

CHAPTER 14

[H. B. 11.]

COMMISSION MERCHANTS CODE

AN ACT relating to persons buying and selling agricultural products; enacting a commission merchants code to be known as Title 20 of the Revised Code of Washington; providing penalties and repealing chapter 197, Laws of 1939 and section 1, chapter 244, Laws of 1951; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

TITLE 20

COMMISSION MERCHANTS—AGRICULTURAL
PRODUCTS

Chapter 20.04

DEFINITIONS AND EXCLUSIONS

20.04.010 Introductory. Terms used in this title, unless the context clearly indicates otherwise, shall have the meaning given to them in this chapter.

20.04.020 "Director" defined. "Director" means the director of agriculture or his duly authorized representative.

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

20.04.040 "Agricultural product." "Agricultural product" includes any horticultural, viticultural, berry, poultry, grain, livestock, bee or other farm product.

20.04.050 "Commission merchant and credit buyer." "Commission merchant and credit buyer" includes any person who receives any agricultural product to be sold on commission, or for or on behalf of another with or without compensation, or who purchases or receives any agricultural product and who fails to pay in full for it at the time of receiving it or at the time its value may be determined, or who may contract with growers in such manner that the grower accepts seed as bailee and agrees to return the crop grown from such seed, the grower to be paid for services rendered in producing the crop.

20.04.060 "Cash buyer." "Cash buyer" includes any person who purchases or offers to purchase any agricultural product for the

purpose of processing or resale and who pays in full, in cash or by check that shall be paid on presentation, for such agricultural product at the time of receiving it or at the time the price of the agricultural product may be determined if the price or value is subject to determination by inspection, grade, test, or pack out.

20.04.070 "Consignor." "Consignor" means any person forwarding, delivering, consigning, shipping, or selling as the producer thereof any agricultural product to any commission merchant and credit buyer or cash buyer for resale or processing.

20.04.080 "Agent." "Agent" means any employee of a commission merchant and credit buyer or cash buyer and who operates all or a portion of his term of employment at any location or on any route within the state other than the principal place of business of his employer, and who is charged with the receiving, purchasing, or soliciting of agricultural products from the seller for the exclusive account of his employer.

20.04.090 "Bona fide fixed or permanent location." "Bona fide fixed or permanent location" means any permanent warehouse, building, or structure, at which a permanent business is carried on as such throughout the year in good faith and not for the purpose of evading this title, and at which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for the requirements of the business. It shall not mean residences or premises or buildings appurtenant thereto, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

20.04.100 "Retail merchant." "Retail merchant" means any person operating from a bona fide fixed or permanent location at which place all of the retail business of such person is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities which have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location.

20.04.110 "Broker." "Broker" means any person engaged in the business of negotiating the sale of any agricultural product for others, who does not at any time during such negotiation or sale receive or have in his possession or under his control, actually or constructively, the agricultural product or the proceeds derived from such sale.

20.04.120 Persons excluded. The provisions of this title shall not apply to any person who sells exclusively his own produce as the producer thereof, nor to any retail merchant as defined

herein, nor to cooperative marketing associations incorporated under chapter 19 of the session laws of 1913, as amended (chapter 23.56 RCW), or under chapter 115 of the session laws of 1921, as amended (chapter 24.32 RCW). Nor shall they apply to any warehouseman or grain dealer licensed under the state grain warehouse acts with respect to his operations as such licensee; nor to any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his operations as such licensee; nor to any processor or dealer licensed under the now existing dairy laws of the state with respect to his operations as such licensee.

Chapter 20.08

LICENSES AND FEES

20.08.010 Operation without license prohibited. On and after June 8, 1939, no person shall receive or purchase within this state, sell or offer for sale within this state, promote the sale of, or solicit consignments for sale on commission within this state, or for the purpose of resale or processing within this state, any agricultural product without a license as provided in this title.

20.08.020 Application for license—Contents. Every person receiving agricultural products for sale on commission, or for the purpose of resale, shall annually, on or before January 1st, file an application with the director for a license to do business as a commission merchant and credit buyer, or as a cash buyer of agricultural products, or both, or as an agent for a licensed commission merchant and credit buyer or licensed cash buyer. Such application shall state the kind or kinds of agricultural products which the applicant proposes to handle, the full name of the person applying for the license, and if the applicant is a partnership, the full name of each member of the partnership, or the officers of the exchange, association, or corporation, and the name of the local agent of the exchange, association, or corporation, the city or town, and street numbers at which the business is to be conducted, and a detailed statement of his financial condition at the time of making application. In the case of partnerships, a verified copy of the partnership agreement shall accompany the application.

20.08.030 Financial statement with application. An applicant shall also, at the time of making application for license, and from time to time, when required, make and file a verified statement exhibiting his financial condition as of a prescribed date: *Provided*, That such financial statement shall be confidential and not subject to public inspection.

20.08.040 Investigation before issuance of license—Hearing before denial. The director may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending an investigation, for the purpose of determining (1) whether the applicant is violating or has violated any of the provisions of this title or (2) whether the application contains any materially false or misleading statement or involves any misrepresentation, concealment, or withholding of facts respecting any violation of this title by any officer, agent, or employee of the applicant. If, after investigation, it appears to the director that the applicant should be refused a license, the applicant shall be given notice and an opportunity for hearing.

20.08.050 Cash buyer's license—Fee—Bond. If an applicant is applying for a license to do a business in agricultural products as a cash buyer, and no part of his business is to be conducted or carried on as a commission merchant and credit buyer, the director shall issue to such applicant, on payment of twenty-five dollars, a cash buyer's license entitling him to conduct the business of purchasing agricultural products for the purpose of processing or resale at the place or places named in the application: *Provided*, That should any or all of such applicant's business include the purchase for resale of any livestock, cattle, horses, mules, swine, sheep, goats, or any hay, grain, or straw, such applicant before being issued a license shall be required to execute and deliver to the director a substantial bond in a sum not to exceed five thousand dollars, and with surety satisfactory to the director. Such bond shall be governed in all respects by the terms of RCW 20.12.020, 20.12.030 and 20.12.040, relating to bonds for commission merchants and credit buyers.

20.08.060 Commission merchant and credit buyer's license—Fee. If the business of an applicant includes the carrying on of a business of commission merchant and credit buyer, the director shall issue to such applicant, on payment of twenty-five dollars and the execution and delivery of a bond as hereinafter provided, a license entitling him to conduct the business of dealing in or receiving and selling agricultural products on commission at the place or places named in the application.

20.08.070 Agent's license—Fee. If the business of an applicant is to act as an agent in the employ of a commission merchant and credit buyer or cash buyer, the director shall issue to such applicant, upon the payment of two dollars, an agent's license, entitling him to receive, purchase, or solicit agricultural products for the account of or delivery to only and exclusively his licensed employer.

20.08.080 Broker's license—Fee. If the business of an applicant is to act as a broker, the director shall issue to such applicant, upon the payment of two dollars, a broker's license, entitling him to do business as a broker as defined in this title.

20.08.090 License plates on vehicles used. Each licensee operating as a commission merchant and credit buyer or as a cash buyer, and who utilizes any motor vehicle in his operations as such licensee, shall secure from the director, and maintain prominently displayed upon the vehicle on both the front and rear thereof, a license plate in such form as prescribed and furnished by the director. One set of such license plates shall be furnished by the director to each commission merchant and credit buyer or cash buyer free with his license, but for each subsequent set of such license plates, he shall pay to the director a fee of twenty-five cents. Such license plates shall not be transferable from one vehicle to another.

20.08.100 Reports of changes in set-up of licensees. Any change in the organization of any firm, association, exchange, corporation, or copartnership licensed under this title shall be reported immediately to the director.

20.08.110 Disposition of license fees—Commission merchants fund. All sums received by the director in license fees under this title shall be paid by him to the state treasurer and be deposited in a special fund to be known as the commission merchants fund and shall be used solely for the purpose of carrying out the provisions of this title.

Chapter 20.12

BONDS AND INSURANCE

20.12.010 Liability policy or bond required of licensees. The director, in issuing licenses either to commission merchants and credit buyers or cash buyers, shall require before issuance thereof the filing with him of a verified copy of a liability insurance policy or bond of an insurance company or association authorized to transact business in this state, in such sum and upon such conditions as the director may deem necessary to protect adequately the interests of the public in the use of the public highways, which liability insurance policy or bond shall bind the obligors and undertake the payment of compensation for injuries to persons and loss of or damage to property within this state by such licensee or by any motor vehicle or vehicles operated by him in the conduct of his business. Such insurance policy or bond shall be conditioned to pay any sum up to five thousand dollars as the result of personal injury or death to one individual, and up to ten thousand dollars as

the result of personal injuries or deaths in any single accident, and up to five thousand dollars as the result of damage to property in any single accident.

20.12.020 Accountability bond by commission merchant and credit buyer. (1) Before any commission merchant and credit buyer's license shall be issued, every applicant therefor shall execute and deliver to the director a substantial bond in the sum of five thousand dollars, and with surety satisfactory to the director.

(2) All such bonds shall be of a standard form as to terms and conditions, approved by the director, and they shall be conditioned for faithful and correct accounting for, and handling of, agricultural products received, provide for the payment to the consignor of all money or things of value received for goods consigned, and to secure the consignor against all fraudulent acts of the commission merchant and credit buyer licensee in the resale or the handling of goods of the consignor. The total liability of the surety upon the bond shall be limited to the face of the bond, and when claims by consignors exceed the face of the bond, recoveries under the bond shall be prorated. However, it shall not be necessary for any consignor suing on the bond to join other consignors as parties to the action, and the claim of prorating shall be a matter of defense and the burden of establishing the pro rata shall be on the surety. Such bond shall be subject to cancellation and liability thereunder may be terminated by the surety by the service of a notice of its intention so to do upon the principal in the bond and upon the director at Olympia, and after thirty days from the service of such notice, the surety shall be released from any and all liability accruing thereafter.

20.12.030 Action on bond, who may maintain—Attorney's fee. An action may be brought by the director or a consignor on the bond furnished by a commission merchant and credit buyer and recovery may be had against the commission merchant and credit buyer and the surety on the bond for the amount due such consignor. In such action, the court shall allow the consignor a reasonable attorney's fee.

20.12.040 Attorney's fee when defendant prevails—Disposition of recoveries. If the court finds for the defendant commission merchant and credit buyer in an action as provided in RCW 20.12.030, the complainant shall receive no attorney's fees. If the complainant is a person other than the director he shall pay a reasonable attorney's fee to defendant. Any sums collected by the director in a suit on the bond shall, after collection, be promptly paid over to the parties entitled thereto.

Chapter 20.16**DEALINGS WITH CONSIGNORS—MANIFESTS—
COMMISSIONS**

20.16.010 Manifest of cargo to be carried on vehicles. Each commission merchant and credit buyer and each cash buyer licensee operating a motor vehicle in the conduct of his business as such licensee, shall carry on the vehicle used by him a manifest on a form to be prescribed or approved by the director, showing at all times a description of the cargo on the vehicle, where and from whom purchased, and the weight or measure upon which the purchase was made, and if purchased upon weight, where and by whom weighed and the weight obtained at said weighing. Such manifest shall be kept in triplicate, one copy to be given to the consignor or seller, one copy preserved by the licensee, and the original, signed by him, shall be furnished to the director on request. False statements on any such manifest as to the nature, quantity, weight, count, grade, quality, or any other essential feature of the cargo, shall be grounds for suspension or cancellation of the cash buyer's or commission merchant and credit buyer's license.

20.16.020 Receipts to consignors—Deduction for damage, etc.—Official inspection. A commission merchant and credit buyer or any cash buyer shall render to the consignor or vendor, on receiving any agricultural product, a statement in writing showing what agricultural products were received, the date received and the condition thereof. Before any claims for deductions may be made on the grounds that the agricultural products were received in a damaged condition or were not of the purported grade, quality, weight, or maturity, the commission merchant and credit buyer or cash buyer shall call a duly authorized agent of the director for prompt inspection of such damaged products, and procure from such agent a certificate in triplicate as to the condition, grade, quality, weight, maturity, and disposition of the agricultural products, and transmit one copy of the certificate to the consignor, and one copy to the director. A reasonable fee shall be paid to the director for such services, and in case of partial damage or total loss, this fee may be charged against the consignment or the consignor or vendor. The certificate may be used as evidence in any hearing conducted by the department of agriculture or in any civil or criminal action brought in any court in the state. Such claim must be made by the licensee within five days from the date of receipt of the goods at the point where the condition on which claim is made became apparent.

20.16.030 Reconsignment from overstocked markets. If the local market should be overstocked, the commission merchant and credit buyer may relieve the condition by reconsigning all or part of any consignment, but he shall send the consignor a copy of the account sales of such reconsigned goods. In all such instances, the commission merchant and credit buyer shall be entitled to only two-thirds of his regular filed commission.

20.16.040 Schedule of commissions and charges—Maximum—Deviation. The commission merchant and credit buyer licensee shall file with the director at the time of furnishing bond, a schedule of his commissions and charges for services in connection with agricultural products handled on account of or as agent for other parties, upon a form prescribed by the director, and the licensee shall not deviate from such designated commissions or charges during the license period until ten days have elapsed after the filing of a notice of such proposed deviation. Such commissions or charges shall not exceed fifteen percent, except by a written contract and agreement between the commission merchant and credit buyer and the consignor of agricultural products: *Provided*, That when a rate of commissions or charges or a deviation therefrom is filed by one or more licensees, any other licensee may file the same rate and such rate will be effective as of the effective date of the first similar filing.

Chapter 20.20

RECORDS—REPORTS—AUDITS

20.20.010 Statement of business transacted to be filed. Any licensee, whether he has a license to do a business as a commission merchant and credit buyer or as a cash buyer, shall from time to time, when required by the director, make and file a verified statement upon a form prescribed by the director showing the volume of agricultural products received, the volume sold on commission, and the volume otherwise disposed of or held for resale during a designated period of time, and showing such other pertinent information as the director may require.

20.20.020 List of agents and changes. Each licensed commission merchant and credit buyer or cash buyer shall file with the director a list of agents subject to license and shall immediately report to the director any changes in this list.

20.20.030 Record of dealings to be kept. Every person licensed to do business as a commission merchant and credit buyer or as a cash buyer under this title shall keep an accurate and complete record of all dealings in agricultural products, showing the name

of the consignor or vendor, the date of purchase or receipt of products, the amount purchased or received, the price paid or received, to whom sold, the sale price and the terms thereof, the grade or quality of the merchandise, the quantity or weights thereof when required by the director, and such other pertinent information as the director may require.

20.20.040 Memoranda of transactions to consignors or vendors. Each commission merchant and credit buyer and each cash buyer shall promptly deliver or mail to the consignor or vendor a memorandum of record of each transaction involving a consignment or purchase or receipt of agricultural products and their resale, or other disposal, except as to the names and addresses of persons to whom such products are sold, together with a payment in settlement therefor. The memorandum shall show the date of purchase or receipt of the products, amount purchased or received, and price paid or received.

20.20.050 Right of entry for inspection—Audit of books—Reports. The director may enter and inspect the premises, yards, warehouses, storage and transportation facilities, or any agricultural products therein, and inspect or audit the books of each licensee during the business hours of any day, and such licensee shall furnish reports concerning his business, in such form and manner as the director may prescribe.

20.20.060 Reports and payments to consignors on pooled commodities. Whenever by agreement in writing between the consignor and the commission merchant and credit buyer, any agricultural products are pooled or commingled with other agricultural products of like kind for the purpose of marketing, and their identity thereby becomes lost, the commission merchant and credit buyer handling such transaction shall be required to render only a report showing average gross pool price, date received, and charges of pool deducted and prorated, and shall not be required to make payment until ten days after demand by the consignor after the pool has been closed.

Chapter 20.24

INVESTIGATIONS—VIOLATIONS—PENALTIES

20.24.010 Director may make full investigations and take testimony. The director may investigate, upon the verified affidavit of an interested party or upon his own initiative the records of any licensee or any person applying for a license, or any transaction involving the solicitation, receipt, sale, or attempted sale of agricultural products on a commission basis, or the purchase thereof

for the purpose of processing or resale, or the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality, or quantity of goods received or while in storage, the making of false statements as to the market conditions with attempt to deceive, or the failure to make payment for goods received, or other alleged injurious transactions, and for such purpose may examine at the place of business of the licensee that portion of his ledgers, books of account, memoranda, or other documents relating to the transactions involved, of any commission merchant and credit buyer and any cash buyer, and may take testimony relating to such transactions, records, or business, under oath.

20.24.020 Procedure on failure of licensee to account and make payment to consignor. If a consignor fails to obtain within a reasonable time proper and complete accounting and payment of any transactions, he may make a demand upon the licensee for such account and payment of goods shipped. If such accounting and payment has not been received by the consignor within forty-eight hours after making his demand, he may file with the director a copy of his demand, together with an affidavit setting forth the nature and amount of the goods consigned or delivered, date of the consignment or delivery, the amount he believes due and owing to him, together with bills of lading and delivery receipts showing the goods were shipped to and received by the licensee. The director shall attempt to secure an explanation or adjustment, and failing to secure a satisfactory settlement within seven days after demand has been made by the director upon the licensee, he shall then notify the licensee that a hearing is to be held and he shall then hold a hearing to determine whether to suspend or revoke the license of the commission merchant and credit buyer or cash buyer.

20.24.030 Refusal, revocation or suspension of license. The director may decline to grant or may revoke or suspend a license after due notice and hearing, if he is satisfied that the applicant or licensee is guilty of any violation of the provisions of this title, or of any of the following practices:

- (1) The imposition of false charges for handling or services rendered;
- (2) Failure to account promptly and properly or to make proper settlements;
- (3) Attempted payment by check with insufficient funds to cover, or the stopping payment on a check given as a cash payment;
- (4) False statements as to condition, quality, or quantity of goods received or held for sale on commission, when the facts might have been determined by reasonable inspection;

(5) False or misleading statement or statements as to market conditions with intent to deceive;

(6) Participation in an illegal combination or combinations to fix prices;

(7) The direct or indirect purchase of consigned goods by the applicant or licensee for his own account, without prior authority therefor or without notifying consignor thereof;

(8) Apparent bankruptcy or insolvency of the applicant or licensee, or evidence or indications that bankruptcy or insolvency may shortly occur;

(9) Evidence of dealings of such a nature as to satisfy the director of the inability of the applicant or licensee to conduct properly the business of commission merchant and credit buyer or of cash buyer, or indication of an intent to deceive or defraud consignors or sellers;

(10) Fraud or deception by the applicant or licensee in obtaining or applying for his license, including the making of false financial statements;

(11) Neglect by the commission merchant and credit buyer licensee or applicant to file a new or additional bond when notified by the director that the bond previously filed is unsatisfactory or has been canceled;

(12) Failure or refusal by the commission merchant and credit buyer licensee or applicant to file with the director a schedule of his maximum and minimum commissions and other charges for services in connection with agricultural products handled on account of or as an agent for another, within thirty days after issuance of his license;

(13) Failure or refusal by a cash buyer licensee to maintain a correct manifest of cargo, or to make a copy available, on request, as required by this title;

(14) Fraud or deception by the licensee in his dealings with purchasers, including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith;

(15) Conducting business as a commission merchant and credit buyer under a cash buyer's license;

(16) Violation by the licensee or applicant of any order of the director or any law of the state setting up standards of grade, quality, or size for any agricultural product, or the violation of any Washington quarantine upon any agricultural product.

20.24.040 Reparation to injured party as condition to issuance or restoration of license. When a license or application has been denied, revoked, or suspended after due notice and hearing, the director, in the order denying such application or revoking or sus-

pending such license, may provide that, before a license will be issued, the applicant or licensee shall make such reparation to the injured party as the director believes reasonable, just and equitable, and until such reparation is made, a license may be denied by the director.

20.24.050 Suspected violations—Demand for explanation—Hearing. In the event the director has reason to suspect that any licensee or applicant is violating or has violated the provisions of this title, he shall attempt to secure a satisfactory explanation and failing to secure an explanation or settlement, he shall cause a notice to be served upon such licensee or applicant, setting forth the provisions of this title which the licensee or applicant is charged with violating, and setting a date in the notice upon which a hearing will be had to determine whether or not the licensee or applicant is violating or has violated such provisions.

20.24.060 Penalty for violations. Any person violating any provisions of this title shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars. Each day's violation shall constitute a separate offense.

20.24.070 Venue. Any prosecution brought under this title may be brought in any county of this state in which the defendant, or any of them, resides, or in which the unlawful act was committed, or in which the defendant, or any of them, has his principal place of business.

Chapter 20.98

CONSTRUCTION

20.98.010 Short title. This act shall be known and cited as the "Washington commission merchants act."

20.98.020 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

20.98.030 Title, chapter, sections headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law.

20.98.040 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected.

20.98.050 Repeals and saving. Chapter 197, Laws of 1939, and section 1, chapter 244, Laws of 1951 are repealed, but such repeal shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder.

20.98.060 Emergency. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House January 26, 1955.

Passed the Senate January 31, 1955.

Approved by the Governor February 8, 1955.

CHAPTER 15

[H. B. 10]

PARTNERSHIPS CODE

AN ACT relating to partnerships including limited partnerships; enacting a partnerships code to be known as Title 25 of the Revised Code of Washington; repealing chapter 92, Laws of 1945, chapter 137, Laws of 1945, and that act entitled "An Act to authorize the formation of limited partnerships," enacted December 2, 1869 (Code of 1881, sections 2370 through 2379), and section 1, chapter 106, Laws of 1927; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

TITLE 25

PARTNERSHIPS

Chapter 25.04

GENERAL PARTNERSHIPS

Part I

PRELIMINARY PROVISIONS

25.04.010 Name of chapter. This chapter may be cited as the uniform partnership act.

25.04.020 Definition of terms. In this chapter:
"Court" includes every court and judge having jurisdiction in the case;