

# AGRICULTURAL MARKETING AND BARGAINING ACT

## Act 344 of 1972

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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973

*The People of the State of Michigan enact:*

### 290.701 Short title.

#### Sec. 1.

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

**History:** 1972, Act 344, Eff. Mar. 30, 1973

**Constitutionality:** This act is constitutional on its face. *Michigan Canners & Freezers Association, Inc v Agricultural Marketing & Bargaining Board*, 416 Mich 706, 332 NW2d 134 (1982). The Michigan Agricultural Marketing and Bargaining Act, MCL 290.701 et seq., authorizes producers' associations to engage in conduct that the federal Agricultural Fair Practices Act of 1967 forbids and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. To that extent, therefore, the Michigan Act is pre-empted by the AFPA. *Michigan Canners and Freezers Association, Inc v Agricultural Marketing & Bargaining Board*, 467 US 461; 104 S Ct 2518; 81 L Ed2d 399 (1984).

### 290.702 Definitions.

#### Sec. 2.

As used in this act:

- (a) "Association" means a cooperative association of producers or a division thereof, or a federation of cooperative associations of producers, engaged in the marketing, bargaining, shipping, or processing of an agricultural commodity on behalf of its members who are producers of the agricultural commodity.
- (b) "Accredited association" means an association accredited in accordance with this act.
- (c) "Person" means an individual, partnership, corporation, or association.
- (d) "Department" means the department of agriculture and rural development.
- (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 a quantity beyond his or her own family use and having a minimum value at first point of sale as determined by the department for that agricultural commodity, and who is able, during the marketing period, to 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 the agricultural commodity under a written or oral contract.
- (f) "Agricultural commodity" means all perishable fruits and vegetables as defined by the department. 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 department on the basis of common usage and practice.
- (g) "Handler" means a person other than an association engaged in the business or practice of any of the following:
  - (i) Acquiring agricultural commodities from producers or associations for processing or sale.
  - (ii) Grading, packaging, handling, storing, or processing agricultural commodities received from producers or associations.
  - (iii) Contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production of any agricultural commodity.

(iv) Acting as an agent or broker for a handler in the performance of any function or act specified above. Handler does not include a producer who sells at a retail establishment that he or she owns and operates or who sells directly to consumers at a produce market agricultural commodities produced by him or her and agricultural commodities produced by another producer subject to value limitation established by the department.

(h) "Marketing period" for an agricultural commodity means a period of time determined by the department 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 or her exclusive agent in negotiations with handlers with respect to the marketing of an agricultural commodity.

(j) "Unfair practices" means those practices prohibited under section 4.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

### **290.702a Excluded sales.**

#### **Sec. 2a.**

Any sale of a commodity by a producer to another producer for his or her own exclusive use and not for resale or any sale of fresh market produce directly to consumers or to a retail store or stand for resale to consumers is exempt from this act.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

### **290.703 Administration and implementation of act; rules.**

#### **Sec. 3.**

(1) The department shall administer this act.

(2) Services for implementing this act shall be provided by the department from appropriations made by the legislature.

(3) The department may promulgate rules necessary for the administration of this act in accordance with and subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 1980, Act 195, Imd. Eff. July 8, 1980 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**Compiler's Notes:** For abolishment of the agricultural marketing and bargaining board and transfer of its powers and duties to the department of agriculture, see E.R.O. No. 2007-7, compiled at MCL 290.741.

**Admin Rule:** R 290.101 et seq. of the Michigan Administrative Code.

### **290.704 Voluntary associations; prohibited practices; complaints; orders.**

#### **Sec. 4.**

(1) Producers of agricultural commodities may join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage or permit an employee or agent to engage in any of the following practices:

(a) To coerce a producer in the exercise of his or her 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 or her 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 or her 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 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:

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

(b) To act in a manner contrary to the bylaws 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 that is in violation of this act.

(3) For the purpose of enforcing this act, the department may receive sworn complaints with respect to violations or threatened violations. The department may make all necessary investigations, examinations, or inspections of any violation or threatened violation specified in the sworn complaint filed with the department. If, upon an investigation, the department considers that there is reasonable cause to believe that a person charged has committed an unfair practice, the department shall issue and cause to be served a complaint upon the person in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The complaint shall summon the person to a hearing before the department or a hearing officer at the time and place provided in the complaint.

(4) If, upon a preponderance of the evidence, the department determines that the person complained of has committed an unfair practice, the department shall state its findings of fact and shall issue and cause to be served on the person complained of an order requiring him or her 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 department is of the opinion that the person complained of has not committed an unfair practice, the department 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 department, at any time upon reasonable notice and in such manner as the department considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by the department.

(7) The department shall determine whether the expense of the proceedings shall be borne by any person found to have committed a practice in violation of this section.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**Compiler's Notes:** For provisions of Act 306 of 1969, referred to in subsection (3), see MCL 24.201 et seq.

## **290.705 Enforcement of orders; temporary relief or restraining orders; jurisdiction; objections; findings; additional evidence; review; stay.**

### **Sec. 5.**

(1) The department may petition the court of appeals for the enforcement of its orders and for appropriate temporary relief or restraining orders 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 complained of, and thereupon shall have

jurisdiction of the proceeding and of the question to be determined, and may grant temporary relief or restraining order as it considers just and proper and make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the department. An objection that has not been urged before the department or a hearing officer shall not be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the department with respect to questions of fact are conclusive if supported by substantial evidence on the record considered as a whole. 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 department, the court may order additional evidence to be taken before the department or hearing officer and to be made a part of the record. The department 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 the court, 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 department 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 department be modified or set aside. A copy of the petition shall be transmitted by the clerk of the court to the department, and the aggrieved party shall file in the court the record in the proceeding certified by the department. Upon the filing of the petition, the court shall proceed in the same manner as in the case of an application by the department under this section and shall have the same jurisdiction to grant temporary relief or a restraining order as it considers 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 department. The findings of the department with respect to questions of fact shall be conclusive if supported by substantial evidence on the record as a whole.

(3) The commencement of proceedings under this section shall not stay enforcement of the department's decision, but the department or the reviewing court may order a stay upon such terms as the court considers proper.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

## **290.706 Proposed bargaining unit; determination of appropriateness; criteria.**

### **Sec. 6.**

(1) The department 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 department shall hold a hearing in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to resolve the dispute.

(2) In making its determination, the department shall define as appropriate the largest bargaining unit in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, the geographic area covered, and the 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 interest 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012  
**Compiler's Notes:** For provisions of Act 306 of 1969, referred to in subsection (1), see MCL 24.201 et seq.

### **290.707 Accreditation of association; requirements.**

#### **Sec. 7.**

An association shall be accredited upon determination by the department that the association meets all of the following:

- (a) The association meets the requirements of the Capper-Volstead act, 7 USC 291 to 292.
- (b) The association has submitted a copy of its bylaws, which shall provide all of the following:
  - (i) Each member of the association shall have 1 vote in all votes of the membership of the association.
  - (ii) Officers or directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership.
  - (iii) 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 department 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 marketing period. The department 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 composed 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

### **290.708 Request for accreditation; contents; fee; report.**

#### **Sec. 8.**

(1) An association desiring accreditation shall file with the department a written request for accreditation in the form as required by the department. 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 department in processing the request shall be established by rule and paid by the association when the request is filed.

(2) The department 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 department, within 30 days following a request, a properly certified report, 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 department shall not be made public by the department nor shall it be made available to any person for private use.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**290.709 Request for accreditation; determination by department; amended request; public hearing; notice.**

**Sec. 9.**

(1) Within 60 days following the date of filing with the department a request for accreditation by an association, the department shall determine whether the association shall be accredited. If the department determines that insufficient evidence was filed by the association, the department 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 department's preliminary finding that the association is to be accredited, the department 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**290.710 Request for accreditation; issuance and publication of determination; preliminary declaration; service fees; effective date of accreditation; referendum; denial of accreditation.**

**Sec. 10.**

(1) The department shall issue and publish its determination within 30 days after the close of the hearing. If the determination of the department is to accredit the association, the department 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 in the association. 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 department and shall be subject to review by the department upon petition by 15% of the affected producers.

(2) The accreditation of the association by the department shall be effective 30 days after the publication of the preliminary declaration of accreditation. The department shall delay the accreditation of the association if the department receives during the 30-day 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 department 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 considered 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 that is denied accreditation may not file another request for accreditation for a period of 1 year.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.711 Annual report of accredited association.**

Sec. 11.

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

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.712 Revocation of accreditation.**

Sec. 12.

(1) To revoke the accreditation of an accredited association, the department shall employ a procedure similar to the accreditation procedure set forth in sections 8, 9, and 10. Subject to subsection (2), revocation of accreditation shall be considered by the department upon receipt of any of the following:

(a) A request from an accredited association for its own disaccreditation.

(b) A petition requesting that the accredited association be discredited 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.

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

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.713 "Bargaining" defined; accredited association as exclusive representative; negotiations; notice.**

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 the following:

(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 department of the commencement of negotiations.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.714 Mediation of issues; duties of department; designation of person to act in department's behalf; fee.**

Sec. 14.



(1) Upon the request of an accredited association or upon the request of a handler, the department shall provide for the mediation of the issues in dispute. The department shall take such steps as it considers 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 department shall do all of the following:

(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 department may retain a competent individual to act on its behalf. If the department seeks to retain an individual to mediate a dispute, the department shall attempt to retain an individual who has experience in mediation and in agricultural marketing.

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

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.715 Election not to purchase or sell during marketing period.**

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. If an agreement on the issues in dispute between the accredited association and the handler has not been reached, 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.716 Arbitration; agreements as to agricultural commodities; disputed quantities; offer; claim for relief; determination of reasonableness; joint settlement 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 considered 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.

(2) If 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 department. The accredited association may file a claim for relief with the department if it feels that the offer is unreasonable. The department shall determine the issue of reasonableness at a hearing in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. This determination shall have priority over all other department matters. The department shall base its determination on all of the following:

(a) Projections as to the quantity of the agricultural commodity to be 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.

(d) The past practices of the handler in relation to the items in subdivisions (a), (b), and (c).

(3) If, upon the preponderance of the evidence, the department is of the opinion that the quantity is unreasonable, it shall order the handler to accept the quantity which the department finds to be reasonable. The finding of the department shall be final, subject to later modification by the joint settlement committee. This finding shall be enforced as provided in section 5. Within 15 days following the start of the marketing period for the agricultural commodity, the department shall establish a joint settlement committee to arbitrate the issues in dispute.

(4) The joint settlement committee consists of 1 committee member selected by the association, 1 committee member selected by the handler, and 1 committee member selected by the committee members representing the association and the handler. This third committee member shall be chairperson of the committee. If the third committee member cannot be agreed upon by the association and the handler committee members, the department shall submit a list composed of the names of 5 persons knowledgeable in the marketing of the agricultural commodity from which the third committee member 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 committee member and as its chairperson. The order of striking shall be determined by chance.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.717 Hearing; notice; duties of chairperson; intervention; evidence; informal proceedings; verbatim record; transcripts; expense; adjournment; conclusion; majority actions and rulings.**

##### **Sec. 17.**

The chairperson of a joint settlement committee established under section 16 shall call a hearing to begin within 15 days after the joint settlement committee is established and shall give reasonable notice of the time and place of the hearing. The chairperson shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon terms and conditions that are just, a person having a substantial interest in the dispute may be granted leave to intervene by the joint settlement committee. Any oral or documentary evidence and other data considered 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 be considered impaired. A verbatim record of the proceedings shall be made and the chairperson 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 joint settlement committee. The expense of the proceedings, including a fee to the chairperson, established in advance by the department shall be borne equally by each of the parties to the dispute. The hearing conducted by the joint settlement committee 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. The actions and rulings of a majority of the members of the joint settlement committee shall constitute the actions and rulings of the joint settlement committee.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 1980, Act 195, Imd. Eff. July 8, 1980 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.718 Joint settlement committee; powers; oaths; subpoenas; contempt.**

##### **Sec. 18.**

The joint settlement committee may administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be considered material by the committee 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 joint settlement 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.719 Joint settlement committee; findings of fact; issuance of award.**

Sec. 19.

Within 20 days after the conclusion of the hearing or such further time to which the parties may agree, the joint settlement committee 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 joint settlement committee shall be limited to the last offer of the association or the last offer of the handler, whichever more nearly complies with the criteria contained in section 20.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.720 Joint settlement committee; decision; basis.**

Sec. 20.

The joint settlement 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 producer's 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.721 Finality of committee's decision; enforcement.**

Sec. 21.

A majority decision of the joint settlement 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 insistence of either party or of the joint settlement committee in the court of appeals.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**290.722 Disobeying or resisting order; contempt.**

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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**290.723 Judicial review of committee awards.**

Sec. 23.

(1) Awards of the joint settlement committee shall be reviewable by the court of appeals but only for the following reasons:

- (a) The joint settlement committee was without or exceeded its jurisdiction.
- (b) The award is unsupported by competent, material, and substantial evidence on the whole record.
- (c) The award was procured by fraud, collusion, or other similar and unlawful means.
- (2) The pendency of a proceeding for review shall not automatically stay the order of the joint settlement committee.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**290.724 Mailing copy of contract or award to department.**

Sec. 24.

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

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

**290.725 Access of department to evidence; refusal to obey subpoena; service of process.**

Sec. 25.

(1) At all reasonable times, the department 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 refusal to obey a subpoena issued to any person under this act, the circuit court, upon application by the department, shall have jurisdiction to order the person to appear before the department to produce evidence or to give testimony on the matter under investigation, and any failure to obey the order may be punished by the court as a contempt.

(3) Complaints, orders, and other processes and papers of the department under this act may be served personally, by registered mail, 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 department 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 to 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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973 ;-- Am. 2012, Act 119, Imd. Eff. May 2, 2012

#### **290.726 Antitrust law not violated.**

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.

**History:** 1972, Act 344, Eff. Mar. 30, 1973

#### **290.727 Repealed. 1976, Act 155, Imd. Eff. June 17, 1976.**

**Compiler's Notes:** The repealed section contained an expiration date and saving clause.