

steps as are necessary to ensure that this act is implemented on its effective date.

Passed the Senate April 17, 1989.

Passed the House April 12, 1989.

Approved by the Governor May 12, 1989.

Filed in Office of Secretary of State May 12, 1989.

CHAPTER 354

[Substitute Senate Bill No. 5686]

AGRICULTURE STATUTES—REVISIONS

AN ACT Relating to agriculture; amending RCW 15.32.010, 15.32.051, 15.32.080, 15.32.100, 15.32.140, 15.32.220, 15.32.420, 15.32.500, 15.32.510, 15.32.520, 15.32.530, 15.32.570, 15.36.011, 15.36.020, 15.36.060, 15.36.080, 15.36.110, 15.36.115, 15.36.300, 15.36.425, 15.36.460, 15.36.470, 15.36.520, 15.36.540, 15.36.550, 15.36.580, 15.28.010, 15.28.160, 15.65.510, 15.86.030, 15.86.020, 15.86.070, 16.36.110, 19.94.190, 20.01.010, 20.01.030, 20.01.040, 20.01.330, 20.01.370, 20.01.380, 20.01.460, 22.09.011, 22.09.020, 22.09.290, 22.09.720, 22.09.730, 22.09.740, 22.09.750, 22.09.780, 22.09.830, 15.24.010, 15.24.020, 15.24.030, 15.24.040, and 15.14.010; adding new sections to chapter 15.86 RCW; adding a new section to chapter 15.58 RCW; adding new sections to chapter 1.20 RCW; adding new sections to chapter 15.60 RCW; adding new sections to chapter 15.49 RCW; adding a new section to chapter 15.04 RCW; creating new sections; repealing RCW 15.32.170, 15.32.180, 15.32.190, 15.32.200, 15.32.230, 15.32.240, 15.32.270, 15.32.280, 15.32.300, 15.32.310, 15.32.390, 15.32.400, 15.32.470, 15.32.480, 15.32.690, 15.32.692, 15.32.694, 15.32.698, 15.36.130, 15.36.290, 15.36.310, 15.36.450, 15.36.560, 15.36.570, 15.86.040, 20.01.600, 22.09.700, 15.49.010, 15.49.020, 15.49.030, 15.49.035, 15.49.040, 15.49.050, 15.49.060, 15.49.070, 15.49.080, 15.49.090, 15.49.100, 15.49.110, 15.49.120, 15.49.130, 15.49.140, 15.49.150, 15.49.160, 15.49.170, 15.49.180, 15.49.190, 15.49.200, 15.49.210, 15.49.220, 15.49.230, 15.49.240, 15.49.250, 15.49.260, 15.49.270, 15.49.280, 15.49.290, 15.49.300, 15.49.320, 15.49.340, 15.49.430, 15.49.440, and 15.49.450; making an appropriation; providing effective dates; and prescribing penalties.

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

Sec. 1. Section 15.32.010, chapter 11, Laws of 1961 and RCW 15.32.010 are each amended to read as follows:

For the purpose of chapter 15.32 RCW:

"Supervisor" means the supervisor of the dairy and ((livestock)) food division;

"Dairy" means a place where milk from one or more cows or goats is produced for sale;

"Creamery" means a structure wherein milk or cream is manufactured into butter for sale;

"Milk plant" means a structure wherein milk is bottled, pasteurized, clarified, or otherwise processed;

"Cheese factory" means a structure where milk is manufactured into cheese;

"Factory of milk products" means a structure, other than a creamery, milk plant, cheese factory, milk condensing plant or ice cream factory, where milk or any of its products is manufactured, changed, or compounded into another article, or where butter is cut or wrapped; except freezing of

ice cream from a mix compounded in a licensed creamery, milk plant, cheese factory, milk condensing plant or ice cream factory;

"Milk condensing plant" means a structure where milk is condensed or evaporated;

"Ice cream factory" means a structure which complies with the sanitary requirements of RCW 15.32.080, where ice cream mix is produced for sale or distribution, and may include freezing such mix into ice cream;

"Counter ice cream freezer" means counter type freezing machines usually operated in retail establishments;

"Sterilized milk" means milk that has been heated under six pounds of steam pressure and maintained thereat for not less than twenty minutes;

"Modified milk" means milk that has been altered in composition to conform to special nutritional requirements;

"Milk product" means an article manufactured or compounded from milk, whether or not the milk conforms to the standards and definitions herein;

"Milk byproduct" means a product of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and includes skimmed milk, buttermilk, whey, casein, and milk powder;

"Butter" means the product made by gathering the fat of pasteurized milk or cream into a mass containing not less than eighty percent of milk fat, and which also contains a small portion of other milk constituents, with or without harmless coloring matter;

"Renovated butter" means butter that has been reduced to a liquid state by melting and drawing off the liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream, or other product of milk;

"Reworked butter" means the product obtained by mixing or rechurning butter made on different dates or at different places: PROVIDED, That the mixing of remnants from one day's churning or cutting with butter from the churning of the same creamery on the next day shall not make the product reworked butter;

"Butter substitute" means a compound of vegetable oils with milk fats or milk solids and all compounds of milk fats or milk solids with butter when the compound contains less than eighty percent of milk fat;

"Oleomargarine" means all manufactured substances, extracts, mixtures, or compounds, including mixtures or compounds with butter, known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suinc, and neutral, and includes all lard and tallow extracts and mixtures and compounds of tallow, beef fat, suet, lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter or calculated or intended to be sold as butter;

"Cheese" means any of the cheeses as described in Title 21 of the code of federal regulations part 133;

"Imitation cheese" means any article, substance, or compound, other than that produced from pure milk or from the cream from pure milk, which is made in the semblance of cheese and designed to be sold or used as a substitute for cheese. The use of salt, lactic acid, or pepsin, and harmless coloring matter in cheese shall not render the true product an imitation. Nothing herein shall prevent the use of pure skimmed milk in the manufacture of cheese;

"Milk vendor" or "milk dealer" means any person who sells, furnishes or delivers milk, skimmed milk, buttermilk, or cream in any manner.

All dairy products mentioned in this chapter mean those fit or used for human consumption.

Sec. 2. Section 2, chapter 58, Laws of 1963 and RCW 15.32.051 are each amended to read as follows:

The director may, by rule, establish and/or amend definitions and standards for dairy products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for dairy products promulgated by the secretary of the United States department of health, education and welfare: PROVIDED, That the director shall at all times provide reasonable standards for ice milk.

The director may adopt any other rules necessary to carry out the purposes of this chapter. The adoption of all rules provided for in this section shall be subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW as enacted or hereafter amended concerning the adoption of rules, except as otherwise provided in this section.

~~((The definitions constituting sections 15.32.020, 15.32.030, 15.32.040 and 15.32.050, chapter 11, Laws of 1961 and RCW 15.32.020, 15.32.030, 15.32.040 and 15.32.050 hereinabove repealed as statutes are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture:))~~

Sec. 3. Section 15.32.080, chapter 11, Laws of 1961 and RCW 15.32.080 are each amended to read as follows:

A structure or place where milk or cream is processed or manufactured into other products, or where handled, stored, or kept for sale shall be deemed insanitary in the following circumstances:

(1) If milk or cream is received or kept which has ~~((reached a stage of putrefactive fermentation))~~ deteriorated in quality;

(2) ~~((If milk or cream is received or kept in containers that have not been sterilized with boiling water or live steam after each delivery;~~

~~(3))~~ If utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and

~~((sterilized by means of boiling water or live steam))~~ sanitized after each using;

~~((4))~~ (3) If the floor is such as to permit liquids to soak into the floor's interstices ~~((thereof in such manner as to permit fermentation and decay))~~, or such as may not be readily kept free from dirt and filth;

~~((5))~~ (4) If drains are not provided that will convey refuse milk ~~((;))~~ and water ~~((; and sewage))~~ to a point at least fifty yards distant;

~~((6))~~ (5) If a cesspool, privy vault, hog yard, slaughterhouse, hen-house, manure, or decaying vegetable or animal matter that will produce foul odors is permitted to exist within such distance as will permit the odors therefrom to reach such place;

~~((7))~~ (6) If it lacks sufficient light and air to secure good ventilation;

~~((8))~~ (7) If in a building used in connection therewith any insects, vermin, or other species of animal life are permitted;

~~((9))~~ (8) If upon the floor or walls thereof, any milk or its products or any other filth is allowed to accumulate ~~((; ferment, or decay))~~;

~~((10))~~ (9) If the person or clothing of a person coming in contact with milk or milk products therein is unclean;

~~((11))~~ (10) If there is permitted to exist any other cause or thing tending to render the milk or its products produced, kept, handled, or manufactured therein unclean, impure, and unhealthy.

Sec. 4. Section 15.32.100, chapter 11, Laws of 1961 as last amended by section 20, chapter 3, Laws of 1983 and RCW 15.32.100 are each amended to read as follows:

Every person who sells, offers or exposes for sale, barter, or exchanges any milk or milk product as defined by rule under chapter 15.36 RCW must have a milk vendor's license to do so: PROVIDED, That such license shall not include retail stores or restaurants which purchase milk prepackaged or bottled elsewhere for sale at retail or establishments which sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of ~~((two))~~ ten dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be nontransferable, shall expire June 30th subsequent to issue, and may be revoked by the director, upon reasonable notice to the licensee, for any violation of or failure to comply with any provision of this chapter or any rule or regulation, or order of the department, or any officer or inspector thereof.

Sec. 5. Section 15.32.140, chapter 11, Laws of 1961 and RCW 15.32.140 are each amended to read as follows:

Milk or sweet cream which is not free from foreign substances, coloring matter, or preservatives, ~~((pus cells or blood cells, or which contains more than one hundred thousand bacteria or germs of all kinds to the cubic centimeter or))~~ which has been infected by or exposed to any contagious or infectious disease ~~((; or which has not cooled to a temperature of fifty-five~~

~~degrees Fahrenheit within thirty minutes after being drawn or separated, or any pasteurized milk that contains in excess of twenty-five thousand bacteria per cubic centimeter))~~ in the finished product, shall be deemed impure, unwholesome, and adulterated.

Sec. 6. Section 15.32.220, chapter 11, Laws of 1961 and RCW 15.32-.220 are each amended to read as follows:

~~((Any person who sells or offers for sale milk or cream in bottles with caps which fail to have the name of the owner inscribed thereon, or which indicate a quality that cannot be determined by laboratory, chemical or bacteriological examination, or in any other way wrongfully or fraudulently brands the same as to name or otherwise, for the purpose of inducing a sale, shall be guilty of a misdemeanor.))~~ All milk container labeling shall conform with the federal fair packaging and labeling act.

Sec. 7. Section 15.32.420, chapter 11, Laws of 1961 and RCW 15.32-.420 are each amended to read as follows:

No person shall use the word "pasteurized" in connection with the sale, designation, advertising, labeling, or billing of milk, cream, or any milk product unless the same and all milk products used in the manufacture thereof consist exclusively of milk, skimmed milk, or cream that has been pasteurized in its final form.

Sec. 8. Section 15.32.500, chapter 11, Laws of 1961 and RCW 15.32-.500 are each amended to read as follows:

Failure to brand products as required in RCW ~~((15.32.480 and))~~ 15-.32.490, and the offering for sale, selling, or otherwise disposing of such products when unbranded, shall constitute violations of this chapter. Selling such unbranded products constitutes knowledge on the part of the seller that the same is not full cream cheese.

Sec. 9. Section 15.32.510, chapter 11, Laws of 1961 and RCW 15.32-.510 are each amended to read as follows:

The director ~~((or a county or city or town))~~ may appoint one or more inspectors of milk, dairies, and dairy products, who are graduates of a recognized dairy school, or have completed a college course in dairying. In the absence of completion of a dairy course, the director may review a candidate's qualifications and determine eligibility.

The inspectors may enter any place where milk and its products are stored and kept for sale and any conveyance used to transport milk or cream, and take samples for analysis ~~((: PROVIDED, That this shall not apply to samples of milk or cream taken for bacteriological examination))~~.

Sec. 10. Section 15.32.520, chapter 11, Laws of 1961 and RCW 15-.32.520 are each amended to read as follows:

~~((The chemist of any state institution shall correctly analyze samples of milk or cream sent him by a city milk inspector and report to the inspector promptly the result of the analysis, without extra compensation, or charge to the city.))~~

A bacteriologist or chemist employed by a ~~((city))~~ certified laboratory may analyze milk for standard of quality, adulteration, contamination, and unwholesomeness, and his analysis shall have the same effect as one made by a chemist of a state institution.

Sec. 11. Section 15.32.530, chapter 11, Laws of 1961 and RCW 15.32.530 are each amended to read as follows:

An inspector ~~((or any state or city officer))~~ who obtains a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send the result to the person from whom the sample was taken or to the person responsible for the condition of the milk.

Sec. 12. Section 15.32.570, chapter 11, Laws of 1961 and RCW 15.32.570 are each amended to read as follows:

No person shall remove from a place under quarantine a container which has been or is to be used to contain milk, skimmed milk, buttermilk, cream, ice cream, or ice milk, without permission of the ~~((health officer in charge))~~ director.

Sec. 13. Section 1, chapter 102, Laws of 1969 ex. sess. and RCW 15.36.011 are each amended to read as follows:

The director of agriculture, by rule, may establish and/or amend definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products promulgated by the ~~((secretary of the United States department of health, education and welfare))~~ federal food and drug administration. The director of agriculture, by rule, may likewise establish and/or amend definitions and standards for products whether fluid, powdered or frozen, compounded or manufactured to resemble or in semblance or imitation of genuine dairy products as defined under the provisions of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600 or chapter 15.32 RCW as enacted or hereafter amended. Such products made to resemble or in semblance or imitation of genuine dairy products shall conform with all the provisions of chapter 15.38 RCW and be made wholly of nondairy products.

All such products compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product shall set forth on the container or labels the specific generic name of each ingredient used.

In the event any product compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product contains vegetable fat or oil, the generic name of such fat or oil shall be set forth on the label. If a blend or variety of oils is used, the ingredient statement shall contain the

term "vegetable oil" in the appropriate place in the ingredient statement, with the qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils" or "vegetable oil, may be cottonseed, coconut or soybean oil."

The labels or containers of such products compounded or manufactured to resemble or in semblance or imitation of genuine dairy products shall not use dairy terms or words or designs commonly associated with dairying or genuine dairy products, except as to the extent that such words or terms are necessary to meet legal requirements for labeling: PROVIDED, That the term "nondairy" may be used as an informative statement.

The director may adopt any other rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW: PROVIDED, That these rules shall not restrict the display or promotion of products covered under this section. The adoption of all rules provided for in this section shall be subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW as enacted or hereafter amended concerning the adoption of rules.

Sec. 14. Section 15.36.020, chapter 11, Laws of 1961 and RCW 15.36.020 are each amended to read as follows:

The terms "pasteurization," "pasteurize" and similar terms, ((refer to the process of heating every particle of milk or milk products to at least one hundred forty-three degrees Fahrenheit, and holding at such temperature for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit, and holding at such temperature for at least fifteen seconds in approved and properly operated equipment under the provisions of this chapter: PROVIDED, That nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and which is approved by the director)) shall mean the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the following table, and held continuously at or above that temperature for at least the corresponding specified time:

<u>Temperature</u>	<u>Time</u>
<u>145°F (63°C)</u>	<u>30 minutes</u>
<u>161°F (72°C)</u>	<u>15 seconds</u>
<u>191°F (89°C)</u>	<u>1.0 second</u>
<u>194°F (90°C)</u>	<u>0.5 second</u>
<u>201°F (94°C)</u>	<u>0.1 second</u>
<u>204°F (96°C)</u>	<u>0.05 second</u>
<u>212°F (100°C)</u>	<u>0.01 second</u>

If the fat content of the milk product is ten percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5°F (3°C). Eggnog shall be heated to at least the following temperature and time specifications:

<u>Temperature</u>	<u>Time</u>
155°F (69°C)	30 minutes
175°F (80°C)	25 seconds
180°F (83°C)	15 seconds

Nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the federal food and drug administration to be equally efficient and which is approved by the director.

Sec. 15. Section 15.36.060, chapter 11, Laws of 1961 as amended by section 2, chapter 226, Laws of 1984 and RCW 15.36.060 are each amended to read as follows:

The word "person" means any individual, partnership, firm, corporation, company, trustee, or association.

"Director" means the director of agriculture of the state of Washington or his duly authorized representative.

"Department" means the state department of agriculture.

~~("Health officer" means the county or city health officer as defined in Title 70 RCW, or his authorized representatives.~~

~~Where the term "and/or" is used "and" shall apply where possible; otherwise "or" shall apply.)~~

Sec. 16. Section 15.36.080, chapter 11, Laws of 1961 and RCW 15.36.080 are each amended to read as follows:

It shall be unlawful for any person to transport, or to sell, or offer for sale, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in this chapter, who does not possess an appropriate permit from the director ~~((or an authorized inspection service as defined in this chapter)).~~

Every milk producer, milk distributor, milk hauler, and operator of a milk plant shall secure a permit to conduct such operation as defined in this chapter. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Such a permit may be temporarily suspended by the director ~~((or health officer of a milk inspection unit))~~ upon violation by the holder of any of the terms of this chapter, or for interference with the director ~~((or health officer of a milk inspection unit))~~ in the performance of his duties, or revoked after an opportunity for a hearing by the director upon serious or repeated violations.

Sec. 17. Section 15.36.110, chapter 11, Laws of 1961 as amended by section 1, chapter 297, Laws of 1981 and RCW 15.36.110 are each amended to read as follows:

During each six months period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined by the director: PROVIDED, That in the case of raw milk

for pasteurization the director may accept the results of nonofficial laboratories which have been officially checked periodically and found satisfactory. Samples of other milk products may be taken and examined by the director as often as he deems necessary. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the director may require. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and other laboratory tests shall conform to the procedures in the current edition of "Standard Methods For The Examination Of Dairy Products," recommended by the American public health association. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration. Samples may be taken by the director at any time prior to the final delivery of the milk or milk products. All proprietors of cafes, stores, restaurants, soda fountains, and other similar places shall furnish the director, upon his request, with the name of all distributors from whom their milk and milk products are obtained. Bio-assays of the vitamin D content of vitamin D milk shall be made when required by the director in a laboratory approved by him for such examinations.

If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one days of the sending of the notice, but not before the lapse of three days, except sixty days must lapse before an official somatic cell count can be taken. The director shall degrade or suspend the grade A permit whenever the standard is again violated (~~by more than one of the last four consecutive samples~~) so that three of the last five consecutive samples exceed the limit of the standard. A grade A permit shall subsequently be reinstated in notice status upon receipt of sample results that are within the standard for which the suspension occurred.

In case of violation of the phosphatase test requirements, the cause of underpasteurization shall be determined and removed before milk or milk products from this plant can again be sold as pasteurized milk or milk products.

Sec. 18. Section 1, chapter 226, Laws of 1984 and RCW 15.36.115 are each amended to read as follows:

(1) If the results of an antibiotic (~~(or)~~), pesticide, or other drug residue test are above the actionable level (~~(as determined by)~~) established in the pasteurized milk ordinance published by the United States public health service and determined using procedures set forth in the current edition of "Standard Methods for the Examination of Dairy Products," a producer

holding a grade A permit is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the permit on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a contested case hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters ~~((34.04))~~ 34.05 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, ~~((reduced, or not imposed))~~ and, if so, shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter ~~((34.04))~~ 34.05 RCW. Tests performed for antibiotic ~~((or))~~, pesticide, or other drug residues by a state or certified industry laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic ~~((or))~~, pesticide, or other drug residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic ~~((or))~~, pesticide, or other drug residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Additional samples shall be taken as soon as possible and tested as soon as feasible for antibiotic ~~((or))~~, pesticide, or other drug residue by the department or a certified laboratory. After the notice has been received by the producer and the results of a test of such an additional sample indicate that residues are above the actionable level or levels referred to in subsection (1) of this section, the

producer's milk may not be sold until a sample is shown to be below the actionable levels established for the residues.

Sec. 19. Section 15.36.300, chapter 11, Laws of 1961 and RCW 15.36.300 are each amended to read as follows:

Grade C raw milk is raw milk ~~((of a producer-distributor which violates any of the requirements for grade B))~~ which violates any of the requirements of grade A raw milk.

Sec. 20. Section 15.36.425, chapter 11, Laws of 1961 as amended by section 22, chapter 141, Laws of 1979 and RCW 15.36.425 are each amended to read as follows:

The health ~~((officer))~~ authority or a physician authorized by him shall examine and take careful morbidity history of every person connected with a pasteurization plant, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state department of social and health services for such examinations, and if the results justify such persons shall be barred from such employment.

Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health ~~((officer))~~ official may require for the purpose of determining freedom from infection.

Sec. 21. Section 15.36.460, chapter 11, Laws of 1961 and RCW 15.36.460 are each amended to read as follows:

Grade C pasteurized milk is pasteurized milk which violates any of the requirements for grade ~~((B))~~ A pasteurized milk.

Sec. 22. Section 15.36.470, chapter 11, Laws of 1961 and RCW 15.36.470 are each amended to read as follows:

No milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except ~~((certified milk pasteurized, certified raw milk,))~~ grade A milk pasteurized, or grade A milk-raw, and the director may revoke the permit of any milk distributor failing to qualify for one of the above grades, or in lieu thereof may degrade his product and permit its sale during a period not exceeding thirty days or in emergencies during such longer period as he may deem necessary.

Sec. 23. Section 15.36.520, chapter 11, Laws of 1961 and RCW 15.36.520 are each amended to read as follows:

No person who is affected with any disease in a communicable form or is a carrier of such disease shall work at any dairy farm or milk plant in any capacity which brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment; and no dairy farm or milk plant shall employ in any such capacity any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk or milk products upon whose dairy farm or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease shall notify the health ((officer)) authority immediately.

Sec. 24. Section 15.36.540, chapter 11, Laws of 1961 as amended by section 6, chapter 102, Laws of 1969 ex. sess. and RCW 15.36.540 are each amended to read as follows:

~~((Save as in this chapter provided))~~ Except as otherwise provided in this chapter, this law shall be enforced by the director in accordance with the interpretation contained in the ~~((1965 edition of the United States public health service))~~ food and drug administration pasteurized milk ((code)) ordinance: PROVIDED, That the director may ((by rule adopt any subsequent amendments to such code as interpretations)) promulgate rules covering any standard set forth in the pasteurized milk ordinance if the rules are consistent with the pasteurized milk ordinance except the standards may be more stringent based upon current industry or public health information for the enforcement of this chapter whenever he determines that any such ((amendments)) rules are necessary to carry out the purposes of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600.

Sec. 25. Section 15.36.550, chapter 11, Laws of 1961 as amended by section 23, chapter 141, Laws of 1979 and RCW 15.36.550 are each amended to read as follows:

The director shall have the power and duty ~~((+))~~ to adopt, issue and promulgate from time to time necessary rules, regulations and orders for the enforcement of this chapter ~~((; (2) with the approval of the secretary of social and health services to adopt standards of requirements necessary for approval of local milk inspection service units hereinafter provided for, the basic standards in this connection being a sufficient force of qualified personnel under the general direction of a health officer, and sufficient laboratory facilities to insure compliance with the provisions of this chapter and the rules and regulations promulgated thereunder, and (3) to cancel, and with the consent of the secretary of social and health services, to approve the issuance of certificates of approval for such local milk inspection service units)).~~

Sec. 26. Section 15.36.580, chapter 11, Laws of 1961 as last amended by section 175, chapter 202, Laws of 1987 and RCW 15.36.580 are each amended to read as follows:

In case of a written protest from any fluid milk producer(;) or fluid milk distributor(~~(, or health officer,)~~) concerning the enforcement of any provisions of this chapter or of any rules and regulations thereunder, the director, or an administrative law judge within ten days after receipt of such protest and after five days written notice thereof to the party against whom the protest is made, shall hold a summary hearing in the county where either the party protesting or protested against resides, upon the completion of which the director or an administrative law judge shall make such written findings of fact and order as the circumstances may warrant: PROVIDED, That if the protest originates with a producer, the hearings shall be held in the county where the protesting producer resides. Such findings and order shall be final and conclusive upon all parties from and after their effective date, which date shall be five days after being signed and deposited postage prepaid in the United States mails addressed to the last known address of all said parties. An appeal from such findings or order may be taken in the manner provided under chapter (~~(34.04)~~) 34.05 RCW.

Sec. 27. Section 15.28.010, chapter 11, Laws of 1961 as last amended by section 1, chapter 11, Laws of 1973 and RCW 15.28.010 are each amended to read as follows:

As used in this chapter:

- (1) "Commission" means the Washington state fruit commission.
- (2) "Shipment" or "shipped" includes loading in a conveyance to be transported to market for resale, and includes delivery to a processor or processing plant, but does not include movement from the orchard where grown to a packing or storage plant within this state for fresh shipment;
- (3) "Handler" means any person who ships or initiates the shipping operation, whether as owner, agent or otherwise;
- (4) "Dealer" means any person who handles, ships, buys, or sells soft tree fruits other than those grown by him, or who acts as sales or purchasing agent, broker, or factor of soft tree fruits;
- (5) "Processor" or "processing plant" includes every person or plant receiving soft tree fruits for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking, quick-freezing, brining, or for use in manufacturing a product;
- (6) "Soft tree fruits" mean Bartlett pears and all varieties of cherries, apricots, prunes, plums, and peaches, which includes all varieties of nectarines. "Bartlett pears" means and includes all standard Bartlett pears and all varieties, strains, subvarieties, and sport varieties of Bartlett pears including Red Bartlett pears, that are harvested and utilized at approximately the same time and approximately in the same manner.
- (7) "Commercial fruit" or "commercial grade" means soft tree fruits meeting the requirements of any established or recognized fresh fruit or processing grade. Fruit bought or sold on orchard run basis and not subject to cull weighback shall be deemed to be "commercial fruit."

(8) "Cull grade" means fruit of lower than commercial grade except when such fruit included with commercial fruit does not exceed the permissible tolerance permitted in a commercial grade;

(9) "Producer" means any person who is a grower of any soft tree fruit;

(10) "District No. 1" or "first district" includes the counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane and Lincoln;

(11) "District No. 2" or "second district" includes the counties of Kittitas, Yakima, and Benton county north of the Yakima river;

(12) "District No. 3" or "third district" comprises all of the state not included in the first and second districts.

Sec. 28. Section 15.28.160, chapter 11, Laws of 1961 as amended by section 3, chapter 51, Laws of 1963 and RCW 15.28.160 are each amended to read as follows:

An annual assessment is hereby levied upon all commercial soft tree fruits grown in ~~((this))~~ the state or packed as Washington soft tree fruit of fifty cents per two thousand pounds (net weight) of said fruits, when shipped fresh or delivered to processors, whether in bulk, loose in containers, or packaged in any style of package, except, that all sales of five hundred pounds or less of such fruits sold by the producer direct to the consumer shall be exempt from said assessments. Sweet cherries which are brined are deemed to be commercial soft tree fruit and therefore assessable hereunder.

Sec. 29. Section 51, chapter 256, Laws of 1961 and RCW 15.65.510 are each amended to read as follows:

All parties to ~~((any))~~ a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers ~~((and other persons subject to any marketing order))~~ of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director ~~((or his))~~, the director's designee, or the commodity board established under the marketing agreement or order, furnish ~~((him with))~~ such information ~~((as he))~~ and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to ~~((enable him to))~~ effectuate the declared policies of this chapter and the purposes of such agreement or order ~~((or))~~. Information and inspections may also be required by the director, the director's designee, or the commodity board 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))~~, the director's designee, or the commodity board. ~~((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)), the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or ~~((any such producer or handler under such marketing order))~~, any person subject to any 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))~~ the director's 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. RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110, 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))~~ the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director ~~((and/or his))~~ or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by ~~((him))~~ the director 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))~~ the director or the director's 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.

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))~~ the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person.

Sec. 30. Section 3, chapter 247, Laws of 1985 and RCW 15.86.030 are each amended to read as follows:

A producer or a vendor shall not sell or offer for sale any food product with the representation that the product is an organic food if the producer or vendor knows, or has reason to know, that the food has been grown, raised, or produced with the use of any of the following substances: (1)

Fertilizers but excluding manures and other natural fertilizers; (2) any of the following when manufactured by man: Pesticides, hormones, antibiotics, or growth stimulants but excluding *Bacillus thuringensis* and other natural pesticides; (3) arsenicals; or (4) similar substances listed by the director under RCW 15.86.060. A food product shall be considered as "grown, raised, or produced" with a substance specified in this section or listed by the director under RCW 15.86.060 if the substance is applied at any time before sale to retail purchasers. ~~((Also, crops shall be considered "grown, raised, or produced" with such a substance if, within one year before seed planting or transplanting or, in the case of perennial crops, within one year before the appearance of the flower bud, the substance is applied to the soil or other growing medium:))~~

NEW SECTION. Sec. 31. A new section is added to chapter 15.86 RCW to read as follows:

(1) Beginning January 1, 1991, it shall be unlawful to sell or offer for sale as organic food, products that have been grown, raised, or produced if harvest of the food product occurs within two years of the most recent use of any prohibited pesticide, herbicide, or fungicide and two years after the most recent use of a prohibited fertilizer.

(2) Beginning January 1, 1992, it shall be unlawful to sell or offer for sale as organic food, products that have been grown, raised, or produced if harvest of the food product occurs within three years of the most recent use of any prohibited pesticide, herbicide, or fungicide and two years after the most recent use of a prohibited fertilizer.

(3) Beginning January 1, 1990, food products may be sold as "transition to organic food" if they have had no applications of prohibited substances within one year before harvest of the food crop. The products must specify first or second-year transition on their labels.

(4) No out-of-state products shall be labelled or sold as organic without having first received an organic certification in the state of origin meeting all requirements established under this chapter.

Sec. 32. Section 2, chapter 247, Laws of 1985 and RCW 15.86.020 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic food" means any food product, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic, other than the phrase "transition to organic food," in its labeling or advertising.

(3) "Producer" means any person or organization who or which (a) grows, raises, or produces a food product; and (b) sells the food product as, or offers it for sale as, an organic food.

(4) "Vendor" means anyone who sells organic food to the consumer or another vendor.

(5) "Transition to organic food" means any food product that satisfies all of the requirements of organic food except the time requirements and satisfied all of the requirements of section 31 of this act.

NEW SECTION. Sec. 33. A new section is added to chapter 15.86 RCW to read as follows:

(1) A producer or a vendor shall not sell or offer for sale any food product with the representation that the food product is a transition to organic food if the producer or vendor knows, or has reason to know, that the food product does not satisfy the requirements of RCW 15.86.020(5).

(2) A producer shall not sell to a vendor any food product that the producer represents as a transition to organic food unless, before the sale, the producer provides the vendor with a sworn statement that the producer has grown, raised, or produced the product in conformance with RCW 15.86.020(5) and section 31 of this act.

Sec. 34. Section 12, chapter 393, Laws of 1987 and RCW 15.86.070 are each amended to read as follows:

The director may adopt rules establishing a certification program for producers and processors of organic or transition to organic food. The rules may govern, but are not limited to governing: The number and scheduling of ~~((on=farm))~~ on-site visits, both announced and unannounced, by certification personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the ~~((certification))~~ inspection program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section.

Sec. 35. Section 5, chapter 22, Laws of 1957 as amended by section 14, chapter 296, Laws of 1981 and RCW 16.36.110 are each amended to read as follows:

A violation of or a failure to comply with any provision of this chapter or the rules adopted under this chapter shall be a ~~((misdemeanor: PROVIDED, That any violation of RCW 16.36.030, 16.36.040, 16.36.050, or that part of RCW 16.36.060 which makes it unlawful for any person to wilfully hinder, obstruct, or resist the director of agriculture or any duly authorized representative, or any peace officer acting under him or them when engaged in the performance of the duties or in the exercise of the powers conferred by this chapter shall be a))~~ gross misdemeanor. Each day upon which a violation occurs shall constitute a separate violation. Any

person violating the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, 16.36.107, 16.36.108 or 16.36.109 may be enjoined from continuing such violation.

Sec. 36. Section 19, chapter 67, Laws of 1969 as amended by section 5, chapter 26, Laws of 1977 ex. sess. and RCW 19.94.190 are each amended to read as follows:

The director shall enforce the provisions of this chapter and shall issue from time to time reasonable rules (~~and regulations~~) for enforcing and carrying out the purposes of this chapter. Such rules (~~and regulations~~) shall have the effect of law and may include (1) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (2) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of rejection to be used by the director and city sealers in the discharge of their official duties, (3) rules governing technical test procedures, reporting procedures, record and reporting forms to be used by commercial firms when installing, repairing or testing commercial weights or measures, (4) rules providing that all weights and measures used by commercial firms in repairing or servicing commercial weighing and measuring devices shall be calibrated by the department and be directly traceable to state standards and shall be submitted to the department for calibration and certification as necessary and/or at such reasonable intervals as may be established or required by the director, (5) exemptions from the sealing or marking requirements of RCW 19.94.250 with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, (6) rules that allow the director to establish fees for weighing, measuring, and providing calibration services performed by the weights and measures laboratory, with all money collected under this subsection paid to the director and deposited in an account within the agricultural local fund to be used for the repair and maintenance of weights and measures devices and other related functions, (7) exemptions from the requirements of RCW 19.94.200 and 19.94.210 for testing, with respect to classes of weights and measures found to be of such character that periodic retesting is unnecessary to continued accuracy. These regulations shall include specifications, tolerances, and regulations for weights and measures of the character of those specified in RCW 19.94.210, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (a) that are not accurate, (b) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (c) that facilitate the perpetration of fraud. The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of

standards Handbook 44, third edition as published at the time of the enactment of this chapter shall be the specifications, tolerances, and regulations for commercial weighing and/or measuring devices of the state. To promote uniformity, any supplements or amendments to Handbook 44 or any similar subsequent publication of the national bureau of standards shall be deemed to have been adopted under this section. The director may, however, within thirty days of the publication or effective date of Handbook 44 or any supplements, amendments, or similar publications give public notice that a hearing will be held to determine if such publications should not be applicable under this section. The hearing shall be conducted under chapter ~~((34.04))~~ 34.05 RCW. For the purpose of this chapter, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section; all other apparatus shall be deemed to be "incorrect".

Sec. 37. Section 1, chapter 139, Laws of 1959 as last amended by section 6, chapter 178, Laws of 1986 and RCW 20.01.010 are each amended to read as follows:

As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or his duly authorized representative.

(2) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural, and berry products, hay and straw, and turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural

product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person operating under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agricultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt in in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

~~(17) ("Boom loader" means a person who owns or operates, or both, a mechanical device mounted on a vehicle and used to load hay or straw for compensation.~~

~~(18))~~ (18) "Conditioner" means any person, firm, company, or other organization that receives turf, forage, or vegetable seeds from a consignor for drying or cleaning.

~~((19))~~ (19) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

~~((20))~~ (20) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

~~((21))~~ (21) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

~~((22))~~ (22) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW.

Sec. 38. Section 3, chapter 139, Laws of 1959 as last amended by section 10, chapter 254, Laws of 1988 and RCW 20.01.030 are each amended to read as follows:

This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW or chapter 24.32 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder(;

~~(11) Any boom loader who loads exclusively his or her own hay or straw as the producer thereof).~~

Sec. 39. Section 4, chapter 139, Laws of 1959 as last amended by section 13, chapter 393, Laws of 1987 and RCW 20.01.040 are each amended to read as follows:

No person may act as a commission merchant, dealer, broker, cash buyer, or agent(~~;~~ ~~or boom loader~~) without a license. Any person applying for such a license shall file an application with the director on or before January 1st of each year. The application shall be accompanied by a license fee as prescribed by the director by rule.

Sec. 40. Section 33, chapter 139, Laws of 1959 as last amended by section 1, chapter 20, Laws of 1982 and RCW 20.01.330 are each amended to read as follows:

The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he is satisfied after a hearing, as herein provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of agricultural products received, handled, sold or stored by him.

(4) That the applicant, or licensee, directly or indirectly has purchased for his own account agricultural products received by him upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examination or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by a check the licensee knows not to be backed by sufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted (~~(an agent)~~) a person to in fact operate his own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director.

(21) That the licensee has discriminated in the licensee's dealings with consignors on the basis of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

Sec. 41. Section 37, chapter 139, Laws of 1959 as last amended by section 18, chapter 254, Laws of 1988 and RCW 20.01.370 are each amended to read as follows:

Every commission merchant taking control of any agricultural products for sale as such commission merchant, shall promptly make and keep for a period of (~~(one year)~~) three years, beginning on the day the sale of the product is complete, a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

(1) The name and address of the consignor.

(2) The date received.

(3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(4) An accounting of all sales, including dates, terms of sales, quality and quantity of agricultural products sold, and proof of payments received on behalf of the consignor.

(5) The terms of payment to the producer.

(6) An itemized statement of the charges to be paid by consignor in connection with the sale.

(7) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.

(8) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the agricultural products actually sold for.

(9) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), and (8) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool.

The commission merchant shall transmit a copy of the record required by this section to the consignor on the same day the final remittance is made to the consignor as required by RCW 20.01.430 as now or hereafter amended.

Sec. 42. Section 38, chapter 139, Laws of 1959 as last amended by section 17, chapter 254, Laws of 1988 and RCW 20.01.380 are each amended to read as follows:

Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for ~~((one year))~~ three years a correct record showing in detail the following:

(1) The name and address of the consignor.

(2) The date received.

(3) The terms of the sale.

(4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.

(6) The name and address of the purchaser: PROVIDED, That the name and address of the purchaser may be deleted from the record furnished to the consignor.

(7) A copy of the itemized list of charges required under RCW 20.01-.080 in effect on the date the terms of sale were agreed upon.

A copy of such record containing the above matters shall be forwarded to the consignor forthwith.

Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or regulation adopted by the director.

Sec. 43. Section 46, chapter 139, Laws of 1959 as last amended by section 19, chapter 254, Laws of 1988 and RCW 20.01.460 are each amended to read as follows:

(1) Any person who violates the provisions of this chapter or fails to comply with the rules adopted under this chapter is guilty of a gross misdemeanor, except as provided in subsections (2) and (3) of this section.

(2) Any commission merchant, dealer, or cash buyer, or any person assuming or attempting to act as a commission merchant, dealer, or cash buyer without a license is guilty of a class C felony who:

(a) Imposes false charges for handling or services in connection with agricultural products.

(b) Makes fictitious sales or is guilty of collusion to defraud the consignor.

(c) Intentionally makes false statement or statements as to the grade, conditions, markings, quality, or quantity of goods shipped or packed in any manner.

(d) With the intent to defraud the consignor, fails to comply with the ((payment)) requirements set forth under RCW 20.01.010(10), 20.01.390 or 20.01.430.

(3) Any person who violates the provisions of RCW 20.01.040, 20.01-.080, 20.01.120, 20.01.125, 20.01.410 or 20.01.610 has committed a civil infraction.

Sec. 44. Section 16, chapter 305, Laws of 1983 as last amended by section 11, chapter 254, Laws of 1988 and RCW 22.09.011 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons

having a joint or common interest, or any unit or agency of local, state, or federal government.

(4) "Agricultural commodities," or "commodities," means: (a) ~~((All the grains, peas, beans, lentils, corn, sorghums, malt, peanuts, and flax, and (b)))~~ Grains for which inspection standards have been established under the United States grain standards act; (b) pulses and similar commodities for which inspection standards have been established under the agricultural marketing act of 1946; and (c) other similar agricultural products ((similar to those listed in (a) of this subsection)) for which inspection standards have been established or which have been otherwise designated by the department by rule for inspection services or the warehousing requirements of this chapter.

(5) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage, or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter ~~((34.04))~~ 34.05 RCW, or (f) within twenty miles of each other but separated by the border between Washington and Idaho or Oregon when the books and records for the station are maintained at the warehouse located in Washington.

(9) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(10) "Warehouseman" means any person owning, operating, or controlling a warehouse in the state of Washington.

(11) "Depositor" means (a) any person who deposits a commodity with a Washington state licensed warehouseman for storage, handling, conditioning, or shipment, or (b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouseman or (c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, whose place of business is located outside the state of Washington.

(12) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(13) "Grain dealer" means any person who, through his place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(14) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(15) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW.

(16) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (15) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(17) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouseman for the immediate or impending shipment of the commodity.

(18) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(19) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the

price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(20) "Shortage" means that a warehouseman does not have in his possession sufficient commodities at each of his stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him for the station.

(21) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(22) "Original inspection" means an initial, official inspection of a grain or commodity.

(23) "Reinspection" means an official review of the results of an original inspection service by an inspection office that performed that original inspection service. A reinspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(24) "Appeal inspection" means, for commodities covered by federal standards, a review of original inspection or reinspection results by an authorized United States department of agriculture inspector. For commodities covered under state standards, an appeal inspection means a review of original or reinspection results by a supervising inspector. An appeal inspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

Sec. 45. Section 2, chapter 124, Laws of 1963 as amended by section 17, chapter 305, Laws of 1983 and RCW 22.09.020 are each amended to read as follows:

The department shall administer and carry out the provisions of this chapter and rules adopted hereunder, and it has the power and authority to:

(1) Supervise the receiving, handling, conditioning, weighing, storage, and shipping of all commodities;

- (2) Supervise the inspection and grading of ~~((att))~~ commodities;
- (3) Approve or disapprove the facilities, including scales, of all warehouses;
- (4) Approve or disapprove all rates and charges for the handling, storage, and shipment of all commodities;
- (5) Investigate all complaints of fraud in the operation of any warehouse;
- (6) Examine, inspect, and audit, during ordinary business hours, any warehouse licensed under this chapter, including all commodities therein and examine, inspect, audit, or record all books, documents, and records;
- (7) Examine, inspect, and audit during ordinary business hours, all books, documents, and records, and examine, inspect, audit, or record records of any grain dealer licensed hereunder at the grain dealer's principal office or headquarters;
- (8) Inspect at reasonable times any warehouse or storage facility where commodities are received, handled, conditioned, stored, or shipped, including all commodities stored therein and all books, documents, and records in order to determine whether or not such facility should be licensed pursuant to this chapter;
- (9) Inspect at reasonable times any grain dealer's books, documents, and records in order to determine whether or not the grain dealer should be licensed under this chapter;
- (10) Administer oaths and issue subpoenas to compel the attendance of witnesses, and/or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purpose and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW;
- (11) Adopt rules establishing inspection standards and procedures for grains and commodities;
- (12) Adopt rules regarding the identification of commodities by the use of confetti or other similar means so that such commodities may be readily identified if stolen or removed in violation of the provisions of this chapter from a warehouse or if otherwise unlawfully transported;
- ~~((12))~~ (13) Adopt all the necessary rules for carrying out the purpose and provisions of this chapter. The adoption of rules under the provisions of this chapter shall be subject to the provisions of chapter ~~((34.04))~~ 34.05 RCW, the Administrative Procedure Act. When adopting rules in respect to the provisions of this chapter, the director shall hold a public hearing and shall to the best of his ability consult with persons and organizations or interests who will be affected thereby, and any final rule adopted as a result of the hearing shall be designed to promote the provisions of this chapter and shall be reasonable and necessary and based upon needs and conditions of the industry, and shall be for the purpose of promoting the well-being of the industry to be regulated and the general welfare of the people of the state.

Sec. 46. Section 29, chapter 124, Laws of 1963 as last amended by section 43, chapter 305, Laws of 1983 and RCW 22.09.290 are each amended to read as follows:

(1) Every warehouse receipt issued for commodities covered by this chapter shall embody within its written or printed terms:

(a) The grade of the commodities (~~(received)~~) as (~~(established)~~) described by the official standards of this state, unless the identity of the commodity is in fact preserved in a special pile or special bin, and an identifying mark of such pile or bin shall appear on the face of the receipt and on the pile or bin. A commodity in a special pile or bin shall not be removed or relocated without canceling the outstanding receipt and issuing a new receipt showing the change;

(b) Such other terms and conditions as required by Article 7 of Title 62A RCW: PROVIDED, That nothing contained therein requires a receipt issued for wheat to specifically state the variety of wheat by name;

(c) A clause reserving for the warehouseman the optional right to terminate storage upon thirty days' written notice to the depositor and collect outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(2) Warehouse receipts issued under the United States Warehouse Act (7 USCA § 241 et seq.) are deemed to fulfill the requirements of this chapter so far as it pertains to the issuance of warehouse receipts.

Sec. 47. Section 39, chapter 124, Laws of 1963 and RCW 22.09.720 are each amended to read as follows:

The grades and standards established by the United States department of agriculture as of (~~(July 1, 1963)~~) September 30, 1988, for all commodities included within the provisions of this chapter are hereby adopted as the grades and standards for such commodities in this state: PROVIDED, That the department is hereby authorized to adopt by regulation any new or future amendments to such federal grades and standards. The department is also authorized to issue regulations whether or not in accordance with the federal government and to prescribe therein grades and standards which it may deem suitable for (~~(such)~~) inspection of commodities(~~(; except hops;)~~) in the state of Washington. In adopting any new or amendatory regulations the department shall give appropriate consideration, among other relevant factors, to the following:

(1) The usefulness of uniform federal and state grades;

(2) The common classifications given such commodities within the industry;

(3) The utility of various grades;

(4) The kind and type of grades requested by those dealing with the particular type of commodity; and

(5) The condition of the commodity with regard to its wholesomeness and purity.

Sec. 48. Section 40, chapter 124, Laws of 1963 and RCW 22.09.730 are each amended to read as follows:

Inspection ~~((and))~~ or grading of a lot ~~((or parcel))~~, partial lot, or sample of a commodity tendered for inspection ~~((and))~~ or grading under this chapter shall consist of taking and examining a representative sample thereof and making such tests as are necessary to determine its grade, condition, or other qualitative measurement. Commodities tendered for inspection must be offered and made accessible for sampling at inspection points during customary business hours.

(1) No inspector shall issue a certificate of grade, grading factors, condition, or other qualitative measurement for any commodity unless the inspection ~~((and))~~ or grading thereof be based upon a correct and representative sample of the commodity and the inspection is made under conditions which permit the determination of its true grade or quality, except as provided in subsections (2) and (3) of this section. No sample shall be deemed to be representative unless it is of the size and procured in accordance with the uniform methods prescribed by the department.

(2) An inspection may be made of a submitted sample ~~((or package))~~ of a commodity, provided that the certificate issued in such case clearly shows that the inspection ~~((and))~~ or grading covers only the submitted sample ~~((or package))~~ of such commodity and not the lot from which it ~~((was))~~ is purportedly drawn.

(3) When commodities are tendered for inspection in such a manner as to make the drawing of a representative sample impossible, a qualified inspection may be made. In such case, the certificate shall clearly show the condition preventing proper sampling such as heavily loaded ~~((box))~~ car, truck, barge, or other container, or other condition.

Sec. 49. Section 41, chapter 124, Laws of 1963 and RCW 22.09.740 are each amended to read as follows:

From all commodities inspected, samples may be drawn, which samples, unless returned by agreement to the applicant, shall become the property of the state and subject to disposition by the department. Upon ~~((prior))~~ request the department may transmit a portion of such samples to interested ~~((persons))~~ parties upon payment of a reasonable fee ~~((therefor))~~ set by regulation. Official state file samples shall be retained for ~~((a))~~ periods ~~((of fifteen days))~~ prescribed by state or federal regulation.

Sec. 50. Section 42, chapter 124, Laws of 1963 as amended by section 54, chapter 305, Laws of 1983 and RCW 22.09.750 are each amended to read as follows:

The department's inspectors shall, at terminal warehouses, have exclusive control of the weighing, inspecting, and grading of the commodities that are included within the provisions of this chapter ~~((, and))~~: PROVIDED, That official supervision of weighing under the United States grain standards act shall be deemed in compliance with this section. The action

and the certificates of the inspectors in the discharge of their duties, as to all commodities (~~((weighed or))~~) inspected or weighed by them, shall be accepted as prima facie evidence of the correctness of the above activity. ~~((However, an appeal may be taken as provided in RCW 22.09.780 to the director of the department. Suitable books and records shall be kept in which shall be entered a record of every carload, or cargo, or part of cargo of commodities inspected or weighed by them, showing the number and initial or other designation of the vehicle or boat containing the carload, or cargo, or part of cargo, its weight, the kind of commodity, and its grade, the reason for the grade if of inferior grade, the amount of the dockage, the amount of fees and forfeitures and disposition of them, and for each vehicle or cargo, or part of cargo, of commodity inspected, they shall give a certificate of inspection showing the kind and grade of the same and the reason for all grades established. They shall also keep a record of all appeals, decisions, and a complete record of every official act, which books and records shall be open to inspection by any party in interest. They shall also furnish the agent of the railroad company, or other carrier over which the commodity was shipped or carried, a report showing the weight thereof, if requested to do so))~~ Suitable books and records shall be maintained in which shall be entered a record of each inspection activity and the fees assessed and collected. These books and records shall be available for inspection by any party of interest during customary business hours. The records shall be maintained for periods set by regulation.

Sec. 51. Section 45, chapter 124, Laws of 1963 and RCW 22.09.780 are each amended to read as follows:

(1) In case any owner, consignee, or shipper of any commodity included under the provisions of this chapter, or his agent or broker, or any warehouseman shall be aggrieved at the grading of such commodity, ~~((such aggrieved))~~ the person may ((appeal to the department from such decision within fifteen)) request a reinspection or appeal inspection within three business days from the date of certificate ((by giving notice of appeal, and paying a fee to be fixed by the department, not exceeding twenty dollars, which shall be retained if the decision appealed is sustained, otherwise to be refunded. Such notice of appeal may be given by a letter or other written notice to the department stating the inspector's name, number of the certificate, date of inspection, and that such party appeals from such decision concerning such grade:

(2) It shall be the duty of the department upon receiving such notice of appeal to hold a hearing within twenty days and inquire into the reasonableness and correctness of such original grading and such evidence shall be received as the parties thereto may desire to offer. After such hearing the director of the department shall make such order affirming or modifying the grade so established by the inspector as the facts may justify)). The reinspection or appeal may be based in the official file sample or upon a new

sample drawn from the lot of the grain or commodity if the lot remains intact and available for sampling. The reinspection or appeal inspection shall be of the same factors and scope as the original inspection.

(2) For commodities inspected under federal standards, the reinspection and appeal inspection procedure provided in the applicable federal regulations shall apply. For commodities inspected under state standards, the department shall provide a minimum of a reinspection and appeal inspection service. The reinspection shall consist of a full review of all relevant information and a reexamination of the commodity to determine the correctness of the grade assigned or other determination. The reinspection shall be performed by an authorized inspector of the department other than the inspector who performed the original inspection unless no other inspector is available. An appeal inspection shall be performed by a supervisory inspector.

(3) If the grading of any commodity for which federal standards have been fixed and the same adopted as official state standards has not been the subject of a hearing, in accordance with subsection (2) of this section, any interested party who is aggrieved with the grading of such commodity, may, with the approval of the secretary of the United States department of agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located. Such federal grain supervisor shall confer with the department inspectors and any other interested party and shall make such tests as he may deem necessary to determine the correct grade of the commodity in question. Such federal grade certificate shall be prima facie evidence of the correct grade of the commodity in any court in the state of Washington.

Sec. 52. Section 50, chapter 124, Laws of 1963 as amended by section 25, chapter 297, Laws of 1981 and RCW 22.09.830 are each amended to read as follows:

(1) All moneys collected as warehouse license fees, fees for weighing, grading, and inspecting commodities and all other fees collected under the provisions of this chapter, except as provided in subsection (2) of this section, shall be deposited ~~((into))~~ in the grain ~~((and hay))~~ inspection revolving fund, which is hereby established. The state treasurer is the custodian of the revolving fund. Disbursements from the revolving fund shall be on authorization of the director of the department of agriculture. The revolving fund is subject to the allotment procedure provided in chapter 43.88 RCW, but no appropriation is required for disbursements from the fund. ~~((Such))~~ The fund shall be used for all expenses directly incurred by the commodity inspection division ~~((of grain and agricultural chemicals))~~ in carrying out the provisions of this chapter. The department may use so much of such fund not exceeding five percent thereof as the director of agriculture may determine necessary for research and promotional work, including rate studies, relating to wheat and wheat products.

(2) All fees collected for the inspection, grading, and testing of hops shall be deposited into the hop inspection fund, which is hereby established, and shall be retained by the department for the purpose of inspecting, grading, and testing hops. Any moneys in any fund retained by the department on July 1, 1963, and derived from hop inspection and grading shall be deposited to this hop inspection fund. For the purposes of research which would contribute to the development of superior hop varieties and to improve hop production and harvest practices, the department may expend up to twenty percent of the moneys deposited in the hop inspection fund during the fiscal year ending June 30th immediately preceding the year in which such expenditures are to be made. No expenditures shall be made under the provisions of this subsection when the hop inspection fund is, or the director may reasonably anticipate that it will be, reduced below twenty thousand dollars as the result of such expenditure or other necessary expenditures made to carry out the inspection, grading, and testing of hops.

Sec. 53. Section 15.24.010, chapter 11, Laws of 1961 as last amended by section 22, chapter 240, Laws of 1967 and RCW 15.24.010 are each amended to read as follows:

As used in this chapter:

(1) "Commission" means the Washington state apple advertising commission;

(2) "Ship" means to load apples into a conveyance for transport, except apples being moved from the orchard where grown to a packing house or warehouse within the immediate area of production;

(3) "Handler" means any person who ships or initiates a shipping operation, whether for himself or for another;

(4) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;

(5) "Processor" and "processing plant" means every person to whom and every place to which apples are delivered for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(6) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(7) "Fresh apples" means all apples other than processing apples;

(8) "Director" means the director of the department of agriculture or his duly authorized representative;

(9) "Grower district No. 1" includes the counties of Chelan, Okanogan, and Douglas;

(10) "Grower district No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;

(11) "Grower district No. 3" includes all counties in the state not included in the first and second districts; ~~((and))~~

(12) "Dealer district No. 1" includes the area of the state north of interstate 90;

(13) "Dealer district No. 2" includes the area of the state south of interstate 90; and

(14) "Executive officer" includes, but is not limited to, the principal management executive, sales manager, general manager, or other executive employee of similar responsibility and authority.

Sec. 54. Section 15.24.020, chapter 11, Laws of 1961 as last amended by section 23, chapter 240, Laws of 1967 and RCW 15.24.020 are each amended to read as follows:

There is hereby created a Washington state apple advertising commission to be thus known and designated. The commission shall be composed of nine practical apple producers and four practical apple dealers. The director shall be an ex officio member of the commission without vote.

The nine producer members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, currently operates a commercial producing orchard in the district represented, and has during that period derived a substantial portion of his income therefrom: PROVIDED, That he may own and operate an apple warehouse and pack and store apples grown by others, without being disqualified, so long as a substantial quantity of the apples handled in such warehouse are grown by him; and he may sell apples grown by himself and others so long as he does not sell a larger quantity of apples grown by others than those grown by himself. The four dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state, and are engaged as apple dealers in the district represented. The qualifications of members of the commission as herein set forth must continue during their term of office.

Sec. 55. Section 15.24.030, chapter 11, Laws of 1961 as last amended by section 24, chapter 240, Laws of 1967 and RCW 15.24.030 are each amended to read as follows:

Thirteen persons with the qualifications stated in RCW 15.24.020 (~~as amended in section 23, chapter 240, Laws of 1967~~) shall be elected members of said commission. Four of the grower members, being positions one, two, three and four, shall be from grower district No. 1, at least one of whom shall be a resident of and engaged in growing and producing apples in Okanogan county; four of the grower members, being positions five, six,

seven and eight, from grower district No. 2; and one grower member, being position nine from grower district No. 3. Two of the dealer members, being positions ten and eleven, shall be from dealer district No. 1; and two of the dealer members, being positions twelve and thirteen, shall be from dealer district No. 2.

The commission shall have authority in its discretion to establish by regulation one or more subdivisions of grower district No. 1 and one or more subdivisions of grower district No. 2; provided that each of the same includes a substantial apple producing district or districts, and provided the same does not result in an unfair or unequitable voting situation or an unfair or unequitable representation of apple growers on said commission. In such event each of said subdivisions shall be entitled to be represented by one of the said grower members of the commission, who shall be elected by vote of the qualified apple growers in said subdivision of said district, and who shall be a resident of and engaged in growing and producing apples in said subdivision.

The regular term of office of the members of the commission shall be three years from March 1 following their election and until their successors are elected and qualified. The commission shall hold its annual meeting during the month of March each year for the purpose of electing officers and the transaction of other business and shall hold such other meetings during the year as it shall determine.

Sec. 56. Section 15.24.040, chapter 11, Laws of 1961 as last amended by section 25, chapter 240, Laws of 1967 and RCW 15.24.040 are each amended to read as follows:

The director shall call a meeting of apple growers (~~(in each of the three districts)~~), and meetings of apple dealers in dealer district No. 1 and dealer district No. 2 for the purpose of nominating their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. Said meetings shall be held not later than February 15th of each year and insofar as practicable, the said meetings of the growers shall be held at the same time and place as the annual (~~(state and district)~~) meeting(~~(s)~~) of the Washington state horticultural association (~~(and its affiliated clubs)~~), or the annual meeting of any other producer organization which represents a majority of the state's apple producers, as determined by the commission, but not while the same (~~(are)~~) is in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: PROVIDED, That nonreceipt of the notice by any interested person shall not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the said respective meetings. Nominations may also be made within five days after any such meeting by written petition filed in the Wenatchee office of the commission, signed by not less than five apple growers or dealers, as the case

may be, residing within the district or within the subdivision if the nomination is made from a subdivision.

The members of the commission shall be elected by secret mail ballot under the supervision of the director: PROVIDED, That in any case where there is but one nomination for a position, a secret mail ballot shall not be conducted or required and the director shall certify the candidate to be elected. Grower members of the commission shall be elected by a majority of the votes cast by the apple growers in the respective districts or subdivisions thereof, as the case may be, each grower who operates a commercial producing apple orchard within the district or subdivision being represented, whether an individual proprietor, partnership, joint venture, or corporation, being entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he is also a member of a partnership or corporation which votes for other apple acreage. Dealer members of the commission shall be elected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being 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.

NEW SECTION. Sec. 57. A new section is added to chapter 15.58 RCW to read as follows:

The director of agriculture may adopt rules to allow the department of agriculture to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons licensed under chapter 15.58 RCW or regulated under chapter 17.21 RCW. For purposes of this section, the department may become licensed as a hazardous waste generator. The department may set fees to cover expenses in connection with pesticide waste received from persons licensed under chapter 15.58 RCW.

NEW SECTION. Sec. 58. The following acts or parts of acts are each repealed:

- (1) Section 15.32.170, chapter 11, Laws of 1961 and RCW 15.32.170;
- (2) Section 15.32.180, chapter 11, Laws of 1961 and RCW 15.32.180;
- (3) Section 15.32.190, chapter 11, Laws of 1961 and RCW 15.32.190;
- (4) Section 15.32.200, chapter 11, Laws of 1961 and RCW 15.32.200;
- (5) Section 15.32.230, chapter 11, Laws of 1961 and RCW 15.32.230;
- (6) Section 15.32.240, chapter 11, Laws of 1961 and RCW 15.32.240;
- (7) Section 15.32.270, chapter 11, Laws of 1961 and RCW 15.32.270;
- (8) Section 15.32.280, chapter 11, Laws of 1961 and RCW 15.32.280;
- (9) Section 15.32.300, chapter 11, Laws of 1961 and RCW 15.32.300;
- (10) Section 15.32.310, chapter 11, Laws of 1961 and RCW 15.32-

.310;

(11) Section 15.32.390, chapter 11, Laws of 1961, section 5, chapter 58, Laws of 1963 and RCW 15.32.390;

(12) Section 15.32.400, chapter 11, Laws of 1961 and RCW 15.32-.400;

(13) Section 15.32.470, chapter 11, Laws of 1961 and RCW 15.32-.470;

(14) Section 15.32.480, chapter 11, Laws of 1961 and RCW 15.32-.480;

(15) Section 15.32.690, chapter 11, Laws of 1961 and RCW 15.32-.690;

(16) Section 15.32.692, chapter 11, Laws of 1961 and RCW 15.32-.692;

(17) Section 15.32.694, chapter 11, Laws of 1961 and RCW 15.32-.694;

(18) Section 15.32.698, chapter 11, Laws of 1961 and RCW 15.32-.698;

(19) Section 15.36.130, chapter 11, Laws of 1961, section 21, chapter 141, Laws of 1979 and RCW 15.36.130;

(20) Section 15.36.290, chapter 11, Laws of 1961, section 4, chapter 297, Laws of 1981 and RCW 15.36.290;

(21) Section 15.36.310, chapter 11, Laws of 1961 and RCW 15.36-.310;

(22) Section 15.36.450, chapter 11, Laws of 1961 and RCW 15.36-.450;

(23) Section 15.36.560, chapter 11, Laws of 1961, section 24, chapter 141, Laws of 1979 and RCW 15.36.560; and

(24) Section 15.36.570, chapter 11, Laws of 1961 and RCW 15.36-.570.

NEW SECTION. Sec. 59. Section 4, chapter 247, Laws of 1985 and RCW 15.86.040 are each repealed.

NEW SECTION. Sec. 60. Section 7, chapter 305, Laws of 1983 and RCW 20.01.600 are each repealed.

NEW SECTION. Sec. 61. Section 21, chapter 124, Laws of 1963, section 18, chapter 238, Laws of 1979 ex. sess., section 38, chapter 305, Laws of 1983 and RCW 22.09.700 are each repealed.

NEW SECTION. Sec. 62. A new section is added to chapter 1.20 RCW to read as follows:

Agropyron spicatum, the species of natural grass commonly called "bluebunch wheatgrass," is hereby designated as the official grass of the state of Washington.

NEW SECTION. Sec. 63. A new section is added to chapter 1.20 RCW to read as follows:

The official fruit of the state of Washington is the apple.

NEW SECTION. Sec. 64. The county legislative authority of any county of the third class located east of the cascade crest and bordering on the southern side of the Snake river shall have the power to designate by an order made and published, as provided in section 66 of this act, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and/or the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area.

NEW SECTION. Sec. 65. When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in sections 64 through 68 of this act.

NEW SECTION. Sec. 66. Within thirty days after the conclusion of any such hearing the county legislative authority shall make an order describing the apiary coordinated areas within the county as to the maximum allowable number of hives per site, the minimum allowable distance between sites, and the minimum required setback from property lines. The order shall be entered upon the records of the county and published in a newspaper having general circulation in the county at least once each week for four successive weeks.

NEW SECTION. Sec. 67. Any person, or any agent, employee, or representative of a corporation, violating any of the provisions of such order after the order has been published or posted as provided in section 66 of this act, or violating any provision of this chapter, shall be guilty of a misdemeanor.

NEW SECTION. Sec. 68. When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in section 65 of this act. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hearing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks.

NEW SECTION. Sec. 69. Sections 64 through 68 of this act are each added to chapter 15.60 RCW.

NEW SECTION. Sec. 70. The purpose of this chapter is to provide uniformity and consistency in the packaging of agricultural, vegetable, and flower seeds so as to facilitate the interstate movement of seed, to protect consumers, and to provide a dispute-resolution process. The department of agriculture is hereby authorized to adopt rules in accordance with chapter 34.05 RCW to implement this chapter. To the extent possible, the department shall seek to incorporate into the rules provisions from the recommended uniform state seed law in order to attain consistency with other states.

NEW SECTION. Sec. 71. (1) The department shall establish by rule standards and label requirements for the following seed types: Agricultural seed (including grass, lawn, and turf seed), flower seed, and vegetable seed.

(2) The standards and label requirements shall be divided into the following categories:

(a) Percentage of kind and variety of each seed component present; and

(b) Percentage of weed seed (restricted and common).

(3) The standards and label requirements developed by the department shall at a minimum include:

(a) Amount of inert material;

(b) Specifics and warning for treated seed;

(c) Specifics for coated seed;

(d) Specifics and duration for inoculated seed;

(e) Specifics for seed which is below standard;

(f) Specifics for seed contained in containers, mats, tapes, or other planting devices;

(g) Specifics for seed sold in bulk;

(h) Specifics for hybrid seed; and

(i) Specifics for seed mixtures.

NEW SECTION. Sec. 72. In addition to the requirements contained in section 71 of this act, each seed label shall contain the following:

(1) The name and address of the person who labeled the seed and who sells, offers, or exposes the seed for sale within the state;

(2) Lot number identification;

(3) Seed origin;

(4) Germination rate and date of germination test or the year for which the seed was packaged for sale.

NEW SECTION. Sec. 73. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(2) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

(3) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) "Bulk seed" means seed distributed in a nonpackage form.

(5) "Certifying agency" means (a) an agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (b) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(7) "Dealer" means any person who distributes.

(8) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(9) "Director" means the director of the department of agriculture.

(10) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(11) "Flower seeds" includes seeds of herbaceous plants grown from their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(12) The terms "foundation seed," "registered seed," and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department.

(13) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(14) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(15) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent generations from such crosses shall not

be regarded as hybrids. Hybrid designations shall be treated as variety names.

(16) "Inert matter" means all matter not seed, that includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule.

(17) "Kind" means one or more related species or subspecies that singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(18) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this chapter, and it may include any other information relating to the labeled seed.

(19) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

(20) "Lot number" shall identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a conditioner's or dealer's code.

(21) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(22) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(23) "Official sample" means any sample of seed taken and designated as official by the department.

(24) "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

(25) "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive, and/or difficult to control by cultural or chemical practices.

(26) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(27) "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result is expressed as a whole number.

(28) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(29) "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices.

(30) "Retail" means to distribute to the ultimate consumer.

(31) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(32) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(33) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(34) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(35) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(36) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(37) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(38) "Vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(39) "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department.

(40) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(41) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process.

NEW SECTION. Sec. 74. Every person who fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than two thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense.

NEW SECTION. Sec. 75. (1) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this state unless the test to determine the percentage of germination is completed within a fifteen-month period prior to sale, provided that germination tests for seed packaged in hermetically sealed containers shall be completed within thirty-six months prior to sale. The department shall establish rules for allowing retesting.

(2) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state not labeled in accordance with this chapter or having false or misleading labeling or for which there has been false or misleading advertisement.

(3) It is unlawful to represent seed to be certified unless it has been determined by a seed-certifying agency that such seed conformed to standards of purity and identity or variety in compliance with the rules adopted under this chapter.

(4) It is unlawful to attach any tags of similar size and format to the official certification tag that could be mistaken for the official certification tag.

(5) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state labeled with a variety name but not certified by an official seed-certifying agency when it is a variety for which a United States certification of plant variety protection under the plant variety protection act (7 U.S.C. Sec. 2321 et seq.) specifies sale only as a class of certified seed: PROVIDED, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(6) It is unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label required by this chapter or its implementing rules or to alter or substitute seed in a manner that may defeat the purpose of this chapter;

(b) To disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(c) To hinder or obstruct in any way, any authorized person in the performance of his or her duties under this chapter;

(d) To fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby;

(e) To use the word "trace" as a substitute for any statement that is required; and

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(7) It is unlawful for any person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seed within this state that consists of or contains: (a) Prohibited noxious weed seeds; or (b) restricted noxious weed seeds in excess of the number declared on the label.

NEW SECTION. Sec. 76. (1) The provisions of sections 71 through 75 of this act do not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage by, or being transported or consigned to a conditioning establishment for conditioning if the invoice or labeling accompanying the shipment of such seed bears the statement "seeds for conditioning" and if any labeling or other representation that may be made with respect to the unconditioned seed is subject to this chapter;

(c) To any carrier with respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if the carrier is not engaged in producing, conditioning, or marketing seeds subject to this chapter; or

(d) Seed stored or transported by the grower of the seed.

(2) No person may be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter that were incorrectly labeled or represented as to kind, species, variety, or type, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

NEW SECTION. Sec. 77. (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under sections 71 through 80 of this act.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04 RCW, and sections 78 through 81 of this act will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under sections 78 through 81 of this act. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court.

NEW SECTION. Sec. 78. The director shall adopt rules, in conformance with chapter 34.05 RCW, providing for mandatory arbitration under this chapter and governing the proceedings of the arbitration committee. The decisions and proceedings of the arbitration committee shall not be subject to chapter 34.05 RCW. The department shall establish by rule a filing fee to cover the administrative costs of processing a complaint and submitting it to the arbitration committee.

NEW SECTION. Sec. 79. (1) To submit a claim to mandatory arbitration, the buyer shall make and file with the department a sworn complaint against the dealer alleging the damages sustained. The buyer shall send a copy of the complaint to the dealer by United States registered mail. The filing fee shall be submitted to the department with each complaint filed and may be recovered from the dealer or other seller upon recommendations of the arbitration committee.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the department, by United States registered mail, the answer to the complaint. Failure of a dealer to file a timely answer to the complaint shall be so documented for the record.

(3) The director shall, upon receipt of the answer, refer the complaint and answer to the arbitration committee for investigation, findings, and recommendations.

(4) Any dealer may request an investigation by the arbitration committee for any dispute involving seed which may not otherwise be before the arbitration committee.

NEW SECTION. Sec. 80. (1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within

sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee chairman may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties.

NEW SECTION. Sec. 81. (1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and four members appointed by the director. The director shall make appointments so that the committee is balanced and does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the chairman may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary.

NEW SECTION. Sec. 82. A new section is added to chapter 15.04 RCW to read as follows:

(1) The director shall conduct a study to recommend a resolution of the agricultural products clear title issue and to accomplish the following goals:

(a) Assure that any resolution of the issues involved does not require further expenditures by the state of Washington;

(b) Assure that any resolution, so far as possible, serves the respective interests of holders of security interests in crops, of buyers of farm products, and of creditors;

(c) Formulate such recommendations to the president of the United States and the congress of the United States as may be deemed useful to resolve these issues; and

(d) Provide adequate opportunity for public comment on the progress of the study and the formulation of its recommendations.

(2) The director shall report his or her findings and recommendations to the legislature at the regular session held in 1990 after which the study shall be terminated.

NEW SECTION. Sec. 83. The sum of forty thousand dollars or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the department of agriculture solely to carry out the purposes of section 82 of this act.

Sec. 84. Section 1, chapter 83, Laws of 1961 as amended by section 19, chapter 3, Laws of 1983 and RCW 15.14.010 are each amended to read as follows:

For the purpose of this chapter:

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

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Plant propagating stock" hereinafter referred to as "planting stock" includes any propagating materials used for the production or processing of horticultural, floricultural, viticultural or olericultural plants for the purpose of being sold, offered for sale or exposed for sale for planting or reproduction purposes: PROVIDED, That it shall not include agricultural and vegetable seeds as defined in (~~RCW 15.49.050 and 15.49.060~~) section 73 of this act.

(6) "Certified plant stock" means the progeny of foundation, registered or certified plant stock if designated foundation and plant propagating materials that are so handled as to maintain satisfactory genetic identity and purity and have met certification standards required by this chapter and have been approved and certified by the director.

(7) "Foundation planting stock" means plant stock propagating materials that are increased from breeder or designated plant stock and are so handled as to most nearly maintain specific genetic identity and purity. Foundation plant stock, established by designation shall be that plant stock so designated by the director.

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or in certain cases the sponsoring plant breeder or institution, which may include the department and which provides the source of the foundation plant stock.

(9) "Registered planting stock" means the progeny of foundation or registered planting stock or plant propagating material that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the director. This class of planting stock shall be of a quality suitable for the production of certified planting stock.

NEW SECTION. Sec. 85. The following acts or parts of acts are each repealed:

- (1) Section 1, chapter 63, Laws of 1969 and RCW 15.49.010;
- (2) Section 2, chapter 63, Laws of 1969 and RCW 15.49.020;
- (3) Section 3, chapter 63, Laws of 1969 and RCW 15.49.030;
- (4) Section 23, chapter 182, Laws of 1982 and RCW 15.49.035;
- (5) Section 4, chapter 63, Laws of 1969 and RCW 15.49.040;
- (6) Section 5, chapter 63, Laws of 1969 and RCW 15.49.050;
- (7) Section 6, chapter 63, Laws of 1969 and RCW 15.49.060;
- (8) Section 7, chapter 63, Laws of 1969 and RCW 15.49.070;
- (9) Section 8, chapter 63, Laws of 1969 and RCW 15.49.080;

- (10) Section 9, chapter 63, Laws of 1969 and RCW 15.49.090;
- (11) Section 10, chapter 63, Laws of 1969 and RCW 15.49.100;
- (12) Section 11, chapter 63, Laws of 1969 and RCW 15.49.110;
- (13) Section 12, chapter 63, Laws of 1969 and RCW 15.49.120;
- (14) Section 13, chapter 63, Laws of 1969 and RCW 15.49.130;
- (15) Section 14, chapter 63, Laws of 1969 and RCW 15.49.140;
- (16) Section 15, chapter 63, Laws of 1969 and RCW 15.49.150;
- (17) Section 16, chapter 63, Laws of 1969 and RCW 15.49.160;
- (18) Section 17, chapter 63, Laws of 1969 and RCW 15.49.170;
- (19) Section 18, chapter 63, Laws of 1969 and RCW 15.49.180;
- (20) Section 19, chapter 63, Laws of 1969 and RCW 15.49.190;
- (21) Section 20, chapter 63, Laws of 1969 and RCW 15.49.200;
- (22) Section 21, chapter 63, Laws of 1969 and RCW 15.49.210;
- (23) Section 22, chapter 63, Laws of 1969, section 6, chapter 297, Laws of 1981 and RCW 15.49.220;
- (24) Section 23, chapter 63, Laws of 1969 and RCW 15.49.230;
- (25) Section 24, chapter 63, Laws of 1969 and RCW 15.49.240;
- (26) Section 25, chapter 63, Laws of 1969, section 2, chapter 26, Laws of 1977 ex. sess. and RCW 15.49.250;
- (27) Section 26, chapter 63, Laws of 1969 and RCW 15.49.260;
- (28) Section 27, chapter 63, Laws of 1969 and RCW 15.49.270;
- (29) Section 28, chapter 63, Laws of 1969, section 7, chapter 297, Laws of 1981 and RCW 15.49.280;
- (30) Section 29, chapter 63, Laws of 1969, section 8, chapter 297, Laws of 1981 and RCW 15.49.290;
- (31) Section 30, chapter 63, Laws of 1969 and RCW 15.49.300;
- (32) Section 32, chapter 63, Laws of 1969, section 10, chapter 297, Laws of 1981 and RCW 15.49.320;
- (33) Section 34, chapter 63, Laws of 1969, section 3, chapter 26, Laws of 1977 ex. sess., section 12, chapter 297, Laws of 1981 and RCW 15.49-.340;
- (34) Section 43, chapter 63, Laws of 1969 and RCW 15.49.430;
- (35) Section 44, chapter 63, Laws of 1969 and RCW 15.49.440; and
- (36) Section 45, chapter 63, Laws of 1969 and RCW 15.49.450.

NEW SECTION. Sec. 86. Sections 70 through 81 of this act are each added to chapter 15.49 RCW.

NEW SECTION. Sec. 87. Section 30 of this act shall take effect on January 1, 1991.

NEW SECTION. Sec. 88. Sections 70 through 81 and 84 through 86 of this act shall take effect January 1, 1990.

NEW SECTION. Sec. 89. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 23, 1989.

Passed the House April 22, 1989.

Approved by the Governor May 12, 1989.

Filed in Office of Secretary of State May 12, 1989.

CHAPTER 355

[Substitute House Bill No. 2000]

AGRICULTURAL MARKETING—FAIR PRACTICES

AN ACT Relating to agricultural marketing; adding a new chapter to Title 15 RCW; prescribing penalties; making an appropriation; and declaring an emergency.

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

NEW SECTION. Sec. 1. Agricultural products are produced by many individual farmers and ranchers located throughout the state. The efficient production and marketing of agricultural products by farmers, ranchers, and handlers is of vital concern to the welfare and general economy of the state. It is the purpose of this chapter to establish standards of fair practices required of handlers, producers, and associations of producers, with respect to certain agricultural commodities, to establish the mutual obligation of handlers and accredited associations of producers to negotiate relative to the production or marketing of these agricultural commodities.

It is the intent of the legislature that a workable process be developed through which a fair price and other contract terms can be arrived at through negotiations between processors of agricultural products and an accredited association of producers, and that in developing rules and administering this chapter the director of agriculture shall recognize this intent.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiation agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means sweet corn and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the federal agriculture marketing act of 1929 or in section 1 of 42 Stat. 388.

(5) "Director" means the director of the department of agriculture.