the existence of a weight, measure or a weighing or measuring device in or about any building, enclosure, stand or vehicle in which or from which it is shown that buying or selling is commonly carried on, in the absence of conclusive evidence to the contrary, shall be presumptive proof of the regular use of such weight, measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle.

History: 1964, Act 283, Eff. Aug. 28, 1964.

290.634 Repeal.

Sec. 34. Act No. 168 of the Public Acts of 1913, as amended, being sections 290.1 to 290.10 of the Compiled Laws of 1948, is repealed.

History: 1964, Act 283, Eff. Aug. 28, 1964.

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MOTOR FUELS QUALITY ACT
Act 44 of 1984

AN ACT to provide purity and quality standards for motor fuels; to regulate the transfer, sale, dispensing, or offering motor fuels for sale; to provide for an inspection and testing program; to provide for the powers and duties of certain state agencies; to prescribe certain powers of the governor; to provide for the licensing of certain persons engaged in the transfer, sale, dispensing, or offering of motor fuels for sale; to regulate stage I vapor-recovery systems at certain facilities; to provide for fees; to make appropriations; and to provide remedies and prescribe fines and penalties.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

The People of the State of Michigan enact:

290.641 Short title.

Sec. 1. This act shall be known and may be cited as the “motor fuels quality act”.

History: 1984, Act 44, Eff. Mar. 29, 1985.

290.642 Definitions.

Sec. 2. As used in this act:

(a) "Additive" means any substance in gasoline other than gasoline but does not include approved blending components, other than lead, sodium, and phosphate components, introduced at refineries or terminals as octane or product quality enhancers in quantities of less than 1% of volume.

(b) "American society for testing and materials" means an international nonprofit scientific and educational society devoted to the promotion of knowledge of the materials of engineering and the standardization of specification and methods of testing.

(c) "Antiknock index" or "AKI" means an index number arrived at by adding the motor octane number and the research octane number, then dividing by 2.

(d) "Biodiesel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, and, in accordance with standards specified by the American society for testing and materials, designated B100, and meeting the requirements of D-6751, as approved by the department.

(e) "Biodiesel blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, suitable for use as a fuel in a compression-ignition internal combustion diesel engine.

(f) "Blender" means a person who as an individual or through his or her agent adds an oxygenate to a gasoline.

(g) "Bulk purchaser-end user" means a person who is an ultimate consumer of gasoline and receives delivery of gasoline into a storage tank of at least 550-gallon capacity substantially under his or her control.

(h) "CARB" means the California air resources board.

(i) "Delivery vessel" means a tank truck, tank equipped trailer, or a similar vessel used for the delivery of gasoline to a dispensing facility.

(j) "Department" means the department of agriculture.

(k) "Diesel fuel" means any liquid other than gasoline that is suitable for use as a fuel or a component of a fuel in a compression-ignition internal combustion diesel engine.

(*l*) "Director" means the director of the department of agriculture or his or her authorized representative.

(m) "Dispensing facility" means a site used for gasoline refueling.

(n) "Dispensing unit" means a device designed for the delivery of gasoline in which 1 nozzle equates to 1 dispensing unit.

(o) "Distributor" means a person who purchases, transports, or stores or causes the transportation or storage of gasoline at any point between a gasoline refinery and a retail outlet or bulk purchaser-end user facility.

(p) "E.P.A." means the United States environmental protection agency.

(q) "Gasoline" means a volatile mixture of liquid hydrocarbons generally containing small amounts of additives suitable for use in spark-ignition internal combustion engines, and commonly or commercially known or sold as gasoline.

(r) "Hydrogen fuel" means a substance containing the chemical formula H2 that exists as a colorless, odorless, and highly flammable gas except at low cryogenic temperatures or when highly compressed that is gaseous or liquefied and suitable for use in a fuel cell or hydrogen fuel vehicle.

(s) "Leak" means liquid or vapor loss from the gasoline dispensing system or stage I vapor-recovery

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system as determined by visual inspection or functional testing.

(t) "Modification" means any change, removal, or addition, other than an identical replacement, of any component contained within a stage I vapor-recovery system. The resultant modification must constitute an approved vapor-recovery system.

(u) "Motor octane number" or "MON" means a knock characteristic of gasoline determined by use of standard procedures on a motor engine.

(v) "Operator" means a person who owns, leases, operates, manages, supervises, or controls, directly or indirectly, a gasoline-dispensing facility.

(w) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as alcohol or ether, that may be used as fuel or fuel supplement.

(x) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.

(y) "Refiner" means a person who owns, leases, operates, controls, or supervises a refinery.

(z) "Refinery" means a plant at which gasoline is produced.

(aa) "Research octane number" or "RON" means a knock characteristic of gasoline determined by use of standard procedures on a research engine.

(bb) "Retail dealer" means a person who owns, leases, operates, controls, or supervises a retail outlet.

(cc) "Retail outlet" means an establishment at which motor fuel is sold or offered for sale to the public.

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

(ee) "Stage I vapor-recovery system" means a vapor tight collection system that is approved by the department and is designed to capture the gasoline vapors displaced during delivery into a stationary storage tank and to return not less than 90% of the displaced vapors to the delivery vessel.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1986, Act 127, Eff. Aug. 1, 1986;—Am. 1988, Act 84, Imd. Eff. Mar. 29, 1988;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006;—Am. 2006, Act 271, Imd. Eff. July 7, 2006.

Compiler's note: In subdivision (2)(r), the numeral "2" in the chemical formula "H2" should be a subscript "2".

290.643 Establishment of standards by rules.

Sec. 3. (1) The director shall establish standards pursuant to this act to ensure the purity and quality of gasoline and diesel fuel sold or offered for sale in this state.

(2) The director shall establish standards for the amount and type of additives allowed to be included in gasoline and diesel fuel.

(3) The director shall establish standards for the grading of gasoline, including, but not limited to, subregular with a minimum 85 AKI, regular with a minimum 87 AKI and a minimum 82 MON, midgrade 88 with a minimum 88 AKI and a minimum 82 MON, midgrade 89 with a minimum 89 AKI and a minimum 83 MON, premium with a minimum 90 AKI, premium 91 with a minimum 91 AKI, premium 92 with a minimum 92 AKI, premium 93 with a minimum 93 AKI, and premium 94 with a minimum 94 AKI.

(4) The director shall establish standards for vapor pressure as specified by the American society for testing and materials, except as otherwise required to conform to federal or state law. Notwithstanding anything to the contrary in section 10d, the director shall establish the vapor pressure as 9.0 pounds per square inch (psi) for retail outlets during the period beginning June 1 through September 15 of each year, except for dispensing facilities in counties where the director establishes the vapor pressure as 7.0 psi or 7.8 psi in the year 2007 and thereafter. As used in this act, "vapor pressure" means the vapor pressure of gasoline or gasoline oxygenate blend as determined by ASTM test method D6378 or D5191 or an ASTM method approved by the department.

(5) In establishing additive and grading standards the director shall adopt the latest standards for gasoline established by the American society for testing and materials and shall adopt the latest standards for gasoline established by federal law or regulation. The standards established by the director shall not prohibit a gasoline blend that is permitted by a valid waiver granted by the United States environmental protection agency pursuant to the fuel or fuel additive waiver in section 211(f)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 USC 7545, and the ethanol waiver of 1.0 psi in section 211(h)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 USC 7545, if the gasoline blend meets all of the conditions set forth in the waiver. Beginning June 1, 2003, the director shall not permit the use of the additive methyl tertiary butyl ether (MTBE) in this state.

(6) The director shall establish standards pursuant to this act to ensure the purity and quality of diesel fuel sold or offered for sale in this state.

(7) Any firm offering hydrogen fuel for sale in this state shall first register with and obtain approval from the department. Registration shall include a complete list of the fuel specifications the product is to meet and

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the sites where the product is offered for sale to the general public.

(8) Standards established pursuant to this section shall be by rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1988, Act 84, Imd. Eff. Mar. 29, 1988;—Am. 1993, Act 231, Imd. Eff. Nov. 13, 1993;—Am. 2000, Act 206, Eff. Mar. 28, 2001;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006;—Am. 2006, Act 271, Imd. Eff. July 7, 2006.

Administrative rules: R 285.564.1 et seq. of the Michigan Administrative Code.

290.644 Transferring, selling, dispensing, or offering gasoline for sale; posting notice on pump dispensing gasoline; contents and design of notice; exception; rule to contain design for uniform notice; violation; liability; disposition of civil fine; applicability of subsection (1).

Sec. 4. (1) A retail dealer shall not transfer, sell, dispense, or offer gasoline for sale in this state unless the pump dispensing the gasoline is posted with a notice, as provided in subsection (2), that indicates the grade of gasoline and the additives in the gasoline that are dispensed from the pump. If the gasoline contains at least 1% alcohol by volume, the notice shall state: "Contains (indicate the type of alcohol such as methanol, and if methanol the label shall state "alcohol: methanol", followed, in the same size type, by the concentration to the nearest whole percent)". If the gasoline contains alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol, those alcohols or ethers are not subject to the notice requirement of this section. Gasoline that contains 10% or less ethanol is not subject to the notice requirement of this section.

(2) The director shall design a uniform means of providing the notice required by subsection (1). The notice shall be designed in such a manner that the consumer can readily identify the grade of gasoline and the additives in the gasoline. The notice shall include a statement indicating that the gasoline dispensed from the pump meets the quality and purity standards established by the laws of this state and indicating the number of the 24-hour toll free consumer hot line maintained pursuant to section 7(2).

(3) The director shall include the design for the uniform notice required by this section in a rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) A person who violates this section or rules promulgated pursuant to this section is liable for a civil fine not to exceed $1,000.00 for each day of the continuance of the violation. A civil fine ordered pursuant to this section shall be submitted to the state treasurer for deposit in the gasoline inspection and testing fund created by section 8.

(5) Subsection (1) shall not apply until 90 days after the rule required by subsection (3) is promulgated.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1986, Act 127, Eff. Aug. 1, 1986;—Am. 2003, Act 116, Eff. Jan. 1, 2004.

Compiler's note: The rule required by subsection (3) was promulgated June 23, 1987, and took effect September 22, 1987, 90 days later. See R 285.562.1 et seq. of the Michigan Administrative Code.

Enacting section 1 of Act 116 of 2003 provides:

"Enacting section 1. This amendatory act shall not take effect until January 1, 2004, or until the energy policy act of 2003, or the safe, accountable, flexible, and efficient transportation equity act of 2003 is passed by the 108th Congress, whichever comes first."

290.644a Testing storage tank at retail outlet to determine water or water-alcohol level; prohibited sales; testing supplies.

Sec. 4a. (1) A storage tank at a retail outlet shall be periodically tested by the retail dealer to insure that the tank does not have water or water-alcohol at the bottom of that tank in an amount greater than 2 inches. If there is more than 2 inches of water or water-alcohol at the bottom of the storage tank, gasoline, diesel fuel, biodiesel, or biodiesel blend shall not be sold to a consumer from that tank until the water or water-alcohol level is reduced to a level of less than 2 inches.

(2) Adequate testing supplies, as determined by the department, shall be maintained at the retail outlet and shall also be made available to the department to determine the water or water-alcohol level in the storage tank.

History: Add. 1986, Act 127, Eff. Aug. 1, 1986;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002;—Am. 2002, Act 425, Imd. Eff. June 5, 2002;—Am. 2006, Act 271, Imd. Eff. July 7, 2006.

290.645 Prohibitions; contents of bill, invoice, or other instrument evidencing delivery of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel; violation; disposition of civil fine.

Sec. 5. (1) Except as provided by federal law or regulation, in the manufacture of gasoline, diesel fuel, or hydrogen fuel at any refinery in this state, a refiner shall not manufacture gasoline, diesel fuel, or hydrogen fuel at a refinery in this state unless the gasoline, diesel fuel, or hydrogen fuel meets the requirements in

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sections 3 and 10d. Except as provided by federal law or regulation, a blender shall not blend gasoline unless the finished blend meets the requirements in sections 3 and 10d.

(2) Except as provided by federal law or regulation, a distributor shall not sell or transfer to any distributor, retail dealer, or bulk purchaser-end user any gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel unless that gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel meets the requirements in sections 3 and 10d and is suitable for its intended purpose.

(3) A carrier or an employee or agent of a carrier, whether operating under contract or tariff, shall not cause gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel tendered to the carrier for shipment or transfer to another carrier, distributor, or retail dealer to fail to comply, at the time of delivery, with the requirements in sections 3 and 10d.

(4) A person shall not knowingly sell, dispense, or offer for sale gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel unless that gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel meets the requirements in sections 3 and 10d.

(5) A refiner or distributor shall not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel for sale in this state to a distributor unless the refiner or distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel the name of the wholesale distributor who received delivery of the gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

(6) A distributor or refiner shall not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel for sale in this state to a retail dealer unless the retail dealer has a valid retail gasoline outlet license pursuant to this act.

(7) A bill, invoice, or other instrument evidencing a delivery of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel issued by a refiner or distributor for deliveries of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel to purchasers who are not required to hold a license issued pursuant to the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, or this act shall clearly indicate the name and address and other information necessary to identify the purchaser of the gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

(8) A bill, invoice, or other instrument evidencing a delivery of gasoline required by subsection (5), (6), or (7) shall include a guarantee that the gasoline delivered meets the requirements in sections 3 and 10d and shall indicate the concentration range of alcohol in the gasoline, except for alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both, and shall indicate the possible presence, without regard to concentration range, of any alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both.

(9) A refiner, distributor, bulk purchaser-end user, or retail dealer shall not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, or biodiesel blend for sale unless that gasoline, diesel fuel, biodiesel, or biodiesel blend is visibly free of undissolved water, sediments, and other suspended matter and the gasoline is clear and bright at an ambient temperature or 70 degrees Fahrenheit, whichever is greater.

(10) A person who violates this section or rules promulgated under this section is liable for a civil fine not to exceed $10,000.00 for each day of the continuance of the violation. A civil fine ordered pursuant to this section shall be submitted to the state treasurer for deposit in the gasoline inspection and testing fund created by section 8.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1986, Act 127, Eff. Aug. 1, 1986;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006;—Am. 2006, Act 271, Imd. Eff. July 7, 2006.

290.646 License required; coordination of licensing; expiration and renewal of license; license fee; disposition of fees; application for license; grounds for suspending, denying, or revoking license; applicability of section; conviction under weights and measures act; effect of suspension, revocation, or denial of license or other licenses; issuance of license within certain time period; report; registering blended products; "completed application" defined.

Sec. 6. (1) Before a distributor or retail dealer engages in transferring, selling, dispensing, or offering for sale gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel in this state, the distributor or retail dealer shall obtain a license from the department for each retail outlet operated by that person. In administering the licensing under this section, the department may attempt to coordinate the licensing with the licensing applicable to gasoline administered by the department of treasury pursuant to the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, and the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

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(2) A license expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department.

(3) The fee for a license is $15.00 for each year or portion of a year through July 31, 2002, $50.00 for each year or portion of a year through July 31, 2003, $75.00 for each year or portion of a year through July 31, 2004, and $100.00 beginning August 1, 2004 and each year or portion of a year thereafter. A license shall not be issued or renewed until the fee and any administrative fines issued under section 10a have been paid. A hearing is not required before the refusal to issue or renew a license under this subsection. Fees collected shall be deposited in the gasoline inspection and testing fund.

(4) An application for a license shall be made to the department upon a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fee specified in subsection (3).

(5) The director may suspend, deny, or revoke a license issued pursuant to this act for failure to comply with the requirements provided for in section 3, for failure to provide notice as provided in section 4, for violating section 31 of the weights and measures act of 1964, 1964 PA 283, MCL 290.631, if that violation occurs at any of the licensee's retail outlets and involves the transferring, selling, dispensing, or the offering for sale of gasoline in this state, or for otherwise failing to comply with this act or a rule promulgated under this act or an order issued under this act.

(6) This section does not apply until June 29, 1985.

(7) If a person licensed under this act is convicted of a willful violation under section 31 of the weights and measures act of 1964, 1964 PA 283, MCL 290.631, any license issued pursuant to this act shall be revoked for 2 years.

(8) A suspension, revocation, or denial of a license of a person who is an individual shall result in the suspension, revocation, or denial of any other license held or applied for by that individual under this act. The license of a corporation, partnership, or other association shall be suspended when a license or license application of a partner, trustee, director, or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied. The suspension shall remain in force until the director determines that the disability created by the suspension, revocation, or denial has been removed.

(9) Except as otherwise provided in subsection (3), beginning on July 23, 2004, the department shall issue an initial or renewal license not later than 120 days after the applicant files a completed application. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notification electronically available within 40 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 120-day period is tolled upon notification by the department of a deficiency until the date all of the information requested during the 40-day period is received by the department. Requests for new or additional information by the department that fall outside the 40-day period do not toll the 120-day period. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(10) If the department does not issue or deny a license within 120 days after the receipt of a completed application, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(11) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with motor fuel quality issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 120-day time period described in subsection (9).

(b) The number of applications denied.

(c) The number of applications not issued within the 120-day period and the amount of money returned to licensees and registrants under subsection (10).

(12) Before a blender engages in the transferring, selling, dispensing, or offering for sale blended gasoline in this state, the blender shall register the finished product with the department and provide to the department test results as the department considers necessary. If the product does not comply with the requirements of section 3, the blender shall provide the department with a written list of the business names and addresses to whom the blended product is sold.

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(13) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1986, Act 127, Eff. Aug. 1, 1986;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002;—Am. 2004, Act 278, Imd. Eff. July 23, 2004;—Am. 2006, Act 271, Imd. Eff. July 7, 2006.

290.647 Inspection, investigation, and testing program; establishment; purpose; monitoring; payment of expenses; consumer hot line; violation; providing documents; authority of director; enforcement powers; transmitting information; rules; implementation of program.

Sec. 7. (1) The director shall establish a gasoline, diesel fuel, biodiesel, and biodiesel blend inspection, investigation, and testing program. The purpose of the inspection, investigation, and testing program is to determine whether gasoline, diesel fuel, biodiesel, and biodiesel blend transferred, sold, dispensed, or offered for sale in this state meet the requirements provided in this act, to sample, to investigate allegations of fraud, to inspect and investigate violations of the weights and measures act, 1964 PA 283, MCL 290.601 to 290.634, and whether notice required by section 4 is provided. The program shall provide for a regular system of monitoring gasoline, diesel fuel, biodiesel, and biodiesel blend sold or offered for sale in this state. The department shall implement the inspection, investigation, and testing program as provided in subsection (8). The expenses of operating the program shall be paid from money in the gasoline inspection and testing fund created in section 8.

(2) As part of the inspection and testing program the director shall maintain a 24-hour toll free consumer hot line to receive consumer complaints regarding vapor-recovery systems and the purity and quality of gasoline sold or offered for sale in this state.

(3) If the director has reason to believe a violation of section 5 or rules promulgated under section 5 has occurred, the director may require a refiner, distributor, storage facility, blender, bulk purchaser-end user, or retail dealer to provide to the department the original documents pertaining to the receipt, transfer, delivery, storage, or sale of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel and to allow the original documents to remain in the possession of the department. If original documents remain in the possession of the department and the documents are necessary for conducting business, the department shall provide copies of the documents to the refiner, distributor, blender, bulk purchaser-end user, or retail dealer upon request. A refiner, distributor, bulk purchaser-end user, blender, or retail dealer shall preserve information regarding the receipt, transfer, delivery, storage, or sale of gasoline, including loading tickets, bills of lading, drop tickets, meter tickets, invoices, sales reports, and billings, for 3 years. A retail outlet shall retain on its premises the original drop tickets, bills of lading, and invoices for 1 month before transfer to another location.

(4) The director, upon presentation of appropriate credentials, may do all of the following:

(a) Enter upon or through any retail outlet, bulk purchaser-end user facility, dispensing facility, or the premises or property of any refiner or distributor.

(b) Make inspections, take samples, and conduct tests during any hours the business is operating.

(c) Examine records during normal business hours to determine compliance with this act.

(5) In addition to the powers provided in this act, the director has all the powers to enforce this act that the director has under the weights and measures act, 1964 PA 283, MCL 290.601 to 290.634.

(6) The director may transmit any information obtained pursuant to the inspection and testing program to any other agency of this state if the information will assist the other agency to carry out any of the agency's regulatory functions or responsibilities related to the transfer, sale, dispensing, or offering of gasoline for sale in this state.

(7) The director may promulgate rules for the purpose of implementing and enforcing this act.

(8) The department shall implement the inspection and testing program provided in subsection (1) as follows:

(a) Inspection and testing for standards regarding lead, alcohol, free water, and sediments within 90 days after the effective date of this act.

(b) Inspection and testing for any other standards by March 29, 1987.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1988, Act 84, Imd. Eff. Mar. 29, 1988;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 271, Imd. Eff. July 7, 2006.

290.648 Gasoline inspection and testing fund; creation; administration; investment of money; use of money and earnings from investment; disposition of civil fines, appropriations, federal money, and other funds.

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Sec. 8. The gasoline inspection and testing fund is created in the state treasury and shall be administered by the director. The state treasurer shall direct the investment of money in the fund. The money in the fund and earnings from investment of the money shall be used exclusively for the purpose of funding the gasoline inspection and testing program and the vapor-recovery program established in this act. Any civil fines ordered in an enforcement proceeding brought under sections 4 and 5, any money that may be appropriated from the general fund for the purposes of sections 7 and 9a to 9j, and any money made available to the director by an agency of the federal government for purposes of sections 7 and 9a to 9j shall be deposited in the fund. In addition, any other funds authorized by law for the enforcement of this act may be deposited in the gasoline inspection and testing fund.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1993, Act 236, Imd. Eff. Nov. 13, 1993.

290.649 Civil action for damage to motor vehicle; costs; other rights to relief not restricted.

Sec. 9. (1) Any person may commence a civil action on that person's own behalf seeking relief for damage caused to that person's motor vehicle as a result of a violation of section 4a or 5 or rules promulgated pursuant to section 4a or 5 against any person alleged to be in violation of section 4a or 5 or rules promulgated pursuant to those sections.

(2) In an action brought pursuant to subsection (1), the court may award costs of litigation, including reasonable attorney and expert witness fees, if the court determines that the award is appropriate.

(3) This section shall not be construed to restrict any right that a person or class of persons has under common law or a law of this state or the United States to seek relief from a violation of section 4a or 5 or rules promulgated pursuant to those sections.

History: 1984, Act 44, Eff. Mar. 29, 1985;—Am. 1986, Act 127, Eff. Aug. 1, 1986.

290.649a Rules.

Sec. 9a. The director shall promulgate rules as necessary to implement sections 9b to 9h and 9j.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993.

290.649b Dispensing facility exempt from certain requirements; annual report; records; notice.

Sec. 9b. (1) Except as otherwise provided for in this section, a dispensing facility that never dispenses 10,000 gallons (37,850 liters) or more of gasoline per month on average in any 12-month period, beginning with the 12 months preceding the effective date of this section is exempt from the requirements of sections 9a to 9d, 9i, and 9j. If the dispensing facility is inactive for any period during the 12-month averaging period, the average shall be calculated based upon the months of actual operation. The exemption described in this subsection does not apply to a dispensing facility that dispenses 10,000 or more gallons of gasoline per month on average in any 12-month period and such a facility is subject to sections 9a to 9f, 9i, and 9j and continues to be subject to these sections even if the facility's gasoline throughput later falls below the exemption threshold.

(2) A dispensing facility that claims or intends to claim exempt status under subsection (1) and which has 2,000 or more gallons stationary gasoline storage capacity beginning in 1994 shall submit an annual report to the department by March 1 of each year for gasoline dispensed during the preceding year. These throughput records shall contain the quantity of gasoline dispensed at the facility during each month of operation for the preceding calendar year and shall list any period of time the facility was not operational during the preceding calendar year. The director shall review and verify the accuracy of the documents before making final determination on eligibility for exemption.

(3) If a dispensing facility's gasoline throughput for any calendar month ever exceeds the applicability threshold, the operator shall notify the department within 30 days.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649c Repealed. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

Compiler's note: The repealed section pertained to stage II vapor recovery system equipment.

290.649d Maintenance of stage I vapor-recovery system; inspection of systems; repair, modification, or tampering prohibited.

Sec. 9d. (1) The operator shall maintain the stage I vapor-recovery systems in proper operating condition as specified by the manufacturer and free of defects that could impair the effectiveness of the system. Any component identified as defective, but which does not substantially impair the effectiveness of the system, may remain in operation but shall be repaired or replaced within 15 days after identification.

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(2) The stage I vapor-recovery systems and gasoline-dispensing equipment shall be maintained to have no leaks.

(3) The operator shall conduct equipment inspections at least weekly to determine if the stage I vapor-recovery system is operating in accordance with this act and rules promulgated under this act.

(4) A person shall not repair, modify, or permit the repair or modification of the stage I vapor-recovery system or its components so that they are different from their approved configuration; or tamper with, or permit tampering with, the system in a manner that would impair the operation or effectiveness of the system.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649e, 290.649f Repealed. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

Compiler's note: The repealed sections pertained to training requirements, subject areas, and initial and subsequent compliance testing.

290.649g Records.

Sec. 9g. (1) An operator shall maintain accurate records of all of the following at the dispensing facility location:

(a) All current licenses and permits required to operate the dispensing facility.

(b) The location, including the contact person's name, address, and telephone number, of the records required under this act which are not maintained at the dispensing facility location.

(2) An operator shall maintain accurate stage I vapor-recovery or gasoline-dispensing equipment maintenance records on forms approved by the department for 3 years.

(3) The records required by subsection (2) shall be maintained for 1 year at the dispensing facility location. After this time these records may be maintained at another business location.

(4) Records required under this act and maintained at the dispensing facility location shall be made available to the director upon request during normal business hours. If records required under this section are not maintained at the dispensing facility location, the records shall be provided to the director within 72 hours of a request.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649h Duties of director to implement MCL 290.649a to 290.649h; rejected or condemned equipment; enforcement; temporary restraining order or permanent injunction.

Sec. 9h. (1) To implement this section and sections 9a to 9g, the director shall do all of the following:

(a) Develop and conduct training for department inspectors to provide knowledge and proficiency on stage I vapor-recovery program requirements and procedures.

(b) Prepare information on the purposes and benefits of stage I vapor-recovery controls and distribute this information to regulated facilities.

(c) Conduct a minimum of 1 compliance inspection per year per dispensing facility, with mandatory reinspection of dispensing facilities that are found to be in violation of this act or rules promulgated under this act. A compliance inspection consists of the inspection of the records required in section 9g and inspection of the equipment.

(d) Monitor the compliance of the regulated facilities with this act through data collection, including applications and required documents.

(e) Investigate complaints and initiate and conduct other investigations on possible violations of this act.

(2) If the director finds a defect in a stage I vapor-recovery system, the director shall reject or condemn and mark the equipment as "rejected" or "condemned". Equipment that is rejected or condemned and ordered corrected or disposed of shall remain under the control of the director until suitable repair or disposition has been made under this section. The operator of the rejected or condemned equipment shall cause it to be made correct within the specified time period authorized by the director, or may dispose of the equipment in a manner specified by the director. Equipment that has been rejected or condemned and ordered corrected or disposed of may be confiscated and may be destroyed by the director if not corrected as required by, or if disposed of contrary to the requirements of, this section.

(3) If necessary for the enforcement of this act or rules promulgated under this act, the director may do all of the following:

(a) Issue stop-use orders, hold orders, or removal orders for stage I vapor-recovery and gasoline-dispensing equipment. A person shall not use, remove from the premises specified, or fail to remove from the premises specified any stage I vapor-recovery or gasoline-dispensing equipment contrary to any order issued pursuant to this section.

(b) Seize for use as evidence without formal warrant, any incorrect or unapproved stage I vapor-recovery

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system or dispensing equipment found to be used or exposed for use in violation of this act or rules promulgated under this act.

(4) With respect to enforcement of this act, the director has the power of a peace officer.

(5) The director may petition a court of competent jurisdiction for a temporary restraining order or permanent injunction restraining a person from violating this act or a rule promulgated under this act.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649i Dispensing permit; requirements; fees; issuance of license within certain time period; report; "completed application" defined.

Sec. 9i. (1) A dispensing facility in the county of Wayne, Oakland, Macomb, Washtenaw, Livingston, Monroe, or St. Clair constructed after November 15, 1990 shall obtain a dispensing permit. The fee for a dispensing permit is $25.00 for each year or portion of a year.

(2) Before a dispensing permit is issued, a dispensing facility shall install an approved stage I vapor-recovery system and, in addition to the fee for the dispensing permit, shall pay a registration fee for each dispensing unit located at the dispensing facility. A permit shall not be issued or renewed until all fees and administrative fines issued under section 10a are paid. A hearing shall not be required before the refusal to issue or renew a permit under this subsection.

(3) A dispensing permit expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department. Application for a dispensing permit shall be made on a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fees specified.

(4) The director may suspend, deny, or revoke a dispensing permit issued pursuant to this act for failure to pay the fee required by subsection (1) or (2) or for failure to comply with the requirements of sections 9a to 10c.

(5) A fee shall be charged to the operator of stage I vapor-recovery or gasoline-dispensing equipment for its inspection if any of the following occur:

(a) The inspection is a reinspection of equipment that has already been tested and found to contain a substantial defect.

(b) The inspection is performed at the request of the operator.

(6) The department shall establish the fees and expenses for special services, including the fee for an operator requested inspection or reinspection, for registrations, for training courses, and for accreditation of a trainer, to provide that each fee is sufficient to cover the cost of an operator requested inspection, reinspection, registration, training, or trainer accreditation, respectively, and that the aggregate of all fees collected is sufficient to pay for all salaries and other expenses connected with the activity. The department shall review and adjust the fees at the end of each year and have all fees approved by the director before they are adopted. Fees collected under this section shall be deposited in the gasoline inspection and testing fund and reserved for conducting the vapor-recovery program.

(7) Subject to subsection (2) and beginning on the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal permit not later than 120 days after the applicant files a completed application. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notification electronically available within 40 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 120-day period is tolled upon notification by the department of a deficiency until the date all of the information requested during the 40-day period is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the permit and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a permit. Requests for new or additional information by the department that fall outside the initial 40-day period do not toll the 120-day period.

(8) If the department does not issue or deny a permit within 120 days after the receipt of a completed application, the department shall return the permit fee and shall reduce the permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue a permit within the time required under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(9) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with motor fuel quality issues. The director shall include all of the following information in the

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report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 120-day time period described in subsection (7).

(b) The number of applications denied.

(c) The number of applications not issued within the 120-day period and the amount of money returned to permittees under subsection (8).

(10) As used in this section, "completed application" means an application complete on its face and submitted with any applicable permitting fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002;—Am. 2004, Act 278, Imd. Eff. July 23, 2004;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649j Delivery of gasoline; Stage I vapor-recovery system; applicability of subsection (7).

Sec. 9j. (1) A person shall not deliver gasoline or permit the delivery of gasoline to a dispensing facility that lacks a stage I vapor-recovery system.

(2) Prior to delivery of gasoline to a dispensing facility, a delivery vessel shall be certified by the department of environmental quality as vapor tight by meeting the requirements of R 336.1627 of the Michigan administrative code.

(3) A person shall not deliver gasoline or permit the delivery of gasoline to a dispensing facility unless the stage I vapor-recovery system is employed during delivery and the dispensing facility storage tank is equipped with a permanent submerged fill pipe.

(4) A stage I vapor-recovery system shall include a properly functioning interlocking system or procedure that ensures that the vapor-tight collection line is connected before any gasoline is loaded, or shall include an equivalent system approved by the department.

(5) A stage I vapor-recovery system shall have a poppetted drybreak on the vapor return or an equivalent system approved by the department.

(6) All open vent pipes for a stage I vapor-recovery system that are on stationary tanks at dispensing facilities shall be equipped with pressure-vacuum relief valves in a system approved by the department.

(7) A dispensing facility regulated under this act is not subject to R 336.1606 or R 336.1703, or both, of the Michigan administrative code. This subsection does not apply to a delivery vessel which shall continue to be subject to the rules listed in this subsection.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649k Declaration of emergency.

Sec. 9k. If the governor declares an emergency under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421, or 1982 PA 191, MCL 10.81 to 10.89, the governor may exercise his or her discretion to grant a temporary variance suspending the low vapor pressure fuel provisions of this act or rules promulgated under this act if the governor concludes it is necessary to avoid disruptions in fuel supply. Fuel manufactured, sold, distributed, offered for sale or distribution, dispensed, offered for supply, stored, or transported under the variance shall be deemed compliant with the low vapor pressure fuel requirements of this act. The fine described in section 9*l*does not apply to a variance described in this section. The variance shall be granted only for the minimum period necessary. The allowable vapor pressure under the variance shall be the minimum the governor considers necessary and in no event shall the variance allow the refiner, distributor, or terminal to operate with a vapor pressure of greater than 9.0 psi.

History: Add. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.649*l* Variance; conditions for granting; fines; disposition.

Sec. 9*l*. (1) A gasoline refiner, distributor, or terminal may petition the department for a temporary variance from the vapor pressure standards established by the director or in this act. In order to receive a variance, the refiner, distributor, or terminal shall demonstrate that fuel necessary to meet the current standard cannot be supplied and that the refiner, distributor, or terminal has taken and will continue to take all reasonable steps to minimize the vapor pressure of fuel during the period the variance is in effect. If the department finds that the reason fuel that would allow the refiner, distributor, or terminal to meet the standard is not available is beyond the control of the refiner, distributor, or terminal and that compliance with the vapor pressure standard would result in fuel shortages that cannot otherwise be made up, the department may grant the variance. The variance shall be granted only for the minimum period necessary and in no event shall the department grant a variance for longer than 20 days. The allowable vapor pressure under the variance shall be

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the minimum the department considers necessary and in no event shall allow the refiner, distributor, or terminal to operate with a vapor pressure of greater than 9.0 psi.

(2) A fine of 10 cents per gallon of fuel sold or released for sale during the variance period shall be collected by the department for every variance granted. After 2006, the amount of the fine shall be the amount charged in 2006 annually adjusted by the same percentage increase or decrease as the increase or decrease in the Detroit consumer price index. The department shall collect the fines on forms generated by the department and shall establish a payment schedule for payment of fines. Fines collected under this section shall be deposited in the gasoline inspection and testing fund established in section 8 and shall be appropriated annually by the legislature for air quality mitigation projects in the geographic area covered by the applicable state implementation plan requirement for low vapor pressure fuel.

History: Add. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.650 Hindering, obstructing, assaulting, or committing bodily injury upon director or authorized representative as misdemeanor; penalty.

Sec. 10. A person who hinders or obstructs in any way, or assaults or commits a bodily injury upon the director or an authorized representative of the director while in the performance of his or her official duties, knowing that person to be the director or an authorized representative of the director, shall be guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, by a fine of not more than $5,000.00, or both. In addition, any license issued or applied for pursuant to this act by a person convicted under this section shall be revoked or denied for 2 years.

History: Add. 1986, Act 127, Eff. Aug. 1, 1986.

290.650a Violation; administrative fine; hearing; judicial review; action brought by attorney general; payment and disposition of fine, costs, and economic benefit.

Sec. 10a. (1) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another violates this act or a rule promulgated under this act is subject to an administrative fine. Upon the request of a person to whom an administrative fine is issued, the director shall conduct a hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A fine authorized by this section shall be as follows:

(a) For a first violation, not less than $100.00 or more than $500.00, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(b) For a second violation within 5 years after the first violation, not less than $500.00 or more than $1,000.00, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(c) For a third violation within 5 years after the date of the first violation, not less than $1,000.00 or more than $2,000.00, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(2) A decision of the director under this section is subject to judicial review as provided by law.

(3) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in court of competent jurisdiction to recover the fine.

(4) Any administrative fine, costs, and the recovery of any economic benefit associated with a violation collected under this section shall be paid to the state treasury and deposited into the gasoline inspection and testing fund.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002.

290.650b Conduct as misdemeanor or felony; assessment of costs.

Sec. 10b. (1) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another, performs any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $1,000.00 or more than $2,000.00, or both:

(a) Renders less effective or inoperable any part of a stage I vapor-recovery system.

(b) Makes a false statement, representation, or certification on an application, report, plan, label, or other document that is required to be maintained under this act or rules promulgated under this act.

(c) Fails to disclose to the department any knowledge or information relating to or observation of any modification of a stage I vapor-recovery system which makes the system less effective or inoperable, or falsification of records required to be maintained under this act or rules promulgated under this act.

(d) Removes a tag, seal, or mark placed on a dispensing device by the director.

(e) Violates this act or a rule promulgated under this act for which a specific penalty is not prescribed.

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(2) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another, performs any of the following acts is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $2,000.00 or more than $10,000.00, or both:

(a) Violates a prohibited act listed in this section within 24 months after another violation of this section that results in a conviction.

(b) Impersonates in any way the director or any department inspector.

(3) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another, performs any of the following acts is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not less than $10,000.00 or more than $15,000.00, or both:

(a) Intentionally commits a prohibited act under this section.

(b) Violates a prohibited act listed in this section within 24 months after 2 previous violations of this section that result in convictions.

(4) If a violation of this section results in a conviction, the court shall assess against the defendant the costs of the department's investigation, and these costs shall be paid to the state treasury and deposited in the gasoline inspection and testing fund to be used for the enforcement of this act.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2002, Act 13, Imd. Eff. Feb. 19, 2002;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.650c Stage I vapor control program; implementation.

Sec. 10c. The director retains the authority to implement the stage I vapor control program in areas where it is determined necessary to attain or maintain national ambient air quality standards.

History: Add. 1993, Act 236, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

290.650d Areas requiring certain vapor pressure; termination of requirement.

Sec. 10d. Beginning June 1 through September 15 of 2007 and for that period of time each subsequent year, the vapor pressure standard shall be 7.0 psi for dispensing facilities in Wayne, Oakland, Macomb, Washtenaw, Livingston, Monroe, St. Clair, and Lenawee counties. The director retains the authority to implement the vapor pressure 7.0 psi requirement or 7.8 psi requirement in areas where it is determined necessary to attain or maintain national ambient air quality standards. If an area of the state that is required to use a low vapor pressure fuel of 7.8 psi or 7.0 psi has been redesignated by the United States environmental protection agency as in attainment of national ambient air quality standards, and the Michigan department of environmental quality has demonstrated that maintenance of the national ambient air quality standards can be achieved without the use of low vapor pressure fuel, the director may, with the approval of the United States environmental protection agency, terminate the low vapor pressure fuel requirement for that area.

History: Add. 1993, Act 231, Imd. Eff. Nov. 13, 1993;—Am. 2006, Act 104, Imd. Eff. Apr. 6, 2006.

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AGRICULTURAL COMMODITIES MARKETING ACT
Act 232 of 1965

AN ACT relating to the marketing of agricultural commodities or agricultural commodity inputs; to provide for marketing and research programs, agreements, referendums by producers, assessments on producers, and commodity committees; and to prescribe certain functions of the department of agriculture relative thereto including powers of enforcement of this act; and to prescribe remedies and penalties.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1974, Act 324, Imd. Eff. Dec. 15, 1974;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

The People of the State of Michigan enact:

290.651 Agricultural commodities marketing act; short title.

Sec. 1. This act shall be known and may be cited as the "agricultural commodities marketing act".

History: 1965, Act 232, Eff. Mar. 31, 1966.

Constitutionality: The Michigan supreme court, in Dukesherer Farms, Inc. v. Director of the Department of Agriculture, 405 Mich. 1, 273 N.W.2d 877 (1979), found the agricultural commodities marketing act and the Michigan cherry promotion and development program instituted pursuant to the act constitutional.

290.652 Definitions.

Sec. 2. As used in this act:

(a) "Agricultural commodity" means all agricultural, aquacultural, silvicultural, horticultural, floricultural, or viticultural products, livestock or livestock products, Christmas trees, bees, maple syrup, honey, commercial fish or fish products, and seeds produced in this state, either in their natural state or as processed by the producer of the commodity. The kinds, types, and subtypes of products to be classed together as an agricultural commodity for the purposes of this act shall be determined on the basis of common usage and practice.

(b) "Agricultural commodity input" means an item used in the production, processing, or packaging of an agricultural commodity that is assessed by a specific marketing agreement. Agricultural commodity input does not include feed, fertilizer, and pesticides.

(c) "Committee" means the commodity committee or advisory board established under a marketing program.

(d) "Department" means the state department of agriculture.

(e) "Director" means the director of the department of agriculture.

(f) "Distributor" means a person engaged in selling, offering for sale, marketing, or distributing an agricultural commodity or agricultural commodity input that he or she has purchased or acquired from a producer or that the person is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise. Distributor does not include a retailer of an agricultural commodity except for either of the following:

(*i*) A retailer who purchases or acquires from or handles on behalf of a producer an agricultural commodity not previously subjected to regulations by the marketing program covering the agricultural commodity.

(*ii*) A retailer specifically identified by a marketing program that is subject to an assessment.

(g) "Financial institution" means a state or nationally chartered bank, member of the farm credit system, savings and loan association, savings bank, and credit union, whose deposits are insured by an agency of the United States government and that maintains a principal or branch office located in this state under the laws of this state or the United States.

(h) "Handler" means a person who takes title to and is engaged in the operation of packing, cleaning, drying, packaging, sizing, hauling, grading, selling, offering for sale, or marketing a marketable agricultural commodity or an agricultural commodity input in commercial quantities as defined in a marketing program, who as owner, agent, or otherwise, ships or causes an agricultural commodity or agricultural commodity input to be shipped.

(i) "Livestock" means that term as defined in section 5 of the animal industry act, 1988 PA 466, MCL 287.705.

(j) "Marketing agreement" means an agreement entered into, with the director, by producers, distributors, processors, or handlers pursuant to this act and binding only on those signing the agreement.

(k) "Marketing program" means a program established by order of the director pursuant to this act prescribing rules and regulations governing the marketing for processing, distributing, selling, or handling an agricultural commodity produced in this state or agricultural commodity input during a specified period and

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which the director determines would be in the public interest.

(*l*) "Processor" means a person engaged in canning, freezing, dehydrating, drying, fermenting, distilling, extracting, preserving, grinding, crushing, milling, or otherwise preserving or changing the form of an agricultural commodity for the purpose of marketing it.

(m) "Producer" means a person engaged in the business of producing, or causing to be produced for any market, an agricultural commodity or agricultural commodity input in quantity beyond that person's own family use, and having a value at first point of sale of more than $800.00 or of an amount as otherwise expressly provided for in a marketing program for the agricultural commodity or agricultural commodity input in any 1 growing and marketing season within the last 3 years.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1978, Act 146, Imd. Eff. May 12, 1978;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.653 Marketing agreements; provisions allowed; provisions required; substantial compliance.

Sec. 3. (1) Any marketing agreement or marketing program authorized under this act may contain 1 or more of the following:

(a) Provisions for establishing advertising and promotional programs.

(b) Provisions for establishing market development programs.

(c) Provisions for establishing and supporting research designed to improve or develop new agricultural commodities or agricultural commodity inputs and contribute to the effectiveness of the program.

(d) Provisions for development and dissemination of market information.

(e) Provision for accepting grants, royalties, license fees, interest, gifts, income, or other items of value that enhance the purpose of the marketing program or marketing agreement.

(f) Provision for contracting with organizations, agencies, or individuals to carry out the activities described in this act.

(g) Provisions for either or both of the following:

(*i*) Establishing standards for quality, purity, condition, size, or other accepted standards for that industry for agricultural commodities or agricultural commodity inputs sold as fresh, seed, or processed and standards for pack or container, or both, for agricultural commodities or agricultural commodity inputs sold for use as fresh, seed, or processed products.

(*ii*) Inspection and grading of the fresh, seed, or processed agricultural commodity or agricultural commodity input in accordance with the grading standards so established.

(h) Provision for determining the existence and extent of any surplus in any marketing period for any agricultural commodity or agricultural commodity input, or of any grade, size, or quality of any agricultural commodity or agricultural commodity input, and providing for handling and equitably sharing the cost of such surplus handling among the producers of the agricultural commodity or agricultural commodity input. Before provisions under this subdivision are included in any marketing program, particular attention shall be given to determining that Michigan producers affected by the provisions produce a sufficient proportion of the product covered by the provisions for the program to be effective in the particular market toward which the provisions would be applicable.

(i) Provision for payment of assessments for all usable products purchased from producers according to established grades.

(j) Provision for payment of assessments on agricultural commodity inputs.

(k) Provision for exemption of nonparticipating producers.

(*l*) Provision for the awarding of grants from money collected pursuant to this act. The grants may be awarded to organizations, agencies, or individuals with whom the committee has contracted for activities described in this section.

(2) A proposed marketing program shall include definition of terms, purpose, maximum rate of an assessment, method of collection of the assessment, and nominating procedures, qualifications, representation, and size of the committee as well as other provisions considered necessary by a committee. This subsection does not invalidate any marketing programs established under this act before the effective date of the amendatory act that added this sentence that are in substantial compliance with this act as determined by the director.

(3) A marketing agreement or marketing program that allows the committee to contract with organizations, agencies, governmental entities, institutions of higher education, individuals, or other legal entities in order to carry out the activities described in this act or allows the committee to award grants may provide in the marketing agreement or marketing program that the marketing program or marketing agreement be allowed to participate in the income or earnings of any royalties or license fees derived from the results of those

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activities. However, the marketing program or marketing agreement shall provide that the royalties or license fees be utilized only in the manner provided for in that marketing program or marketing agreement.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.654 Inspection and grading; approved inspectors.

Sec. 4. For the purpose of this act, all inspection and grading shall be performed by or under the supervision of trained inspectors approved by the director or by inspectors supplied under cooperative agreement between the department and the United States department of agriculture.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.655 Assessments to defray program and administrative costs; collection; maximum assessment to be specified; collection by processors, distributors, or handlers; disposition; trust fund; complaint; notice of due date; ability to borrow money; assessment for loans and interest.

Sec. 5. (a) Assessments shall be collected from each producer of a marketable agricultural commodity produced in this state and directly affected by a marketing program issued for the agricultural commodity to defray all program and administrative costs except for nonparticipating producers as provided for under section 3(1)(k). Assessments shall be collected on agricultural commodity inputs in this state directly affected by a marketing program established for the agricultural commodity input in order to defray all marketing program and administrative costs. Subject to approval by the director, assessments may also be collected from either producers or distributors, or both, and manufacturers, of a marketable agricultural commodity produced in this state or an agricultural commodity input used in this state if the director determines that the unique nature of the agricultural commodity or agricultural commodity input or the industry structure warrants the assessment of both the producer and the distributors of the agricultural commodity or agricultural commodity input.

(b) Each marketing program shall specify the maximum assessment on an agricultural commodity or an agricultural commodity input and may provide for any other assessment mechanism as approved by the director to be collected to cover program and administrative costs.

(c) Pursuant to the marketing program and for convenience, the processors, distributors, or handlers of the agricultural commodity or agricultural commodity input may be required to collect and remit producer assessments to the committee at no cost to the marketing program unless the marketing program expressly provides for the payment of a reasonable fee for making the deduction and remittance.

In the case of a marketing program that provides for the imposition of an assessment, the processors, distributors, or handlers dealing with the producer shall collect the assessment from the producer by deducting the assessment from the gross amount owing to the producer and shall remit the assessment and data to the committee within a reasonable time period as established by the committee. A processor, distributor, or handler who fails to deduct or remit the assessment is liable to the committee for any assessments not deducted or remitted. If a processor, distributor, or handler is not involved at the first point of sale of an agricultural commodity or agricultural commodity input, or is not within this state and the assessment is not deducted and remitted, the producer shall remit the assessments to the committee on all sales of the agricultural commodity or agricultural commodity input, subject to a marketing program and within a time period specified by the committee.

(d) All assessments deducted or collected and held by a processor, distributor, or handler for over 92 days shall be deposited in a separate interest bearing escrow account held jointly with the marketing program committee and not commingled with other funds. Interest accrued in the escrow account shall be forwarded to the committee.

(e) All assessments collected or deducted shall be considered trust funds and be remitted quarterly or more frequently if required by the marketing program to the appropriate committee.

(f) A committee may file a written complaint with the director documenting that a processor, distributor, handler, or producer has failed to deduct or remit any assessment due to the committee pursuant to a marketing program. Upon receipt of such a complaint, the director shall conduct an investigation of the allegations. If, after investigation, the director finds that the processor, distributor, handler, or producer has failed to deduct or remit an assessment to the committee, the director shall request by certified mail the processor, distributor, handler, or producer to remit the assessment within 10 days after the director determines that a deduction or remittance was not made. In the case of the failure to deduct an assessment, the director shall compute the amount that reasonably should have been deducted and impose an assessment in that amount. If the assessment is not remitted within 30 days after the request or is not in compliance with a

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written agreement for full payment, the director may file an action in a court of competent jurisdiction to collect the assessment. Venue in such an action is the place where the processor, distributor, handler, or producer has its primary place of business. In any action to recover an assessment under this subsection, if the director prevails, the court shall award to the director all costs and expenses in bringing the action, including, but not limited to, reasonable and actual attorney fees, court costs, and audit expenses. If the director does not prevail, he or she shall charge the committee for reasonable and actual attorney fees, court costs, and expenses incurred in bringing about the action.

(g) Each committee shall specify the date the assessment is due in the account of the marketing program on that production. Producers, processors, distributors, or handlers of the affected agricultural commodity or agricultural commodity input shall be given reasonable notice of the due date.

(h) A committee established pursuant to this act has the ability to borrow money in anticipation of the receipt of assessments if the following conditions are met:

(*i*) The loan will not be requested or authorized, or will not mature, within 90 days before a resubmittal or termination referendum for the marketing program.

(*ii*) The amount of the loan does not exceed 50% of the annual average assessment revenue during the previous 3 years. In the case of a marketing program that has been in existence for less than 3 years, the loan does not exceed 25% of the projected annual assessment revenue.

(*iii*) The loan repayment period does not exceed the life of the marketing program.

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

(i) The director shall assess against the agricultural commodity input or the producers of the agricultural commodity all outstanding loans, including interest, approved under subsection (h) if the marketing program is inactive or is terminated.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1966, Act 130, Imd. Eff. June 23, 1966;—Am. 1974, Act 324, Imd. Eff. Dec. 15, 1974;—Am. 1978, Act 146, Imd. Eff. May 12, 1978;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.656 Marketing program; temporary suspension, duration.

Sec. 6. The operation of a marketing program, or any part thereof, may be temporarily suspended by the director upon recommendation by the committee for a period of not longer than 1 growing and marketing season if the program or part is deemed undesirable during such season.

History: 1965, Act 232, Eff. Mar. 31, 1966.

290.657 Committee; establishment; appointment, qualifications, and terms of members; reapportionment of districts; expenses and per diem; duties and responsibilities; conducting business at public meeting; notice of meeting; availability of writings to public; exemption of certain information from freedom of information act.

Sec. 7. (1) A marketing program shall provide for the establishment of a committee to consist of an odd number of members which shall be not less than 5 and not more than 13.

(2) The members of the committee shall be appointed by the governor with the advice and consent of the senate from nominations received from the producers and handlers or processors of the agricultural commodity or agricultural commodity input for which the marketing program is established. Nominating procedures, qualifications, representation, term of office, and size of the committee shall be prescribed in the marketing program for which the committee is appointed. Each committee shall be composed of producers and handlers or processors who are directly affected by the marketing program in the proportion of representation as prescribed by the program. The term of office of a committee member is 3 years or until such time as his or her successor is appointed and qualified.

(3) The director or his or her representative shall serve as a nonvoting ex officio member. Additional nonvoting ex officio members may serve if approved for in a specific marketing program.

(4) A committee, with the advice and consent of the director and the commission of agriculture, may reapportion either the number of committee members or member districts, or both. Reapportionment of the districts shall be on the basis of production or industry representation. The reapportionment may be commenced 30 days after the effective date of the amendatory act that added this subsection. Reapportionment of either members or districts shall not occur more often than twice in any 5-year period and shall not occur within 6 months before a referendum.

(5) After the reapportionment described in subsection (4), if the residence of a member of the committee falls outside of the district for which he or she serves on the committee and falls within the district for which another member serves on the committee, then both members shall continue to serve on the committee for a

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term equal to the remaining term of the member who served for the longest period of time. After the reapportionment described in subsection (4), if a district is created in which no member serving on the committee resides, then a member shall be selected in the manner as prescribed in each program. After a reapportionment or redistricting, a committee may temporarily have more members than prescribed in the marketing program until the expiration of the term of the longest serving member from that district.

(6) A member of a committee is entitled to reimbursement for actual expenses and a per diem payment to be set by the committee not to exceed the commission of agriculture rate while attending meetings of the committee or while engaged in the performance of official responsibilities delegated by the committee.

(7) The duties and responsibilities of a committee shall be prescribed in the order establishing the marketing program and to the extent applicable shall include the following duties and responsibilities:

(a) Developing procedures relating to the marketing program.

(b) Recommending amendments to the marketing program as are considered advisable.

(c) Preparing the estimated budget required for the proper operation of the marketing program.

(d) Developing methods for collecting and auditing the assessments.

(e) Collecting and assembling information and data necessary for proper administration of the marketing program.

(f) Performing other duties necessary for the operation of the marketing program as agreed upon with the director.

(8) The business which a committee may perform shall be conducted at a public meeting of the committee 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.

(9) Subject to section 10(b) and except as otherwise provided in this subsection, a writing prepared, owned, used, in the possession of, or retained by a committee 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 for information regarding penalties levied under this act, information relating to specific assessments to a specific person under a marketing program as well as names and addresses of producers shall be exempt from disclosure to any other person or committee. This subsection does not prevent the director or the department from obtaining information necessary to confirm compliance with this act and does not prevent the director or the department from disclosing statistical information so long as that disclosure does not reveal specific assessments or production levels of any producer, handler, or processor.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1978, Act 146, Imd. Eff. May 12, 1978;—Am. 1980, Act 196, Imd. Eff. July 8, 1980;—Am. 1992, Act 145, Imd. Eff. July 15, 1992;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.658 Disposition of moneys or assets collected; expenditures.

Sec. 8. (1) Money, assets, or other items of value collected or received under this act, whether collected from assessments, received as grants or gifts, or earned from royalties or license fees or derived from any activities performed by another organization, agency, or individual and conducted under a marketing program, are not state money and shall be deposited in a financial institution in this state. The money shall be allocated to the marketing program under which it is collected or received and shall be disbursed only for the necessary expenses incurred for the marketing program according to the rules established under the marketing program and for grants authorized under a marketing agreement or marketing program.

(2) Except as otherwise provided for in this subsection, all expenditures shall be audited by a certified public accountant at least annually and within 30 days after completion of the audit, the certified public accountant shall give copies of the audit to the members of the committee and the director. An activity and financial report shall be published annually and made available to interested parties. A committee with annual assets of $50,000.00 or less, based upon a 3-year average, shall be audited twice between referenda and shall have a financial review conducted in those years where it is not audited under this subsection.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 1997, Act 20, Imd. Eff. June 12, 1997;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.659 Refunds.

Sec. 9. (1) Money remaining from the assessments collected under a marketing program may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom assessments were collected. If the committee finds that the money may be necessary to defray the cost of operating a marketing program in succeeding marketing seasons, all or any portion of the money may be carried over into succeeding seasons.

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(2) Upon termination of any marketing program, all money remaining and not required to defray the expenses of operating the marketing program shall be refunded on a pro rata basis to persons from whom assessments were collected. If the committee finds that the refundable amount is so small as to make impracticable the computation and refunding of the money, it may be used to defray the expenses incurred by the department in the formulation, adoption, administration, or enforcement of any subsequent marketing program for the commodity or for agricultural research for that commodity. In the case of money earned from royalties, license fees, or other assets that may be collected or received after termination of a marketing program, that money shall be allocated to any institution of higher education engaged in agricultural or nutritional research, as determined by the director.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.660 Petition for program or amendment; notice; public hearing; decision by director; producers.

Sec. 10. (a) Whenever the director has received a petition signed by 25%, or 200, whichever is less, of the producers of an agricultural commodity regarding the adoption of a marketing program or amendments to an existing marketing program, he or she shall give notice of a public hearing on the proposed marketing program or the proposed amendments to an existing marketing program. After receiving a petition for the establishment of a marketing program, the director may appoint a temporary producer committee to develop the proposed marketing program to be considered at the public hearing.

(b) The director may require all handlers or processors of the agricultural commodity or distributors of the agricultural commodity input 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 producers of the agricultural commodity from whom such handler, processor, or distributor received such agricultural commodity or agricultural commodity input in the marketing season next preceding the filing of such report. The director shall not make public or provide to anyone for private use the information contained in the individual reports of handlers or processors filed with the director pursuant to this section.

(c) The director shall issue a decision within 45 days after the close of the hearing based upon his or her findings and deliver to all parties of record appearing at the hearing and any other interested parties upon the request of those interested parties, by mail or otherwise, copies of the findings and recommendation approving or disapproving of the proposed marketing program. The recommendation shall contain the text in full of any proposed marketing program or amendment of an existing marketing program. 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.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.661 Referendum to determine assent of producers and processors.

Sec. 11. (1) After recommending the adoption or amendment of a marketing program, the director shall determine by a referendum whether the affected producers assent to the proposed action. If provisions prescribed in section 3(1)(h) are part of the proposed marketing program, the director shall also determine by a referendum if processors assent to the proposed action. The director shall conduct the referendum within 45 days after the issuance of the recommendation. The affected producers 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 the affected agricultural commodity produced by those voting assent to the proposal. The affected processors, if provisions prescribed in section 3(1)(h) are in the marketing program, 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 the affected agricultural commodity processed by those voting assent to the proposal.

(2) A marketing program involving provisions prescribed in section 3(1)(h) shall not be instituted without assent of both the affected producers and the affected processors.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1978, Act 146, Imd. Eff. May 12, 1978;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.662 Referendum; director to establish procedures for determination of volume.

Sec. 12. The director shall establish procedures for determination of volume for the conduct of referendums and other necessary procedures. For the purpose of referendums under this act, a producer is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, husband-wife or family ownership.

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History: 1965, Act 232, Eff. Mar. 31, 1966.

290.663 Termination of program; petition, hearing, recommendation, referendum.

Sec. 13. (a) Upon written petition duly signed by 25%, or 200, of the producers affected by the program, whichever is less, the director shall, within 30 days, give 10 days' notice and hold a hearing on termination of a program.

(b) Within 30 days after the close of the hearings, the director, after consulting with the committee, shall issue a recommendation, give public notice, and notify all producers of record, all parties appearing at the hearing and any other interested parties.

(c) The director, upon recommending termination of a marketing program, shall, within 30 days, conduct a referendum to determine whether the affected producers assent to the proposed action. The affected producers shall be deemed to have assented to the termination of the program if 51% or more by number of those voting, representing 51% or more of the volume of those voting, vote in favor of its termination.

History: 1965, Act 232, Eff. Mar. 31, 1966.

290.664 Program approved by referendum; duties of director.

Sec. 14. If a program has been approved in referendum, the director shall:

(a) Insure that the program is self-supporting.

(b) Supervise all committee activities to assure program operations are in accord with the rules established under the program as approved by the referendum.

(c) Coordinate administrative activities between the committee and the department.

(d) Confer and cooperate with the legally constituted authorities of other states and the United States.

History: 1965, Act 232, Eff. Mar. 31, 1966.

290.665 Repealed. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

Compiler's note: The repealed section pertained to proposed marketing programs.

290.666 Deposit by applicants of funds for expenses; reimbursement.

Sec. 16. Prior to the adoption of a marketing program, the director may require the applicants therefor to deposit with him such funds as he deems necessary to defray the expenses of preparing and establishing the marketing program. The funds shall be received, deposited and disbursed by the director in the same manner as other fees received by him under this act. The applicants shall be reimbursed in the amount of the deposit from fees received under such program, if established.

History: 1965, Act 232, Eff. Mar. 31, 1966.

290.667 Marketing agreements with producers, handlers and others; effective upon signing.

Sec. 17. (1) The director may enter into marketing agreements with producers, handlers, or other parties where such agreements will tend to supplement or aid in the accomplishment of the objectives of a marketing program.

(2) The execution of a marketing agreement does not affect the adoption, administration, or enforcement of any marketing program under this act. The director may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing program in the manner provided in this act, giving due notice and opportunity for hearing for a marketing agreement.

(3) When a marketing agreement is proposed for any agricultural commodity or agricultural commodity input, the director shall call a public hearing. The director's decision to enter into or not enter into a marketing agreement is subject to the same requirements for justification on the basis of factual evidence introduced at the hearing. A marketing agreement, if recommended by the director, shall become effective when signed by the director and the other parties to the agreement.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.668 Rules and regulations; duty of director.

Sec. 18. The director may make and promulgate such rules and regulations as may be necessary to effectuate the provisions and intent of this act, in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

History: 1965, Act 232, Eff. Mar. 31, 1966.

Administrative rules: R 285.301.1 et seq. of the Michigan Administrative Code.

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290.669 Action to enforce compliance; injunction; jurisdiction.

Sec. 19. The director may institute an action necessary to enforce compliance with this act, a rule promulgated under this act, or a marketing agreement or program adopted under this act and committed to his or her administration. In addition to any other remedy provided by law, the director may apply for relief by injunction to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. The application may be made to a court of competent jurisdiction.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1980, Act 196, Imd. Eff. July 8, 1980;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.670 Suspension of statute where marketing program approved; exception.

Sec. 20. (a) If a marketing program is approved for a commodity for which there is a state commission or council operating pursuant to a statute, such statute is suspended during the period of operation of the marketing program under this act, except that the appointed members of an existing commission or council shall be members of the commodity committee for the duration of the terms for which they were appointed, and no fees or assessments shall be collected under such act while it is suspended.

(b) If the producers of an agricultural commodity for which there is a state commission or council pursuant to a statute, vote for discontinuance of a marketing program, then the provisions of such commission or council shall be reinstated, and the appointed members on the commodity committee shall be members of the commission or council for the duration of the terms for which they were appointed on the committee.

(c) Voluntary commodity organizations may be assigned duties which are necessary for the effective operation of a marketing program and allowed expenses to cover such duties. Organizations to be assigned such responsibilities shall be named and their duties defined in the program.

History: 1965, Act 232, Eff. Mar. 31, 1966.

290.671 Referendum; requirements; exception; time period.

Sec. 21. (1) Except as otherwise provided in subsection (2), all marketing programs established under this act shall be resubmitted to a referendum of the producers during each fifth year of operation.

(2) A producer referendum under subsection (1) is not required for a marketing program if all the following circumstances exist:

(a) The agricultural commodity or agricultural commodity input subject to the marketing program is involved in a commodity checkoff program established pursuant to federal law.

(b) The federal commodity checkoff program involving the agricultural commodity provides for a mechanism for a producer referendum.

(c) The marketing program involving the agricultural commodity or agricultural commodity input is entirely financed by that federal commodity checkoff program.

(3) If the federal commodity checkoff is suspended or terminated, a marketing program established under this act shall conduct a referendum of the producers within 18 months after the suspension or termination.

History: 1965, Act 232, Eff. Mar. 31, 1966;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.672 Interest on unpaid assessment.

Sec. 22. If the assessment is not paid by the date specified by a committee as permitted under section 5(g), the unpaid assessment shall be subject to an interest charge of 1% per month.

History: Add. 1974, Act 324, Imd. Eff. Dec. 15, 1974;—Am. 1996, Act 216, Imd. Eff. May 28, 1996;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.673 Violations; penalties.

Sec. 23. (1) Except as provided in subsections (2) and (3), a person who violates this act is guilty of a misdemeanor punishable by a fine of up to $1,000.00 a day.

(2) A member of the board who intentionally violates section 7(8) shall be subject to the penalties prescribed in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) If the board arbitrarily and capriciously violates section 7(9), the board shall be subject to the penalties prescribed in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1974, Act 324, Imd. Eff. Dec. 15, 1974;—Am. 1980, Act 196, Imd. Eff. July 8, 1980;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

290.674 Venue for prosecution of violation; enforcement; institution of prosecution for violation.

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Sec. 24. (1) Except as provided in subsections (2) and (3), prosecution for violation of this act may be instituted in any county in which any of the defendants reside, or in which the violation was committed, or in which any of the defendants have a principal place of business. State and county law enforcement officers shall enforce this act.

(2) A prosecution for a violation of section 7(8) shall be instituted in the manner provided for in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A prosecution for a violation of section 7(9) shall be instituted in the manner provided for in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1974, Act 324, Imd. Eff. Dec. 15, 1974;—Am. 1980, Act 196, Imd. Eff. July 8, 1980;—Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002.

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MARKETING FEES FOR FRUITS AND VEGETABLES
Act 153 of 1975

AN ACT to require certain purchasers of fruits and vegetables to deduct and remit marketing fees if authorized by a grower-member of a cooperative marketing association; to prescribe the powers and duties of certain state agencies; and to prescribe means of enforcement and penalties.

History: 1975, Act 153, Imd. Eff. July 9, 1975.

The People of the State of Michigan enact:

290.691 Deduction and remittance of marketing fees by purchaser of fruits and vegetables; statement.

Sec. 1. An agricultural producer and member of an agricultural cooperative marketing association organized under Act No. 327 of the Public Acts of 1931, as amended, being sections 450.62 to 450.192 of the Michigan Compiled Laws, may, by a membership and marketing agreement or by separate written authorization, authorize a processor, handler, distributor, dealer, broker or agent thereof, each of which is hereinafter referred to as a purchaser, to make deductions from any money due the member for fruits and vegetables received or purchased from the member. The amount or rate of the deductions and the names of the members from whose accounts deductions are authorized to be made shall be set forth in a written statement, filed by the association with the purchaser of the members' fruits or vegetables on or before delivery of the members' produce. The purchaser shall deduct from moneys due members of the association the amounts authorized to be deducted and shall forward the moneys deducted to the designated association on or before the fifteenth day of the month after the month for which payment is due or within 30 days after the harvest season of each commodity, together with a summary statement showing the producer's name, quantity purchased, the grades thereof, the gross sales proceeds of each commodity due the grower, and the amount deducted therefrom pursuant to the authorization.

History: 1975, Act 153, Imd. Eff. July 9, 1975.

290.692 Enforcement; complaint; investigation; hearing; powers and duties of hearing officer; judicial order; contempt; rules.

Sec. 2. (1) For the purpose of enforcing this act, the department of agriculture may receive sworn complaints with respect to violations or threatened violations of this act. The director of the department of agriculture, or his or her authorized representatives, shall make all necessary investigations, examinations, or inspections of violations or threatened violations specified in the sworn complaint filed with the department.

(2) The department of agriculture shall complete an investigation within 30 days after the filing of the complaint.

(3) If, upon investigation, the director of the department of agriculture considers there is reasonable cause to believe that a violation of this act has occurred, the director or his or her authorized representative shall, within 75 days after the filing of the complaint, provide notice and opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to determine whether a purchaser has failed to comply with this act.

(4) A hearing officer designated by the director of the state office of administrative hearings and rules shall preside at the hearing and may administer oaths and require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as are considered material to a just determination of the issues in dispute, and for that purpose may issue subpoenas. If a person refuses to obey a subpoena or refuses to be sworn or to testify or if a witness, party, or attorney is guilty of contempt while in attendance at a hearing, the hearing officer may, or the attorney general if requested shall, invoke the aid of the circuit court within the jurisdiction in which the hearing is being held to issue an appropriate order. Failure to obey the order may be punished by the court as contempt.

(5) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1975, Act 153, Imd. Eff. July 9, 1975;—Am. 2006, Act 221, Imd. Eff. June 26, 2006.

290.693 Order requiring remittance of moneys to designated association; cease and desist order; recovery of costs and expenses; order dismissing complaint; civil penalty.

Sec. 3. (1) If upon the preponderance of the testimony taken the director of the department of agriculture is of the opinion that a purchaser named in the complaint has violated this act, then the director shall state his findings of fact and conclusions of law and cause to be served on that purchaser an order requiring the

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purchaser to immediately forward the appropriate moneys to the designated association.

(2) The director may apply to the circuit court for an order requiring the purchaser to cease and desist from violating the act and the court may order further affirmative relief as will effectuate the policies of this act. The director may permit the aggrieved association to recover all reasonable costs and expenses incurred in filing and prosecuting the complaint, including attorney fees.

(3) If upon the preponderance of the testimony taken, the director is not of the opinion that any purchaser named in the complaint has violated this act, then the director shall state his findings of fact and conclusions of law and issue an order dismissing the complaint.

(4) A purchaser who violates this act may also be liable for a civil penalty of not more than $500.00 for each violation of this act.

History: 1975, Act 153, Imd. Eff. July 9, 1975.

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AGRICULTURAL MARKETING AND BARGAINING ACT
Act 344 of 1972

AN ACT to permit producers of agriculture commodities to be represented by associations; to create an agricultural marketing and bargaining board; to provide for the accreditation of associations; to establish obligations on the part of handlers and associations; to provide for arbitration; to define unfair practices; and to prescribe penalties.

History: 1972, Act 344, Eff. Mar. 30, 1973.

The People of the State of Michigan enact:

290.701 Short title.

Sec. 1. This act shall be known and may be cited as the "agricultural marketing and bargaining act".

History: 1972, Act 344, Eff. Mar. 30, 1973.

Constitutionality: This act is constitutional on its face. Michigan Canners And Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board, 416 Mich. 706, 332 N.W.2nd 134 (1982).

The Michigan Agricultural Marketing and Bargaining Act, § 290.701 et seq., authorizes producers' associations to engage in conduct that the federal Agricultural Fair Practices Act of 1967 forbids and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. To that extent, therefore, the Michigan Act is pre-empted by the AFPA. Michigan Canners and Freezers Association, Inc. v. Agricultural Marketing And Bargaining Board, 467 U.S 461, 104 S.Ct. 2518 (1984).

290.702 Definitions.

Sec. 2. As used in this act:

(a) "Association" means a cooperative association of producers or a division thereof, or federation of cooperative associations of producers engaged in the marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity.

(b) "Accredited association" means an association accredited in accordance with this act.

(c) "Person" means an individual, partnership, corporation or association.

(d) "Board" means the agricultural marketing and bargaining board created in section 3.

(e) "Producer" means any person who produces or causes to be produced in any 1 marketing period within the previous 2 marketing periods, any agricultural commodity in quantity beyond his own family use and having a minimum value at first point of sale as determined by the board for that agricultural commodity, and who is able to, during the marketing period transfer to a handler or an association a merchantable title to the agricultural commodity or provide management, labor, machinery, facilities or any other production input, with the assumption of risk, for the production of the agricultural commodity under a written or oral contract.

(f) "Agricultural commodity" means all perishable fruits and vegetables as defined by the board. The kinds, types and subtypes of products to be classed together as an agricultural commodity for the purposes of this act shall be determined by the board on the basis of common usage and practice.

(g) "Handler" means a person other than an association engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which he owns and operates or who sells directly to consumers at a produce market, agricultural commodities produced by him and agricultural commodities produced by another producer subject to value limitation established by the board.

(h) "Marketing period" for an agricultural commodity shall be a period of time determined by the board during which producers normally deliver for sale to handlers or contract with handlers for the production and future delivery for sale of substantially all of a crop or periodic production of the agricultural commodity.

(i) "Member" means a producer who has entered into a contract with an association appointing the association as his exclusive agent in negotiations with handlers with respect to the marketing of an agricultural commodity.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.702a Excluded sales.

Sec. 2a. Any sale of a commodity by a producer to another producer for his own exclusive use and not for resale or any sale of fresh market produce directly to a consumer or to a retail store or stand for resale to consumers shall be excluded from the provisions of this act.

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History: 1972, Act 344, Eff. Mar. 30, 1973.

290.703 Agricultural marketing and bargaining board; creation; purpose; appointment, qualifications, and terms of members; vacancy; removal; quorum; per diem reimbursement and expenses; services for implementing act; conducting business at public meeting; notice of meeting; rules.

Sec. 3. (1) An agricultural marketing and bargaining board is created within the department of agriculture. The board shall administer this act.

(2) The board consists of 5 individuals who shall be citizens of the state appointed by the governor with the advice and consent of the senate, not more than 3 of whom shall be affiliated with the same political party. A minimum of 2 members of the board shall derive a substantial portion of their livelihood from agricultural enterprises. One member shall be considered a lay person, who shall not be a producer, handler, or a member of an association, as defined under this act. The governor shall designate 1 member of the board to serve as chairperson of the board. The original board shall be composed of 2 members of the board for a 1-year term, 1 member of the board for a 2-year term, 1 member of the board for a 3-year term and 1 member of the board for a 4-year term. The governor shall indicate the length of term when making the appointment of the original board. As the term of each member of the board expires, the governor, with the advice and consent of the senate, shall appoint a successor to serve for a term of 4 years. An individual appointed to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term of the member of the board whom the individual succeeds.

(3) A member of the board may be removed by the governor, upon notice and hearing, for neglect of duty, or for corrupt conduct in office, or for any other misfeasance or malfeasance but not for any other cause.

(4) A vacancy in the board shall not impair the right of the remaining members to exercise the powers of the board. Three members of the board constitutes a quorum.

(5) Members of the board shall receive per diem reimbursement fixed by the legislature and necessary traveling and subsistence expenses incurred while attending meetings of the board or engaged in the performance of official responsibilities delegated by the board or other amounts as may be appropriated by the legislature.

(6) Services for implementing this act shall be provided by the department of agriculture from appropriations made by the legislature.

(7) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(8) The board may promulgate rules necessary for the administration of this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1972, Act 344, Eff. Mar. 30, 1973;—Am. 1980, Act 195, Imd. Eff. July 8, 1980.

Compiler's note: For abolishment of the agricultural marketing and bargaining board and transfer of its powers and duties to the department of agriculture, see E.R.O. No. 2007-7, compiled at MCL 290.741.

Administrative rules: R 290.101 et seq. of the Michigan Administrative Code.

290.704 Voluntary associations; unfair practices; complaints; orders.

Sec. 4. (1) Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor permit an employee or agent to engage in any of the following practices, defined as unfair practices:

(a) To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 15.

(b) To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of his membership in or contract with an association.

(c) To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler.

(d) To pay or loan money, give anything of value or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association.

(e) To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers.

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(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this act.

(g) To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association.

(h) To negotiate with a producer included in the bargaining unit after an association is accredited.

(2) An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

(a) To enter into a contract which discriminates against a producer represented by an accredited association whether or not he is a member producer.

(b) To act in a manner contrary to the by-laws of the association.

(c) To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association.

(d) To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer.

(e) To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers.

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this act.

(3) For the purpose of enforcing this act, the board may receive sworn complaints with respect to violations or threatened violations. The board may make all necessary investigations, examinations or inspections of any violation or threatened violation specified in the sworn complaint filed with the board. If, upon such investigation, the board considers that there is reasonable cause to believe that a person charged has committed a practice in violation of this act, the board shall issue and cause to be served a complaint upon the person in accordance with Act No. 306 of the Public Acts of 1969, as amended. The complaint shall summon the person to a hearing before the board or a member thereof or a hearing officer at the time and place fixed.

(4) If, upon a preponderance of the evidence, the board determines that the person complained of has committed a practice in violation of this act, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease the violation and shall order further affirmative action as will effectuate the policies of this act.

(5) If, upon a preponderance of the evidence, the board is of the opinion that the person complained of has not committed a practice in violation of this act, it shall make its findings of fact and issue an order dismissing the complaint.

(6) Until the record in a case has been filed in a court, as provided in this act, the board at any time upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: 1972, Act 344, Eff. Mar. 30, 1973.

Compiler's note: For provisions of Act 306 of 1969, referred to in subsection (3), see § 24.201 et seq.

290.705 Enforcement of orders; temporary relief or restraining order; jurisdiction; objections; findings; additional evidence; review.

Sec. 5. (1) The board may petition the court of appeals for the enforcement of its orders, and for appropriate temporary relief or restraining order and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice to be served upon the person and thereupon shall have jurisdiction of the proceeding and of the question determined, and may grant temporary relief or restraining order as it deems just and proper and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board. An objection that has not been urged before the board, a member thereof or a hearing officer before whom a hearing was conducted shall not be considered by the court, unless the failure or neglect to urge the objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole is conclusive. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, the court may order additional evidence to be taken before the board, a member thereof, or hearing officer and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed and it shall file the modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside

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of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that it shall be subject to review in accordance with established procedures for appeal.

(2) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of an order in the court of appeals, by filing in the court a written petition requesting that the order of the board be modified or set aside. A copy of the petition shall be transmitted by the clerk of the court to the board and the aggrieved party shall file in the court the record in the proceeding certified by the board. Upon the filing of the petition, the court shall proceed in the same manner as in the case of an application by the board under this section and shall have the same jurisdiction to grant temporary relief or a restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; the findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(3) The commencement of proceedings under this section shall not stay enforcement of the board's decision but the board or the reviewing court may order a stay upon such terms as it deems proper.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.706 Proposed bargaining unit; determination of appropriateness.

Sec. 6. (1) The board shall determine whether a proposed bargaining unit is appropriate. This determination shall be made upon the petition of an association representing not less than 10% of the producers of the commodity eligible for membership in the proposed bargaining unit as defined by the association. An association with an overlapping definition of bargaining unit may, upon the presentation of a petition by not less than 10% of the producers eligible for membership in the overlapping bargaining unit, contest the proposed bargaining unit. The board shall hold a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended, to resolve the dispute.

(2) In making its determination, the board shall define as appropriate the largest bargaining unit in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, geographic area covered and number of producers included as is consistent with the following criteria:

(a) The community of interest of the producers included;

(b) The potential serious conflicts of interests among members of the proposed unit;

(c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;

(d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;

(e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of “producer” for the agricultural commodity involved;

(f) The wishes of the producers;

(g) The pattern of past marketing of the commodity.

History: 1972, Act 344, Eff. Mar. 30, 1973.

Compiler's note: For provisions of Act 306 of 1969, referred to in subsection (1), see § 24.201 et seq.

290.707 Accreditation of association; requirements.

Sec. 7. An association shall be accredited upon determination by the board that the association meets all of the following:

(a) The association meets the requirements of the Capper-Volstead act, 7 U.S.C. 291-2.

(b) The association has submitted a copy of its bylaws which provide that: Each member of the association shall have 1 vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association has marketing and bargaining contracts for the current or next marketing period with more than 50% of the producers of an agricultural commodity who are in the bargaining unit and these contracts cover more than 50% of the quantity of that commodity produced by producers in the bargaining unit. The board may determine the quantity produced by the bargaining unit using information on production in prior marketing periods, current market information, and projections on production during the current market periods. The board shall exclude from that quantity any quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers. An association whose main purpose is bargaining but which processes a surplus into a form which is not the subject of bargaining is not a processing cooperative. The contracts with members shall

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specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate them to dispose of their production or holdings of the agricultural commodity through or at the direction of the association.

(d) The association has established and authorized a marketing and bargaining committee to negotiate with handlers for the agricultural commodity. The committee shall be comprised of members elected by the members in a secret ballot election. The production of the agricultural commodity shall comprise a significant portion of the total farming operation of each committee member. Members who have any quantity of the commodity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such commodity.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.708 Request for accreditation; contents; fee; reports.

Sec. 8. (1) An association desiring accreditation shall file with the board a written request for accreditation in the form as required by the board. The request shall contain properly certified evidence that the association meets the standards for accreditation and shall be accompanied by a report of the names and addresses of members, the name of each handler to whom the member delivered or contracted to deliver the agricultural commodity during the previous 2 marketing periods and the quantity delivered. A fee to cover the costs of the board in processing the request shall be established by rule and paid by the association when the request is filed.

(2) The board may require all handlers of an agricultural commodity produced in the bargaining unit area as individuals or through their trade association to file with the board within 30 days following a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the 2 marketing periods preceding the filing of the report and the quantities of the agricultural commodity received by the handler from each named producer during the periods. The information contained in the individual reports of handlers filed with the board shall not be made public by the board nor available to any person for private use.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.709 Request for accreditation; determination by board; amended request; hearing; notice.

Sec. 9. (1) Within 60 days following the date of filing with the board a request for accreditation by an association, the board shall determine whether the association shall be accredited. If the board determines that insufficient evidence was filed by the association, the board may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association.

(2) Within 30 days following the board's preliminary finding that the association is to be accredited, the board shall hold a public hearing to obtain further evidence relevant to confirmation that the association is to be accredited. Producers of record involved in the bargaining unit shall be notified of the hearing by mail and publication in a newspaper of general circulation in the bargaining unit area at least 10 days prior to the date of the hearing.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.710 Request for accreditation; issuance and publication of determination; preliminary declaration; service fees; effective date of accreditation; referendum; denial of accreditation.

Sec. 10. (1) The board shall issue and publish its determination within 30 days after the close of the hearing. If the determination of the board is to accredit the association, the board shall include a preliminary declaration of accreditation in its determination. The preliminary declaration of accreditation shall clearly state that the association shall represent all producers, members and nonmembers alike, who are in the bargaining unit and act as exclusive sales agents for the bargaining unit in negotiations with handlers. A producer covered in a declaration of accreditation may join the association and have full membership rights therein. Handlers shall deduct marketing service fees from the proceeds to be paid to producers for the agricultural commodity in the amount as determined by the association and forward the service fees promptly to the association. The fees shall be within guidelines determined by the board and shall be subject to review by the board upon petition by 15% of the affected producers.

(2) The accreditation of the association by the board shall be effective 30 days after the publication of the preliminary declaration of accreditation. The board shall delay the accreditation of the association whenever it receives during the 30-day period a petition signed by at least 1/3 of the producers in the bargaining unit who

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produce at least 1/3 of the production of the agricultural commodity produced by the bargaining unit, exclusive of quantities contracted with processing cooperatives and produced by handlers, and requesting that the association should not be accredited. The board shall determine by a mail referendum of bargaining unit producers within 30 days following receipt of the petition if producers assent to the accreditation of the association. Producers in the bargaining unit shall be deemed to have assented to accreditation if more than 50% of the producers in the bargaining unit who produce more than 50% of the volume of the affected commodity assent to representation by the association.

(3) All affected producers, handlers and other interested parties shall be notified of the outcome of the referendum within 10 days following the referendum. Accreditation shall be effective immediately if producers assent. Accreditation shall be denied without the required assent of the producers.

(4) An association which is denied accreditation may not file another request for accreditation for a period of 1 year.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.711 Annual report of accredited association.

Sec. 11. An accredited association shall file an annual report with the board in such form as required by the board to determine if the association continues to meet the requirements of accreditation as provided in section 7.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.712 Revocation of accreditation.

Sec. 12. To revoke the accreditation of an accredited association the board shall employ a procedure similar to the accreditation procedure set forth in sections 8, 9 and 10. Revocation of accreditation shall be considered by the board upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own disaccreditation.

(b) Upon receipt of a petition requesting that the accredited association be disaccredited and bearing the signatures of at least 1/3 of the producers in the bargaining unit who produce at least 1/3 of the bargaining unit production of the agricultural commodity exclusive of quantities contracted with processing cooperatives and produced by handlers.

(c) A request for revocation of accreditation may not be accepted by the board during the marketing period or for a 60-day period prior thereto.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.713 "Bargaining" defined; accredited association as exclusive representative; negotiations; notice.

Sec. 13. (1) As used in this act, "bargaining" means the mutual obligation of a handler and an accredited association or their designated representatives to meet at reasonable times and confer and negotiate in good faith. The obligation does not require either party to agree to a proposal or to make a concession. An accredited association is the exclusive representative of all producers in the bargaining unit for the purpose of bargaining with all handlers that purchase the agricultural commodity produced in the bargaining unit. Negotiations may include all terms relative to trading between handlers and producers of the agricultural commodity such as:

(a) Prices and related terms of sale.

(b) Quality specifications.

(c) Quantity to be marketed.

(d) Transactions involving products and services utilized by 1 party and provided to the other party.

(2) The parties shall notify the board of the commencement of negotiations.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.714 Mediation of issues; duties of board; designation of person to act in board's behalf, fee.

Sec. 14. (1) Upon the request of an accredited association or upon the request of a handler, the board shall provide for the mediation of the issues in dispute. The board shall take such steps as it deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the association and the handler which could disrupt the normal sale and purchase of the agricultural commodity between producers and the handler. The board shall:

(a) Arrange for, hold, adjourn or reconvene a conference or conferences between disputants and 1 or more of their representatives.

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(b) Invite the disputants and their representatives to attend the conference and submit, orally or in writing, the differences between the disputants.

(c) Discuss the differences with the disputants or their representatives.

(d) Assist in negotiating and drafting agreements for the adjustment and settlement of differences.

(2) In implementing its duties under this section, the board may designate 1 of its members or retain a competent individual to act in its behalf and may delegate to the designee its duties, and for such purpose, the designee shall have all of the powers conferred upon the board in connection with the discharge of the duties so delegated. If the board seeks to retain an individual to mediate a dispute, it shall attempt to retain an individual who has experience in mediation and in agricultural marketing.

(3) Where an individual is retained, the board shall establish his fee in advance.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.715 Election not to purchase or sell during marketing period.

Sec. 15. At any time prior to 30 days before the first day of the marketing period, if an agreement on the issues in dispute between the accredited association and the handler has not been reached, the handler may elect not to purchase, directly or indirectly, any quantity of the agricultural commodity produced in the bargaining unit during the marketing period or the affected producers may elect, as represented by the association, not to sell, directly or indirectly, any quantity of the agricultural commodity to the handler during the marketing period. If either party makes an election, the other party is not under an obligation to continue bargaining with the party so electing during that marketing period.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.716 Arbitration; agreements as to agricultural commodities; disputed quantities; offer; claim for relief; determination of reasonableness; joint settlement committee.

Sec. 16. (1) If the election provided for in section 15 is not exercised by the association or the handler involved in negotiations, and if the issues in dispute are not agreed upon through good faith bargaining by the first day of the marketing period for the agricultural commodity, the parties shall be deemed to have consented to the settlement of all issues in dispute by arbitration and the association shall agree that producers shall deliver the agricultural commodity to the handler or initiate the production of the agricultural commodity for future delivery to the handler and the handler shall accept delivery of the agricultural commodity or shall commit for the future delivery of the agricultural commodity. Where the quantity of the agricultural commodity to be marketed is in dispute, the handler shall offer to accept for delivery a reasonable quantity of the agricultural commodity. This offer shall be made in writing to the accredited association at least 7 days prior to the start of the marketing period. A copy of this offer shall be sent by registered mail to the board. The accredited association may file a claim for relief with the board if it feels that the offer is unreasonable. The board shall determine the issue of reasonableness at a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended. This determination shall have priority over all other board matters. The board shall base its determination on: (a) Projections as to the quantity of the agricultural commodity to be produced, (b) the relationship between the quantity of the commodity available and the amount of the quantity accepted by the handler, (c) the kind, grade, and quality of the commodity available, and (d) the past practices of the handler in relation to the items in subdivisions (a), (b) and (c). If, upon the preponderance of the evidence, the board is of the opinion that the quantity is unreasonable, it shall order the handler to accept the quantity which the board finds to be reasonable. The finding of the board shall be final, subject to later modification by the joint settlement committee. This finding shall be enforced in accordance with the provisions of section 5. Within 15 days following the start of the marketing period for the agricultural commodity, the board shall establish a joint settlement committee to arbitrate the issues in dispute.

(2) The committee consists of 1 committeeman selected by the association, 1 committeeman selected by the handler and 1 committeeman selected by the committeeman representing the association and the handler. This third committeeman shall be chairman of the committee. If the third committeeman cannot be agreed upon by the association and the handler committeeman, the board shall submit a list composed of the names of 5 persons knowledgeable in the marketing of the agricultural commodity from which the third committeeman shall be chosen. The selection shall be made by the association representative and the handler representative each striking 2 different names from the list. The remaining name shall be the person who serves as the third committeeman and as its chairman. The order of striking shall be determined by chance.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.717 Hearing; notice; duties of chairperson; intervention; evidence; informal proceedings; verbatim record; transcripts; expense; adjournment; conclusion; majority

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actions and rulings.

Sec. 17. The chairperson shall call a hearing to begin within 15 days and give reasonable notice of the time, and place of the hearing. The chairperson shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon such terms and conditions as are just, a person having a substantial interest therein may be granted leave to intervene by the committee. Any oral or documentary evidence and other data deemed relevant by the joint settlement committee may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the chairperson shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts shall not be necessary for a decision by the committee. The expense of the proceedings, including a fee to the chairperson, established in advance by the board shall be borne equally by each of the parties to the dispute and the state. The hearing conducted by the arbitration panel may be adjourned from time to time, but, unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Its majority actions and rulings shall constitute the actions and rulings of the joint settlement committee.

History: 1972, Act 344, Eff. Mar. 30, 1973;—Am. 1980, Act 195, Imd. Eff. July 8, 1980.

290.718 Committee; powers; oaths; subpoenas; contempt.

Sec. 18. The committee may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpeonas. If any person refuses to obey a subpeona, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the committee may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.719 Committee; findings of fact; issuance of award.

Sec. 19. The committee within 20 days after the conclusion of the hearing or such further time to which the parties may agree shall make written findings of fact and issue its written award upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true copy thereof to the parties or their representatives. The award of the committee shall be limited to the last offer of the association or the last offer of the handler which more nearly complies with the criteria contained in section 20.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.720 Basis for committee's decision.

Sec. 20. The committee shall base its decision upon the following factors:

(a) Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing market areas.

(b) Amount of the commodity produced or projections of production in the production area or competing marketing areas.

(c) Relationship between the quantity produced and the quantity handled by the handler.

(d) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The impact of the award on the competitive position of the handler in the marketing area or competing areas.

(g) The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities.

(h) A fair return on investment.

(i) Kind, quality or grade of the commodity involved.

(j) Stipulation of the parties.

(k) Such other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.721 Finality of committee's decision; enforcement.

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Sec. 21. A majority decision of the committee, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the committee in the court of appeals.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.722 Disobeying or resisting order; contempt.

Sec. 22. A party who wilfully disobeys a lawful order of enforcement by the court of appeals pursuant to section 21, or wilfully encourages or offers resistance to such order shall be in contempt. The punishment for each day the contempt persists, may be a fine fixed in the discretion of the court in an amount not to exceed $500.00 per day.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.723 Judicial review of committee awards.

Sec. 23. Awards of the committee shall be reviewable by the court of appeals but only for reasons that the committee was without or exceeded its jurisdiction; the award is unsupported by competent, material and substantial evidence on the whole record; or the award was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the committee.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.724 Mailing copy of contract or award to board.

Sec. 24. Within 30 days after an accredited association negotiates a contract with a handler or receives a committee award, it shall send to the board by registered mail a copy of the contract or award.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.725 Access of board to evidence; refusal to obey subpoena; service of process.

Sec. 25. (1) At all reasonable times the board shall have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any failure or refusal to bargain or for engaging in unfair practices.

(2) In case of contumacy or refusal to obey a subpeona issued to any person, the circuit court, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation, and any failure to obey such order may be punished by the court as a contempt.

(3) Complaints, orders and other processes and papers of the board may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of the service. Witnesses summoned before the board shall be paid the same fee and mileage allowance that are paid witnesses in circuit court and witnesses whose depositions are taken and the person taking the same shall be entitled to the same fees as are paid for like services in circuit court.

(4) All processes of any court of which an application or petition may be made under this act may be served at any place in the state wherein the person or persons required to be served reside or may be found.

History: 1972, Act 344, Eff. Mar. 30, 1973.

Compiler's note: In subsection (2) the word “subpeona” evidently should read “subpoena”.

290.726 Antitrust law not violated.

Sec. 26. The activities of accredited associations and handlers in bargaining with respect to the price and other terms of sale of the agricultural commodities produced by the members of such accredited associations do not violate any antitrust law of this state.

History: 1972, Act 344, Eff. Mar. 30, 1973.

290.727 Repealed. 1976, Act 155, Imd. Eff. June 17, 1976.

Compiler's note: The repealed section contained an expiration date and saving clause.

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MICHIGAN GINSENG ACT
Act 184 of 1994

AN ACT to regulate the harvest, sale, and distribution of American ginseng; to provide for licensing; and to prescribe penalties.

History: 1994, Act 184, Eff. Mar. 30, 1995.

The People of the State of Michigan enact:

290.751 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan ginseng act".

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.753 Definitions.

Sec. 3. As used in this act:

(a) "Buy" means to purchase, trade, or barter, or to offer to purchase, trade, or barter.

(b) "Collect" means the harvest of wild ginseng.

(c) "Collector" means a person who collects wild ginseng.

(d) "Cultivated ginseng" means ginseng growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng.

(e) "Dealer" means a person who buys, collects, or otherwise acquires ginseng roots in this state for resale or trade.

(f) "Dealer license" means a license issued by the director authorizing a dealer to buy, collect, or otherwise acquire ginseng roots for resale or export from this state.

(g) "Department" means the department of agriculture.

(h) "Director" means the director of the department of agriculture or an authorized representative of the director.

(i) "Dry weight" means the weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable.

(j) "Ginseng" means Panax quinquefolius L., also known as Panax quinquefolium L., commonly known as American ginseng, either wild or cultivated, and includes plants and plant parts.

(k) "Ginseng certificate" means a document issued by the department or other official agency authorized by the director that verifies the origin, quantity by weight, type, and condition of ginseng offered for inspection.

(*l*) "Green weight" means the weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable.

(m) "Grower" means a person who grows cultivated ginseng.

(n) "Grower license" means a license issued by the director authorizing a grower to sell cultivated ginseng that the grower has produced.

(o) "Harvest" means to cut, pick, dig, root up, or gather ginseng.

(p) "Natural habitat" means the environment where a species exists as a natural population.

(q) "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(r) "Purchaser" means a person who buys or otherwise acquires ginseng from a grower, collector, or other purchaser for resale or trade.

(s) "Sell" means to sell, trade, or barter, or to offer to sell, trade, or barter.

(t) "Wild ginseng" means ginseng growing or grown in an uncultivated state or harvested from its natural habitat. Wild ginseng includes ginseng that was introduced to or propagated in its natural habitat by sowing ginseng seed or transplanting ginseng plants from other areas and performing no other standard ginseng horticultural practices.

(u) "Woodsgrown ginseng" means ginseng growing or grown in managed beds under natural shade.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.755 Ginseng management program; establishment; administration; purpose; ginseng management program fund; payment, deposit, and use of money; rules.

Sec. 5. (1) The director shall establish and administer a ginseng management program to promote the production and harvest of cultivated ginseng and the legal collection of wild ginseng, if allowed, and to

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prohibit acts detrimental to the survival of the indigenous ginseng population. The ginseng management program shall regulate ginseng collecting, harvesting, certification, transportation, and sale.

(2) The state treasurer shall establish in the state treasury the ginseng management program fund. A fee, fine, penalty, or forfeited money from a conviction, confiscation, or other action taken under this act, or a licensing fee or inspection fee under this act, shall be paid to the state treasurer and deposited in the ginseng management program fund. Money in the fund shall be used only for the administration of this act.

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

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.757 Inspection; seizure; forfeiture; deposit of proceeds from sale of seized ginseng; inspection fee.

Sec. 7. (1) The director may inspect any ginseng sold, held, or transported in this state. A person shall not resist agents of the department who request to inspect ginseng. A person shall not hinder a ginseng inspection by misrepresenting or concealing facts.

(2) The director shall not certify and may seize ginseng cultivated, harvested, collected, or otherwise acquired in violation of this act, or in violation of a rule promulgated under this act. Seized ginseng is forfeited to the state and may be disposed of as determined by the director. The director may certify and sell seized ginseng. Proceeds from the sale of seized ginseng shall be deposited into the ginseng management program fund.

(3) The department shall charge an inspection fee based on an hourly rate established by the insect pest and plant disease act, Act No. 189 of the Public Acts of 1931, being sections 286.201 to 286.226 of the Michigan Compiled Laws, or rules promulgated pursuant to Act No. 189 of the Public Acts of 1931, for certification of both cultivated and wild ginseng.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.758 Ginseng certificate required; prohibited conduct.

Sec. 8. (1) A grower or collector shall obtain a ginseng certificate from the director certifying that ginseng harvested or collected in this state that is entering commerce or is being exported from this state was legally harvested or collected.

(2) Until a ginseng certificate is obtained, a person shall not do either of the following:

(a) Export ginseng harvested or collected in this state.

(b) Commingle ginseng harvested or collected in this state with ginseng originating outside this state.

(3) Ginseng shall not be certified more than 1 time without written authorization from the director.

(4) Ginseng harvested or collected in this state shall not be exported from this state under authority of a certificate issued by another state.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.759 Ginseng plants or plant parts sold for propagation.

Sec. 9. (1) Ginseng plants or plant parts sold for propagation shall not be regarded as harvested or collected and are exempt from the certification requirement of this act.

(2) Live ginseng plants or plant parts, except seed, for propagation shall not be transported or sold without the owner satisfying the plant certification and license requirements of the insect pest and plant disease act, Act No. 189 of the Public Acts of 1931, being sections 286.201 to 286.226 of the Michigan Compiled Laws.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.761 Sale of cultivated ginseng by grower.

Sec. 11. A grower selling cultivated ginseng shall do all of the following:

(a) Provide a record of sale containing all of the following information to a purchaser:

(*i*) Grower's name and address.

(*ii*) Grower's license number and ginseng certificate number.

(*iii*) Dry weight.

(*iv*) Year harvested.

(b) Certify that the ginseng was grown in this state in accordance with this act. The certification shall be in the form prescribed by the director.

(c) Maintain records of ginseng production.

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(d) Maintain records of the location and dimensions of, and all management activities applied to, any woodsgrown ginseng beds.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.763 Wild ginseng.

Sec. 13. (1) A person may only collect wild ginseng if, and to the extent, authorized by the director of the department of natural resources.

(2) If the collection of wild ginseng is authorized, a collector shall do all of the following:

(a) Obtain a permit from the department of natural resources.

(b) Collect only wild ginseng in its natural habitat during the season of August 15 through December 31.

(c) Collect only mature wild ginseng plants with ripe berries and not less than 3-leaf stems, or prongs.

(d) Replant on the collection site all seeds from collected wild ginseng plants.

(e) Obtain written authorization from a land manager, landowner, authorized agent, or other person entitled to the ginseng if collecting wild ginseng from property other than the collector's property.

(3) A person possessing collected wild ginseng shall maintain accurate records of all of the following:

(a) Green weight.

(b) Dry weight.

(c) County where collected.

(d) Date collected.

(4) A person shall not sell collected wild ginseng unless licensed as a dealer.

(5) A person shall not sell collected wild ginseng without providing a record of sale to a purchaser containing all of the following information:

(a) Collector's name and address.

(b) Dealer license number.

(c) Ginseng certificate number.

(d) Green weight.

(e) Dry weight.

(f) County where collected.

(g) Year collected.

(h) Date of sale.

(5) A person selling wild ginseng shall attest in an affidavit that the wild ginseng sold was collected in this state in accordance with this act. The affidavit shall be in the form prescribed by the director.

History: 1994, Act 184, Eff. Mar. 30, 1995.

Compiler's note: The second subsection (5), beginning with the words “A person selling wild ginseng,” evidently should be numbered (6).

290.765 Grower's license; dealer's license; fee; expiration; requirement.

Sec. 15. (1) A grower shall be licensed by the department and pay a $25.00 annual license fee. A grower's license expires annually on August 14. A person shall not sell or distribute cultivated ginseng unless licensed by the department.

(2) A dealer shall be licensed by the department and pay a $100.00 annual license fee. A dealer's license is nontransferable. A dealer's license expires annually on August 14. A person shall not act as a dealer unless licensed by the department. The licensing requirements of this section do not apply to a person purchasing dried ginseng solely for retail sale in Michigan to individuals for personal consumption.

(3) A person who acts as both a grower and a dealer must be licensed as both a grower and a dealer.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.767 Prohibited conduct by dealer.

Sec. 17. A dealer shall not do any of the following:

(a) Buy or otherwise acquire uncertified ginseng without written authorization from the director.

(b) Buy, acquire, or sell ginseng without creating and maintaining an accurate record of all of the following information:

(*i*) Seller's or purchaser's name and address.

(*ii*) Grower's license number, dealer's license number, or collector's name and address, and ginseng certificate number.

(*iii*) Green weight and dry weight of wild ginseng and cultivated ginseng, compiled separately, and county where the ginseng was harvested or collected.

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(*iv*) Year the ginseng was harvested or collected.

(*v*) Date of the transaction.

(c) Sell or export ginseng harvested in this state without first obtaining a ginseng certificate.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.769 Cultivated and wild ginseng submitted for weighing.

Sec. 19. (1) A grower or dealer shall submit all cultivated and wild ginseng in the grower's or dealer's possession for weighing annually on March 31. The director shall record separately the weight of the certified and uncertified ginseng submitted. Future export certification of uncertified ginseng shall be based on these records in a draw-down process until all documented stock has been certified.

(2) A dealer shall document the cultivated ginseng and wild ginseng submitted for weighing as required in section 17. The cultivated ginseng and wild ginseng submitted for weighing and all documentation shall be available for inspection by the director at all reasonable hours.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.771 Record of sale.

Sec. 21. A grower, collector, or dealer shall not provide a purchaser with a record of sale for more ginseng than is actually sold or otherwise exchanged.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.773 Retention of record; availability for inspection.

Sec. 23. A record required under this act shall be retained for 2 years after the ginseng documented is sold, conveyed, or otherwise exchanged. A record shall be available for inspection by the director at all reasonable hours.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.777 Prohibited conduct.

Sec. 27. A person shall not do any of the following:

(a) Harvest, collect, or transport ginseng without documentation evidencing ownership or control of the property from which the ginseng was harvested or collected, or written authorization from a land manager, landowner, authorized agent, or other person entitled to the ginseng. The authorization shall be in a form prescribed by the director.

(b) Fail to maintain all required records.

(c) Buy, otherwise acquire, or possess uncertified ginseng, except ginseng cultivated, harvested, or collected on that person's own property or property under that person's direct control.

(d) Transport uncertified ginseng from this state.

(e) Possess ginseng originating from another state without authorization from the state of origin.

(f) Violate this act or a rule promulgated under this act.

(g) Knowingly provide incorrect or false information on a license application, report, export certificate, or other document required under this act, or to the director.

History: 1994, Act 184, Eff. Mar. 30, 1995.

290.779 Violation as misdemeanor.

Sec. 29. (1) A person who violates this act or a rule promulgated under this act is guilty of a misdemeanor and is subject to the following penalties:

(a) If the person was acting as a dealer in violation of this act, for a first offense, the person shall be fined not less than $1,000.00 or more than $5,000.00, or shall be imprisoned for not more than 90 days, or both. For each subsequent offense, the person shall be fined not less than $2,000.00 or more than $10,000.00, or shall be imprisoned for not more than 90 days, or both.

(b) If the person was acting as a grower in violation of this act, for a first offense, the person shall be fined not less than $25.00 or more than $500.00, or shall be imprisoned for not more than 90 days, or both. For each subsequent offense, the person shall be fined not less than $200.00 or more than $1,000.00, or shall be imprisoned for not more than 90 days, or both.

(2) In addition to other penalties provided by law, the director may withhold, suspend, or revoke a license, registration, or certificate for good cause, including violation of this act or violation of a rule promulgated under this act.

History: 1994, Act 184, Eff. Mar. 30, 1995.

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290.781 Administrative fine; warning in lieu of fine; civil action by attorney general to recover fine.

Sec. 31. (1) After notice and opportunity for hearing, upon finding that a person has violated this act or a rule promulgated under this act, the director may impose an administrative fine of not more than $1,000.00 for each violation. If a violation of this act or a rule promulgated under this act occurs despite the exercise of due care or does not result in significant harm to human health or the environment, the director may issue a warning in lieu of an administrative fine.

(2) The director shall advise the attorney general if a person fails to pay an administrative fine imposed under this section. The attorney general may bring a civil action in a court of competent jurisdiction to recover the fine.

History: 1994, Act 184, Eff. Mar. 30, 1995.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2007-7

290.741 Transfer of powers and duties of agricultural marketing and bargaining board to department of agriculture by type III transfer; abolishment of agricultural marketing and bargaining board.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Agricultural Marketing and Bargaining Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Agricultural Marketing and Bargaining Board created under Section 3 of the Agricultural Marketing and Bargaining Act, 1972 PA 344, MCL 290.703, are transferred by Type III transfer to the Department of Agriculture.

B. The Agricultural Marketing and Bargaining Board is abolished.

III. IMPLEMENATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Agricultural Marketing and Bargaining Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

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History: 2007, E.R.O. 2007-7, Eff. July 15, 2007.

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