

ACT 155

S. B. NO. 881

A Bill for an Act Relating to Agricultural Marketing Orders and Agreements.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately numbered and to read as follows:

**“CHAPTER
MARKETING ORDERS AND AGREEMENTS**

Sec. -1. Short title. This Act shall be known as the ‘Hawaii Agricultural Marketing Act’.

Sec. -2. Statement of findings and policy. The legislature finds that the marketing of Hawaiian agricultural commodities when in excess of reason-

able and normal market demands creates disorderly marketing conditions. The ramifications of such conditions lead to improper preparation for market, the lack of uniform grading and classification of agricultural commodities, unfair methods of competition in marketing of agricultural commodities, and the inability of the individual producers to develop new and larger markets for Hawaii-grown agricultural commodities. As a result, there is an unreasonable and unnecessary economic waste of the agricultural wealth of the State. The legislature further finds that such conditions and the accompanying waste jeopardizes the continued production of adequate food supplies for the people of this State and other states, and prevents agricultural producers from obtaining a fair return for their labor. As a consequence, the purchasing power of such producers has been in the past, and may continue to be in the future low in relation to that of persons engaged in other gainful occupations unless such conditions are remedied. The legislature finds that disorderly marketing conditions ultimately affect the consumer who must pay higher prices for their agricultural products due to the seasonal fluctuations involved in unpredictable supply and demand. The legislature further finds that the disregard for essential health standards in agricultural products during disorderly marketing conditions directly affects the general health, safety, and public welfare of the people of this State.

The legislature declares that it is the public policy of the State to develop efficient and equitable methods in the marketing of agricultural commodities, to aid agricultural producers in restoring and maintaining their purchasing power at a more equitable level in relation to the present cost of living, and to protect the public health, safety, and general welfare of the people of the State by assuring them of the highest standards of quality in the food they purchase.

Sec. -3. Definitions as used in this chapter:

- (1) "Agricultural commodity" means any agricultural product, including but not limited to, horticultural (including floricultural), nuts, coffee, fruits, and vegetable products, livestock and livestock products, bees and honey, poultry and poultry products, egg and egg products, timber and Christmas trees, fish and fish products either in their natural state or as processed by the producer thereof or by a processor, as defined in this section, except pineapple, milk and milk products.
- (2) "Board" means the board of agriculture or its designated representative.
- (3) "Chairman" means the chairman of the board of agriculture.
- (4) "Department" means the department of agriculture.
- (5) "Distributor" means any person engaged within this State in the operation of producing, selling, marketing, or distributing an agricultural commodity in intrastate commerce which he has produced, purchased, or acquired from a producer or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but excludes a retailer, as defined in this section, except a retailer who purchases or acquires from, or handles on behalf of any producer, an agricultural commodity not subject to prior regulation by the marketing order covering the commodity.

- (6) "Grade" means the official United States or Hawaii designation applied to agricultural commodities as determined by the presence or absence of certain quality and other factors.
- (7) "Handler" means any person engaged within this State as a distributor in the business of distributing an agricultural commodity in intrastate commerce, or any person engaged as a processor in the business of processing an agricultural commodity.
- (8) "Marketable agricultural product" is a product which meets the requirements of any marketing order, marketing agreement, or regulation in effect in the area in which it is produced or handled.
- (9) "Marketing order" or "agreement" means an order or agreement issued by the board pursuant to this chapter, prescribing rules and regulations governing the processing, distributing, selling, or handling of any agricultural commodity within this State during any specified period or periods.
- (10) "Processor" means any person engaged within this State in the operation of producing for processing, or in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural product for the purposes of marketing such commodity, in intrastate commerce, but excludes a person engaged in manufacturing from an agricultural commodity, so changed in form, another and different product.
- (11) "Producer" means any person engaged within this State in the growing or producing for market of any agricultural commodity.
- (12) "Product" means an agricultural commodity which has been produced by the producer and placed in condition for sale or distribution by the producer, distributor, or handler.
- (13) "Retailer" means any person who purchases or acquires any agricultural commodity for resale to the consumer for off-premise consumption.

Sec. -4. General powers and duties. (a) The department of agriculture, through the board of agriculture, shall administer and enforce this chapter. The board may delegate any of its powers and duties under this chapter to the chairman of the board or his duly designated representative. In addition, the board shall promulgate rules and regulations, pursuant to chapter 91, relative to the exercise of its powers and authority in carrying out this chapter.

(b) Whenever the board has reason to believe that the issuance of a marketing order will tend to effectuate the policy of this chapter with respect to any agricultural commodity, either upon its own motion or upon application of any producer or handler of the commodity, the board shall give notice of a public hearing upon the proposed marketing order. The board may establish or appoint a producer advisory committee of a specified commodity to investigate the need and desirability of a proposed marketing order by holding a preliminary hearing or referendum of the producers.

(c) Notice of any public hearing called for such purpose shall be given to all persons who may be directly affected by any action of the board pursuant to this chapter, and whose names appear upon lists to be filed by the agricultural industry with the board.

(d) In order to effectuate the policy of this chapter, the board may, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers, and handlers of any agricultural commodity, regulating the preparation, sale, and handling of that agricultural commodity.

The marketing agreement shall be binding only upon those signing the agreement. The execution of the marketing agreement shall in no way affect the issuance, administration, or enforcement of any marketing order provided for in this chapter. The board may issue a marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The board, in its discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for in this chapter.

Sec. -5. Records; information, hearings. (a) The board may require all processors or distributors subject to any marketing order issued pursuant to this chapter, to maintain books and records reflecting their operations under the marketing order, and to furnish to the board such information as may be requested relating to operations under the marketing order, and to permit inspection by the board of portions of the books and records relating to operations under the marketing order.

(b) Information obtained by the board shall be confidential and shall not be disclosed by the board except when the public interest demands disclosure or under order of court.

(c) The board may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents of any kind. Upon failure or refusal of any witness to obey any subpoena, the board may petition the circuit court, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court.

(d) No person shall be excused from attending and testifying or from producing documentary evidence before the board in obedience to a subpoena of the board on the grounds that the testimony or evidence, documentary, or other information, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for any transaction, matter, or information concerning which he may be required to testify, or produce evidence, documentary or otherwise, before the board in obedience to a subpoena issued by the board; except for perjury committed in testifying or producing evidence.

Sec. -6. Marketing order issued. (a) After notice and hearing and subject to section -10, the board may issue a marketing order if it finds that the marketing order will:

- (1) Re-establish or maintain prices received by producers for an agricultural commodity at a level which will give the commodity a purchasing power, equivalent to the purchasing power of the commodity in the base period. The base period shall be a period in which the board finds that the volume of production of a commodity was adequate to supply the requirements of consumers and the net returns to producers were sufficient to provide an adequate standard of living to the farm operator and his family;
 - (2) Approach all equality of purchasing power at as rapid a rate as is feasible in view of the market demand for the commodity;
 - (3) Prevent the unreasonable or unnecessary waste of agricultural wealth because of improper preparation of an agricultural commodity for market, lack of uniform grading and inspection, or excessive shipments to markets;
 - (4) Protect the interests of consumers of a commodity, by exercising the powers of this chapter only to the extent necessary to effectuate the policy of this chapter.
- (b) In making the findings set forth in subsection (a), the board shall take into consideration all facts available with respect to the following:
- (1) The quantity of the agricultural commodity available for distribution;
 - (2) The quantity of the agricultural commodity normally required by consumers;
 - (3) The cost of producing the agricultural commodity as determined by available statistics and surveys;
 - (4) The purchasing power of consumers as indicated by reports and indices;
 - (5) The level of prices of commodities, services, and articles which the farmers commonly buy;
 - (6) The level of prices of other commodities which compete with or are utilized as substitutes for the agricultural commodity; and
 - (7) Such other factors as are necessary to make an intelligent determination of the order.

Sec. 7. Administrative committee. (a) Any marketing order issued under this chapter shall provide for the establishment of an administrative committee to administer the order in accordance with its terms and provisions. The members of the committee and alternate members shall be elected by the industry from nominations submitted by the industry and shall hold office until the expiration of term or industry's voluntary termination of the order or the board's termination of the order, whichever occurs first. If the marketing order directly affects only producers of a particular commodity the members of the committee shall be producers. If the marketing order directly affects only handlers of a particular commodity the members of the committee shall be handlers. If the marketing order directly affects both producers and handlers of a particular commodity the committee shall be composed of both producers and handlers. The number of producers or handlers upon any such committee shall be the number of producers or handlers the board finds necessary to properly administer the order; provided, that no committee shall consist of less than seven members.

(b) No member of an administrative committee shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties. The board may authorize the chairman to employ necessary personnel, including an attorney approved by the attorney general, fix their compensation and terms of employment, and incur such expenses, to be paid by the board from moneys collected as provided in sections -14 and -15 as the board may deem necessary to enable the committee to perform its authorized duties. The duties of the committee are:

- (1) To administer the marketing agreement or order, subject to the approval of the board;
- (2) To recommend to the board administrative rules and regulations relating to the marketing agreement or order;
- (3) To receive and report to the board complaints of violations of the marketing agreement or order;
- (4) To recommend to the board amendments to the marketing agreement or order or termination or suspension of a marketing agreement or order;
- (5) To submit to the board for approval an estimated budget of expense necessary for the operation of any marketing agreement or order established by authority of this chapter, and to submit for approval a method of assessing and collecting funds, necessary for the administration of the marketing agreement or order;
- (6) To assist the board in the collection of necessary information and data as the board may deem necessary for the proper administration of this chapter;
- (7) To assist the board in the collection of assessments, as provided in section -14; and
- (8) Such other matters as may be necessary, subject to the approval of the board, to effectively administer the marketing agreement or order.

Sec. -8. Contents of marketing order. Any marketing agreement or order issued by the board pursuant to this chapter may contain any of the following provisions for regulating, within this State, the handling, sale, and operations of processing or distributing by producers, handlers, or distributors of any agricultural commodity:

- (1) Provisions for determining the existence and extent of the surplus of any agricultural commodity or of any grade, size, or species or other classifications or quality thereof, and providing for the control and disposition of the surplus, and for equalizing the burden of the surplus elimination or control among the producers, processors, distributors, or other handlers affected.
- (2) Provisions for limiting the total quantity of any marketable agricultural product or of any grade or grades, size or sizes, or species or other classifications, or quality or portions, or combinations thereof, which may be processed, distributed, or otherwise handled by all persons engaged in such processing, distributing, or handling, during any specified period or periods. The total quantity of any commodity so regulated and permitted to be processed, distributed, or otherwise

handled, shall not be less than the quantity which the board finds reasonably necessary to supply the market demand of consumers for the commodity.

- (3) Provisions for allotting the quantity of any agricultural commodity or of any grade, size, species, or other classification or quality thereof, which each handler may purchase or acquire from, or handle on behalf of any and all producers thereof, during any specified period or periods under a uniform rule applicable to all handlers under the marketing order based upon the amounts produced or sold by the producers in a prior period which the board finds to be representative, or upon the current season's production or sales of the products, or both, so that the total quantity of the commodity, or of any grade or grades, size or sizes, species or other classifications, or quality or portions, or combinations thereof, purchased or handled shall be apportioned equitably among the producers.
- (4) Provisions for allotting the quantity of any agricultural commodity or of any grade or grades, size or sizes, quality or portions, or species or other classifications, or combinations thereof, which each handler may process, distribute, or handle under a uniform rule, applicable to all handlers based upon quantities of the commodity or of any grades, size or quality, species, or other classifications thereof of the current season's crop which each handler has available for processing, distribution, or handling, or upon the quantities of the commodity or of any grade, size, species, or other classifications or quality thereof processed, distributed, or handled by each handler in a prior period which the board finds to be representative, or based upon both, so that the total quantity of the commodity, or any grade or grades, or size or sizes, or species, or other classifications or portions or combinations or quality thereof, processed, distributed, or handled during any specified period or periods shall be equitably apportioned among all handlers.
- (5) Provisions regulating the period or periods during which any agricultural commodity, or any grade or grades, size or sizes, or quality or portions or combinations of the commodity, may be processed, distributed, or otherwise marketed.
- (6) Provisions for the establishment of surplus, stabilization, or by-product pools for any agricultural commodity or of any grade, size, quality, or species or other classifications or conditions and providing for the sale of the commodity in any pool and for the equitable distribution among the persons participating therein of the net returns derived from the sale of the commodity. Whenever the marketing order authorizes the establishment of any pool or pools the administrative committee may receive the commodity from each producer or handler and may handle it according to grade, size, species, or other classifications, quality, or condition thereof and account to each producer or handler participating therein upon a pro rata basis for the net proceeds derived from the sale of the commodity.

The contents of any surplus pool shall not be marketed by the committee in any form which would compete directly with that portion of the commodity which is marketed in regular channels of trade. However, any portion of any surplus pool may be transferred by the committee upon any gratuitous basis to charitable organizations and other similar agencies under proper safeguards to insure that none of the commodity shall compete directly with the unrestricted portion of the commodity. The committee may dispose of the contents of a stabilization pool in the regular marketing channels in the manner and at the times the committee deems advisable, consistent with the maintenance of stabilized marketing conditions for the commodity. The committee may dispose of the contents of any byproduct pool only for byproducts or for other similar purposes under proper safeguards to prevent such portion of the commodity so disposed of from directly competing with that part of the commodity which is marketed in the usual form or in the regular channels of trade.

Whenever the marketing order authorizes the establishment of a surplus, stabilization, or byproduct pool, the committee may arrange for and operate any necessary facilities for the storing, financing, grading, packing, servicing, processing, preparing for market, selling, and disposing of the contents of any pools provided for in this section; provided, the committee shall not engage in commercial warehousing. The committee may pledge all of the commodity in any pool with banks or other lending agencies for the purpose of obtaining loans. The committee shall have title, for the purpose of financing and handling, to all of the commodity in any pool.

Whenever the marketing order authorizes the establishment of any type of pool authorized in this section, the committee may create, by a uniform assessment upon producers or upon some other uniform and equitable basis, maintain, and disburse an equalization fund to be used for the removal of any inequalities between producers or handlers participating in any pool resulting from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to byproducts, relief, or other noncompetitive purposes pursuant to the provisions of the marketing order.

- (7) Provisions for the establishment of uniform grading and inspection of any agricultural commodity delivered by producers to handlers or others engaging in the handling thereof and for the establishment of grading standards of quality, condition, size, or pack for any agricultural commodity, and the inspection and grading of the commodity in accordance with grading standards so established. The grading standards for any commodity shall not be established below any minimum standards now prescribed by law for the commodity. The department shall perform all inspections made necessary by such provisions.

- (8) Provisions for the establishment of plans for advertising and sales promotion to create new or larger markets for agricultural commodities grown in the State. The board may prepare, issue, administer, and enforce plans for promoting the sale of any agricultural commodity. Plans shall be directed toward increasing the sale of the commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the board which makes use of false or unwarranted claims in behalf of the product, or disparages the quality, value, sale, or use of any other agricultural commodity.
- (9) Provisions for price posting of any grade, size, species, or other classifications, quality, portion, or combination thereof, to be sold by the handlers and distributors only at prices filed by the handlers and distributors in the manner provided for in the order.
- (10) Provisions to require the labeling, marking, or branding of any agricultural commodity in conformity with the regulations specified in any marketing agreement or order, issued under authority of this chapter.
- (11) Provisions for establishing convenient stations for inspection, weighing, and receiving payment for any agricultural commodities sold or delivered by producers or distributors in conformity with any marketing agreement or order issued under authority of this chapter, and providing for the collection of expenses of operating the stations.
- (12) Provisions allowing an administrative committee to cooperate with any other state or federal agency whose activities may be deemed beneficial to the policy of this chapter.
- (13) Provisions to require the packaging of any agricultural commodity in containers, and to set standards for the containers, or pack thereof, in conformity with the regulations or authority contained in any marketing agreement or order issued under the authority of this chapter. The standards shall not be established below any minimum standards now prescribed by law for the commodity. The department shall perform all inspections made necessary for such provisions.
- (14) Provisions for the establishment of programs in the field of research for the improvement of production, control of insects or disease, harvesting, storing, transporting, marketing, handling, processing, or any other phase of research work which would benefit any agricultural commodity produced in Hawaii.
- (15) Provisions for establishing processing plants or necessary arrangements with persons or companies for the processing of agricultural products whose processing would tend to effectuate the policy of this chapter.
- (16) Provisions establishing methods whereby agricultural commodities and products other than marketable products may be disposed of and prohibiting dispositions thereof except as provided under the order.
- (17) Provisions for the limitation and prevention of unfair methods of competition in the marketing of agricultural commodities.

(18) Provisions for allotting, or providing methods for allotting, the quantity of the commodity or product or any grade, size, or quality thereof, which each producer may be permitted to market or dispose of in any or all markets or use classifications during any specified period or periods on the basis of:

- (A) The amount produced or marketed by the producer or produced on or marketed from the farm on which he is a producer in such prior period as the board determines to be representative, subject to such adjustment for abnormal conditions and other factors affecting production or marketing as the board may determine.
- (B) The current quantities available for marketing by the producer, or
- (C) Any combination of (A) and (B) so that the total allotment during any specified period or periods shall be apportioned equitably among producers.

Allotments hereunder may be in terms of quantities or production from given acres or other production units.

(19) Notwithstanding any other provisions of law, whenever a marketing order issued by the board pursuant to this chapter contains any terms or conditions regulating the grade, size, species, other classifications, quality, or portions, maturity, or combinations thereof, or any other provisions of this section affecting a commodity that may be marketed in the area covered by the order, the importation into the area of the same commodity shall be prohibited unless it complies with the grade, size, species, or other classifications, quality, portions, maturity, or combinations thereof, or any other provisions of this section of the commodity produced and marketed from the regulated area.

Sec. -9. Issuance of regulations. Upon recommendations from the administrative committee concerned, the chairman shall have the power, without regard to chapter 91, to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each such order or agreement. Prior to the adoption of any such administrative rules and regulations, the chairman shall cause a notice to be published at least once in a newspaper of general circulation. In addition, the notice shall be mailed to all persons whose names appear upon the lists filed with the Board. The rules and regulations established under this section shall become effective five days from the date of publication.

Sec. -10. When marketing agreement or order effective. (a) No marketing agreement or amendments, directly affecting handlers, issued pursuant to this chapter, shall become effective unless the board finds that the agreement has been assented to in writing by the handlers engaged in the operation covered by the marketing agreement who handle not less than fifty per cent of the volume of the commodity covered thereby which is processed or distributed within the area defined in the agreement and by not less than seventy-five

per cent of the number of the handlers engaged in the operation covered by the agreement.

(b) No marketing order or amendments directly affecting producers shall become effective unless the board determines that the valid votes cast in a referendum represent not less than seventy-five per cent of the total number of producers of the commodity, and the issuance of the order is approved and favored by not less than seventy-five per cent of those voting, who during the representative period, have produced not less than fifty-one per cent of the total quantity of the commodities marketed in commercial quantities within the production area specified in the marketing agreement or order, or by not less than fifty-one per cent of those voting who, during the respective period, have produced not less than seventy-five per cent of the total quantity of the commodity marketed within the marketing area specified in the marketing agreement or order.

(c) Any order issued pursuant to this section shall become effective notwithstanding the refusal or failure of handlers of more than fifty per cent of the volume of the commodity or product thereof covered by the order which is produced or marketed within the production or marketing area defined in the order, to sign a marketing agreement relating to the commodity or product thereof, on which a hearing has been held, when the board, with the approval of the governor, determines:

- (1) That the refusal or failure to sign a marketing agreement by the handlers of more than fifty per cent of the volume of the commodity or product specified which is produced or marketed within the production or marketing area specified in the marketing agreement tends to prevent the effectuation of the policy of this chapter with respect to the commodity or product; and
- (2) That the issuance of the order is the only practical means of advancing the interests of the producers of the commodity pursuant to the policy, and is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of its approval and, who, during a representative period determined by the board, have been engaged, within the production area specified in the marketing agreement or order, in the production for market of the commodity specified or who, during the representative period, have been engaged in the marketing area specified in the marketing agreement or order; or by producers who, during the representative period, have produced for market at least two-thirds of the volume of the commodity marketed within the production area specified in the marketing agreement or order.

(d) In finding whether the order is assented to in compliance with this chapter, the board may consider the expression of any nonprofit agricultural cooperative marketing association which is authorized by its members to express the approval or disapproval of the producers who are members of, or stockholders in, such nonprofit agricultural cooperative marketing association.

Sec. -11. Orders regulating processing. Subject to the provisions, restrictions, and limitations imposed in this chapter, the board may issue mar-

keting orders regulating the processing, distributing, or handling in any manner of agricultural commodities by all persons engaged in such processing, distributing, or handling of the commodities within this State.

Sec. -12. Termination of marketing order. The board shall suspend, amend, or terminate any marketing order, or any provisions of any marketing order, whenever it finds that the provision or order does not tend to effectuate the policy of this chapter; provided the suspension or termination shall not be effective until the expiration of the current marketing season. If the board finds that the termination of any marketing order is requested in writing by more than fifty per cent of the producers, who are engaged within the designated production area in the production for market of the commodity specified in the marketing order, or who produce for market more than seventy-five per cent of the volume of the commodity produced within the designated production areas for market, the board shall terminate or suspend for a specified period, the marketing order or provisions thereof; provided the termination shall be effective only if announced on or before the date specified in the order.

Sec. -13. Notice of issuance. Upon the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the board at its office and a copy of the notice shall be published in a newspaper of general circulation published in the State and in such other newspapers as the board may prescribe. No order or any suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of the posting and publication. The board shall mail a copy of the notice of the issuance to all persons directly affected by the terms of the order, suspension, amendment, or termination, whose names and addresses are on file in the office of the board and to every person who files in the office of the board a written request for the notice.

Sec. -14. Budgeting and collection of fees. (a) To defray the necessary expenses incurred by the board in the formulation, issuance, administration, and enforcement of any marketing order issued by the board, the board may prepare a budget of the costs involved. The administrative committee shall prepare a budget approved by the board for the administration and operating costs and expenses, including advertising and sales promotion, when they are requested in any marketing agreement or order executed hereunder. Both budgets, with provisions for the collection of the necessary fees, the time and conditions of payment, which shall not exceed six and one-half per cent of the gross dollar volume of such sales or dollar volume or amounts handled, shall become a part of any marketing order upon adoption as provided in this chapter. Fees for a marketing order that do not provide for advertising and sales promotion shall not exceed five per cent of the gross dollar volume of the sales or dollar volume or amounts handled.

(b) Every person engaged in the production, processing, distributing, or handling of any marketable agricultural product produced in this State and directly affected by any marketing order issued pursuant to this chapter shall pay to the board at the time and in the manner prescribed by the adopted order

an assessment covering the budgets provided by this chapter, necessary to defray the expenses of the administration of the order, but in no case to exceed six and one-half per cent of the gross dollar volume.

Sec. -15. Disposition of funds. (a) Any moneys collected by the board pursuant to this chapter shall be deposited in a bank or other depository approved by the board, allocated to the marketing order under which they are collected, and disbursed by the board only for necessary expenses incurred by the administrative committee and approved by the board with respect to each separate marketing order. Funds collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the board. All expenditures by the board shall be audited annually by an independent certified public accounting firm and a copy of the audit shall be delivered after its completion to the governor and the board.

(b) Any moneys remaining in the fund, allocated to any particular agricultural commodity affected by a marketing order, may be refunded at the close of any marketing season upon a pro rata basis, to all persons from whom assessments were collected, or portions of such moneys may be carried over into the next succeeding marketing season whenever the board finds that such moneys may be required to assist in defraying the cost of operating the marketing order in succeeding seasons. Upon termination by the board of any marketing order, all moneys remaining which are not required by the board to defray the expenses of the marketing order, shall be returned by the board upon a pro rata basis, to all persons from whom assessments were collected. If the board finds that the amounts returnable are so small as to make impractical the computation and remitting of the pro rata refund, the board may use the moneys to defray the expenses incurred by it in the formulation, issuance, or administration of any subsequent marketing order for the commodity.

Sec. -16. Deposit to defray expenses. (a) Prior to the issuance of any marketing order, the board may require the applicants to make a deposit of an amount the board deems necessary to defray the expenses of preparing and making effective the marketing order. The funds shall be received, deposited, and disbursed by the board in accordance with section -15.

(b) The board may reimburse the applicant in the amount of any deposit from any funds received by the board pursuant to section -15.

Sec. -17. Marketing areas. Marketing orders issued by the board under this chapter may be limited in their application by prescribing statewide marketing areas or portions of the State in which a particular order shall be effective; provided no marketing order shall be issued by the board unless it embraces all persons of a like class in a given area who are engaged in a specific and distinctive agricultural industry or trade within this State.

Sec. -18. Violations. (a) Every person who violates this chapter or any provision of any marketing order issued by the board shall be fined not less than \$50 nor more than \$500 or imprisoned not less than ten days nor more than six months, or both. Each day during which any violation continues shall constitute a separate offense.

(b) Upon the filing of a verified complaint charging a violation of this chapter or of any provision of any marketing order issued by the board, and prior to the institution of any court proceedings authorized in this section, the board may refer the matter to appropriate authorities of this State for action pursuant to this chapter or call a hearing to consider the charges set forth in the verified complaint. The board shall cause a copy of the complaint, together with a notice of the time and place of hearing of the complaint, to be served personally, or by mail, upon the person or persons named as respondent or respondents therein. The service shall be made at least three days before the hearing, and at the discretion of the board, shall be held in the county in which the principal place of business of the respondent is situated or in which the violation is alleged to have occurred, or in the nearest office of the department. At the time and place designated for the hearing, the board or its agents shall hear the parties to the complaint and shall make their findings based upon facts established at the hearing.

(c) If the board finds that no violation has occurred it shall dismiss the complaint and notify the parties to the complaint.

(d) If the board finds that a violation has occurred it shall enter its findings and notify the parties to the complaint. Should the respondents fail, neglect, or refuse to desist from the violation, within the time specified by the board, the board may file a complaint against the respondent or respondents in a court of competent jurisdiction as set forth hereinafter.

(e) In the enforcement of this chapter or the provisions of any marketing order issued thereunder the board may stop, search, and hold all trucks, and other conveyances where the stopping, searching, or holding is deemed necessary.

(f) In the enforcement of this chapter or any marketing order issued thereunder, the board may enter and go into or upon at any reasonable time without formal warrant, any farm, structure, or premises, and any other place where activities subject to this chapter or a marketing order or marketing agreement are involved.

(g) The board may, whenever it believes the public interest will be best served serve suitable notices or warnings, in writing, rather than resorting to prosecution for minor violations.

(h) The circuit courts of this State are vested with jurisdiction to enforce, and to prevent and restrain violations of this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter.

(i) Judicial review of any finding, decision, or order of the board made pursuant to this chapter may be reviewed in the manner provided in chapter 91.

Sec. -19. Assessment a personal debt. Any assessment levied in a specified amount as determined by the board pursuant to section -13 shall constitute a personal debt of every person so assessed and shall be due and payable to the board when payment is due. In the event of failure of a person to pay any such assessment upon the date determined by the board, the board may file a complaint against the person for the collection thereof.

Sec. -20. No personal liability. The members of any administrative committee, including employees of the committee, shall not be held responsible

individually in any way whatsoever to any producer, processor, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual criminal acts. No person or employee shall be held individually for any act or omission of any other member of the committee. The liability of the members of the committee shall be several and not joint and no member shall be liable for the default of any other member.

Sec. -21. Immunity from restraint of trade law. 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 complained of was done in compliance with this chapter or a marketing order issued under this chapter and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding.

Sec. -22. Separability provision. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or the application, and to this end the provisions of this chapter are separable.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 30, 1972.)