

AGRICULTURAL COMMODITIES MARKETING ACT (EXCERPT)
Act 232 of 1965

290.655 Assessments to defray program and administrative costs; collection; maximum assessment to be specified; collection by processors, distributors, or handlers; disposition; trust fund; complaint; notice of due date; ability to borrow money; assessment for loans and interest.

Sec. 5.

(a) Assessments shall be collected from each producer of a marketable agricultural commodity produced in this state and directly affected by a marketing program issued for the agricultural commodity to defray all program and administrative costs except for nonparticipating producers as provided for under section 3(1)(k). Assessments shall be collected on agricultural commodity inputs in this state directly affected by a marketing program established for the agricultural commodity input in order to defray all marketing program and administrative costs. Subject to approval by the director, assessments may also be collected from either producers or distributors, or both, and manufacturers, of a marketable agricultural commodity produced in this state or an agricultural commodity input used in this state if the director determines that the unique nature of the agricultural commodity or agricultural commodity input or the industry structure warrants the assessment of both the producer and the distributors of the agricultural commodity or agricultural commodity input.

(b) Each marketing program shall specify the maximum assessment on an agricultural commodity or an agricultural commodity input and may provide for any other assessment mechanism as approved by the director to be collected to cover program and administrative costs.

(c) Pursuant to the marketing program and for convenience, the processors, distributors, or handlers of the agricultural commodity or agricultural commodity input may be required to collect and remit producer assessments to the committee at no cost to the marketing program unless the marketing program expressly provides for the payment of a reasonable fee for making the deduction and remittance.

In the case of a marketing program that provides for the imposition of an assessment, the processors, distributors, or handlers dealing with the producer shall collect the assessment from the producer by deducting the assessment from the gross amount owing to the producer and shall remit the assessment and data to the committee within a reasonable time period as established by the committee. A processor, distributor, or handler who fails to deduct or remit the assessment is liable to the committee for any assessments not deducted or remitted. If a processor, distributor, or handler is not involved at the first point of sale of an agricultural commodity or agricultural commodity input, or is not within this state and the assessment is not deducted and remitted, the producer shall remit the assessments to the committee on all sales of the agricultural commodity or agricultural commodity input, subject to a marketing program and within a time period specified by the committee.

(d) All assessments deducted or collected and held by a processor, distributor, or handler for over 92 days shall be deposited in a separate interest bearing escrow account held jointly with the marketing program committee and not commingled with other funds. Interest accrued in the escrow account shall be forwarded to the committee.

(e) All assessments collected or deducted shall be considered trust funds and be remitted quarterly or more frequently if required by the marketing program to the appropriate committee.

(f) A committee may file a written complaint with the director documenting that a processor, distributor, handler, or producer has failed to deduct or remit any assessment due to the committee pursuant to a marketing program. Upon receipt of such a complaint, the director shall conduct an investigation of the allegations. If, after investigation, the director finds that the processor, distributor, handler, or producer has failed to deduct or remit an assessment to the committee, the director shall request by certified mail the processor, distributor, handler, or producer to remit the assessment within 10 days after the director determines that a deduction or remittance was not made. In the case of the failure to deduct an assessment, the director shall compute the amount that reasonably should have been deducted and impose an assessment in that amount. If the assessment is not remitted within 30 days after the request or is not in compliance with a written agreement for full payment, the director may file an action in a court of competent jurisdiction to collect the assessment. Venue in such an action is the place where the processor, distributor, handler, or producer has its primary place of business. In any action to recover an assessment under this subsection, if the director prevails, the court shall award to the director all costs and expenses in bringing the action, including, but not limited to, reasonable and actual attorney fees, court costs, and audit expenses. If the director does not prevail, he or she shall charge the committee for reasonable and actual attorney fees, court costs, and expenses incurred in bringing about the action.

(g) Each committee shall specify the date the assessment is due in the account of the marketing program on that production. Producers, processors, distributors, or handlers of the affected agricultural commodity or agricultural commodity input shall be given reasonable notice of the due date.

(h) A committee established pursuant to this act has the ability to borrow money in anticipation of the receipt of assessments if the following conditions are met:

- (i) The loan will not be requested or authorized, or will not mature, within 90 days before a resubmittal or termination referendum for the marketing program.
- (ii) The amount of the loan does not exceed 50% of the annual average assessment revenue during the previous 3 years. In the case of a marketing program that has been in existence for less than 3 years, the loan does not exceed 25% of the projected annual assessment revenue.
- (iii) The loan repayment period does not exceed the life of the marketing program.
- (iv) The loan has the prior written consent of the director. The director may request an audit of the committee by the auditor general before approving the loan.
- (i) The director shall assess against the agricultural commodity input or the producers of the agricultural commodity all outstanding loans, including interest, approved under subsection (h) if the marketing program is inactive or is terminated.

History: 1965, Act 232, Eff. Mar. 31, 1966 ;-- Am. 1966, Act 130, Imd. Eff. June 23, 1966 ;-- Am. 1974, Act 324, Imd. Eff. Dec. 15, 1974 ;-- Am. 1978, Act 146, Imd. Eff. May 12, 1978 ;-- Am. 1996, Act 216, Imd. Eff. May 28, 1996 ;-- Am. 2002, Act 601, Imd. Eff. Dec. 20, 2002