

2005 DRAFTING REQUEST

Bill

Received: 01/20/2005

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Joan Ballweg (608) 266-8077

By/Representing: Vince williams

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ballweg@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Exemption from licensing for certain vegetable contractors

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	btradewe 01/21/2005	wjackson 01/21/2005	rschluet 01/24/2005	_____	lnorthro 01/24/2005	sbasford 01/25/2005	State
/2	btradewe 05/02/2005	wjackson 05/04/2005	pgreensl 05/04/2005	_____	lnorthro 05/04/2005	lnorthro 05/04/2005	State
/3	btradewe 06/01/2005	wjackson 06/15/2005	rschluet 06/15/2005	_____	sbasford 06/15/2005	sbasford 06/15/2005	State

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14 WJ 7/11

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6155 PB

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Received: **01/20/2005**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Alvin Ott (608) 266-5831**

By/Representing: **Erin Napralla**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ott@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

See Attached

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By/Representing: Erin Napralla

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12 WJ 5/3 5/4 ps P81B

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/?	btradewe	1 WJ 1/24					

Handwritten signature and scribbles over the Drafting History table, including the number '24' and '3' written below the signature.

FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau

100 N. Hamilton Street

Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 1/20/05

Legislator, agency, or other person requesting this draft Rep. Ott

Person submitting request (name and phone number) Eria Naprella (6-5831)

Persons to contact for questions about this draft (names and phone numbers) _____

Describe the problem, including any helpful examples. How do you want to solve the problem?

* Please See Attachment.

Would like draft to reflect change to s.126.56 (2) outlined on page 3.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes:

Anyone who asks?

YES

NO

Any legislator?

YES

NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES

NO

Amendments to the Wisconsin Producer Security Act
Wisconsin Potato & Vegetable Growers Association

ISSUE #1: Double-licensure required for potatoes sold for processing in Wisconsin under the Wisconsin Producer Security Act and the federal Perishable Agricultural Commodities Act discourage purchase of Wisconsin potatoes for processing.

A. Background

1. State Protection

The Wisconsin Producer Security Act ("PSA") (Wis. Stats. Chap 126) establishes an agricultural security program that helps protect commodity producers against catastrophic financial defaults by processors and handlers by allowing the DATCP to obtain a proprietary line of credit in case a processor defaults on an amount greater than the deductible amount for a particular commodity. The PSA covers dairy, grain and vegetable contracts.

2. Federal Protection

In addition to this state protection, the federal Perishable Agricultural Commodities Act ("PACA") of 1930 grants preferred trust fund protection to eligible unpaid sellers and suppliers of perishable agricultural commodities. Under PACA, if the purchaser of perishable agricultural commodities files for bankruptcy, eligible unpaid sellers and suppliers of commodities are entitled to full payment of their PACA trust claims, before the secured and unsecured creditors' claims are paid.

3. Current Exemption from State Requirement for Federal Compliance

In order to prevent double coverage, current Wisconsin law exempts a vegetable contractor from having to purchase a Wisconsin PSA license (i.e., a license from DATCP through which the contractor pays into the Wisconsin fund) *if* the contractor is, "A vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and is licensed under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t." *See* Wis. Stat. § 126.56(2)(a) (2004). This language was intended to prevent contractors purchasing vegetables from Wisconsin producers from having to get BOTH a PACA and a PSA license. *However*, it doesn't.

Under the PACA, anyone buying or selling commercial quantities of fruit and vegetables must be licensed by the U.S. Department of Agriculture.¹ PACA defines the term "perishable agricultural commodity" as "Fresh fruits and fresh vegetables of every kind and character..." *See*

¹ *See* <http://www.ams.usda.gov/fv/paca.htm> .

7 U.S.C. § 499a? In 2003, the USDA adopted rules that guide the application of PACA and defined “fresh fruits and vegetables” as the following:

“Fresh fruits and fresh vegetables include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, battering, coating, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seeds, pits, stems, calyx, husk, pods, rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents used to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruits or vegetables for packaging in any type of containers; or comparable methods of preparation.” See 7 C.F.R. § 46.2(u) (*emphasis added*).

B. The Problem

1. Double Licensure is Expensive

Securing a license under Wisconsin’s PSA is expensive (especially when audited financial statements are required – see below). In addition, PACA licenses are also expensive. Having to get both a federal and a state license is unnecessary, therefore Wisconsin enacted an exemption for those who have a federal PACA license, when Wis. Stat. § 126.56 was enacted in 2001.

2. Wisconsin Law Has Not Been Updated to Recognize the Expanded Applicability of Federal PACA Coverage

The federal PACA definition of “fresh fruits and vegetables” (see above), includes potato products such as frozen potatoes and potatoes that will be used for processing. However, the Wisconsin exemption is limited to, “vegetables primarily for unprocessed, fresh market use and is licensed under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t.” See Wis. Stat. § 126.56(2)(a).

Therefore, Wisconsin law inadvertently requires a Wisconsin license for those who also have a PACA license, *if* they are purchasing primarily potatoes used for processing (i.e., potatoes that will be chipped, frozen or canned) while allowing an exemption for potatoes that will be purchased for the fresh market.

This result was likely the effect of the Wisconsin law preceding the federal rule. The PACA regulation became effective on June 2, 2003, which is about 2 years after Wis. Stat. § 126.56 was enacted.² Accordingly, an update to Wisconsin law is needed to track PACA because there is a perception by contractors purchasing potatoes from Wisconsin growers that this double licensure makes doing business in Wisconsin unnecessarily expensive and these buyers are refusing to purchase Wisconsin potatoes.

² Wis. Stat. § 126.56 was enacted on August 30, 2001, as a part of 2001 Wisconsin Act 16, the biennial budget bill.

C. The Solution

A simple amendment to Wisconsin's PSA to bring it into agreement with PACA would eliminate the requirement for double licensure for contractors purchasing potatoes used for processing.

Wis. Stat. § 126.56(2) shall be amended to read:

(2) Exempt contractors. The following vegetable contractors are exempt from licensing under sub. (1):

(a) A vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and is licensed under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t.

(b) A restaurant or retail food establishment that procures processing vegetables solely for retail sale at the restaurant or retail food establishment.

There are two other issues that need to be addressed. However, the above-described PACA exemption amendment would likely resolve most of the WPVGA members' concerns regarding Wisconsin's PSA.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1813/1

RCT.....

Wlj

2005 BILL

1 ^{GEN} AN ACT ...; relating to: an exemption from the requirement that vegetable
2 contractors be licensed by the Department of Agriculture, Trade and Consumer
3 Protection.

Analysis by the Legislative Reference Bureau

Current law generally requires vegetable contractors to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). A vegetable contractor is a person who buys vegetables from vegetable farmers for use in food processing or who markets vegetables for use in food processing on behalf of farmers. Licensed vegetable contractors are, with some exceptions, required to make contributions under the Agricultural Producer Security Program. The program is designed to reimburse farmers for a portion of the losses they incur when contractors, including vegetable contractors, default on their financial obligations. Under current law, a vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and who is licensed by the federal government under the Perishable Agricultural Commodities Act is not required to be licensed by DATCP.

This bill makes all vegetable contractors that are licensed under the federal Perishable Agricultural Commodities Act exempt from the requirement to be licensed by DATCP, not just those that procure vegetables primarily for unprocessed, fresh market use.

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 126.56 (2) (a) of the statutes is amended to read:

2 126.56 (2) (a) A vegetable contractor who procures vegetables primarily for
3 ~~unprocessed, fresh market use~~ and is licensed under the federal Perishable
4 Agricultural Commodities Act, 7 USC 499a to 499t.

5 History: 2001 a. 16.

(END)

Emery, Lynn

From: Napralla, Erin
Sent: Tuesday, January 25, 2005 10:54 AM
To: LRB.Legal
Subject: Draft review: LRB 05-1813/1 Topic: Exemption from licensing for certain vegetable contractors

It has been requested by <Napralla, Erin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1813/1 Topic: Exemption from licensing for certain vegetable contractors

Tradewell, Becky

From: Napralla, Erin
Sent: Friday, April 29, 2005 8:23 AM
To: Tradewell, Becky
Subject: LRB 1813

Becky,

I will be sending back the jacket for LRB 1813 this morning along with a "revised" draft of the bill. As you will see, the group working on this legislation has made a number of changes.

Let me know if you have any questions.

Thank you!!

Erin

Erin Napralla
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
3rd Assembly District
erin.napralla@legis.state.wi.us
608.266.5831

1 **Sixth-~~Seventh~~ Revised DATCP Working Draft Bill Language**

2
3 **SECTION 1** 126.55(10m) is created to read:

4 126.55(10r) "Processed potato buyer" means a vegetable contractor or a producer
5 agent who purchases processed potatoes.

6 126.55(10s) "Processed potatoes" means potatoes grown or sold for use in food
7 processing, regardless of whether those potatoes are actually harvested or processed as
8 food.¹

9 **Section 2.** 126.56(4)(f) is created to read:

10 (f) A vegetable contractor who is a processed potato buyer who does not
11 participate in the fund in accordance with s. 126.56m, shall pay a fee of not more than
12 \$500.

13 **SECTION 3.** 126.56m is created to read:

14 126.56m. PROCESSED **POTATO BUYER OPTIONAL NONPARTICIPATION.** (1)
15 **Criteria for Nonparticipation.** Processed potato buyers who meet all of the provisions
16 in sub (2) may, at their discretion, opt out of participating in the fund.

17 (2) A nonparticipating processed potato buyer must do all of the following:

18 (a) Submit to the department when first licensed and thereafter by January 31 of
19 each year, a notification of nonparticipation

¹ "Food processing" in this section refers to the definition stated in Wis. Stat. § 97.29(1)(g).

1 (b) Certify, in a statement to the department, that the processed potato buyer will
2 not, in the next license year, enter into contracts with Wisconsin producers where
3 payment terms exceed 20 days, or if the contract is in writing, 30 days.

4 (c) Certify, in a statement to the department, that the processed potato buyer
5 does not currently have any unpaid obligations with producers where payment terms
6 exceed 20 days, or if the contract is in writing, 30 days.

7 (d) Provide evidence to the department that the processed potato buyer has, in
8 good standing, a PACA license with the United States Department of Agriculture --
9 Agricultural Marketing Service.

10 (e) Disclose to all producers that the processed potato buyer does not participate
11 in the fund by including, in at least 10 point bold type, the following statement in each
12 contract for procurement of processed potatoes: ***The undersigned processed potato***
13 ***buyer, as defined in s. 126.55(10r) Wisconsin Statutes, does not participate in the***
14 ***Wisconsin agriculture producer security fund, established under s. 25.463, Wisconsin***
15 ***Statutes. As a result, you, the producer, do not have the security or other protections***
16 ***against non-payment provided by that fund.***

17 (f) Maintain on file evidence that each and every purchase of Wisconsin potatoes
18 grown for processing qualifies for PACA Trust Protection and the producers trust rights
19 have been validly preserved.

1 **(2) Limitation on Resuming Participation.** Processed potato buyers who meet
2 all of the criteria under sub. (1) and who opt out of the fund may re-enter the fund in
3 accordance with the applicable provisions of this chapter. However, if a processed potato
4 buyer has any obligations under an existing contract for processed potatoes that remain
5 outstanding at the time the processed potato buyer chooses to resume participation in the
6 fund, those obligations will not be covered by the fund. In addition, the processed potato
7 buyer must purchase a bond in an amount sufficient to cover any potential default on any
8 contracts entered into after resuming participation in the fund until current financial
9 information is provided to the Department and the Department releases the bond
10 requirement. Verification of a bond in a sufficient amount to cover any such contracts
11 must be provided to the Department prior to resuming participation. Once current
12 financials are provided to the Department, the Department must issue a decision within
13 60 days regarding any assessments and whether to release the bond requirement.

14 **(3) Merger of Participating and Nonparticipating Processed Potato Buyers or**
15 **Other Vegetable Contractors.** If a nonparticipating processed potato buyer merges with
16 a processed potato buyer or any other vegetable contractor who is a contributing
17 vegetable contractor, the merged entity will be a contributing vegetable contractor that
18 participates in the fund unless the merged entity meets all of the provisions in sub. (2)
19 and opts out of the fund.

1 **SECTION 4.** 126.57(1)(b)3 is created to read:

2 3. The vegetable contractor is a nonparticipating processed potato buyer.

3 **SECTION 5.** 126.58(1)(c)3 is created to read:

4 3. The vegetable contractor is a nonparticipating processed potato buyer.

5 **SECTION 6.** 126.61(1)(c)3 is created to read:

6 3. The vegetable contractor is a nonparticipating processed potato buyer.

7

8

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1813/2dn

RCT...:....
wj

Erin Napralla:

This redraft is based on the proposed language that you provided on April 29. I added ss. 126.59 (1) (d) and 126.71 (3) (a) 5. to eliminate conflict within ch. 126.

I used the term "processing potatoes" to be consistent with the term "processing vegetables" used in ch. 126.

The proposed definition for potato buyer included "producer agent." I deleted that because the definition of "vegetable contractor" in s. 126.55 (14) includes producer agents. More fundamentally, though, by definition producer agents do not purchase vegetables. Therefore, if the intent is to cover producer agents, the definition of "processing potato buyer" must be expanded to cover more than those who purchase potatoes. Also, I limited coverage of the draft to those who only buy potatoes, not potatoes and other processing vegetables.

The proposed language would require a buyer who opts out to pay a fee of "not more than \$500." The draft needs to indicate the specific amount of the fee or how the amount would be established. In s. 126.56 (4) (f), I provided that the fee is \$500 unless DATCP establishes a lower amount by rule. Please let me know if this should be changed.

The proposed language required a buyer who opts out to include a statement in each contract. Because the draft contemplates that some contracts are not in writing, I required that a signed copy of the statement be provided in case of an unwritten contract. See s. 126.595 (1) (e).

The proposed language required a buyer who wants to opt back into the program to obtain a bond. Please let me know if the draft should allow the buyer to use other forms of financial security. See current s. 126.61 (4).

I am not an expert on the Perishable Agricultural Commodities Act (PACA). Please ask someone from DATCP to verify that the brief description of PACA in the analysis is accurate.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us