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:

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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

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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.

(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

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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.

(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

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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 Notes: 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 Notes: 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.

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(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).

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 Notes: 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

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