**2524 AMS AWNP S7139.1 - NOT FOR FLOOR USE**

**HB 2524** - S COMM AMD

By Committee on Agriculture, Water, Natural Resources & Parks

**ADOPTED 03/04/2020**

Strike everything after the enacting clause and insert the following:

**"Sec.**  RCW 15.83.010 and 1989 c 355 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise, the~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited association of producers" means an association of producers which is accredited by the director to be the exclusive negotiation agent for all producer members of the association within a negotiating unit.

(2) "Advance contract" means a contract for purchase and sale of a crop entered into before the crop becomes a growing crop and providing for delivery at or after the harvest of that crop.

(3) "Agricultural products" as used in this chapter means pears, sweet corn, and potatoes produced for sale from farms in this state.

(4) "Association of producers" means any association of producers of agricultural products engaged in marketing, negotiating for its members, shipping, or processing as defined in section 15(a) of the federal agriculture marketing act of 1929 or in section 1 of 42 Stat. 388.

(5) "Director" means the director of the department of agriculture.

(6) "Handler" means a processor or a person engaged in the business or practice of:

(a) Acquiring agricultural products from producers or associations of producers for use by a processor;

(b) Processing agricultural products received from producers or associations of producers, provided that a cooperative association owned by producers shall not be a handler except when contracting for crops from producers who are not members of the cooperative association;

(c) Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product for use by a processor; or

(d) Acting as an agent or broker for a handler in the performance of any function or act specified in (a), (b), or (c) of this subsection.

(7) "Negotiate" means meeting at reasonable times and for reasonable periods of time commencing at least sixty days before the normal planting date for sweet corn and potatoes, or at least sixty days before the normal harvest date for pears, and concluding within thirty days of the normal planting date for sweet corn and potatoes, or within thirty days of the normal harvest date for pears, to make a serious, fair, and reasonable attempt to reach agreement by acknowledging or refuting with reason points brought up by either party with respect to the price, terms of sale, compensation for products produced under contract, or other terms relating to the production or sale of these products: PROVIDED, That neither party shall be required to disclose proprietary business or financial records or information.

(8) "Negotiating unit" means a negotiating unit approved by the director under RCW 15.83.020.

(9) "Person" means an individual, partnership, corporation, association, or any other entity.

(10) "Processor" means any person that purchases agricultural crops from a producer and cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner for eventual resale. A person who solely cleans, sorts, grades, and packages a farm product for sale without altering the natural condition of the product is not a processor. A person processing any portion of a crop is a processor.

(11) "Producer" means a person engaged in the production of agricultural products as a farmer or planter, including a grower or farmer furnishing inputs, production management, or facilities for growing or raising agricultural products. A producer who is also a handler shall be considered a handler under this chapter.

(12) "Qualified commodity" means agricultural products as defined in subsection (3) of this section.

**Sec.**  RCW 15.83.020 and 1989 c 355 s 3 are each amended to read as follows:

(1) An association of producers may file an application with the director:

(a) Requesting accreditation to serve as the exclusive negotiating agent on behalf of its producer members who are within a proposed negotiating unit with respect to any qualified commodity;

(b) Describing geographical boundaries of the proposed negotiating unit;

(c) Specifying the number of producers and the quantity of products included within the proposed negotiating unit;

(d) Specifying the number and location of the producers and the quantity of products represented by the association; ((~~and~~))

(e) Agreeing to reimburse the department for all anticipated and uncovered costs incurred by the department for actions necessary to carry out the provisions of this chapter; and

(f) Supplying any other information required by the director.

(2) Within a reasonable time after receiving an application under subsection (1) of this section, the director shall approve or disapprove the application in accordance with this section.

(a) The director shall approve the initial application or renewal if the director determines that:

(i) The association is owned and controlled by producers under the charter documents or bylaws of the association;

(ii) The association has valid and binding contracts with its members empowering the association to sell or negotiate terms of sale of its members' products or to negotiate for compensation for products produced under contract by its members;

(iii) The association represents a sufficient percentage of producers or that its members produce a sufficient percentage of agricultural products to enable it to function as an effective agent for producers in negotiating with a given handler as defined in rules promulgated by the department. In making this finding, the director shall exclude any quantity of the agricultural products contracted by producers with producer-owned and controlled processing cooperatives with its members and any quantity of these products produced by handlers;

(iv) One of the association's functions is to act as principal or agent for its members in negotiations with handlers for prices and other terms of trade with respect to the production, sale, and marketing of the products of its members, or for compensation for products produced by its members under contract; ((~~and~~))

(v) Sufficient resources, including public funds and any funds to be provided by the applicant under reimbursement agreements, will be available to cover department costs for services provided by the department in carrying out the provisions of this chapter, including department costs to defend a decision made by the department under this chapter if such a decision is appealed; and

(vi) Accreditation would not be contrary to the policies established in RCW 15.83.005.

(b) If the director does not approve the application under (a) of this subsection, then the association of producers may file an amended application with the director. The director, within a reasonable time, shall approve the amended application if it meets the requirements set out in (a) of this subsection.

(3) The department shall provide the association an estimate of expenses that may be incurred prior to the department's provision of services.

(4) At the discretion of the director, or upon submission of a timely filed petition by an affected handler or an affected association of producers, the association of producers accredited under this section may be required by the director to renew the application for accreditation by providing the information required under subsection (1) of this section.

**Sec.**  RCW 15.83.030 and 1989 c 355 s 4 are each amended to read as follows:

It shall be unlawful for any handler to engage, or permit any employee or agent to engage, in the following practices:

(1) To refuse to negotiate with an association of producers accredited under RCW 15.83.020 with respect to any qualified commodity: PROVIDED, That the obligation to negotiate does not require either party to agree to a proposal, to make a concession, or to enter into a contract;

(2) To coerce any producer in the exercise of his or her right to contract with, join, refrain from contracting with or joining, belong to an association of producers, or refuse to deal with any producer because of the exercise of that producer's right to contract with, join, or belong to an association or because of that producer's promotion of legislation on behalf of an association of producers;

(3) To discriminate against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of that producer's membership in or contract with an association of producers or because of that producer's promotion of legislation on behalf of an association of producers;

(4) To coerce or intimidate any producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler;

(5) To pay or loan money, give anything of value, or offer any other inducement or reward to a producer for refusing or ceasing to belong to an association of producers;

(6) To make knowingly false reports about the finances, management, or activities of associations of producers or handlers; ((~~or~~))

(7) To conspire, agree, or arrange with any other person to do, aid, or abet any act made unlawful by this chapter; or

(8) To refuse, in the event that an acceptable price cannot be agreed to between a producer and a processor, to meet with a mutually agreed upon third-party mediator to resolve the price dispute. Any fees associated with the third-party mediation must be borne by the producer."

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On page 1, line 3 of the title, after "marketing;" strike the remainder of the title and insert "and amending RCW 15.83.010, 15.83.020, and 15.83.030."

EFFECT: Specifies that an association of producers, when filing an application with the director of the Department of Agriculture (WSDA) under the Agricultural Marketing and Fair Practices Act, agrees to reimburse WSDA for all anticipated and uncovered costs incurred by WSDA. Requires the director of WSDA to determine that sufficient resources, including public funds and funds to be provided by the applicant under reimbursement agreements, will be available to cover costs for services provided under the application before approving the application. Requires WSDA to provide the association with an estimate of expenses that may be incurred prior to WSDA provision of services.