



HOUSE BILL No. 5393

March 8 1994 Introduced by Reps Gnodtke Harder Bobier Gustafson Hill Gernaat McManus Middleton Goschka Lowe Wetters Anthony Curtis Randall Bender Middaugh Llewellyn and Stille and referred to the Committee on Agriculture and Forestry

A bill to amend sections 2, 5 7 and 10 of Act No 232 of the Public Acts of 1965 entitled as amended

Agricultural commodities marketing act
section 7 as amended by Act No 145 of the Public Acts of 1992
being sections 290 652 290 655 290 657 and 290 660 of the
Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2 5 7 and 10 of Act No 232 of the
2 Public Acts of 1965 section 7 as amended by Act No 145 of the
3 Public Acts of 1992 being sections 290 652 290 655 290 657
4 and 290 660 of the Michigan Compiled Laws are amended to read as
5 follows

6 Sec 2 As used in this act

7 (a) Agricultural commodity means all agricultural,
8 horticultural floricultural or vineyard products livestock or

1 livestock products poultry or poultry products Christmas trees,
 2 bees, maple syrup and honey produced in this state, either in
 3 their natural state or as processed by the producer thereof The
 4 kinds types, and subtypes of products to be classed together as
 5 an agricultural commodity for the purposes of this act shall be
 6 determined on the basis of common usage and practice

7 (b) Producer means a person engaged in the business of
 8 producing, or causing to be produced for any market, an agricul-
 9 tural commodity in quantity beyond that person s own family use
 10 and having a value at first point of sale of more than \$800 00 OR
 11 OF VALUE IN AN AMOUNT AS OTHERWISE EXPRESSLY PROVIDED FOR IN A
 12 MARKETING PROGRAM for the agricultural commodity in any 1 growing
 13 and marketing season within the last 3 years

14 (c) Handler means a person engaged in the operation of
 15 packing grading selling offering for sale or marketing a mar-
 16 ketable agricultural commodity in commercial quantities as
 17 defined in a marketing program who as owner agent or other-
 18 wise ships or causes an agricultural commodity to be shipped

19 (d) Processor means a person engaged in canning freezing
 20 dehydrating fermenting distilling extracting preserving
 21 grinding, crushing or otherwise preserving or changing the form
 22 of an agricultural commodity for the purpose of marketing it

23 (e) Distributor means a person engaged in selling offer-
 24 ing for sale marketing or distributing an agricultural commod-
 25 ity which he OR SHE has purchased or acquired from a producer or
 26 which that person is marketing on behalf of a producer whether
 27 as owner, agent, employee broker, or otherwise ~~but shall~~

1 DISTRIBUTOR DOES not include a retailer, except a retailer who
2 purchases or acquires from, or handles on behalf of a producer,
3 an agricultural commodity not previously subjected to regulations
4 by the marketing program covering the commodity

5 (f) 'Department means the state department of agriculture

6 (g) Director means the director of the department of
7 agriculture

8 (h) Marketing agreement means an agreement entered into
9 with the director by producers, distributors processors or
10 handlers pursuant to this act and binding only on those signing

11 THE AGREEMENT

12 (i) Marketing program means a program established by order
13 of the director pursuant to this act prescribing rules and regu-
14 lations governing the marketing for processing distributing
15 selling or handling an agricultural commodity produced in this
16 state during a specified period and which the director determines
17 would be in the public interest

18 (j) Committee means the commodity committee or advisory
19 board established under a marketing program

20 Sec 5 (a) Assessments shall be collected from each
21 producer of a marketable agricultural commodity produced in this
22 state and directly affected by a marketing program issued for the
23 AGRICULTURAL commodity to defray all program and administrative
24 costs except as provided under section 3(1) ANY ASSESSMENTS ON
25 PRODUCERS PROVIDED FOR IN A MARKETING PROGRAM SHALL BE COLLECTED
26 FROM THE PRODUCER IN THE MANNER SET FORTH IN SUBSECTION (C)

1 (b) Each MARKETING program shall specify the maximum
2 assessment to be collected to cover program and administrative
3 costs

4 (c) ~~For convenience the processors, distributors, or han-~~
5 ~~dlers of the commodity may be required to collect and remit~~
6 ~~producer assessments at no cost to the marketing program~~
7 ~~Processors distributors or handlers paying the assessments for~~
8 ~~a producer may deduct the amount from any money which they owe to~~
9 ~~the producers~~ IN THE CASE OF A MARKETING PROGRAM ADOPTED PURSU-
10 ANT TO THIS ACT THAT PROVIDES FOR THE IMPOSITION OF AN ASSESS-
11 MENT THE PROCESSORS DISTRIBUTORS OR HANDLERS DEALING WITH THE
12 PRODUCER SHALL COLLECT THE ASSESSMENTS FROM THE PRODUCER BY
13 DEDUCTING THE ASSESSMENTS FROM THE GROSS AMOUNT OWING TO THE
14 PRODUCER AND SHALL REMIT THEM TO THE COMMITTEE WITHIN A REASON-
15 ABLE TIME PERIOD AS ESTABLISHED BY THE COMMITTEE A PROCESSOR
16 DISTRIBUTOR OR HANDLER WHO FAILS TO DEDUCT OR REMIT THE ASSESS-
17 MENT IS LIABLE TO THE COMMITTEE FOR ANY ASSESSMENTS NOT DEDUCTED
18 OR REMITTED THE PROCESSOR DISTRIBUTOR OR HANDLER SHALL DEDUCT
19 AND REMIT THE ASSESSMENTS AT NO COST TO THE PRODUCER OR COMMIT-
20 TEE UNLESS THE MARKETING PROGRAM EXPRESSLY PROVIDES FOR THE PAY-
21 MENT OF A REASONABLE FEE FOR MAKING THE DEDUCTION AND
22 REMITTANCE IF A PROCESSOR DISTRIBUTOR OR HANDLER IS NOT
23 INVOLVED AT THE FIRST POINT OF SALE OF AN AGRICULTURAL COMMODITY,
24 THE PRODUCER SHALL REMIT THE ASSESSMENTS TO THE COMMITTEE ON ALL
25 SALES OF THE AGRICULTURAL COMMODITY SUBJECT TO A MARKETING PRO-
26 GRAM ESTABLISHED PURSUANT TO THIS ACT WITHIN A TIME PERIOD
27 SPECIFIED BY THE COMMITTEE

1 (D) A COMMITTEE MAY FILE A COMPLAINT WITH THE DIRECTOR
2 ALLEGING THAT A PROCESSOR DISTRIBUTOR HANDLER, OR PRODUCER HAS
3 FAILED TO DEDUCT OR REMIT ANY ASSESSMENTS DUE TO THE COMMITTEE
4 PURSUANT TO A MARKETING PROGRAM UPON RECEIPT OF SUCH A COM-
5 PLAIN, THE DIRECTOR SHALL CONDUCT AN INVESTIGATION OF THE
6 ALLEGATIONS IF, AFTER INVESTIGATION, THE DIRECTOR FINDS THAT
7 THE PROCESSOR DISTRIBUTOR HANDLER, OR PRODUCER HAS FAILED TO
8 DEDUCT OR REMIT AN ASSESSMENT TO THE COMMITTEE HE OR SHE SHALL
9 MAKE A REQUEST TO THE PROCESSOR DISTRIBUTOR, HANDLER, OR
10 PRODUCER FOR THE REMITTING OF THE ASSESSMENT IN NOT LESS THAN 10
11 DAYS IF THE ASSESSMENT IS NOT REMITTED WITHIN 10 DAYS AFTER THE
12 REQUEST THE DIRECTOR SHALL FILE AN ACTION TO COLLECT THE ASSESS-
13 MENT IN A COURT OF COMPETENT JURISDICTION WHERE THE PROCESSOR
14 DISTRIBUTOR HANDLER OR PRODUCER HAS ITS PRIMARY PLACE OF BUSI-
15 NESS OR IN THE COUNTY OF INGHAM IN ANY ACTION TO RECOVER AN
16 ASSESSMENT UNDER THIS SUBSECTION THE COURT SHALL IF THE DIREC-
17 TOR PREVAILS IN THE ACTION AWARD ALL COSTS AND EXPENSES IN
18 BRINGING THE ACTION, INCLUDING BUT NOT LIMITED TO REASONABLE
19 AND ACTUAL ATTORNEY FEES COURT COSTS AND AUDIT EXPENSES

20 (E) ~~(d)~~ Each ~~program~~ COMMITTEE shall specify the date
21 when the assessment ~~whether collected by the producers pro-~~
22 ~~cessors distributors or handlers of the commodity~~ is due in
23 the account of the MARKETING program on that production
24 Producers processors distributors or handlers of the affected
25 AGRICULTURAL commodity shall be given reasonable notice of the
26 due date

1 (F) A COMMITTEE ESTABLISHED PURSUANT TO THIS ACT HAS THE
2 POWER TO BORROW MONEY IN ANTICIPATION OF THE RECEIPT OF
3 ASSESSMENTS, WITH THE PRIOR WRITTEN CONSENT OF THE COMMISSION OF
4 AGRICULTURE

5 Sec 7 (1) A marketing program shall provide for the
6 establishment of a ~~commodity~~ committee to consist of an odd
7 number of members which shall be not less than 5 nor more than
8 15

9 (2) The members of the committee shall be appointed by the
10 governor with the advice and consent of the senate from nomina-
11 tions received from the producers and handlers or processors of
12 the AGRICULTURAL commodity for which the marketing program is
13 established Nominating procedures qualifications, representa-
14 tion term of office and size of the committee shall be pre-
15 scribed in the marketing program for which the committee is
16 appointed Each committee shall be composed of producers and
17 handlers or processors who are directly affected by the marketing
18 program in the proportion of representation as prescribed by the
19 program

20 (3) A member of a committee ~~shall be~~ IS entitled to reim-
21 bursement for actual expenses and a per diem payment ~~not to~~
22 ~~exceed \$75.00 per day~~ AS ESTABLISHED BY THE COMMITTEE while
23 attending meetings of the committee or while engaged in the per-
24 formance of official responsibilities delegated by the
25 committee

26 (4) The duties and responsibilities of a committee shall be
27 prescribed in the order establishing the MARKETING program and

1 to the extent applicable shall include the following duties and
2 responsibilities

3 (a) Developing administrative procedures relating to the
4 marketing program

5 (b) Recommending amendments to the marketing program as are
6 considered advisable

7 (c) Preparing the estimated budget required for the proper
8 operation of the marketing program

9 (d) Developing methods for assessing producers and methods
10 for collecting the necessary funds

11 (e) Collecting and assembling information and data necessary
12 for proper administration of the MARKETING program

13 (f) Performing other duties necessary for the operation of
14 the marketing program as agreed upon with the director

15 (5) The business which a committee may perform shall be con-
16 ducted at a public meeting of the committee held in compliance
17 with the open meetings act Act No 267 of the Public Acts of
18 1976 as amended being sections 15 261 to 15 275 of the Michigan
19 Compiled Laws Public notice of the time date and place of the
20 meeting shall be given in the manner required by Act No 267 of
21 the Public Acts of 1976 as amended

22 (6) Subject to section 10(b) and except as otherwise pro-
23 vided in this subsection a writing prepared, owned, used in the
24 possession of or retained by a committee in the performance of
25 an official function shall be made available to the public in
26 compliance with the freedom of information act, Act No 442 of
27 the Public Acts of 1976, as amended, being sections 15 231 to

1 15 246 of the Michigan Compiled Laws Except for information
2 regarding penalties levied under this act, information relating
3 to specific assessments to a specific person under a marketing
4 program shall be exempt from disclosure to any other person or
5 committee This subsection does not prevent the director or the
6 department from obtaining information necessary to confirm com-
7 pliance with this act and does not prevent the director or the
8 department from disclosing statistical information so long as
9 that disclosure does not reveal specific assessments or produc-
10 tion levels of any producer handler or processor

11 Sec 10 (a) Whenever the director has received a petition
12 signed by 25%, or 200, WHICHEVER IS LESS, of the producers of an
13 agricultural commodity ~~—whichever is less for~~ REGARDING the
14 adoption of a marketing program or 10% OR 100 WHICHEVER IS
15 LESS, OF THE PRODUCERS OF AN AGRICULTURAL COMMODITY REGARDING THE
16 ADOPTION OF amendments to an existing marketing program he OR
17 SHE shall give notice of a public hearing on the proposed market-
18 ing program or the proposed amendments to an existing marketing
19 program After receiving a petition for the establishment of a
20 marketing program the director may appoint a temporary producer
21 committee to develop the proposed program to be considered at the
22 public hearing

23 (b) The director may require all handlers or processors of
24 the agricultural commodity as individuals or through their trade
25 associations to file with him OR HER within 30 days a report
26 properly certified, showing the correct names and addresses of
27 all producers of the agricultural commodity from whom such

1 handler or processor received such agricultural commodity in the
2 marketing season next preceding the filing of such report

3 The information contained in the individual reports of han-
4 dlers or processors filed with the director pursuant to
5 ~~provisions of~~ this section shall not be made public by the
6 director ~~, nor~~ AND SHALL NOT BE MADE available to anyone for
7 private use

8 (c) The director shall issue a decision within 45 days after
9 the close of the hearing based upon his OR HER findings ~~, and~~
10 deliver TO ALL PARTIES OF RECORD APPEARING AT THE HEARING AND ANY
11 OTHER INTERESTED PARTIES by mail or otherwise copies of the
12 findings and recommendation ~~, approving or disapproving of the~~
13 proposed MARKETING program ~~to all parties of record appearing~~
14 ~~at the hearing and any other interested parties~~ The recommenda-
15 tion shall contain the text in full of any proposed MARKETING
16 program or amendment of an existing MARKETING program The rec-
17 ommendation shall be substantially within the purview of the
18 notice of hearings and shall be supported by evidence taken at
19 the hearing or by documents of which the director is authorized
20 to take official notice