

purpose, and no provision is intended to receive a strict or limited construction.

Section 10. It is hereby declared that the provisions of this act are severable one from another and if for any reason this act shall be judicially declared and determined to be unconstitutional so far as relate to one or more words, phrases, clauses, sentences, paragraphs or section thereof, such judicial determination shall not affect any other provision of this act. It is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the validity in any respect of one or more of the provisions of this act. Severability.

Section 11. All acts and parts of acts are repealed in so far as they are inconsistent herewith. General repeal.

Section 12. This act shall take effect three calendar months after its final enactment. Effective date.

APPROVED—The 20th day of September, A. D. 1961.

DAVID L. LAWRENCE

No. 657

### AN ACT

Providing for the issuing, administration, enforcement and termination of marketing orders on apples; imposing powers and duties on the Secretary of Agriculture; providing for the creation and operation of an advisory board; prescribing the contents of orders; and providing for the imposition and collection of fees.

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Pennsylvania  
Apple Marketing  
Act of 1961.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Pennsylvania Apple Marketing Act of 1961.”

Section 2. Definitions.—When used in this act, the following words and phrases shall have the following meanings, unless the context indicates otherwise:

(1) “Producer” means any person engaged within this State or any production area therein in the business of producing apples or causing apples to be produced.

(2) “Person” means an individual, firm, corporation, association or any other business unit.

(3) “Secretary” means the Secretary of Agriculture of the Commonwealth of Pennsylvania.

(4) “Advisory board” means the persons appointed by the Secretary of Agriculture from nominations from the apple industry to assist the secretary in administering an order.

(5) “Marketing order” means an order, issued by the Secretary of Agriculture pursuant to this act, governing the collection of fees and administration of budgets for the specified provisions to benefit producers in Pennsylvania during any specified period or periods.

Section 3. Powers and Duties of the Secretary Marketing Orders.—

(a) The Secretary of Agriculture shall administer and enforce the provisions of this act, and shall have and may exercise any or all of the administrative powers conferred upon the head of a department of a state. In order to effectuate this act, the Secretary of Agriculture is hereby authorized to issue, and with the advice and assistance of the advisory board, administer and enforce the provisions of marketing orders.

(b) Whenever the secretary has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate this act, he shall, either upon his own motion or upon application of any producer or any organization of producers, give due notice of an opportunity for a public hearing upon a proposed marketing order of such amendments to such existing marketing order.

(c) Notice of any hearing called for such purpose shall be given by the secretary by publishing a notice of such hearing, for a period of not less than five consecutive publication days, in a daily newspaper of general circulation, published in the capital of the State and in such other newspaper or newspapers as the secretary may prescribe. No such public hearing shall be

held prior to twenty days after the last day of such a period of publication.

(d) The secretary shall also mail a copy of such notice of a hearing, and a copy of such proposed marketing order or proposed amendments, to all producers whose names and addresses appear upon lists of such persons which shall be compiled in the Department of Agriculture.

(e) Such notice of hearing shall set forth the date and place of said hearing, and the area covered by such proposed marketing order, or such proposed amendments, and a statement that the secretary will receive at such hearing, in addition to testimony and evidence as to the proposed marketing order, testimony and evidence as to other necessary and relevant matters and with respect to the accuracy and sufficiency of lists on file with the secretary, which show the names and addresses of producers and the quantities of apples produced by such producers in the marketing season next preceding such hearing.

(f) Such hearing shall be public, and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the secretary. At such hearings the secretary shall receive, in addition to other necessary relevant matters, testimony and evidence with respect to the accuracy and sufficiency of the lists on file with the secretary, which show the names of the producers and the quantities of agricultural commodities produced by such producers in the marketing season next preceding such hearing.

(g) After such notice and hearing, the secretary may issue a marketing order if he finds and sets forth in such marketing order that such order will tend to effectuate the purposes of this act.

Section 4. Advisory Board.—(a) Any marketing order, issued pursuant to this act, shall provide for the establishment of an advisory board to advise and assist the secretary in the administration of marketing orders. The members of the board shall be appointed by the secretary from nominations submitted by apple producers, and shall hold office until the expiration of the term established in the order, or until such appointment is terminated by majority action of the board. The number of members of any such board and their term of office shall be set forth in the marketing order, and shall be of such number as is necessary to properly administer such order, but shall be a minimum of five.

(b) No member of any such board shall receive a salary, but each shall be entitled to his actual expenses

incurred while engaged in performing his duties herein authorized. Any marketing order established under the act may authorize a per diem payment not to exceed fifteen dollars (\$15) per day, and expenses for each day in which a board member or subcommittee member is performing a duty necessary to the function of the board. The secretary may authorize such board to employ necessary personnel, fix their compensation and terms of employment, and to incur such expenses to be paid by the secretary from moneys collected, as provided in this act, as the secretary may deem necessary and proper, to enable such board to perform its duties as are authorized herein. The duties of any such board shall be administrative only and may include only the following:

(1) Subject to the approval of the secretary, to administer such marketing order.

(2) To recommend to the secretary administrative rules and regulations relating to the marketing order.

(3) To receive and report to the secretary complaints or violations of the marketing order.

(4) To recommend to the secretary amendments to the marketing order.

(5) To assist the secretary in assessment of members of the industry in the collection of funds to cover expenses incurred in administration of the apple marketing order.

(6) To assist the secretary in collection of such necessary information and data as the secretary may deem necessary to the proper administration of this act.

(c) Upon approval of the secretary, the board may establish committees or subcommittees to carry out assigned duties and functions, and designate the persons who need not be members of the board to serve upon such committees.

Section 5. Provisions of Marketing Orders.—Subject to the legislative restrictions and limitations set forth in this act, any marketing order issued by this secretary pursuant to this act may contain any or all of the following provisions:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets, or to create new or larger markets for apples grown in the State of Pennsylvania. The secretary is hereby authorized to prepare, issue, administer and enforce plans for promoting the sale of apples: Provided, That any such plans shall be directed toward increasing the sale of such commodity without reference to any particular firm's or individual's brand or trade name: And provided, That no advertising or sales pro-

motion program shall be issued by the secretary, 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.

(2) Provisions for the establishment of research programs designed to benefit producers, or for agriculture in general.

(3) Provisions establishing or providing authority for establishing an information and service program designed to acquaint producers and other interested persons with quality standards and quality improvements.

(4) Provisions allowing the secretary and the advisory board to cooperate with any other state or Federal agency, or other organization whose activities may be deemed beneficial to the purpose of this act.

Section 6. Effecting Marketing Orders.—No marketing order, or amendment thereto, shall become effective unless and until the secretary determines by a referendum whether or not the affected producers assent to the proposed action. The secretary shall conduct the referendum among the affected producers and the affected producers shall be deemed to have assented to the proposed order if, of those replying, not less than sixty-six and two-thirds per centum by number and not less than fifty per centum by volume assent to the proposed order.

Any referendum required under this act shall be conducted in accordance with reasonable rules and regulations to be established and promulgated by the secretary.

Section 7. Terminating Marketing Orders.—The secretary shall suspend or terminate any marketing order or any provisions of any marketing order whenever he finds that such provisions or order does not tend to effectuate this act within the standards and subject to the limitations and restrictions imposed in this act: Provided, That such suspension or termination shall not be effective until the expiration of the current marketing season. If the secretary finds that the termination of any marketing order is requested, in writing, by more than thirty-three and one-third per centum of the affected producers who produce for market more than fifty per centum of the volume of apples produced within the designated production area for market, the secretary shall terminate or suspend for a specified period such marketing order or provisions thereof: Provided, That such termination shall be effective only if announced on or before such date as may be specified in such order. If ten per centum of the producers who participated in the referendum effecting a marketing order request,

in writing, that a referendum be held on the question of terminating the order, the secretary must announce and conduct such a referendum within a reasonable period of time, and in any case, within one year of the request, a marketing order shall be terminated if so voted by a majority of those voting.

Section 8. Marketing Order Review.—Every three years the Secretary of Agriculture shall call a referendum to determine whether or not a majority of the apple producers still desire a marketing order.

Section 9. Notice of Issuance.—Upon the issuance of any marketing order or any suspension, amendment or termination thereof, a notice be published in a newspaper of general circulation published in the capital of the State and in such other newspapers as the secretary may prescribe. No order or any suspension, amendment or termination thereof, shall become effective until the termination of a period of twenty days from the date of such publication. It shall also be the duty of the secretary to mail a copy of the notice of said issuance to all producers directly affected by the terms of such order, suspension, amendment or termination, whose names and addresses may be on file in the office of the secretary, and to every person who files in the office of the secretary a written request for such notice.

Section 10. Budgeting and Collection of Fees.—(a) For the purpose of providing funds to defray the necessary expense incurred by the secretary in the formulation, issuance, administration and enforcement of any marketing order, the secretary shall prepare a necessary budget covering the cost of same. Likewise the board shall prepare a budget for the administration and operation costs and expenses, including advertising and sales promotion, when same is requested in any marketing order executed hereunder, which budget shall be approved by the secretary. Both budgets with the provisions for the collection of such necessary fees, the time and condition of such payment and in no case to exceed five per centum of the gross market value of apples produced and marketed, shall become a part of any marketing order upon adopting as provided in this act. Each and every producer affected by any marketing order issued pursuant to this act shall pay to the secretary at such time and in such manner as prescribed by the order as adopted an assessment covering the budget provided by this section.

(b) For the convenience of making collections of any producers, assessments established pursuant to this section, the secretary may collect such assessment from

the sales agent of the producer upon mutual agreement of the producer and sales agent.

(c) Any money collected by the secretary pursuant to this act is hereby specifically appropriated to the Department of Agriculture for the administration of the marketing orders for which they were collected. When a marketing order is discontinued, the surplus money shall be made available for the administration of this act or of future marketing orders involving the same commodity.

Section 11. Rules and Regulations for Enforcement.—The secretary may, with the advice of the advisory board, make and promulgate such rules and regulations as may be necessary to effectuate this act and to enforce the provisions of any marketing order, all of which shall have the force and effect of law. The secretary may institute such action at law or in equity as may appear necessary to enforce compliance with this act, or any rule or \*regulation, \*\*or marketing order committed to his administration in addition to any other remedy under this act.

Section 12. Advanced Deposits.—Prior to the issuance of any marketing order, the secretary may require the applicant therefor to deposit with him such amount as the secretary may deem necessary to defray the expense of preparing and making effective such marketing order. Such funds shall be received, deposited and disbursed by the secretary in accordance with the provisions of handling funds in this act. The secretary may reimburse the applicant in the amount of any such deposit from any funds received through the adopting of a marketing order pursuant to the provisions of this act.

Section 13. Separability.—If any section, sentence, clause, or part of this act, is for any reason held to be unconstitutional, such decision shall not affect the remaining portion of the act. The Legislature hereby declares that it would have passed this act and each sentence, clause, and part thereof, despite the fact that one or more sections, sentences, clauses or parts thereof, be declared unconstitutional.

Section 14. Effective Date.—This act shall take effect immediately.

APPROVED—The 20th day of September, A. D. 1961.

DAVID L. LAWRENCE

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\* "regulations" in original.

\*\* "or" not in original.