

mainder thereof shall be and remain in full force and effect.

Passed the House February 11, 1937.

Passed the Senate March 4, 1937.

Approved by the Governor March 13, 1937.

CHAPTER 67.

[H. B. 297.]

COMMISSION MERCHANTS.

AN ACT relating to persons engaged in buying and selling agricultural products; providing for licenses; defining "agricultural product," "commission merchant," "dealer," "agent," "consignor," "retail merchant," "broker," and other terms; exempting producers, retail merchants, non-profit cooperative marketing associations, certain processors, certain warehousemen, nurserymen, and certain grain dealers, and certain persons bonded under designated laws of the United States, from certain provisions of this act; requiring commission merchants to have bonds; repealing chapter 194 of the Laws of the Extraordinary Session of 1925 as subsequently amended; making an appropriation; providing penalties; and declaring an emergency.

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

SECTION 1. Definitions. (a) "Agricultural product" whenever used in this act shall include any horticultural, viticultural, berry, poultry, grain, livestock, bee or other farm product;

"Agricultural product."

(b) "Commission merchant" whenever used in this act shall include any person, firm, association, exchange or corporation who receives any agricultural product to be sold on commission for the account of, or as agent for another, or who shall buy or accept any agricultural product in trust from anyone for the purpose of sale or resale or processing and who shall fail to pay in full for such produce at the time of receiving it or at the time its value may be determined;

"Commission merchant."

"Dealer."

(c) "Dealer" whenever used in this act shall include any person, firm, association, exchange or corporation who shall purchase or offer to purchase any agricultural produce as herein defined for the purpose of processing or resale and who shall pay in full for such produce at the time of receiving it or at the time the price of such produce may be determined if such price or value is subject to determination by inspection, grade, test or pack-out;

"Consignor."

(d) "Consignor" whenever used in this act shall mean any person, firm, association, exchange or corporation forwarding, delivering, consigning, shipping or selling, as the producer thereof, any agricultural product to any commission merchant or dealer for sale on commission or for resale or processing;

"Agent."

(e) "Agent" shall mean any employee of a commission merchant or dealer 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, or to be delivered exclusively to, the employer;

"Retail merchant."

(f) "Retail merchant" means and includes any person, firm or corporation operating from a *bona fide* fixed or permanent location at which place all of the retail business of said merchant 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;

"Broker."

(g) "Broker" means and includes any person, firm or corporation 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, actual or constructive, or under his control, said agri-

cultural product or the proceeds derived from such sale.

SEC. 2. The provisions of this act 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, or under chapter 115 of the Session Laws of 1921; nor to any warehouseman or grain dealer licensed under the state grain warehouse acts; nor to any nurseryman who is required to be licensed under the now existing horticultural laws of the State of Washington with respect to his operations as such licensee; nor to any processor or dealer licensed under the now existing dairy laws of the State of Washington with respect to his operations as such licensee.

Exemptions
from act.

SEC. 3. (a) On and after the effective date of this act, no person, firm, association, exchange or corporation shall receive, sell or offer for sale, promote the sale of, or solicit consignments for sale on commission or for the purpose of resale or processing within this state, any kind of agricultural product without a license as provided in this act;

License
required.

(b) Every person, firm, association, exchange or corporation in this state receiving agricultural products for sale on commission, or for the purpose of resale, shall annually, on or before January 1, file an application with the director of agriculture for a license to do business as a commission merchant, or as a dealer in agricultural products, or both, or as an agent for a licensed commission merchant or licensed dealer. Such application shall state the kind or kinds of farm agricultural products which the applicant proposes to handle, the full name of the person, firm, association, exchange or corporation applying for such a license, and if the applicant be a firm, the full name of each member of the firm, or

Application.

the names of the officers of the exchange, association, or corporation, and the name of the local agent of the exchange or corporation or association, and the city, town, or village, and street numbers at which the business is to be conducted;

License fees.

(c) If such applicant is applying for a license to do a business in agricultural products as a dealer and no part of his business is to be conducted or carried on as a commission merchant, the director of agriculture shall thereupon issue to such applicant, on payment of twenty-five dollars (\$25.00), a dealer'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;

(d) If the business of such applicant shall include the carrying on of a business of commission merchant as herein defined, the director of agriculture shall issue to such applicant, on payment of twenty-five dollars (\$25.00) 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;

(e) If the business of such applicant is to act as a broker, or as an agent in the employ of a commission merchant or dealer, the director of agriculture shall issue to such applicant, upon the payment of two dollars (\$2.00), 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;

Expiration of license.

(f) Each of the licenses provided by this act shall expire on the first day of January of the year next following, and such license shall be kept posted and available for inspection in the principal place of business of such licensee within the state.

SEC. 4. (a) Before any such commission merchant's license shall be issued every applicant therefor shall execute and deliver to the director of agriculture a substantial bond in the sum of five thousand dollars (\$5,000.00), and with surety satisfactory to the said director; Bond.

(b) All such bonds are to be of a standard form as to terms and conditions, approved by the director, and they shall be conditioned on faithful and correct accounting for, and handling of agricultural products received, provide for the payment to the consignor of all monies or things of value received for goods consigned, and to secure the consignor against all fraudulent acts of the commission merchant licensee in the resale or the handling of the goods of the consignor. The total liability of the surety upon the bonds shall be limited to the face of the bond, and when claims by consignors exceed the face of the bond recovery 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 terminated thereunder by the surety by the service of a notice of its intention so to do upon the principal in said bond and upon the director of agriculture at Olympia, and after thirty (30) days from the service of such notice the surety shall be released from any and all liability accruing thereafter; Terms and conditions.

(c) Any licensee, whether he has a license to do a business as a dealer or as a commission merchant, shall from time to time, when required by the director of agriculture, 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 Statement as to volume of business.

disposed of or held for resale during a designated period of time, and showing such other pertinent information as the director may require;

Financial statement.

(d) Such licensee shall also from time to time, when required, make and file a verified statement exhibiting his financial condition as of a prescribed date: *Provided*, Such financial statement shall be confidential and not subject to public inspection;

List of agents filed.

(e) Such licensed commission merchant or dealer shall file with the director a list of agents subject to license and shall immediately report to the director any changes in this list;

Operators coming under federal act.

(f) Any livestock marketing agency operating under the act of Congress of the United States of August 15, 1921, known as the "Packers and Stock-yard Act" and/or any warehouse agency operating under the act of Congress of the United States of August 11, 1916, known as the "United States Warehouse Act" and any amendments thereof, and rules, regulations and orders made by the Secretary of Agriculture of the United States thereunder, shall not be required to furnish the bond provided for in this act: *Provided*, That the director of agriculture may require such livestock marketing agencies and/or warehousing agencies to furnish him a certified copy of their bond or bonds filed with the Secretary of Agriculture of the United States.

Records.

SEC. 5. (a) Every person, firm, association, exchange or corporation licensed to do business as a commission merchant or dealer under this act shall keep an accurate and complete record of all dealings in agricultural products, showing the name of the consignor, the date of purchase, the amount purchased, the price paid, and to whom sold;

Memoran-dum of each transfer.

(b) A memorandum of record of each transaction involving a consignment or purchase or receipt of agricultural products and their resale or disposal otherwise, except as to the names and ad-

dresses of persons to whom such products are sold, together with payment in settlement for such products, shall be delivered or mailed to the consignor promptly after the sale thereof;

(c) The premises, yards, warehouses, storage and transportation facilities, and books of such licensee shall be open to inspection or audit during the business hours of any day by the director of agriculture or his agents; such licensee shall furnish reports concerning his business in such form and manner as the director may prescribe;

Audit of books.

(d) *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 render such report and shall not be required to make payment until ten (10) days after demand by the consignor after said pool has been closed.

Pooled or commingled products.

SEC. 6. (a) 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, the date received and the 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 such damaged products, and to procure from such agent of the director of agriculture a certificate in duplicate as to the condition and disposition of said agricultural products, and to transmit a duplicate of said certificate to the consignor. A reasonable fee shall be paid to the director for such services, and in case of partial damage

Statement to consignor on receipt of goods.

Damaged products.

Inspection fee.

or total loss this fee may be charged against such consignment and/or the consignor;

Overstocked market.

(b) If the local 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 consignor copy of the account sales of such reconsigned goods. In all such instances the commission merchant shall be entitled to only two thirds of his regular filed commission.

Reconsignment.

Merchant's commission.

Schedule of commissions filed.

SEC. 7. The commission merchant 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 an agent for other parties, and the licensee shall not deviate from such designated commissions or charges during the license period until ten (10) days have elapsed after the filing of a notice of such proposed deviation, and provided such commission or charges shall not exceed fifteen (15) per cent, except by a written contract and agreement between the commission merchant and the consignor of agricultural products: *Provided*, That when a rate of commission or charges or a deviation therefrom shall be 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.

Investigation of complaints.

SEC. 8. (a) The director of agriculture or his assistants shall have the power to investigate, upon the verified complaint of an interested party, or upon his own initiative, the records of any licensee or any person, firm, association, exchange or corporation 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 ac-

counts 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 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 or dealer, and may take testimony relating to such transactions, records or business, under oath. The burden of proof shall be upon the commission merchant or dealer to prove the correctness of his records as to any transaction which may be questioned;

(b) In the event the director has reason to suspect that any licensee is violating the provisions of this act he shall cause a notice to be served personally or by mail upon such licensee, in writing, setting forth the provisions of this act which the licensee is charged with violating, and setting a date in said notice upon which a hearing will be had to determine whether or not such licensee is violating such provision, which date shall be not less than seven (7) days from the date such notice is served. After such hearing the director shall revoke or suspend such license if he is satisfied that the licensee is violating any of the provisions of this act;

Notice to licensee.

(c) If a consignor fails to obtain within a reasonable time proper and complete accounting and payment of any transaction 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 (48) hours after making this demand, he may file with the director a copy of his demand, together with an affidavit setting forth the nature and amount

Complaint of consignor.

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 (7) days, he shall cause a copy of the complaint, together with a notice of a date and place for hearing on such complaint, to be served personally or by mail upon such licensee, provided such date shall be not less than seven (7) days after service of the notice and complaint;

Hearing to
revoke or
suspend
license.

(d) At the time and place appointed for such hearing the director or his deputies shall hear the parties to such complaint and shall enter in the office of the director of agriculture at Olympia a decision either dismissing said complaint or specifying the facts he deems established on such hearing. If the facts established at such hearing are deemed sufficient by the director to justify the revocation or suspension of the license of any commission merchant, the director of agriculture may bring an action on the bond for the recovery of any damages resulting from the failure of the licensee: *Provided, however,* That the director may bring an action on the bond of a licensed commission merchant independent of any complaint by a consignor, if his investigations should indicate damages for which he deems the sureties to be liable;

Action on
bond.

Hearing,
where held.

(e) Any hearing held under this act brought by the director of agriculture to revoke or suspend a license, whether the same be upon the complaint of a consignor or seller or of the director of agriculture, shall be held in the county in which the licensee has his principal place of business, or in such county where the violation occurred at a place designated by the director in the notice. The director shall, in

any such hearing, or other investigation provided in this act, have the power to administer oaths and issue subpoenas;

(f) The director may decline to grant or may revoke or suspend a license after a hearing duly held as herein provided, where he is satisfied that the applicant or licensee is guilty of any violation of the provisions of this act, or of the following practices or any of them:

(1) The imposition of false charges for handling or services rendered;

(2) Failure to account promptly and properly or to make proper settlements or attempted payment by check with insufficient funds to cover;

(3) 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;

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

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

(6) 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;

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

(8) Evidence of dealing of such a nature as to satisfy the director of the inability of the applicant or licensee to properly conduct the business of commission merchant or of dealer, or indication of an intent to deceive or defraud consignors or sellers;

(9) Fraud or deception by the licensee in obtaining his license;

(10) Neglect by the commission merchant licensee to file a new or additional bond when notified

Grounds for
refusal to
grant
license.

by the director that the bond previously filed is unsatisfactory;

(11) Failure or refusal by the commission merchant 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 of another within thirty (30) days after issuance of his license;

(g) Any action of the director of agriculture with reference to the granting of, or the refusal to grant, or to renew any license, or with reference to the revocation or suspension of any license granted under the provisions of this act may be reviewed by certiorari in the superior court of the county in which the hearing thereon was held within ten (10) days after notice in writing of the said director's order refusing, revoking, or suspending such license has been served upon the licensee or applicant.

Action to
recover pay-
ment for
goods.

SEC. 9. (a) The director of agriculture or a consignor or seller may bring an action in the superior court in the county in which is situated the place of business of the licensee whose actions are in question, or in the county where the agricultural products were received by the commission merchant, or in the county in which the violation of this chapter occurred, to recover payment for goods sold for resale or on commission, and not paid to said consignor or seller, or not properly accounted for, and damages sustained by said consignor or seller by reason of fraudulent acts or wrongful handling;

(b) Such an action may be brought by the director of agriculture or a consignor on the bond furnished by a commission merchant under the provisions of this act and recovery may be had against such 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*, That 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 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 said consignors;

(c) If the defendant commission merchant is adjudged not guilty, the complainant shall receive no attorney's fees, but if the complainant be other than the director of agriculture he shall pay a reasonable attorney's fee to defendant; any such sums collected by the director of agriculture as hereinbefore provided shall after collection be promptly paid over to the parties entitled thereto.

SEC. 10. (a) Any person, firm, association, exchange or corporation violating any provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00). Each day's violation of this act shall constitute a separate offense;

Penalty for violation.

(b) Any prosecution brought under this act may be instituted or brought in any county of this state in which the defendant, or any of the defendants, resides, or in which such unlawful act was committed, or in which the defendant, or any of the defendants, has his principal place of business;

Prosecutions.

(c) All sums received by the director of agriculture for license fees under this act shall be paid by him to the state treasurer and 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 act;

Commission merchants fund.

(d) There is hereby appropriated the sum of forty thousand dollars (\$40,000.00) out of the commission merchants fund in the state treasury, said

Appropriation.

money to be available to the director of agriculture for the purpose of carrying out the provisions of this act, but in no case shall such expenses exceed the receipts from license fees heretofore or hereafter collected under this act, and all fees so collected shall remain in said fund until expended.

Partial invalidity.

SEC. 11. If any section or part of a section of this act shall, for any cause be held unconstitutional, such holding shall not affect the validity of any other section or part of a section, sentences or part of a sentence of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such parts or part thereof would be declared unconstitutional.

Statutes repealed.

SEC. 12. Chapter 194 of the Laws of the Extraordinary Session of 1925, and all amendments thereto, and chapter 67 of the Laws of 1933 are hereby repealed: *Provided*, That nothing herein contained shall be construed as affecting any existing right acquired under the provisions of said act, or amendments thereto, or as affecting any proceeding instituted under said act or amendments thereto: *Provided, further*, That the repeal hereby of said act and amendments thereto, which amended or repealed any former act or part thereof, shall not operate to revive such former act or part thereof so amended or repealed.

Existing rights protected.

SEC. 13. This act is necessary for the immediate preservation of the financial structure of the state, for the preservation of agriculture and to prevent a financial crisis, and for the support of the state government and its existing institutions, and shall take effect immediately.

Passed the House March 3, 1937.

Passed the Senate March 3, 1937.

Approved by the Governor March 13, 1937.