

CHAPTER 197.

[H. B. 135.]

WASHINGTON COMMISSION MERCHANTS ACT.

AN ACT relating to persons engaged in buying and selling agricultural products; providing for licenses; providing for hearings; defining "agricultural products," "commission merchant and credit buyer," "agent," "consignor," "retail merchant," "broker," and other terms; exempting producers, retail merchants, certain non-profit cooperative marketing associations, certain processors, certain warehousemen, nurserymen, and certain grain dealers from certain provisions of this act; requiring commission merchants and credit buyers to have bonds; requiring all licensees to carry public liability and property damage insurance; requiring a deposit for tax purposes; requiring that manifests of cargo and other pertinent information be furnished to the Director; requiring commission merchants and credit buyers to give certain information to consignors; providing for suit by the Director on the bonds of commission merchants and credit buyers; setting up certain grounds for denying or revoking a license; giving the Director the right to enter and inspect the premises of any licensee; repealing chapter 67 of the Session Laws of 1937 (section 8292, section 8292-1, section 8293, section 8294, section 8295, section 8296, section 8298, section 8299, section 8300, section 8302, section 8302-1, and section 8302-2 of Remington's Revised Statutes; sections 1417-41 to 1417-52, inclusive, of Pierce's Code); and providing penalties.

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

SECTION 1. This act shall be known and cited as the Washington commission merchants act. Short title.

SEC. 2. The definitions as given in this act shall apply unless the context clearly indicates otherwise. Definitions:

SEC. 3. The term "director" whenever used in this act shall mean the Director of Agriculture of the State of Washington or his duly authorized representative. "Director."

SEC. 4. The term "person" whenever used in this act shall mean and include any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors. "Person."

"Agricultural product."

SEC. 5. The term "agricultural product" whenever used in this act shall include any horticultural, viticultural, berry, poultry, grain, livestock, bee or other farm product.

"Commission merchant and credit buyer."

SEC. 6. "Commission merchant and credit buyer" whenever used in this act shall include 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 such product 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 said crop.

"Cash buyer."

SEC. 7. "Cash buyer" whenever used in this act shall include any person who shall purchase or offer to purchase any agricultural product as herein defined for the purpose of processing or resale and who shall pay 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 such agricultural product may be determined if such price or value is subject to determination by inspection, grade, test or pack-out.

"Consignor."

SEC. 8. "Consignor" whenever used in this act shall mean 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.

"Agent."

SEC. 9. "Agent" shall mean 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.

SEC. 10. "Bona fide fixed or permanent location" shall mean 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 act, 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 such business, and 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.

"Bona fide fixed or permanent location."

SEC. 11. "Retail merchant" means and includes any person 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 at the bona fide fixed or permanent location.

"Retail merchant."

SEC. 12. "Broker" means and includes 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, said agricultural product or the proceeds derived from such sale.

"Broker."

SEC. 13. 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 mar-

Exemptions from act.

keting associations incorporated under chapter 19 of the Session Laws of 1913, as amended (sections 3904 to 3923, inclusive, of Remington's Revised Statutes; sections 4593 to 4612, inclusive, of Pierce's Code), or under chapter 115 of the Session Laws of 1921, as amended (sections 2878 to 2909, inclusive, of Remington's Revised Statutes; sections 134-46 to 134-77, inclusive, of Pierce's Code); nor 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 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.

License
required.

SEC. 14. On and after the effective date of this act, 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 act.

Application
to do
business.

SEC. 15. Every person 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 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 such a license, and if the applicant be a partnership, the full name of each member of the partnership, or the officers of the exchange, asso-

ciation, or corporation, and the name of the local agent of the exchange or corporation or association, the city, town, or village, 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.

SEC. 16. The director may withhold the issuance of a license to an applicant, for a period not to exceed thirty (30) days pending an investigation, for the purpose of determining (1) whether the applicant is violating or has violated any of the provisions of this act, 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 the act 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.

SEC. 17. 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 thereupon issue to such applicant, on payment of twenty-five dollars (\$25.00), 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.

SEC. 18. Each licensee operating as a commission merchant and credit buyer or as a cash buyer as defined in this act, 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

Investigation.

License fee.

Licensee utilizing motor vehicle to secure license plates.

the 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 (25¢). Such license plates shall not be transferable from one vehicle to another.

License issued.

SEC. 19. If the business of an applicant shall include the carrying on of a business of commission merchant and credit buyer as herein defined, the director 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.

Change in organization to be reported.

SEC. 20. Any change in the organization of any firm, association, exchange, corporation or copartnership licensed under this act shall be reported immediately to the director.

Agent's license.

SEC. 21. 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 (\$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.

Broker's license.

SEC. 22. If the business of an applicant is to act as a broker as defined in this act, the director shall issue to such applicant, upon the payment of two dollars (\$2.00), a broker's license, entitling him to do business as a broker as defined in this act.

SEC. 23. The director is hereby vested with power and authority and it shall be his duty in

issuing licenses either to commission merchants and credit buyers or cash buyers to require before issuance thereof the filing with him of a verified copy of a liability insurance policy or bond in 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 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: *Provided, however,* That such insurance policy or bond shall be conditioned to pay any sum up to five thousand dollars (\$5,000) as the result of personal injury or death to one individual, and up to ten thousand dollars (\$10,000) as the result of personal injuries or deaths in any single accident, and up to five thousand dollars (\$5,000) as the result of damage to property in any single accident.

Liability
insurance
or bond
required.

SEC. 24. (a) Before any such 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 (\$5,000), and with surety satisfactory to the director.

Surety 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 moneys 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 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 bonds 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 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.

Statement as
to volume of
business.

SEC. 25. 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.

Financial
statement.

SEC. 26. Any licensee 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.

List of
agents filed.

SEC. 27. 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.

SEC. 28. Every person licensed to do business as a commission merchant and credit buyer or as a cash buyer under this act 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. Records.

SEC. 29. 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 disposal otherwise, except as to the names and addresses of persons to whom such products are sold, together with payment in settlement for such products, and such memorandum shall show the date of purchase or receipt of the products, amount purchased or received, and price paid or received. Memorandum of each transaction.

SEC. 30. The director shall have the right to enter and inspect the premises, yards, warehouses, storage and transportation facilities or any agricultural products therein; and to 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. Director. power to inspect.

SEC. 31. Whenever by agreement in writing between the consignor and the commission merchant and credit buyer, any agricultural products are Pooled or commingled products.

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 (10) days after demand by the consignor after said pool has been closed.

Manifest to be carried on vehicle.

SEC. 32. 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.

Statement to consignor on receipt of goods.

SEC. 33. Any commission merchant and credit buyer or any cash buyer as defined in this act 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, it shall be the duty of the commission merchant and credit buyer or cash buyer to call a duly authorized agent of the director for prompt inspection of such damaged products, and to procure from such agent of the director a certificate in triplicate as to the condition, grade, quality, weight, maturity, and disposition of said agricultural products, and to transmit one copy of said 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 such consignment or the consignor or vendor. Said 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 of Washington. Such claim must be made by the licensee within five (5) days of the date of receipt of such goods at the point where the condition on which claim is made became apparent.

Damaged products.

Inspection fee.

SEC. 34. If the local market should be overstocked, the commission merchant and credit buyer shall have the authority to relieve the condition by reassigning all or part of any consignment, but shall send consignor copy of the account sales of such reassigned goods. In all such instances, the commission merchant and credit buyer shall be entitled to only two-thirds of his regular filed commission.

Overstocked market.

Reassignment.

Merchant's commission.

SEC. 35. 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 an agent for other parties, upon a form prescribed by the director, and the licensee shall not deviate

Schedule of commissions filed.

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 per cent (15%), 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 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. 36. The director shall have the power to 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.

Demand
upon
licensee for
payment for
goods
consigned.

SEC. 37. 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 (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 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 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 shall then hold a hearing to determine whether to suspend or revoke the license of the commission merchant and credit buyer or cash buyer.

SEC. 38. The director may decline to grant or may revoke or suspend a license after due notice and a hearing held as herein provided, if he is satisfied that the applicant or licensee is guilty of

Causes for denial, revocation or suspension of license.

- (a) Any violation of the provisions of this act, or
- (b) 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.

- (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 dealing 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 cancelled.

(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 (30) 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 in this act.

(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.

SEC. 39. When a license or application has been denied, revoked, or suspended after due notice and a hearing, the director, in the order denying such application or revoking or suspending such license, may provide that, before a license shall be issued, the applicant or licensee shall make such reparations to the injured party as the director believes reasonable, just, and equitable, and until such reparations are made, a license may be denied by the director.

Reparations
to injured
party.

SEC. 40. In the event the director has reason to suspect that any licensee or applicant is violating or has violated the provisions of this act, 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 act which the licensee or applicant 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 or applicant is violating or has violated such provisions.

Hearing to
revoke or
suspend
license.

SEC. 41. An action may be brought by the director or a consignor on the bond furnished by a commission merchant and credit buyer under the provisions of this act and recovery may be had against such commission merchant and credit buyer 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.

Action on
bond.

Attorney's
fees.

SEC. 42. If the court finds for the defendant commission merchant and credit buyer in an action as provided in section 42 of this act, the complainant shall receive no attorney's fees. If the complainant be other than the director, the complainant shall pay a reasonable attorney's fee to defendant. Any such sums collected by the director in the suit provided for in section 42 of this act shall, after collection, be promptly paid over to the parties entitled thereto.

Penalty.

SEC. 43. Any person 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.

Prosecution,
where
instituted.

SEC. 44. 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.

Commission
merchants
fund.

SEC. 45. All sums received by the director 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.

Partial
invalidity.

SEC. 46. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, sub-section, clause or phrase of this act is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this act. The Legislature here-

by declares that it would have passed this act and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, sub-sections, sentences, clauses, or phrases be declared unconstitutional.

SEC. 47. Chapter 67 of the Session Laws of 1937 (section 8292, section 8292-1, section 8293, section 8294, section 8295, section 8296, section 8298, section 8299, section 8300, section 8302, section 8302-1, and section 8302-2 of Remington's Revised Statutes; section 1417-41 to 1417-52, inclusive, of Pierce's Code) is hereby repealed: *Provided*, That nothing herein contained shall be construed as affecting any existing right acquired under the provisions of said act, or as affecting any proceeding instituted under said act: *Provided, further*, That the repeal hereby of said act shall not operate to revive any former act or part thereof therein repealed. Repeal.

Passed the House March 6, 1939.

Passed the Senate March 5, 1939.

Approved by the Governor March 17, 1939.