

AN ACT

To amend sections 924.01, 924.02, 924.08, 924.09, and 924.99 and to enact sections 924.20 to 924.30 and 3717.53 of the Revised Code to establish a grain marketing program, to provide that the Director of Agriculture has exclusive authority to regulate the provision of food nutrition information at food service operations, and to provide incentives for bioproducts innovation in the Ohio polymer industry.

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

SECTION 1. That sections 924.01, 924.02, 924.08, 924.09, and 924.99 be amended and sections 924.20, 924.21, 924.22, 924.23, 924.24, 924.25, 924.26, 924.27, 924.28, 924.29, 924.30, and 3717.53 of the Revised Code be enacted to read as follows:

Sec. 924.01. As used in ~~Chapter 924.~~ sections 924.01 to 924.16 and 924.51 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 ~~which he~~ that the person has purchased or acquired directly from a producer, or ~~which he~~ 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 ~~which that~~ that is established by order of the director ~~of agriculture~~ 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. 924.02. The director of agriculture, subject to ~~this chapter~~ sections 924.01 to 924.16 and Chapter 119. of the Revised Code, shall do all of the following:

(A) Establish procedures by which producers of Ohio agricultural commodities may propose, develop, and operate marketing programs to:

- (1) Promote the sale and use of their products;
- (2) Develop new uses and markets for such products;
- (3) Improve the methods of distributing such products to consumers;
- (4) Standardize the quality of such products for specific uses.

(B) Adopt and enforce rules to put into effect the intent of sections 924.01 to 924.16 of the Revised Code;

(C) Determine the eligibility of producers to participate in referendums and other procedures that may be required to establish marketing programs for agricultural commodities.

Sec. 924.08. The director of agriculture shall monitor the actions of each operating committee to assure that:

(A) Each marketing program is self-supporting;

(B) Each such committee keeps all records ~~which~~ that are required for agencies of the state;

(C) All program operations are in accord with:

- (1) The provisions of the marketing program;
- (2) ~~Regulations~~ Rules adopted by the director;
- (3) ~~Chapter 924.~~ Sections 924.01 to 924.16 of the Revised Code.

(D) Administrative activities of each committee are coordinated with those of the department of agriculture.

Sec. 924.09. (A) Each operating committee may make assessments upon the marketable agricultural commodity for which the marketing program was established.

(B) No operating committee shall levy any assessment:

(1) That was not approved by the producers affected by the program;

(2) That exceeds two cents per bushel of corn; or soybeans, ~~or wheat~~, or two per cent of the average market price of any other agricultural commodity during the preceding marketing year as defined for the commodity by the United States department of agriculture or, if there is no such definition, by the director of agriculture;

(3) Against any producer who is not eligible to vote in a referendum for the marketing program that the operating committee administers.

(C) The director ~~of agriculture~~ may require a producer, processor, distributor, or handler of an agricultural commodity for which a marketing program has been established under sections 924.01 to 924.16 of the Revised Code to withhold assessments from any amounts that the producer, processor, distributor, or handler owes to producers of the commodity and, notwithstanding division (B)(3) of this section, to remit them to the director. Any processor, distributor, or handler who pays for any producer any assessment that is levied under authority of this section may deduct the amount of the assessment from any moneys that the processor, distributor, or handler owes to the producer.

(D) No operating committee shall use any assessments that it levies for any political or legislative purpose, or for preferential treatment of one person to the detriment of any other person affected by the marketing program.

(E) The operating committee of each marketing program shall refund to a producer the assessments that it collects from the producer not later than sixty days after receipt of a valid application by the producer for a refund, provided that the producer complies with the procedures for a refund that were included in the program under division (B)(3) of section 924.04 of the Revised Code.

In the case of the state beef marketing program, in lieu of giving a refund to a producer, the director of the program's operating committee may forward the refund to the cattlemen's beef promotion and research board pursuant to the "Beef Promotion and Research Act," 99 Stat. 1597 (1985), 7 U.S.C.A. 2901, and amendments thereto, and shall credit that amount to the total amount owed by the producer to the federal beef program. Each application for a refund of assessments levied for a program established after April 10, 1985 shall be made on a form provided by the director of agriculture. Each operating committee for such a program shall ensure that refund forms are available where assessments for its program are withheld.

Sec. 924.20. As used in sections 924.20 to 924.30 of the Revised Code:

(A) "Grain" means wheat, barley, rye, or oats.

(B) "Handler" means a person who is in the business of agricultural commodity handling, as defined in section 926.01 of the Revised Code, of grain.

(C) "Producer" means a person who is in the business of producing, or causing to be produced, grain for commercial sale.

(D) "Rule" means a rule adopted under section 924.25 of the Revised Code.

Sec. 924.21. There is hereby established a grain marketing program. The program shall be administered in accordance with sections 924.20 to 924.30 of the Revised Code and rules.

Sec. 924.22. (A) For the purposes of sections 924.20 to 924.30 of the Revised Code, the director of agriculture shall hold an election to determine the membership of a grain marketing program operating committee in accordance with rules. The election shall be for nine members of the operating committee.

(B) Not later than one hundred twenty days after the effective date of this section, the director shall accept the names of persons as nominees to serve on the operating committee. In accepting nominations and placing names on the ballot, the director shall follow the procedures established in rules.

(C) Not later than one hundred eighty days after the effective date of this section, the director shall hold an election to determine the membership of the operating committee. In the election, eligible producers may cast votes in person at or mail ballots to polling places designated by the director. The director shall establish a three-day period during which eligible producers may vote in person during normal business hours at the designated polling places. The director or another appropriate person shall send a ballot by ordinary first-class mail to an eligible producer who requests one by calling the toll-free telephone number or submitting the ballot request form provided for in division (D) of this section, by calling one of the designated polling places, or by any additional method that the director may provide. A ballot returned by mail is not valid if it is postmarked later than the third day of the election period established by the director.

(D) For the purposes of an election of members of the grain marketing program operating committee, the director shall cause a ballot request form to be published at least thirty days before the beginning of the election period established in accordance with division (C) of this section in at least two appropriate periodicals designated by the director and shall make the form available for reproduction to any interested group or association. The

director also shall provide a toll-free telephone number that producers may call to request a ballot.

(E) Following the election of the initial members of the operating committee, the director shall hold subsequent elections in order to maintain the membership of the operating committee as provided in rules. The elections shall be held in the manner established in this section and rules for the election of initial members.

(F) Persons elected to the grain marketing program operating committee shall hold office in accordance with rules.

Sec. 924.23. (A) The grain marketing program operating committee shall hold at least one meeting per quarter each year. The members of the operating committee annually shall select officers, including a chairperson and a vice-chairperson.

(B) A majority of the members of the operating committee constitutes a quorum. A majority of concurring votes is required to pass a motion or approve any operating committee action.

(C) The director of agriculture, or the director's designee, is an ex-officio voting member of the operating committee.

(D) Each member of the operating committee, except the director or the director's designee, is entitled to actual and necessary travel and incidental expenses while attending meetings of the committee or while engaged in the performance of official responsibilities as a member of the committee.

(E) A member or employee of the operating committee is not civilly liable for any actions taken in good faith as a member or employee, as applicable, of the committee.

Sec. 924.24. (A) The grain marketing program operating committee shall do all of the following:

(1) Hire personnel and contract for services that are necessary for the operation of the grain marketing program;

(2) Promote the sale of grain for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for grain, and inform the public of the uses and benefits of grain;

(3) Establish requirements and procedures for the collection of assessments that the operating committee is required to levy under section 924.26 of the Revised Code, including the method and frequency of collection;

(4) Establish procedures to be used by a person who wishes to file for a refund of the person's assessment that is levied under section 924.26 of the Revised Code;

(5) Perform all acts and exercise all powers incidental to, in connection with, or considered reasonably necessary, proper, or advisable to effectuate the purposes of sections 924.20 to 924.30 of the Revised Code.

(B) The operating committee may do any or all of the following:

(1) Conduct, and contract with others to conduct, research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere, concerning the marketing and distribution of grain, the storage, processing, and transportation of grain, and the production and product development of grain;

(2) Provide the wholesale and retail grain trade with information relative to proper methods of handling and selling grain;

(3) Conduct, and contract with others to conduct, market surveys and analyses, undertake any other similar activities that it determines are appropriate for the maintenance and expansion of present markets and the creation of new and larger markets for grain, and enter into contracts, in the name of the committee, to render service in formulating and conducting plans and programs and other contracts or agreements that the committee considers necessary for the promotion of the sale of grain;

(4) Publish and distribute to producers and others information relating to the grain industry;

(5) Propose to the director of agriculture rules that are necessary for the exercise of its powers and the performance of its duties;

(6) Establish priorities and prepare and approve a budget consistent with estimated resources and the scope of the grain marketing program;

(7) Receive and investigate, or cause to be investigated, complaints concerning and violations of the grain marketing program. The operating committee shall refer any violations to the director for action under section 924.29 of the Revised Code.

Sec. 924.25. (A) The director of agriculture shall monitor the activities of the grain marketing program operating committee to ensure all of the following:

(1) The grain marketing program is self-supporting.

(2) The operating committee keeps all records that are required for agencies of the state.

(3) The program's operations comply with all of the following:

(a) The provisions of the program;

(b) Rules;

(c) Sections 924.20 to 924.30 of the Revised Code.

(4) Administrative activities of the committee are coordinated with those of the department of agriculture.

(B) Not later than ninety days after the effective date of this section, the director shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to carry out the purposes of sections 924.20 to 924.30 of the Revised Code. The rules shall include all of the following:

(1) Deadlines and nomination procedures for the placement of persons on the ballot for election to the grain marketing program operating committee;

(2) The terms of office of members of the operating committee, including the staggering of terms for the initial members;

(3) Insofar as possible, requirements providing for the equitable distribution of members on the operating committee by geographic and production areas of the state.

Sec. 924.26. (A) The grain marketing program operating committee shall levy on producers and, as provided in division (B) of this section, handlers the following assessments, as applicable:

(1) One-half of one per cent of the per-bushel price of wheat at the first point of sale;

(2) One-half of one per cent of the per-bushel price of barley at the first point of sale;

(3) One-half of one per cent of the per-bushel price of rye at the first point of sale;

(4) One-half of one per cent of the per-bushel price of oats at the first point of sale.

(B) The director may require a handler to withhold assessments from any amounts that the handler owes to producers and to remit them to the director. A handler who pays for a producer an assessment that is levied under this section may deduct the amount of the assessment from any money that the handler owes to the producer.

(C) The operating committee shall deposit all money collected under this section with a bank or savings and loan association as defined in sections 1101.01 and 1151.01 of the Revised Code. All money so collected and deposited shall be used only for defraying the costs of administration of the marketing program and for carrying out sections 924.20 to 924.30 of the Revised Code. The operating committee shall not use any assessments that it levies for any political or legislative purpose or for preferential treatment of one person to the detriment of any other person affected by the grain marketing program.

(D) The operating committee shall refund to a producer the assessments that it collects from the producer not later than thirty days after receipt of a valid application by the producer for a refund, provided that the producer

complies with the procedures for a refund established by the committee under section 924.24 of the Revised Code.

An application for a refund shall be made on a form provided by the director. The operating committee shall ensure that refund forms are available where assessments for the grain marketing program are collected.

Sec. 924.27. (A) The grain marketing program operating committee shall establish a fiscal year for the grain marketing program. Within sixty days of the end of each fiscal year, the operating committee shall publish an activity and financial report and make the report available to each producer who pays the assessment levied under section 924.26 of the Revised Code or otherwise contributes to the program and to other interested persons.

(B) In addition to the reports required by division (A) of this section, the operating committee shall submit to the director of agriculture both of the following:

(1) An annual financial statement prepared by a certified public accountant holding a permit issued by the accountancy board under Chapter 4701. of the Revised Code. The operating committee shall file the financial statement with the director not more than sixty days after the end of each fiscal year.

(2) A monthly unaudited financial statement.

Sec. 924.28. The grain marketing program may be suspended or terminated in the same manner in which other marketing programs are suspended or terminated under sections 924.12 and 924.13 of the Revised Code.

Sec. 924.29. The director of agriculture may institute an action at law or in equity that appears necessary to enforce compliance with sections 924.20 to 924.30 of the Revised Code, rules, or the grain marketing program that is established in compliance with those sections and rules.

Sec. 924.30. (A) No person shall knowingly fail or refuse to withhold or remit an assessment levied under section 924.26 of the Revised Code.

(B) Before instituting an enforcement action for a violation of this section, the director of agriculture shall give the alleged violator an opportunity to present the alleged violator's views to the director as to why the action should not be instituted.

Sec. 924.99. Whoever violates division (A) of section 924.16 or of section 924.30 of the Revised Code is guilty of a misdemeanor of the fourth degree.

Sec. 3717.53. (A) As used in this section:

(1) "Food nutrition information" includes the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, and sodium

content of food.

(2) "Political subdivision" and "local legislation" have the same meanings as in section 905.501 of the Revised Code.

(B) The director of agriculture has sole and exclusive authority in this state to regulate the provision of food nutrition information at food service operations. The director may adopt rules for that purpose in accordance with Chapter 119. of the Revised Code, including rules that establish a schedule of civil penalties for violations of this section and rules adopted under it. Subject to the approval of the joint committee on agency rule review, portions of the rules may be adopted by referencing all or any part of any federal regulations pertaining to the provision of food nutrition information.

The regulation of the provision of food nutrition information at food service operations is a matter of general statewide interest that requires statewide regulation, and rules adopted under this section constitute a comprehensive plan with respect to all aspects of the regulation of the provision of food nutrition information at food service operations in this state. Rules adopted under this section shall be applied uniformly throughout this state.

(C) No political subdivision shall enact, adopt, or continue in effect local legislation relating to the provision of food nutrition information at food service operations.

SECTION 2. That existing sections 924.01, 924.02, 924.08, 924.09, and 924.99 of the Revised Code are hereby repealed.

SECTION 3. In fiscal year 2009, up to \$200,000 from a non-General Revenue Fund source to be determined by the Director of Development, shall be used for the Ohio BioProducts Innovation Center to conduct a material flow study, which shall examine biobased resources in Ohio and the flow of materials through the chain of harvesting, refining, and production of a commercialized product; and up to \$350,000 from a non-General Revenue Fund source to be determined by the Director of Development shall be used for the Ohio BioProducts Innovation Center to conduct a techno-economic analysis to determine the economic feasibility of using bioderived chemicals over petroleum-derived or other types of chemicals in the polymer industry.

SECTION 4. The sections of law contained in Sections 3 and 4 of this act,

and the items of which they are composed, are not subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, the sections of law contained in Sections 3 and 4 of this act and the items of which they are composed go into immediate effect when this act becomes law.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 217

127th 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 _____