

No. 665, A.]

[Published August 10, 1957.

**CHAPTER 511**

AN ACT to create 20.005 (2) (a) (line 40m), 20.140 (42m) and 100.32 of the statutes, relating to agricultural marketing orders, granting rule-making authority and making a revolving appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 20.005 (2) (a) (line 40m) of the statutes is created to read:

20.005 (2) (a)		1957-1958	1958-1959
40m. Marketing orders	20.140 (42m)	\$	\$

SECTION 2. 20.140 (42m) of the statutes is created to read:

20.140 (42m) MARKETING ORDERS. As a revolving appropriation, all moneys received under s. 100.32 for the purpose of carrying out said section and making refunds under s. 100.32 (17).

SECTION 3. 100.32 of the statutes is created to read:

100.32 AGRICULTURAL MARKETING ACT. (1) DEFINITIONS.

As used in this section:

(a) "Marketing order" means an order issued by the director pursuant to this section.

(b) "Agricultural commodity" means any distinctive type of fruit or vegetable in its natural state except fruits or vegetables which are marketed for processing.

(c) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity.

(d) "Handler" means any person engaged within this state in the business of distributing or placing in the channels of trade or commerce, an agricultural commodity, or any person engaged as a processor in the business of processing an agricultural commodity who resells a fruit or vegetable in its natural state.

(e) "Affected producer or handler" means any producer or handler of an affected commodity.

(f) "Affected commodity" means any agricultural commodity for which the director has established a list of producers or handlers pursuant to this section.

(2) POLICY. It is declared to be the policy of this state to promote orderly and efficient marketing of agricultural commodities and to prevent economic waste of the agricultural wealth of this state. Unfair methods of competition, lack of uniform grading and classification of agricultural commodities, and the inability of individual producers to obtain present markets or to develop new or larger markets for Wisconsin grown agricultural commodities result in disorderly marketing of such commodities. As a result agricultural producers are prevented from receiving a fair return for the products which they market. Such conditions jeopardize the continued production of an adequate food supply for this and other states, and may result in unemployment with its attendant burdens on the citizens of this state. The production, processing and marketing of agricultural commodities within this state is hereby declared to be affected with a public interest and the provisions of this section are enacted for the purpose of protecting the health, peace, safety and general welfare of the people of this state.

(3) AUTHORITY OF DIRECTOR. The director shall administer and enforce the provisions of this section. In order to effectuate the declared purposes of this section, the director is hereby authorized to issue, administer and enforce marketing orders under this section regulating producer marketing or handling of agricultural commodities within this state.

(4) MARKETING ORDER. Whenever the director has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this section with respect to any agricultural commodity, he shall, either upon his own motion or upon petition signed by 5 per cent or 100 of the affected producers or handlers, whichever is less, give due notice of and an opportunity for a public hearing upon a proposed marketing order or such amendments to such existing marketing order. Prior to the issuance of a notice of public hearing on any proposed marketing order, the director shall establish a list of producers or handlers of the affected commodity or make any such existing list current. The director shall publish a notice to producers or handlers of the commodity to be affected, requiring them to file with the director a report showing the producer's or handler's name, mailing address and the yearly average quantity of the affected commodity produced or handled by him in the 5 years preceding the date of the notice or in such lesser period as the producer or handler has produced or handled the commodity in question. The notice shall be published in such newspaper or newspapers within the affected areas as the director may prescribe and shall be mailed to all affected producers or handlers on record with the director. All reports shall be filed with the director within 20 days from the last date of publication of the notice or within 30 days after the mailing of the notice to the affected producers or handlers, whichever is later. The director shall keep such lists at all times as current as possible and may require information from affected producers or handlers at various times in accordance with rules prescribed by the director. Such producer or handler lists shall be final and conclusive in making determinations relative to the assent of producers or handlers upon the issuance, amendment or termination of a marketing order and in elections under this section. The director shall then notify affected producers or handlers so listed by mail that the public hearing affording opportunity for them to be heard upon the proposed issuance,

amendment or termination of the marketing order will be held at the time and place stated in the notice. Such notice of the hearing shall be given not less than 10 days nor more than 60 days prior to the hearing.

(5) PUBLIC HEARING. At the public hearing the director shall receive evidence and testimony offered in support of or opposition to the proposed issuance of, amendment to or termination of a marketing order, and concerning the terms, conditions, scope and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearing shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base his findings upon the testimony and evidence received at the hearing, together with any other relevant facts available to him from official publications of institutions of recognized standing. The director shall prescribe in his findings such official publications upon which any finding is based.

(6) DECISIONS. (a) The director shall make and publish findings upon every material point controverted at the hearing and required by this section, and upon such other matters and things as he may deem fitting and proper. He shall also issue a decision within 45 days after the close of the hearing based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing or their attorneys of record. The decision shall contain the text in full of any order or amendment or termination of existing order, and may deny or approve the proposal in its entirety or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal, but such decision shall be substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment or termination of any marketing order unless he shall find with respect thereto:

1. That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objectives sought in such marketing order;

2. That the proposed issuance, amendment or termination is in conformity with this section, and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this section;

3. That the interests of consumers of such commodity are protected in that the powers of this section are being exercised only to the extent necessary to attain such objectives.

(b) The director shall deliver or mail copies of the decision to the same parties to whom copies of the findings are required to be sent. If the final decision denies the proposal in its entirety, no further action shall be taken by the director.

(7) ASSENT. After the issuance by the director of the decision approving the issuance, amendment or termination of a marketing order, the director shall determine by a referendum whether the affected producers or handlers assent to the proposed action or not. The director shall within 45 days after issuance of the decision conduct the referendum among the affected producers or handlers, based on the list as provided for in sub. (4), and the affected producers or handlers shall be deemed to have assented to the proposed order if two-thirds by number of those voting, representing 51 per cent or more of the volume of the affected commodity produced or handled by those voting, assent to the proposed order. The determination by volume shall be made on the basis of the volume as determined in the list of affected producers or handlers created under sub. (4). The director shall issue rules establishing procedures for

the conduct of such referendum. The director shall consider the approval or disapproval of any co-operative marketing association authorized by its producer members to act for them in any such referendum as being the approval or disapproval of the producers who are the members of such association of producers. The co-operative shall first determine that a majority of the membership authorize its action concerning the marketing order. If the requisite assent is given, the director shall promulgate the order and shall mail notices of the same to all affected producers or handlers.

(8) **TERMINATION OF ORDERS.** Marketing orders may be terminated in the same manner provided for their issuance, except that the required assent shall be 51 per cent or more by number of those voting, representing 51 per cent or more by volume of the affected commodity produced or handled by those voting; but the director shall suspend or terminate any marketing order whenever he finds, after public hearing duly noticed and held in accordance with this section, that such marketing order is contrary to or does not tend to effectuate the declared purposes of this section. Every marketing order shall terminate 3 years from the date of its issuance or last assent. Within 6 months of the expiration of such 3-year period the director shall conduct a referendum as provided for in sub. (7) to determine whether such marketing order shall remain in effect.

(9) **PUBLIC RECORD.** Each referendum shall be conducted by secret ballot, and the ballots and results shall be a matter of public record and open to inspection.

(10) **MARKETING AGREEMENTS.** In order to effectuate the declared policy of this section, the director shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with distributors, producers and others engaged in the handling of any agricultural commodity, regulating the preparation for marketing and handling of such agricultural commodity. Such marketing agreements shall be binding upon the signatories thereto exclusively. The purposes and provisions of this section relating to marketing orders shall be applicable to marketing agreements, except for the provisions relating to establishing a list of producers or handlers and conducting a referendum.

(11) **REPORTS.** The director shall have the power to require handlers and producers of agricultural commodities to file such information and reports as may be reasonably necessary to assist him in carrying out his functions under this section.

(12) **RULES.** The director may issue such rules as may be necessary for each order to facilitate his administration of this section, including, but not limited to, rules relative to the collection of assessments and expenditures of funds.

(13) **DEFINITION OF AREA.** A marketing order shall define the area of the state to be covered by the order, which may be all or any portion of the state. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced.

(14) **ADVISORY BOARD.** (a) *Selection.* Every marketing order issued pursuant to this section shall provide for the establishment of an advisory board to assist the director in the administration of the marketing order. If the marketing order affects directly only producers of a particular commodity, the members of the board shall be producers. If the marketing order affects directly only handlers of a particular commodity, the members of the board shall be handlers. If the marketing order affects directly both producers and handlers of a particular commodity, such board shall be composed of both producers and handlers. Each marketing order shall prescribe the number and term of office of members of the

advisory board. Members of the advisory board shall be elected by the affected producers and handlers by secret ballot at the time of the referendum provided for in sub. (7). Notice of the director's decision shall contain a call for nominations and limit the time within which they can be filed. Nominations shall be signed by at least 5 persons qualified to vote for such candidates.

(b) *Duties.* The duties of any such board shall be advisory only and may include only the following:

1. To recommend to the director administrative rules relating to the marketing order.

2. To receive and report to the director complaints of violations of the marketing order.

3. To recommend to the director amendments to the marketing order.

4. To advise the director in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the director in the administration of the marketing order.

5. To advise the director in the collection of such information and data as the director may deem necessary to the proper administration of this section.

6. To advise the director in the administration of this section.

(c) *Vacancies.* Upon the expiration of the term of any member of the advisory board, the director shall call for an election as provided in this subsection to fill such vacancy.

(15) **ASSESSMENTS.** For the purpose of providing funds to defray the necessary expenses incurred by the director in the formulation, issuance, administration and enforcement of each marketing order issued under this section, each such marketing order shall provide for the levying and collection of assessments in sufficient amounts to defray such expenses. Each marketing order shall indicate the maximum rate of any such assessment which may be collected and the proportion, if any, payable by each producer and handler directly affected by such marketing order. The advisory board elected to advise the director in administering each marketing order shall recommend to the director from time to time budgets to cover necessary expenses and the assessment rate necessary to provide sufficient funds. If the director finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray the necessary expenses, he may provide such budget and rate of assessment and order that each producer and handler so assessed shall pay to the director, at such times and in such instalments as the director may prescribe, an assessment based upon the units in which such agricultural commodity is marketed or upon any other uniform basis which the director determines to be reasonable and equitable, but in amounts which in the case of producers, in addition to inspection fees, will not exceed 2 per cent of the gross dollar volume of sales of the affected commodity by all such producers regulated by such marketing order, or in amounts which in the case of handlers will not exceed 2 per cent of the gross dollar volume of purchases of the commodity affected by the marketing order from producers or of the gross dollar volume of sales of the commodity affected by the marketing order and handled by all distributors or other handlers regulated by such marketing order during the marketing season or seasons during which such marketing order is effective. Such assessments shall be in addition to fees which are established by the department to cover actual cost of inspection.

(16) **COLLECTION.** To collect such assessments each order may require:

(a) Payment of producer assessment before the affected units are shipped off the farm, or payment of assessment at different or later times and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(b) Every affected producer or handler subject to assessment under such order to deposit with the director in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed 25 per cent of the estimated total annual assessment payable by such person. At the close of such marketing year the sum so deposited shall be adjusted to the total of such assessments payable by such person.

(c) Handlers receiving the affected commodity from the producer, including warehousemen, to collect producer assessments from producers whose production they handle and remit the same to the director. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this paragraph. No affected units shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment provided for by this subsection has been paid and a receipt issued, but no liability under this subsection shall attach to common carriers in the regular course of their business.

(17) REFUNDS. Moneys collected by the director pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the director only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order. Upon termination of any marketing order, any and all moneys remaining with the director and not required to defray expenses or repay obligations incurred shall be returned to the affected producers or handlers in proportion to the assessments paid by each in the 2-year period preceding the date of the termination order.

(18) NONPAYMENT. Any due and payable assessment levied under this section and every sum due under any marketing order in a specified amount shall constitute a personal debt of every person so assessed or who otherwise owes the same and the same shall be due and payable to the director when payment is called for by the director. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the director may add to such unpaid assessment or sum an amount not exceeding 10 per cent of the same to defray the cost of enforcing the collection of the same. In the event of failure of such person or persons to pay any such due and payable assessment or sum, the director may bring a civil action against such person in a court of competent jurisdiction for the collection thereof, together with the above specified 10 per cent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

(19) APPLICATION OF FUNDS. All moneys which are collected or otherwise received pursuant to each marketing order created under this section shall be used by the director solely for the administration of the marketing order concerned in accordance with s. 20.142 (42m) and shall not be used for any other marketing order or to influence either state or federal legislation.

(20) MARKETING ORDER PROVISIONS. Subject to the restrictions and limitations set forth in this section, any marketing order issued by the director pursuant to this section may contain any or all of the following provisions for regulating or providing methods for regulating producer marketing or handling, or any of the operations of distributing by handlers of any agricultural commodity within this state:

(a) Provisions establishing or providing for establishing, with respect to any agricultural commodity, either as delivered by producers to handlers,

or as handled or marketed by producers or handlers: grading standards, standards of quality, condition, size or maturity, which standards may include minimum standards, provided the standards so established shall not be established below any minimum standards prescribed by law for such commodity; uniform inspection and grading of such commodity in accordance with the standards so established; and provisions prohibiting the sale of commodities specified in the order as undergrade in regular trade channels, whether or not produced in the area affected by the marketing order.

(b) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law, applicable to the distributing or handling of agricultural commodities within this state, the director is authorized to include in any marketing order issued under this section provisions designed to correct any trade practice affecting the distributing or handling of any agricultural commodity within this state which the director finds is unfair and detrimental to the effectuation of the declared purposes of this section.

(c) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for agricultural commodities grown in this state. The director is authorized to prepare, issue, administer and enforce plans for promoting the sale of any agricultural commodity. Any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the director which shall make use of false or unwarranted claims on behalf of any such product or disparage the quality, value, sale or use of any other agricultural commodity. The costs of such program shall be defrayed by the assessments provided for herein.

(d) Provisions for carrying on applied research studies in the production, processing or distribution of any agricultural commodity and for the expenditure of moneys for such purposes.

(e) Provisions establishing or providing authority for establishing for any agricultural commodity, either as such commodity is produced or is delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers, an educational program designed to acquaint producers, handlers or other interested persons with quality improvement, including sanitation practices, procedures or methods as applied to such commodity.

(f) Provisions for the adoption of a uniform brand name or device to identify affected commodities of a specified quality produced or handled under a marketing order; but no marketing order provision issued under this paragraph shall make the use of such brand name or device by affected handlers or producers compulsory.

(g) Provisions establishing procedures to be followed where the director finds that the imposition of the order as to any individual producer would result in undue hardship.

(21) ENFORCEMENT. Any person who violates this section or any order issued pursuant thereto shall be fined not to exceed \$100 or imprisoned not to exceed 30 days. In the event of violation or threatened violation of this section or of any marketing order duly issued or entered into pursuant to this section, the director shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order; and upon trial of such action, if judgment is in favor of the plaintiff, the court shall permanently enjoin the defendant from further violation.

(22) RESTRAINT OF TRADE. In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act com-

plained of was done in compliance with this section or a marketing order issued under this section and in furtherance of the purposes and provisions of this section shall be a complete defense to such action or proceeding.

(23) PRICE FIXING. Nothing contained in this section shall permit fixing of prices not otherwise permitted by law or any limitation on production, and no marketing order or agreement, or any rule thereunder, shall contain any such provision.

(24) TITLE. This section shall be known and may be cited as the "Wisconsin Agricultural Marketing Act".

Approved August 1, 1957.

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