

**REPRINT**

**SUBSTITUTE FOR**

**HOUSE BILL NO. 6256**

(As passed the House, November 12, 2002)

(As amended by the Senate, December 11, 2002)

A bill to amend 1965 PA 232, entitled "Agricultural commodities marketing act," by amending the title and sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 17, 19, 21, 22, 23, and 24 (MCL 290.652, 290.653, 290.654, 290.655, 290.657, 290.658, 290.659, 290.660, 290.661, 290.667, 290.669, 290.671, 290.672, 290.673, and 290.674), sections 2, 3, 5, 7, 9, 10, 21, and 22 as amended by 1996 PA 216, section 8 as amended by 1997 PA 20, and sections 19, 23, and 24 as amended by 1980 PA 196; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1

TITLE

2

An act relating to the marketing of agricultural commodities

3

OR AGRICULTURAL COMMODITY INPUTS; to provide for marketing AND

4

RESEARCH programs, agreements, referendums by producers,

5

assessments on producers, and commodity committees; and to

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1 prescribe ~~the~~ CERTAIN functions of the department of  
2 agriculture relative thereto including powers of enforcement of  
3 this act; and to prescribe REMEDIES AND penalties.

4 Sec. 2. As used in this act:

5 (a) "Agricultural commodity" means all agricultural, aqua-  
6 cultural, silvicultural, horticultural, floricultural, or viti-  
7 cultural products, livestock or livestock products, ~~poultry or~~  
8 ~~poultry products,~~ Christmas trees, bees, maple syrup, honey,  
9 commercial fish or fish products, and seeds produced in this  
10 state, either in their natural state or as processed by the  
11 producer of the commodity. The kinds, types, and subtypes of  
12 products to be classed together as an agricultural commodity for  
13 the purposes of this act shall be determined on the basis of  
14 common usage and practice.

15 (b) "Agricultural commodity input" means an item ~~or~~  
16 ~~ingredient~~ used in the production, PROCESSING, OR PACKAGING of  
17 an agricultural commodity that is assessed by a specific market-  
18 ing agreement. AGRICULTURAL COMMODITY INPUT DOES NOT INCLUDE  
19 FEED, FERTILIZER, AND PESTICIDES.

20 ~~(c) "Producer" means a person engaged in the business of~~  
21 ~~producing, or causing to be produced for any market, an agricul-~~  
22 ~~tural commodity in quantity beyond that person's own family use,~~  
23 ~~and having a value at first point of sale of more than \$800.00 or~~  
24 ~~of an amount as otherwise expressly provided for in a marketing~~  
25 ~~program for the agricultural commodity in any 1 growing and mar-~~  
26 ~~keting season within the last 3 years.~~

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1       ~~(d) "Handler" means a person engaged in the operation of~~  
2 ~~packing, grading, selling, offering for sale or marketing a~~  
3 ~~marketable agricultural commodity or an agricultural commodity~~  
4 ~~input in commercial quantities as defined in a marketing program,~~  
5 ~~who as owner, agent, or otherwise, ships or causes an agricul-~~  
6 ~~tural commodity or agricultural commodity input to be shipped.~~

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

11       ~~(f) "Distributor" means a person engaged in selling, offer-~~  
12 ~~ing for sale, marketing, or distributing an agricultural commod-~~  
13 ~~ity which he or she has purchased or acquired from a producer or~~  
14 ~~which that person is marketing on behalf of a producer, whether~~  
15 ~~as owner, agent, employee, broker, or otherwise. Distributor~~  
16 ~~does not include a retailer of an agricultural commodity except~~  
17 ~~for either of the following:~~

18       ~~(i) A retailer who purchases or acquires from or handles on~~  
19 ~~behalf of a producer an agricultural commodity not previously~~  
20 ~~subjected to regulations by the marketing program covering the~~  
21 ~~agricultural commodity.~~

22       ~~(ii) A retailer specifically identified by a marketing pro-~~  
23 ~~gram that is subject to an assessment.~~

24       ~~(g) "Department" means the state department of agriculture.~~

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

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1       ~~(i) "Marketing agreement" means an agreement entered into,~~  
2 ~~with the director, by producers, distributors, processors, or~~  
3 ~~handlers pursuant to this act and binding only on those signing~~  
4 ~~the agreement.~~

5       ~~(j) "Marketing program" means a program established by order~~  
6 ~~of the director pursuant to this act prescribing rules and regu=~~  
7 ~~lations governing the marketing for processing, distributing,~~  
8 ~~selling, or handling an agricultural commodity produced in this~~  
9 ~~state during a specified period and which the director determines~~  
10 ~~would be in the public interest.~~

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

13       (C) "COMMITTEE" MEANS THE COMMODITY COMMITTEE OR ADVISORY  
14 BOARD ESTABLISHED UNDER A MARKETING PROGRAM.

15       (D) "DEPARTMENT" MEANS THE STATE DEPARTMENT OF AGRICULTURE.

16       (E) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF  
17 AGRICULTURE.

18       (F) "DISTRIBUTOR" MEANS A PERSON ENGAGED IN SELLING, OFFER-  
19 ING FOR SALE, MARKETING, OR DISTRIBUTING AN AGRICULTURAL COMMOD-  
20 ITY OR AGRICULTURAL COMMODITY INPUT THAT HE OR SHE HAS PURCHASED  
21 OR ACQUIRED FROM A PRODUCER OR THAT THE PERSON IS MARKETING ON  
22 BEHALF OF A PRODUCER, WHETHER AS OWNER, AGENT, EMPLOYEE, BROKER,  
23 OR OTHERWISE. DISTRIBUTOR DOES NOT INCLUDE A RETAILER OF AN  
24 AGRICULTURAL COMMODITY EXCEPT FOR EITHER OF THE FOLLOWING:

25       (i) A RETAILER WHO PURCHASES OR ACQUIRES FROM OR HANDLES ON  
26 BEHALF OF A PRODUCER AN AGRICULTURAL COMMODITY NOT PREVIOUSLY

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1 SUBJECTED TO REGULATIONS BY THE MARKETING PROGRAM COVERING THE  
2 AGRICULTURAL COMMODITY.

3 (ii) A RETAILER SPECIFICALLY IDENTIFIED BY A MARKETING PRO-  
4 GRAM THAT IS SUBJECT TO AN ASSESSMENT.

5 (G) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY  
6 CHARTERED BANK, MEMBER OF THE FARM CREDIT SYSTEM, SAVINGS AND  
7 LOAN ASSOCIATION, SAVINGS BANK, AND CREDIT UNION, WHOSE DEPOSITS  
8 ARE INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT AND THAT  
9 MAINTAINS A PRINCIPAL OR BRANCH OFFICE LOCATED IN THIS STATE  
10 UNDER THE LAWS OF THIS STATE OR THE UNITED STATES.

11 (H) "HANDLER" MEANS A PERSON WHO TAKES TITLE TO AND IS  
12 ENGAGED IN THE OPERATION OF PACKING, CLEANING, DRYING, PACKAGING,  
13 SIZING, HAULING, GRADING, SELLING, OFFERING FOR SALE, OR MARKET-  
14 ING A MARKETABLE AGRICULTURAL COMMODITY OR AN AGRICULTURAL COM-  
15 MODITY INPUT IN COMMERCIAL QUANTITIES AS DEFINED IN A MARKETING  
16 PROGRAM, WHO AS OWNER, AGENT, OR OTHERWISE, SHIPS OR CAUSES AN  
17 AGRICULTURAL COMMODITY OR AGRICULTURAL COMMODITY INPUT TO BE  
18 SHIPPED.

19 (I) "LIVESTOCK" MEANS THAT TERM AS DEFINED IN SECTION 5 OF  
20 THE ANIMAL INDUSTRY ACT, 1988 PA 466, MCL 287.705.

21 (J) "MARKETING AGREEMENT" MEANS AN AGREEMENT ENTERED INTO,  
22 WITH THE DIRECTOR, BY PRODUCERS, DISTRIBUTORS, PROCESSORS, OR  
23 HANDLERS PURSUANT TO THIS ACT AND BINDING ONLY ON THOSE SIGNING  
24 THE AGREEMENT.

25 (K) "MARKETING PROGRAM" MEANS A PROGRAM ESTABLISHED BY ORDER  
26 OF THE DIRECTOR PURSUANT TO THIS ACT PRESCRIBING RULES AND  
27 REGULATIONS GOVERNING THE MARKETING FOR PROCESSING, DISTRIBUTING,

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1 SELLING, OR HANDLING AN AGRICULTURAL COMMODITY PRODUCED IN THIS  
2 STATE OR AGRICULTURAL COMMODITY INPUT DURING A SPECIFIED PERIOD  
3 AND WHICH THE DIRECTOR DETERMINES WOULD BE IN THE PUBLIC  
4 INTEREST.

5 (I) "PROCESSOR" MEANS A PERSON ENGAGED IN CANNING, FREEZING,  
6 DEHYDRATING, DRYING, FERMENTING, DISTILLING, EXTRACTING, PRESERV-  
7 ING, GRINDING, CRUSHING, MILLING, OR OTHERWISE PRESERVING OR  
8 CHANGING THE FORM OF AN AGRICULTURAL COMMODITY FOR THE PURPOSE OF  
9 MARKETING IT.

10 (M) "PRODUCER" MEANS A PERSON ENGAGED IN THE BUSINESS OF  
11 PRODUCING, OR CAUSING TO BE PRODUCED FOR ANY MARKET, AN AGRICUL-  
12 TURAL COMMODITY OR AGRICULTURAL COMMODITY INPUT IN QUANTITY  
13 BEYOND THAT PERSON'S OWN FAMILY USE, AND HAVING A VALUE AT FIRST  
14 POINT OF SALE OF MORE THAN \$800.00 OR OF AN AMOUNT AS OTHERWISE  
15 EXPRESSLY PROVIDED FOR IN A MARKETING PROGRAM FOR THE AGRICUL-  
16 TURAL COMMODITY OR AGRICULTURAL COMMODITY INPUT IN ANY 1 GROWING  
17 AND MARKETING SEASON WITHIN THE LAST 3 YEARS.

18 Sec. 3. (1) Any marketing agreement or marketing program  
19 ~~issued pursuant to~~ AUTHORIZED UNDER this act may contain 1 or  
20 more of the following:

21 (a) Provisions for establishing advertising and promotional  
22 programs.

23 (b) Provisions for establishing market development  
24 programs.

25 (c) Provisions for establishing and supporting  
26 ~~supplemental~~ research ~~programs~~ designed to improve ~~the~~  
27 ~~market acceptability of the specific~~ OR DEVELOP NEW agricultural

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1 ~~commodity~~ COMMODITIES OR AGRICULTURAL COMMODITY INPUTS and  
2 contribute to the effectiveness of the program.

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

5 (E) PROVISION FOR ACCEPTING GRANTS, ROYALTIES, LICENSE FEES,  
6 INTEREST, GIFTS, INCOME, OR OTHER ITEMS OF VALUE THAT ENHANCE THE  
7 PURPOSE OF THE MARKETING PROGRAM OR MARKETING AGREEMENT.

8 (F) ~~(e)~~ Provision for contracting with organizations,  
9 agencies, or individuals ~~for carrying~~ TO CARRY out ~~any of~~ the  
10 activities described in this ~~section~~ ACT.

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

12 (i) Establishing standards for quality, PURITY, condition,  
13 ~~or~~ size, OR OTHER ACCEPTED STANDARDS FOR THAT INDUSTRY for  
14 agricultural commodities OR AGRICULTURAL COMMODITY INPUTS sold as  
15 fresh, ~~or~~ seed, ~~products for resale or processing~~ OR  
16 PROCESSED and standards for pack or container, or both, for agri-  
17 cultural commodities OR AGRICULTURAL COMMODITY INPUTS sold for  
18 use as fresh, SEED, OR PROCESSED products.

19 (ii) Inspection and grading of the fresh, ~~or~~ seed, OR  
20 PROCESSED agricultural commodity OR AGRICULTURAL COMMODITY INPUT  
21 in accordance with the grading standards so established.

22 (H) ~~(g)~~ Provision for determining the existence and extent  
23 of any surplus in any marketing period for any agricultural com-  
24 modity OR AGRICULTURAL COMMODITY INPUT, or of any grade, size, or  
25 quality of any agricultural commodity OR AGRICULTURAL COMMODITY  
26 INPUT, and providing for handling and equitably sharing the cost  
27 of such surplus handling among the producers of the agricultural

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1 commodity OR AGRICULTURAL COMMODITY INPUT. Before provisions  
2 under this subdivision are included in any marketing program,  
3 particular attention shall be given to determining that Michigan  
4 producers affected by the provisions produce a sufficient propor-  
5 tion of the product covered by the provisions for the program to  
6 be effective in the particular market toward which the provisions  
7 would be applicable.

8 (I) ~~(h)~~ Provision for payment OF ASSESSMENTS for all  
9 usable products purchased from producers according to established  
10 grades.

11 (J) PROVISION FOR PAYMENT OF ASSESSMENTS ON AGRICULTURAL  
12 COMMODITY INPUTS.

13 (K) ~~(i)~~ Provision for exemption of nonparticipating  
14 producers.

15 (l) ~~(j)~~ Provision for the awarding of grants from money  
16 collected pursuant to this act. The grants may be awarded to  
17 organizations, agencies, or individuals with whom the committee  
18 has contracted for activities described in this section.

19 (2) A PROPOSED MARKETING PROGRAM SHALL INCLUDE DEFINITION OF  
20 TERMS, PURPOSE, MAXIMUM RATE OF AN ASSESSMENT, METHOD OF COLLEC-  
21 TION OF THE ASSESSMENT, AND NOMINATING PROCEDURES, QUALIFICA-  
22 TIONS, REPRESENTATION, AND SIZE OF THE COMMITTEE AS WELL AS OTHER  
23 PROVISIONS CONSIDERED NECESSARY BY A COMMITTEE. THIS SUBSECTION  
24 DOES NOT INVALIDATE ANY MARKETING PROGRAMS ESTABLISHED UNDER THIS  
25 ACT BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
26 THIS SENTENCE THAT ARE IN SUBSTANTIAL COMPLIANCE WITH THIS ACT AS  
27 DETERMINED BY THE DIRECTOR.



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1           (3) ~~(2)~~ A marketing agreement or marketing program that  
2 allows the committee to contract with organizations, agencies,  
3 GOVERNMENTAL ENTITIES, INSTITUTIONS OF HIGHER EDUCATION, ~~or~~  
4 individuals, OR OTHER LEGAL ENTITIES in order to carry out the  
5 activities described in this ~~section~~ ACT or allows the commit-  
6 tee to award grants may provide in the marketing agreement or  
7 marketing program that the marketing program or MARKETING agree-  
8 ment be allowed to participate in the INCOME OR earnings of any  
9 royalties OR LICENSE FEES derived from the results of those  
10 activities. However, the marketing program or MARKETING agree-  
11 ment shall provide that the royalties OR LICENSE FEES be utilized  
12 only in the manner provided for in that marketing program or  
13 MARKETING agreement.

14           Sec. 4. For the purpose of this act, all inspection and  
15 grading shall be performed by or under the supervision of  
16 ~~competently~~ trained inspectors approved by the director or by  
17 inspectors supplied under cooperative agreement between the  
18 department and the United States department of agriculture.

19           Sec. 5. (a) Assessments shall be collected from each  
20 producer of a marketable agricultural commodity produced in this  
21 state and directly affected by a marketing program issued for the  
22 agricultural commodity to defray all program and administrative  
23 costs except for nonparticipating producers as provided for under  
24 section ~~3(1)(i)~~ 3(1)(K). ASSESSMENTS SHALL BE COLLECTED ON  
25 AGRICULTURAL COMMODITY INPUTS IN THIS STATE DIRECTLY AFFECTED BY  
26 A MARKETING PROGRAM ESTABLISHED FOR THE AGRICULTURAL COMMODITY  
27 INPUT IN ORDER TO DEFRAY ALL MARKETING PROGRAM AND ADMINISTRATIVE

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1 COSTS. Subject to approval by the director, assessments may also  
2 be collected from ~~both~~ EITHER producers ~~and~~ OR distributors,  
3 OR BOTH, AND MANUFACTURERS, of a marketable agricultural commod-  
4 ity produced in this state OR AN AGRICULTURAL COMMODITY INPUT  
5 USED IN THIS STATE if the director determines that the unique  
6 nature of the agricultural commodity OR AGRICULTURAL COMMODITY  
7 INPUT or THE industry structure warrants the assessment of both  
8 the producer and the distributors of the agricultural commodity  
9 OR AGRICULTURAL COMMODITY INPUT.

10 (b) Each marketing program shall specify the maximum assess-  
11 ment on an agricultural commodity or an agricultural commodity  
12 input and may provide for any other assessment mechanism as  
13 approved by the director to be collected to cover program and  
14 administrative costs.

15 (c) Pursuant to the marketing program and for convenience,  
16 the processors, distributors, or handlers of the agricultural  
17 commodity or agricultural commodity input may be required to col-  
18 lect and remit producer assessments TO THE COMMITTEE at no cost  
19 to the marketing program unless the marketing program expressly  
20 provides for the payment of a reasonable fee for making the  
21 deduction and remittance.

22 In the case of a marketing program that provides for the  
23 imposition of an assessment, the processors, distributors, or  
24 handlers dealing with the producer shall collect the assessment  
25 from the producer by deducting the assessment from the gross  
26 amount owing to the producer and shall remit the assessment AND  
27 DATA to the committee within a reasonable time period as

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1 established by the committee. A processor, distributor, or  
2 handler who fails to deduct or remit the assessment is liable to  
3 the committee for any assessments not deducted or remitted. If a  
4 processor, distributor, or handler is not involved at the first  
5 point of sale of an agricultural commodity or agricultural com-  
6 modity input, OR IS NOT WITHIN THIS STATE AND THE ASSESSMENT IS  
7 NOT DEDUCTED AND REMITTED, the producer shall remit the assess-  
8 ments to the committee on all sales of the agricultural commodity  
9 or agricultural commodity input, subject to a marketing program  
10 and within a time period specified by the committee.

11 (D) ALL ASSESSMENTS DEDUCTED OR COLLECTED AND HELD BY A PRO-  
12 CESSOR, DISTRIBUTOR, OR HANDLER FOR OVER 92 DAYS SHALL BE DEPOS-  
13 ITED IN A SEPARATE INTEREST BEARING ESCROW ACCOUNT HELD JOINTLY  
14 WITH THE MARKETING PROGRAM COMMITTEE AND NOT COMMINGLED WITH  
15 OTHER FUNDS. INTEREST ACCRUED IN THE ESCROW ACCOUNT SHALL BE  
16 FORWARDED TO THE COMMITTEE.

17 (E) ALL ASSESSMENTS COLLECTED OR DEDUCTED SHALL BE CONSID-  
18 ERED TRUST FUNDS AND BE REMITTED QUARTERLY OR MORE FREQUENTLY IF  
19 REQUIRED BY THE MARKETING PROGRAM TO THE APPROPRIATE COMMITTEE.

20 (F) ~~(d)~~ A committee may file a written complaint with the  
21 director documenting that a processor, distributor, handler, or  
22 producer has failed to deduct or remit any assessment due to the  
23 committee pursuant to a marketing program. Upon receipt of such  
24 a complaint, the director shall conduct an investigation of the  
25 allegations. If, after investigation, the director finds that  
26 the processor, distributor, handler, or producer has failed to  
27 deduct or remit an assessment to the committee, the director

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1 shall request BY CERTIFIED MAIL the processor, distributor,  
2 handler, or producer to remit the assessment within 10 days after  
3 the director determines that a deduction or remittance was not  
4 made. In the case of the failure to deduct an assessment, the  
5 director shall compute the amount that reasonably should have  
6 been deducted and impose an assessment in that amount. If the  
7 assessment is not remitted within 30 days after the request OR IS  
8 NOT IN COMPLIANCE WITH A WRITTEN AGREEMENT FOR FULL PAYMENT, the  
9 director may file an action in a court of competent jurisdiction  
10 to collect the assessment. Venue in such an action is the place  
11 where the processor, distributor, handler, or producer has its  
12 primary place of business. In any action to recover an assess-  
13 ment under this subsection, if the director prevails, the court  
14 shall award to the director all costs and expenses in bringing  
15 the action, including, but not limited to, reasonable and actual  
16 attorney fees, court costs, and audit expenses. If the director  
17 does not prevail, he or she shall charge the committee for rea-  
18 sonable and actual attorney fees, court costs, and expenses  
19 incurred in bringing about the action.

20 (G) ~~(e)~~ Each committee shall specify the date the assess-  
21 ment is due in the account of the marketing program on that  
22 production. Producers, processors, distributors, or handlers of  
23 the affected agricultural commodity or agricultural commodity  
24 input shall be given reasonable notice of the due date.

25 (H) ~~(f)~~ A committee established pursuant to this act has  
26 the ability to borrow money in anticipation of the receipt of  
27 assessments if the following conditions are met:

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1           (i) The loan will not be requested or authorized, or will  
2 not mature, within 90 days before a resubmittal or termination  
3 referendum for the marketing program.

4           (ii) The amount of the loan does not exceed 50% of the  
5 annual average assessment revenue during the previous 3 years.  
6 In the case of a marketing program that has been in existence for  
7 less than 3 years, the loan does not exceed 25% of the projected  
8 annual assessment revenue.

9           (iii) The loan repayment period does not exceed the life of  
10 the marketing program.

11           (iv) The loan has the prior written consent of the  
12 director. The director may request an audit of the committee by  
13 the auditor general before approving the loan.

14           (I) ~~(g)~~ The director shall assess against the AGRICULTURAL  
15 COMMODITY INPUT OR THE producers of the agricultural commodity  
16 all outstanding loans, including interest, approved under subsec-  
17 tion ~~(f)~~ (H) if the marketing program is inactive or is  
18 terminated.

19           Sec. 7. (1) A marketing program shall provide for the  
20 establishment of a committee to consist of an odd number of mem-  
21 bers which shall be not less than 5 and not more than ~~15~~ 13.

22           (2) The members of the committee shall be appointed by the  
23 governor with the advice and consent of the senate from nomina-  
24 tions received from the producers and handlers or processors of  
25 the agricultural commodity or agricultural commodity input for  
26 which the marketing program is established. Nominating  
27 procedures, qualifications, representation, term of office, and

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1 size of the committee shall be prescribed in the marketing  
2 program for which the committee is appointed. Each committee  
3 shall be composed of producers and handlers or processors who are  
4 directly affected by the marketing program in the proportion of  
5 representation as prescribed by the program. THE TERM OF OFFICE  
6 OF A COMMITTEE MEMBER IS 3 YEARS OR UNTIL SUCH TIME AS HIS OR HER  
7 SUCCESSOR IS APPOINTED AND QUALIFIED.

8 (3) THE DIRECTOR OR HIS OR HER REPRESENTATIVE SHALL SERVE AS  
9 A NONVOTING EX OFFICIO MEMBER. ADDITIONAL NONVOTING EX OFFICIO  
10 MEMBERS MAY SERVE IF APPROVED FOR IN A SPECIFIC MARKETING  
11 PROGRAM.

12 (4) A COMMITTEE, WITH THE ADVICE AND CONSENT OF THE DIRECTOR  
13 AND THE COMMISSION OF AGRICULTURE, MAY REAPPORTION EITHER THE  
14 NUMBER OF COMMITTEE MEMBERS OR MEMBER DISTRICTS, OR BOTH.  
15 REAPPORTIONMENT OF THE DISTRICTS SHALL BE ON THE BASIS OF PRODUC-  
16 TION OR INDUSTRY REPRESENTATION. THE REAPPORTIONMENT MAY BE COM-  
17 MENCED 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT  
18 THAT ADDED THIS SUBSECTION. REAPPORTIONMENT OF EITHER MEMBERS OR  
19 DISTRICTS SHALL NOT OCCUR MORE OFTEN THAN TWICE IN ANY 5-YEAR  
20 PERIOD AND SHALL NOT OCCUR WITHIN 6 MONTHS BEFORE A REFERENDUM.

21 (5) AFTER THE REAPPORTIONMENT DESCRIBED IN SUBSECTION (4),  
22 IF THE RESIDENCE OF A MEMBER OF THE COMMITTEE FALLS OUTSIDE OF  
23 THE DISTRICT FOR WHICH HE OR SHE SERVES ON THE COMMITTEE AND  
24 FALLS WITHIN THE DISTRICT FOR WHICH ANOTHER MEMBER SERVES ON THE  
25 COMMITTEE, THEN BOTH MEMBERS SHALL CONTINUE TO SERVE ON THE COM-  
26 MITTEE FOR A TERM EQUAL TO THE REMAINING TERM OF THE MEMBER WHO  
27 SERVED FOR THE LONGEST PERIOD OF TIME. AFTER THE REAPPORTIONMENT

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1 DESCRIBED IN SUBSECTION (4), IF A DISTRICT IS CREATED IN WHICH NO  
2 MEMBER SERVING ON THE COMMITTEE RESIDES, THEN A MEMBER SHALL BE  
3 SELECTED IN THE MANNER AS PRESCRIBED IN EACH PROGRAM. AFTER A  
4 REAPPORTIONMENT OR REDISTRICTING, A COMMITTEE MAY TEMPORARILY  
5 HAVE MORE MEMBERS THAN PRESCRIBED IN THE MARKETING PROGRAM UNTIL  
6 THE EXPIRATION OF THE TERM OF THE LONGEST SERVING MEMBER FROM  
7 THAT DISTRICT.

8 (6) ~~(3)~~ A member of a committee is entitled to reimburse-  
9 ment for actual expenses and a per diem payment TO BE SET BY THE  
10 COMMITTEE not to exceed ~~\$75.00 per day~~ THE COMMISSION OF AGRI-  
11 CULTURE RATE while attending meetings of the committee or while  
12 engaged in the performance of official responsibilities delegated  
13 by the committee.

14 (7) ~~(4)~~ The duties and responsibilities of a committee  
15 shall be prescribed in the order establishing the marketing pro-  
16 gram and to the extent applicable shall include the following  
17 duties and responsibilities:

18 (a) Developing ~~administrative~~ procedures relating to the  
19 marketing program.

20 (b) Recommending amendments to the marketing program as are  
21 considered advisable.

22 (c) Preparing the estimated budget required for the proper  
23 operation of the marketing program.

24 (d) Developing methods for ~~assessing and~~ collecting AND  
25 AUDITING the ~~necessary funds~~ ASSESSMENTS.

26 (e) Collecting and assembling information and data necessary  
27 for proper administration of the marketing program.

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1 (f) Performing other duties necessary for the operation of  
2 the marketing program as agreed upon with the director.

3 (8) ~~(5)~~ The business which a committee may perform shall  
4 be conducted at a public meeting of the committee held in compli-  
5 ance with the open meetings act, ~~Act No. 267 of the Public Acts~~  
6 ~~of 1976, being sections 15.261 to 15.275 of the Michigan Compiled~~  
7 ~~Laws~~ 1976 PA 267, MCL 15.261 TO 15.275. Public notice of the  
8 time, date, and place of the meeting shall be given in the manner  
9 required by ~~Act No. 267 of the Public Acts of 1976~~ THE OPEN  
10 MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

11 (9) ~~(6)~~ Subject to section 10(b) and except as otherwise  
12 provided in this subsection, a writing prepared, owned, used, in  
13 the possession of, or retained by a committee in the performance  
14 of an official function shall be made available to the public in  
15 compliance with the freedom of information act, ~~Act No. 442 of~~  
16 ~~the Public Acts of 1976, being sections 15.231 to 15.246 of the~~  
17 ~~Michigan Compiled Laws~~ 1976 PA 442, MCL 15.231 TO 15.246.  
18 Except for information regarding penalties levied under this act,  
19 information relating to specific assessments to a specific person  
20 under a marketing program AS WELL AS NAMES AND ADDRESSES OF  
21 PRODUCERS shall be exempt from disclosure to any other person or  
22 committee. This subsection does not prevent the director or the  
23 department from obtaining information necessary to confirm com-  
24 pliance with this act and does not prevent the director or the  
25 department from disclosing statistical information so long as  
26 that disclosure does not reveal specific assessments or  
27 production levels of any producer, handler, or processor.



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1           Sec. 8. (1) Money, ASSETS, OR OTHER ITEMS OF VALUE  
2 collected OR RECEIVED under this act, whether collected from  
3 assessments, RECEIVED AS GRANTS OR GIFTS, or earned from royal-  
4 ties OR LICENSE FEES OR derived from any activities performed by  
5 another organization, agency, or individual and conducted under a  
6 marketing program, ~~is~~ ARE not state money and shall be depos-  
7 ited in a financial institution IN THIS STATE. The money shall  
8 be allocated to the marketing program under which it is collected  
9 OR RECEIVED and shall be disbursed only for the necessary  
10 expenses incurred for the marketing program according to the  
11 rules established under the marketing program ~~—~~ and for grants  
12 authorized under a marketing agreement or marketing program.

13           (2) ~~All~~ EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SUBSEC-  
14 TION, ALL expenditures shall be audited by ~~the state auditor~~  
15 ~~general or by~~ a certified public accountant at least annually  
16 and within 30 days after completion of the audit, the ~~state~~  
17 ~~auditor general or~~ certified public accountant shall give copies  
18 of the audit to the members of the committee and the director.  
19 An activity and financial report shall be published annually and  
20 made available to interested parties. A COMMITTEE WITH ANNUAL  
21 ASSETS OF \$50,000.00 OR LESS, BASED UPON A 3-YEAR AVERAGE, SHALL  
22 BE AUDITED TWICE BETWEEN REFERENDA AND SHALL HAVE A FINANCIAL  
23 REVIEW CONDUCTED IN THOSE YEARS WHERE IT IS NOT AUDITED UNDER  
24 THIS SUBSECTION.

25           ~~(3) As used in this section, "financial institution" means~~  
26 ~~a state or nationally chartered bank or a state or federally~~  
27 ~~chartered savings and loan association, savings bank, or credit~~

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1 ~~union whose deposits are insured by an agency of the United~~  
2 ~~States government and which maintains a principal office or~~  
3 ~~branch office located in this state under the laws of this state~~  
4 ~~or the United States.~~

5       Sec. 9. (1) Money remaining from the assessments collected  
6 under a marketing program may be refunded at the close of any  
7 marketing season upon a pro rata basis to all persons from whom  
8 assessments were collected. If the committee finds that the  
9 money may be necessary to defray the cost of operating a market-  
10 ing program in succeeding marketing seasons, all or any portion  
11 of the money may be carried over into succeeding seasons.

12       (2) Upon termination of any marketing program, all money  
13 remaining and not required to defray the expenses of operating  
14 the marketing program shall be refunded on a pro rata basis to  
15 persons from whom assessments were collected. If the committee  
16 finds that the refundable amount is so small as to make impracti-  
17 cable the computation and refunding of the money, it may be used  
18 to defray the expenses incurred by the department in the formula-  
19 tion, adoption, administration, or enforcement of any subsequent  
20 marketing program for the commodity or for agricultural research  
21 for that commodity. In the case of money earned from royalties,  
22 LICENSE FEES, OR OTHER ASSETS that may be collected OR RECEIVED  
23 after termination of a marketing program, that money shall be  
24 allocated to any institution of higher education engaged in agri-  
25 cultural OR NUTRITIONAL research, as determined by the director.

26       Sec. 10. (a) Whenever the director has received a petition  
27 signed by 25%, or 200, whichever is less, of the producers of an

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1 agricultural commodity regarding the adoption of a marketing  
2 program or amendments to an existing marketing program, he or she  
3 shall give notice of a public hearing on the proposed marketing  
4 program or the proposed amendments to an existing marketing  
5 program. After receiving a petition for the establishment of a  
6 marketing program, the director may appoint a temporary producer  
7 committee to develop the proposed marketing program to be consid-  
8 ered at the public hearing.

9 (b) The director may require all handlers or processors of  
10 the agricultural commodity or DISTRIBUTORS OF THE agricultural  
11 commodity input as individuals or through their trade associa-  
12 tions to file with him or her within 30 days a report, properly  
13 certified, showing the correct names and addresses of all produc-  
14 ers of the agricultural commodity from whom such handler, ~~or~~  
15 processor, OR DISTRIBUTOR received such agricultural commodity OR  
16 AGRICULTURAL COMMODITY INPUT in the marketing season next preced-  
17 ing the filing of such report. The director shall not make  
18 public or provide to anyone for private use the information con-  
19 tained in the individual reports of handlers or processors filed  
20 with the director pursuant to this section.

21 (c) The director shall issue a decision within 45 days after  
22 the close of the hearing based upon his or her findings and  
23 deliver to all parties of record appearing at the hearing and any  
24 other interested parties upon the request of those interested  
25 parties, by mail or otherwise, copies of the findings and recom-  
26 mendation approving or disapproving of the proposed marketing  
27 program. The recommendation shall contain the text in full of

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1 any proposed marketing program or amendment of an existing  
2 marketing program. The recommendation shall be substantially  
3 within the purview of the notice of hearings and shall be sup-  
4 ported by evidence taken at the hearing or by documents of which  
5 the director is authorized to take official notice.

6 ~~-(d) For purposes of this section, producers may include~~  
7 ~~both producers and distributors of a marketable agricultural com-~~  
8 ~~modity produced in this state subject to the requirements of sec-~~  
9 ~~tion 5.~~

10 Sec. 11. (1) After recommending the adoption or amendment  
11 of a marketing program, the director shall determine by a refer-  
12 endum whether the affected producers assent to the proposed  
13 action. If provisions prescribed in section ~~3(g)~~ 3(1)(H) are  
14 part of the proposed MARKETING program, the director shall also  
15 determine by a referendum if processors assent to the proposed  
16 action. The director shall conduct the referendum within 45 days  
17 after the issuance of the recommendation. The affected producers  
18 shall be considered to have assented to the proposal if more than  
19 50% by number of those voting representing more than 50% of the  
20 volume of the affected AGRICULTURAL commodity produced by those  
21 voting assent to the proposal. The affected processors, if pro-  
22 visions prescribed in section ~~3(g)~~ 3(1)(H) are in the MARKETING  
23 program, shall be considered to have assented to the proposal if  
24 more than 50% by number of those voting representing more than  
25 50% of the volume of the affected AGRICULTURAL commodity pro-  
26 cessed by those voting assent to the proposal.

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1 (2) A MARKETING program involving provisions prescribed in  
2 section ~~3(g)~~ 3(1)(H) shall not be instituted without assent of  
3 both the affected producers and the affected processors.

4 Sec. 17. (1) The director may enter into marketing agree-  
5 ments with producers, handlers, or other parties where such  
6 agreements will tend to supplement or aid in the accomplishment  
7 of the objectives of a marketing program.

8 (2) The execution of a marketing agreement ~~shall~~ DOES not  
9 affect the adoption, administration, or enforcement of any mar-  
10 keting program under this act. The director may hold a concur-  
11 rent hearing upon a proposed marketing agreement and a proposed  
12 marketing program in the manner provided in this act, giving due  
13 notice and opportunity for hearing for a marketing agreement.

14 (3) When a marketing agreement is proposed for any  
15 AGRICULTURAL commodity OR AGRICULTURAL COMMODITY INPUT, the  
16 director shall call a public hearing. ~~, and the~~ THE DIRECTOR'S  
17 decision to enter into or not enter into a marketing agreement  
18 ~~shall be~~ IS subject to the same requirements for justification  
19 on the basis of factual evidence introduced at the hearing. A  
20 marketing agreement, if recommended by the director, shall become  
21 effective when signed by the director and the other parties to  
22 the agreement.

23 Sec. 19. ~~(1) Except as provided in subsections (2) and~~  
24 ~~(3), the~~ THE director may institute an action necessary to  
25 enforce compliance with this act, a rule promulgated under this  
26 act, or a marketing agreement or program ~~—~~ adopted under this  
27 act and committed to his or her administration. In addition to

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1 any other remedy provided by law, the director may apply for  
2 relief by injunction to protect the public interest without being  
3 compelled to allege or prove that an adequate remedy at law does  
4 not exist. The application may be made to ~~the circuit~~ A court  
5 ~~in any county~~ OF COMPETENT JURISDICTION.

6 ~~(2) A violation of section 7(5) shall be enforced in the~~  
7 ~~manner provided for enforcement of a violation of Act No. 267 of~~  
8 ~~the Public Acts of 1976, as amended.~~

9 ~~(3) A violation of section 7(6) shall be enforced in the~~  
10 ~~manner provided for enforcement of a violation of Act No. 442 of~~  
11 ~~the Public Acts of 1976, as amended.~~

12 Sec. 21. (1) Except as otherwise provided in subsection  
13 (2), all marketing programs established under this act shall be  
14 resubmitted to a referendum of the producers during each fifth  
15 year of operation.

16 (2) A producer referendum under subsection (1) is not  
17 required for a marketing program if all the following circum-  
18 stances exist:

19 (a) The agricultural commodity OR AGRICULTURAL COMMODITY  
20 INPUT subject to the marketing program is involved in a commodity  
21 checkoff program established pursuant to federal law.

22 (b) The federal commodity checkoff program involving the  
23 agricultural commodity provides for a mechanism for a ~~periodic~~  
24 producer referendum.

25 (c) The marketing program involving the agricultural commod-  
26 ity OR AGRICULTURAL COMMODITY INPUT is entirely financed by that  
27 federal commodity checkoff program.

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1 (3) IF THE FEDERAL COMMODITY CHECKOFF IS SUSPENDED OR  
2 TERMINATED, A MARKETING PROGRAM ESTABLISHED UNDER THIS ACT SHALL  
3 CONDUCT A REFERENDUM OF THE PRODUCERS WITHIN 18 MONTHS AFTER THE  
4 SUSPENSION OR TERMINATION.

5 Sec. 22. If the assessment is not paid by the date speci-  
6 fied by a committee as permitted under section ~~5(e)~~ 5(G), the  
7 unpaid assessment shall be subject to an interest charge of 1%  
8 per month.

9 Sec. 23. (1) Except as provided in subsections (2) and (3),  
10 a person who violates this act ~~shall be subject to~~ IS GUILTY OF  
11 A MISDEMEANOR PUNISHABLE BY a fine of up to ~~-\$100.00~~ \$1,000.00 a  
12 day.

13 (2) A member of the board who intentionally violates section  
14 ~~7(5)~~ 7(8) shall be subject to the penalties prescribed in ~~Act~~  
15 ~~No. 267 of the Public Acts of 1976, as amended~~ THE OPEN MEETINGS  
16 ACT, 1976 PA 267, MCL 15.261 TO 15.275.

17 (3) If the board arbitrarily and capriciously violates sec-  
18 tion ~~7(6)~~ 7(9), the board shall be subject to the penalties  
19 prescribed in ~~Act No. 442 of the Public Acts of 1976, as~~  
20 ~~amended~~ THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231  
21 TO 15.246.

22 Sec. 24. (1) Except as provided in subsections (2) and (3),  
23 prosecution for violation of this act may be instituted in any  
24 county in which any of the defendants reside, or in which the  
25 violation was committed, or in which any of the defendants have a  
26 principal place of business. State and county law enforcement  
27 officers shall enforce this act.

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1           (2) A prosecution for a violation of section ~~7(5)~~ 7(8)  
2 shall be instituted in the manner provided for in ~~Act No. 267 of~~  
3 ~~the Public Acts of 1976, as amended~~ THE OPEN MEETINGS ACT, 1976  
4 PA 267, MCL 15.261 TO 15.275.

5           (3) A prosecution for a violation of section ~~7(6)~~ 7(9)  
6 shall be instituted in the manner provided for in ~~Act No. 442 of~~  
7 ~~the Public Acts of 1976, as amended~~ THE FREEDOM OF INFORMATION  
8 ACT, 1976 PA 442, MCL 15.231 TO 15.246.

9           Enacting section 1. (1) Section 15 of the agricultural com-  
10 modities marketing act, 1965 PA 232, MCL 290.665, is repealed.

11           (2) R 285.301.1 to R 285.301.40 of the Michigan administra-  
12 tive code are repealed.