

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1573 Session of
1997

INTRODUCED BY BUNT, BELFANTI, WAUGH, B. SMITH, FLEAGLE,
HENNESSEY, GORDNER, MAJOR, E. Z. TAYLOR, HERMAN, FARGO,
MILLER, HESS, HERSHEY, COLAIZZO, ITKIN, MCGILL, PHILLIPS,
SCRIMENTI, COY, KREBS, LYNCH, CLARK, KELLER, BAKER,
ZIMMERMAN, ARMSTRONG, ROSS, BARD, SATHER, HALUSKA, FAIRCHILD,
TRELLO, STEELMAN, HARHART, CAPPABIANCA, CIVERA, YOUNGBLOOD,
SAYLOR, WILT, BENNINGHOFF AND ZUG, JUNE 4, 1997

SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, NOVEMBER 24, 1997

AN ACT

1 ~~Amending the act of September 20, 1961 (P.L.1541, No.657),~~ <—
2 ~~entitled, as reenacted and amended, "An act providing for the~~
3 ~~issuing, administration, enforcement and termination of~~
4 ~~marketing programs on agricultural commodities; imposing~~
5 ~~powers and duties on the Secretary of Agriculture; providing~~
6 ~~for the creation and operation of advisory boards;~~
7 ~~prescribing the content of programs; and providing for the~~
8 ~~imposition and collection of fees," further providing for the~~
9 ~~definition of "agricultural commodity."~~
10 AMENDING TITLE 3 (AGRICULTURE) OF THE PENNSYLVANIA CONSOLIDATED <—
11 STATUTES, FURTHER DEFINING "GARBAGE" FOR PURPOSES OF DOMESTIC
12 ANIMALS; PROVIDING FOR PAYMENT OF INDEMNIFICATION AND
13 DEPOPULATION INCENTIVES FOR AVIAN INFLUENZA; FURTHER
14 PROVIDING FOR GENERAL TESTING AND INSPECTION OF SCANNING
15 DEVICES; PROVIDING FOR THE ISSUING, ADMINISTRATION,
16 ENFORCEMENT AND TERMINATION OF MARKETING PROGRAMS ON
17 AGRICULTURAL COMMODITIES; IMPOSING POWERS AND DUTIES ON THE
18 SECRETARY OF AGRICULTURE; PROVIDING FOR THE CREATION AND
19 OPERATION OF ADVISORY BOARDS; PRESCRIBING THE CONTENT OF
20 PROGRAMS; PROVIDING FOR THE IMPOSITION AND COLLECTION OF
21 FEES; AND MAKING A REPEAL.
22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:
24 ~~Section 1. Section 2(6) of the act of September 20, 1961~~ <—

~~(P.L.1541, No.657), known as the Pennsylvania Agricultural
Commodities Marketing Act of 1968, reenacted and amended July
16, 1968 (P.L.359, No.179), is amended to read:~~

~~Section 2. Definitions. When used in this act, the
following words and phrases shall have the following meanings,
unless the context indicates otherwise:~~

~~* * *~~

~~(6) "Agricultural commodity" means agricultural,
aquacultural, horticultural, viticultural and dairy products,
livestock and the products thereof, ranch raised fur bearing
animals and the products thereof, the products of poultry and
bee raising, forestry and forestry products, and any and all
products raised or produced on farms intended for human
consumption and the processed or manufactured products thereof
intended for human consumption, transported or intended to be
transported in commerce.~~

~~* * *~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. THE DEFINITION OF "GARBAGE" IN SECTION 2303 OF
TITLE 3 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED TO
READ:

§ 2303. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

* * *

["GARBAGE." ALL WASTE MATERIAL RESULTING FROM THE HANDLING,
PREPARATION, COOKING OR CONSUMPTION OF FOOD, EXCEPT THAT THE
TERM SHALL NOT INCLUDE WASTE FROM ORDINARY HOUSEHOLD OPERATIONS
WHICH IS FED DIRECTLY TO DOMESTIC ANIMALS ON THE SAME PREMISES

1 WHERE THE HOUSEHOLD IS LOCATED. THE TERM ALSO DOES NOT INCLUDE
2 ANY WASTE OR RESIDUALS FROM FOOD PROCESSING OPERATIONS.]

3 "GARBAGE." ALL WASTE OR RESIDUALS RESULTING FROM THE
4 HANDLING, PREPARATION, COOKING OR CONSUMPTION OF FOOD DERIVED IN
5 WHOLE OR IN PART FROM THE MEAT OF ANY ANIMAL, INCLUDING POULTRY
6 AND FISH, OR OTHER ANIMAL MATERIAL AND OTHER REFUSE OF ANY
7 CHARACTER THAT HAS BEEN ASSOCIATED WITH THE MEAT OF ANY ANIMAL
8 OR OTHER ANIMAL MATERIAL. THE TERM DOES NOT INCLUDE WASTE FROM
9 ORDINARY HOUSEHOLD OPERATIONS THAT IS FED DIRECTLY TO SWINE ON
10 THE SAME PREMISES WHERE THE HOUSEHOLD IS LOCATED.

11 * * *

12 SECTION 2. SECTIONS 2333 AND 4112(C) OF TITLE 3 ARE AMENDED
13 TO READ:

14 § 2333. RESTRICTION ON PAYMENT OF INDEMNIFICATION AND
15 DEPOPULATION INCENTIVE.

16 (A) GENERALLY.--NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
17 INDEMNIFICATION UNDER SECTION 2331 (RELATING TO INDEMNIFICATION)
18 AND DEPOPULATION INCENTIVE UNDER SECTION 2332 (RELATING TO
19 DEPOPULATION INCENTIVE) SHALL BE PAID ONLY FOR DOMESTIC ANIMALS.

20 (B) AVIAN INFLUENZA.--NOTWITHSTANDING ANY OTHER PROVISION OF
21 LAW, WHETHER A DOMESTIC ANIMAL, DOMESTIC ANIMAL PRODUCT OR OTHER
22 PROPERTY IS CONDEMNED BY THE DEPARTMENT AND SLAUGHTERED OR
23 DESTROYED UNDER SECTION 2331 OR VOLUNTARILY SLAUGHTERED OR
24 DESTROYED BY THE OWNER UNDER SECTION 2332 TO ERADICATE OR
25 PREVENT THE SPREAD OF AVIAN INFLUENZA, THE AMOUNT PAYABLE BY THE
26 DEPARTMENT SHALL, IN ALL CASES, BE THE SAME ~~MAXIMUM~~ PERCENTAGE <—
27 OF APPRAISED VALUE AS DETERMINED BY THE DEPARTMENT. ALL OTHER <—
28 PROVISIONS OF SECTIONS 2331 AND 2332 SHALL APPLY TO ANY PAYMENT
29 UNDER THIS SUBSECTION.

30 § 4112. GENERAL TESTING AND INSPECTIONS.

1 4510. COLLECTION OF FEES.

2 4511. RULES AND REGULATIONS FOR ENFORCEMENT.

3 4512. ADVANCED DEPOSITS.

4 4513. SEVERABILITY.

5 § 4501. SHORT TITLE OF CHAPTER.

6 THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE
7 AGRICULTURAL COMMODITIES MARKETING ACT.

8 § 4502. DEFINITIONS.

9 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
10 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
11 CONTEXT CLEARLY INDICATES OTHERWISE:

12 "AGRICULTURAL COMMODITY." AGRICULTURAL, AQUACULTURAL,
13 HORTICULTURAL, VITICULTURAL AND DAIRY PRODUCTS, LIVESTOCK AND
14 THE PRODUCTS THEREOF, RANCH RAISED FURBEARING ANIMALS AND THE
15 PRODUCTS THEREOF, THE PRODUCTS OF POULTRY AND BEE RAISING,
16 FORESTRY AND FORESTRY PRODUCTS, AND ANY AND ALL PRODUCTS RAISED
17 OR PRODUCED ON FARMS INTENDED FOR HUMAN CONSUMPTION AND THE
18 PROCESSED OR MANUFACTURED PRODUCTS THEREOF INTENDED FOR HUMAN
19 CONSUMPTION, TRANSPORTED OR INTENDED TO BE TRANSPORTED IN
20 COMMERCE.

21 "COMMODITY MARKETING BOARD" OR "BOARD." THE PERSONS WHO ARE
22 APPOINTED BY THE SECRETARY OF AGRICULTURE FROM AMONG PRODUCERS
23 WHOSE COMMODITIES ARE SUBJECT TO AN ISSUED MARKETING PROGRAM.

24 "COOPERATIVE ASSOCIATION." ANY COOPERATIVE MARKETING
25 ASSOCIATION OF PRODUCERS WHICH THE SECRETARY OF AGRICULTURE
26 DETERMINES, AFTER APPLICATION BY THE COOPERATIVE ASSOCIATION:

27 (1) TO BE QUALIFIED UNDER THE PROVISIONS OF THE CO-
28 OPERATIVE MARKETING ASSOCIATIONS ACT (42 STAT. 388, 7 U.S.C.
29 §§ 291 AND 292) AND ORGANIZED AS A COOPERATIVE AGRICULTURAL
30 ASSOCIATION UNDER THE LAWS OF THIS COMMONWEALTH AND ANY OTHER

STATE; AND

(2) TO HAVE FULL AUTHORITY IN THE SALE OF AFFECTED AGRICULTURAL COMMODITY OF ITS MEMBERS AND TO BE ENGAGED IN MAKING COLLECTIVE SALES OF OR MARKETING THE COMMODITY OR ITS PRODUCTS FOR ITS MEMBERS.

"MARKETING CONTRACT." A CONTRACT OR AGREEMENT BETWEEN A COMMODITY MARKETING BOARD AND A PERSON FOR THE PERFORMANCE OF SERVICES RELATING TO ADVERTISING, MARKETING, PROMOTION, RESEARCH OR OTHER OBJECTIVES IN FURTHERANCE OF A MARKETING PROGRAM.

"MARKETING PROGRAM." A PROGRAM ESTABLISHED PURSUANT TO THIS CHAPTER GOVERNING THE COLLECTION OF FEES AND ADMINISTRATION OF BUDGETS TO IMPLEMENT PROJECTS TO BENEFIT PRODUCERS IN THIS COMMONWEALTH DURING ANY SPECIFIED PERIOD OR PERIODS.

"PERSON." AN INDIVIDUAL, FIRM, CORPORATION, ASSOCIATION OR ANY OTHER BUSINESS UNIT.

"PRODUCER." A PERSON ENGAGED WITHIN THIS COMMONWEALTH OR A PRODUCTION AREA WITHIN THIS COMMONWEALTH IN THE BUSINESS OF PRODUCING AGRICULTURAL COMMODITIES OR CAUSING AGRICULTURAL COMMODITIES TO BE PRODUCED.

"SALES AGENT." ANY PERSON, INCLUDING INDIVIDUALS, PARTNERSHIPS, CORPORATIONS, COOPERATIVE ASSOCIATIONS AND UNINCORPORATED COOPERATIVE ASSOCIATIONS, WHO PURCHASES OR HANDLES OR RECEIVES OR SELLS OR CONTRACTS TO SELL AN AFFECTED AGRICULTURAL COMMODITY.

§ 4503. POWERS AND DUTIES OF SECRETARY.

(A) ADMINISTRATION AND ENFORCEMENT OF CHAPTER.--SUBJECT TO THE PROVISIONS CONTAINED IN THIS CHAPTER, THE SECRETARY SHALL ADMINISTER AND ENFORCE THE PROVISIONS OF THIS CHAPTER, AND SHALL HAVE AND SHALL EXERCISE ALL ADMINISTRATIVE POWERS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS CHAPTER, INCLUDING THE ISSUANCE

1 OF MARKETING PROGRAMS, THE APPOINTMENT OF MEMBERS TO COMMODITY
2 MARKETING BOARDS AS PROVIDED IN SECTION 4504 (RELATING TO
3 COMMODITY MARKETING BOARD) AND THE PROVIDING OF PERSONNEL,
4 STAFF, LEGAL COUNSEL AND OFFICE FACILITIES REQUIRED FOR THE
5 ADMINISTRATION AND ENFORCEMENT OF MARKETING PROGRAMS.

6 (B) GROUNDS FOR PUBLIC HEARING.--WHENEVER THE SECRETARY HAS
7 REASON TO BELIEVE THAT THE ISSUANCE OF A MARKETING PROGRAM OR
8 AMENDMENTS TO AN EXISTING MARKETING PROGRAM WILL TEND TO
9 EFFECTUATE THIS CHAPTER, THE SECRETARY SHALL, EITHER UPON HIS
10 OWN MOTION OR UPON APPLICATION OF ANY PRODUCER OR ANY
11 ORGANIZATION OF PRODUCERS, GIVE DUE NOTICE OF AN OPPORTUNITY FOR
12 A PUBLIC HEARING UPON A PROPOSED MARKETING PROGRAM OR AMENDMENTS
13 TO AN EXISTING MARKETING PROGRAM.

14 (C) PUBLICATION OF NOTICE OF HEARING.--NOTICE OF ANY HEARING
15 CALLED FOR THIS PURPOSE SHALL BE GIVEN BY THE SECRETARY BY
16 PUBLISHING A NOTICE OF THE HEARING, FOR A PERIOD OF NOT LESS
17 THAN FIVE CONSECUTIVE PUBLICATION DAYS, IN A DAILY NEWSPAPER OF
18 GENERAL CIRCULATION, PUBLISHED IN THE CAPITAL OF THE
19 COMMONWEALTH AND IN ANY OTHER NEWSPAPER OR NEWSPAPERS AS THE
20 SECRETARY MAY PRESCRIBE. NO PUBLIC HEARING SHALL BE HELD PRIOR
21 TO 20 DAYS AFTER THE LAST DAY OF THE PERIOD OF PUBLICATION.

22 (D) MAILING TO PRODUCERS.--THE SECRETARY SHALL ALSO MAIL A
23 COPY OF THE NOTICE OF A HEARING AND A COPY OF THE PROPOSED
24 MARKETING PROGRAM OR PROPOSED AMENDMENTS TO ALL PRODUCERS WHOSE
25 NAMES AND ADDRESSES APPEAR UPON LISTS OF SUCH PERSONS WHICH
26 SHALL BE COMPILED IN THE DEPARTMENT.

27 (E) SPECIFICS OF NOTICE.--THE NOTICE OF HEARING SHALL SET
28 FORTH THE DATE AND PLACE OF THE HEARING, AND THE AREA COVERED BY
29 THE PROPOSED MARKETING PROGRAM, OR THE PROPOSED AMENDMENTS, AND
30 A STATEMENT THAT THE SECRETARY WILL RECEIVE AT THE HEARING, IN

1 ADDITION TO TESTIMONY AND EVIDENCE AS TO THE PROPOSED MARKETING
2 PROGRAM, TESTIMONY AND EVIDENCE AS TO OTHER NECESSARY AND
3 RELEVANT MATTERS, INCLUDING RATE OF ASSESSMENT, AND WITH RESPECT
4 TO THE ACCURACY AND SUFFICIENCY OF LISTS ON FILE WITH THE
5 SECRETARY, WHICH SHOW THE NAMES AND ADDRESSES OF PRODUCERS AND
6 THE QUANTITIES OF AGRICULTURAL COMMODITIES PRODUCED BY THE
7 PRODUCERS IN THE MARKETING SEASON NEXT PRECEDING THE HEARING.

8 (F) HEARING REQUIREMENTS.--THE HEARING SHALL BE PUBLIC, AND
9 ALL TESTIMONY SHALL BE RECEIVED UNDER OATH. A FULL AND COMPLETE
10 RECORD OF ALL PROCEEDINGS AT THE HEARINGS SHALL BE MADE AND
11 MAINTAINED ON FILE IN THE OFFICE OF THE SECRETARY. AT HEARINGS
12 THE SECRETARY SHALL RECEIVE, IN ADDITION TO OTHER NECESSARY AND
13 RELEVANT MATTERS, TESTIMONY AND EVIDENCE REGARDING THE RATE OF
14 ASSESSMENT AND TESTIMONY AND EVIDENCE WITH RESPECT TO THE
15 ACCURACY AND SUFFICIENCY OF THE LISTS ON FILE WITH THE
16 SECRETARY, WHICH SHOW THE NAMES OF THE PRODUCERS AND THE
17 QUANTITIES OF AGRICULTURAL COMMODITIES PRODUCED BY THE PRODUCERS
18 IN THE MARKETING SEASON NEXT PRECEDING THE HEARING.

19 (G) ISSUANCE OF MARKETING PROGRAM.--AFTER NOTICE AND
20 HEARING, THE SECRETARY MAY ISSUE A MARKETING PROGRAM IF THE
21 SECRETARY FINDS AND SETS FORTH IN THE MARKETING PROGRAM THAT THE
22 PROGRAM WILL TEND TO EFFECTUATE THE PURPOSES OF THIS CHAPTER.

23 § 4504. COMMODITY MARKETING BOARD.

24 (A) ESTABLISHMENT OF COMMODITY MARKETING BOARD.--

25 (1) EACH MARKETING PROGRAM, ISSUED PURSUANT TO THIS
26 CHAPTER, SHALL PROVIDE FOR THE ESTABLISHMENT OF A COMMODITY
27 MARKETING BOARD, WHICH SHALL HAVE PRIMARY DECISION MAKING
28 AUTHORITY RELATIVE TO MARKETING CONTRACTS AND OTHER PROJECTS
29 IN FURTHERANCE OF THE PROGRAM. THE NUMBER, REPRESENTATION,
30 QUALIFICATIONS AND TERMS OF BOARD MEMBERS AND THE SCHEDULE OF

1 REGULAR BOARD MEETINGS AND PROCEDURE FOR CALLING SPECIAL
2 BOARD MEETINGS SHALL BE ESTABLISHED IN THE ISSUED MARKETING
3 PROGRAM. NO MARKETING PROGRAM SHALL BE ISSUED TO ESTABLISH A
4 COMMODITY BOARD OF LESS THAN FIVE MEMBERS, ONE OF WHOM SHALL
5 BE THE SECRETARY, OR THE SECRETARY'S DESIGNEE. THE OTHER
6 BOARD MEMBERS SHALL BE APPOINTED BY THE SECRETARY FROM AMONG
7 THE AGRICULTURAL PRODUCERS WHOSE COMMODITIES SHALL BE SUBJECT
8 TO THE MARKETING PROGRAM. IN MAKING THESE APPOINTMENTS, THE
9 SECRETARY SHALL CONSIDER NOMINATIONS SUBMITTED BY THE
10 PRODUCERS. NO DECISION BY THE BOARD SHALL BE EFFECTIVE
11 UNLESS, PURSUANT TO REGULAR OR SPECIAL MEETINGS, A MAJORITY
12 OF BOARD MEMBERS WERE PRESENT AND A MAJORITY OF THOSE PRESENT
13 VOTED IN SUPPORT OF THE DECISION. ALL DECISIONS RENDERED BY
14 THE BOARD SHALL BE RECORDED IN WRITTEN MINUTES OF THE
15 MEETING, AND THE RECORDED MINUTES SHALL BE MADE AVAILABLE TO
16 THE SECRETARY AND TO THE PRODUCERS WHOSE COMMODITIES ARE
17 SUBJECT TO THE MARKETING PROGRAM.

18 (2) IF THE SECRETARY REQUIRES SALES AGENTS TO COLLECT
19 PRODUCER CHARGES UNDER SECTION 4510(B) (RELATING TO
20 COLLECTION OF FEES), AN ADDITIONAL MEMBER SHALL BE APPOINTED
21 TO THE BOARD BY THE SECRETARY. THIS MEMBER SHALL REPRESENT
22 THESE SALES AGENTS WHO ARE SUBJECT TO THE MARKETING PROGRAM
23 COLLECTION AGREEMENT. IN MAKING THE APPOINTMENT, THE
24 SECRETARY SHALL CONSIDER NOMINATIONS BY THE SALES AGENTS.

25 (B) BOARD MEMBERS.--NO MEMBER OF A COMMODITY MARKETING BOARD
26 SHALL RECEIVE A SALARY, BUT EACH SHALL BE ENTITLED TO ACTUAL
27 EXPENSES INCURRED WHILE ENGAGED IN PERFORMING THE DUTIES
28 AUTHORIZED BY THIS CHAPTER. ANY MARKETING PROGRAM ESTABLISHED
29 UNDER THIS CHAPTER MAY AUTHORIZE A PAYMENT NOT TO EXCEED \$100
30 PER DAY, AND EXPENSES FOR EACH DAY IN WHICH A BOARD MEMBER OR

1 SUBCOMMITTEE MEMBER IS PERFORMING A DUTY NECESSARY TO THE
2 FUNCTION OF THE BOARD.

3 (C) POWERS AND DUTIES OF BOARD.--IN ADMINISTERING THE
4 MARKETING PROGRAM THE BOARD SHALL HAVE THE FOLLOWING POWERS AND
5 DUTIES:

6 (1) TO DETERMINE ALL MATTERS PERTAINING TO THE MARKETING
7 PROGRAM ISSUED BY THE SECRETARY.

8 (2) TO HIRE AND EMPLOY PERSONNEL WHICH THE BOARD DEEMS
9 NECESSARY FOR THE PROPER ADMINISTRATION OF THE MARKETING
10 PROGRAM AND TO FIX THE COMPENSATION AND TERMS OF EMPLOYMENT
11 OF PERSONNEL. THE HIRING, EMPLOYMENT, COMPENSATION AND TERMS
12 OF EMPLOYMENT OF PERSONNEL UNDER THIS PARAGRAPH SHALL NOT BE
13 SUBJECT TO THE PROVISIONS OF THE ACT OF APRIL 9, 1929
14 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

15 (3) TO ADOPT WRITTEN PROCEDURES FOR ACQUIRING AND
16 DISPOSING OF PROPERTY, AND, SUBJECT TO THESE PROCEDURES, TO
17 ACQUIRE, OWN, USE, HIRE, LEASE, OPERATE AND DISPOSE OF
18 PERSONAL PROPERTY, REAL PROPERTY AND INTERESTS IN REAL
19 PROPERTY.

20 (4) TO MAKE AND ENTER INTO ALL CONTRACTS AND AGREEMENTS,
21 IN ACCORDANCE WITH THE PROVISIONS OF THE LAW, WHICH THE BOARD
22 DEEMS NECESSARY OR INCIDENTAL TO THE FURTHERANCE OF THE
23 MARKETING PROGRAM OR PERFORMANCE OF DUTIES AND POWERS UNDER
24 THIS CHAPTER. MARKETING CONTRACTS AND THE PROCEDURES AND
25 DECISIONS RELATED TO CONTRACTS SHALL NOT BE SUBJECT TO
26 COMPETITIVE BIDDING REQUIREMENTS OF ANY OTHER STATUTE OR
27 OTHER REQUIREMENTS PRESCRIBED IN THE ADMINISTRATIVE CODE OF
28 1929. THE BOARD SHALL ADOPT WRITTEN PROCUREMENT PROCEDURES
29 FOR ALL MARKETING CONTRACTS. PROCEDURES SHALL INCLUDE:

30 (I) THE METHOD OR METHODS WHICH THE BOARD MAY USE TO

1 INVITE PROPOSALS FOR MARKETING CONTRACTS AND THE MANNER
2 OF NOTICE TO BE GIVEN TO PROSPECTIVE CONTRACTING PARTIES.

3 (II) THE MINIMUM QUALIFICATIONS OF A PROSPECTIVE
4 CONTRACTING PARTY NECESSARY FOR CONSIDERATION BY THE
5 BOARD IN MARKETING CONTRACTS.

6 (III) THE MANNER IN WHICH A CONTRACT OFFER IS
7 ACCEPTED AND A MARKETING CONTRACT IS AWARDED BY THE
8 BOARD. NOTWITHSTANDING ANY OTHER REQUIREMENT OF THIS
9 SUBSECTION, THE BOARD MAY MAKE SOLE SOURCE PROCUREMENTS
10 WHEN THERE IS ONLY ONE SOURCE FOR THE REQUIRED SERVICE
11 AND MAY MAKE EMERGENCY PROCUREMENTS WHEN THE BOARD
12 DETERMINES IN WRITING THAT THE PROCEDURE IS NECESSARY DUE
13 TO THE URGENCY OF THE PARTICULAR SITUATION.

14 (5) TO RECEIVE, ACCOUNT FOR AND DISBURSE ALL MONEYS
15 COLLECTED PURSUANT TO THE ISSUED MARKETING PROGRAM.

16 (6) TO PREPARE A BUDGET FOR THE ADMINISTRATION,
17 OPERATING COSTS AND EXPENSES OF THE PROGRAM.

18 (7) TO RECEIVE AND REPORT TO THE SECRETARY COMPLAINTS OR
19 VIOLATIONS OF THE MARKETING PROGRAM AND TO ASSIST AND
20 COOPERATE WITH THE SECRETARY IN THE ENFORCEMENT THEREOF.

21 (8) TO ESTABLISH COMMITTEES OR SUBCOMMITTEES TO CARRY
22 OUT ASSIGNED DUTIES AND FUNCTIONS, AND TO DESIGNATE BOARD
23 MEMBERS AND NONBOARD MEMBERS TO SERVE ON SUCH COMMITTEES AND
24 SUBCOMMITTEES.

25 (9) TO COLLECT AND GATHER INFORMATION AND DATA RELEVANT
26 TO THE PROPER ADMINISTRATION OF THE MARKETING PROGRAM.

27 (10) TO CHARGE FEES AND TO ASSIST THE SECRETARY IN THE
28 IMPOSITION OF FEES AND THE COLLECTION OF FEES AND REVENUES
29 UNDER THIS CHAPTER.

30 (11) TO ISSUE AN ANNUAL REPORT ON THE OPERATION OF THE

1 PROGRAM.

2 (12) TO RECOMMEND AMENDMENTS TO THE MARKETING PROGRAM
3 AND AMENDMENTS TO THIS ACT AND REGULATIONS ISSUED UNDER THIS
4 CHAPTER.

5 (D) LIMITATION.--NO FINANCIAL OBLIGATION SHALL BE INCURRED
6 BY ANY BOARD BEYOND THE EXTENT TO WHICH MONEY SHALL HAVE BEEN
7 PROVIDED UNDER THE AUTHORITY OF THIS CHAPTER. NO OBLIGATION OR
8 LIABILITY OF ANY TYPE INCURRED BY A BOARD CREATED PURSUANT TO
9 THIS CHAPTER SHALL BE AN OBLIGATION OR LIABILITY OF THE
10 COMMONWEALTH, AND NO BOARD SHALL HAVE THE POWER TO PLEDGE THE
11 CREDIT OR TAXING POWER OF THE COMMONWEALTH NOR TO MAKE ITS DEBTS
12 PAYABLE OUT OF ANY MONEYS EXCEPT THOSE PROVIDED FOR BY THIS
13 CHAPTER.

14 (E) DAIRY INDUSTRY MARKETING PROGRAM.--ANY MARKETING PROGRAM
15 ISSUED UNDER THIS CHAPTER SPECIFICALLY FOR THE DAIRY INDUSTRY
16 SHALL PROVIDE FOR THE ESTABLISHMENT OF A BOARD OF 21 MEMBERS,
17 WHO SHALL INCLUDE THE SECRETARY, OR HIS DESIGNEE, AND 20 PERSONS
18 APPOINTED BY THE SECRETARY WHO ARE ACTIVE IN THE PRODUCTION OF
19 MILK, INCLUDING, BUT NOT LIMITED TO, REPRESENTATIVES OF MILK
20 COOPERATIVES AND FARMING ASSOCIATIONS, PRODUCER-HANDLERS OF MILK
21 AND INDEPENDENT DAIRY FARMERS. IN ADDITION TO THE POWERS AND
22 DUTIES CONTAINED IN SUBSECTION (C), THE COMMODITY MARKETING
23 BOARD OF THE DAIRY PROMOTION PROGRAM SHALL HAVE THE POWER TO
24 ELECT OR APPOINT FROM THE MEMBERSHIP OF THE BOARD A CHAIRMAN,
25 VICE CHAIRMAN, SECRETARY AND TREASURER AND TO HOLD SPECIAL
26 MEETINGS AT THE REQUEST OF THE CHAIRMAN OR UPON REQUEST OF ONE-
27 THIRD OF THE MEMBERS OF THE BOARD.

28 § 4505. PROVISIONS OF MARKETING PROGRAMS.

29 SUBJECT TO THE LEGISLATIVE RESTRICTIONS AND LIMITATIONS SET
30 FORTH IN THIS CHAPTER, ANY MARKETING PROGRAM ISSUED BY THE

1 SECRETARY PURSUANT TO THIS CHAPTER MAY CONTAIN ANY OR ALL OF THE
2 FOLLOWING PROVISIONS:

3 (1) PROVISIONS FOR THE ESTABLISHMENT OF PLANS FOR
4 ADVERTISING AND SALES PROMOTION TO MAINTAIN PRESENT MARKETS,
5 OR TO CREATE NEW OR LARGER MARKETS FOR AGRICULTURAL
6 COMMODITIES GROWN OR PRODUCED IN THIS COMMONWEALTH. PLANS
7 SHALL BE DIRECTED TOWARD INCREASING THE SALE OF SUCH
8 COMMODITIES WITHOUT REFERENCE TO ANY PARTICULAR FIRM'S OR
9 INDIVIDUAL'S BRAND OR TRADE NAME. NO ADVERTISING OR SALES
10 PROMOTION PROGRAM SHALL BE ISSUED BY THE SECRETARY, WHICH
11 SHALL MAKE USE OF FALSE OR UNWARRANTED CLAIMS ON BEHALF OF
12 ANY PRODUCT OR DISPARAGE THE QUALITY, VALUE, SALE OR USE OF
13 ANY OTHER AGRICULTURAL COMMODITY.

14 (2) PROVISIONS FOR THE ESTABLISHMENT OF RESEARCH
15 PROGRAMS DESIGNED TO BENEFIT PRODUCERS, OR FOR AGRICULTURE IN
16 GENERAL.

17 (3) PROVISIONS ESTABLISHING OR PROVIDING AUTHORITY FOR
18 ESTABLISHING AN INFORMATION AND SERVICE PROGRAM DESIGNED TO
19 ACQUAINT PRODUCERS AND OTHER INTERESTED PERSONS WITH QUALITY
20 STANDARDS AND QUALITY IMPROVEMENTS.

21 (4) PROVISIONS ALLOWING THE SECRETARY AND THE COMMODITY
22 MARKETING BOARD TO COOPERATE WITH ANY OTHER STATE OR FEDERAL
23 AGENCY, OR OTHER ORGANIZATION WHOSE ACTIVITIES MAY BE DEEMED
24 BENEFICIAL TO THE PURPOSE OF THIS CHAPTER.

25 (5) PROVISION MAY BE MADE IN THE PROGRAM TO EXEMPT, OR
26 ALLOW SUITABLE ADJUSTMENTS OR CREDITS, IN CONNECTION WITH AN
27 AGRICULTURAL COMMODITY ON WHICH A MANDATORY CHECKOFF FOR
28 MARKET DEVELOPMENT IS REQUIRED UNDER THE AUTHORITY OF ANY
29 FEDERAL LAW.

30 § 4506. EFFECTING MARKETING PROGRAMS.

1 (A) REFERENDUM REQUIRED.--NO MARKETING PROGRAM, OR AMENDMENT
2 THERETO, SHALL BECOME EFFECTIVE UNLESS AND UNTIL THE SECRETARY
3 DETERMINES BY A REFERENDUM WHETHER OR NOT THE AFFECTED PRODUCERS
4 ASSENT TO THE PROPOSED ACTION.

5 (B) MAJORITY VOTE.--THE SECRETARY SHALL CONDUCT THE
6 REFERENDUM AMONG THE AFFECTED PRODUCERS, AND THE AFFECTED
7 PRODUCERS SHALL BE DEEMED TO HAVE ASSENTED TO THE PROPOSED
8 PROGRAM IF, OF THOSE VOTING, A MAJORITY BY NUMBER AND A MAJORITY
9 BY VOLUME ASSENT TO THE PROPOSED PROGRAM.

10 (C) VOTE OF COOPERATIVE ASSOCIATION.--IN DETERMINING WHETHER
11 A MARKETING PROGRAM OR AN AMENDMENT TO THE MARKETING PROGRAM HAS
12 BEEN APPROVED BY PRODUCERS, THE SECRETARY SHALL CONSIDER THE
13 VOTE OF A COOPERATIVE ASSOCIATION AS THE VOTES OF ITS MEMBERS,
14 PROVIDING THE COOPERATIVE HAS FIRST NOTIFIED ITS MEMBERS IN
15 WRITING AT LEAST 30 DAYS IN ADVANCE OF ITS INTENTION TO CAST A
16 REPRESENTATIVE VOTE. THE NOTICE SHALL INFORM THE PRODUCER OF THE
17 RIGHT TO CAST A VOTE INDIVIDUALLY AND SHALL INCLUDE THE
18 FOLLOWING WORDING IN BOLD FACE TYPE: WARNING - IF YOU DO NOT
19 EXERCISE YOUR RIGHT TO VOTE YOUR COOPERATIVE HAS THE RIGHT TO
20 VOTE FOR YOU. EACH PRODUCER SHALL RECEIVE A BALLOT FROM THE
21 SECRETARY. THE BALLOT SHALL CONTAIN THE FOLLOWING WORDING IN
22 BOLD FACE TYPE: WARNING - IF YOU DO NOT EXERCISE YOUR RIGHT TO
23 VOTE YOUR COOPERATIVE HAS THE RIGHT TO VOTE FOR YOU. IF THE
24 PRODUCER VOTES INDIVIDUALLY, THE VOTE SHALL BE DEDUCTED FROM THE
25 COOPERATIVE REPRESENTATIVE VOTE.

26 (D) PROCEDURE.--ANY REFERENDUM REQUIRED UNDER THIS CHAPTER
27 SHALL BE CONDUCTED IN ACCORDANCE WITH REASONABLE RULES AND
28 REGULATIONS TO BE ESTABLISHED AND PROMULGATED BY THE SECRETARY.

29 (E) PENNSYLVANIA DAIRY PRODUCTS PROMOTION PROGRAM.--THE
30 SECRETARY MAY ESTABLISH WITHOUT A REFERENDUM A PENNSYLVANIA

1 DAIRY PRODUCTS PROMOTION PROGRAM, PROVIDED THAT THE PROGRAM IS
2 FINANCED BY VOLUNTARY CONTRIBUTIONS CREDITED AGAINST ASSESSMENTS
3 PAYABLE TO THE NATIONAL DAIRY PROMOTION AND RESEARCH BOARD
4 PURSUANT TO THE DAIRY AND TOBACCO ADJUSTMENT ACT OF 1983 (PUBLIC
5 LAW 98-180, 97 STAT. 1128). THIS PROGRAM SHALL TERMINATE, UNLESS
6 CONTINUED BY REFERENDUM AS PROVIDED IN THIS SECTION, NOT LATER
7 THAN SIX MONTHS FOLLOWING THE DISAPPROVAL OF THE FEDERAL DAIRY
8 PROMOTION PROGRAM BY A MAJORITY OF PRODUCERS VOTING IN A
9 NATIONWIDE REFERENDUM. THE ESTABLISHMENT, TERMINATION, AMENDMENT
10 AND MANAGEMENT OF THE PENNSYLVANIA DAIRY PRODUCTS PROMOTION
11 PROGRAM SHALL, EXCEPT AS PROVIDED IN THIS SUBSECTION, BE
12 CONDUCTED PURSUANT TO THE PROVISIONS OF THIS CHAPTER.

13 § 4507. TERMINATING MARKETING PROGRAMS.

14 SUBJECT TO APPROVAL OF THE APPROPRIATE COMMODITY MARKETING
15 BOARD, THE SECRETARY SHALL SUSPEND OR TERMINATE ANY MARKETING
16 PROGRAM OR ANY PROVISIONS OF ANY MARKETING PROGRAM WHENEVER THE
17 SECRETARY FINDS THAT THE PROVISIONS OR PROGRAM DOES NOT TEND TO
18 EFFECTUATE THIS CHAPTER WITHIN THE STANDARDS AND SUBJECT TO THE
19 LIMITATIONS AND RESTRICTIONS IMPOSED IN THIS CHAPTER. A
20 SUSPENSION OR TERMINATION SHALL NOT BE EFFECTIVE UNTIL THE
21 EXPIRATION OF THE CURRENT MARKETING SEASON. IF THE SECRETARY
22 FINDS THAT THE TERMINATION OF ANY MARKETING PROGRAM IS REQUESTED
23 IN WRITING BY MORE THAN 33 1/3% OF THE AFFECTED PRODUCERS WHO
24 PRODUCE FOR MARKET MORE THAN 50% OF THE VOLUME OF AGRICULTURAL
25 COMMODITIES PRODUCED WITHIN THE DESIGNATED PRODUCTION AREA FOR
26 MARKET, THE SECRETARY SHALL TERMINATE OR SUSPEND FOR A SPECIFIED
27 PERIOD THE MARKETING PROGRAM OR PROVISIONS THEREOF. THE
28 TERMINATION SHALL BE EFFECTIVE ONLY IF ANNOUNCED ON OR BEFORE
29 THE DATE AS MAY BE SPECIFIED IN THE PROGRAM. IF 10% OF THE
30 PRODUCERS IN A COMMODITY GROUP OF OVER 2,000 AFFECTED PRODUCERS

1 OR 15% OF THE PRODUCERS IN A COMMODITY GROUP OF LESS THAN 2,000
2 AFFECTED PRODUCERS REQUEST IN WRITING THAT A REFERENDUM BE HELD
3 ON THE QUESTION OF TERMINATING THE PROGRAM, THE SECRETARY MUST
4 ANNOUNCE AND CONDUCT A REFERENDUM WITHIN A REASONABLE PERIOD OF
5 TIME, AND IN ANY CASE, WITHIN ONE YEAR OF THE REQUEST, A
6 MARKETING PROGRAM SHALL BE TERMINATED IF SO VOTED BY A MAJORITY
7 OF THOSE VOTING.

8 § 4508. MARKETING PROGRAM REVIEW AND AMENDMENTS.

9 (A) REVIEW.--EVERY FIVE YEARS THE SECRETARY SHALL CALL A
10 REFERENDUM OF AFFECTED PRODUCERS WITHIN EACH AGRICULTURAL
11 COMMODITY GROUP FOR WHICH A MARKETING PROGRAM EXISTS TO
12 DETERMINE WHETHER OR NOT A MAJORITY OF THOSE VOTING STILL DESIRE
13 A MARKETING PROGRAM.

14 (B) REFERENDUM ON AMENDMENTS.--THE SECRETARY SHALL CALL FOR
15 A REFERENDUM ON AMENDMENTS TO A MARKETING PROGRAM WITHIN A
16 REASONABLE PERIOD OF TIME, UPON THE REQUEST OF THE ADVISORY
17 BOARD OR WITH WRITTEN REQUEST OF 10% OF THE PRODUCERS IN A
18 COMMODITY GROUP OF OVER 2,000 AFFECTED PRODUCERS OR 15% OF THE
19 PRODUCERS IN A COMMODITY GROUP OF LESS THAN 2,000 AFFECTED
20 PRODUCERS. IN VOTING ON AN AMENDMENT TO THE MARKETING PROGRAM,
21 THE VOTE SHALL BE ONLY ON THE AMENDMENT, AND SHALL NOT TERMINATE
22 THE PROGRAM.

23 § 4509. NOTICE OF ISSUANCE.

24 UPON THE ISSUANCE OF ANY MARKETING PROGRAM OR ANY SUSPENSION,
25 AMENDMENT OR TERMINATION THEREOF, A NOTICE SHALL BE PUBLISHED IN
26 A NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE CAPITAL OF
27 THE COMMONWEALTH AND IN SUCH OTHER NEWSPAPERS AS THE SECRETARY
28 MAY PRESCRIBE. NO PROGRAM OR ANY SUSPENSION, AMENDMENT OR
29 TERMINATION THEREOF SHALL BECOME EFFECTIVE UNTIL THE TERMINATION
30 OF A PERIOD OF 20 DAYS FROM THE DATE OF THE PUBLICATION. IT

1 SHALL ALSO BE THE DUTY OF THE SECRETARY TO MAIL A COPY OF THE
2 NOTICE OF THE ISSUANCE TO ALL PRODUCERS DIRECTLY AFFECTED BY THE
3 TERMS OF THE PROGRAM, SUSPENSION, AMENDMENT OR TERMINATION,
4 WHOSE NAMES AND ADDRESSES MAY BE ON FILE IN THE OFFICE OF THE
5 SECRETARY, AND TO EVERY PERSON WHO FILES IN THE OFFICE OF THE
6 SECRETARY A WRITTEN REQUEST FOR NOTICE.

7 § 4510. COLLECTION OF FEES.

8 (A) GENERAL RULE.--ANY MARKETING PROGRAM ISSUED PURSUANT TO
9 THIS CHAPTER SHALL PROVIDE FOR THE COLLECTION OF FEES TO DEFRAY
10 THE NECESSARY EXPENSES INCURRED IN THE FORMATION, ISSUANCE,
11 ADMINISTRATION AND ENFORCEMENT OF THE MARKETING PROGRAM AND
12 SHALL INCLUDE THE AMOUNT, TIME, METHOD AND CONDITION OF PAYMENT.
13 FEES TO BE CHARGED SHALL NOT BE IN EXCESS OF THAT WHICH WILL
14 GENERATE REVENUES OF 5% OF THE GROSS MARKET VALUE OF PRODUCTION
15 AND MARKETING OF THE COMMODITY SUBJECT TO THE MARKETING PROGRAM.
16 EACH AND EVERY PRODUCER AFFECTED BY ANY MARKETING PROGRAM ISSUED
17 UNDER THIS CHAPTER SHALL PAY TO THE SECRETARY AT THE TIME AND IN
18 THE MANNER AS PRESCRIBED BY THE PROGRAM AS ADOPTED THE CHARGES
19 PROVIDED BY THIS SUBSECTION.

20 (B) COLLECTION BY SALES AGENTS.--FOR THE CONVENIENCE OF
21 MAKING COLLECTIONS OF ANY PRODUCER CHARGES ESTABLISHED PURSUANT
22 TO THIS SECTION, THE SECRETARY SHALL HAVE THE AUTHORITY AND MAY,
23 BY REGULATION, UPON THE REQUEST OF A COMMODITY MARKETING BOARD,
24 REQUIRE SALES AGENTS TO COLLECT PRODUCER CHARGES UPON THE SALE
25 OF THE AGRICULTURAL COMMODITY.

26 (C) APPROPRIATION.--ANY MONEY COLLECTED BY THE SECRETARY
27 UNDER THIS ACT IS HEREBY SPECIFICALLY APPROPRIATED TO THE
28 DEPARTMENT FOR THE ADMINISTRATION OF THE MARKETING PROGRAMS FOR
29 WHICH THEY WERE COLLECTED. WHEN A MARKETING PROGRAM IS
30 DISCONTINUED, THE SURPLUS MONEY SHALL BE MADE AVAILABLE FOR THE

1 ADMINISTRATION OF THIS CHAPTER OR OF FUTURE MARKETING PROGRAMS
2 INVOLVING THE SAME COMMODITY.

3 (D) AUDITING STANDARDS.--EACH BOARD SHALL ADOPT AND PUBLISH
4 A SET OF AUDITING STANDARDS, CONSISTENT WITH GENERALLY ACCEPTED
5 AUDITING STANDARDS, AGAINST WHICH THE MONEYS IT COLLECTS
6 PURSUANT TO THIS CHAPTER AND EXPENDS IN ACCORDANCE WITH THE
7 TERMS OF THIS CHAPTER CAN BE AUDITED. EACH BOARD SHALL ENGAGE AN
8 OUTSIDE AUDITING FIRM TO CONDUCT ANNUALLY AN AUDIT OF ITS
9 COLLECTIONS AND EXPENDITURES. AN AUDIT UNDER FEDERAL LAW OR
10 REGULATION MAY BE ACCEPTED BY THE BOARD AS LONG AS IT MEETS THE
11 MINIMUM STANDARDS ESTABLISHED UNDER THIS SECTION.

12 § 4511. RULES AND REGULATIONS FOR ENFORCEMENT.

13 THE SECRETARY SHALL, WITH THE ADVICE OF THE COMMODITY
14 MARKETING BOARD, MAKE AND PROMULGATE RULES AND REGULATIONS AS
15 MAY BE NECESSARY TO EFFECTUATE THIS CHAPTER AND TO ENFORCE THE
16 PROVISIONS OF ANY MARKETING PROGRAM, ALL OF WHICH SHALL HAVE THE
17 FORCE AND EFFECT OF LAW. THE SECRETARY MAY INSTITUTE AN ACTION
18 AT LAW OR IN EQUITY AND MAY ESTABLISH PENALTIES AS MAY APPEAR
19 NECESSARY TO ENFORCE COMPLIANCE WITH THIS CHAPTER, OR ANY RULE
20 OR REGULATION, OR MARKETING PROGRAM COMMITTED TO THE SECRETARY'S
21 ADMINISTRATION IN ADDITION TO ANY OTHER REMEDY UNDER THIS
22 CHAPTER.

23 § 4512. ADVANCED DEPOSITS.

24 PRIOR TO THE ISSUANCE OF ANY MARKETING PROGRAM, THE SECRETARY
25 MAY REQUIRE THE APPLICANT THEREFOR TO DEPOSIT AN AMOUNT AS THE
26 SECRETARY MAY DEEM NECESSARY TO DEFRAY THE EXPENSE OF PREPARING
27 AND MAKING THE MARKETING PROGRAM EFFECTIVE. FUNDS SHALL BE
28 RECEIVED, DEPOSITED AND DISBURSED BY THE SECRETARY IN ACCORDANCE
29 WITH THE PROVISIONS OF HANDLING FUNDS IN THIS CHAPTER. THE
30 SECRETARY MAY REIMBURSE THE APPLICANT IN THE AMOUNT OF THE

1 DEPOSIT FROM ANY FUNDS RECEIVED THROUGH THE ADOPTING OF A
2 MARKETING PROGRAM PURSUANT TO THIS CHAPTER.

3 § 4513. SEVERABILITY.

4 THE PROVISIONS OF THIS CHAPTER ARE SEVERABLE. IF ANY
5 PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR
6 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT
7 OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER WHICH CAN BE
8 GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

9 SECTION 4. THE ACT OF SEPTEMBER 20, 1961 (P.L.1541, NO.657),
10 KNOWN AS THE PENNSYLVANIA AGRICULTURAL COMMODITIES MARKETING ACT
11 OF 1968, IS REPEALED.

12 SECTION 5. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.