

Chapter 15.26 RCW
TREE FRUIT RESEARCH ACT

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RCW 15.26.010 Short title. This chapter shall be known and cited as the "tree fruit research act." [1969 c 129 § 1.]

RCW 15.26.020 Purpose. The purpose of this chapter is for the creation of a commission which shall promote and carry on research and administer specific industry service programs, including but not limited to sanitation programs, which will or may benefit the planting, production, harvesting, handling, processing or shipment of tree fruit of this state, which shall collect assessments on tree fruit in this state and which shall coordinate its research efforts with those of other state, federal, or private agencies doing similar research. [1983 c 281 § 1; 1969 c 129 § 2.]

RCW 15.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree fruit or has orchard plantings intended for commercial tree fruit production.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits. [2010 c 8 § 6025; 1983 c 281 § 2; 1969 c 129 § 3.]

RCW 15.26.040 Tree fruit research commission created—
Membership. There is hereby created the Washington tree fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the Washington apple commission, and one member representing the winter pear industry to be appointed by the director. The director or his or her duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070. [2010 c 8 § 6026; 1969 c 129 § 4.]

RCW 15.26.050 Qualifications of members. Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his or her income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this

section shall continue during their term of office. [2010 c 8 § 6027; 1969 c 129 § 5.]

RCW 15.26.060 Appointment of members. The Washington apple commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his or her income from the production of winter pears. [2010 c 8 § 6028; 1969 c 129 § 6.]

RCW 15.26.070 Terms of members. The terms of the members of commission shall be staggered and each shall serve for a term of three years and until their successor has been appointed and qualified: PROVIDED, That the first appointments to the commission beginning July 30, 1969, shall be for the following terms:

- (1) Positions one, four, and seven, one year.
- (2) Positions two, five, and eight, two years.
- (3) Positions three, six, and nine, three years. [1969 c 129 § 7.]

RCW 15.26.080 Vacancies. In the event a commission member resigns, is disqualified, or vacates his or her position on the commission for any other reason, the appointing agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member. [2010 c 8 § 6029; 1969 c 129 § 8.]

RCW 15.26.090 Quorum. A majority of the members of the commission shall constitute a quorum for the transaction of all business and carrying out the duties of the commission: PROVIDED, That on all fiscal matters, approval for passage must be by at least two-thirds majority of the said quorum. [1969 c 129 § 9.]

RCW 15.26.100 Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 13; 1975-'76 2nd ex.s. c 34 § 13; 1969 c 129 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

RCW 15.26.110 Powers of commission. The powers of the commission shall include the following:

- (1) To elect a chair, treasurer, and such other officers as it deems advisable;
- (2) To adopt any rules necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the administrative procedure act, chapter 34.05 RCW, as enacted or hereafter amended;
- (3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;
- (4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;
- (5) To own, lease, or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;
- (6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;
- (7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;
- (8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;
- (9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state, or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;
- (10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;
- (11) To establish a foundation using commission funds as grant money for the benefit of the tree fruit industry. The foundation may use commission funds for the purposes authorized by this chapter;
- (12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in this chapter. Personal service contracts must comply with *chapter 39.29 RCW;
- (13) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research;
- (14) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this chapter;
- (15) To accept and expend or retain any gift, bequest, contribution, or grant from private persons or private and public agencies to carry out the purposes provided in this chapter; and
- (16) Such other powers and duties that are necessary to carry out the purpose of this chapter. [2010 c 78 § 1; 2010 c 8 § 6030; 1969 c 129 § 11.]

Reviser's note: *(1) Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

(2) This section was amended by 2010 c 8 § 6030 and by 2010 c 78 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

RCW 15.26.120 Assessments levied—Referendum. There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the Washington apple commission, Washington state fruit commission, and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [2011 c 103 § 1; 1969 c 129 § 12.]

Purpose—2011 c 103: "The purpose of this act is to make technical, nonsubstantive amendments to the sections included in this act. No substantive changes to the law are intended or implied." [2011 c 103 § 45.]

Collection by the Washington apple commission: RCW 15.24.110.

RCW 15.26.125 Assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW—Washington tree fruit research commission. The Washington tree fruit research commission may raise the assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars per ton in effect under chapter 16-560 WAC on July 1, 1995, to four dollars per ton. The commission may also establish an additional assessment on all tree fruits under RCW 15.26.155 of not more than eight cents per ton.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of the tree fruit research commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments. [1995 c 109 § 2.]

Effective date—1995 c 109: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 109 § 3.]

RCW 15.26.130 List of producers. The Washington apple commission and the Washington state fruit commission shall supply the director with a list of known producers subject to paying assessments to the respective commissions. The director, in addition, shall at the commission's cost compile a list of known tree fruit producers producing fruit not subject to assessments of the Washington apple commission and the Washington state fruit commission but subject to assessments or becoming subject to assessments under the provisions of this chapter. In compiling such list the director shall publish notice to producers of such tree fruit, requiring them to file with the director a report giving the producer's name, mailing address and orchard location. The notice shall be published once a week for four consecutive weeks in weekly or daily newspapers of general circulation in the area or areas where such tree fruit is produced. All producer reports shall be filed with the director within twenty days from the date of last publication of notice or thirty days of mailing notice to producers of such tree fruit, whichever is later. The director shall for the purpose of conducting any referendum affecting tree fruits subject to the provisions of this chapter keep such list up-to-date when conducting such referendum. Every person who becomes a producer after the list is compiled shall file with the director a similar report, giving his or her name, mailing address and orchard location. Such list shall be final and conclusive in conducting referendums and failure to notify a producer shall not be cause for the invalidation of any referendum. [2002 c 313 § 135; 1969 c 129 § 13.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

RCW 15.26.140 Increase in assessments by referendum. The producers of tree fruit subject to the provisions of this chapter may subsequent to approving initial assessment increase such assessment by referendum when approved by a majority of the producers voting. [1969 c 129 § 14.]

RCW 15.26.150 Additional assessments for special projects. The producers of any specific tree fruit subject to the provisions of this chapter may at any time by referendum conducted by the department and approved by a majority of the producers voting of such specific tree fruit establish an additional assessment on such specific tree fruit for special research projects of special interest to such specific tree fruit. [1969 c 129 § 15.]

RCW 15.26.155 Additional assessment. The producers of tree fruit subject to the provisions of this chapter may at any time, by referendum conducted by the department and approved by a majority of the producers voting, establish an additional assessment for programs including but not limited to sanitation programs and the

reregistration of plant protection products for use on minor crops. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section. [1991 c 257 § 2; 1983 c 281 § 3.]

RCW 15.26.160 Suspension of assessments. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend for a period not exceeding one crop year at a time all or part of the assessments on tree fruit subject to the provisions of this chapter. [1969 c 129 § 16.]

RCW 15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit. Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he or she has received proof that the assessment due and payable the commission has been paid. [2010 c 8 § 6031; 1969 c 129 § 17.]

RCW 15.26.180 Records of persons receiving fruit. Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his or her own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two years subject to inspection by duly authorized representatives of the commission. [2010 c 8 § 6032; 1969 c 129 § 18.]

RCW 15.26.190 Return of dealers, handlers, and processors—Filing—Contents. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him or her during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [2010 c 8 § 6033; 1969 c 129 § 19.]

RCW 15.26.200 Assessments—When due and payable—Collection. Such assessments on tree fruits shall be due and payable by the producer thereof by the end of the next business day that such tree fruits are sold or shipped for sale unless such time is extended as provided for in RCW 15.26.210 by rule or regulation of the commission. The commission may by rule or regulation provide that such assessments shall be collected from the producer and remitted by the person purchasing, or receiving such tree fruit for sale, processing, or shipment anywhere. [1969 c 129 § 20.]

RCW 15.26.210 Assessments—Constitute personal debt. Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: PROVIDED, That such extension of time shall not apply to any person who is in arrears in his or her payments to the commission. [2010 c 8 § 6034; 1969 c 129 § 21.]

RCW 15.26.220 Assessments—Failure to pay—Collection. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the commission may add to such unpaid assessment or sum an amount not more than ten percent but not less than one dollar of the same to defray the cost of enforcing the collection of such assessment, together with interest on the unpaid balance of one percent per month commencing the first month following the month in which payment was due. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the interest and the above specified ten percent thereon, and such reasonable attorneys' fees as may be allowed by the court, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 129 § 22.]

RCW 15.26.230 Disposition of moneys collected—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him or her in banks designated by the commission, and disbursed on the order of the commission. The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his or her faithful performance of his or her duties and his or her strict accounting of all funds of the commission. RCW 43.01.050 shall not apply to money collected under this chapter. [2010 c 8 § 6035; 1969 c 129 § 23.]

RCW 15.26.235 Collection, administration, and disbursement of funds for industry service programs. Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed [disbursed] separately from all other funds authorized and collected for research by the commission. The commission may appoint a committee to advise them regarding the need for specific industry service programs and regarding the administration of the assessments collected under RCW 15.26.155. [1983 c 281 § 4.]

RCW 15.26.240 Nonliability of state, members, employees. Obligations incurred by the commission shall be enforced only against

the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any 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 or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member. [2010 c 8 § 6036; 1969 c 129 § 24.]

RCW 15.26.250 Collection of assessments for commission by apple commission and state fruit commission. The Washington apple commission and Washington state fruit commission in order to avoid unnecessary duplication of costs and efforts in collecting assessments for tree fruits at the time said commissions collect assessments due under the provisions of their acts may also collect the assessment due the commission on such tree fruit. Such assessments on winter pears may be collected by the Washington state fruit commission or in a manner prescribed by the commission. Assessments collected for the commission by the Washington apple commission and the Washington state fruit commission shall be forwarded to the commissions expeditiously. No fee shall be charged the commission for the collection of assessments because the research conducted by the commission shall be of direct benefit to all commercial growers of tree fruits in the state of Washington. However, the commission shall reimburse at actual cost to the department or the Washington state fruit commission or apple commission any assessment collected for the commission by such agencies for any tree fruit subject to the provisions of this chapter, but not subject to pay assessments to the Washington state fruit commission or the Washington apple commission. [2002 c 313 § 136; 1969 c 129 § 25.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

RCW 15.26.260 Legal costs and expenses to be borne by commission. All legal costs and expenses that may be incurred in the collection of delinquent accounts owed this commission shall be borne by the commission; except as provided for otherwise in RCW 15.26.220. [1969 c 129 § 26.]

RCW 15.26.265 Funding staff support—Rules. The director may provide by rule for a method to fund staff support for all commodity boards and commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2002 c 313 § 73.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

RCW 15.26.270 Copies of commission's proceedings, records, acts as evidence. Copies of the commission's proceedings, records, and acts when certified by the secretary and authenticated by the commission's seal shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1969 c 129 § 27.]

RCW 15.26.280 Moneys collected retained by commission. All moneys collected by the commission under the provisions of this chapter shall be retained by the commission for the purpose of carrying out the purpose and provisions of this chapter. The commission may accept and retain any moneys from private persons or private or public agencies to carry out the purposes and provisions of this chapter. [1969 c 129 § 28.]

RCW 15.26.290 Contracts with public or private agencies to carry out chapter. The commission may enter into agreement or contract with any private person or any private or public agency whether federal, state or local in order to carry out the purposes and provisions of this chapter. [1969 c 129 § 29.]

RCW 15.26.295 Certain records exempt from public disclosure—Exceptions—Actions not prohibited by chapter. (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving any provision of this chapter or a marketing order.

(3) This chapter does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2005 c 274 § 212; 2002 c 313 § 67.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

RCW 15.26.300 Violations—Penalty. (1) Except as provided in subsection (2) of this section, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction

shall be considered a first offense. [2003 c 53 § 105; 1969 c 129 § 30.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 15.26.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 c 129 § 32.]