

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Reps. Rhead, Green, Middleton, Gernaat and DeLange

# ENROLLED HOUSE BILL No. 5362

AN ACT to amend sections 2, 3, 5, 7, 8, 9, 10, 15, 21, and 22 of Act No. 232 of the Public Acts of 1965, entitled as amended "An act relating to the marketing of agricultural commodities; to provide for marketing programs, agreements, referendums by producers, assessments on producers, and commodity committees; and to prescribe the functions of the department of agriculture relative thereto including powers of enforcement of this act; and to prescribe penalties," section 7 as amended by Act No. 145 of the Public Acts of 1992, being sections 290.652, 290.653, 290.655, 290.657, 290.658, 290.659, 290.660, 290.665, 290.671, and 290.672 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 2, 3, 5, 7, 8, 9, 10, 15, 21, and 22 of Act No. 232 of the Public Acts of 1965, section 7 as amended by Act No. 145 of the Public Acts of 1992, being sections 290.652, 290.653, 290.655, 290.657, 290.658, 290.659, 290.660, 290.665, 290.671, and 290.672 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 2. As used in this act:

(a) "Agricultural commodity" means all agricultural, aquacultural, silvicultural, horticultural, floricultural, or viticultural products, livestock or livestock products, poultry or poultry 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 or ingredient used in the production of an agricultural commodity that is assessed by a specific marketing agreement.

(c) "Producer" means a person engaged in the business of producing, or causing to be produced for any market, an agricultural commodity 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 in any 1 growing and marketing season within the last 3 years.

(d) "Handler" means a person engaged in the operation of packing, 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.

(e) "Processor" means a person engaged in canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or otherwise preserving or changing the form of an agricultural commodity for the purpose of marketing it.

(f) "Distributor" means a person engaged in selling, offering for sale, marketing, or distributing an agricultural commodity which he or she has purchased or acquired from a producer or which that 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) "Department" means the state department of agriculture.

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

(i) "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.

(j) "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 during a specified period and which the director determines would be in the public interest.

(k) "Committee" means the commodity committee or advisory board established under a marketing program.

Sec. 3. (1) Any marketing agreement or marketing program issued pursuant to 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 supplemental research programs designed to improve the market acceptability of the specific agricultural commodity and contribute to the effectiveness of the program.

(d) Provisions for development and dissemination of market information.

(e) Provision for contracting with organizations, agencies or individuals for carrying out any of the activities described in this section.

(f) Provisions for either or both of the following:

(i) Establishing standards for quality, condition, or size for agricultural commodities sold as fresh or seed products for resale or processing and standards for pack or container, or both, for agricultural commodities sold for use as fresh products.

(ii) Inspection and grading of the fresh or seed agricultural commodity in accordance with the grading standards so established.

(g) Provision for determining the existence and extent of any surplus in any marketing period for any agricultural commodity, or of any grade, size, or quality of any agricultural commodity, and providing for handling and equitably sharing the cost of such surplus handling among the producers of the agricultural commodity. 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.

(h) Provision for payment for all usable products purchased from producers according to established grades.

(i) Provision for exemption of nonparticipating producers.

(j) 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 marketing agreement or marketing program that allows the committee to contract with organizations, agencies, or individuals in order to carry out the activities described in this section or allows the committee to award grants may provide in the marketing agreement or marketing program that the marketing program or agreement be allowed to participate in the earnings of any royalties derived from the results of those activities. However, the marketing program or agreement shall provide that the royalties be utilized only in the manner provided for in that marketing program or agreement.

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)(i). Subject to approval by the director, assessments may also be collected from both producers and distributors of a marketable agricultural commodity produced in this state if the director determines that the unique nature of the agricultural commodity or industry structure warrants the assessment of both the producer and the distributors of the agricultural commodity.

(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 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 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, 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) 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 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, 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.

(e) 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.

(f) 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.

(g) The director shall assess against the producers of the agricultural commodity all outstanding loans, including interest, approved under subsection (f) if the marketing program is inactive or is terminated.

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 15.

(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.

(3) A member of a committee is entitled to reimbursement for actual expenses and a per diem payment not to exceed \$75.00 per day while attending meetings of the committee or while engaged in the performance of official responsibilities delegated by the committee.

(4) 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 administrative 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 assessing and collecting the necessary funds.
- (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.

(5) 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, Act No. 267 of the Public Acts of 1976, 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.

(6) 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, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. Except for information regarding penalties levied under this act, information relating to specific assessments to a specific person under a marketing program 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.

Sec. 8. (1) Money collected pursuant to this act, whether collected from assessments or earned from royalties derived from any activities performed by another organization, agency, or individual and conducted pursuant to a marketing program, is not state money and shall be deposited in a bank or other depository in this state. The money shall be allocated to the marketing program under which it is collected and shall be disbursed only for the necessary expenses incurred with respect to each such separate marketing program, in accordance with the rules established under the marketing program, and for grants authorized under a marketing agreement or marketing program.

(2) All expenditures shall be audited by the state auditor general or by a certified public accountant at least annually and within 30 days after completion of the audit, the state auditor general or 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.

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.

(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 that may be collected after termination of a marketing program, that money shall be allocated to any institution of higher education engaged in agricultural research, as determined by the director.

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 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 or processor received such agricultural commodity 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.

(d) For purposes of this section, producers may include both producers and distributors of a marketable agricultural commodity produced in this state subject to the requirements of section 5.

Sec. 15. (1) A marketing program proposed for adoption pursuant to this act shall include definition of terms, purpose of the marketing program, the maximum rate of assessment, method of collection, nominating procedure, qualifications, representation and size of the committee, and other necessary provisions.

(2) A marketing program proposed for adoption pursuant to this act may provide for the awarding of grants or the participation in the earnings by the marketing program or marketing agreement of any royalties derived from any activities performed by another organization, agency, or individual and conducted pursuant to the marketing program or marketing agreement. Any money earned from such royalties shall be spent according to the marketing agreement or marketing program.

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 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 periodic producer referendum.

(c) The marketing program involving the agricultural commodity is entirely financed by that federal commodity checkoff program.

Sec. 22. If the assessment is not paid by the date specified by a committee as permitted under section 5(e), the unpaid assessment shall be subject to an interest charge of 1% per month.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.