

AGRICULTURE CODE (3 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Mar. 24, 1998, P.L. 217, No. 39

Cl. 03

Session of 1998

No. 1998-39

HB 1573

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, further defining "garbage" for purposes of domestic animals; providing for payment of indemnification and depopulation incentives for avian influenza; further providing for general testing and inspection of scanning devices; providing for the issuing, administration, enforcement and termination of marketing programs on agricultural commodities; imposing powers and duties on the Secretary of Agriculture; providing for the creation and operation of advisory boards; prescribing the content of programs; providing for the imposition and collection of fees; and making a repeal.

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

Section 1. The definition of "garbage" in section 2303 of Title 3 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

["Garbage." All waste material resulting from the handling, preparation, cooking or consumption of food, except that the term shall not include waste from ordinary household operations which is fed directly to domestic animals on the same premises where the household is located. The term also does not include any waste or residuals from food processing operations.]

"Garbage." All waste or residuals resulting from the handling, preparation, cooking or consumption of food derived in whole or in part from the meat of any animal, including poultry and fish, or other animal material and other refuse of any character that has been associated with the meat of any animal or other animal material. The term does not include waste from ordinary household operations that is fed directly to swine on the same premises where the household is located.

* * *

Section 2. Section 2333 of Title 3 is amended to read:
§ 2333. Restriction on payment of indemnification and depopulation incentive.

(a) **Generally.**--Notwithstanding any other provision of law, indemnification under section 2331 (relating to indemnification) and depopulation incentive under section 2332 (relating to depopulation incentive) shall be paid only for domestic animals.

(b) **Avian influenza.**--Notwithstanding any other provision of law, whether a domestic animal, domestic animal product or other property is condemned by the department and slaughtered or destroyed under section 2331 or voluntarily slaughtered or destroyed by the owner under section 2332 to eradicate or

prevent the spread of avian influenza, the amount payable by the department shall in all cases be the same percentage of appraised value as determined by the department. All other provisions of sections 2331 and 2332 shall apply to any payment under this subsection.

Section 3. Section 4112(c) of Title 3 is amended and the section is amended by adding a subsection to read:
§ 4112. General testing and inspections.

* * *

(c) General testing and inspection of scanning devices.--Notwithstanding any other provision of this chapter to the contrary, within the 12-month period ending on [June 30, 1998] **June 30, 1999**, and every 12-month period thereafter, the department shall test and inspect to ascertain if they are correct all commercially used Universal Product Code scanning systems and Price Look Up devices. A city or county may test and inspect such devices and systems if specified in its memorandum of understanding entered into with the department in accordance with section 4125 (relating to division of responsibilities). Such devices and systems shall be exempt from the annual testing and inspection requirements of this subsection if the device or system is inspected at least annually on an unannounced basis as part of a private certification program which conforms with the examination procedures for price verification as adopted by the National Conference of Weights and Measures.

(d) Interim procedures.--In order to facilitate the speedy implementation of subsection (c), the department shall promulgate, adopt and use guidelines to provide for the certification of individuals to test and inspect all commercially used Universal Product Code scanning systems and Price Look Up devices. The guidelines shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review pursuant to section 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and section 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall be effective for a period of not more than two years. After the expiration of the two-year period, the guidelines shall expire and shall be replaced by regulations which shall be promulgated, adopted and published as provided by law. Nothing in this chapter shall be construed to relieve the department of the responsibility, prior to June 30, 1999, to conduct tests and inspections of all commercially used Universal Product Code scanning systems and Price Look Up devices on a periodic basis and in response to complaints and to initiate appropriate enforcement actions.

Section 4. Title 3 is amended by adding a chapter to read:

CHAPTER 45

AGRICULTURAL COMMODITIES MARKETING

Sec.

- 4501. Short title of chapter.
- 4502. Definitions.
- 4503. Powers and duties of secretary.
- 4504. Commodity marketing board.
- 4505. Provisions of marketing programs.
- 4506. Effecting marketing programs.
- 4507. Terminating marketing programs.
- 4508. Marketing program review and amendments.
- 4509. Notice of issuance.

4510. Collection of fees.
4511. Rules and regulations for enforcement.
4512. Advance deposits.
4513. Severability.

§ 4501. Short title of chapter.

This chapter shall be known and may be cited as the Agricultural Commodities Marketing Act.

§ 4502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural commodity." Agricultural, aquacultural, horticultural, viticultural and dairy products, livestock and the products thereof, ranch-raised furbearing animals and the products thereof, the products of poultry and bee raising, forestry and forestry products and any and all products raised or produced on farms intended for human consumption and the processed or manufactured products thereof intended for human consumption, transported or intended to be transported in commerce.

"Commodity marketing board" or "board." The persons who are appointed by the Secretary of Agriculture from among producers whose commodities are subject to an issued marketing program.

"Cooperative association." Any cooperative marketing association of producers which the Secretary of Agriculture determines, after application by the cooperative association:

(1) to be qualified under the provisions of the Cooperative Marketing Association Act (42 Stat. 388, 7 U.S.C. §§ 291 and 292) and organized as a cooperative agricultural association under the laws of this Commonwealth and any other state; and

(2) to have full authority in the sale of affected agricultural commodity of its members and to be engaged in making collective sales of or marketing the commodity or its products for its members.

"Marketing contract." A contract or agreement between a commodity marketing board and a person for the performance of services relating to advertising, marketing, promotion, research or other objectives in furtherance of a marketing program.

"Marketing program." A program established pursuant to this chapter governing the collection of fees and administration of budgets to implement projects to benefit producers in this Commonwealth during any specified period or periods.

"Person." An individual, firm, corporation, association or any other business unit.

"Producer." A person engaged within this Commonwealth or a production area within this Commonwealth in the business of producing agricultural commodities or causing agricultural commodities to be produced.

"Sales agent." Any person, including individuals, partnerships, corporations, cooperative associations and unincorporated cooperative associations, who purchases or handles or receives or sells or contracts to sell an affected agricultural commodity.

§ 4503. Powers and duties of secretary.

(a) Administration and enforcement of chapter.--Subject to the provisions contained in this chapter, the secretary shall administer and enforce the provisions of this chapter and shall have and shall exercise all administrative powers necessary to effectuate the purposes of this chapter, including the issuance

of marketing programs, the appointment of members to commodity marketing boards as provided in section 4504 (relating to commodity marketing board) and the providing of personnel, staff, legal counsel and office facilities required for the administration and enforcement of marketing programs.

(b) Grounds for public hearing.--Whenever the secretary has reason to believe that the issuance of a marketing program or amendments to an existing marketing program will tend to effectuate this chapter, the secretary 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 program or amendments to an existing marketing program.

(c) Publication of notice of hearing.--Notice of any hearing called for this purpose shall be given by the secretary by publishing a notice of the 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 Commonwealth and in any other newspaper or newspapers as the secretary may prescribe. No public hearing shall be held prior to 20 days after the last day of the period of publication.

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

(e) Specifics of notice.--The notice of hearing shall set forth the date and place of the hearing and the area covered by the proposed marketing program or the proposed amendments and a statement that the secretary will receive at the hearing, in addition to testimony and evidence as to the proposed marketing program, testimony and evidence as to other necessary and relevant matters, including rate of assessment, 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 agricultural commodities produced by the producers in the marketing season next preceding the hearing.

(f) Hearing requirements.--The hearing shall be public, and all testimony shall be received under oath. A full and complete record of all proceedings at the hearings shall be made and maintained on file in the office of the secretary. At hearings the secretary shall receive, in addition to other necessary and relevant matters, testimony and evidence regarding the rate of assessment and 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 the producers in the marketing season next preceding the hearing.

(g) Issuance of marketing program.--After notice and hearing, the secretary may issue a marketing program if the secretary finds and sets forth in the marketing program that the program will tend to effectuate the purposes of this chapter.

§ 4504. Commodity marketing board.

(a) Establishment of commodity marketing board.--

(1) Each marketing program issued pursuant to this chapter shall provide for the establishment of a commodity marketing board, which shall have primary decision-making authority relative to marketing contracts and other projects in furtherance of the program. The number, representation, qualifications and terms of board members and the schedule of regular board meetings and procedure for calling special

board meetings shall be established in the issued marketing program. No marketing program shall be issued to establish a commodity board of less than five members, one of whom shall be the secretary or the secretary's designee. The other board members shall be appointed by the secretary from among the agricultural producers whose commodities shall be subject to the marketing program. In making these appointments, the secretary shall consider nominations submitted by the producers. No decision by the board shall be effective unless, pursuant to regular or special meetings, a majority of board members were present and a majority of those present voted in support of the decision. All decisions rendered by the board shall be recorded in written minutes of the meeting, and the recorded minutes shall be made available to the secretary and to the producers whose commodities are subject to the marketing program.

(2) If the secretary requires sales agents to collect producer charges under section 4510(b) (relating to collection of fees), an additional member shall be appointed to the board by the secretary. This member shall represent these sales agents who are subject to the marketing program collection agreement. In making the appointment, the secretary shall consider nominations by the sales agents.

(b) Board members.--No member of a commodity marketing board shall receive a salary, but each shall be entitled to actual expenses incurred while engaged in performing the duties authorized by this chapter. Any marketing program established under this chapter may authorize a payment not to exceed \$100 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.

(c) Powers and duties of board.--In administering the marketing program the board shall have the following powers and duties:

(1) To determine all matters pertaining to the marketing program issued by the secretary.

(2) To hire and employ personnel which the board deems necessary for the proper administration of the marketing program and to fix the compensation and terms of employment of personnel. The hiring, employment, compensation and terms of employment of personnel under this paragraph shall not be subject to the provisions of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(3) To adopt written procedures for acquiring and disposing of property and, subject to these procedures, to acquire, own, use, hire, lease, operate and dispose of personal property, real property and interests in real property.

(4) To make and enter into all contracts and agreements, in accordance with the provisions of the law, which the board deems necessary or incidental to the furtherance of the marketing program or performance of duties and powers under this chapter. Marketing contracts and the procedures and decisions related to contracts shall not be subject to competitive bidding requirements of any other statute or other requirements prescribed in The Administrative Code of 1929. The board shall adopt written procurement procedures for all marketing contracts. Procedures shall include:

(i) The method or methods which the board may use to invite proposals for marketing contracts and the manner of notice to be given to prospective contracting parties.

(ii) The minimum qualifications of a prospective contracting party necessary for consideration by the board in marketing contracts.

(iii) The manner in which a contract offer is accepted and a marketing contract is awarded by the board. Notwithstanding any other requirement of this subsection, the board may make sole source procurements when there is only one source for the required service and may make emergency procurements when the board determines in writing that the procedure is necessary due to the urgency of the particular situation.

(5) To receive, account for and disburse all moneys collected pursuant to the issued marketing program.

(6) To prepare a budget for the administration, operating costs and expenses of the program.

(7) To receive and report to the secretary complaints or violations of the marketing program and to assist and cooperate with the secretary in the enforcement thereof.

(8) To establish committees or subcommittees to carry out assigned duties and functions and to designate board members and nonboard members to serve on such committees and subcommittees.

(9) To collect and gather information and data relevant to the proper administration of the marketing program.

(10) To charge fees and to assist the secretary in the imposition of fees and the collection of fees and revenues under this chapter.

(11) To issue an annual report on the operation of the program.

(12) To recommend amendments to the marketing program and amendments to this chapter and regulations issued under this chapter.

(d) Limitation.--No financial obligation shall be incurred by any board beyond the extent to which money shall have been provided under the authority of this chapter. No obligation or liability of any type incurred by a board created pursuant to this chapter shall be an obligation or liability of the Commonwealth, and no board shall have the power to pledge the credit or taxing power of the Commonwealth nor to make its debts payable out of any moneys except those provided for by this chapter.

(e) Dairy industry marketing program.--Any marketing program issued under this chapter specifically for the dairy industry shall provide for the establishment of a board of 21 members, who shall include the secretary or his designee and 20 persons appointed by the secretary who are active in the production of milk, including, but not limited to, representatives of milk cooperatives and farming associations, producer-handlers of milk and independent dairy farmers. In addition to the powers and duties contained in subsection (c), the commodity marketing board of the dairy promotion program shall have the power to elect or appoint from the membership of the board a chairman, vice chairman, secretary and treasurer and to hold special meetings at the request of the chairman or upon request of one-third of the members of the board.

§ 4505. Provisions of marketing programs.

Subject to the legislative restrictions and limitations set forth in this chapter, any marketing program issued by the secretary pursuant to this chapter 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 agricultural commodities grown or produced in this Commonwealth. Plans shall be directed toward increasing the sale of such commodities without reference to any particular firm's or individual's brand or trade name. No advertising or sales promotion program shall be issued by the secretary which shall make use of false or unwarranted claims on behalf of any 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 commodity marketing board to cooperate with any other state or Federal agency or other organization whose activities may be deemed beneficial to the purpose of this chapter.

(5) Provision may be made in the program to exempt or allow suitable adjustments or credits in connection with an agricultural commodity on which a mandatory checkoff for market development is required under the authority of any Federal law.

§ 4506. Effecting marketing programs.

(a) Referendum required.--No marketing program 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.

(b) Majority vote.--The secretary shall conduct the referendum among the affected producers, and the affected producers shall be deemed to have assented to the proposed program if, of those voting, a majority by number and a majority by volume assent to the proposed program.

(c) Vote of cooperative association.--In determining whether a marketing program or an amendment to the marketing program has been approved by producers, the secretary shall consider the vote of a cooperative association as the votes of its members, providing the cooperative has first notified its members in writing at least 30 days in advance of its intention to cast a representative vote. The notice shall inform the producer of the right to cast a vote individually and shall include the following wording in boldface type: **WARNING - IF YOU DO NOT EXERCISE YOUR RIGHT TO VOTE, YOUR COOPERATIVE HAS THE RIGHT TO VOTE FOR YOU.** Each producer shall receive a ballot from the secretary. The ballot shall contain the following wording in boldface type: **WARNING - IF YOU DO NOT EXERCISE YOUR RIGHT TO VOTE, YOUR COOPERATIVE HAS THE RIGHT TO VOTE FOR YOU.** If the producer votes individually, the vote shall be deducted from the cooperative representative vote.

(d) Procedure.--Any referendum required under this chapter shall be conducted in accordance with reasonable rules and regulations to be established and promulgated by the secretary.

(e) Pennsylvania Dairy Products Promotion Program.--The secretary may establish without a referendum a Pennsylvania Dairy Products Promotion Program, provided that the program is financed by voluntary contributions credited against assessments payable to the National Dairy Promotion and Research Board pursuant to the Dairy and Tobacco Adjustment Act of 1983 (Public Law 98-180, 97 Stat. 1128). This program shall terminate, unless continued by referendum as provided in this section, not later

than six months following the disapproval of the Federal Dairy Promotion Program by a majority of producers voting in a nationwide referendum. The establishment, termination, amendment and management of the Pennsylvania Dairy Products Promotion Program shall, except as provided in this subsection, be conducted pursuant to the provisions of this chapter.

§ 4507. Terminating marketing programs.

Subject to approval of the appropriate commodity marketing board, the secretary shall suspend or terminate any marketing program or any provisions of any marketing program whenever the secretary finds that the provisions or program does not tend to effectuate this chapter within the standards and subject to the limitations and restrictions imposed in this chapter. A 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 program is requested in writing by more than 33 1/3% of the affected producers who produce for market more than 50% of the volume of agricultural commodities produced within the designated production area for market, the secretary shall terminate or suspend for a specified period the marketing program or provisions thereof. The termination shall be effective only if announced on or before the date as may be specified in the program. If 10% of the producers in a commodity group of over 2,000 affected producers or 15% of the producers in a commodity group of less than 2,000 affected producers request in writing that a referendum be held on the question of terminating the program, the secretary must announce and conduct a referendum within a reasonable period of time, and, in any case, within one year of the request a marketing program shall be terminated if so voted by a majority of those voting.

§ 4508. Marketing program review and amendments.

(a) Review.--Every five years the secretary shall call a referendum of affected producers within each agricultural commodity group for which a marketing program exists to determine whether or not a majority of those voting still desire a marketing program.

(b) Referendum on amendments.--The secretary shall call for a referendum on amendments to a marketing program within a reasonable period of time, upon the request of the advisory board or with written request of 10% of the producers in a commodity group of over 2,000 affected producers or 15% of the producers in a commodity group of less than 2,000 affected producers. In voting on an amendment to the marketing program, the vote shall be only on the amendment and shall not terminate the program.

§ 4509. Notice of issuance.

Upon the issuance of any marketing program or any suspension, amendment or termination thereof, a notice shall be published in a newspaper of general circulation published in the capital of the Commonwealth and in such other newspapers as the secretary may prescribe. No program or any suspension, amendment or termination thereof shall become effective until the termination of a period of 20 days from the date of the publication. It shall also be the duty of the secretary to mail a copy of the notice of the issuance to all producers directly affected by the terms of the program, 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 notice.

§ 4510. Collection of fees.

(a) General rule.--Any marketing program issued pursuant to this chapter shall provide for the collection of fees to defray the necessary expenses incurred in the formation, issuance, administration and enforcement of the marketing program and shall include the amount, time, method and condition of payment. Fees to be charged shall not be in excess of that which will generate revenues of 5% of the gross market value of production and marketing of the commodity subject to the marketing program. Each and every producer affected by any marketing program issued under this chapter shall pay to the secretary at the time and in the manner as prescribed by the program as adopted the charges provided by this subsection.

(b) Collection by sales agents.--For the convenience of making collections of any producer charges established pursuant to this section, the secretary shall have the authority and may, by regulation, upon the request of a commodity marketing board, require sales agents to collect producer charges upon the sale of the agricultural commodity.

(c) Appropriation.--Any money collected by the secretary under this chapter is hereby specifically appropriated to the department for the administration of the marketing programs for which they were collected. When a marketing program is discontinued, the surplus money shall be made available for the administration of this chapter or of future marketing programs involving the same commodity.

(d) Auditing standards.--Each board shall adopt and publish a set of auditing standards, consistent with generally accepted auditing standards, against which the moneys it collects pursuant to this chapter and expends in accordance with the terms of this chapter can be audited. Each board shall engage an outside auditing firm to conduct annually an audit of its collections and expenditures. An audit under Federal law or regulation may be accepted by the board as long as it meets the minimum standards established under this section.

§ 4511. Rules and regulations for enforcement.

The secretary shall, with the advice of the commodity marketing board, make and promulgate rules and regulations as may be necessary to effectuate this chapter and to enforce the provisions of any marketing program, all of which shall have the force and effect of law. The secretary may institute an action at law or in equity and may establish penalties as may appear necessary to enforce compliance with this chapter, or any rule or regulation, or marketing program committed to the secretary's administration in addition to any other remedy under this chapter.

§ 4512. Advance deposits.

Prior to the issuance of any marketing program, the secretary may require the applicant therefor to deposit an amount as the secretary may deem necessary to defray the expense of preparing and making the marketing program effective. Funds shall be received, deposited and disbursed by the secretary in accordance with the provisions of handling funds in this chapter. The secretary may reimburse the applicant in the amount of the deposit from any funds received through the adopting of a marketing program pursuant to this chapter.

§ 4513. Severability.

The provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

Section 5. The act of September 20, 1961 (P.L.1541, No.657), known as the Pennsylvania Agricultural Commodities Marketing Act of 1968, is repealed.

Section 6. This act shall take effect immediately.

APPROVED--The 24th day of March, A. D. 1998.

THOMAS J. RIDGE