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Senator Hite

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Newbold, O'Brien, Phillips, Pillich, Scherer, Smith, Sprague, Wachtmann,
Winburn, Young**

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A B I L L

To amend sections 905.40 and 924.01 and to enact 1
sections 924.40 to 924.45 of the Revised Code to 2
establish procedures and requirements for the 3
establishment of marketing agreements for 4
agricultural commodities and to revise the 5
rule-making authority of the Director of 6
Agriculture regarding fertilizers, specifically 7
anhydrous ammonia. 8

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

Section 1. That sections 905.40 and 924.01 be amended and 9
sections 924.40, 924.41, 924.42, 924.43, 924.44, and 924.45 of the 10

Revised Code be enacted to read as follows: 11

Sec. 905.40. The director of agriculture shall adopt and 12
enforce uniform rules: 13

(A) Governing the storing and handling of ~~fertilizers~~ 14
anhydrous ammonia; 15

(B) For safety in the design, construction, location, 16
installation, or operation of ~~equipment for storing, handling,~~ 17
~~transporting, and utilizing~~ anhydrous ammonia, ~~aqueous ammonia, or~~ 18
~~other solutions~~ systems for agricultural use as ~~agricultural~~ 19
~~fertilizers~~. In addition, with regard to an anhydrous ammonia 20
system that is used for agricultural purposes, the rules shall 21
establish standards and procedures for the approval or disapproval 22
of the design and construction of ~~storage facilities for~~ anhydrous 23
ammonia systems and procedures for applying for such approval, 24
including the form of the application. 25

(C) To prohibit the reselling or reuse of such containers 26
without authorization by the owner thereof; 27

(D) Requiring that guaranteed analysis be stated in a form 28
other than that defined in section 905.31 of the Revised Code when 29
another form will not impose an economic hardship on 30
manufacturers, distributors, and users of fertilizer by reason of 31
conflicting labeling requirements among the states. 32

Sec. 924.01. As used in sections 924.01 to 924.16 and ~~924.51~~ 33
924.40 to 924.55 of the Revised Code: 34

(A) "Agricultural commodity" means any food, fiber, feed, 35
animal, or plant, or group of foods, fibers, feeds, animals, or 36
plants that the director of agriculture determines to be of the 37
same nature, in either a natural or a processed state. 38
"Agricultural commodity" does not include grain as defined in 39

section 924.20 of the Revised Code. 40

(B) "Distributor" means any person who sells, offers for 41
sale, markets, or distributes an agricultural commodity that the 42
person has purchased or acquired directly from a producer, or that 43
the person markets on behalf of a producer. 44

(C) "Handler" means any person who is in the business of 45
packing, grading, selling, offering for sale, or marketing any 46
agricultural commodity in commercial quantities as defined in a 47
marketing program. 48

(D) "Marketing program" means a program that is established 49
by order of the director pursuant to this chapter, to improve or 50
expand the market for an agricultural commodity. 51

(E) "Operating committee" means a committee established to 52
administer a marketing program for an agricultural commodity. 53

(F) "Person" means any natural person, partnership, 54
corporation, society, association, or fiduciary. 55

(G) "Processor" means any person who is in the business of 56
grading, packaging, packing, canning, freezing, dehydrating, 57
fermenting, distilling, extracting, preserving, grinding, 58
crushing, juicing, or in any other way preserving or changing the 59
form of any agricultural commodity. 60

(H) "Producer" means any person who is in the business of 61
producing, or causing to be produced, any agricultural commodity 62
for commercial sale, except that when used in reference to nursery 63
stock, "producer" also means a distributor, processor, handler, or 64
retailer of nursery stock. 65

Sec. 924.40. (A) For purposes of sections 924.40 to 924.46 of 66
the Revised Code, the director of agriculture shall adopt rules in 67
accordance with Chapter 119. of the Revised Code that establish 68
procedures and requirements that are necessary to administer and 69

implement a marketing agreement executed under those sections for 70
an agricultural commodity or a region of the state concerning an 71
agricultural commodity that is the subject of the marketing 72
agreement. 73

(B) For purposes of sections 924.40 to 924.45 of the Revised 74
Code, the director may do all of the following: 75

(1) Approve a marketing agreement; 76

(2) Terminate a marketing agreement executed under those 77
sections if any of the following applies: 78

(a) The director finds that the agreement or any terms of the 79
agreement violate state or federal law. 80

(b) A producer is engaging in malfeasance, disparagement, or 81
unfair trade practices. 82

(c) The number of producers that signed the marketing 83
agreement becomes fewer than the minimum number of producers that 84
are necessary for the administration of the marketing agreement to 85
be financially self-supporting. 86

(3) Enter and inspect a facility of a producer that signed a 87
marketing agreement to ensure compliance with the marketing 88
agreement. The director may delegate that authority to another 89
person or contract with another person to exercise that authority. 90

(4) Adopt rules in accordance with Chapter 119. of the 91
Revised Code that establish civil penalties that the director may 92
assess against a person that signed a marketing agreement who 93
violates its terms or who violates sections 924.40 to 924.45 of 94
the Revised Code and rules adopted under those sections; 95

(5) Enforce rules under sections 924.40 to 924.45 of the 96
Revised Code. 97

Sec. 924.41. A marketing agreement that is executed in 98

compliance with and pursuant to sections 924.40 to 924.45 of the 99
Revised Code for the purpose of the voluntary participation of 100
persons who are signatories to the agreement may provide for the 101
establishment and regulation of one or more of the following: 102

(A) Standards of production for an agricultural commodity, 103
including growing and handling practices, provided that the 104
standards are equivalent to or more stringent than standards of 105
production for that agricultural commodity that are established in 106
the laws of this state or federal law; 107

(B) Standards for the establishment and use of a logo, 108
trademark, or brand associated with an agricultural commodity, 109
provided that the standards do not violate the laws of this state 110
or federal law; 111

(C) Collection of fees for services provided pursuant to the 112
marketing agreement; 113

(D) Any other topic that the director of agriculture may 114
allow by rule. 115

Sec. 924.42. (A) Producers of an agricultural commodity in 116
this state may present to the director of agriculture a petition 117
signed by at least two hundred or twenty-five per cent of all the 118
producers of that agricultural commodity in this state, whichever 119
is less, requesting the director to approve a marketing agreement 120
for that agricultural commodity. 121

(B) A petition submitted under division (A) of this section 122
shall include all of the following: 123

(1) A document that creates and identifies a provisional 124
board of directors for the purpose of facilitating the execution 125
of the proposed marketing agreement, which shall consist of at 126
least three, but not more than five producers of the agricultural 127
commodity that is the subject of the proposed marketing agreement; 128

<u>(2) A proposed marketing agreement that at a minimum contains</u>	129
<u>a description of all of the following:</u>	130
<u>(a) The affected agricultural commodity or the region of the</u>	131
<u>state concerning the agricultural commodity that is the subject of</u>	132
<u>the proposed marketing agreement;</u>	133
<u>(b) Any standards that will be adopted under the proposed</u>	134
<u>marketing agreement;</u>	135
<u>(c) Procedures by which the proposed marketing agreement may</u>	136
<u>be amended;</u>	137
<u>(d) The length of time that the proposed marketing agreement</u>	138
<u>will be in effect;</u>	139
<u>(e) The size and composition of a board of directors that</u>	140
<u>will be established under the marketing agreement for the purpose</u>	141
<u>of administering the agreement;</u>	142
<u>(f) The method by which the members of the board of directors</u>	143
<u>that will be established under the marketing agreement will be</u>	144
<u>elected;</u>	145
<u>(g) The estimated costs to and rate of assessment to be made</u>	146
<u>on each person who is a signatory to the marketing agreement for</u>	147
<u>purposes of membership, inspections, or other services provided by</u>	148
<u>the board of directors under the marketing agreement in</u>	149
<u>conjunction with the person's participation in the marketing</u>	150
<u>agreement;</u>	151
<u>(h) The minimum number of producers that are necessary for</u>	152
<u>the marketing agreement to be financially self-supporting;</u>	153
<u>(i) Any other information that the director may require by</u>	154
<u>rule.</u>	155
<u>(3) An unbiased and accurate summary of the proposed</u>	156
<u>marketing agreement.</u>	157
<u>(C) The petitioners shall include with the petition submitted</u>	158

under division (A) of this section all of the following: 159

(1) A current list of producers of the agricultural commodity 160
or in the region of the state concerning the agricultural 161
commodity that is the subject of the proposed marketing agreement. 162
The list may be created from existing records or records that are 163
available from any reliable source. 164

(2) An administration fee of five hundred dollars or another 165
amount that the director determines is necessary to pay the costs 166
of the director of notifying all known producers of the affected 167
agricultural commodity or in the region of the state concerning 168
the agricultural commodity that is the subject of the proposed 169
marketing agreement and the costs of conducting the public meeting 170
that is required in section 924.43 of the Revised Code concerning 171
the proposed marketing agreement; 172

(3) Information that demonstrates that the producers of the 173
agricultural commodity or in the region of the state concerning 174
the agricultural commodity that is the subject of the proposed 175
marketing agreement have sufficient money to pay the costs of a 176
board of directors to administer the marketing agreement and to 177
pay the costs of administration and enforcement of the marketing 178
agreement. 179

Sec. 924.43. (A) After receipt of a petition submitted under 180
division (A) of section 924.42 of the Revised Code, the director 181
of agriculture shall notify all producers included in the list 182
provided to the director under division (C)(1) of that section. 183
The notification shall contain a description of the purpose of the 184
proposed marketing agreement and provide the date, time, and 185
location of a public meeting that will be conducted by the 186
director as required by division (B) of this section. The 187
notification shall be sent through regular mail and published in 188
at least one publication specific to the agricultural commodity 189

that is the subject of the proposed marketing agreement. In 190
addition, the director may post the notification on the department 191
of agriculture's web site. 192

(B) Not later than thirty days after receipt of a petition 193
submitted under division (A) of section 924.42 of the Revised 194
Code, the director shall conduct a public meeting concerning the 195
proposed marketing agreement for an agricultural commodity or for 196
the region of the state concerning an agricultural commodity. At 197
the meeting, the director shall allow any interested person to 198
present information concerning the proposed marketing agreement. 199

(C) At least a majority of the members of the provisional 200
board of directors created pursuant to division (B)(1) of section 201
924.42 of the Revised Code shall attend the public meeting 202
conducted by the director pursuant to division (B) of this 203
section. The provisional board shall consider all of the 204
information presented at the public meeting before drafting a 205
marketing agreement that will be submitted to the director for 206
approval. Not later than thirty days after the public meeting, the 207
provisional board shall submit to the director for approval a 208
marketing agreement that complies with section 924.44 of the 209
Revised Code for an agricultural commodity or for a region of the 210
state concerning an agricultural commodity. 211

(D)(1) Not later than thirty days after receipt of a 212
marketing agreement, the director shall consider all of the 213
information presented at the public meeting conducted under 214
division (B) of this section before approving or denying the 215
marketing agreement. The director may approve a marketing 216
agreement only if all of the following apply: 217

(a) The director is unable to discover a substantially 218
similar marketing agreement existing for the agricultural 219
commodity or for the region of the state concerning the 220

agricultural commodity that is the subject of the marketing agreement. 221
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(b) The marketing agreement complies with section 924.44 of the Revised Code. 223
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(c) The marketing agreement complies with the laws of this state and federal law. 225
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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. 227
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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. 235
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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. 243
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(4) Following the date by which producers desiring to be 251

signatories to the marketing agreement are required to sign the 252
agreement, the director shall determine if there is a sufficient 253
number of producers that signed the marketing agreement for the 254
administration of the marketing agreement to be financially 255
self-supporting plus an additional twenty per cent of that number. 256
If the director determines that at least the minimum number of 257
required producers have signed the marketing agreement, the 258
director shall sign the marketing agreement and the marketing 259
agreement shall be effective on the date on which the director 260
signs it. 261

Sec. 924.44. A marketing agreement submitted by a provisional 262
board of directors under section 924.43 of the Revised Code at a 263
minimum shall contain terms that establish all of the following: 264
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(A) The identification of the agricultural commodity or of 266
the region of the state concerning the agricultural commodity that 267
is the subject of the marketing agreement; 268

(B) Standards, if any, of production for the agricultural 269
commodity or of marketing that will apply to each producer that 270
signs the marketing agreement; 271

(C) Standards for the use of a logo, trademark, or brand 272
associated with the agricultural commodity; 273

(D) The length of time that the marketing agreement will be 274
in effect, whether the marketing agreement may be renewed, and, if 275
so, procedures for renewal; 276

(E) Procedures by which the marketing agreement may be 277
amended. The procedures shall require the approval of the director 278
of agriculture and of at least a majority of the producers that 279
are signatories to the marketing agreement in order for an 280
amendment to be effective. 281

<u>(F) The size and composition of a board of directors that will administer the marketing agreement;</u>	282
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<u>(G) Procedures for the election of members of the board of directors;</u>	284
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<u>(H) The lengths of terms of members of the board of directors and conditions, if any, for reelection;</u>	286
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<u>(I) Procedures for the removal of a member of the board of directors for misfeasance, malfeasance, or nonfeasance;</u>	288
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<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>	290
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<u>(K) Procedures by which producers of the agricultural commodity may become signatories to the marketing agreement after the agreement takes effect;</u>	295
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<u>(L) Procedures by which producers who are signatories to the marketing agreement may be removed from the marketing agreement;</u>	298
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<u>(M) Procedures by which producers that are signatories to the marketing agreement may terminate the marketing agreement;</u>	300
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<u>(N) Any other procedures or requirements that the director of agriculture requires by rule.</u>	302
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Sec. 924.45. <u>(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>	304
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(2) The provisional board of directors created pursuant to 312
division (B)(1) of section 924.42 of the Revised Code shall verify 313
that the board of directors is established in accordance with the 314
terms of the marketing agreement. If the provisional board of 315
directors determines that the board of directors was not 316
established in accordance with the terms of the marketing 317
agreement, the provisional board shall notify the director who 318
shall take appropriate actions to ensure that the board of 319
directors is established in accordance with the terms of the 320
marketing agreement. If the provisional board of directors 321
determines that the board of directors was established in 322
accordance with the terms of the marketing agreement, the 323
provisional board shall cease to exist. 324

(B) A board of directors that is established to administer a 325
marketing agreement shall do all of the following: 326

(1) Establish priorities of the board that are consistent 327
with the estimated financial resources that will be generated 328
under the terms of the marketing agreement and with the scope of 329
the marketing agreement; 330

(2) Prepare a budget that is consistent with the estimated 331
financial resources that will be generated under the terms of the 332
marketing agreement and with the scope of the marketing agreement; 333

(3) Deposit all money collected pursuant to the marketing 334
agreement with a bank as defined in section 1101.01 of the Revised 335
Code or with a savings and loan association as defined in section 336
1151.01 of the Revised Code. The board shall use the money only to 337
pay the costs of the board in administering the marketing 338
agreement and of the activities authorized under the marketing 339
agreement and under sections 924.40 to 924.45 of the Revised Code. 340

(4) Establish a fiscal year for purposes of marketing 341
activities performed under the terms of the marketing agreement; 342

(5) Publish an activity and financial report not later than 343
sixty days after the end of a fiscal year. The board shall make 344
the report available to each producer that signed the marketing 345
agreement and to other interested parties. 346

(6) Provide annually to the director of agriculture and to 347
each producer that signed the marketing agreement a financial 348
statement that is prepared by a person who holds a current 349
certificate as a certified public accountant issued under Chapter 350
4701. of the Revised Code. The board shall provide the financial 351
statement to the director not later than sixty days after the end 352
of a fiscal year. 353

(7) Reimburse the department of agriculture for actual 354
administrative costs incurred by the department in the 355
administration of sections 924.40 to 924.45 of the Revised Code. 356
However, the amount reimbursed in a fiscal year shall not exceed 357
ten per cent of the total amount of money collected in that fiscal 358
year by the board of directors under the authority of the 359
marketing agreement. 360

(8) Perform all other acts and exercise all other powers that 361
are reasonably necessary, proper, or advisable to effectuate the 362
purposes of sections 924.40 to 924.45 of the Revised Code. 363

(C) A board of directors that is established to administer a 364
marketing agreement may do all of the following: 365

(1) Propose to the director rules that are necessary for the 366
board to perform its duties under the requirements of the 367
marketing agreement and under sections 924.40 to 924.45 of the 368
Revised Code; 369

(2) Hire personnel and contract for services that are 370
necessary for the implementation and administration of the 371
marketing agreement; 372

(3) Receive and investigate, or cause to be investigated, a 373

complaint concerning an alleged violation of a term of the 374
marketing agreement. If the board determines that such a violation 375
has occurred, the board shall refer the matter to the director for 376
enforcement. 377

(4) Amend the marketing agreement in accordance with the 378
terms of the marketing agreement and with sections 924.40 to 379
924.45 of the Revised Code; 380

(5) Terminate the marketing agreement with the approval of a 381
majority of the participating producers that are signatories to 382
the marketing agreement. If the marketing agreement is terminated, 383
the board shall distribute any remaining unobligated money 384
collected under the authority of the marketing agreement to each 385
participating producer in the same proportion that the producer 386
paid assessments under the marketing agreement. 387

Section 2. That existing sections 905.40 and 924.01 of the 388
Revised Code are hereby repealed. 389