

CHAPTER 102

[Engrossed Senate Bill No. 3078]

COMMISSION MERCHANTS, REGULATIONS--

LIVESTOCK AND MEAT PRODUCTS, SECURITY INTERESTS

AN ACT Relating to commission merchants; amending section 9-204, chapter 157, Laws of 1965 ex. sess. and RCW 62A.9-204; amending section 1, chapter 139, Laws of 1959 as last amended by section 1, chapter 182, Laws of 1971 1st ex. sess. and RCW 20.01.010; amending section 4, chapter 139, Laws of 1959 as amended by section 3, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.040; amending section 6, chapter 139, Laws of 1959 as amended by section 4, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.060; amending section 5, chapter 232, Laws of 1963 as amended by section 8, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.210; amending section 37, chapter 139, Laws of 1959 as last amended by section 3, chapter 232, Laws of 1963 and RCW 20.01.370; amending section 42, chapter 240, Laws of 1967 and RCW 20.01.385; amending section 43, chapter 139, Laws of 1959 and RCW 20.01.430; and adding a new section to chapter 20.01 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 9-204, chapter 157, Laws of 1965 ex. sess. and RCW 62A.9-204 are each amended to read as follows:

(1) A security interest cannot attach until there is agreement (subsection (3) of RCW 62A.1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase

or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (RCW 62A.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

(6) A security interest cannot attach to livestock or to meat or meat products made from such livestock, where (a) the livestock was sold to the debtor by another party, (b) this other party has been paid by draft or check, and (c) the draft or check remains outstanding: PROVIDED, That a security interest may attach when the draft or check has been outstanding more than ten days.

Sec. 2. Section 1, chapter 139, Laws of 1959 as last amended by section 1, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.010 are each amended to read as follows:

[For the purpose of this chapter:]

(1) "Director" means the director of agriculture or his duly authorized representative.

(2) "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.

(3) "Agricultural product" means any horticultural, viticultural, berry, poultry, poultry product, grain including mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form by or for the producer thereof, bee, or other agricultural products, and livestock except horses, mules, and asses.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product.

(5) "Consignor" means any producer ~~((or))~~, person or his agent who sells, ships or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale or resale.

(6) "Commission merchant" means any person who shall receive on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of such consignor, or who shall accept any farm product in trust from the consignor thereof for the purpose of resale, or who shall sell or offer for sale on commission any agricultural product, or who shall

in any way handle for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a commission merchant or cash buyer, as defined in subsection (9) of this section, who solicits, contracts for or obtains from the consignor thereof, for reselling or processing, title, possession or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing: PROVIDED, That for the purpose of this 1971 amendatory act the term dealer includes any person who purchases livestock on behalf of and for the account of another.

(8) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product: PROVIDED, That no broker may handle the agricultural products involved or proceeds of such sale.

(9) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession or control of any agricultural product or who contracts for the title, possession or control of any agricultural product, or who buys or agrees to buy any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of such agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check or bankdraft may be used for such payment.

(10) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, receives, contracts for or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of such business at any location other than at the principal place of business of his employer: PROVIDED, That, with the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of said principal.

(11) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year: PROVIDED, That any retailer may occasionally wholesale any agricultural product which he has in surplus; however, such wholesaling shall not be in excess of two percent of such retailer's gross business.

(12) "Fixed or established place of business" for the purpose of this chapter shall mean any permanent warehouse, building, or

structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered and generally dealt in in quantities reasonably adequate for and usually carried for the requirements of such a business and which is recognized as a permanent business at such place, and carried on as such in good faith and for the purpose of not evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, said personnel being available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(13) "Processor" means any person, firm, company or other organization that purchases agricultural crops from a farmer-producer and who cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes such crops in any manner whatsoever for eventual resale.

(14) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor which shall indicate the variety of horticultural product delivered, the number of containers, or the weight and tare thereof.

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records which shall include variety, grade, size and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs: PROVIDED, That platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size and date of delivery.

(c) Terms under which the commission merchant may use his judgement in regard to the sale of the pooled horticultural product.

(d) Terms setting forth the charges as filed with the state of Washington.

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, up to eighty percent of his interest less expenses directly incurred, prior liens and other advances on the growers crop

unless otherwise mutually agreed upon between grower and commission merchant.

Sec. 3. Section 4, chapter 139, Laws of 1959 as amended by section 3, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.040 are each amended to read as follows:

On or after the effective date of this chapter no person shall act as a commission merchant, dealer, broker, cash buyer or agent without a license. Any person applying for such a license shall file an application with the director on or before January 1st of each year. Such application shall be accompanied by the following license fee:

- (1) Commission merchant, ~~((sixty))~~ eighty dollars
- (2) Dealer, ~~((sixty))~~ eighty dollars
- (3) Broker, ~~((sixty))~~ eighty dollars
- (4) Cash buyer, thirty dollars
- (5) Agent, ten dollars.

Sec. 4. Section 6, chapter 139, Laws of 1959 as amended by section 4, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.060 are each amended to read as follows:

Any person licensed as a commission merchant, dealer, or broker (~~or cash buyer~~), in the manner herein prescribed, may apply for and secure a license in any or all of the remaining such classifications (~~(without further payment of a fee: PROVIDED, That a cash buyer shall accompany his application for a commission merchant, broker or dealer license with a fee of thirty dollars)~~) upon payment of an additional fee of twenty-five dollars. Such applicant shall further comply with those parts of this chapter regulating the licensing of the other particular classifications involved.

Sec. 5. Section 5, chapter 232, Laws of 1963 as amended by section 8, chapter 182, Laws of 1971 ex. sess. and RCW 20.01.210 are each amended to read as follows:

Before the license is issued to any commission merchant and/or dealer the applicant shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of seven thousand five hundred dollars for a commission merchant or any dealer handling livestock, hay, grain, or straw and a bond in the sum of three thousand dollars for any other dealer: PROVIDED, That the bond for a commission merchant, a dealer acting as a processor, or a dealer in livestock, hay, grain, or straw shall be in a minimum amount of seven thousand five hundred dollars or more based upon the annual gross dollar volume of purchases ~~((of))~~ by, or consignments to the licensee. The bond for such commission merchant or dealer shall be determined by

taking the annual gross dollar volume of that commission merchant or dealer of net payment to growers and dividing that amount by one hundred thirty and the bond shall be in an amount to the next multiple of two thousand dollars larger than the sum: PROVIDED, That the gross dollar volume used in computing the bond requirements of a commission merchant or dealer handling horticultural products shall be based on the net proceeds due to growers: PROVIDED FURTHER, That bonds above twenty-six thousand dollars shall be not less than the next multiple of five thousand dollars above the amount secured by applying the formula except that when the bond amount reaches fifty thousand dollars any amount of bond required above this shall be on a basis of ten percent of the amount arrived by applying the formula of annual gross divided by one hundred thirty. Such bond shall be of a standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules and regulations adopted hereunder. Said bond shall be to the state for the benefit of every consignor of an agricultural product in this state. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of such bond. Every bond filed with and approved by the director shall without the necessity of periodic renewal remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled, or until released by notice from the director when a superseding bond has been issued and is in effect. All such sureties on a bond, as provided herein, shall also be released and discharged from all liability to the state accruing on such bond by giving notice to the principal and the director by certified mail. Upon receipt of such notice the director shall notify the surety and the principal of the effective date of termination which shall be thirty days from the receipt of such notice by the director, but this shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for above. Unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. Upon such cancellation the license and vehicle plates issued attendant to the license shall be surrendered to the director forthwith.

Sec. 6. Section 37, chapter 139, Laws of 1959 as last amended by section 3, chapter 232, Laws of 1963 and RCW 20.01.370 are each amended to read as follows:

Every commission merchant, ((having received)) before taking control of any agricultural products for sale as such commission

merchant, shall utilize the standard contract format provided for in section 8 of this 1974 amendatory act and shall promptly make and keep for a period of one year a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

(1) The name and address of the consignor.

(2) The date received.

(3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(4) Date of such sale for account of consignor.

(5) The terms of the sale.

(6) The terms of payment to the producer.

(7) An itemized statement of the charges to be paid by consignor in connection with the sale.

~~((7))~~ (8) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.

~~((8))~~ (9) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the agricultural products actually sold for.

~~((9))~~ (10) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

(11) Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), (7), and (9) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool.

Sec. 7. Section 42, chapter 240, Laws of 1967 and RCW 20.01.385 are each amended to read as follows:

Whenever a commission merchant or dealer handling any agricultural products fails to carry out the provisions of section 5

of this 1974 amendatory act or RCW ((20-04-370 or) 20.01.380, whichever is applicable, ((and there is no contract in writing attested to by the consignor and the commission merchant or dealer varying the said requirements of RCW 20-04-370 or 20-04-380;)) it shall be prima facie evidence that the transaction involving the handling of any agricultural products between the consignor and the commission merchant or dealer was either a commission type transaction, or dealer transaction constituting an outright sale by the consignor, whichever is most favorable to the consignor. Such determination in favor of the consignor shall be based on the market price of the agricultural product in question at the time the complaint is filed against said commission merchant or dealer by the consignor: PROVIDED, That if the return to the consignor is determined most favorably on a commission basis, the total commission shall not exceed ten percent, and all other charges for handling the agricultural product in question shall be figured on the basis of the actual cost of said handling.

NEW SECTION. Sec. 8. There is added to chapter 20.01 RCW a new section to read as follows:

The reporting provisions of section 9 of this 1974 amendatory act and of RCW 20.01.370 and 20.01.380 being matters of public interest may not be waived by contract between the consignor and/or the commission merchant or dealer.

Notwithstanding any other provision of sections 1, 2, 3, 4, 5, 6, 8, and 9 of this 1974 amendatory act the reporting and records requirements of RCW 20.01.380 may be satisfied by any dealer handling horticultural products by his making such records available at his principal place of business for inspection by the consignor.

Sec. 9. Section 43, chapter 139, Laws of 1959 and RCW 20.01.430 are each amended to read as follows:

Every commission merchant shall remit to the consignor of any agricultural product the full price for which such agricultural product was sold within ((ten)) thirty days of said sale, unless otherwise ((agreed in writing)) mutually agreed between grower and commission merchant. Such remittance shall include all collections, overcharges and damages, less the agreed commission and other charges and a complete account of the sale.

NEW SECTION. Sec. 10. There is added to chapter 20.01 RCW a new section to read as follows:

The director, in accordance with the provisions of chapter 34.04 RCW and in conjunction with representatives of producers and commission merchants, shall develop a standard contract format for use in the sale or consignment of agricultural products by persons licensed as commission merchants pursuant to this chapter.

On and after the effective date of the rules and regulations establishing the standard contract format, the director or the supervisor of the appropriate division of the department of agriculture shall approve contracts for the sale or consignment of agricultural products by persons licensed as commission merchants pursuant to this chapter to insure that such contracts are in the form and style required by the department's rules and regulations.

Passed the Senate February 9, 1974.
Passed the House February 7, 1974.
Approved by the Governor February 16, 1974.
Filed in Office of Secretary of State February 16, 1974.

CHAPTER 103

[Substitute Senate Bill No. 3106]

MOTOR VEHICLE SPEED LIMITS

AN ACT Relating to the regulation of speeds of motor vehicles; amending section 2, chapter 16, Laws of 1963 as last amended by section 2, chapter 100, Laws of 1970 ex. sess. and RCW 46.61.405; amending section 3, chapter 16, Laws of 1963 as last amended by section 1, chapter 100, Laws of 1970 ex. sess. and RCW 46.61.410; amending section 4, chapter 16, Laws of 1963 and RCW 46.61.415; amending section 46.48.041, chapter 12, Laws of 1961 and RCW 46.61.430; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 2, chapter 16, Laws of 1963 as last amended by section 2, chapter 100, Laws of 1970 ex. sess. and RCW 46.61.405 are each amended to read as follows:

Whenever the state highway commission shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater than is reasonable or safe with respect to a state highway under the conditions found to exist at any intersection or upon any other part of the state highway system or at state ferry terminals, or that a general reduction of any maximum speed hereinbefore set forth would aid in the conservation of energy resources, said commission may determine and declare a lower ((reasonable and safe)) maximum limit ((thereat)) for any state highway, the entire state highway system, or any portion thereof, which shall be effective when appropriate signs giving notice thereof are erected. The commission may also fix and regulate the speed of vehicles on any state highway within the maximum speed limit allowed by this chapter for special occasions including, but not limited to, local parades and other special events. Any such