

CHAPTER 256.

[ Sub. H. B. 389. ]

WASHINGTON STATE AGRICULTURAL  
ENABLING ACT.

AN ACT relating to agricultural commodities and products thereof; providing for assessments; and providing penalties.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. This act shall be known and may be cited as the Washington state agricultural enabling act. Short title.

SEC. 2. The following terms are hereby defined: Definitions.

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative. The phrase "director or his designee" means the director unless, in the provisions of any marketing agreement or order, he has designated an administrator, board or other designee to act for him in the matter designated, in which case "director or his designee" means for such order or agreement the administrator, board or other person(s) so designated and not the director. "Director".

(2) "Department" means the department of agriculture of the state of Washington. "Department".

(3) "Marketing order" means an order issued by the director pursuant to this act. "Marketing order".

(4) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this act. "Marketing agreement".

(5) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable or animal product, either in its natural or processed state, including bees and honey but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) "Agricultural commodity".

what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this act.

"Production area",  
"marketing area".

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with section 35 of this act. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

"Unit" of an agricultural commodity.

(7) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

"Affected unit".

(8) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is sold or marketed or delivered for sale or marketing within such marketing area: *Provided*, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

"Affected commodity".

(9) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

"Producer".

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected

"Affected producer".

producer” means any producer of an affected commodity. “To produce” means to act as a producer. “To produce”.

(11) “Handler” means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity which was not produced by him. “Affected handler” means any handler of an affected commodity. “To handle” means to act as a handler. “Handler”.

(12) “Producer-handler” means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself. “Affected handler”.

(13) “Cooperative association” means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the “Capper-Volstad Act” and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis. “To handle”.

(14) “Member of a cooperative association” means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product. “Producer-handler”.

(15) “Producer marketing” or “marketed by producers” means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; “Producer marketing”, “marketed by producers”.

(b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

“Commercial quantities”.

(16) “Commercial quantities” as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent man engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. “Commercial quantities” as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent man engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case the director may in his discretion: (a) determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he finds to be similarly situated.

“Commodity board”,  
“Board”.

(17) “Commodity board” means any board established pursuant to section 22 of this act. “Board” means any such commodity board unless a different board is expressly specified.

“Sell”.

(18) “Sell” includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

“Section”.

(19) “Section” means a section of this act unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(20) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this act.

"Represented in a referendum".

(21) "Person" as used in this act shall mean any person, firm, association or corporation.

"Person".

SEC. 3. The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this act to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale and proper use of such commodities. This act is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety and general welfare of the people of this state.

Legislative declaration.

SEC. 4. It is hereby declared to be the policy of this act:

Policy declaration.

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state: (a) to develop, and engage in research for developing, better and more efficient production, marketing and utilization of agricultural products; (b) to establish orderly marketing of agricultural commodities; (c) to provide for uniform grading and proper preparation of agricultural commodities for market; (d) to provide methods and means (including, but not limited to, public relations and promotion) for the maintenance

of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market; (e) to eliminate or reduce economic waste in the marketing and/or use of agricultural commodities; (f) to restore and maintain adequate purchasing power for the agricultural producers of this state; and (g) to accomplish all the declared policies of this act.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times.

Administra-  
tion—  
Enforcement.

SEC. 5. The director shall administer and enforce this act and it shall be his duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, suspension and/or termination of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this act and not otherwise. Whenever he has reason to believe that the issuance, amendment or termination of a marketing agreement or order will tend to effectuate any declared policy of this act with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply or in the case of application for termination ten percent of the affected producers so apply, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance, amendment or termination, and he shall issue marketing agreements and orders containing the provisions specified in this act and from time to time amend or terminate the same whenever upon compliance with and on the basis of facts adduced

Standards  
requisite for  
amendment or  
termination of  
marketing  
agreement.

in accordance with the procedural requirements of this act he shall find that such agreement, order or amendment:

(1) Will tend to effectuate one or more of the declared policies of this act and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this act.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this act.

SEC. 6. The director shall cause any proposed marketing agreement, order, amendment or termination to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order.

Marketing  
"proposals".  
—Filed.

SEC. 7. The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than five days in a newspaper of general circulation in Olympia and such other newspapers as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail a copy of such notice to all producers

Notice of  
hearing on  
marketing  
proposals.

and handlers who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department.

Hearings—  
Hearing  
examiner,  
powers.

SEC. 8. Every hearing held pursuant to this act shall be public and all testimony shall be received under oath and a permanent record thereof maintained. The director may designate an employee of the department or other qualified person as an examiner (which person is designated herein, "hearing examiner") in any inquiry, investigation, hearing or proceeding held pursuant to this act and for such purpose such examiner may exercise any power herein conferred upon the director in connection therewith, including the power to administer oaths, examine witnesses and to issue subpoenas. At each such hearing the director shall receive evidence with respect to all of the matters and things upon which he must make a finding.

Hearings—  
Production of  
evidence.

SEC. 9. In any and every hearing conducted pursuant to any provision of this act the director and/or such examiner shall have the power to issue subpoenas for the production of any books, records or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify

Duty to give  
testimony or  
evidence.



or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this act and that the fees and mileage of the witness have been paid or tendered to him in accordance with RCW 2.40.020 and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the notice and subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he has not responded to the subpoena. A certified copy of the show cause order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that said witness appear at the time and place fixed in the decree and testify or produce the required papers, and on failing to obey said

Compelling attendance of witnesses, production of records—Contempt of court upon failure.

decree the witness shall be dealt with as for contempt of court.

Initial findings, decision  
—Copies of distributed.

SEC. 10. The director shall make and publish findings based upon the facts, testimony and evidence received at the public hearings together with any other relevant facts available to him from official publications of the United States or any state thereof or any institution of recognized standing and he is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this act and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record.

Objections to findings, decision, filed—  
Final decision.

SEC. 11. After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his discretion omit compliance with the provisions of this section 11.

Final decision  
—Contents—  
Distribution.

SEC. 12. The recommended decision shall contain the text in full of any recommended agreement, order, amendment or termination, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, amendment or termination containing other or different terms

or conditions from those contained in the proposal: *Provided*, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, amendment or termination covered thereby, and the director shall issue and deliver or mail copies of said final decision to all producers and handlers who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its entirety no further action shall be taken by the director.

SEC. 13. With respect to marketing agreements, the director shall after publication of his final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: *Provided*, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and *Provided further*, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he shall find in addition to the other findings specified in this act that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes

Assent to final  
decision, mini-  
mum needed—  
Parties  
bound by.

of this act and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto.

Order affect-  
ing producer  
marketing,  
minimum re-  
quired assent  
of producers.

SEC. 14. No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at section 16 of this act) that the issuance of such order or amendment is assented to or favored by producers who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers.

Order affect-  
ing handlers,  
minimum  
required  
assent.

SEC. 15. Any marketing order or amendment thereto directly affecting handlers shall be issued either (1) when the director determines that the issuance of such order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area,

as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers of such commodity pursuant to the declared policy of this act and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this act;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order.

SEC. 16. After publication of his final decision, the director shall ascertain (either by written agreement in accordance with subsection 16 (1) of this act or by referendum in accordance with subsection 16 (2) of this act) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in sections 14, 15 or 19 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case,

Procedure to  
determine  
assent.

be held to be complied with, if of the total number of affected producers or affected handlers and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers and the requirements of assent or approval shall be held to be complied with if of the total number of producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in sections 14, 15 or 19 (whichever is applicable): *Provided*, That thirty percent of the affected producers producing thirty percent by volume of the affected commodity have been represented in the referendum: *Provided further*, That a marketing order shall not become effective when the provisions of subsection (3) of this section are used unless sixty-five percent by number of the affected producers producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of the affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: *Provided*, That the association shall first determine that a majority

of its affected producers authorizes its action concerning the specific marketing order.

SEC. 17. If the director determines that the requisite assent has been given he shall issue and put any order or amendment thereto into force, whereupon each and every provision thereof shall have the force of law. Issuance shall be accomplished by publication for one day in a newspaper of general circulation in Olympia and in the affected area of notice stating that the order has been issued and put into force and where copies of such order may be obtained. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect.

Issuance of  
order—Effect.

SEC. 18. The director may, upon the advice of the commodity board serving under any agreement or order and without compliance with the provisions of sections 5 through 17 of this act:

Amendment  
or suspension  
of order by  
director with  
consent of  
commodity  
board.

(1) Amend any marketing agreement or order as to any minor matter or wording which does not substantially alter the provisions and intention of such agreement or order;

(2) Suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if he finds that such suspension will tend to effectuate the declared policy of this act: *Provided*, That any such suspension of all or substantially all of such agreement or order shall not become effective until the end of the then current marketing season.

SEC. 19. Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent to such termination. The director may ascertain without compliance with the provisions of sec-

Termination  
of order, mini-  
mum assent  
—When  
effective.

tions 5 through 13 hereof whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him for such termination. No such termination shall become effective until the expiration of the marketing season then current.

Producer,  
handler lists  
—Use.

SEC. 20. Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or his designee shall cause lists to be prepared from any information which he has at hand or which he may obtain from producers, associations of producers and handlers of the affected commodity. Such lists shall contain the names and addresses of persons who produce the affected commodity, the amount of such commodity produced by each such person during the period which the director determines for the purposes of the agreement or order to be representative, and the name of any cooperative association authorized to market for him the commodity specified in the marketing agreement or order. Such lists shall also contain the names and addresses of persons who handle the affected commodity and the amount of such commodity handled by each person during the period which the director determines for the purposes of the agreement or order to be representative. Any qualified person may at any time have his name placed upon any list for which he qualifies by delivering or mailing his name, address and other information to the director and in such case the director shall verify such person's qualifications and if he qualifies, place his name upon such list. At every hearing upon the issuance, amendment or termination of such order or agreement the director or his designee shall take evidence for the purpose of making such lists complete and



accurate and he may employ his powers of subpoena of witnesses and of books, records and documents for such purpose. After every such hearing the director shall compile, complete, correct and bring lists up to date in accordance with the evidence and information obtained at such hearing. For all purposes of giving notice, holding referenda and electing members of commodity boards, the lists on hand corrected up to the day next preceding the date for issuing notices or ballots as the case may be shall, for all purposes of this act, be deemed to be the list of all persons entitled to notice or to assent or dissent or to vote.

SEC. 21. The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he shall include in each order and he may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he determines are necessary and proper for such order or agreement to effectuate the declared policies of this act. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor.

SEC. 22. Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to qualification, nomination, elec-

Order to contain enforcement, administration provisions.

Order to provide for commodity board—Members.

tion, term of office, powers, duties and all other matters pertaining to such board. The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the agreement or order, but in any marketing order the number of handlers on the board shall not exceed the number of producers thereon. The director shall appoint to every such board one person who is neither a producer nor a handler to represent the department and the public generally.

Qualifications  
of commodity  
board  
members.

SEC. 23. The producer members of each such board shall be practical producers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in producing such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom and who is not engaged in business, directly or indirectly, as a handler or other dealer. The handler members of such board shall be practical handlers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been, either individually or as an officer or employee of a corporation, firm, partnership, association or cooperative, actually engaged in handling such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom. The qualification of members of the board as herein set forth must continue during their terms of office.

Terms of office  
of commodity  
board mem-  
bers—District  
representa-  
tion.

SEC. 24. The term of office of board members shall be three years, and one-third as nearly as may be shall be elected every year: *Provided*, That at the inception of any agreement or order the entire board shall be elected one-third for a term of one year, one-third for a term of two years and one-third for

a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected each year.

Any marketing agreement or order may provide for election of board members by districts, in which case district lines and the number of board members to be elected from each district shall be specified in such agreement or order and upon such basis as the director finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this act.

SEC. 25. For the purpose of nominating candidates to be voted upon for election to such board memberships, the director shall call separate meetings of the affected producers and handlers and in case elections shall be by districts he shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers and/or handlers according to the list thereof maintained by the director pursuant to section 20 of this act. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such

Procedure for  
nomination of  
commodity  
board  
members.

district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

Procedure for  
election of  
commodity  
board  
members.

SEC. 26. The members of every such board shall be elected by secret mail ballot under the supervision of the director. Producer members of such board shall be elected by a majority of the votes cast by the affected producers, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer shall be entitled to one vote. Handler members of the board shall be elected by a majority of the votes cast by the affected handlers, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler shall be entitled to one vote.

If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each pro-

ducer and handler entitled to vote whose name appears upon the list thereof compiled and maintained by the director in accordance with section 20 hereof. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member.

SEC. 27. In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term. A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board. No member of the board shall receive any salary or other compensation but each member shall receive a sum to be specified in the marketing agreement or order not in excess of thirty-five dollars per day for each day spent in actual attendance on or traveling to and from meetings of the board or on special assignment for the board, together with subsistence and traveling expense at the rate allowed by law to state employees.

Filling vacancies on commodity board — Quorum.

Board members reimbursed for expenses.

SEC. 28. The powers and duties of the board shall be:

Commodity board, powers and duties.

(1) To elect a chairman and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules, regulations and orders and amendments thereto for the exercise of his powers in connection with such agreement or order;

(4) To advise the director upon any and all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this act;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this act.

Legal liability of board, its employees or agents.

SEC. 29. Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this act or any marketing agreement or order issued pursuant to this act, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee or agent incurred in their official capacity under the agreement or order shall exist either against its administrator, board, officers, employees and/or agents in his or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee

or agent thereof) established pursuant to this act or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member.

SEC. 30. The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in sections 31 through 34 inclusive. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said sections 31 through 34 set after its name below, to wit:

- (1) Wheat, sections 31, 32 and 33.

SEC. 31. Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement

Order to set  
out purposes  
—Limitations.

Order may  
provide for  
advertising  
programs,  
removal of  
trade barriers.

and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor disparage the quality, value, sale or use of any other agricultural commodity.

Order may provide for research.

SEC. 32. Any marketing agreement or order may provide for research in the production, processing and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his designee.

Order may provide for standards and grades.

SEC. 33. Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his designee to provide by rules and regulations for, any one or more, or all, of the following: (1) establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and/or label for the affected commodity or any products thereof; (2) requiring producers, handlers and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of the affected commodity and/or in offering, advertising and/or delivering it therefore; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his designee shall carry out inspection and enforcement of, and may (within the general provisions of the



agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: *Provided*, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this act.

SEC. 34. Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his customer or his supplier or of otherwise dealing or trading with him or of diverting trade from a competitor, to wit:

Order may prohibit certain selling practices.

(1) Paying rebates, commissions or unearned discounts;

(2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-

on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices.

Order shall designate "production area" or "marketing area".

SEC. 35. Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is sold or marketed or delivered for sale or

marketing or distribution or processing or consumption within such marketing area.

SEC. 36. Any marketing agreement or order may provide for marketing information and services to producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers.

Order may provide for marketing information and services.

SEC. 37. No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural commodity or product thereof produced in any production area of the United States.

Order discriminatorily burdening specific area, unlawful.

SEC. 38. Any marketing agreement or order may contain any other, further and different provisions which are incidental to and not inconsistent with this act and which the director finds to be needed and reasonably adapted to effectuate the declared policies of this act. Such provisions shall set forth the detailed application of this act to the affected agricultural commodity. The director or his designee shall have the power to make rules and regulations of a technical or administrative nature under this act and/or under any agreement or order issued pursuant to this act.

Order may contain needed incidental matter.

SEC. 39. There is hereby levied, and the director or his designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold or marketed or delivered for sale or marketed by him, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution by him: *Provided*, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or

Annual unit assessment levied—Maximum.

order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity, or by both producers and handlers of such commodity shall not exceed four percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. However, the total amount of such annual assessment upon producers, or handlers, or both producers and handlers, of the below listed commodities shall not exceed the amounts per unit or the percentage of selling price stated after the names of the respective commodities below:

(1) Wheat, maximum, one-quarter cent per bushel.

Annual unit  
assessment—  
Determination  
of rate.

SEC. 40. In every marketing agreement and order the director shall prescribe the per unit rate of such assessment, and such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this act. In every such marketing agreement, order and amendment the director shall base his determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The per unit rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate.

SEC. 41. The director shall prescribe in each marketing order and agreement the time, place and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such purpose the director may, by the terms of the marketing order or agreement, either:

Order to prescribe method for payment and collection of assessments—Alternative methods.

(1) Require stamps to be purchased from him or his designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be cancelled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued.

SEC. 42. Moneys collected by the director or his designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his designee only for the purpose of paying for expenses and

Disposition of moneys received as assessments.

costs arising in connection with the formulation, issuance, administration and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this act with respect to such marketing order or agreement.

Assessments, option to re-fund pro rata or carry over into new year.

SEC. 43. Any moneys collected or received by the director or his designee pursuant to the provisions of any marketing agreement or order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the director determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the director or his designee finds that the same will tend to effectuate such policies and purposes. Upon the termination of any marketing agreement or order, any and all moneys remaining, and not required to defray the expenses or repay the obligations incurred and undertaken pursuant to such agreement or order, shall be returned by the director upon a pro rata basis to all persons from whom such moneys were collected or received. However, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may use such moneys to defray expenses incurred by him in the formulation, issuance, administration or enforcement of any subsequent marketing agreement or order for such commodity. Thereafter, if there are any such moneys remaining which have not been used by the director as hereinabove provided, the same shall be withdrawn from

Disposition of moneys on termination of order.

the approved depository and paid into the state treasury as unclaimed trust moneys.

SEC. 44. Any due and payable assessment herein levied in such specified amount as may be determined by the director or his designee pursuant to the provisions of this act and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his designee when payment is called for by him. In the event any person fails to pay the director or his designee the full amount of such assessment or such other sum on or before the date due, the director or his designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his designee may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

Assessment collection—Penalty for cost of enforcing unpaid assessment.

Civil action to collect.

SEC. 45. Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order. The director or his designee may reimburse the applicant from any moneys received by him under such agreement or order for any moneys so deposited by such applicant and/or for any necessary expenses incurred by such applicant in preparing and obtaining approval of such marketing agreement or order upon receipt of

Preliminary deposit for preparing order—Reimbursement.

a verified statement of such expense approved by the director or his designee.

“Marketing act revolving fund”.

SEC. 46. There shall be a fund known as the “marketing act revolving fund” which shall consist of all assessments, fees, penalties, forfeitures and all other moneys, income or revenue received or collected pursuant to the provisions of this act and of all marketing orders and agreements issued pursuant to this act. None of the provisions of RCW 43.01.050 shall be applicable to such fund nor to any of the moneys so received or collected.

RCW 43.01.050 inapplicable.

Depositories for fund— Financial responsibility required.

SEC. 47. The marketing act revolving fund shall be deposited in such banks and financial institutions as the director or his designee may select throughout the state which shall give to the director or his designee surety bonds executed by surety companies authorized to do business in the state, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each such bank or financial institution. All moneys received by the director or his designee or by any administrator, board or employee, except an amount of petty cash for each day’s needs as fixed by the regulations, shall be deposited each day, and as often during the day as advisable, in the authorized depository.

Separate accounts for marketing orders in fund.

SEC. 48. The director and each of his designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this act in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the pro-



visions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this act and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his designee.

SEC. 49. The director and each of his designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to such order or agreement, and the same shall be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the commodity board of the agreement or order concerned. The state auditor shall make at least annually a composite financial statement showing the financial position under all such orders and agreements as of the last day of the fiscal year of the state of Washington and a copy of such composite financial statement shall be delivered within thirty days after completion thereof to the governor and the director of agriculture.

Separate records, audits for marketing orders.

Books closed, when.

Copies of audit distributed.

State auditor's statement—Distribution.

Bonds re-  
quired for  
positions of  
trust—  
Premiums  
from assess-  
ments.

SEC. 50. The director or his designee shall require that a bond be given by every administrator, administrative board and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: *Provided*, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington.

Director to be  
furnished  
information.

SEC. 51. All parties to any marketing agreement and all producers, handlers and other persons subject to any marketing order shall severally from time to time, upon the request of the director or his designee, furnish him with such information as he finds to be necessary to enable him to effectuate the declared policies of this act and the purposes of such agreement or order or to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director or his designee. For the purpose of ascertaining the correctness of any report made to the director or his designee pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director or his designee is hereby authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he deems relevant and which are within the control:

Right to in-  
spect records.

(1) Of any such party to such marketing agreement or any such producer or handler under such

marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or his designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. Sections 8, 9, 10 and 11, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or his designee pursuant to this section shall be kept confidential by all officers and employees of the director and/or his designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by him or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which he or his designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Right to hold hearings.

Information acquired as confidential—Exception.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person, or

(2) The publication by the director or his designee of the name of any person violating any marketing agreement or order, together with a state-

ment of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person.

Violations  
enumerated as  
misdemeanor.

SEC. 52. It shall be a misdemeanor:

(1) For any person to violate any provision of this act or any provision of any marketing agreement or order duly issued by the director pursuant to this act.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement or record required by the director pursuant to the provisions of this act or any provision of any marketing agreement or order duly issued by the director pursuant to this act or to wilfully fail or refuse to furnish or render any such report, statement or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his designee or his duly authorized agents, upon request, information concerning the name and address of the person from whom he has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this act and the grade, standard, quality or quantity of and the price paid for such commodity so received.

Penalty.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than \$50.00 nor more than \$500.00 or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: *Provided*, That if the court finds that a petition pursuant to section 57 of this act was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under clause (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed

Separate  
offense.

with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with section 57 and regulations prescribed pursuant thereto.

SEC. 53. Any person who violates any provisions of this act or any marketing agreement or order duly issued and in effect pursuant to this act or who violates any rule or regulation issued by the director and/or his designee pursuant to the provisions of this act or of any marketing agreement or order duly issued by the director and in effect pursuant to this act, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this paragraph shall be allocated to and used for the purposes of the agreement or order concerned.

Civil liability  
for violation—  
Penalty.

Disposition of  
moneys  
received.

SEC. 54. The several superior courts of the state of Washington are hereby vested with jurisdiction:

Superior court  
jurisdiction.

(1) Specifically to enforce this act and the provisions of each and every marketing agreement and order issued pursuant to this act and each and every term, condition and provision thereof;

(2) To prevent, restrain and enjoin pending litigation and thereafter permanently any person from violating this act or the provisions of any such agreement or order and each and every term, condition and provision thereof, regardless of the existence of any other remedy at law.

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this act and each and every duty imposed upon him by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of

the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this act upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by this act or by any marketing agreement or order issued pursuant to this act and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal.

Enforcement  
—Duty of  
attorney  
general,  
prosecuting  
attorney.

SEC. 55. Upon the request of the director or his designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this act. Whenever the director and/or his designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this act, the director and/or his designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in sections 8, 9, 10 and 11 shall apply with respect to such hearings.

Remedies  
concurrent

SEC. 56. The remedies provided for in this section shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this act or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall the same be exclusive.

SEC. 57. All proceedings held by the director for the promulgation of any marketing agreement or order and the amendment, modification, or dissolution thereof and all proceedings concerning the promulgation of any rules or regulations or the amendment or modification thereof and appeals therefrom shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended.

Chapter 34.04  
RCW appli-  
cable.

SEC. 58. In the event the director finds that it tends to effectuate the declared purposes of this act within the standards prescribed in this act, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel: *Provided*, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder.

Order may  
comply with  
federal stand-  
ards, utilize  
personnel  
serving under  
federal order.

SEC. 59. The director and his designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agree-

Intergovern-  
mental coop-  
eration in  
adminis-  
tration.

ments or orders, for the purposes and within the standards set forth in this act, and may exercise any administrative authority prescribed by this act to effect such uniformity of administration and regulation.

Public's interest to be protected.

SEC. 60. The director shall protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every marketing agreement and order issued pursuant to this act and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices.

Act not to apply to operation of common carriers.

SEC. 61. Nothing in this act contained shall apply to any order, rule or regulation issued or issuable by the Washington public service commission or the interstate commerce commission with respect to the operation of common carriers.

Scope of act—Specific commissions excluded.

SEC. 62. Nothing in this act shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple advertising commission (RCW 15.24.010-.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-.310 inclusive), or to dairy products commission (RCW 14.44.010-.180 inclusive), or to wheat commission (chapter 87, Laws of 1961, Senate Bill No. 305). No marketing agreement or order containing any of the provisions specified in sections 31 or 32 of this act shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this act shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (RCW 15.66); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this act upon compliance with the provisions of this act relating



to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this act shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this act.

SEC. 63. Except for the provisions of section 41, nothing in this act shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. Personnel excluded under act.

SEC. 64. Nothing in this act shall apply to any person engaged in growing of or processing green peas. Grower-processor exclusion.

SEC. 65. This act shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. Savings.

SEC. 66. If any section, sentence, clause, or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional. Severability.

Passed the House March 9, 1961.

Passed the Senate March 9, 1961.

Approved by the Governor March 20, 1961.