

FROM THE CURRENT SCHOOL FUND.

Vocational education.

FOR THE STATE BOARD FOR VOCATIONAL EDUCATION:

Deficiency, Salary, Wages and Operations (To Reimburse the General Fund Account Emergency approved February 9, 1939)	\$4,800.00
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Effective immediately.

SEC. 3. This act is necessary for the immediate preservation of public peace, health and safety, for the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1939.

Passed the Senate March 9, 1939.

Approved by the Governor March 20, 1939, with the exception of certain items, which are vetoed.

CHAPTER 224.

[H. B. 541.]

PREVENTING UNFAIR TRADE PRACTICES IN APPLE INDUSTRY.

AN ACT relating to the apple industry; providing the public policy of this state; declaring and prohibiting unfair trade practices and preventing frauds; defining terms; providing for certain orders and marketing agreements and the terms thereof; prescribing the powers and duties of the Director of Agriculture and the making of rules and regulations; establishing and delineating the powers and duties of the Washington apple marketing board; providing for the enforcement of this act; prescribing penalties; and declaring an emergency.

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

Apple industry affected with a public interest.

SECTION 1. The present acute economic emergency in the apple industry is, in part, the consequence of the severe and increasing disparity between the prices for which apples can be sold and the increased cost of producing them, which disparity has largely destroyed the purchasing power of

apple growers for industrial products, has broken down the orderly exchange of commodities in apple producing areas, and has seriously impaired those agricultural assets now engaged in producing apples which support the state credit structure; it is therefore declared that these conditions in the basic agricultural industry of producing apples have affected the apple industry with a public interest, have burdened and obstructed commerce in such commodities, and render imperative the immediate enactment of this act.

SEC. 2. It is hereby declared to be the policy of the Legislature:

Legislative
policy.

(a) In the exercise of the public powers of this state, to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of this state;

(b) To foster, encourage and aid the business of producing, handling, selling and distributing the apple crop of this state and the expanding and protection of its market, because such apple crop comprises one of the major agricultural commodities of this state;

(c) To assure the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and to increase wages for agricultural labor, which can be done only by stabilizing the apple industry, enlarging its markets, and increasing the production of apples;

(d) To establish and maintain such balance between the production and consumption of apples and the marketing thereof as will re-establish net prices to producers at a level that will give apples and the apple industry a net purchasing power with respect to articles that are purchased by the producers of apples, equivalent to the net purchasing power of

apples in the base period from August, 1909, to April, 1917;

(e) To approach such equality of purchasing power by a gradual correction of the present inequalities in the apple industry at as rapid a rate as is deemed feasible in view of the current consumptive demand thereof in domestic markets and to increase such consumptive demand and to prevent over-production.

Unfair trade
practices
declared.

SEC. 3. The following are declared to be unfair trade practices and are prohibited:

(a) Selling, contracting to sell, or offering or advertising for sale any apples which are not owned by or mortgaged to the seller or offerer, or which are not included within or covered by a written exclusive agency or power of authority to sell the same, naming said seller or offerer as the agent therein;

(b) Purchasing or dealing in any inferior fruit received from the producer thereof, except such fruit as is handled for the producer upon consignment, the dealer or handler remitting in full all proceeds received from said fruit less only a handling commission of not to exceed ten per cent (10%) of the f. o. b. gross proceeds and less actual expenses properly allocated to such inferior fruit;

(c) Shipping any apples to apple markets except on a definite contract, or to a named consignee for handling on consignment, or to a purchaser on a purchase contract theretofore agreed upon; nothing herein shall apply to shipments to an established apple auction;

(d) Shipping or accepting for shipment or transportation to any point outside the area of production of such fruit, any inferior apples, by any means whatsoever, unless such apples are sorted, graded and packed in an approved container, excepting to approved processors.

The designation of the above named unfair practices shall not be construed to exclude any other practices from being so held to be unfair trade practices.

SEC. 4. As used in this act:

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| | Definitions. |
| (a) The term "person" shall mean an individual, firm, corporation, trust, association, co-operative or any other business unit, device or arrangement; | "Person." |
| (b) The terms "handler" or "handle" shall mean any person who engages in, or, the act or operation of shipping, buying, warehousing, storing, preparing for market, acting as sales or purchasing agent, dealer, broker or factor, or distributing agricultural commodities for others or for profit, hire or compensation; | "Handler." |
| (c) The term "dealer" shall mean and include any person who handles, ships, buys or sells apples, or who acts as sales or purchasing agent, broker or factor of apples; | "Dealer." |
| (d) The term "processor" shall include every person to whom apples are delivered for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking or for use in producing or manufacturing a product or manufactured article; | "Processor." |
| (e) "District No. 1" or "first district" shall mean and include the counties of Chelan, Okanogan, Grant and Douglas; | "First district." |
| (f) "District No. 2" or "second district" shall mean and include the counties of Kittitas, Yakima, Benton, Franklin and Klickitat; | "Second district." |
| (g) "District No. 3" or "third district" shall comprise all of the State of Washington not included in the first and second districts; | "Third district." |
| (h) The word "Governor" shall mean the Governor of the State of Washington; | "Governor." |
| (i) The word "director" shall mean the Director of Agriculture of the State of Washington, or his designated agent; | "Director." |

"Marketing agreement."

(j) The words "marketing agreement" shall mean any marketing agreement approved, prescribed or entered into by the director pursuant to the provisions of this act and any rule, regulation or order which the director may adopt, prescribe or promulgate in conformity with the provisions and under the authority of this act;

"Board."

(k) The term "board" shall mean the Washington apple marketing board;

"Inferior fruit."

(l) The term "inferior fruit" shall mean all apples of a grade lower or poorer than "C" grade.

Marketing agreements entered into by Director.

SEC. 5. In order to effectuate the declared policy of this act, the director shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with handlers, producers, associations of producers and others engaged in the producing or handling of apples. The making of any such agreement shall not be held to be in violation of any monopoly or anti-trust law of this state and any such agreement shall be deemed to be lawful: *Provided*, That no such agreement shall remain in force after the termination of this act.

Orders regulating handling of apples.

SEC. 6. The director shall, subject to the provisions of this act, issue and from time to time amend orders applicable to handlers, producers, associations of producers and others engaged in the producing and handling of apples. Such orders shall regulate the producing and handling of apples in the manner hereinafter provided in this act.

Notice and hearing on proposed order.

SEC. 7. Whenever the director has reason to believe that the issuance of an order will tend to effectuate the declared policy of this act, he shall give due notice of and an opportunity for a hearing upon a proposed order.

SEC. 8. After such notice and opportunity for hearing the director shall issue an order if, upon the evidence introduced at such hearing, he finds, and

sets forth in such order, in addition to such other findings as may be specifically required by this act, that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this act.

Findings.

SEC. 9. Orders issued pursuant to this act shall contain one or more of the following terms and conditions and, no others, except as provided herein:

Contents and conditions.

(a) Limiting, or providing bases for the limitation of, the total quantity of inferior apples of any grade or size marketed or transported during any specified period or periods;

(b) Allotting, or providing methods for allotting, the amount of apples or any grade, size or quality thereof which each handler may purchase from or handle on behalf of any and all producers thereof during any specified period or periods, under a uniform rule based upon the amount sold by the producers of apples in such prior period as the director determines to be representative, or upon the current quantities of apples available for sale by such producers, or both, to the end that the total quantities thereof to be purchased or handled during any specified period or periods shall be apportioned equitably among the producers thereof;

(c) Allotting, or providing methods for allotting, the amount of any apples, or any grade, size or quality thereof which each handler may market or transport to any market under a uniform rule based upon the amount which each such handler has available for current shipment, or upon the amount shipped by each such handler in such period prior thereto as the director determines to be representative, or both, to the end that the total quantity of apples, or any grade, size or quality thereof, to be marketed in or transported, during any specified period or periods, shall be equitably apportioned among all of the handlers thereof.

SEC. 10. Orders may also contain one or more of the following terms and conditions:

(a) Prohibiting unfair methods of competition and unfair trade practices in the handling of apples; and

(b) Providing other terms incidental to and not inconsistent with the terms and conditions specified herein and necessary to effectuate the other provisions of such order.

Marketing
board.

Qualifica-
tions.

SEC. 11. The order or orders provided for in this act shall also provide for the establishment and operation of the Washington Apple Marketing Board to be thus known and designated. The board shall consist of seven (7) practical apple producers and four (4) practical apple handlers. The director, and the Supervisor of Horticulture of the State of Washington shall be ex-officio members of the board without vote. The seven (7) producer members shall be citizens and residents of this state, over the age of twenty-five (25) years, each of whom is and has been actually engaged in growing and producing apples within the State of Washington for a period of five (5) years and has derived the major portion of his income therefrom during said period and shall not be engaged in business, directly or indirectly, as a dealer. The four (4) handlers shall be persons who either individually or as executive officers of a corporation, firm, partnership, association or co-operative organization are and have been actually engaged in handling apples within the State of Washington and are citizens and residents of this state. The qualifications of the members of the board as herein set forth must continue during their terms of office. The regular term of office of the members of the board shall be three years from the date of appointment and until their successors are appointed and qualified. The term of the first members shall terminate on July 1, 1942. The Governor shall, im-

mediately after this act becomes effective, appoint eleven (11) men with the qualifications stated above to be members of said board; three of the grower members shall be appointed from district No. 1; three from district No. 2 and one from district No. 3. Two of the handler members shall be appointed from district No. 1 and two from district No. 2. Due consideration shall be given to men who in the past have been connected with the various attempts to foster and establish co-operative apple marketing, and the Governor shall consider any petition or vote taken by growers recommending individuals for appointment. A majority of the regular members shall constitute a quorum for the transaction of all business and the carrying out of the duties of such board. No member of the board shall receive any salary or other compensation, but each shall receive the sum of ten dollars (\$10.00) per day for each day spent in actual performance of his duties together with traveling expenses at the rate allowed by law to state employees.

SEC. 12. The powers and duties of the board may be defined in any order but shall include only the powers: Powers and
duties.

(1) To administer such order in accordance with its terms and provisions;

(2) To make rules and regulations to effectuate the terms and provisions of such order;

(3) To receive, investigate and report to the director complaints of the violation of such order; and

(4) To recommend to the director amendments to such order. No person acting as a member of the board shall be deemed to be acting in an official capacity, in the meaning of section 26 of this act, unless such person receives compensation for his personal services from funds of this state.

SEC. 13. Except as provided in section 14 of this act, no order issued pursuant hereto shall become ef-

Orders not effective until marketing agreement signed by handlers.

fective until the handlers, excluding co-operative associations of producers who are not engaged in processing, distributing or shipping apples, of not less than fifty per cent (50%) of the volume of apples produced or marketed within this state have signed a marketing agreement, entered into pursuant to section 5 of this act, which regulates the handling of such commodity or product in the same manner as such order: *Provided*, That no order issued pursuant to this section shall be effective unless the director determines that the issuance of such order is approved or favored:

(a) By at least two-thirds ($\frac{2}{3}$) of the producers who, during the representative period determined by the director, have been engaged in this state in the production for market of apples or who, during such representative period, have been engaged in the production of apples for sale in this state.

Refusal to sign agreement.

SEC. 14. Any order issued pursuant to this act shall become effective in the event that, notwithstanding the refusal or failure of handlers, excluding co-operative associations of producers which associations are not engaged in processing, distributing or shipping apples, of more than fifty per cent (50%) of the volume of apples produced or marketed within this state to sign a marketing agreement relating to apples, on which a hearing has been held, the director, with the approval of the Governor, determines:

(a) That the refusal or failure to sign a marketing agreement, upon which a hearing has been held, by the handlers, excluding co-operative associations of producers which associations are not engaged in processing, distributing or shipping apples, of more than fifty per cent (50%) of the volume of apples which are produced or marketed within this state tends to prevent the effectuation of the declared policy of this act with respect to apples; and

(b) That the issuance of such order is the only practical means of advancing the interests of apple growers and the apple industry pursuant to the policy declared in this act, and is approved or favored:

(1) By at least two-thirds ($\frac{2}{3}$) of the producers of apples who, during a representative period determined by the director, have been engaged, within this state, in the production for market of apples or who, during such representative period, have been engaged in the production of apples for sale within this state.

SEC. 15. No order shall be issued under this act unless it regulates the handling or producing of apples in the same manner as, and is made applicable only to persons in the respective classes of industrial or agricultural activity specified in, a marketing agreement upon which a hearing has been held. No order or marketing agreement issued under this act shall contain any provision prohibiting, regulating or restricting the advertising of apples.

Advertise-
ment of
apples.

SEC. 16. Whenever, pursuant to the provisions of this act, the director is required to determine the approval or disapproval of the producers or handlers of apples with respect to the issuance of any order or any terms or conditions thereof, the director shall consider the approval or disapproval of any co-operative association of producers, bona fide engaged in processing, distributing or shipping apples, as the approval or disapproval of a handler. The approval or disapproval of no other co-operative association of producers shall be considered by the director.

Approval or
disapproval
of
cooperative
association of
producers,
to be
considered
by director.

SEC. 17. For the purpose of ascertaining whether the issuance of an order is approved or favored by producers as required under the applicable provisions of this act, the director may conduct a referendum among producers. The requirements of approval or favor under any such provisions shall be held to be complied with if, of the total number of

Referendum.

producers, or the total volume of productions, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision.

Pro rata
share of
expenses.

SEC. 18. Each order issued by the director issued under this act shall provide that each handler or producer subject thereto shall pay to the Washington Apple Marketing Board established under such order, such handler's or producer's pro rata share, as approved by the director, of such expenses as the director may find will necessarily be incurred by the board, during any period specified by him, for the maintenance and functioning of the board, other than expenses incurred in receiving, handling, holding or disposing of any quantity of apples received, handled, held or disposed of by the board for the benefit or account of persons other than handlers or producers subject to such order. The pro rata share of the expenses payable by a co-operative association of producers shall be computed on the basis of the quantity of apples covered by such order which is distributed, processed or shipped by such co-operative association of producers. The board may maintain in its own name, or the names of its members, a suit against any handler or producer subject to an order, for the collection of such handler's or producer's pro rata share of expenses. The several Superior Courts of this state are hereby vested with jurisdiction to entertain such suits.

Action to
collect.

All moneys collected or received shall be expended exclusively to effectuate the purposes and objects of this act.

Board to
appoint
treasurer.

SEC. 19. The board shall appoint a treasurer. All moneys received or collected by the board shall be paid to the treasurer of the board, shall be deposited in such banks as the board may designate and shall be disbursed by order of the board. The trea-

surer shall file with the board a surety bond conditioned for the faithful performance of his duties. None of the provisions of section 1, chapter 133, Laws of 1909 (section 5501, Remington's Revised Statutes) shall be applicable to moneys collected or received under this act.

Surety bond.

SEC. 20. The State of Washington shall not be liable for the acts of said board or its contracts. All persons shall be limited to the funds collected by the board, and no member of the board or any employee or agent thereof shall be liable on the contracts of the board. All salaries, expenses, costs, obligations, and liabilities incurred by said board shall be payable only from the funds collected by the board under this act.

State not liable for acts of board.

Expenses incurred by board.

SEC. 21. (a) The director shall, whenever he finds that any order issued under this act or any provision thereof obstructs or does not tend to effectuate the declared policy of this act, terminate or suspend the operation of such order or such provision thereof.

Termination of order.

(b) The director shall terminate any marketing agreement entered into under section 5 of the act, or any order issued under or pursuant thereto, at the end of the then current marketing period for apples, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers of apples who, during the representative period determined by the director, have been engaged in such production for market, within this state, or who, during such representative period, have been engaged in the production of apples for sale within this state: *Provided*, That such majority has, during such representative period, produced for market more than fifty per cent (50%) of the volume of apples produced for market within this state or has, during such period, produced more than fifty per

Termination of marketing agreement.

cent (50%) of the volume of apples sold in this state but such termination shall be effective only if announced on or before such date, prior to the end of the then current marketing period, as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

Amendments
to orders.

SEC. 22. The provisions of this act applicable to orders shall be applicable to amendments to orders: *Provided*, That a notice of hearing upon a proposed amendment to any order issued pursuant to this act given not less than three (3) days prior to the date fixed for such hearing shall be deemed due notice thereof.

Director may
require
information
from party
to marketing
agreement.

SEC. 23. (a) All parties to any marketing agreement and all producers or handlers subject to an order, shall severally from time to time at the request of the director or the board, or a duly authorized employee of either, furnish him with such information necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this act, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemption from the anti-trust or monopoly law. Such information shall be furnished in accordance with forms of reports to be prescribed by the director or the board. For the purpose of ascertaining the correctness of any report made to the director or the board pursuant to this act, 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 the board, or a duly authorized employee of either, is hereby authorized to examine such books, papers,

records, copies of income tax reports, accounts, correspondence, contracts, documents or memoranda as he deems relevant and which are within the control:

(1) Of any such parties to such marketing agreement, or any such handler or producer, from whom such report was requested; or

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

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

(b) All information furnished to or acquired by the director or the board pursuant to this section shall be kept confidential by all officers and employees of the State Department of Agriculture and of the board, and only such information so furnished or required as the director deems relevant shall be disclosed by them and then only in a suit or administrative hearings brought at the direction or upon the request of the director or to which he 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 be deemed to prohibit:

Information
confidential.

(1) The issuance of general statements based upon the reports of parties to a marketing agreement or of producers or handlers subject to an order, which statement does not identify the information furnished by any person.

SEC. 24. The director may appoint such officers and employees as are necessary to carry out the provisions of this act and is hereby authorized, with the approval of the Governor, to make such regulations and rules and promulgate the same, which rules and regulations shall have the force

Appointment
of personnel.

and effect of law as may be necessary to carry out the powers vested in him by this act.

Rules and regulations filed in office of Governor and published in certain newspapers.

SEC. 25. Every rule, regulation or order promulgated by the director or the Washington Apple Marketing Board under the provisions of this act, shall be filed in the office of the Governor and shall be published in a legal newspaper in Wenatchee and Yakima within five (5) days after its promulgation. Such rule, order or regulation shall become effective five (5) days after such filing and publication.

Officers prohibited from speculating in contracts or apples.

SEC. 26. No person shall, while acting in any official capacity in the administration of this act, speculate, directly or indirectly, in apples or in contracts relating thereto or in the stock or membership interest of any association or corporation engaged in handling, processing or disposing of apples.

Penalty for violation of provisions of order.

SEC. 27. Any producer or handler subject to an order issued under this act, or any officer, director, agent or employee of such producer or handler who violates any provision of such order, or any provision calling for payment of a pro rata share of expenses, shall, on conviction, be guilty of a gross misdemeanor and each day during which such violation shall continue shall be deemed a separate violation: *Provided*, That if the court finds that a petition pursuant to section 28 of this act was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this section for such violation as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to section 28.

SEC. 28. (a) Any handler or producer subject to an order may file a written petition with the

director stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with the law and requesting a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition in accordance with regulations made by the director with the approval of the Governor. After such hearing the director shall make a ruling upon the prayer of such petition which shall be final, if in accordance with the law.

Petition for
modification
of order.

(b) The Superior Courts of the State of Washington in any county in which the handler or producer is a resident, or has his principal place of business, are hereby vested with jurisdiction to review such ruling: *Provided*, An appeal for that purpose is filed within twenty (20) days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the director by delivering to him a copy of the notice of appeal and complaint. If the court determines that such ruling is not in accordance with the law, it shall remand such proceedings to the director with directions either:

Court review.

(1) To make such ruling as the court shall determine to be in accordance with the law; or

(2) To take such further proceedings as in its opinion the law requires. The pendency of proceedings instituted pursuant to this section shall not impede, injure or delay the State of Washington or the director from obtaining relief pursuant to section 29 of this act. Any proceedings brought pursuant to such section 29 of this act, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the

same subject matter, instituted pursuant to this section.

Jurisdiction
of Superior
Court.

SEC. 29. The several Superior Courts of the State of Washington are hereby vested with jurisdiction specifically to enforce and to prevent and restrain any person from violating any order, regulation or agreement heretofore or hereafter made, issued or entered into pursuant to this act, in any proceedings now pending or hereafter brought in said court.

Enforcement
of act.

SEC. 30. It shall be the duty of all state and county law enforcement officers and all employees and agents of the Department of Agriculture to enforce this act. It shall also be the duty of the several Prosecuting Attorneys of this state in their respective counties to institute proceedings to enforce the remedies provided for herein, or pursuant to this act. Whenever the director, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler or producer has violated or is violating provisions of any order, agreement or amendment thereto issued pursuant to this title, the director shall have power to institute an investigation and, after due notice to such handler or producer, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the proper Prosecuting Attorney for appropriate action.

Institution of
proceedings.

Remedies.

SEC. 31. The remedies provided for in section 29 shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this act or now or hereafter existing.

Penalty for
violation of
act.

SEC. 32. (a) Any person who shall violate or aid in the violation of any provision of this act shall be guilty of a gross misdemeanor;

(b) Any person who shall violate or aid in the violation of any rule or regulation of the director or of the board shall be guilty of a misdemeanor. Penalty for violation of regulations.

SEC. 33. Any hearing authorized or required under this act shall be conducted by the director or by such officer or employee of the State Department of Agriculture as he may designate for that purpose. Hearings.

SEC. 34. This act shall be liberally construed. If any section, sentence, clause or part of this act is, for any reason, held to be unconstitutional or invalid, such provisions shall not affect the remaining portion of this act. The Legislature hereby declares that it intended to pass each section and sub-section of this act irrespective of every other section or sub-section, sentence, clause or phrase hereof and instructs all courts that such is its intention and such intention shall be given effect. Liberal construction.
Partial invalidity.

SEC. 35. This act is necessary for the immediate preservation of public health, the preservation of the apple industry and of the apple producing areas and for the support of the state government and its existing institutions, and shall take effect immediately. Effective immediately.

Passed the House March 9, 1939.

Passed the Senate March 9, 1939.

Approved by the Governor March 20, 1939.