

CHAPTER 194.

[H. B. 199.]

COMMISSION MERCHANTS.

AN ACT relating to commission merchants engaged in selling any agricultural product other than grain, making an appropriation and repealing Chapter 134 of the Laws of 1923, and providing penalties.

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

Terms defined.

SECTION 1. The terms "agricultural product" whenever used in this act shall include any horticultural, viticultural, dairy, livestock, poultry, bee or farm product other than grain; the term "commission merchant" whenever used in this act shall include every person, firm or corporation who received any agricultural product to be sold on commission for the account of another, but shall not include non-profit co-operative marketing organization; the term "consignor" whenever used in this act shall mean any person, firm or corporation forwarding, delivering, consigning, or shipping any agricultural product other than grain to any commission merchant for sale on commission.

License required.

Application.

SEC. 2. It shall be unlawful for any person, firm or corporation to act as a commission merchant without first obtaining a license as in this act provided. Applications for licenses under this act shall be in writing, signed and sworn to by the applicant and shall state the name of the city or town where the business of commission merchant is to be conducted, giving the street and number of building if practicable, and the character of products which will be handled by the applicant; and if made by an individual, his full name; and if made by a co-partnership, the full names of each of the partners composing the copartnership, together with the firm or trade name under which the business is to be con-

ducted; and if made by a corporation, shall state whether a domestic or foreign corporation, the amount of its capital stock as provided in its articles of incorporation, and the amount of its capital stock fully paid in. All applications for licenses hereunder shall be filed with the director of agriculture and shall be accompanied by a good and sufficient bond in the penal sum of five thousand dollars (\$5,000.00) and upon a form to be approved by the attorney general, and shall be executed by the applicant as principal and by a surety company authorized to do business in the state of Washington as surety. Said bond shall be for the benefit of all consignors having any cause of action against the commission merchant, and shall be conditioned for the faithful performance by the applicant of all duties as such commission merchant.

Upon receipt by the department of agriculture of such application the director of agriculture shall cause to be prepared and issued to the applicant a license as commission merchant under this act, which license shall be signed by the director of agriculture and attested by the secretary under the seal of the department of agriculture.

SEC. 3. All applications shall be accompanied by a fee of twenty-five dollars (\$25) which shall entitle the applicant to a license to expire on December 31st next following. Upon application and payment of a fee of twenty-five dollars (\$25) on or before the first day of January following the date of expiration of any license issued hereunder the applicant shall be entitled to a renewal license to expire one year from the date of expiration of the old license. All applications for renewal of licenses shall be made in the same manner as applications for original licenses. All sums received by the director of agriculture for license fees shall be paid into the state

Commission merchant fund.

treasury and deposited in a special fund to be known as the Commission Merchant Fund and shall be used solely for the purpose of carrying out the provisions of this act.

Records to be kept.

SEC. 4. Every person licensed to do business as a commission merchant under this act shall keep an accurate and complete record in which shall be truly recorded the amount and character of all agricultural products received on consignment by such commission merchant from any resident of the state of Washington, with the date of receipt, the name of the consignor, and, if damaged, the condition of the shipment when received in the city or town in which the same is to be sold by such commission merchant; the date when the same or any part thereof is sold, together with the price for which sold, and the name of the person, firm or corporation to whom sold: *Provided*, that whenever, by agreement in writing between the consignor and the commission merchant, such agricultural products are pooled or commingled with other agricultural products of like kind for the purpose of marketing, and their identity thereby becomes lost, such commission merchant shall not be required to record the date when such agricultural products or any part thereof are sold, the price for which sold and the name of the person, firm or corporation to whom sold: *Provided, further*, whenever such agricultural products are sold in divided carload lots by auction or otherwise, the commission merchant shall be required to record the name of the person, firm or corporation through whom such agricultural products are sold, and the price for which sold. The records of any such commission merchant shall at all times be open and subject to the inspection of the director of agriculture or his duly authorized agent and to any consignor as to any

Pooling products.

Sale in divided lots by auction.

Records subject to inspection.

entry concerning any agricultural product received from such consignor.

SEC. 5. Any commission merchant, who shall receive any agricultural products to sell on a commission, shall immediately send to such consignor a statement in writing showing what agricultural products were received and the date and condition thereof and if any such agricultural products are received in a damaged condition, it shall be the duty of the commission merchant to call a duly authorized agent of the director of agriculture, for prompt inspection of said damaged products, and shall procure from such agent of the director of agriculture, a certificate in duplicate as to the condition of said agricultural products, and to transmit a duplicate of said certificate to the consignor. A reasonable fee shall be paid to such agricultural agent to be charged against such consignment or in case of total loss against the consignor. If the market should be overstocked the commission merchant shall have the authority to relieve the condition by reconsigning all or part of any consignment, but shall send consignors copy of the account sales of such reconsigned goods. In all such instances the commission merchant shall be entitled to his full commission.

Statement to consignor on receipt of goods.

Goods unfit for sale.

Director of agriculture to be notified.

Inspection fee.

Overstocked market.

Reconsignment.

Merchant's commission.

SEC. 6. Whenever any commission merchant sells all or a portion of any agricultural products received for sale on commission, he shall within fifteen days following the sale and delivery to the purchaser of such agricultural products sold in intrastate commerce, or thirty days following the sale and delivery to the purchaser of such agricultural products sold in interstate commerce, render a true statement to the consignor showing such sale, the price received therefor, the date of sale, and all charges and expenses paid or incurred on account of such sale; and such commission merchant shall

Goods sold :
Statement to consignor.

Remittance.

within five days thereafter upon demand by the consignor, pay to the consignor all sums due said consignor after deducting therefrom all amounts paid for transportation, drayage, auction, brokerage, storage, taxes, insurance, duty and all other charges incurred in the handling and selling of such agricultural products consigned: *Provided*, that whenever by agreement in writing between the consignor and commission merchant such agricultural products are pooled or commingled with other agricultural products of like kind for the purpose of marketing, and their identity thereby becomes lost, such commission merchant shall not be required to render such report and shall not be required to make payment until ten days after demand by the consignor after said pool has been closed.

When remittance due for pooled goods.

Commission chargeable.

SEC. 7. No commission merchant shall charge a commission exceeding 15% of the total gross amount received from the sale of goods consigned to him, unless an agreement in writing for a higher commission has been made between such commission merchant and the consignor.

Complaint of consignor.

SEC. 8. Whenever any consignor shall, after request, receive no remittance or report of sale, or if after receipt of any report or remittance be dissatisfied with such report or the amount of such remittance, he may make a verified complaint in writing to the director of agriculture, who shall upon receipt of the same cause to be investigated the sale or sales complained of, and shall serve upon the commission merchant complained of, a copy of said complaint, together with a notice in writing, stating the place where and the time when such investigation will be made, which time shall not be less than five, nor more than twenty days from the serving of the notice and if upon such investigation, it proves that the said commission merchant has failed or neglected

Investigation.

to account for such consignment or any part thereof, or has failed or neglected to make a true and complete report thereof, or has been guilty of fraudulent acts in his dealings with said consignor, or has been convicted of a violation of any of the provisions of this act, the director of agriculture may, in the name of the state, institute an action in the Superior Court of the county in which such commission merchant resides or transacts business for the purpose of having the license of said commission merchant revoked; and if the Court shall find that the commission merchant has failed or neglected to account for any consignment, or any part thereof, or has failed or neglected to make a true or complete report thereof, or has been guilty of fraudulent acts in his dealings with the consignor, or has been convicted of the violations of any of the provisions of this act, the Court may enter a decree in said action cancelling and revoking the license of said commission merchant, and thereafter such commission merchant shall not be entitled to any license under this act, without the approval of the director of agriculture.

Action to
revoke
license.

SEC. 9. If any commission merchant shall make any sale of agricultural products received for sale on commission and shall fail or neglect to pay the amount received upon such sale as hereinbefore provided, the consignor of any such agricultural products may bring an action on the bond given by such commission merchant under the provisions of this act and recovery may be had against said commission merchant and the surety on said bond for the amount due such consignor; and in such action the court shall allow such consignor a reasonable attorney's fee: *Provided*, if such commission merchant has failed or neglected to account and pay for any agricultural products received and sold on commission for two or more consignors and the amount

Action on
bond.

Attorney's
fee.

Pro rata
distribution
of proceeds
from bond.

of said bond is not sufficient to pay the amount due all the consignors, they shall be entitled to receive from the proceeds of such bond a pro rata share in proportion to the amount due each of such consignors. If the defendant commission merchant is adjudged not to be guilty, then and in that case the complainant shall not alone receive no attorney's fees but shall also pay a reasonable attorney fee of the defendant or defendants.

Charges
fall:
costs
payable by
complainant.

Combina-
tions and
pools pro-
hibited.

SEC. 10. It shall be unlawful for any commission merchant to enter into any combination, conspiracy or pool, for the purpose of excluding from any market, or artificially raising or depressing the market price thereof, any agricultural products of the state of Washington.

Penalty.

SEC. 11. Any person, firm or corporation violating any provisions of this act shall be guilty of a misdemeanor.

Appropriation:
\$5,000.00.

SEC. 12. For the purpose of carrying out the provisions of this act there is hereby appropriated out of the Commission Merchant Fund in the state treasury, created by this act, the sum of five thousand (\$5000) dollars, not, however, to exceed collections for such fund.

Validity.

SEC. 13. If any section or part of a section of this act shall, for any cause, be held unconstitutional, such holding shall not affect the rest of this act or any other section hereof.

Repeals
§§ 8292
to 8302-2,
Rem. 1923
Sup.

SEC. 14. That Chapter 134 of the Laws of 1923 is hereby repealed.

Passed the House January 2, 1926.

Passed the Senate January 6, 1926.

Approved by the Governor January 18, 1926.