

2005 Assembly Bill 635

Date of enactment: **December 21, 2005**

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2005 WISCONSIN ACT 80

AN ACT *to amend* 126.55 (4), 126.56 (4) (b) and 126.56 (6) (a); and *to create* 126.55 (10r) and (10t), 126.56 (4) (f), 126.57 (1) (b) 3., 126.58 (1) (c) 3., 126.59 (1) (d), 126.595, 126.61 (1) (c) 3. and 126.71 (3) (a) 5. of the statutes; **relating to:** participation by certain persons who buy potatoes in the Agriculture Producer Security Program and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 126.55 (4) of the statutes is amended to read:

126.55 (4) “Contributing vegetable contractor” means a vegetable contractor who is licensed under s. 126.56 (1), who either has paid one or more quarterly installments under s. 126.60 (6) or is required to contribute to the fund, but the first quarterly installment under s. 126.60 (6) is not yet due, who has not elected not to participate in the fund under s. 126.595 (1), and who is not disqualified under s. 126.59 (2).

SECTION 2. 126.55 (10r) and (10t) of the statutes are created to read:

126.55 (10r) “Processing potato buyer” means a vegetable contractor who purchases processing potatoes and no other processing vegetables.

(10t) “Processing potatoes” means potatoes grown or sold for use in food processing, regardless of whether those potatoes are actually harvested or processed as food.

SECTION 3. 126.56 (4) (b) of the statutes is amended to read:

126.56 (4) (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations reported under sub. (9) (a),

less any credit provided under sub. (6), except that this paragraph does not apply to a vegetable contractor to whom par. (f) applies.

SECTION 4. 126.56 (4) (f) of the statutes is created to read:

126.56 (4) (f) If the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500 or another amount established by the department by rule.

SECTION 5. 126.56 (6) (a) of the statutes is amended to read:

126.56 (6) (a) If the balance in the fund contributed by vegetable contractors exceeds \$1,000,000 \$825,000 on November 30 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (4) (b) to contributing vegetable contractors who file timely license renewal applications for the next license year. The department shall credit each contributing vegetable contractor on a prorated basis, in proportion to the total fees that the vegetable contractor has paid under sub. (4) (b) for the 4 preceding license years.

SECTION 6. 126.57 (1) (b) 3. of the statutes is created to read:

126.57 (1) (b) 3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 7. 126.58 (1) (c) 3. of the statutes is created to read:

126.58 (1) (c) 3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

SECTION 8. 126.59 (1) (d) of the statutes is created to read:

126.59 (1) (d) The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

SECTION 9. 126.595 of the statutes is created to read:

126.595 Processing potato buyer optional nonparticipation. (1) **ELIGIBILITY.** A processing potato buyer may elect not to participate in the fund by doing all of the following:

(a) Submitting a notification of nonparticipation to the department by January 31 of each year or, for a new processing potato buyer, at the time of application for its first license.

(b) Certifying in a statement to the department that the processing potato buyer will not, in the next licensing year, enter into any of the following:

1. An unwritten contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 10 days before paying for the processing potatoes in full.

2. A written contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 30 days before paying for the processing potatoes in full.

(c) Certifying in a statement to the department that the processing potato buyer does not at the time of certification have any unpaid obligations to vegetable producers under any of the following:

1. An unwritten contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 10 days before paying for the processing potatoes in full.

2. A written contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 30 days before paying for the processing potatoes in full.

(d) Providing evidence to the department that the processing potato buyer has a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t, that is in good standing.

(e) Certifying that it will disclose to all vegetable producers with whom the processing potato buyer contracts that the processing potato buyer does not participate in the fund by providing the following statement, in at least 10-point bold type, in each written contract for processed potatoes or, for unwritten contracts, in a written statement signed by the vegetable processor and the vegetable producer: "The undersigned processing potato buyer, as defined in s. 126.55 (10r), Wisconsin Statutes, does not participate in the Wisconsin agricultural producer secu-

rity fund, established under s. 25.463, Wisconsin Statutes. As a result the producer does not have the security or other protections against nonpayment provided by that fund. The parties to this contract acknowledge that the Wisconsin Department of Agriculture, Trade and Consumer Protection and the State of Wisconsin cannot be held liable for any default under the contract between the parties."

(f) Maintaining documentation that every purchase of potatoes grown in this state for processing under contract with the processing potato buyer qualifies for trust protection under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t, and that the vegetable producers' trust rights have been validly preserved.

(2) **RESUMING PARTICIPATION.** (a) 1. A processing potato buyer that has elected not to participate in the fund may rescind its election and participate in the fund by notifying the department of its intention to participate and complying with par. (b). Participation is effective the 30th day after the day on which the department receives the notice or on the effective date of the security described in par. (b) 1., whichever is later.

2. A processing potato buyer that has elected not to participate in the fund shall participate in the fund if the processing potato buyer ceases to meet the requirements in sub. (1). Participation is effective on the day on which the department notifies the processing potato buyer that the potato buyer is no longer eligible under sub. (1) or on the effective date of the security described in par. (b) 1., whichever is later.

(b) 1. A processing potato buyer that decides or is required to participate in the fund under par. (a) shall file security with the department in a form that satisfies the requirements in s. 126.61 (4) and that is in an amount equal to at least 75 percent of the amount last reported under s. 126.56 (9) (b). The processing potato buyer shall maintain the security until the department releases it. The department may not release the security until the processing potato buyer has participated in the fund for 2 continuous complete license years.

2. A processing potato buyer that decides or is required to participate in the fund under par. (a) shall begin contributing to the fund at the beginning of its 2nd complete license year of participation, except that this requirement does not apply to a processing potato buyer that is disqualified under s. 126.59 (2).

SECTION 10. 126.61 (1) (c) 3. of the statutes is created to read:

126.61 (1) (c) 3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

SECTION 11. 126.71 (3) (a) 5. of the statutes is created to read:

126.71 (3) (a) 5. A default claim allowed against a vegetable contractor who is a processing potato buyer, as defined in s. 126.55 (10r), if the default claim is related

to a default on an obligation that was outstanding when the processing potato buyer's participation in the fund became effective under s. 126.595 (2).

SECTION 12. Effective date.

(1) This act takes effect on February 1, 2006.
