

AN ACT

To amend sections 905.40 and 924.01 and to enact sections 924.40 to 924.45 of the Revised Code to establish procedures and requirements for the establishment of marketing agreements for agricultural commodities and to revise the rule-making authority of the Director of Agriculture regarding fertilizers, specifically anhydrous ammonia.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 905.40 and 924.01 be amended and sections 924.40, 924.41, 924.42, 924.43, 924.44, and 924.45 of the Revised Code be enacted to read as follows:

Sec. 905.40. The director of agriculture shall adopt and enforce uniform rules:

(A) Governing the storing and handling of ~~fertilizers~~ anhydrous ammonia;

(B) For safety in the design, construction, location, installation, or operation of ~~equipment for storing, handling, transporting, and utilizing anhydrous ammonia, aqueous ammonia, or other solutions~~ systems for agricultural use as agricultural fertilizers. In addition, with regard to an anhydrous ammonia system that is used for agricultural purposes, the rules shall establish standards and procedures for the approval or disapproval of the design and construction of ~~storage facilities for anhydrous ammonia systems~~ and procedures for applying for such approval, including the form of the application.

(C) To prohibit the reselling or reuse of such containers without authorization by the owner thereof;

(D) Requiring that guaranteed analysis be stated in a form other than that defined in section 905.31 of the Revised Code when another form will not impose an economic hardship on manufacturers, distributors, and users of fertilizer by reason of conflicting labeling requirements among the states.

Sec. 924.01. As used in sections 924.01 to 924.16 and ~~924.51~~ 924.40 to

924.55 of the Revised Code:

(A) "Agricultural commodity" means any food, fiber, feed, animal, or plant, or group of foods, fibers, feeds, animals, or plants that the director of agriculture determines to be of the same nature, in either a natural or a processed state. "Agricultural commodity" does not include grain as defined in section 924.20 of the Revised Code.

(B) "Distributor" means any person who sells, offers for sale, markets, or distributes an agricultural commodity that the person has purchased or acquired directly from a producer, or that the person markets on behalf of a producer.

(C) "Handler" means any person who is in the business of packing, grading, selling, offering for sale, or marketing any agricultural commodity in commercial quantities as defined in a marketing program.

(D) "Marketing program" means a program that is established by order of the director pursuant to this chapter, to improve or expand the market for an agricultural commodity.

(E) "Operating committee" means a committee established to administer a marketing program for an agricultural commodity.

(F) "Person" means any natural person, partnership, corporation, society, association, or fiduciary.

(G) "Processor" means any person who is in the business of grading, packaging, packing, canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, juicing, or in any other way preserving or changing the form of any agricultural commodity.

(H) "Producer" means any person who is in the business of producing, or causing to be produced, any agricultural commodity for commercial sale, except that when used in reference to nursery stock, "producer" also means a distributor, processor, handler, or retailer of nursery stock.

Sec. 924.40. (A) For purposes of sections 924.40 to 924.46 of the Revised Code, the director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that establish procedures and requirements that are necessary to administer and implement a marketing agreement executed under those sections for an agricultural commodity or a region of the state concerning an agricultural commodity that is the subject of the marketing agreement.

(B) For purposes of sections 924.40 to 924.45 of the Revised Code, the director may do all of the following:

(1) Approve a marketing agreement;

(2) Terminate a marketing agreement executed under those sections if any of the following applies:

(a) The director finds that the agreement or any terms of the agreement violate state or federal law.

(b) A producer is engaging in malfeasance, disparagement, or unfair trade practices.

(c) The number of producers that signed the marketing agreement becomes fewer than the minimum number of producers that are necessary for the administration of the marketing agreement to be financially self-supporting.

(3) Enter and inspect a facility of a producer that signed a marketing agreement to ensure compliance with the marketing agreement. The director may delegate that authority to another person or contract with another person to exercise that authority.

(4) Adopt rules in accordance with Chapter 119. of the Revised Code that establish civil penalties that the director may assess against a person that signed a marketing agreement who violates its terms or who violates sections 924.40 to 924.45 of the Revised Code and rules adopted under those sections;

(5) Enforce rules under sections 924.40 to 924.45 of the Revised Code.

Sec. 924.41. A marketing agreement that is executed in compliance with and pursuant to sections 924.40 to 924.45 of the Revised Code for the purpose of the voluntary participation of persons who are signatories to the agreement may provide for the establishment and regulation of one or more of the following:

(A) Standards of production for an agricultural commodity, including growing and handling practices, provided that the standards are equivalent to or more stringent than standards of production for that agricultural commodity that are established in the laws of this state or federal law;

(B) Standards for the establishment and use of a logo, trademark, or brand associated with an agricultural commodity, provided that the standards do not violate the laws of this state or federal law;

(C) Collection of fees for services provided pursuant to the marketing agreement;

(D) Any other topic that the director of agriculture may allow by rule.

Sec. 924.42. (A) Producers of an agricultural commodity in this state may present to the director of agriculture a petition signed by at least two hundred or twenty-five per cent of all the producers of that agricultural commodity in this state, whichever is less, requesting the director to approve a marketing agreement for that agricultural commodity.

(B) A petition submitted under division (A) of this section shall include all of the following:

(1) A document that creates and identifies a provisional board of directors for the purpose of facilitating the execution of the proposed marketing agreement, which shall consist of at least three, but not more than five producers of the agricultural commodity that is the subject of the proposed marketing agreement;

(2) A proposed marketing agreement that at a minimum contains a description of all of the following:

(a) The affected agricultural commodity or the region of the state concerning the agricultural commodity that is the subject of the proposed marketing agreement;

(b) Any standards that will be adopted under the proposed marketing agreement;

(c) Procedures by which the proposed marketing agreement may be amended;

(d) The length of time that the proposed marketing agreement will be in effect;

(e) The size and composition of a board of directors that will be established under the marketing agreement for the purpose of administering the agreement;

(f) The method by which the members of the board of directors that will be established under the marketing agreement will be elected;

(g) The estimated costs to and rate of assessment to be made on each person who is a signatory to the marketing agreement for purposes of membership, inspections, or other services provided by the board of directors under the marketing agreement in conjunction with the person's participation in the marketing agreement;

(h) The minimum number of producers that are necessary for the marketing agreement to be financially self-supporting;

(i) Any other information that the director may require by rule.

(3) An unbiased and accurate summary of the proposed marketing agreement.

(C) The petitioners shall include with the petition submitted under division (A) of this section all of the following:

(1) A current list of producers of the agricultural commodity or in the region of the state concerning the agricultural commodity that is the subject of the proposed marketing agreement. The list may be created from existing records or records that are available from any reliable source.

(2) An administration fee of five hundred dollars or another amount that the director determines is necessary to pay the costs of the director of notifying all known producers of the affected agricultural commodity or in

the region of the state concerning the agricultural commodity that is the subject of the proposed marketing agreement and the costs of conducting the public meeting that is required in section 924.43 of the Revised Code concerning the proposed marketing agreement;

(3) Information that demonstrates that the producers of the agricultural commodity or in the region of the state concerning the agricultural commodity that is the subject of the proposed marketing agreement have sufficient money to pay the costs of a board of directors to administer the marketing agreement and to pay the costs of administration and enforcement of the marketing agreement.

Sec. 924.43. (A) After receipt of a petition submitted under division (A) of section 924.42 of the Revised Code, the director of agriculture shall notify all producers included in the list provided to the director under division (C)(1) of that section. The notification shall contain a description of the purpose of the proposed marketing agreement and provide the date, time, and location of a public meeting that will be conducted by the director as required by division (B) of this section. The notification shall be sent through regular mail and published in at least one publication specific to the agricultural commodity that is the subject of the proposed marketing agreement. In addition, the director may post the notification on the department of agriculture's web site.

(B) Not later than thirty days after receipt of a petition submitted under division (A) of section 924.42 of the Revised Code, the director shall conduct a public meeting concerning the proposed marketing agreement for an agricultural commodity or for the region of the state concerning an agricultural commodity. At the meeting, the director shall allow any interested person to present information concerning the proposed marketing agreement.

(C) At least a majority of the members of the provisional board of directors created pursuant to division (B)(1) of section 924.42 of the Revised Code shall attend the public meeting conducted by the director pursuant to division (B) of this section. The provisional board shall consider all of the information presented at the public meeting before drafting a marketing agreement that will be submitted to the director for approval. Not later than thirty days after the public meeting, the provisional board shall submit to the director for approval a marketing agreement that complies with section 924.44 of the Revised Code for an agricultural commodity or for a region of the state concerning an agricultural commodity.

(D)(1) Not later than thirty days after receipt of a marketing agreement, the director shall consider all of the information presented at the public

meeting conducted under division (B) of this section before approving or denying the marketing agreement. The director may approve a marketing agreement only if all of the following apply:

(a) The director is unable to discover a substantially similar marketing agreement existing for the agricultural commodity or for the region of the state concerning the agricultural commodity that is the subject of the marketing agreement.

(b) The marketing agreement complies with section 924.44 of the Revised Code.

(c) The marketing agreement complies with the laws of this state and federal law.

(d) The director determines that the producers of the agricultural commodity or the region of the state concerning the agricultural commodity that is the subject of the marketing agreement have sufficient money to pay the costs of a board of directors to administer the marketing agreement and to pay the costs of administration and enforcement of the marketing agreement pursuant to the information submitted under division (C)(3) of section 924.42 of the Revised Code.

(2) The director shall send notice to the provisional board of directors created pursuant to division (B)(1) of section 924.42 of the Revised Code of the director's decision to approve or deny the marketing agreement. If the director approves the marketing agreement, the notice shall indicate the date by which producers will be required to sign the marketing agreement, which shall be sixty days after the date on which the director approved the marketing agreement.

(3) If the provisional board of directors created pursuant to division (B)(1) of section 924.42 of the Revised Code receives notice from the director approving the marketing agreement, the board shall notify all known producers of the agricultural commodity or all known producers in the region in which the agricultural commodity is produced that is the subject of the approved marketing agreement. The notice shall include the date by which producers must sign the marketing agreement.

(4) Following the date by which producers desiring to be signatories to the marketing agreement are required to sign the agreement, the director shall determine if there is a sufficient number of producers that signed the marketing agreement for the administration of the marketing agreement to be financially self-supporting plus an additional twenty per cent of that number. If the director determines that at least the minimum number of required producers have signed the marketing agreement, the director shall sign the marketing agreement and the marketing agreement shall be

effective on the date on which the director signs it.

Sec. 924.44. A marketing agreement submitted by a provisional board of directors under section 924.43 of the Revised Code at a minimum shall contain terms that establish all of the following:

(A) The identification of the agricultural commodity or of the region of the state concerning the agricultural commodity that is the subject of the marketing agreement;

(B) Standards, if any, of production for the agricultural commodity or of marketing that will apply to each producer that signs the marketing agreement;

(C) Standards for the use of a logo, trademark, or brand associated with the agricultural commodity;

(D) The length of time that the marketing agreement will be in effect, whether the marketing agreement may be renewed, and, if so, procedures for renewal;

(E) Procedures by which the marketing agreement may be amended. The procedures shall require the approval of the director of agriculture and of at least a majority of the producers that are signatories to the marketing agreement in order for an amendment to be effective.

(F) The size and composition of a board of directors that will administer the marketing agreement;

(G) Procedures for the election of members of the board of directors;

(H) The lengths of terms of members of the board of directors and conditions, if any, for reelection;

(I) Procedures for the removal of a member of the board of directors for misfeasance, malfeasance, or nonfeasance;

(J) The costs to and rate of assessment to be made on each person who is a signatory to the marketing agreement for purposes of membership, inspections, or other services provided by the board of directors under the marketing agreement in conjunction with the person's participation in the marketing agreement;

(K) Procedures by which producers of the agricultural commodity may become signatories to the marketing agreement after the agreement takes effect;

(L) Procedures by which producers who are signatories to the marketing agreement may be removed from the marketing agreement;

(M) Procedures by which producers that are signatories to the marketing agreement may terminate the marketing agreement;

(N) Any other procedures or requirements that the director of agriculture requires by rule.

Sec. 924.45. (A)(1) After a marketing agreement takes effect, a board of directors that will administer the marketing agreement shall be established in accordance with the terms of the marketing agreement. Except for the director of agriculture or the director's designee who shall serve as an ex officio member of the board of directors, members of the board shall be selected only from individuals who are producers that signed the marketing agreement.

(2) The provisional board of directors created pursuant to division (B)(1) of section 924.42 of the Revised Code shall verify that the board of directors is established in accordance with the terms of the marketing agreement. If the provisional board of directors determines that the board of directors was not established in accordance with the terms of the marketing agreement, the provisional board shall notify the director who shall take appropriate actions to ensure that the board of directors is established in accordance with the terms of the marketing agreement. If the provisional board of directors determines that the board of directors was established in accordance with the terms of the marketing agreement, the provisional board shall cease to exist.

(B) A board of directors that is established to administer a marketing agreement shall do all of the following:

(1) Establish priorities of the board that are consistent with the estimated financial resources that will be generated under the terms of the marketing agreement and with the scope of the marketing agreement;

(2) Prepare a budget that is consistent with the estimated financial resources that will be generated under the terms of the marketing agreement and with the scope of the marketing agreement;

(3) Deposit all money collected pursuant to the marketing agreement with a bank as defined in section 1101.01 of the Revised Code or with a savings and loan association as defined in section 1151.01 of the Revised Code. The board shall use the money only to pay the costs of the board in administering the marketing agreement and of the activities authorized under the marketing agreement and under sections 924.40 to 924.45 of the Revised Code.

(4) Establish a fiscal year for purposes of marketing activities performed under the terms of the marketing agreement;

(5) Publish an activity and financial report not later than sixty days after the end of a fiscal year. The board shall make the report available to each producer that signed the marketing agreement and to other interested parties.

(6) Provide annually to the director of agriculture and to each producer that signed the marketing agreement a financial statement that is prepared by

a person who holds a current certificate as a certified public accountant issued under Chapter 4701. of the Revised Code. The board shall provide the financial statement to the director not later than sixty days after the end of a fiscal year.

(7) Reimburse the department of agriculture for actual administrative costs incurred by the department in the administration of sections 924.40 to 924.45 of the Revised Code. However, the amount reimbursed in a fiscal year shall not exceed ten per cent of the total amount of money collected in that fiscal year by the board of directors under the authority of the marketing agreement.

(8) Perform all other acts and exercise all other powers that are reasonably necessary, proper, or advisable to effectuate the purposes of sections 924.40 to 924.45 of the Revised Code.

(C) A board of directors that is established to administer a marketing agreement may do all of the following:

(1) Propose to the director rules that are necessary for the board to perform its duties under the requirements of the marketing agreement and under sections 924.40 to 924.45 of the Revised Code;

(2) Hire personnel and contract for services that are necessary for the implementation and administration of the marketing agreement;

(3) Receive and investigate, or cause to be investigated, a complaint concerning an alleged violation of a term of the marketing agreement. If the board determines that such a violation has occurred, the board shall refer the matter to the director for enforcement.

(4) Amend the marketing agreement in accordance with the terms of the marketing agreement and with sections 924.40 to 924.45 of the Revised Code;

(5) Terminate the marketing agreement with the approval of a majority of the participating producers that are signatories to the marketing agreement. If the marketing agreement is terminated, the board shall distribute any remaining unobligated money collected under the authority of the marketing agreement to each participating producer in the same proportion that the producer paid assessments under the marketing agreement.

SECTION 2. That existing sections 905.40 and 924.01 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 309

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____