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**APPENDIX B**  
**STATE LEGISLATION**

## 1. Michigan Agricultural Marketing and Bargaining Act

AN ACT to permit producers of agriculture commodities to be represented by associations; to create an agricultural marketing and bargaining board; to provide for the accreditation of associations; to establish obligations on the part of handlers and associations; to provide for arbitration; to define unfair practices; and to prescribe penalties.

§ 290.701 Agricultural marketing and bargaining act; short title.

Sec. 1. This act shall be known and may be cited as the "agricultural marketing and bargaining act".

§ 290.702 Definitions.

Sec. 2. As used in this act:

(a) "Association" means a cooperative association of producers or a division thereof, or federation of cooperative associations of producers engaged in the marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity.

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

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

(d) "Board" means the agricultural marketing and bargaining board created in section 3.

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

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

(g) "Handler" means a person other than an association engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which he owns and operates or who sells directly to consumers at a produce market, agricultural commodities produced by him and agricultural commodities produced by another producer subject to value limitation established by the board.

(h) "Marketing period" for an agricultural commodity shall be a period of time determined by the board during which producers normally deliver for sale to handlers or contract with handlers for the production and future delivery for sale of substantially all of a crop or periodic production of the agricultural commodity.

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

§ 290.702a Exclusion sales.

Sec. 2a. Any sale of a commodity by a producer to another producer for his own exclusive use and not for resale or any sale of fresh market produce directly to a consumer or to a retail store or stand for resale to consumers shall be excluded from the provisions of this act.

§ 290.703 Agricultural marketing and bargaining board; duties; rules.

Sec. 3.

(1) An agricultural marketing and bargaining board is created within the department of agriculture. The board shall administer this act.

(2) The board consists of 5 individuals who shall be citizens of the state appointed by the governor with the advice and consent of the senate, not more than 3 of whom shall be affiliated with the same political party. A minimum of 2 members of the board shall derive a substantial portion of their livelihood from agricultural enterprises. One member shall be considered a lay person, neither a producer, nor handler, nor a member of an association, as defined under this act. The governor shall designate 1 member of the board to serve as chairman of the board. The original board shall be composed of 2 members of the board for a 1-year term, 1 member of the board for a 2-year term, 1 member of the board for a 3-year term and 1 member of the board for a 4-year term. The governor shall indicate the length of term when making the appointment of the original board. Thereafter, as the term of each member of the board expires, the governor, with the advice and consent of the senate, shall appoint a successor to serve for a term of 4 years. An individual appointed to fill a vacancy caused by other than expiration of the term shall be appointed only for the unexpired term of the member of the board whom he shall succeed.

(3) A member of the board may be removed by the governor, upon notice and hearing, for neglect of duty, or for corrupt conduct in office, or for any other misfeasance or malfeasance but for no other cause.

(4) A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members of the board constitutes a quorum.

(5) Members of the board are entitled to receive a per diem fixed by the legislature and all necessary traveling and subsistence expenses incurred while attending meetings of the board or engaged in the performance of official responsibilities delegated by the board or such other amounts as may be appropriated by the legislature.

(6) Services for implementing this act shall be provided by the department of agriculture from appropriations made therefor by the legislature.

(7) The board may promulgate rules necessary for the administration of this act in accordance with the subject to Act No. 366 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948.

§ 290.704 Unfair practices; complaints; hearings; findings.

Sec. 4.

(1) Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor pen-nit an employee or agent to engage in any of the following practices, defined as unfair practices:

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

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

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

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

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

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

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

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

(2) An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

(a) To enter into a contract which discriminates against a producer represented by an accredited association whether or not he is a member producer.

(b) To act in a manner contrary to the by-laws of the association.

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

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

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

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

(3) For the purpose of enforcing this act, the board may receive sworn complaints with respect to violations or threatened violations. The board may make all necessary investigations, examinations or inspections of any violation or threatened violation specified in the sworn complaint filed with the board. If, upon such investigation, the board considers that there is reasonable cause to believe that a person charged has committed a practice in violation of this act, the board shall issue and cause to be served a complaint upon the person in accordance with Act No. 306 of the Public Acts of 1969, as amended. The complaint shall summon the person to a hearing before the board or a member thereof or a hearing officer at the time and place fixed.

(4) If, upon a preponderance of the evidence, the board determines that the person complained of has committed a practice in violation of this act, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease the violation and shall order further affirmative action as will effectuate the policies of this act.

(5) If, upon a preponderance of the evidence, the board is of the opinion that the person complained of has not committed a practice in violation of this act, it shall make its findings of fact and issue an order dismissing the complaint.

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

§ 290.705 Orders, enforcement; judicial review; stay of proceedings.

Sec. 5.

(1) The board may petition the court of appeals for the enforcement of its orders, and for appropriate temporary relief or restraining order and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice to be served upon the person and thereupon shall have jurisdiction of the proceeding and of the question determined, and may grant temporary relief or restraining order as it deems just and proper and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board. An objection that has not been urged before the board, a member thereof or a hearing officer before whom a hearing was conducted shall not be considered by the court, unless the failure or neglect to urge the objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole is conclusive. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, the court may order additional evidence to be taken before the board, a member thereof, or hearing officer and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed and it shall file the modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that it shall be subject to review in accordance with established procedures for appeal.

(2) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of an order in the court of appeals, by filing in the court a written petition requesting that the order of the board be modified or set aside. A copy of the petition shall be transmitted by the clerk of the court to the board and the aggrieved party shall file in the court the record in the proceeding certified by the board. Upon the filing of the petition, the court shall proceed in the same manner as in the case of an application by the board under this section and shall have the same jurisdiction to grant temporary relief or a restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; the findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(3) The commencement of proceedings under this section shall not stay enforcement of the board's decision by the board or the reviewing court may order a stay upon such terms as it deems proper.

§ 299.796 Bargaining unit; determination; criteria.

Sec. 6.

(1) The board shall determine whether a proposed bargaining unit is appropriate. This determination shall be made upon the petition of an association representing not less than 10% of the producers of the commodity eligible for membership in the proposed bargaining unit as defined by the association. An association with an overlapping definition of bargaining unit may, upon the presentation of a petition by not less than 10% of the producers eligible for membership in the overlapping bargaining unit, contest the proposed bargaining unit. The board shall hold a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended, to resolve the dispute.

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

- (a) The community of interest of the producers included;
- (b) The potential serious conflicts of interests among members of the proposed unit;
- (c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;
- (d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;
- (e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved;
- (f) The wishes of the producers;
- (g) The pattern of past marketing of the commodity.

§ 290.707 Association, conditions of accreditation.

Sec. 7. An association shall be accredited upon determination by the board that the association meets all of the following:

(a) The association meets the requirements of the Capper-Volstead act, 7 U.S.C. 291-2.

(b) The association has submitted a copy of its bylaws which provide that: Each member of the association shall have 1 vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association has marketing and bargaining contracts for the current or next marketing period with more than 50% of the producers of an agricultural commodity who are in the bargaining unit and these contracts cover more than 50% of the quantity of that commodity produced by producers in the bargaining unit. The board may determine the quantity produced by the bargaining unit using information on production in prior marketing periods, current market information, and projections on production during the current market periods. The board shall exclude from that quantity any quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers. An association whose main purpose is bargaining but which processes a surplus into a form which is not the subject of bargaining is not a processing cooperative. The contracts with members shall specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate them to dispose of their production or holdings of the agricultural commodity through or at the direction of the association.

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

§ 290.708 Application for accreditation; contents; fee; reports; confidentiality.

Sec. 8.

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

(2) The board may require all handlers of an agricultural commodity produced in the bargaining unit area as individuals or through their trade association to file with the board within 30 days following a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the 2 marketing periods preceding the filing of the report and the quantities of the agricultural commodity received by the handler from each named producer during the periods. The information contained in the individual reports of handlers filed with the board shall not be made public by the board nor available to any person for private use.

§ 290.709 Determination by board; hearing.

Sec. 9.

(1) Within 60 days following the date of filing with the board a request for accreditation by an association, the board shall determine whether the association shall be accredited. If the board determines that insufficient evidence was filed by the association, the board may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association.

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

§ 290.710 Determination, publication; effective date; referendum; refiling.

Sec. 10.

(1) The board shall issue and publish its determination within 30 days after the close of the hearing. If the determination of the board is to accredit the association, the board shall include a preliminary declaration of accreditation in its determination. The preliminary declaration of accreditation shall clearly state that the association shall represent all producers, members and nonmembers alike, who are in the bargaining unit and act as exclusive sales agents for the bargaining unit in negotiations with handlers. A producer covered in a declaration of accreditation may join the association and have full membership rights therein. Handlers shall deduct marketing service fees from the proceeds to be paid to producers for the agricultural commodity in the amount as determined by the association and forward the service fees promptly to the association. The fees shall be within guidelines determined by the board and shall be subject to review by the board upon petition by 15% of the affected producers.

(2) The accreditation of the association by the board shall be effective 30 days after the publication of the preliminary declaration of accreditation. The board shall delay the accreditation of the association whenever it receives during the 30day period a petition signed by at least 1/3 of the producers in the bargaining unit who

produce at least 1/3 of the production of the agricultural commodity produced by the bargaining unit, exclusive of quantities contracted with processing cooperatives and produced by handlers, and requesting that the association should not be accredited. The board shall determine by a mail referendum of bargaining unit producers within 30 days following receipt of the petition if producers assent to the accreditation of the association. Producers in the bargaining unit shall be deemed to have assented to accreditation if more than 50% of the producers in the bargaining unit who produce more than 50% of the volume of the affected commodity assent to representation by the association.

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

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

§ 290.711 Annual report; content.

Sec. 11. An accredited association shall file an annual report with the board in such form as required by the board to determine if the association continues to meet the requirements of accreditation as provided in section 7.

§ 290.712 Revocation of accreditation.

Sec. 12. To revoke the accreditation of an accredited association the board shall employ a procedure similar to the accreditation procedure set forth in sections 8, 9 and 10. Revocation of accreditation shall be considered by the board upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own disaccreditation.

(b) Upon receipt of a petition requesting that the accredited association be disaccredited and bearing the signatures of at least 1/3 of the producers in the bargaining unit who produce at least 1/3 of the bargaining unit production of the agricultural commodity exclusive of quantities contracted with processing cooperatives and produced by handlers.

(c) A request for revocation of accreditation may not be accepted by the board during the marketing period or for a 60day period prior thereto.

§ 290.713 Bargaining, defined; negotiations; terms included.

Sec. 13.

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

(a) Prices and related terms of sale.

(b) Quality specifications.

(c) Quantity to be marketed.

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

(2) The parties shall notify the board of the commencement of negotiations.

§ 290.714 Mediation of issues; mediator; employment; fee.

Sec. 14.

(1) Upon the request of an accredited association or upon the request of a handler, the board shall provide for the mediation of the issues in dispute. The board shall take such steps as it deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the association and the handler which could disrupt the normal sale and purchase of the agricultural commodity between producers and the handler. The board shall:

- (a) Arrange for, hold, adjourn or reconvene a conference or conferences between disputants and 1 or more of their representatives.
- (b) Invite the disputants and their representatives to attend the conference and submit, orally or in writing, the differences between the disputants.
- (c) Discuss the differences with the disputants or their representatives.
- (d) Assist in negotiating and drafting agreements for the adjustment and settlement of differences.

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

(3) Where an individual is retained, the board shall establish his fee in advance.

§ 290.715 Election not to buy or sell; result.

Sec. 15. At any time prior to 30 days before the first day of the marketing period, if an agreement on the issues in dispute between the accredited association and the handler has not been reached, the handler may elect not to purchase, directly or indirectly, any quantity of the agricultural commodity produced in the bargaining unit during the marketing period or the affected producers may elect, as represented by the association, not to sell, directly or indirectly, any quantity of the agricultural commodity to the handler during the marketing period. If either party makes an election, the other party is not under an obligation to continue bargaining with the party so electing during that marketing period.

§ 290.716 Failure to elect; determination of quantity; arbitration committee.

Sec. 16.

(1) If the election provided for in section 15 is not exercised by the association or the handler involved in negotiations, and if the issues in dispute are not agreed upon through good faith bargaining by the first day of the marketing period for the agricultural commodity, the parties shall be deemed to have consented to the settlement of all issues in dispute by arbitration and the association shall agree that producers shall deliver the agricultural commodity to the handler or initiate the production of the agricultural commodity for future delivery to the handler and the handler shall accept delivery of the agricultural commodity or shall commit for the future delivery of the agricultural commodity. Where the quantity of the agricultural commodity to be marketed is in dispute, the handler shall offer to accept for delivery a reasonable quantity of the agricultural commodity. This offer shall be made in writing to the accredited association at least 7 days prior to the start of the marketing period. A copy of this offer shall be sent by registered mail to the board. The accredited association may file a claim for relief with the board if it feels that the offer is unreasonable. The board shall determine the issue of reasonableness at a hearing in accordance with Act No. 306 of the Public Acts of 1969, as amended. This determination shall have priority over all other board matters. The board shall base its determination on: (a) Projections as to the quantity of the agricultural commodity to be

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produced, (b) the relationship between the quantity of the commodity available and the amount of the quantity accepted by the handler, (c) the kind, grade, and quality of the commodity available, and (d) the past practices of the handler in relation to the items in subdivisions (a), (b) and (c). If, upon the preponderance of the evidence, the board is of the opinion that the quantity is unreasonable, it shall order the handler to accept the quantity which the board finds to be reasonable. The finding of the board shall be final, subject to later modification by the joint settlement committee. This finding shall be enforced in accordance with the provisions of section 5. Within 15 days following the start of the marketing period for the agricultural commodity, the board shall establish a joint settlement committee to arbitrate the issues in dispute.

(2) The committee consists of 1 committeeman selected by the association, 1 committeeman selected by the handler and 1 committeeman selected by the committeeman representing the association and the handler. This third committeeman shall be chairman of the committee. If the third committeeman cannot be agreed upon by the association and the handler committeeman, the board shall submit a list composed of the names of 5 persons knowledgeable in the marketing of the agricultural commodity from which the third committeeman shall be chosen. The selection shall be made by the association representative and the handler representative each striking 2 different names from the list. The remaining name shall be the person who serves as the third committeeman and as its chairman. The order of striking shall be determined by chance.

§ 290.717 Arbitration hearing; notice; intervenors; record; expenses; conclusion.

Sec. 17. The chairman shall call a hearing to begin within 15 days and give reasonable notice of the time and place of the hearing. The chairman shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon such terms and conditions as are just, a person, having a substantial interest therein may be granted leave to intervene by the committee. Any oral or documentary evidence and other data deemed relevant by the joint settlement committee may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the chairman shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts shall not be necessary for a decision by the committee. The expense of the proceedings, including a fee to the chairman, established in advance by the board shall be borne equally by each of the parties to the dispute and the state. The hearing conducted by the arbitration panel may be adjourned from time to time, but, unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Its majority actions and rulings shall constitute the actions and rulings of the joint settlement committee

§ 290.718 Arbitration committee; powers; oaths; subpoena; failure: penalty.

Sec. 18. The committee may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the committee may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

§ 290.719 Committee's decision; time; mailing; limitation on award.

Sec. 19. The committee within 20 days after the conclusion of the hearing or such further time to which the parties may agree shall make written findings of fact and issue its written award upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true copy thereof to the parties or their representatives. The award of the committee shall be limited to the last offer of the association or the last offer of the handler which more nearly complies with the criteria contained in section 20.

§ 290.720 Bases for committee's decision.

Sec. 20. The committee shall base its decision upon the following factors:

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

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

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

(d) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate.

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

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

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

(h) A fair return on investment.

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

(j) Stipulation of the parties.

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

§ 290.721 Decision; finality; enforcement.

Sec. 21. A majority decision of the committee, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the committee in the court of appeals.

§ 290.722 Failure to obey order; penalty.

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

§ 290.723 Committee awards; judicial review.

Sec. 23. Awards of the committee shall be reviewable by the court of appeals but only for reasons that the committee was without or exceeded its jurisdiction; the award is unsupported by competent, material and substantial evidence on the whole record; or the award was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the committee.

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### § 290.724 Negotiated contracts; copy to board.

Sec. 24. Within 30 days after an accredited association negotiates a contract with a handler or receives a committee award, it shall send to the board by registered mail a copy of the contract or award.

### § 290.725 Board; right of access; enforcement; service of papers.

#### Sec. 25.

(1) At all reasonable times the board shall have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any failure or refusal to bargain or for engaging in unfair practices.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, the circuit court, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation, and any failure to obey such order may be punished by the court as a contempt.

(3) Complaints, orders and other processes and papers of the board may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of the service. Witnesses summoned before the board shall be paid the same fee and mileage allowance that are paid witnesses in circuit court and witnesses whose depositions are taken and the person taking the same shall be entitled to the same fees as are paid for like services in circuit court.

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

### § 290.726 Activities not in violation of antitrust laws.

Sec. 26. The activities of accredited associations and handlers in bargaining with respect to the price and other terms of sale of the agricultural commodities produced by the members of such accredited associations do not violate any antitrust law of this state.

### § 290.727 Expiration of act; savings clause.

Sec. 27. Repealed by Pub. Acts 1976, No. 155.

2. California Cooperative Bargaining Associations Act

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Article 1

DEFINITIONS AND GENERAL PROVISIONS

Sec.

54401. Cooperative bargaining association.

**54402.** Public policy.

64403. Powers of director; hearings and investigations.

54404. Complaint; investigations, examinations or inspections.

54405. Injunction against violations; consolidation of actions.

§ 54401. Cooperative bargaining association

As used in this chapter, "cooperative bargaining association" means a farmer association which is organized and functioning pursuant to Chapter 1 (commencing with Section 54001) of this division, for the purpose of group bargaining between its producer members and the first handler or processor, with respect to the sale of any agricultural commodity except milk, cotton, or cottonseed.

§ 54402. Public policy

It is the public policy of the State of California to establish and support the right of any farmer to join voluntarily and belong to cooperate bargaining associations.

§ 54403. Powers of director; hearings and investigations

The director may exercise any or all of the powers which are conferred by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code upon the head of a department of the state with respect to hearings and investigations pursuant to this chapter.

§ 54404. Complaint; investigations, examinations or inspections

For the purpose of enforcing this chapter, the director may receive complaints from producers against any processor, handler, distributor, or any agent of such persons, or any other person, with respect to violations of the unfair trade practices which are specified in Section 54431.

Upon verification of the complaint, the director shall, or upon his own motion may, make any and all necessary investigations, examinations or inspections of any transaction which involves a suspected violation of any provision of this chapter.

§ 54405. Injunction against violations; consolidation of actions

The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter in the superior court of the county in which such violation occurred or is about to occur. Actions against different defendants may be consolidated, in the discretion of the court, if the alleged violations are of the same provision, have occurred in the same or an adjoining county, relate to the same agricultural commodity, occurred in the same production season, and such consolidation can be done without prejudice to a substantial right of any defendant. Any proceedings which are brought pursuant to this section shall be governed in all other respects by Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

Article 2

UNFAIR TRADE PRACTICES

Sec.

- 54431. Acts constituting.
- 54432. Processors, handlers, etc.; refusal to negotiate or bargain; prior course of dealing.
- 54433. Cooperative bargaining association; refusal to negotiate or bargain.
- 54434. Business done among members of association; inapplicability of subd.(e) of § 54431.
- 54435. No specific negotiation time or agreement required of processors, handlers, etc. with association.

§ 54431. Acts constituting

It is an unfair trade practice, and unlawful, for any processor, handler, distributor, or agent of any such person, or for any other person to do any of the following:

- (a) Interfere with, restrain, coerce, or boycott producers in the exercise of the rights which are guaranteed pursuant to Section 54402.
- (b) Discriminate against any producer with respect to price or other terms of purchase of any raw agricultural commodity, by reason of the producer's membership in, or contract with, any cooperative bargaining association.
- (c) Pay or loan money, or give any other thing of value, to a producer as an inducement or reward for refusing to, or ceasing to, belong to a cooperative bargaining association.
- (d) Maliciously or knowingly give false reports about the finances, management, or activities of a cooperative bargaining association.
- (e) Refuse to negotiate or bargain for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which a cooperative bargaining association represents. This subdivision only applies to a cooperative association which meets all of the following:
  - (1) That under the articles of incorporation or bylaws of the cooperative bargaining association, the association is producer owned and controlled exclusively by producers.
  - (2) The cooperative bargaining association has enforceable contracts with its members.
  - (3) The cooperative bargaining association has financial resources and management reasonably sufficient to accomplish the purpose for which it was organized.
  - (4) The cooperative bargaining association represents, through its own members, a sufficient number of producers or a sufficient quantity of any particular commodity, or both, to make it an effective agent for producers in bargaining with handlers.
  - (5) One of the functions of the cooperative bargaining association is acting as principal or agent for its producer members to negotiate or bargain with handlers for prices, terms of sale, compensation for commodities produced under contract and other terms of contracts with respect to the production, sale, and marketing of their commodity.

§ 54432. Processors, handlers, etc.; refusal to negotiate or bargain; prior course of dealing

The provisions of subdivision (e) of Section 54431 only apply to any processor, handler, distributor, or agent of any such person, who refuses to negotiate or bargain, as specified by such provisions, with a cooperative bargaining association which represents producers with whom such a processor, handler, distributor, or agent of any such person, has had a prior course of dealing.

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For purposes of this section, "prior course of dealing" means that the processor, handler, distributor, or agent of any such person has purchased in any two of the immediate preceding five years a commodity from a producer which a cooperative bargaining association represents.

§ 54433. Cooperative bargaining association; refusal to negotiate or bargain

It is an unfair trade practice, and unlawful, for any cooperative bargaining association to which subdivision (e) of Section 54431 applies to refuse to negotiate or bargain with any processor, handler, distributor, or agent of any such person, for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which the cooperative bargaining association represents.

§ 54434. Business done among members of association; Inapplicability of subd. (e) of § 54431

The provisions of subdivision (e) of Section 54431 shall not apply to cooperative associations in respect to business done with its own membership.

§ 54435. No specific negotiation time or agreement required of processors, handlers, etc. with association

Nothing in subdivision (e) of Section 54431 shall require any processor, handler, distributor, or agent of any such person, to negotiate over any specific period of time, or to agree upon price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which any such cooperative bargaining association represents.

### Article 3

#### PENALTIES

**Sec.**

54461. Offense; punishment.

54462. Civil penalty.

§ 54461. Offense; punishment

The willful violation of any provision of this chapter is a misdemeanor punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each and every such violation.

§ 54462. Civil penalty

In addition to the penalty which is provided by Section 54461, any person that violates any provision of this chapter is liable civilly for a penalty in an amount not to exceed a sum of five hundred dollars (\$500) for each and every violation.

### 3. Maine Agricultural Marketing and Bargaining Act of 1973

§ 1953. Legislative findings and purpose

Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation.

§ 1954. Short title

Article 6 shall be known and may be cited as the "Maine Agricultural Marketing and Bargaining Act of 1973."

§ 1955. Definitions

As used in this article, unless the context otherwise requires, the following words shall have the following meanings.

1. Association of producers. "Association of producers" means any association of producers of agricultural products organized and existing under this subchapter.

2. Board. "Board" means the Maine Agricultural Bargaining Board provided for in this Article.

3. Handler. "Handler," in the case of potatoes, means "processor" as defined under Title 7, section 1012, subsection 14 and in the case of other agricultural products means any person engaged in the business or practice of:

A. Acquiring agricultural products from producers or associations of producers for processing or sale;

B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers;

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or

D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C.

4. Person. "Person" includes one or more individuals, partnerships, corporations and associations.

5. Producer. "Producer" means a person engaged in the production of agricultural products, excluding forest products, as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower, or independent agricultural contractor as specified in section 1774, subsections 6-A and 8-A. If producer is also a handler, he shall be considered only a handler for the purposes of this Act.

6. Qualified association. "Qualified association" means an association of producers accredited in accordance with section 1957.

§ 1955. Maine Agricultural Bargaining Board

1. Board. There is established in the Department of Agriculture a Maine Agricultural Bargaining Board, which shall administer this Article.

2. Membership. The board shall consist of 5 members who shall be appointed by the Governor. One member shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One shall be appointed from a list of names submitted by processors of agricultural products. Three shall be representatives of the public.

The initial terms of office of members of the board shall be 2 years for 2 representatives of the public and 3 years for the producer and processor representative and 4 years for the remaining public member. The Governor shall designate one member to serve as chairman of the board. Thereafter all terms shall be for a period of 5 years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of avacancy, the Governor shall, within one month, appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Members shall take the oath of office prescribed for state officers.

3. Removal. Members of the board shall be removed by the Commissioner of Agriculture upon notice and hearing for neglect of duty or malfeasance in office but for no other cause.

4. Quorum. A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members of the board shall, at all times, constitute a quorum of the board, provided that reasonable notice has been given to all members of the board of the subject matter and date of any meeting at which the board is to exercise any of its powers.

5. Expenses. Members of the board shall be compensated at the rate of \$50 per day, in addition to their actual expenses while carrying out the functions of the board.

6. Rules and regulations. The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by the Maine Administrative Procedure Act such rules and regulations as may be necessary or appropriate to carry out this Article.

§ 1957. Qualification of associations of producers

1. Qualification. Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this Article.

2. Petition. An association of producers desiring qualification shall file with the board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the board.

3. Hearing. The board shall provide notice and opportunity for a hearing, provided in a manner consistent with the provisions as to adjudicatory proceedings of the Maine Administrative Procedure Act. The board shall qualify such association, if based upon the evidence at such hearing, the board finds:

A. That under the charter documents or the bylaws of the association, the association is directly or indirectly producer-owned and controlled;

B. The association has contracts with its members that are binding under state law;

C. The association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized;

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D. The association represents 51% of the producers and produced at least 1/2 of the volume of a particular agricultural product for the specific handler involved with those producers and that agricultural product during the previous 12 months; if the board has reasonable cause to question such representation, the board shall require a secret ballot election to certify the percentage of representation; and

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other terms of contracts with respect to the production, sale and marketing of their product.

4. Refiling of petition. If after said hearing, the board does not deem an association qualified, it shall, in a manner consistent with the Maine Administrative Procedure Act, clearly specify the reasons for such failure to qualify in its decision and, upon the refiling of said petition, shall reconsider its decision within 30 days after the date on which said petition was filed.

5. Notice. After the board qualifies *such* association, it shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association represents.

6. Annual report. A qualified association shall file an annual report with the board in such form as shall be required by the regulations of the board. The annual report shall contain such information as will enable the board to determine whether the association continues to meet the standards for qualification.

7. Revocation. If a qualified association ceases to maintain the standards for qualifications set forth in subsection 3, the board shall, in a manner consistent with the Maine Administrative Procedure Act, apply to the Administrative Court to revoke the qualification of such association.

### § 1958. Bargaining

1. Definition. As used in this Article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession.

2. Prior course of dealing. A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any 2 of the preceding 3 years, provided that the sale by a handler of his business shall not negate any prior course of dealing that producers have had with this business.

3. Contracts. Nothing in this Article shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

4. -limitation. It shall be unlawful for a handler to negotiate with other producers of a product with respect to the price, terms of sale, compensation for commodities produced under contract and other contract provisions relative to such product while negotiating with a qualified bargaining association able to supply all or a substantial portion of the requirements of such handler for such product.

5. -further limitation. It shall be unlawful for a handler to purchase a product from other persons under terms more favorable to such persons than those terms negotiated with a qualified bargaining association for such product, unless such handler has first offered to purchase said product under said more favorable terms from the members of the qualified association of producers and said members have failed to supply the required product within a reasonable time according to said more favorable terms.

6. Investigation. Whenever it is charged that a qualified association or handler refuses to bargain, as that term is defined in subsection 1, the board shall investigate the charges. If, upon investigation, the board considers that there is reasonable cause to believe that the person charged has refused to bargain in violation of this Article, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory hearings.

7. Hearing. Hearings held pursuant to subsection 6 shall be held in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory hearings. The board shall request that the Attorney General, or any attorney in his department designated by him, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

8. Findings. If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this Article, it shall state its findings of fact and shall issue and cause to be served on such person an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this Article.

9. Dismissal. Repealed. 1977, c. 694, § 283.

10. Modification. Until the record in a case has been filed in a court, as provided in section 1959, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

§ 1959. Enforcement of orders and judicial review

1. Complaint. The board shall have power to complain to the Superior Court for the enforcement of its orders made under section 1958 and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

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2. Appeal. Repealed. 1977, c. 694, § 284,

3. Stay. The commencement of proceedings for judicial review shall not stay enforcement of the board's decision, but the reviewing court may order a stay upon such terms as it deems proper.

4. Procedure. Repealed. 1977, c. 694, § 286.

### § 1960. Copy evidence; oaths; subpoenas

The board shall at all reasonable times have access to and the right to copy evidence relating to any person or action under investigation by it in connection with any refusal to bargain. The board is empowered to administer oaths and to issue subpoenas requiring the attendance of witnesses or the production of evidence.

### § 1961. Contempt

In case of contumacy or refusal to obey a subpoena issued to any person, the Superior Court, upon application by the board, shall have jurisdiction to order such person to appear before the board to produce evidence or to give testimony touching the matter under investigation and any failure to obey such order may be punished by the court as a contempt thereof.

### § 1962. Service

Complaints, orders and other papers of the board shall be served in accordance with the methods provided by the Maine Rules of Civil Procedure.

### § 1963. Subpoena

In any proceeding before the board under this Act, the board may issue subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath provided that:

1. Upon written application of a party to a proceeding, the board shall issue subpoenas for the attendance of witnesses or for the production of documents;

2. A person who fails to obey the subpoena of the board may be punished as for contempt of court on application by the board to the Superior Court for the county in which such failure occurs;

3. Witnesses who are summoned before the board or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the District Courts of the State.

### § 1964. Antitrust

The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of this State. Nothing in this Article shall be construed to permit handler to contract, combine or conspire with one another in bargaining with qualified associations.

### § 1965. Unfair practices

1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor permit an employee or agent to engage in any of the following practices, defined as unfair practices:

A. To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 1958, subsections 4 and 5;

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B. To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of his membership in or contract with an association;

C. To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler;

D. To pay or loan money, give anything of value or offer any other inducement or regard to a producer for refusing or ceasing to belong to an association;

E. To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers;

F. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act;

G. To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association;

H. To negotiate with a producer included in the bargaining unit after an association is accredited.

2. An association shall not engage or permit an employee or agent to engage in the following practices, defined as unfair practices:

A. To act in a manner contrary to the bylaws of the association;

B. To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association;

C. To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer;

D. To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers;

E. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act;

F. To hinder or prevent, by picketing, threats, intimidations, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance;

G. To exercise coercive pressure by picketing, patrolling or otherwise business establishments other than the premises owned or controlled by the handler in order to cause such parties to cease doing business with such handler.

4. Wisconsin Marketing, Warehouses,  
and Trade Practices Act (Excerpt)

100.235 Unfair trade practices in purchase of vegetable crops

(1) No processor of vegetable crops, who grows in this state more than 10% of the acreage of a species of vegetable, processed at a single processing plant, may pay to growers who sell vegetable crops under contract to \* . . . *the processor* for processing at such plant, an average amount per ton less than the average cost per ton incurred by the processor in growing such vegetable species . . . in this state during the past 3 consecutive years prior to the current contract year. If the processor has grown a vegetable species less than 3 consecutive years, \* . . . *the processor* shall average the costs of the past 2 consecutive years, if applicable, or use the cost of the preceding year when it is the only one available.

(2) On the complaint of any grower filed with the department within 180 days after completion of the processing of a vegetable at a plant, alleging that the processor to whom . . . *the grower* sold a vegetable crop under contract may have engaged in such unfair trade practice, the department shall make investigation thereof. In making its investigation the department may require the processor to submit reports of \* . . . acreages, tonnages, costs of growing, and amounts paid to contract growers. For vegetables contracted on a tonnage basis and for open-market tonnage purchased, the processor shall report the estimated acreage based on this state's average yield per acre for the preceding year. All such reports shall be confidential and shall not be open to public inspection.

The department may require such reports to be certified by a public accountant or the department may inspect the processor's records to verify such reports. Upon completion of its investigation, the department shall issue its determination as to whether the processor has engaged in an unfair trade practice. If the department finds that the processor has engaged in an unfair trade practice, it shall specify the amount per ton by which the processor's costs of growing the vegetable species exceeded the amount paid to contract growers. Either the complainant or the processor may demand a public hearing of the matter, before the department, within 30 days of receipt of the determination, and shall be entitled to judicial review of the department's order under ch. 227.

(3) The department, after public hearing, may by rule adopt a uniform system of cost accounting to be used by processors in determining and reporting growing costs. Such accounting system shall take into account cost differences attributable to factors affecting prices for the vegetable species under the processor's contract with growers. If the contract provides for no seed charge or for cancellation of seed charges and charges for services furnished by the processor, if any, with respect to growers' nonharvested acreage, then the processor's cost of growing such species of vegetable shall not include the cost of . . . *the processor's* nonharvested acreage. A violation of this section or any rule issued under this section is an unfair trade practice under s. 100.20.

**5. Minnesota Agricultural Marketing  
and Bargaining Act of 1973**

**17.691 Citation**

Sections 17.691 to 17.701 shall be known and may be cited as the "agricultural marketing and bargaining act of 1973."

**17.692 Declaration of policy**

Since agricultural products are produced by numerous and often scattered individual producers, the marketing and bargaining position of individual producers will be adversely affected unless they are free to join together voluntarily in cooperative associations or other associations as authorized by law. Membership of a producer in such a cooperative association or other association can only be meaningful if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative association or other association as the representative of the members of such association. Production and marketing of agricultural commodities constitutes a basic and essential industry. Agricultural producers do not now enjoy the opportunity, comparable to that of industrial workers and those in many other forms of enterprise or employment, to organize and bargain effectively. Neither is adequate government provision available to assure that the bargaining process shall be fair both to producers and handlers and in the public interest.

**17.693 Definitions**

Subdivision 1. For the purposes of sections 17.691 to 17.701, the terms defined in this section have the meanings given them.

Subd. 2. "Association" means an association of producers, or federation of cooperative association of producers engaged in producing, marketing, bargaining, shipping or processing functions of an agricultural commodity on behalf of its members who are producers of such agricultural commodity, which has been accredited by the commissioner.

Subd. 3. "Person" means an individual, partnership, corporation or association.

Subd. 4. "Producer" means any person, who in any one calendar year within the previous two calendar years, produces or causes to be produced any agricultural commodity in quantity beyond his own family use, and who is able to transfer, during the calendar year, to a handler or an association a merchantable title to the agricultural commodity or provide management, labor, machinery, facilities, or any other production input, with the assumption of risk, for the production of the agricultural commodity under a written contract.

Subd. 5. "Agricultural commodity" includes all agricultural goods produced under contract for marketing as defined by the commissioner of agriculture. It does not include any commodity sold by a producer to another producer for his own exclusive use and not for resale. The kinds, types and subtypes of products to be classed together as an agricultural commodity for the purposes of sections 17.691 to 17.701 shall be determined by the commissioner on the basis of common usage and practice.

Subd. 6. "Handler" means a person, other than an association, engaged in the business or practice of acquiring agricultural commodities from producers or associations for processing or sale; grading, packaging, handling, storing or processing agricultural commodities received from producers or associations; contracting or negotiating contracts or other arrangements with producers or associations with respect to the production of any agricultural commodity; or acting as an agent or broker for a handler in the performance of any function or act specified above. It does not include a producer who sells at a retail establishment which he owns and

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operates or who sells at a produce market, agricultural commodities produced by him and agricultural commodities produced by another producer subject to value limitation established by the commissioner.

Subd. 7. "Commissioner" means the commissioner of agriculture of the state of Minnesota or his designated authority.

Subd. 8. "Marketing year" shall mean, generally, any time between the second day of February of the previous calendar year and the first day of February of the subsequent year, unless the commissioner shall determine an alternative time period for a specific agricultural commodity to be designated as its marketing year.

### 17.694 Accreditation

Subdivision 1. Any association accredited under this section may engage in bargaining as provided for under sections 17.691 to 17.701.

(1) An association desiring accreditation shall file with the commissioner in the form required by the commissioner. The request shall contain properly certified evidence that the association meets the standards for accreditation and shall be accompanied by a report of the names and addresses of member producers, the name of each handler to whom the member producer delivered or contracted to deliver the agricultural commodity during the previous two calendar years and the quantity delivered or acreage grown. A fee to cover the costs of the commissioner in processing the request shall be established pursuant to Chapter 15, and paid by the association when the request is filed.

(2) The commissioner may require all handlers of an agricultural commodity produced in a bargaining unit area as individuals or through their trade association to file with the board within 30 days following such a request, a report, properly certified, showing the correct names and addresses of all producers of the agricultural commodity who have delivered the agricultural commodity to the handler during the two calendar years preceding the filing of the report and the quantities of the agricultural commodity received by the handler from each named producer during those periods. The information contained in the individual reports of handlers filed with the commissioner shall not be made public by the commissioner nor available to any person for private use.

Subd. 2. In determination of accreditation, the commissioner shall determine whether bargaining shall be appropriate by plant, processor, or company. This determination shall be the unit area for the bargaining provisions of sections 17.691 to 17.701 as is applicable to associations and handlers. In making his determination, the commissioner shall define as appropriate the largest bargaining unit area in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, geographic area covered and number of producers included as is consistent with the following criteria:

- (a) The community of interest of the producers included;
- (b) The potential serious conflicts of interests among members of the proposed unit;
- (c) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined;
- (d) The kinds, types and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed;
- (e) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved;
- (f) The wishes of the producers;
- (g) The pattern of past marketing of the commodity.

Subd. 3. An association shall be accredited only if it complies with the following:

(a) The association meets the requirements of the Capper-Volstead Act, 7 U.S.C. 291-2.

(b) The association has submitted a copy of its bylaws which provide that:

Each member of the association shall have one vote in all votes of the membership of the association; that officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot.

(c) The association would have marketing and bargaining contracts for the current or next marketing year with more than 50 percent of the producers of an agricultural commodity who are in the bargaining unit area and these contracts would cover more than 50 percent of the quantity of that commodity produced by producers in that bargaining unit area. The commissioner may determine the quantity produced by the bargaining unit area using information on production in the prior year, current marketing information, and projections on production during the current marketing year. The commissioner shall exclude from the quantity of the agricultural commodity contracted by producers with producer owned and controlled processing cooperatives and any quantity produced by handlers. An association whose main purpose is bargaining but which processes a surplus into a form which is not the subject of bargaining is not a processing cooperative. The contracts with members shall specify the agricultural commodity and that the members have appointed the association as their exclusive agent in negotiations with handlers for prices and other terms of trade with respect to the sale and marketing of the agricultural commodity and obligate the members of the association to dispose of their production or holdings of the agricultural commodity through or at the direction of the association.

Subd. 4. Within 60 days of the filing date of the request for accreditation by an association, the commissioner shall determine whether the association shall be accredited. If the commissioner determines that insufficient evidence was filed by the association, the commissioner may permit the association to file an amended request for accreditation within 30 days following the determination and notification of the association. The commissioner shall then determine, within 30 days of the filing of the amended request, whether the association shall be accredited. An association which is denied accreditation after filing of an amended request may not file another request for accreditation for a period of one year.

Subd. 4a. Within 30 days of a decision by the commissioner denying accreditation to an association, the association may request a hearing before the commissioner. The commissioner shall then conduct a hearing to determine whether the association shall be accredited. This hearing shall be governed by the provisions of sections 15.0418 and 15.0419. If the commissioner, after this hearing has been held, determines that the association should not be accredited, the association may appeal this decision in accordance with sections 15.0424 and 15.0425. Only an association denied certification after such hearing may appeal under this chapter.

Subd. 5. Accreditation of the association by the commissioner shall be effective upon receipt by the association of the notice of accreditation from the commissioner.

Subd. 6. The commissioner shall consider revocation of accreditation upon any of the following conditions:

(a) Upon receipt of a request from an accredited association for its own dis-accreditation.

(b) Upon receipt of a petition requesting that the accredited association be dis-accredited and bearing the signatures of at least ten percent of the producers of an accredited association in the bargaining unit. Following the receipt of a petition bearing the signatures of at least ten percent of the producers of an accredited association in a bargaining unit the board shall order the commissioner to initiate a referendum among the members of the accredited association and if in the referendum a majority of the producers, producing 50 percent of the commodity approve, the association accreditation shall be revoked by the board.

Subd. 7. The accredited association shall represent all member producers who are in the bargaining unit area and it shall act as exclusive sales agents for the bargaining unit area in negotiations with handlers. The association may not assess, bargain for, or claim to represent those producers who choose not to be represented by the association or choose not to have a bargaining committee bargain for them.

#### 17.695 Marketing and bargaining committee

Subdivision 1. After accreditation of the association, the association shall establish and authorize a marketing and bargaining committee to negotiate, as the association's exclusive agent, with handlers for the sale and marketing of the agricultural commodity for which the association was accredited.

Subd. 2. This committee shall be comprised of members of the association elected by the association in a secret ballot election, except that the association may contract with legal counsel who shall, at the discretion of the association, be eligible for membership on the committee.

Subd. 3. The production of the agricultural commodity shall comprise a significant portion of the total producing operation of each committee member.

Subd. 4. Members who have any quantity contracted with a producer owned and controlled processing cooperative are not eligible to serve on a marketing and bargaining committee for such a commodity.

#### 17.696 Unfair practices of handlers and associations

Subdivision 1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage in any of the following practices, defined as unfair practices:

(a) To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association.

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

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

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

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

(f) To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.701.

(g) To refuse to bargain with an association with whom the handler has had prior dealings or with an association whose producers in the bargaining units have had dealings with the handler prior to July 1, 1973.

Subd. 2. An association shall not engage nor permit an employee or agent to engage in the following practices, defined as unfair practices:

- (a) To enter into a contract which discriminates against a producer represented by that association.
- (b) To act in a manner contrary to the bylaws of the association.
- (c) To coerce or intimidate a handler to breach, cancel or terminate an agreement or marketing contract with an association or a contract with a producer.
- (d) To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers.
- (e) To conspire, combine, agree or arrange with another person to do or aid or abet the doing of any practice which is in violation of sections 17.691 to 17.701.

17.697 Bargaining defined; notice of commencement of negotiations: mediation procedure

Subdivision 1. As used in sections 17.691 to 17.701, "bargaining" means the mutual obligation of a handler and an association or their designated representatives to meet at reasonable times and confer and negotiate in good faith. Negotiations may include all terms relative to trading between handlers and producers of the agricultural commodity such as:

- (a) prices and terms of sale
- (b) quality specifications
- (c) quantity to be marketed by acreage or weight
- (d) transactions involving products and services utilized by one party and provided by the other party
- (e) check off procedures pursuant to assessments levied by the association, not to exceed one-half of one percent of the gross value of the producers annual production contract are collected by handlers from proceeds to producers within the bargaining unit and paid to the association.

Subd. 2. The association shall notify the commissioner of the commencement of negotiations.

Subd. 3. (a) If no agreement is reached at the expiration of ten days after service of such notice to the commissioner, the association may, at any time thereafter, petition the commissioner to assume supervision over the dispute, except as provided for by clause (e).

(b) The commissioner shall then set a time and place for conference with the parties to present facts representing each party's case and hearing arguments. The commissioner shall take such steps, in accordance with rules promulgated under sections 17.691 to 17.701, as he deems expedient to affect a voluntary, amicable and expeditious adjustment and settlement of the differences between the handler and the association.

(c) At any time prior to 15 days before the first day of the marketing year in dispute, if an agreement on the issues in dispute between the association and the handler has not been reached, the handler may elect not to purchase, directly or indirectly, any quantity of the agriculture commodity produced by the association during that marketing year; or, the affected producers may elect not to sell, directly or indirectly, any quantity of the agricultural commodity produced by the association during that marketing year; or, the affected producers may elect not to sell, directly or indirectly, any quantity of the agricultural commodity to the handler during that marketing year.

(d) If either party makes an election, the other party is not under an obligation to continue bargaining with the party so electing for terms during the marketing period in dispute. Both parties may, however, engage immediately in bargaining for the following marketing year.

## Cooperative Fawn Bargaining

(e) If the petition requesting the commissioner to assume supervision over a dispute is presented 15 days or less before the marketing year in dispute, then the commissioner shall exercise his discretionary authority, according to rules promulgated under sections 17.691 to 17.701, in determining which disputes are arbitrable before the start of the marketing year in dispute.

### 17.698 Basis for mediation and bargaining decisions

All decisions of mediation and bargaining which result from section 17.697 shall be based upon the following factors:

- (a) Prices or projected prices for the agricultural commodity paid by the competing handlers in the market area or competing market areas.
- (b) Amount of the commodity produced or projections of production in the production area or competing marketing areas.
- (c) Relationship between the quantity produced and the quantity handled by the handler.
- (d) The producers cost of production including the cost which would be involved in paying farm labor a fair wage rate and providing them with adequate housing.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The impact of the award on the competitive position of the handler in the marketing area or competing areas.
- (g) The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities.
- (h) A fair return on investment.
- (i) Kind, quality or grade of the commodity involved.
- (j) Stipulation of the parties.
- (k) Such other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

### 17.699 Time limit upon decisions

The commissioner shall announce his findings of fact and decisions in all cases in which he has assumed supervision during the year previous to the marketing year in dispute by the fifteenth day of the marketing year in dispute. To expedite his decisions, the commissioner may engage the services of the bureau of mediation services, whose recommendations he shall consider in his final determination.

### 17.70 Violation procedure

Subdivision 1. For the purpose of sections 17.691 to 17.701, the commissioner may receive complaints with respect to violations or threatened violations. The commissioner may make all necessary investigations, examinations or inspections of any violation or threatened violation specified in the sworn complaint filed with the commissioner. If, upon such investigation, the commissioner considers that there is reasonable cause to believe that the person charged has committed a practice in violation of sections 17.691 to 17.701, the commissioner shall issue and cause to be served a complaint upon the person. The complaint shall summon the person to a hearing before the commissioner at the time and place fixed.

Subd. 2. If the commissioner determines that the person complained of has committed a practice in violation of sections 17.691 to 17.701, he shall state his findings of fact and shall issue and cause to be served on the person an order requiring him to cease the violation and shall order further affirmative action as will effectuate the policies of sections 17.691 to 17.701.

Subd. 3. If the commissioner is of the opinion that the person complained of has not committed a practice in violation of sections 17.691 to 17.701, he shall make his findings of fact and issue an order dismissing the complaint.

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Subd. 4. Until the record in a case has been filed in a court the commissioner may, at any time upon reasonable notice and in such manner as he deems proper, modify or set aside, in whole or in part, any finding or order he has made or issued, with jurisdiction for such a change specified in additional findings of fact.

Subd. 5. The commissioner may request the attorney general of the state of Minnesota to seek the appropriate temporary relief or restraining order of injunction in district court to insure the enforcement of his findings.

### **17.701 Rules**

The commissioner may promulgate rules necessary for the administration of sections 17.691 to 17.701 in accordance with sections 17.691 to 17.701 and Chapter 15.

6. Ohio Cooperatives Act (Excerpt)

§ 1729.191 (Definitions.)

As used in sections 1729.191 and 1729.192 of the Revised Code:

(A) "Sales Contract" means an agreement between a handler and a producer, negotiated by the producer or by a cooperative acting as agent for a producer, under which the producer agrees to grow or produce fruits or vegetables in this state for sale as raw agricultural products to the handler, and the handler agrees to buy such fruits or vegetables.

(B) "Handler" means a person who acquires fruits or vegetables under a sales contract for the purpose of processing such fruits or vegetables.

(C) "Processing" means changing the physical or chemical characteristics of fruits or vegetables by operations such as cooking, freezing, or canning. "Processing" does not include cleaning, grading, or packaging.

(D) "Cooperative" means any corporation organized under Chapter 1729, of the Revised Code, controlled by and operated for producers, and meeting the requirements of the "Co-operative Marketing Associations Act," 42 Stat. 388 (1922), 7 U.S.C. 291, 292, which negotiates sales contracts with handlers on behalf of its members and is not in direct competition with any handler with which it negotiates such contracts.

(E) "Bargaining" means the mutual obligation of a handler and a cooperative to meet at reasonable times and confer and negotiate in good faith. Negotiations may include all terms relative to trading between handlers and producers of fruits and vegetables. The obligation does not require either party to agree upon price, terms of sale, or any other contract provision, or to make a concession.

§ 1729.192 (Sales contracts for fruits or vegetables.)

(A) Whenever a cooperative has contracts with its members authorizing the cooperative to bargain on behalf of its members for sales contracts for a specified fruit or vegetable, no handler nor cooperative shall commit an unfair marketing practice when the following conditions exist:

(1) The contract obligates such members to produce and sell such fruit or vegetable under sales contracts negotiated by the cooperative;

(2) Such members represent, on the yearly average calculated over the immediate two preceding calendar years, at least fifty-one per cent of the producers who delivered, under sales contracts, such specified fruit or vegetable to the specified facility of the handler;

(3) Such members delivered, under sales contracts, on the yearly average calculated over the immediate two preceding calendar years, at least fifty per cent of the total amount of such fruit or vegetable delivered, under sales contracts, to such facility;

(4) The cooperative, if requested by the handler, presents to the handler copies of the contracts with its members authorizing the cooperative to bargain on behalf of its members for sales contracts for the specified fruit or vegetable which is the subject of the sales contract under negotiation.

(B) It is an unfair marketing practice:

(1) If a handler or a cooperative fails to bargain in good faith with such cooperative or such handler for the purpose of negotiating sales contracts for the specified fruit or vegetable to be delivered to a specified facility of the handler when the cooperative requests such negotiations between the first day of January and the twenty-eighth day of February of any year. The obligation to negotiate in no event extends past the thirty-first day of March for annual plantings or past the thirty-first day of July for perennial plantings.

## *State Legislation*

(2) If a handler enters into a sales contract directly with a producer, pertaining to specified fruits and vegetables to be delivered to the same facility, with the intent to cause the cooperative to fail to meet the conditions set forth in divisions (A) (2) and (3) of this section.

§ 1729.99 Penalty.

(A) Whoever violates section 1729.181 of the Revised Code shall be fined not less than fifty nor more than five hundred dollars for each offense.

(B) Whoever commits an unfair marketing practice as defined in section 1729.192 of the Revised Code shall be fined not less than one hundred nor more than twenty-five hundred dollars for each offense.

**7. Oregon Producers' Cooperative  
Bargaining Associations Act**

**646.516 Definitions for ORS 646.516 to 646.545.** As used in ORS 646.515 to 646.545, unless the context requires otherwise:

(1) "Agricultural commodity" or "commodities" means any and all agricultural, horticultural, viticultural and vegetable products produced in this state, either in their natural state or as processed by a producer for the purpose of marketing such product, including bees and honey, but not including timber, timber products, grain and grain products or seed products.

(2) "Cooperative bargaining association" means an association of producers formed or operated pursuant to ORS chapter 62 with the purpose of group bargaining with respect to the sale of any agricultural commodity or commodities.

(3)(a) "Dealer" means, except as provided in paragraph (b) of this subsection, any person or his agent who purchases or contracts to purchase an agricultural commodity from a producer or his agent, for the purpose of packing, processing or marketing such commodity.

(b) "Dealer" shall not include any organization operating as an agricultural cooperative corporation.

(4) "Producer" means a person engaged in the business of producing agricultural commodities.

**646.525 Cooperative bargaining associations authorized.** Producers shall have the right to join voluntarily and belong to cooperative bargaining associations.

**646.635 Unfair trade practices prohibited.** No dealer shall knowingly engage in the following unfair trade practices:

(1) Interfere with, restrain, coerce or boycott a producer in the exercise of the rights guaranteed pursuant to ORS 646.525; or

(2) Discriminate against a producer with respect to price or other terms of purchase of raw agricultural commodities, by reason of the producer's membership in or contract with cooperative bargaining associations; or

(3) Pay or loan money, or give any other thing of value to a producer as an inducement or reward for refusing to or ceasing to belong to a cooperative bargaining association.

**646.645 Remedy for unfair trade practices; jurisdiction.** (1) In addition to any other remedies provided by law, any producer injured by a violation of ORS 646.535 may maintain an action for damages sustained by such producer.

(2) The prevailing party in any action brought pursuant to subsection (1) of this section shall be allowed, in addition to the costs and disbursements otherwise prescribed by law, a reasonable sum for attorney's fees for the prosecution or defense of such action.

(3) Notwithstanding the provisions of ORS 46.660 to 46.080, the district court shall not have jurisdiction in any action for damages for violation of ORS 646.535.