

CHAPTER 261

[Substitute House Bill No. 546]
AGRICULTURAL COMMODITIES

AN ACT Relating to commodity commissions; amending RCW 15.65.020, 15.65.070, 15.65.120, 15.65.140, 15.65.150, 15.65.160, 15.65.190, 15.65.200, 15.65.250, 15.65.260, 15.65.280, 15.65.350, 15.65.390, 15.65.410, 15.65.440, 15.65.630, 15.44.010, 15.44.080, 15.44.130, and 15.66.140; repealing RCW 16.67.124; and declaring an emergency.

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

Sec. 1. Section 2, chapter 256, Laws of 1961 as amended by section 2, chapter 7, Laws of 1975 1st ex. sess. and RCW 15.65.020 are each amended to read as follows:

The following terms are hereby defined:

(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.

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

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

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

(5) "Agricultural commodity" means any animal or 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) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(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.

(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 stored in frozen condition or 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.

(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.

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer of an affected commodity. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a 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.

(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-Volstead 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.

(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.

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

(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.

(17) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

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

(19) "Section" means a section of this chapter 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 chapter.

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

Sec. 2. Section 7, chapter 256, Laws of 1961 as amended by section 4, chapter 154, Laws of 1979 and RCW 15.65.070 are each amended to read as follows:

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

two 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 and handlers within the affected area 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.

Sec. 3. Section 12, chapter 256, Laws of 1961 and RCW 15.65.120 are each amended to read as follows:

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 within the affected area 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. 4. Section 14, chapter 256, Laws of 1961 as amended by section 3, chapter 7, Laws of 1975 1st ex. sess. and RCW 15.65.140 are each amended to read as follows:

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 RCW 15.65.160) that the issuance of such order or amendment is assented to or favored by producers within the affected area 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: PROVIDED, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum.

Sec. 5. Section 15, chapter 256, Laws of 1961 and RCW 15.65.150 are each amended to read as follows:

Any marketing order or amendment thereto directly ((affecting)) assessing 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 chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(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. 6. Section 16, chapter 256, Laws of 1961 as amended by section 4, chapter 7, Laws of 1975 1st ex. sess. and RCW 15.65.160 are each amended to read as follows:

After publication of his final decision, the director shall ascertain (either by written agreement in accordance with subdivision (1) of this section or by referendum in accordance with subdivision (2) of this section) 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 RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area 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 within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such 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 RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: PROVIDED, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: PROVIDED FURTHER, That a marketing order shall not become effective when the provisions of subdivision (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of ~~((the))~~ such 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. 7. Section 19, chapter 256, Laws of 1961 and RCW 15.65.190 are each amended to read as follows:

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 within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 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.

Sec. 8. Section 20, chapter 256, Laws of 1961 and RCW 15.65.200 are each amended to read as follows:

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 within the affected area, 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 within the affected area 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 within the affected area 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 chapter, be deemed to be the list of all persons entitled to notice or to assent or dissent or to vote.

Sec. 9. Section 25, chapter 256, Laws of 1961 as amended by section 5, chapter 7, Laws of 1975 1st ex. sess. and RCW 15.65.250 are each amended to read as follows:

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 within the affected area 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 RCW 15.65.200. 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 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.

When only one nominee is nominated for any position on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected.

Sec. 10. Section 26, chapter 256, Laws of 1961 and RCW 15.65.260 are each amended to read as follows:

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 within the affected area, 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 within the affected area 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 within the affected area, 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 within the affected area 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 producer and handler entitled to vote whose name appears upon the list thereof compiled and

maintained by the director in accordance with RCW 15.65.200. 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. 11. Section 28, chapter 256, Laws of 1961 and RCW 15.65.280 are each amended to read as follows:

The powers and duties of the board shall be:

- (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 chapter;
- (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 within the affected area 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 chapter.

Sec. 12. Section 35, chapter 256, Laws of 1961 and RCW 15.65.350 are each amended to read as follows:

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 stored in frozen condition or sold or marketed or delivered

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

Sec. 13. Section 39, chapter 256, Laws of 1961 and RCW 15.65.390 are each amended to read as follows:

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 affected unit stored in frozen condition or 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, or stored in frozen condition, by him: PROVIDED, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or 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 shall not exceed four percent of the total market value of all affected units stored in frozen condition or 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.

Sec. 14. Section 41, chapter 256, Laws of 1961 and RCW 15.65.410 are each amended to read as follows:

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)~~):

- (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 canceled 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; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

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 by the producer or first handler and the receipt issued.

Sec. 15. Section 44, chapter 256, Laws of 1961 and RCW 15.65.440 are each amended to read as follows:

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 chapter 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.

Sec. 16. Section 63, chapter 256, Laws of 1961 and RCW 15.65.630 are each amended to read as follows:

Except for the provisions of ((RCW 15.65.410)) this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall

apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables.

Sec. 17. Section 15.44.010, chapter 11, Laws of 1961 as amended by section 1, chapter 238, Laws of 1979 ex. sess. and RCW 15.44.010 are each amended to read as follows:

As used in this chapter:

"Commission" means the Washington state dairy products commission;

To "ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human consumption or industrial or medicinal uses;

"Handler" means one who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution;

"Dealer" means one who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

"Processor" means a person who uses milk or cream for canning, drying, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom;

"Producer" means a person who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses;

"Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers;

"Current level of assessment" means the level of assessment paid by the producer as set by the commission which cannot exceed the maximum authorized assessment rate.

Sec. 18. Section 15.44.080, chapter 11, Laws of 1961 as last amended by section 1, chapter 41, Laws of 1973 1st ex. sess. and RCW 15.44.080 are each amended to read as follows:

(1) There is hereby levied upon all milk produced in this state an assessment of 0.6% of class I price for 3.5% butter fat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; and

(2) Subject to approval by a producer referendum as provided in this section, the commission shall have the further power and duty to increase the amount of the maximum authorized assessment rate to be levied upon either milk or cream according to the necessities required to effectuate the stated purpose of the commission.

In determining such necessities, the commission shall consider one or more of the following:

(a) The necessities of—

(i) developing better and more efficient methods of marketing milk and related dairy products;

(ii) aiding dairy producers in preventing economic waste in the marketing of their commodities;

(iii) developing and engaging in research for developing better and more efficient production, marketing and utilization of agricultural products;

(iv) establishing orderly marketing of dairy products;

(v) providing for uniform grading and proper preparation of dairy products for market;

(vi) providing methods and means including but not limited to public relations and promotion, for the maintenance of present markets, for development of new or larger markets, both domestic and foreign, for dairy products 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;

(vii) restoring and maintaining adequate purchasing power for dairy producers of this state; and

(viii) protecting the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality;

(b) The extent and probable cost of required research and market promotion and advertising;

(c) The extent of public convenience, interest and necessity; and

(d) The probable revenue from the assessment as a consequence of its being revised.

This section shall apply where milk or cream is marketed either in bulk or package. However, this section shall not apply to milk or cream used upon the farm or in the household where produced.

The increase in the maximum authorized assessment (~~(or any part thereof)~~) rate to be charged producers on milk and cream provided for in this section shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.

The referendum for approval of any increase in the maximum authorized assessment (~~(or part thereof)~~) rate provided for in this section shall be by secret mail ballot furnished to all producers paying assessments to the commission. The commission shall furnish ballots to producers at least ten days in advance of the day it has set for concluding the referendum and counting the ballots. Any interested producer may be present at such time the commission counts said ballots.

~~((Any proposed increase in assessments by the commission subsequent to a decrease in assessments as provided for in RCW 15.44.130(2) shall be subject to a referendum and approval by producers as herein provided:))~~

Sec. 19. Section 15.44.130, chapter 11, Laws of 1961 as amended by section 2, chapter 60, Laws of 1969 and RCW 15.44.130 are each amended to read as follows:

(1) In order to adequately advertise and market Washington dairy products in the domestic, national and foreign markets, and to make such advertising and marketing research and development as extensive as public

interest and necessity require, and to put into force and effect the policy of this chapter 15.44 RCW, the commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign, and keep such research, advertising and education as continuous as the production, sales, and market conditions reasonably require.

(2) The commission shall investigate and ascertain the needs of dairy products and producers, the conditions of the markets, and the extent to which public convenience and necessity require advertising and research to be conducted. ~~((If upon such investigation, it shall appear that the revenue from an assessment provided for in RCW 15.44.080 is more than adequate to accomplish the purposes and objects of this chapter, it shall file a request with the director of agriculture showing the necessities of the industry, the extent and probable cost of the required research and advertising, the extent of public convenience, interest and necessity, and the probable revenue from the assessment herein levied and imposed. If such probable revenue is more than the amount reasonably necessary to conduct the research and advertising that the public interest and convenience require to accomplish the objects and purposes hereof, the commission shall decrease the assessment to a sum that the commission shall determine adequate to effectuate the purposes hereof. PROVIDED, That no such change shall be made in rate of assessment until the commission shall have filed with the director a full report of such investigations and findings. Such change in assessment shall be effective thirty days after such report is filed.))~~

(3)(a) The commission may decrease or increase the current level of assessment provided for in RCW 15.44.080 following a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.04 RCW: PROVIDED, That the current level of assessment established in this manner shall not exceed the maximum authorized assessment rate established by producers in the most recent referendum.

(b) Upon receipt of a petition bearing the names of twenty percent of the producers requesting a reduction in the current level of assessment, the commission shall hold a hearing in accordance with chapter 34.04 RCW to receive producer testimony. After considering the testimony of the producer, the commission may adjust the current level of assessment.

Sec. 20. Section 15.66.140, chapter 11, Laws of 1961 as amended by section 2, chapter 81, Laws of 1982 and RCW 15.66.140 are each amended to read as follows:

Every marketing commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

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

(2) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) Such other powers and duties that are necessary to carry out the purposes of this chapter.

NEW SECTION. Sec. 21. Section 2, chapter 64, Laws of 1971 and RCW 16.67.124 are each repealed.

NEW SECTION. Sec. 22. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 25, 1985.

Passed the Senate April 23, 1985.

Approved by the Governor May 10, 1985.

Filed in Office of Secretary of State May 10, 1985.

CHAPTER 262

[Engrossed Substitute House Bill No. 254]

AMUSEMENT RIDES

AN ACT Relating to amusement rides; adding a new chapter to Title 67 RCW; prescribing penalties; and providing an effective date.

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