Chapter 18. Potato Board.

Article 1. Potato Board Membership and Authority.

§ 3.2-1800. Definitions.
As used in this chapter, unless the context requires a different meaning:

"Approved seed potatoes" means disease-free potatoes and parts thereof that conform to the standards established by the Potato Board.

"Board" means the Potato Board.

"Handler" means any person who is a processor, dealer, shipper, or exporter who purchases potatoes from a grower, or who acts as the grower's agent, or any person who holds a produce dealer or commission merchant license from the Department. The term also means any producer who packs, processes, or otherwise performs the functions of a handler pursuant to the provisions of this chapter.

"Jurisdiction" means any locality where potatoes are produced according to the records of the Department.

"Potatoes" means all varieties of potatoes except sweet potatoes.

"Producer" means any person who, in a calendar year, grows a minimum of 40,000 pounds of potatoes in the Commonwealth.

"Seed potatoes" means potatoes and parts thereof intended for the propagation or production of commercial potatoes.


§ 3.2-1801. Potato Board; composition and appointment of members.
The Potato Board, established by the passage of a 1994 referendum held pursuant to Chapter 126 of the Acts of Assembly of 1982, is continued within the Department. The Potato Board shall be composed of seven members appointed by the Governor from nominations by grower organizations, the appointments to be subject to confirmation by the General Assembly. All members of the Potato Board shall be producers of potatoes. Each grower organization shall submit nominations for each available position before the expiration of the member's term for which the nomination is being provided. If said organizations fail to provide nominations, the Governor may appoint other nominees that meet the criteria provided by this section.


§ 3.2-1802. Repealed.

§ 3.2-1803. Potato Board meetings and quorum.
The Potato Board shall meet at least once each year prior to the beginning of the seed potato buying season, at the call of the chairman, and whenever the majority of the members so request. A majority of the members shall constitute a quorum.
§ 3.2-1804. Powers and duties of the Potato Board.
A. The Board shall have charge of the management and expenditures of the Virginia Potato Fund established in the state treasury.

B. The Board may expend funds to provide for programs of research, education, publicity, advertising, and other promotion; manage the fund so as to accumulate a reserve for contingencies; establish an office and employ such technical and professional assistants as may be required; contract for research, publicity, advertising and other promotional services; and take all actions as will assist in strengthening and promoting the best interest of producers of potatoes.

C. In carrying out the purposes of this chapter, the Board may cooperate with other state, regional, and national agricultural organizations in research, education, publicity, advertising, and other promotional activities.

D. The Board may establish an executive committee and charge it with those powers, duties, and functions as the Board deems proper.

E. The chairman of the Board shall make an annual report to the Board including a statement of the total receipts and disbursements for the year and shall file a copy of the report and the audit required by § 3.2-1810 with the Commissioner.

F. The Board shall adopt regulations to establish standards for seed potatoes and to carry out the provisions of this chapter and, at the recommendation of the chairman, request that the Commissioner, the Dean of the College of Agriculture and Life Sciences at Virginia Polytechnic Institute and State University, the Chairman of the Certified Seed Board, and the Director of the Eastern Shore Agricultural Research and Extension Center at Painter appoint representatives to advise the Board.


Article 2. Potato Referenda and Fund.

§ 3.2-1805. Referenda.
Upon a petition, or its own motion, or that of an interested person properly made, the Board may hold a referendum on the continuance of the tax. If a petition is not presented to the Board or the Board is not otherwise advised, the tax to support additional research and promotion of potatoes shall continue to be levied and collected as provided for in this article. The cost of conducting any referendum as prescribed in this article shall be paid from funds paid into the Virginia Potato Fund. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.


§ 3.2-1806. Management of referenda; Commissioner's duties; notice.
A. The Commissioner shall arrange for and manage any referendum conducted pursuant to this article.

B. The Commissioner shall, at least 60 days before the referendum is to be held, mail notice to the clerk of the circuit court in each locality where producers are located.

The clerk of the circuit court shall post the notice and the regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall give notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation in each locality where producers are located at least 60 days prior to the holding of any referendum pursuant to the provisions of this article. The notice shall contain the date, hours, voting places, and method of voting in the referendum, the amount of tax to be collected, the means by which the tax shall be collected, the general purposes for how the taxes will be used, and the regulations adopted by the Board hereunder.

C. The Commissioner, with the assistance of the petitioners, shall prepare and distribute in advance of the referendum all necessary ballots and supplies required for the referendum and shall under regulations adopted by the Board and with the assistance of the petitioners and the Extension Service arrange for the necessary polling places.

D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.


§ 3.2-1807. Question to be printed on ballots.
The question to be printed on the ballots used in a referendum pursuant to this article shall be as follows:

"Do you favor additional research, education, publicity, advertising, and other promotion of potatoes and the continuation of the levy of two cents ($0.02) per 100 pounds in accordance with the provisions of the Board law to support the same?

_____ Yes

_____ No."


§ 3.2-1808. Persons eligible to vote.
Each producer in the Commonwealth who produced 40,000 pounds of potatoes during the year next preceding the date of the referendum held pursuant to this article shall be eligible to vote in the referendum if he certifies to the required production. The certification shall be on forms approved by the Board. Any person meeting these requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in any other respect. Any person who is not an individual shall vote by its authorized representative.


§ 3.2-1809. Referenda results; action of Governor.
The Governor shall examine all matters relating to the referendum and whether a majority of the producers voting expressed a desire for additional research, education, publicity, advertising, and other means of promotion and continuing the levying of the tax to support them. If the Governor finds the referendum in order and that a majority of those voting are in opposition to the continuation of the levying of the tax on potatoes, he shall so proclaim and upon such proclamation the tax on potatoes shall be discontinued. If the Governor finds that a majority of
those voting are in favor of the continuation of the tax on potatoes, the Governor shall not so proclaim.

1982, c. 126, § 3.1-684.28; 2008, c. 860.

§ 3.2-1810. Virginia Potato Fund established.
There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Potato Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller.

All moneys levied and collected pursuant to this article shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this chapter.

Expenditures and disbursements from the Fund shall be made by the Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Board.

The Auditor of Public Accounts shall audit all the accounts of the Board as is provided for in § 30-133.


§ 3.2-1811. Collection and disposition of tax by handler; reports.
A. Every handler who purchases from a producer shall deduct, from payments made to the producer for any potatoes, a tax of two cents ($0.02) per 100 pounds of potatoes and shall remit the tax to the Commissioner on or before the 20th day of each month. The tax shall be paid to the Commissioner and shall be promptly paid into the state treasury to the credit of the Virginia Potato Fund.

B. Every handler shall complete a report consisting of a statement of the gross volume of potatoes on which the tax was levied that were packed, processed, or handled by the handler and shall file such report with the Commissioner together with the tax submitted pursuant to subsection A. The tax levied on potatoes shall be due by the handler on the same day that the report is due.

1982, c. 126, § 3.1-684.33; 2008, c. 860.

§ 3.2-1812. Collection of delinquent tax; civil action.
The tax imposed under the provisions of this article and unpaid on the date when due shall bear interest at a rate determined in accordance with § 58.1-1812, from and after the due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the Board and the person adjudged in default shall pay the costs of the proceeding. The Attorney General, at the request of the Commissioner, shall institute an appropriate action for the collection of the amount of any tax past due under this article, including interest thereon.


§ 3.2-1813. Records to be kept by handlers.
Every handler shall keep a complete record of the potatoes subject to the provisions of this article.
that have been packed, processed, or handled by him for a period of time not less than three years from the time the potatoes were packed, processed, or handled. The records shall be open to the inspection of the Commissioner and shall be established and maintained as required by the Commissioner.


§ 3.2-1814. Falsification of records; misdemeanor.
It is a Class 1 misdemeanor:

1. For any handler knowingly to report falsely to the Commissioner the quantity of potatoes processed or handled by him.

2. For any handler to fail to keep a complete record of the potatoes processed or handled by him.

3. For any handler to preserve the records for a period of time less than three years from the time such potatoes are processed or handled.

1982, c. 126, § 3.1-684.38; 2008, c. 860.

§ 3.2-1815. Licenses.
The Commissioner shall revoke the produce dealer or commission merchant license of any handler who fails to report, pay the tax, or perform any other duty required of him pursuant to the provisions of this article.


Article 3. Seed Potato Standards.

§ 3.2-1816. Standards required of seed potatoes.
Any seed potatoes sold, offered for sale, advertised, or shipped in the Commonwealth shall conform to the standards of approved seed potatoes.


§ 3.2-1817. Exempted sales.
Nothing in this article shall prohibit the sale of seed potatoes sold by the grower to a planter who has personal knowledge of the conditions under which the seed potatoes were grown.

Code 1950, § 3-228.10; 1950, p. 1030; 1958, c. 94; 1966, c. 702, § 3.1-294; 2008, c. 860, § 3.2-4106; 2012, cc. 803, 835.

§ 3.2-1818. Inspection of potatoes; right of entry; fees; records required.
A. The Commissioner shall inspect any seed potatoes. The Commissioner may enter any place of business, warehouse, common carrier, or other place where seed potatoes may be found for the purpose of an inspection. It is unlawful for any person to interfere with such inspections.

B. The fee for inspection shall not exceed the lesser of the current rate for federal-state inspection of table stock potatoes or the reasonable cost of inspection. The Commissioner shall abate any fee to the extent funds are appropriated from the general fund for seed potato inspection.
C. Bills of lading, invoices, or other records accompanying any shipment of approved seed potatoes shall give the name of the consignee, consignor, and custodian, if any. The Commissioner shall have the right to inspect such records.


§ 3.2-1819. "Stop sale" order; seizure; condemnation.
A. When the Commissioner finds seed potatoes sold or offered for sale in violation of this article or any regulation hereunder, he may issue a "stop sale" order to the owner or custodian. It is unlawful for anyone to sell any seed potatoes under a "stop sale" order until the Commissioner has evidence that such potatoes will (i) not be used for propagation purposes or (ii) be used outside the Commonwealth. When the Commissioner has such evidence, he shall issue a notice releasing potatoes from the "stop sale" order.

B. Any shipment of seed potatoes in violation of this article shall be subject to seizure on complaint of the Commissioner to the appropriate court in the county or city where the seed potatoes are located. If the court finds the seed potatoes to be in violation and orders condemnation, the owner shall be permitted to post a bond for double the amount of the value of the seed potatoes. Then the owner shall have 10 days from the date of the order of condemnation to denature, destroy, or process the potatoes for other than propagation purposes. If the owner fails to post the bond required or act within the time limit set forth in this subsection, then the court shall order that the seed potatoes be denatured, destroyed, or processed for other than propagation purposes.


§ 3.2-1820. Commissioner may permit sale of substandard potatoes and experimental varieties.
The Commissioner may permit the sale of seed potatoes that do not meet the standards of approved seed potatoes when he deems necessary. The Commissioner may permit the sale of experimental varieties of potatoes for propagation purposes. He may delegate the authority granted in this section to the Board.


§ 3.2-1821. Notice; hearings.
A. If the Commissioner finds a violation of this article or of any regulation adopted pursuant to this article, he shall notify the custodian of the seed potatoes in writing, designating a time and place for a hearing, and send a copy of the notice to the owner or shipper. Any party notified shall be given an opportunity to be heard under the regulations adopted pursuant to this article. If it appears after proper hearing that any of the provisions of this article have been violated, the Commissioner may certify the facts to the attorney for the Commonwealth in the county or city where the violation occurred and furnish him with a copy of the results of the inspection duly authenticated and under the oath of the inspector.

B. It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement of this article, and to whom any violation is reported, to commence proceedings in the appropriate court.
§ 3.2-1822. Penalties.
Any person violating any provision of this article or any regulation adopted pursuant to this article is guilty of a Class 1 misdemeanor.