

CHAPTER 142

AN ACT

HB 3811

Relating to agricultural cooperatives; creating new provisions; amending ORS 62.015, 62.845, 646.535 and 646.740; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 62.015 is amended to read:

62.015. As used in this chapter, unless the context requires otherwise:

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of incorporation in the case of a domestic cooperative.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign cooperative.

(2) "Articles" means articles of incorporation, articles of conversion and articles of merger.

(3) "Board" means board of directors.

(4) "Cooperative" means a cooperative corporation which is subject to the provisions of this chapter.

(5) "Corporation" means a corporation which is not a cooperative.

(6) "Foreign cooperative" means a cooperative corporation organized under laws other than the laws of this state.

(7) "Member" means a person who has been qualified and accepted for membership in a cooperative.

(8) "Membership stock" means any class of stock, continuous ownership of which is required for membership in a cooperative.

(9) "Negotiate" means to confer with another in order to come to terms.

[9] (10) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, trusts, estates and foreign and domestic cooperative corporations.

[(10)] (11) "Shareholder" means a holder of shares of capital stock of a cooperative other than membership stock.

SECTION 2. ORS 62.845 is amended to read:

62.845. (1) It is the public policy of the State of Oregon to encourage the efficient production and distribution of agricultural and other products derived from natural resources or labor resources of this state. Accordingly, [no] a cooperative [which] that operates in compliance with the provisions of this chapter and [which] that does not during its fiscal year market products for nonmember patrons in an amount greater in value than the products marketed for its members[, shall] **may not** be deemed to be a conspiracy or combination in restraint of trade, or an illegal monopoly; nor shall the contracts of such cooperative authorized by this chapter, whether or not required by the cooperative

as a condition of membership or of doing business with the cooperative, be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(2) A negotiating committee of dealers, as defined in ORS 646.515 (3), that operates in compliance with the provisions of section 4 of this 2001 Act to negotiate with a cooperative the price for which the members of the cooperative will sell agricultural products to be produced by the members, or the price to be paid for the services of producing agricultural products by the members or under the control of the members, may not be deemed to be engaged in unlawful restraint of trade or to be participants in a conspiracy or combination to accomplish an improper or illegal purpose or act.

SECTION 3. Section 4 of this 2001 Act is added to and made a part of ORS chapter 62.

SECTION 4. (1) As used in this section:

(a) "Parties" or "party" means perennial ryegrass seed producers, perennial ryegrass seed associations, perennial ryegrass seed cooperatives or perennial ryegrass seed dealers that are participants in the state regulatory program described in subsection (2) of this section.

(b) "Regulatory program" means the state regulatory program described in subsection (2) of this section that is actively supervised by the Director of Agriculture and that authorizes parties to engage in certain collective bargaining and negotiations to establish the price of perennial ryegrass to be produced and sold to perennial ryegrass seed dealers in the future.

(2)(a) It is the intent of this section and ORS 646.535 (2) and 646.740 (10) to displace competition with a regulatory program in the perennial ryegrass seed industry to a limited degree. The regulatory program is intended to grant immunity from federal and state antitrust laws to perennial ryegrass seed producers and perennial ryegrass seed dealers for the limited purpose of allowing the producers and the dealers to bargain collectively and to arrive at a negotiated price for the sale of perennial ryegrass seed by the producers to the dealers. The activities of any party that comply with the provisions of this section may not be considered to be in restraint of trade, a conspiracy or combination or any other unlawful activity in violation of any provision of ORS 646.705 to 646.826 or federal antitrust laws.

(b) A perennial ryegrass seed cooperative or marketing association may negotiate with one or more dealers, as defined in ORS 646.515, of perennial ryegrass seed to establish the price at which members of the cooperative or association will sell products to be produced by its members or under the control of its members. The perennial ryegrass seed dealers may negoti-

ate the price of the perennial ryegrass seed products through a committee that sets forth the views of the dealers and votes on any issues being negotiated as authorized by this section, including the price of perennial ryegrass seed products.

(c) The Director of Agriculture is authorized to actively supervise the conduct of a perennial ryegrass seed agricultural cooperative organized under this chapter, a representative committee of perennial ryegrass seed dealers and any perennial ryegrass seed association in establishing the price of perennial ryegrass seed to be produced and sold to seed dealers at a future date. The director is authorized to supervise the negotiations between the parties, review the prices established by the negotiations and approve the prices proposed by the parties before the prices take effect. The director must approve the proposed prices and any adjustments to previously approved prices before the prices may be implemented.

(d) The director may compel the parties to take whatever action the director considers necessary to:

(A) Ensure that the parties are engaging in conduct that is authorized under this section;

(B) Ensure that the policies of this state are being fulfilled under the regulatory program; and

(C) Enjoin conduct by any of the parties that is not authorized by the director or conduct that the director finds does not advance the interests of this state in carrying out the regulatory program.

(e) The Director of Agriculture may adopt rules to carry out the director's authority under this section.

(f) The director may designate persons as the director deems necessary to carry out the responsibility of actively supervising the conduct of the parties, including serving as intermediaries between prospective parties. Persons designated by the director must be employees of the State Department of Agriculture.

(g) The director by rule shall set and collect fees from the parties who are participants in a regulatory program. The fees shall be deposited in the Department of Agriculture Account established under ORS 561.150.

(h) The director shall supervise the labeling of perennial ryegrass seeds to ensure compliance with ORS 633.520, 633.531 and 633.541.

SECTION 5. ORS 646.535 is amended to read:

646.535. (1) [No] A dealer [shall] may not knowingly engage in the following unfair trade practices:

[(1)] (a) Interfere with, restrain, coerce or boycott a producer in the exercise of the rights guaranteed pursuant to ORS 646.525; [or]

[(2)] (b) Discriminate against a producer with respect to price or other terms of purchase of raw

agricultural commodities, by reason of the producer's membership in or contract with cooperative bargaining associations; or

[(3)] (c) Pay or loan money, or give any other thing of value to a producer as an inducement or reward for refusing to or ceasing to belong to a cooperative bargaining association.

(2) A perennial ryegrass seed dealer who participates in negotiating committee activities described in section 4 of this 2001 Act does not violate subsection (1) of this section.

SECTION 6. ORS 646.740 is amended to read:

646.740. [No] The provisions of ORS 136.617, 646.705 to 646.805 and 646.990 [shall] may not be construed to make illegal:

(1) The activities of any labor organization or individual working men and women permitted by ORS chapters 661 to 663;

(2) The right of producers of agricultural commodities and commercial fishermen to join, belong to and act through cooperative bargaining associations under ORS 646.515 to 646.545. For the purpose of this subsection, activities of cooperative bargaining associations and their members that are lawful under 15 U.S.C. 521 and 522 or 7 U.S.C. 291 and 292 are lawful under ORS 646.515 to 646.545;

(3) The activities of any person subject to regulation by the Public Utility Commission under ORS chapters 756 to 759 to the extent that such activities are so regulated and are lawful thereunder or the activities of any person conducted or carried out in accordance with any agreement or procedure approved as provided in 49 U.S.C. 5b or 5c;

(4) The activities of any person subject to regulation by the Director of the Department of Consumer and Business Services under ORS chapters 731 to 750 to the extent that such activities are so regulated and are lawful thereunder;

(5) The activities of any state or national banking institution or savings and loan association, and of any other lending institution, to the extent that such activities are regulated by the Director of the Department of Consumer and Business Services under ORS chapters 706 to 725 and are lawful thereunder;

(6) Any other activity specifically authorized under state law or local ordinance;

(7) The activities of any metropolitan service district formed under ORS chapter 268 and the activities of any person subject to regulation by a metropolitan service district formed under ORS chapter 268 to the extent that those activities are so regulated and are lawful thereunder;

(8) The activities of any person conducted or carried out in accordance with the terms and conditions of a certificate issued pursuant to 15 U.S.C. 4001 to 4021; [or]

(9) The activities of a health care provider authorized by and in accordance with ORS 442.700 to 442.760 to the extent the activities are regulated and lawful under ORS 442.700 to 442.760[.]; or

(10) The negotiating activities of a dealer in agricultural commodities that are carried out and supervised under section 4 of this 2001 Act.

SECTION 7. Section 4 of this 2001 Act and the amendments to ORS 62.015, 62.845, 646.535 and 646.740 by sections 1, 2, 5 and 6 of this 2001 Act apply only to negotiations begun on or after the effective date of this 2001 Act.

SECTION 8. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Approved by the Governor May 16, 2001
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