

CHAPTER 573

MARKETING OF AGRICULTURAL COMMODITIES

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573.101 Short title.—Sections 573.101–573.124 may be cited as the “Florida Agricultural Commodities Marketing Law.”

History.—ss. 1, 26, ch. 87–171; s. 4, ch. 91–429.

573.102 Purposes.—The purposes of ss. 573.101–573.124 are to:

(1) Enable producers of agricultural commodities of this state, with the aid of the state, to correlate more effectively the marketing of their agricultural commodities with market demands therefor.

(2) Establish and maintain orderly marketing of agricultural commodities.

(3) Provide methods for the maintenance of present markets, or for the development of new and larger markets for agricultural commodities grown in this state.

(4) Provide for uniform grading and proper preparation of agricultural commodities for market.

(5) Eliminate or reduce economic waste in the marketing of agricultural commodities grown in this state.

(6) Provide for the funding of production research, harvesting research, economic research, environmental research, and marketing research.

History.—ss. 2, 26, ch. 87–171; s. 1, ch. 89–197; s. 4, ch. 91–429.

573.103 Definitions.—As used in ss. 573.101–573.124:

(1) “Agricultural commodities” means any and all aquacultural, agricultural, apicultural, horticultural (including floricultural), viticultural, and vegetable products produced in this state or any class, variety, or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such

product, or by a processor as herein defined, and shall include, but not be limited to, any one, any combination thereof, or all of the agricultural products, livestock and livestock products, poultry and poultry products, timber and timber products, fish and seafood, and the products of the farms, waters, and forests of this state. “Agricultural commodities” includes citrus regulated pursuant to chapter 601 only for the purpose of funding production research and associated activities related to chemical residue; the term does not include citrus with respect to any other citrus-related activity, whether or not that activity is regulated by or described in chapter 601.

(2) “Advertising and sales promotion,” in addition to the ordinarily accepted meaning, means the presentation of facts to and negotiations with the state, federal, and foreign governmental agencies on matters which affect the production and marketing of agricultural commodities.

(3) “Advisory council” means the advisory council or councils established pursuant to s. 573.112.

(4) “Container” means a crate, bag, box, basket, carton, package, bulk load, or other unit used in the packaging, transportation, sale, shipment, or any other unit used in the handling of agricultural commodities.

(5) “Department” means the Department of Agriculture and Consumer Services.

(6) “Distributor” means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, agricultural commodities which he has produced, or purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.

(7) “Handler” is synonymous with shipper and means any person, except a common or contract carrier of agricultural commodities owned by another person, engaged within this state as a distributor in the business of distributing agricultural commodities in the primary channel of trade.

(8) “Marketing agreement” means an agreement between the department and distributors, producers, handlers, and others engaged in the handling of agricultural commodities, regulating the handling of the commodities.

(9) “Marketing order” means an order issued by the department, prescribing rules governing the distributing, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods.

(10) “Primary channel of trade” means agricultural commodities shall be deemed and held to be in the primary channel of trade when such commodities are cut, gathered from the ground, or otherwise harvested or prepared for sale in any manner for commercial purposes, but agricultural commodities shall cease to be in the primary channel of trade if they leave intrastate commerce.

(11) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, agricultural commodities for market.

(12) "Retailer" means any person who purchases or acquires any agricultural commodities for resale at retail to the general public, unless such retailer engages in the business of a distributor.

(13) "Seasonal marketing regulations" means marketing regulations, applicable to a particular marketing order or agreement, made effective by the department upon recommendation of the advisory council concerned for the purpose of carrying into effect by administrative order the marketing regulatory authorizations and provisions of the marketing order or agreement as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which the marketing order or agreement may operate. Seasonal marketing regulations shall not extend beyond the marketing regulatory authorizations specified in the marketing order or agreement concerned.

(14) "To distribute" means to engage in the business of a distributor as herein defined.

(15) "To handle" means to engage in the business of a handler as herein defined.

(16) "To process" means to engage in the business of a processor as herein defined.

(17) "To retail" means to engage in the business of a retailer as herein defined.

(18) "Administrative rules" means rules applicable to a particular marketing order or agreement, issued and made effective by the department upon recommendation of the advisory council concerned, to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules may include, but shall not be limited to, methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement; and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

History.—ss. 3, 26, ch. 87-171; s. 2, ch. 89-197; s. 4, ch. 91-429.

573.104 Required consent to marketing order by industry.—No marketing order or amendment directly or indirectly affecting or regulating agricultural commodities in the primary channel of trade of this state shall become effective unless the marketing order or amendment has been consented to by a majority of producers or handlers of such commodities in this state, as provided in s. 573.1101.

History.—ss. 4, 26, ch. 87-171; s. 4, ch. 91-429.

573.105 Petition of producers.—Upon the application or petition of 10 or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of ss.

573.101-573.124, the department may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

History.—ss. 5, 26, ch. 87-171; s. 4, ch. 91-429.

573.106 Petitioner's expense.—Prior to the issuance of any marketing order by the department, the department shall require the applicants to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective any marketing order. Funds shall be received, deposited, and disbursed by the department; provided, however, any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If the proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory council and approval of the department.

History.—ss. 6, 26, ch. 87-171; s. 4, ch. 91-429.

573.107 Public hearing.—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the department. These hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any hearing shall be made and filed by the department in its office. All interested persons shall have a period of not less than 7 days following the public hearing for filing written briefs with the department concerning such action.

History.—ss. 7, 26, ch. 87-171; s. 4, ch. 91-429.

573.108 Findings required to issue marketing order.—After notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of ss. 573.101-573.124, and:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of agricultural commodities affected with market demands therefor and the marketing order or amendments thereto will tend to reestablish or maintain a level of prices for agricultural commodities which will provide a purchasing power for the commodities adequate to maintain sufficient producers as are required to provide such supply of the quantities and qualities of agricultural commodities necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach equality of purchasing power at as rapid a rate as is feasible in view of the market demand for agricultural commodities.

(3) The marketing order or amendments thereto are in conformity with the provisions of ss. 573.101-573.124 and will tend to effectuate the declared purposes and policies of ss. 573.101-573.124.

(4) The marketing order or amendments thereto will protect the interests of consumers of agricultural commodities by exercising the powers of ss. 573.101-573.124 only to the extent necessary to establish the equality of purchasing power described in subsection (1).

(5) Provided that no marketing order would be issued wherein the commodity addressed is subject to regulation by any other state agency unless a memoran-

dum of agreement is executed between the department and the regulating agency.

History.—ss. 8, 26, ch. 87-171; s. 4, ch. 91-429.

573.109 Procedure for referendum.—

(1) With respect to any referendum conducted under the provisions of ss. 573.101-573.124, the department shall, before calling and announcing a referendum, fix, determine, and publicly announce, at least 15 days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the department. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of the producers or handlers affected who vote in each referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe.

History.—ss. 9, 26, ch. 87-171; s. 4, ch. 91-429.

573.1101 Referendum.—

(1) No marketing order or amendments thereto directly affecting and regulating handlers shall become effective unless the department finds that the order has been approved by ballot by the handlers covered by the marketing order who, during a representative period determined by the department, handled no less than 51 percent of the volume of agricultural commodities produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers shall become effective unless and until the department finds that the order has been approved by ballot by the producers covered by the marketing order who, during a representative period determined by the department, produced not less than 51 percent of the volume of agricultural commodities covered by the marketing order and who total by number not less than 65 percent of the agricultural commodities producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

History.—ss. 10, 26, ch. 87-171; s. 4, ch. 91-429.

573.111 Notice of effective date of marketing order.—

Before 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 department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be published in a newspaper of general

circulation in the state and in such other newspaper or newspapers as the department may prescribe. The notices published in the newspaper or newspapers shall be sent by first-class mail, by the department to those newspapers designated by it, the same date that the notice is posted on the bulletin board with instructions to publish the same as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provides. No marketing order, or any suspension, amendment, or termination thereof, shall become effective until the termination of a period of 5 days from the date of posting and publication.

History.—ss. 11, 26, ch. 87-171; s. 4, ch. 91-429; s. 4, ch. 92-4; ss. 44, 45, ch. 92-291.

573.112 Advisory council.—

(1) When a marketing order is issued, the Department of Agriculture and Consumer Services shall appoint an advisory council to advise the department in administering the marketing order. The advisory council shall be composed of seven members and an alternate for each member. The majority of the members and alternate members of the council shall be producers.

(2) Each appointment to the council shall be made by the department in the following manner:

(a) As soon as practicable after the effective date of the marketing order, the department shall appoint the members and alternates of the first council from the class of persons set forth in the marketing order. For the purpose of selection of the council, both nomination and appointment of members and their alternates, the members shall be selected from the state at large. As designated by the department, four of the members of the council shall be appointed for terms of 4 years and three of the members shall be appointed for terms of 2 years beginning with the initial appointment. Thereafter, members shall be appointed for 4-year terms. Any vacancy shall be filled in the manner of the original appointment for the remainder of the term.

(b) Immediately after their appointment, the members of the council shall meet and organize by the election of a chairman and a vice chairman, whose terms shall be for 1 year.

(c) Nominations shall be submitted by the producers of the agricultural commodity. The department shall appoint members and alternates from the nominations submitted from the various commodity-producing counties. In the absence of nominations, the department may appoint a person to that seat on the council without such person first being nominated by the producers of such area.

(d) For the terms following the term in which the order becomes effective, the council, by its chairman, secretary, or manager, shall submit a report of nominations to the department by June 1.

(3) An alternate member of the council shall, in the absence of the member for whom he is the alternate, sit in the place and stead of said member; and in such event, the alternate shall have all the rights, privileges, and powers of the member for whom he is the alternate.

(4) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of the council.

(5) The council shall meet at the call of its chairman, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules.

(6) No member or alternate member of the council shall receive a salary, but shall be reimbursed for travel expenses while on council business as provided in s. 112.061. The department may employ necessary personnel, including professional and technical services personnel, and fix their compensation and terms of employment and may incur expenses to be paid from moneys collected as herein provided.

History.—ss. 12, 26, ch. 87-171; s. 2, ch. 88-303; ss. 4, 5, ch. 91-429.

573.113 Advisory council; exemption from liability.

The members and alternate members of any advisory council duly appointed by the department, including employees of the council, shall not be held responsible individually in any way whatsoever to any producer, 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 acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act of any other member of the council.

History.—ss. 13, 26, ch. 87-171; s. 2, ch. 88-303; ss. 4, 5, ch. 91-429.

573.114 Possible subjects of marketing orders.—

Subject to the legislative restrictions and limitations set forth herein, any marketing order issued by the department may contain any or all of the following provisions:

(1) Provisions for the establishment of plans and programs for advertising, sales promotion, and education to maintain present markets or to create new or larger markets for agricultural commodities grown in this state. The department is authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of agricultural commodities, provided that any plan or program shall be directed toward increasing the sale of the commodities without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production, harvesting, marketing, or distribution of agricultural commodities; for economic research or environmental research related to agricultural commodities; and for the expenditure of moneys for such purposes. In any research carried on pursuant to this subsection, the department, upon recommendation of the advisory council, shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department determines, based upon recommendations of the advisory council.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law applicable to the distribution or handling of agricultural commodities within this state, the department is hereby authorized to include in any marketing order issued provisions designed to correct any trade practices affecting the distributing or handling of agricultural commodities within this state which the department finds, after a hearing in which all interested persons are given an opportunity to be heard, are unfair and detrimental to the effectuation of the declared purposes of this act.

(4) Provisions establishing or providing for establishing, with respect to agricultural commodities, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

(a) Grading standards of quality, condition, size, shape, maturity, pack, or any other criteria for indicating desirability of agricultural commodities, which standards may include minimum standards, provided the standards shall not be established below any minimum prescribed by law for such commodities.

(b) Uniform inspection and grading and proper labeling of agricultural commodities in accordance with the standards so established.

(c) The size, weight, capacity, dimensions, or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of agricultural commodities.

(5) Provisions for the establishment of surplus, stabilization, or byproduct pools for agricultural commodities, or of any grade, size, quality, or condition thereof, and provisions for the sale of the commodities in any pool and for the equitable distribution among the persons participating of the net returns derived from the sale of the commodities. Whenever the marketing order authorizes the establishment of any pool or pools, the department shall have the power to receive the commodities from each producer or handler and to handle the same according to the grade, size, quality, or condition and to account to each producer or handler participating upon a pro rata basis for the net proceeds derived from the sale.

(6) Provisions for mitigating problems of agricultural commodity producers, including, without limitation, production, labor, water, and environmental problems. After receiving the advice and recommendation of the appropriate agricultural advisory council, the department may expend assessment funds collected from the affected commodity group for use by that group in mitigating a specific problem.

(7) Provisions incidental to and not inconsistent with the terms, conditions, and provisions specified and necessary to effectuate the other provisions of the marketing order.

History.—ss. 14, 26, ch. 87-171; s. 3, ch. 89-197; s. 4, ch. 91-429; s. 22, ch. 94-335.

573.115 Cooperation with other governments.—

The department is hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders, and the department is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and exercise any administrative authority to effect such uniformity of administration and regulation.

History.—ss. 15, 26, ch. 87-171; s. 4, ch. 91-429.

573.116 Limited marketing orders.—A marketing order issued by the department may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective, provided that no marketing order shall be issued by the

department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

History.—ss. 16, 26, ch. 87-171; s. 4, ch. 91-429.

573.117 Marketing agreement.—In order to effectuate the declared policy of ss. 573.101-573.124, the department shall have the power to enter into marketing agreements, which agreements may contain any of those provisions contained in s. 573.114 with distributors, producers, and others engaged in the handling of agricultural commodities regulating the handling of the commodities, which marketing agreements shall be binding upon the signatories exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order. The department may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodities.

History.—ss. 17, 26, ch. 87-171; s. 4, ch. 91-429.

573.118 Assessment; funds; audit; loans.—

(1) To provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order, every person engaged in the production, distributing, or handling of agricultural commodities within this state, and directly affected by any marketing order, shall pay to the department, at such times and in such installments as the department may prescribe, such person's pro rata share of necessary expenses. Each person's share of expenses shall be that proportion which the total volume of agricultural commodities produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodities produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the volume of agricultural commodities sold or some other equitable basis. For convenience of collection, upon request of the department, handlers of the commodities shall pay any producer assessments. Handlers paying assessments for and on behalf of any producers shall, at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers. The collected assessments shall be deposited into the General Inspection Trust Fund and shall be used for the sole purpose of implementing the marketing order for which the assessment was collected. The department is not subject to the procedures found in s. 287.057 in the expenditure of these funds. However, the director of the Division of Marketing and Development shall file with the internal auditor of the department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient

bond, based upon the estimated volume of agricultural commodities to be handled during the period or periods covered by the marketing order, to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor, or handler upon the basis of the volume of agricultural commodities handled during the period or periods. The department shall prescribe rules with respect to the assessment and collection of these funds.

(3) Any money so collected shall be used to defray the actual expenses incurred by the department with respect to the agricultural commodities marketing order. Any moneys remaining in the fund, at the discretion of the department, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected. Upon termination by the department of any marketing order, all moneys remaining and not required to defray the expenses of the order shall be returned by the department upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of levying and collecting of assessments, for each fiscal year in which assessment funds are received by the department, the department shall cause to be made a thorough annual audit of the books and accounts by a certified public accountant, such audit to be completed within 60 days after the end of the fiscal year. The department and all producers and handlers covered by the marketing order shall be properly advised of the details of the annual official audit of the accounts as shown by the certified public accountant within 30 days of the audit.

(5) Any assessment levied, in the specified amount as may be determined by the department, shall constitute a personal debt of every person so assessed and shall be due and payable to the department, and the department may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

(6) Any assessment levied upon citrus fruit under this section shall be at a rate not to exceed 1 cent per standard-packed box of citrus fruit grown and placed into the primary channel of trade in this state. All revenues from such assessment collected by the department shall be deposited into the Citrus Inspection Trust Fund.

History.—ss. 18, 26, ch. 87-171; s. 4, ch. 89-197; s. 4, ch. 91-429; s. 23, ch. 92-151; s. 4, ch. 93-270.

573.119 Department; powers and duties.—

(1) The department shall administer and enforce the provisions of ss. 573.101-573.124. In order to effectuate the declared purposes of ss. 573.101-573.124, the department is authorized to issue, administer, and enforce the provisions of any marketing agreement or order regulating producer marketing and handling of agricultural commodities in the primary channel of trade.

(2) Upon recommendation of the advisory council concerned, the department shall have the power to

establish administrative rules for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(3) Upon recommendation of the advisory council concerned, the department shall have the power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any rule issued by the department shall be given to all producers and handlers directly affected.

History.—ss. 19, 26, ch. 87-171; s. 4, ch. 91-429.

573.1201 Certificates of exemption.—

(1) The department may adopt procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The department may issue certificates of exemption to any applicant who applies for an exemption and furnishes adequate evidence to the department that by reason of a marketing order the applicant has been adversely affected or unduly burdened or that the result of the marketing order is confiscatory by reason of acts beyond the applicant's control or by acts beyond reasonable expectation.

(3) The department shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemption.

History.—ss. 20, 26, ch. 87-171; s. 4, ch. 91-429.

573.121 Termination or suspension of marketing orders.—The department shall suspend or terminate the marketing order or any provision of the marketing order whenever it finds the provision or order does not tend to effectuate the declared purposes of ss. 573.101-573.124, within the standards and subject to the limitations and restrictions herein imposed, and it further finds upon a referendum called by the department that 51 percent of the producers who are engaged within the state in the production of agricultural commodities for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of agricultural commodities produced within the state for market are opposed to the marketing order, provided the suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 51 percent of the producers who are engaged within the state in the production of agricultural commodities for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of the commodity produced within the state for market, covered by the order, and the department further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of ss. 573.101-573.124, it shall terminate or suspend for a specified period the marketing order or provision thereof, provided the termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, as may be specified in the order.

History.—ss. 21, 26, ch. 87-171; s. 4, ch. 91-429.

573.122 Inspections.—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building, or conveyance where he has reason to believe any agricultural commodities subject to a marketing order are produced, stored, being prepared for market, or marketed and may inspect or cause to be inspected the representative samples of the commodities as may be necessary to determine whether or not any lot of agricultural commodities is in compliance with applicable regulations of any marketing order.

History.—ss. 22, 26, ch. 87-171; s. 4, ch. 91-429.

573.123 Maintenance and production of records.—

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department or its duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under the marketing order, and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except to an attorney who provides legal advice to the division about enforcing a market order or by court order. A person who receives confidential information under this subsection shall maintain the confidentiality of that information. This exemption is subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

(3) The department or its duly authorized or designated representative or representatives may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department, or its duly authorized or designated representative or representatives, in obedience to the subpoena of the department on the ground or the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify, or to produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued, provided no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History.—ss. 23, 26, ch. 87-171; s. 4, ch. 91-429; s. 5, ch. 92-4.

1Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the

Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995.*

573.124 Penalties; violation; hearings.—

(1) Every person who violates any provision of ss. 573.101–573.124 or any provision of any marketing agreement or order duly issued by the department shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Each day during which any such violation continues after the department has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department to be used to defray the cost of administering the respective marketing order or agreement.

(2) Upon the filing of a verified complaint with the department charging a violation of any provision of ss. 573.101–573.124, any provision of any marketing order issued by the department, or any provision of any marketing agreement enforced by the department, and prior to institution of any court proceedings authorized, the department may refer the matter to a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of ss. 573.101–573.124 or may proceed to consider the charges set forth in such verified complaint.

(3) If the department finds that no violation has occurred, it shall forthwith dismiss the complaint.

(4) If the department finds that a violation has occurred, it shall so enter its findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the department, the department may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) Any prosecuting attorney of this state having jurisdiction may, upon his own initiative, and shall, upon complaint of any person, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of

ss. 573.101–573.124, any marketing order duly issued by the department, or any marketing agreement enforced by the department.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provision of ss. 573.101–573.124, any marketing order duly issued by the department or any marketing agreement enforced by the department; and in any such proceeding it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. The circuit court may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if the final decree is in favor of the department, the final decree shall provide that the defendant or defendants pay to the department the reasonable costs of each suit, including reasonable attorney's fees to be fixed by the court. These actions may be commenced either in the county where any defendant resides or in the county where any act complained of occurred.

(7) The provisions of ss. 573.101–573.124 shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in ss. 573.101–573.124.

(8) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for:

(a) Any person to willfully render or furnish a false or fraudulent report, statement, or record required by the department, or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any agricultural commodity or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any agricultural commodity regulated by a marketing order issued and in effect hereunder, and the quantity of the commodity so received.

History.—ss. 24, 26, ch. 87–171; s. 51, ch. 91–220; s. 4, ch. 91–429.