

HOUSE BILL No. 4751

June 14, 2011, Introduced by Rep. Johnson and referred to the Committee on Agriculture.

A bill to amend 1972 PA 344, entitled
"Agricultural marketing and bargaining act,"
by amending sections 2, 2a, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 (MCL 290.702,
290.702a, 290.703, 290.704, 290.705, 290.706, 290.707, 290.708,
290.709, 290.710, 290.711, 290.712, 290.713, 290.714, 290.715,
290.716, 290.717, 290.718, 290.719, 290.720, 290.721, 290.722,
290.723, 290.724, and 290.725), sections 3 and 17 as amended by
1980 PA 195.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Association" means a cooperative association of producers
3 or a division thereof, or **A** federation of cooperative associations

1 of producers, engaged in the marketing, bargaining, shipping, or
2 processing ~~functions~~ of an agricultural commodity on behalf of its
3 members who are producers of ~~such~~ **THE** agricultural commodity.

4 (b) "Accredited association" means an association accredited
5 in accordance with this act.

6 (c) "Person" means an individual, partnership, corporation, or
7 association.

8 (d) ~~"Board" means the agricultural marketing and bargaining~~
9 ~~board created in section 3.~~ **"DEPARTMENT" MEANS THE DEPARTMENT OF**
10 **AGRICULTURE AND RURAL DEVELOPMENT.**

11 (e) "Producer" means any person who produces or causes to be
12 produced in any 1 marketing period within the previous 2 marketing
13 periods ~~any~~ agricultural commodity in **A** quantity beyond his **OR**
14 **HER** own family use and having a minimum value at first point of
15 sale as determined by the ~~board~~ **DEPARTMENT** for that agricultural
16 commodity, and who is able, ~~to~~ during the marketing period, **TO**
17 transfer to a handler or an association a merchantable title to the
18 agricultural commodity or provide management, labor, machinery,
19 facilities, or any other production input, with the assumption of
20 risk, for the production of the agricultural commodity under a
21 written or oral contract.

22 (f) "Agricultural commodity" means all perishable fruits and
23 vegetables as defined by the ~~board~~ **DEPARTMENT**. The kinds, types,
24 and subtypes of products to be classed together as an agricultural
25 commodity for the purposes of this act shall be determined by the
26 ~~board~~ **DEPARTMENT** on the basis of common usage and practice.

27 (g) "Handler" means a person other than an association engaged

1 in the business or practice of ~~acquiring~~ **ANY OF THE FOLLOWING:**

2 (i) **ACQUIRING** agricultural commodities from producers or
3 associations for processing or sale. ~~grading,~~

4 (ii) **GRADING**, packaging, handling, storing, or processing
5 agricultural commodities received from producers or associations. ~~contracting~~

6
7 (iii) **CONTRACTING** or negotiating contracts or other
8 arrangements, written or oral, with producers or associations with
9 respect to the production of any agricultural commodity. ~~acting~~

10
11 (iv) **ACTING** as an agent or broker for a handler in the
12 performance of any function or act specified above. ~~It~~ **HANDLER** does
13 not include a producer who sells at a retail establishment ~~which~~
14 **THAT** he **OR SHE** owns and operates or who sells directly to consumers
15 at a produce market ~~agricultural commodities produced by him~~ **OR**
16 **HER** and agricultural commodities produced by another producer
17 subject to value limitation established by the ~~board~~ **DEPARTMENT**.

18 (h) "Marketing period" for an agricultural commodity ~~shall be~~
19 **MEANS** a period of time determined by the ~~board~~ **DEPARTMENT** during
20 which producers normally deliver for sale to handlers or contract
21 with handlers for the production and future delivery for sale of
22 substantially all of a crop or periodic production of the
23 agricultural commodity.

24 (i) "Member" means a producer who has entered into a contract
25 with an association appointing the association as his **OR HER**
26 exclusive agent in negotiations with handlers with respect to the
27 marketing of an agricultural commodity.

1 (J) "UNFAIR PRACTICES" MEANS THOSE PRACTICES PROHIBITED UNDER
2 SECTION 4.

3 Sec. 2a. Any sale of a commodity by a producer to another
4 producer for his OR HER own exclusive use and not for resale or any
5 sale of fresh market produce directly to a ~~consumer~~ CONSUMERS or to
6 a retail store or stand for resale to consumers shall be excluded
7 from the provisions of ~~IS EXEMPT FROM~~ this act.

8 Sec. 3. (1) ~~An agricultural marketing and bargaining board is~~
9 ~~created within the department of agriculture. The board~~ DEPARTMENT
10 shall administer this act.

11 ~~——(2) The board consists of 5 individuals who shall be citizens~~
12 ~~of the state appointed by the governor with the advice and consent~~
13 ~~of the senate, not more than 3 of whom shall be affiliated with the~~
14 ~~same political party. A minimum of 2 members of the board shall~~
15 ~~derive a substantial portion of their livelihood from agricultural~~
16 ~~enterprises. One member shall be considered a lay person, who shall~~
17 ~~not be a producer, handler, or a member of an association, as~~
18 ~~defined under this act. The governor shall designate 1 member of~~
19 ~~the board to serve as chairperson of the board. The original board~~
20 ~~shall be composed of 2 members of the board for a 1 year term, 1~~
21 ~~member of the board for a 2 year term, 1 member of the board for a~~
22 ~~3 year term and 1 member of the board for a 4 year term. The~~
23 ~~governor shall indicate the length of term when making the~~
24 ~~appointment of the original board. As the term of each member of~~
25 ~~the board expires, the governor, with the advice and consent of the~~
26 ~~senate, shall appoint a successor to serve for a term of 4 years.~~
27 ~~An individual appointed to fill a vacancy caused by other than~~

1 ~~expiration of the term shall be appointed only for the unexpired~~
2 ~~term of the member of the board whom the individual succeeds.~~

3 ~~—— (3) A member of the board may be removed by the governor, upon~~
4 ~~notice and hearing, for neglect of duty, or for corrupt conduct in~~
5 ~~office, or for any other misfeasance or malfeasance but not for any~~
6 ~~other cause.~~

7 ~~—— (4) A vacancy in the board shall not impair the right of the~~
8 ~~remaining members to exercise the powers of the board. Three~~
9 ~~members of the board constitutes a quorum.~~

10 ~~—— (5) Members of the board shall receive per diem reimbursement~~
11 ~~fixed by the legislature and necessary traveling and subsistence~~
12 ~~expenses incurred while attending meetings of the board or engaged~~
13 ~~in the performance of official responsibilities delegated by the~~
14 ~~board or other amounts as may be appropriated by the legislature.~~

15 (2) ~~(6)~~ Services for implementing this act shall be provided
16 by the department of agriculture from appropriations made by the
17 legislature.

18 ~~—— (7) The business which the board may perform shall be~~
19 ~~conducted at a public meeting of the board held in compliance with~~
20 ~~Act No. 267 of the Public Acts of 1976, as amended, being sections~~
21 ~~15.261 to 15.275 of the Michigan Compiled Laws. Public notice of~~
22 ~~the time, date, and place of the meeting shall be given in the~~
23 ~~manner required by Act No. 267 of the Public Acts of 1976, as~~
24 ~~amended.~~

25 (3) ~~(8)~~ The board **DEPARTMENT** may promulgate rules necessary
26 for the administration of this act in accordance with and subject
27 to Act No. 306 of the Public Acts of 1969, as amended, being

1 ~~sections 24.201 to 24.315 of the Michigan Compiled Laws.~~**THE**
2 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**
3 **24.328.**

4 Sec. 4. (1) Producers of agricultural commodities ~~are free to~~
5 **MAY** join together voluntarily in associations as authorized by law
6 without interference by handlers. A handler shall not engage ~~nor~~**OR**
7 permit an employee or agent to engage in any of the following
8 practices: ~~, defined as unfair practices:~~

9 (a) To coerce a producer in the exercise of his **OR HER** right
10 to join and belong to or to refrain from joining or belonging to an
11 association or to refuse to deal with a producer because of the
12 exercise of his **OR HER** right to join and belong to an association
13 except as provided in section 15.

14 (b) To discriminate against a producer with respect to price,
15 quantity, quality, or other terms of purchase, acquisition, or
16 other handling of agricultural products because of his **OR HER**
17 membership in or contract with an association.

18 (c) To coerce or intimidate a producer to breach, cancel, or
19 terminate a membership agreement or marketing contract with an
20 association or a contract with a handler.

21 (d) To pay or loan money, give anything of value, or offer any
22 other inducement or reward to a producer for refusing or ceasing to
23 belong to an association.

24 (e) To make or circulate unsubstantiated reports about the
25 finances, management, or activities of associations or handlers.

26 (f) To conspire, combine, agree, or arrange with any other
27 person to do or aid or abet the doing of any practice which is in

1 violation of this act.

2 (g) To refuse to bargain with an accredited association with
3 whom the handler has had prior dealings or with an accredited
4 association whose producers in the bargaining units have had
5 substantial dealing with the handler prior to the accreditation of
6 the association.

7 (h) To negotiate with a producer included in the bargaining
8 unit after an association is accredited.

9 (2) An association shall not engage ~~nor~~**OR** permit an employee
10 or agent to engage in the following practices: ~~defined as unfair~~
11 ~~practices.~~

12 (a) To enter into a contract ~~which~~**THAT** discriminates against
13 a producer represented by an accredited association whether or not
14 he **OR SHE** is a member producer.

15 (b) To act in a manner contrary to the ~~by laws~~**BYLAWS** of the
16 association.

17 (c) To refuse to bargain with a handler with whom the
18 accredited association has had prior dealing or with whom its
19 producers have had substantial dealing prior to the accreditation
20 of the association.

21 (d) To coerce or intimidate a handler to breach, cancel, or
22 terminate a membership agreement or marketing contract with an
23 association or a contract with a producer.

24 (e) To make or circulate unsubstantiated reports about the
25 finances, management or activities of other associations or
26 handlers.

27 (f) To conspire, combine, agree, or arrange with any other

1 person to do or aid or abet the doing of any practice ~~which~~ **THAT** is
2 in violation of this act.

3 (3) For the purpose of enforcing this act, the ~~board~~
4 **DEPARTMENT** may receive sworn complaints with respect to violations
5 or threatened violations. The ~~board~~ **DEPARTMENT** may make all
6 necessary investigations, examinations, or inspections of any
7 violation or threatened violation specified in the sworn complaint
8 filed with the ~~board~~ **DEPARTMENT**. If, upon ~~such~~ **AN** investigation,
9 the ~~board~~ **DEPARTMENT** considers that there is reasonable cause to
10 believe that a person charged has committed a ~~an~~ **UNFAIR** practice,
11 ~~in violation of this act,~~ the ~~board~~ **DEPARTMENT** shall issue and
12 cause to be served a complaint upon the person in accordance with
13 ~~Act No. 306 of the Public Acts of 1969, as amended. THE~~
14 **ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO**
15 **24.328**. The complaint shall summon the person to a hearing before
16 the ~~board or a member thereof~~ **DEPARTMENT** or a hearing officer at
17 the time and place ~~fixed~~ **PROVIDED IN THE COMPLAINT**.

18 (4) If, upon a preponderance of the evidence, the ~~board~~
19 **DEPARTMENT** determines that the person complained of has committed a
20 **AN UNFAIR** practice, ~~in violation of this act, it~~ **THE DEPARTMENT**
21 shall state its findings of fact and shall issue and cause to be
22 served on the person **COMPLAINED OF** an order requiring him **OR HER** to
23 cease the violation and shall order further affirmative action as
24 will effectuate the policies of this act.

25 (5) If, upon a preponderance of the evidence, the ~~board~~
26 **DEPARTMENT** is of the opinion that the person complained of has not
27 committed a ~~an~~ **UNFAIR** practice, ~~in violation of this act, it~~ **THE**

1 **DEPARTMENT** shall make its findings of fact and issue an order
2 dismissing the complaint.

3 (6) Until the record in a case has been filed in a court, as
4 provided in this act, the ~~board~~**DEPARTMENT**, at any time upon
5 reasonable notice and in such manner as ~~it deems~~**THE DEPARTMENT**
6 **CONSIDERS** proper, may modify or set aside, in whole or in part, any
7 finding or order made or issued by ~~it~~**THE DEPARTMENT**.

8 (7) **THE DEPARTMENT SHALL DETERMINE WHETHER THE EXPENSE OF THE**
9 **PROCEEDINGS SHALL BE BORNE BY ANY PERSON FOUND TO HAVE COMMITTED A**
10 **PRACTICE IN VIOLATION OF THIS SECTION.**

11 Sec. 5. (1) The ~~board~~**DEPARTMENT** may petition the court of
12 appeals for the enforcement of its orders ~~,~~and for appropriate
13 temporary relief or restraining order~~s~~**ORDERS** and shall file in the
14 court the record in the proceedings. Upon the filing of the
15 petition, the court shall cause notice to be served upon the person
16 **COMPLAINED OF**, and thereupon shall have jurisdiction of the
17 proceeding and of the question **TO BE** determined, and may grant
18 temporary relief or restraining order as it ~~deems~~**CONSIDERS** just
19 and proper and ~~to~~make and enter a decree enforcing, modifying, and
20 enforcing as so modified, or setting aside in whole or in part the
21 order of the ~~board~~**DEPARTMENT**. An objection that has not been
22 urged before the ~~board, a member thereof~~**DEPARTMENT** or a hearing
23 officer ~~before whom a hearing was conducted~~ shall not be considered
24 by the court, unless the failure or neglect to urge the objection
25 ~~shall be~~**IS** excused because of extraordinary circumstances. The
26 findings of the ~~board~~**DEPARTMENT** with respect to questions of fact
27 **ARE CONCLUSIVE** if supported by substantial evidence on the record

1 considered as a whole. ~~is conclusive.~~ If either party applies to
2 the court for leave to adduce additional evidence and shows to the
3 satisfaction of the court that the additional evidence is material
4 and that there were reasonable grounds for the failure to adduce
5 the evidence in the hearing before the ~~board,~~ **DEPARTMENT**, the court
6 may order additional evidence to be taken before the ~~board,~~ a
7 ~~member thereof,~~ **DEPARTMENT** or hearing officer and to be made a part
8 of the record. The ~~board~~ **DEPARTMENT** may modify its findings as to
9 the facts, or make new findings, by reason of additional evidence
10 so taken and filed, and it shall file the modified or new findings,
11 which findings with respect to questions of fact if supported by
12 substantial evidence on the record considered as a whole shall be
13 conclusive, and shall file its recommendations, if any, for the
14 modification or setting aside of its original order. Upon the
15 filing of the record with ~~it~~ **THE COURT**, the jurisdiction of the
16 court shall be exclusive and its judgment and decree shall be
17 final, except that it shall be subject to review in accordance with
18 established procedures for appeal.

19 (2) Any person aggrieved by a final order of the ~~board~~
20 **DEPARTMENT** granting or denying in whole or in part the relief
21 sought may obtain a review of an order in the court of appeals, by
22 filing in the court a written petition requesting that the order of
23 the ~~board~~ **DEPARTMENT** be modified or set aside. A copy of the
24 petition shall be transmitted by the clerk of the court to the
25 ~~board~~ **DEPARTMENT**, and the aggrieved party shall file in the court
26 the record in the proceeding certified by the ~~board.~~ **DEPARTMENT**.
27 Upon the filing of the petition, the court shall proceed in the

1 same manner as in the case of an application by the ~~board~~
 2 **DEPARTMENT** under this section and shall have the same jurisdiction
 3 to grant temporary relief or a restraining order as it ~~deems~~
 4 **CONSIDERS** just and proper, and in like manner to make and enter a
 5 decree enforcing, modifying, and enforcing as so modified, or
 6 setting aside in whole or in part the order of the ~~board; the~~
 7 **DEPARTMENT. THE** findings of the ~~board-DEPARTMENT~~ with respect to
 8 questions of fact ~~if supported by substantial evidence on the~~
 9 ~~record considered as a whole shall in like manner be~~
 10 ~~conclusive.~~ **SHALL BE CONCLUSIVE IF SUPPORTED BY SUBSTANTIAL EVIDENCE**
 11 **ON THE RECORD AS A WHOLE.**

12 (3) The commencement of proceedings under this section shall
 13 not stay enforcement of the ~~board's-DEPARTMENT'S~~ decision, but the
 14 ~~board-DEPARTMENT~~ or the reviewing court may order a stay upon such
 15 terms as ~~it deems-~~ **THE COURT CONSIDERS** proper.

16 Sec. 6. (1) The ~~board-DEPARTMENT~~ shall determine whether a
 17 proposed bargaining unit is appropriate. This determination shall
 18 be made upon the petition of an association representing not less
 19 than 10% of the producers of the commodity eligible for membership
 20 in the proposed bargaining unit as defined by the association. An
 21 association with an overlapping definition of bargaining unit may,
 22 upon the presentation of a petition by not less than 10% of the
 23 producers eligible for membership in the overlapping bargaining
 24 unit, contest the proposed bargaining unit. The ~~board-DEPARTMENT~~
 25 shall hold a hearing in accordance with ~~Act No. 306 of the Public~~
 26 ~~Acts of 1969, as amended-~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969,**
 27 **1969 PA 306, MCL 24.201 TO 24.328,** to resolve the dispute.

1 (2) In making its determination, the ~~board~~**DEPARTMENT** shall
 2 define as appropriate the largest bargaining unit in terms of the
 3 quantity of the agricultural commodity produced, the definition of
 4 the agricultural commodity, **THE** geographic area covered, and **THE**
 5 number of producers included as is consistent with the following
 6 criteria:

7 (a) The community of interest of the producers included. †

8 (b) The potential serious conflicts of ~~interests~~**INTEREST**
 9 among members of the proposed unit. †

10 (c) The effect of exclusions on the capacity of the
 11 association to effectively bargain for the bargaining unit as
 12 defined. †

13 (d) The kinds, types, and subtypes of products to be classed
 14 together as agricultural commodity for which the bargaining unit is
 15 proposed. †

16 (e) Whether the producers eligible for membership in the
 17 proposed bargaining unit meet the definition of "producer" for the
 18 agricultural commodity involved. †

19 (f) The wishes of the producers. †

20 (g) The pattern of past marketing of the commodity.

21 Sec. 7. An association shall be accredited upon determination
 22 by the ~~board~~**DEPARTMENT** that the association meets all of the
 23 following:

24 (a) The association meets the requirements of the Capper-
 25 Volstead act, 7 U.S.C. ~~291-2~~**USC 291 TO 292**.

26 (b) The association has submitted a copy of its bylaws, which
 27 **SHALL** provide ~~that:~~**ALL OF THE FOLLOWING:**

1 (i) Each member of the association shall have 1 vote in all
2 votes of the membership of the association. ~~; that officers~~

3 (ii) **OFFICERS** or directors shall be elected by a majority of
4 the members voting or by delegates representing a majority of the
5 membership. ~~; and that all~~

6 (iii) **ALL** elections shall be by secret ballot.

7 (c) The association has marketing and bargaining contracts for
8 the current or next marketing period with more than 50% of the
9 producers of an agricultural commodity who are in the bargaining
10 unit and these contracts cover more than 50% of the quantity of
11 that commodity produced by producers in the bargaining unit. The
12 ~~board~~**DEPARTMENT** may determine the quantity produced by the
13 bargaining unit using information on production in prior marketing
14 periods, current market information, and projections on production
15 during the current ~~market periods.~~**MARKETING PERIOD.** The ~~board~~
16 **DEPARTMENT** shall exclude from that quantity any quantity of the
17 agricultural commodity contracted by producers with producer owned
18 and controlled processing cooperatives and any quantity produced by
19 handlers. An association whose main purpose is bargaining but which
20 processes a surplus into a form which is not the subject of
21 bargaining is not a processing cooperative. The contracts with
22 members shall specify the agricultural commodity and that the
23 members have appointed the association as their exclusive agent in
24 negotiations with handlers for prices and other terms of trade with
25 respect to the sale and marketing of the agricultural commodity and
26 obligate them to dispose of their production or holdings of the
27 agricultural commodity through or at the direction of the

1 association.

2 (d) The association has established and authorized a marketing
3 and bargaining committee to negotiate with handlers for the
4 agricultural commodity. The committee shall be ~~comprised~~ **COMPOSED**
5 of members elected by the members in a secret ballot election. The
6 production of the agricultural commodity shall comprise a
7 significant portion of the total farming operation of each
8 committee member. Members who have any quantity of the commodity
9 contracted with a producer owned and controlled processing
10 cooperative are not eligible to serve on a marketing and bargaining
11 committee for such commodity.

12 Sec. 8. (1) An association desiring accreditation shall file
13 with the ~~board~~ **DEPARTMENT** a written request for accreditation in
14 the form as required by the ~~board~~ **DEPARTMENT**. The request shall
15 contain properly certified evidence that the association meets the
16 standards for accreditation and shall be accompanied by a report of
17 the names and addresses of members, the name of each handler to
18 whom the member delivered or contracted to deliver the agricultural
19 commodity during the previous 2 marketing periods, and the quantity
20 delivered. A fee to cover the costs of the ~~board~~ **DEPARTMENT** in
21 processing the request shall be established by rule and paid by the
22 association when the request is filed.

23 (2) The ~~board~~ **DEPARTMENT** may require all handlers of an
24 agricultural commodity produced in the bargaining unit area as
25 individuals or through their trade association to file with the
26 ~~board~~ **DEPARTMENT**, within 30 days following a request, a **PROPERLY**
27 **CERTIFIED** report, ~~properly certified,~~ showing the correct names and

1 addresses of all producers of the agricultural commodity who have
2 delivered the agricultural commodity to the handler during the 2
3 marketing periods preceding the filing of the report and the
4 quantities of the agricultural commodity received by the handler
5 from each named producer during the periods. The information
6 contained in the individual reports of handlers filed with the
7 ~~board-DEPARTMENT~~ shall not be made public by the ~~board-DEPARTMENT~~
8 nor **SHALL IT BE MADE** available to any person for private use.

9 Sec. 9. (1) Within 60 days following the date of filing with
10 the ~~board-DEPARTMENT~~ a request for accreditation by an association,
11 the ~~board-DEPARTMENT~~ shall determine whether the association shall
12 be accredited. If the ~~board-DEPARTMENT~~ determines that insufficient
13 evidence was filed by the association, the ~~board-DEPARTMENT~~ may
14 permit the association to file an amended request for accreditation
15 within 30 days following the determination and notification of the
16 association.

17 (2) Within 30 days following the ~~board's-DEPARTMENT'S~~
18 preliminary finding that the association is to be accredited, the
19 ~~board-DEPARTMENT~~ shall hold a public hearing to obtain further
20 evidence relevant to confirmation that the association is to be
21 accredited. Producers of record involved in the bargaining unit
22 shall be notified of the hearing by mail and publication in a
23 newspaper of general circulation in the bargaining unit area at
24 least 10 days prior to the date of the hearing.

25 Sec. 10. (1) The ~~board-DEPARTMENT~~ shall issue and publish its
26 determination within 30 days after the close of the hearing. If the
27 determination of the ~~board-DEPARTMENT~~ is to accredit the

1 association, the ~~board~~-**DEPARTMENT** shall include a preliminary
2 declaration of accreditation in its determination. The preliminary
3 declaration of accreditation shall clearly state that the
4 association shall represent all producers, members, and nonmembers
5 alike, who are in the bargaining unit and act as exclusive sales
6 agents for the bargaining unit in negotiations with handlers. A
7 producer covered in a declaration of accreditation may join the
8 association and have full membership rights ~~therein~~. **IN THE**
9 **ASSOCIATION**. Handlers shall deduct marketing service fees from the
10 proceeds to be paid to producers for the agricultural commodity in
11 the amount as determined by the association and forward the service
12 fees promptly to the association. The fees shall be within
13 guidelines determined by the ~~board~~-**DEPARTMENT** and shall be subject
14 to review by the ~~board~~-**DEPARTMENT** upon petition by 15% of the
15 affected producers.

16 (2) The accreditation of the association by the ~~board~~
17 **DEPARTMENT** shall be effective 30 days after the publication of the
18 preliminary declaration of accreditation. The ~~board~~-**DEPARTMENT**
19 shall delay the accreditation of the association ~~whenever it~~ **IF THE**
20 **DEPARTMENT** receives during the 30-day period a petition signed by
21 at least 1/3 of the producers in the bargaining unit who produce at
22 least 1/3 of the production of the agricultural commodity produced
23 by the bargaining unit, exclusive of quantities contracted with
24 processing cooperatives and produced by handlers, and requesting
25 that the association should not be accredited. The ~~board~~-**DEPARTMENT**
26 shall determine, by a mail referendum of bargaining unit producers
27 within 30 days following receipt of the petition, if producers

1 assent to the accreditation of the association. Producers in the
 2 bargaining unit shall be ~~deemed~~ **CONSIDERED** to have assented to
 3 accreditation if more than 50% of the producers in the bargaining
 4 unit who produce more than 50% of the volume of the affected
 5 commodity assent to representation by the association.

6 (3) All affected producers, handlers, and other interested
 7 parties shall be notified of the outcome of the referendum within
 8 10 days following the referendum. Accreditation shall be effective
 9 immediately if producers assent. Accreditation shall be denied
 10 without the required assent of the producers.

11 (4) An association ~~which~~ **THAT** is denied accreditation may not
 12 file another request for accreditation for a period of 1 year.

13 Sec. 11. An accredited association shall file an annual report
 14 with the ~~board~~ **DEPARTMENT** in such form as required by the ~~board~~
 15 **DEPARTMENT** to determine if the association continues to meet the
 16 requirements ~~of~~ **FOR** accreditation as provided in section 7.

17 Sec. 12. (1) To revoke the accreditation of an accredited
 18 association, the ~~board~~ **DEPARTMENT** shall employ a procedure similar
 19 to the accreditation procedure set forth in sections 8, 9, and 10.
 20 ~~Revocation~~ **SUBJECT TO SUBSECTION (2), REVOCATION** of accreditation
 21 shall be considered by the ~~board~~ **DEPARTMENT** upon **RECEIPT OF** any of
 22 the following: ~~conditions:~~

23 (a) ~~Upon receipt of a~~ **A** request from an accredited association
 24 for its own disaccreditation.

25 (b) ~~Upon receipt of a~~ **A** petition requesting that the
 26 accredited association be disaccredited and bearing the signatures
 27 of at least 1/3 of the producers in the bargaining unit who produce

1 at least 1/3 of the bargaining unit production of the agricultural
2 commodity exclusive of quantities contracted with processing
3 cooperatives and produced by handlers.

4 (2) ~~(e)~~—A request for revocation of accreditation may not be
5 accepted by the ~~board~~—**DEPARTMENT** during the marketing period or for
6 a 60-day period prior thereto.

7 Sec. 13. (1) As used in this act, "bargaining" means the
8 mutual obligation of a handler and an accredited association or
9 their designated representatives to meet at reasonable times and
10 confer and negotiate in good faith. The obligation does not require
11 either party to agree to a proposal or to make a concession. An
12 accredited association is the exclusive representative of all
13 producers in the bargaining unit for the purpose of bargaining with
14 all handlers that purchase the agricultural commodity produced in
15 the bargaining unit. Negotiations may include all terms relative to
16 trading between handlers and producers of the agricultural
17 commodity such as **THE FOLLOWING:**

18 (a) Prices and related terms of sale.

19 (b) Quality specifications.

20 (c) Quantity to be marketed.

21 (d) Transactions involving products and services utilized by 1
22 party and provided to the other party.

23 (2) The parties shall notify the ~~board~~—**DEPARTMENT** of the
24 commencement of negotiations.

25 Sec. 14. (1) Upon the request of an accredited association or
26 upon the request of a handler, the ~~board~~—**DEPARTMENT** shall provide
27 for the mediation of the issues in dispute. The ~~board~~—**DEPARTMENT**

1 shall take such steps as it ~~deems~~**CONSIDERS** expedient to effect a
2 voluntary, amicable, and expeditious adjustment and settlement of
3 the differences and issues between the association and the handler
4 which could disrupt the normal sale and purchase of the
5 agricultural commodity between producers and the handler. The ~~board~~
6 **DEPARTMENT** shall **DO ALL OF THE FOLLOWING:**

7 (a) Arrange for, hold, adjourn, or reconvene a conference or
8 conferences between disputants and 1 or more of their
9 representatives.

10 (b) Invite the disputants and their representatives to attend
11 the conference and submit, orally or in writing, the differences
12 between the disputants.

13 (c) Discuss the differences with the disputants or their
14 representatives.

15 (d) Assist in negotiating and drafting agreements for the
16 adjustment and settlement of differences.

17 (2) In implementing its duties under this section, the ~~board~~
18 **DEPARTMENT** may ~~designate 1 of its members or retain a competent~~
19 individual to act ~~in~~**ON** its behalf. ~~and may delegate to the~~
20 ~~designee its duties, and for such purpose, the designee shall have~~
21 ~~all of the powers conferred upon the board in connection with the~~
22 ~~discharge of the duties so delegated.~~ If the ~~board~~**DEPARTMENT** seeks
23 to retain an individual to mediate a dispute, ~~it~~**THE DEPARTMENT**
24 shall attempt to retain an individual who has experience in
25 mediation and in agricultural marketing.

26 (3) Where an individual is retained, the ~~board~~**DEPARTMENT**
27 shall establish his **OR HER** fee in advance.

1 Sec. 15. At any time prior to 30 days before the first day of
2 the marketing period, if an agreement on the issues in dispute
3 between the accredited association and the handler has not been
4 reached, the handler may elect not to purchase, directly or
5 indirectly, any quantity of the agricultural commodity produced in
6 the bargaining unit during the marketing period. ~~or~~ **IF AN AGREEMENT**
7 **ON THE ISSUES IN DISPUTE BETWEEN THE ACCREDITED ASSOCIATION AND THE**
8 **HANDLER HAS NOT BE REACHED**, the affected producers may elect, as
9 represented by the association, not to sell, directly or
10 indirectly, any quantity of the agricultural commodity to the
11 handler during the marketing period. If either party makes an
12 election, the other party is not under an obligation to continue
13 bargaining with the party so electing during that marketing period.

14 Sec. 16. (1) If the election provided for in section 15 is not
15 exercised by the association or the handler involved in
16 negotiations, and if the issues in dispute are not agreed upon
17 through good-faith bargaining by the first day of the marketing
18 period for the agricultural commodity, the parties shall be ~~deemed~~
19 **CONSIDERED** to have consented to the settlement of all issues in
20 dispute by arbitration and the association shall agree that
21 producers shall deliver the agricultural commodity to the handler
22 or initiate the production of the agricultural commodity for future
23 delivery to the handler and the handler shall accept delivery of
24 the agricultural commodity or shall commit for the future delivery
25 of the agricultural commodity. ~~Where~~

26 (2) **IF** the quantity of the agricultural commodity to be
27 marketed is in dispute, the handler shall offer to accept for

1 delivery a reasonable quantity of the agricultural commodity. This
 2 offer shall be made in writing to the accredited association at
 3 least 7 days prior to the start of the marketing period. A copy of
 4 this offer shall be sent by registered mail to the ~~board~~.

5 **DEPARTMENT**. The accredited association may file a claim for relief
 6 with the ~~board~~-**DEPARTMENT** if it feels that the offer is
 7 unreasonable. The ~~board~~-**DEPARTMENT** shall determine the issue of
 8 reasonableness at a hearing in accordance with ~~Act No. 306 of the~~
 9 ~~Public Acts of 1969, as amended.~~ **THE ADMINISTRATIVE PROCEDURES ACT**
 10 **OF 1969, 1969 PA 306, MCL 24.201 TO 24.328**. This determination
 11 shall have priority over all other ~~board~~-**DEPARTMENT** matters. The
 12 ~~board~~-**DEPARTMENT** shall base its determination on **ALL OF THE**
 13 **FOLLOWING:**

14 (a) Projections as to the quantity of the agricultural
 15 commodity to be produced. 7

16 (b) ~~the~~-**THE** relationship between the quantity of the commodity
 17 available and the amount of the quantity accepted by the handler. 7

18 (c) ~~the~~-**THE** kind, grade, and quality of the commodity
 19 available. 7 and

20 (d) ~~the~~-**THE** past practices of the handler in relation to the
 21 items in subdivisions (a), (b), and (c).

22 (3) If, upon the preponderance of the evidence, the ~~board~~
 23 **DEPARTMENT** is of the opinion that the quantity is unreasonable, it
 24 shall order the handler to accept the quantity which the ~~board~~
 25 **DEPARTMENT** finds to be reasonable. The finding of the ~~board~~
 26 **DEPARTMENT** shall be final, subject to later modification by the
 27 joint settlement committee. This finding shall be enforced in

1 accordance with the provisions of ~~AS PROVIDED IN~~ section 5. Within
 2 15 days following the start of the marketing period for the
 3 agricultural commodity, the ~~board-DEPARTMENT~~ shall establish a
 4 joint settlement committee to arbitrate the issues in dispute.

5 (4) ~~(2)~~ The **JOINT SETTLEMENT** committee consists of 1
 6 ~~committeeman-COMMITTEE MEMBER~~ selected by the association, 1
 7 ~~committeeman-COMMITTEE MEMBER~~ selected by the handler, and 1
 8 ~~committeeman-COMMITTEE MEMBER~~ selected by the ~~committeeman~~
 9 **COMMITTEE MEMBERS** representing the association and the handler.
 10 This third ~~committeeman-COMMITTEE MEMBER~~ shall be ~~chairman~~
 11 **CHAIRPERSON** of the committee. If the third ~~committeeman-COMMITTEE~~
 12 **MEMBER** cannot be agreed upon by the association and the handler
 13 ~~committeeman-COMMITTEE MEMBERS~~, the ~~board-DEPARTMENT~~ shall submit a
 14 list composed of the names of 5 persons ~~knowledgeable-KNOWLEDGABLE~~
 15 in the marketing of the agricultural commodity from which the third
 16 ~~committeeman-COMMITTEE MEMBER~~ shall be chosen. The selection shall
 17 be made by the association representative and the handler
 18 representative each striking 2 different names from the list. The
 19 remaining name shall be the person who serves as the third
 20 ~~committeeman-COMMITTEE MEMBER~~ and as its ~~chairman-CHAIRPERSON~~. The
 21 order of striking shall be determined by chance.

22 Sec. 17. The chairperson **OF A JOINT SETTLEMENT COMMITTEE**
 23 **ESTABLISHED UNDER SECTION 16** shall call a hearing to begin within
 24 15 days **AFTER THE JOINT SETTLEMENT COMMITTEE IS ESTABLISHED** and
 25 **SHALL** give reasonable notice of the time ~~and~~ place of the
 26 hearing. The chairperson shall preside over the hearing and shall
 27 take testimony. Upon application and for good cause shown, and upon

1 ~~such~~ terms and conditions as ~~THAT~~ are just, a person having a
2 substantial interest ~~therein~~ **IN THE DISPUTE** may be granted leave to
3 intervene by the **JOINT SETTLEMENT** committee. Any oral or
4 documentary evidence and other data ~~deemed~~ **CONSIDERED** relevant by
5 the joint settlement committee may be received in evidence. The
6 proceedings shall be informal. Technical rules of evidence shall
7 not apply and the competency of the evidence shall not ~~thereby~~ be
8 ~~deemed~~ **CONSIDERED** impaired. A verbatim record of the proceedings
9 shall be made and the chairperson shall arrange for the necessary
10 recording service. Transcripts may be ordered at the expense of the
11 party ordering them but the transcripts shall not be necessary for
12 a decision by the **JOINT SETTLEMENT** committee. The expense of the
13 proceedings, including a fee to the chairperson, established in
14 advance by the ~~board~~ **DEPARTMENT** shall be borne equally by each of
15 the parties to the dispute. ~~and the state.~~ The hearing conducted by
16 the ~~arbitration panel~~ **JOINT SETTLEMENT COMMITTEE** may be adjourned
17 from time to time, but, unless otherwise agreed by the parties,
18 shall be concluded within 30 days of the time of its commencement.
19 ~~Its majority~~ **THE** actions and rulings **OF A MAJORITY OF THE MEMBERS**
20 **OF THE JOINT SETTLEMENT COMMITTEE** shall constitute the actions and
21 rulings of the joint settlement committee.

22 Sec. 18. The **JOINT SETTLEMENT** committee may administer oaths,
23 require the attendance of witnesses, and **REQUIRE** the production of
24 such books, papers, contracts, agreements, and documents as may be
25 ~~deemed by it~~ **CONSIDERED** material **BY THE COMMITTEE** to a just
26 determination of the issues in dispute, and for such purpose may
27 issue ~~subpoenas.~~ **SUBPOENAS**. If any person refuses to obey a

1 ~~subpeena,~~ **SUBPOENA**, or refuses to be sworn or to testify, or if any
2 witness, party, or attorney is guilty of any contempt while in
3 attendance at any hearing, the **JOINT SETTLEMENT** committee may, or
4 the attorney general if requested shall, invoke the aid of any
5 circuit court within the jurisdiction in which the hearing is being
6 held, which court shall issue an appropriate order. Any failure to
7 obey the order may be punished by the court as contempt.

8 Sec. 19. ~~The committee within~~ **WITHIN** 20 days after the
9 conclusion of the hearing or such further time to which the parties
10 may agree, **THE JOINT SETTLEMENT COMMITTEE** shall make written
11 findings of fact and issue its written award upon the issues
12 presented to it and upon the record made before it, and shall mail
13 or otherwise deliver a true copy thereof to the parties or their
14 representatives. The award of the **JOINT SETTLEMENT** committee shall
15 be limited to the last offer of the association or the last offer
16 of the handler, ~~which~~ **WHICHEVER** more nearly complies with the
17 criteria contained in section 20.

18 Sec. 20. The **JOINT SETTLEMENT** committee shall base its
19 decision upon the following factors:

20 (a) Prices or projected prices for the agricultural commodity
21 paid by competing handlers in the market area or competing market
22 areas.

23 (b) Amount of the commodity produced or projections of
24 production in the production area or competing marketing areas.

25 (c) Relationship between the quantity produced and the
26 quantity handled by the handler.

27 (d) The ~~producers~~ **PRODUCER'S** cost of production including the

1 cost which would be involved in paying farm labor a fair wage rate.

2 (e) The average consumer prices for goods and services,
3 commonly known as the cost of living.

4 (f) The impact of the award on the competitive position of the
5 handler in the marketing area or competing areas.

6 (g) The impact of the award on the competitive position of the
7 agricultural commodity in relationship to competing commodities.

8 (h) A fair return on investment.

9 (i) Kind, quality, or grade of the commodity involved.

10 (j) Stipulation of the parties.

11 (k) Such other factors which are normally or traditionally
12 taken into consideration in determining prices, quality, quantity,
13 and the costs of other services involved.

14 Sec. 21. A majority decision of the **JOINT SETTLEMENT**
15 committee, if supported by competent, material and substantial
16 evidence on the whole record, shall be final and binding upon the
17 parties, and may be enforced, at the ~~instance~~**INSISTENCE** of either
18 party or of the **JOINT SETTLEMENT** committee in the court of appeals.

19 Sec. 22. A party who ~~wilfully~~**WILLFULLY** disobeys a lawful
20 order of enforcement by the court of appeals pursuant to section 21
21 ~~, or wilfully~~**WILLFULLY** encourages or offers resistance to such
22 order shall be in contempt. The punishment for each day the
23 contempt persists ~~,~~ may be a fine fixed in the discretion of the
24 court in an amount not to exceed \$500.00 per day.

25 Sec. 23. (1) Awards of the **JOINT SETTLEMENT** committee shall be
26 reviewable by the court of appeals but only for **THE FOLLOWING**
27 reasons: ~~that the~~

1 (A) **THE JOINT SETTLEMENT** committee was without or exceeded its
2 jurisdiction. ~~the~~

3 (B) **THE** award is unsupported by competent, material, and
4 substantial evidence on the whole record. ~~or the~~

5 (C) **THE** award was procured by fraud, collusion, or other
6 similar and unlawful means.

7 (2) The pendency of ~~such~~**A** proceeding for review shall not
8 automatically stay the order of the **JOINT SETTLEMENT** committee.

9 Sec. 24. Within 30 days after an accredited association
10 negotiates a contract with a handler or receives a **JOINT SETTLEMENT**
11 committee award, it shall send to the ~~board~~**DEPARTMENT** by
12 registered mail a copy of the contract or award.

13 Sec. 25. (1) At all reasonable times, the ~~board~~**DEPARTMENT**
14 shall have access to and the right to copy evidence relating to any
15 person or action under investigation by it in connection with any
16 failure or refusal to bargain or for engaging in unfair practices.

17 (2) In case of ~~contumacy or refusal to obey a subpoena~~
18 **SUBPOENA** issued to any person **UNDER THIS ACT**, the circuit court,
19 upon application by the ~~board~~**DEPARTMENT**, shall have jurisdiction
20 to order ~~such~~**THE** person to appear before the ~~board~~**DEPARTMENT** to
21 produce evidence or to give testimony ~~touching~~**ON** the matter under
22 investigation, and any failure to obey ~~such~~**THE** order may be
23 punished by the court as a contempt.

24 (3) Complaints, orders, and other processes and papers of the
25 ~~board~~**DEPARTMENT UNDER THIS ACT** may be served personally, by
26 registered mail, ~~by telegraph~~, or by leaving a copy thereof at the
27 principal office or place of business of the person required to be

1 served. The verified return of service shall be proof of the
2 service. Witnesses summoned before the ~~board~~**DEPARTMENT** shall be
3 paid the same fee and mileage allowance that are paid witnesses in
4 circuit court and witnesses whose depositions are taken, and the
5 person taking the same shall be entitled to the same fees as are
6 paid for like services in circuit court.

7 (4) All processes of any court ~~of~~**TO** which an application or
8 petition may be made under this act may be served at any place in
9 the state wherein the person or persons required to be served
10 reside or may be found.