

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**S. B. No. 309**

**Senator Hite**

**Cosponsors: Senators Balderson, Widener, Cafaro, Seitz**

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**A B I L L**

To amend section 924.01 and to enact sections 924.40 1  
to 924.45 of the Revised Code to establish 2  
procedures and requirements for the establishment 3  
of marketing agreements for agricultural 4  
commodities. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 924.01 be amended and sections 6  
924.40, 924.41, 924.42, 924.43, 924.44, and 924.45 of the Revised 7  
Code be enacted to read as follows: 8

**Sec. 924.01.** As used in sections 924.01 to 924.16 and ~~924.51~~ 9  
924.40 to 924.55 of the Revised Code: 10

(A) "Agricultural commodity" means any food, fiber, feed, 11  
animal, or plant, or group of foods, fibers, feeds, animals, or 12  
plants that the director of agriculture determines to be of the 13  
same nature, in either a natural or a processed state. 14  
"Agricultural commodity" does not include grain as defined in 15  
section 924.20 of the Revised Code. 16

(B) "Distributor" means any person who sells, offers for 17  
sale, markets, or distributes an agricultural commodity that the 18  
person has purchased or acquired directly from a producer, or that 19

the person markets on behalf of a producer. 20

(C) "Handler" means any person who is in the business of 21  
packing, grading, selling, offering for sale, or marketing any 22  
agricultural commodity in commercial quantities as defined in a 23  
marketing program. 24

(D) "Marketing program" means a program that is established 25  
by order of the director pursuant to this chapter, to improve or 26  
expand the market for an agricultural commodity. 27

(E) "Operating committee" means a committee established to 28  
administer a marketing program for an agricultural commodity. 29

(F) "Person" means any natural person, partnership, 30  
corporation, society, association, or fiduciary. 31

(G) "Processor" means any person who is in the business of 32  
grading, packaging, packing, canning, freezing, dehydrating, 33  
fermenting, distilling, extracting, preserving, grinding, 34  
crushing, juicing, or in any other way preserving or changing the 35  
form of any agricultural commodity. 36

(H) "Producer" means any person who is in the business of 37  
producing, or causing to be produced, any agricultural commodity 38  
for commercial sale, except that when used in reference to nursery 39  
stock, "producer" also means a distributor, processor, handler, or 40  
retailer of nursery stock. 41

Sec. 924.40. (A) For purposes of sections 924.40 to 924.46 of 42  
the Revised Code, the director of agriculture shall adopt rules in 43  
accordance with Chapter 119. of the Revised Code that establish 44  
procedures and requirements that are necessary to administer and 45  
implement a marketing agreement executed under those sections for 46  
an agricultural commodity or a region of the state concerning an 47  
agricultural commodity that is the subject of the marketing 48  
agreement. 49

(B) For purposes of sections 924.40 to 924.45 of the Revised Code, the director may do all of the following: 50  
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(1) Approve a marketing agreement; 52

(2) Terminate a marketing agreement executed under those sections if any of the following applies: 53  
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(a) The director finds that the agreement or any terms of the agreement violate state or federal law. 55  
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(b) A producer is engaging in malfeasance, disparagement, or unfair trade practices. 57  
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(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. 59  
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(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. 63  
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(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; 67  
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(5) Enforce rules under sections 924.40 to 924.45 of the Revised Code. 72  
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**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: 74  
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(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; 79  
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(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; 84  
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(C) Collection of fees for services provided pursuant to the marketing agreement; 88  
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(D) Any other topic that the director of agriculture may allow by rule. 90  
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**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. 92  
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(B) A petition submitted under division (A) of this section shall include all of the following: 98  
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(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; 100  
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(2) A proposed marketing agreement that at a minimum contains a description of all of the following: 105  
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(a) The affected agricultural commodity or the region of the state concerning the agricultural commodity that is the subject of 107  
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<u>the proposed marketing agreement;</u>	109
<u>(b) Any standards that will be adopted under the proposed marketing agreement;</u>	110
<u>(c) Procedures by which the proposed marketing agreement may be amended;</u>	111
<u>(d) The length of time that the proposed marketing agreement will be in effect;</u>	112
<u>(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;</u>	113
<u>(f) The method by which the members of the board of directors that will be established under the marketing agreement will be elected;</u>	114
<u>(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;</u>	115
<u>(h) The minimum number of producers that are necessary for the marketing agreement to be financially self-supporting;</u>	116
<u>(i) Any other information that the director may require by rule.</u>	117
<u>(3) An unbiased and accurate summary of the proposed marketing agreement.</u>	118
<u>(C) The petitioners shall include with the petition submitted under division (A) of this section all of the following:</u>	119
<u>(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.</u>	120
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The list may be created from existing records or records that are 139  
available from any reliable source. 140

(2) An administration fee of five hundred dollars or another 141  
amount that the director determines is necessary to pay the costs 142  
of the director of notifying all known producers of the affected 143  
agricultural commodity or in the region of the state concerning 144  
the agricultural commodity that is the subject of the proposed 145  
marketing agreement and the costs of conducting the public meeting 146  
that is required in section 924.43 of the Revised Code concerning 147  
the proposed marketing agreement; 148

(3) Information that demonstrates that the producers of the 149  
agricultural commodity or in the region of the state concerning 150  
the agricultural commodity that is the subject of the proposed 151  
marketing agreement have sufficient money to pay the costs of a 152  
board of directors to administer the marketing agreement and to 153  
pay the costs of administration and enforcement of the marketing 154  
agreement. 155

**Sec. 924.43.** (A) After receipt of a petition submitted under 156  
division (A) of section 924.42 of the Revised Code, the director 157  
of agriculture shall notify all producers included in the list 158  
provided to the director under division (C)(1) of that section. 159  
The notification shall contain a description of the purpose of the 160  
proposed marketing agreement and provide the date, time, and 161  
location of a public meeting that will be conducted by the 162  
director as required by division (B) of this section. The 163  
notification shall be sent through regular mail and published in 164  
at least one publication specific to the agricultural commodity 165  
that is the subject of the proposed marketing agreement. In 166  
addition, the director may post the notification on the department 167  
of agriculture's web site. 168

(B) Not later than thirty days after receipt of a petition 169

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. 170  
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(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. 176  
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(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: 188  
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(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. 194  
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(b) The marketing agreement complies with section 924.44 of the Revised Code. 199  
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(c) The marketing agreement complies with the laws of this state and federal law. 201  
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(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. 203  
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(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. 211  
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(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. 219  
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(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. 227  
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If the director determines that at least the minimum number of 233  
required producers have signed the marketing agreement, the 234  
director shall sign the marketing agreement and the marketing 235  
agreement shall be effective on the date on which the director 236  
signs it. 237

Sec. 924.44. A marketing agreement submitted by a provisional 238  
board of directors under section 924.43 of the Revised Code at a 239  
minimum shall contain terms that establish all of the following: 240  
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(A) The identification of the agricultural commodity or of 242  
the region of the state concerning the agricultural commodity that 243  
is the subject of the marketing agreement; 244

(B) Standards, if any, of production for the agricultural 245  
commodity or of marketing that will apply to each producer that 246  
signs the marketing agreement; 247

(C) Standards for the use of a logo, trademark, or brand 248  
associated with the agricultural commodity; 249

(D) The length of time that the marketing agreement will be 250  
in effect, whether the marketing agreement may be renewed, and, if 251  
so, procedures for renewal; 252

(E) Procedures by which the marketing agreement may be 253  
amended. The procedures shall require the approval of the director 254  
of agriculture and of at least a majority of the producers that 255  
are signatories to the marketing agreement in order for an 256  
amendment to be effective. 257

(F) The size and composition of a board of directors that 258  
will administer the marketing agreement; 259

(G) Procedures for the election of members of the board of 260  
directors; 261

(H) The lengths of terms of members of the board of directors 262

<u>and conditions, if any, for reelection;</u>	263
<u>(I) Procedures for the removal of a member of the board of directors for misfeasance, malfeasance, or nonfeasance;</u>	264
<u>(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;</u>	265
<u>(K) Procedures by which producers of the agricultural commodity may become signatories to the marketing agreement after the agreement takes effect;</u>	266
<u>(L) Procedures by which producers who are signatories to the marketing agreement may be removed from the marketing agreement;</u>	267
<u>(M) Procedures by which producers that are signatories to the marketing agreement may terminate the marketing agreement;</u>	268
<u>(N) Any other procedures or requirements that the director of agriculture requires by rule.</u>	269
<u>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.</u>	270
<u>(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</u>	271
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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. 293  
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(B) A board of directors that is established to administer a marketing agreement shall do all of the following: 301  
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(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; 303  
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(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; 307  
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(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. 310  
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(4) Establish a fiscal year for purposes of marketing activities performed under the terms of the marketing agreement; 317  
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(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. 319  
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(6) Provide annually to the director of agriculture and to 323

each producer that signed the marketing agreement a financial 324  
statement that is prepared by a person who holds a current 325  
certificate as a certified public accountant issued under Chapter 326  
4701. of the Revised Code. The board shall provide the financial 327  
statement to the director not later than sixty days after the end 328  
of a fiscal year. 329

(7) Reimburse the department of agriculture for actual 330  
administrative costs incurred by the department in the 331  
administration of sections 924.40 to 924.45 of the Revised Code. 332  
However, the amount reimbursed in a fiscal year shall not exceed 333  
ten per cent of the total amount of money collected in that fiscal 334  
year by the board of directors under the authority of the 335  
marketing agreement. 336

(8) Perform all other acts and exercise all other powers that 337  
are reasonably necessary, proper, or advisable to effectuate the 338  
purposes of sections 924.40 to 924.45 of the Revised Code. 339

(C) A board of directors that is established to administer a 340  
marketing agreement may do all of the following: 341

(1) Propose to the director rules that are necessary for the 342  
board to perform its duties under the requirements of the 343  
marketing agreement and under sections 924.40 to 924.45 of the 344  
Revised Code; 345

(2) Hire personnel and contract for services that are 346  
necessary for the implementation and administration of the 347  
marketing agreement; 348

(3) Receive and investigate, or cause to be investigated, a 349  
complaint concerning an alleged violation of a term of the 350  
marketing agreement. If the board determines that such a violation 351  
has occurred, the board shall refer the matter to the director for 352  
enforcement. 353

(4) Amend the marketing agreement in accordance with the 354

terms of the marketing agreement and with sections 924.40 to 355  
924.45 of the Revised Code; 356

(5) Terminate the marketing agreement with the approval of a 357  
majority of the participating producers that are signatories to 358  
the marketing agreement. If the marketing agreement is terminated, 359  
the board shall distribute any remaining unobligated money 360  
collected under the authority of the marketing agreement to each 361  
participating producer in the same proportion that the producer 362  
paid assessments under the marketing agreement. 363

**Section 2.** That existing section 924.01 of the Revised Code 364  
is hereby repealed. 365