

CHAPTER 182

[House Bill No. 706]

AGRICULTURAL PRODUCTS--

COMMISSION MERCHANTS AND DEALERS--

PROCESSORS AND GROWERS

AN ACT Relating to commission merchants -- agricultural products; amending section 1, chapter 139, Laws of 1959 as last amended by section 40, chapter 240, Laws of 1967 and RCW 20.01.010; amending section 1, chapter 139, Laws of 1959 as last amended by section 1, chapter 132, Laws of 1969 ex. sess. and RCW 20.01.030; amending section 4, chapter 139, Laws of 1959 and RCW 20.01.040; amending section 6, chapter 139, Laws of 1959 and RCW 20.01.060; amending section 8, chapter 139, Laws of 1959 and RCW 20.01.080; amending section 8, chapter 232, Laws of 1963 and RCW 20.01.125; amending section 13, chapter 139, Laws of 1959 and RCW 20.01.130; amending section 5, chapter 232, Laws of 1963 and RCW 20.01.210; amending section 6, chapter 232, Laws of 1963 and RCW 20.01.212; amending section 7, chapter 232, Laws of 1963 and RCW 20.01.214; amending section 33, chapter 139, Laws of 1959 and RCW 20.01.330; amending section 41, chapter 139, Laws of 1959 and RCW 20.01.410; amending section 43, chapter 240, Laws of 1967 and RCW 20.01.475; adding new sections to chapter 139, Laws of 1959 and to chapter 20.01 RCW; and providing an effective date.

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

Section 1. Section 1, chapter 139, Laws of 1959 as last amended by section 40, chapter 240, Laws of 1967 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 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 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.

Sec. 2. Section 3, chapter 139, Laws of 1959 as last amended by section 1, chapter 132, Laws of 1969 ex. sess. and RCW 20.01.030 are each amended to read as follows:

This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 or chapter 24.32 RCW, except as to that portion of the activities of such association or federation as involves the handling or dealing in the agricultural products of nonmembers of such organization: PROVIDED, That such associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if such cooperative or association acts as a processor as defined in section 14(2) +[15(2)] of this 1971 amendatory act and markets such processed agricultural crops on behalf of the grower or its own behalf, said association or federation shall be subject to the provisions of sections 15 through 21 of this 1971 amendatory act and the license provision of this chapter excluding bonding provisions.

(2) Any person who sells exclusively his own agricultural products as the producer thereof.

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of such public livestock market's obligation.

(4) Any retail merchant having bona fide fixed or permanent place of business in this state.

(5) Any person buying farm products for his own use or consumption.

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act.

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his operations as such licensee.

(8) Any person licensed under the now existing dairy laws of the state with respect to his operations as such licensee.

(9) Any producer who purchases less than fifteen percent of his volume to fill orders.

Sec. 3. Section 4, chapter 139, Laws of 1959 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, (~~(fifty)~~) sixty dollars
- (2) Dealer, (~~(fifty)~~) sixty dollars
- (3) Broker, (~~(fifty)~~) sixty dollars
- (4) Cash buyer, (~~(twenty-five)~~) thirty dollars
- (5) Agent, (~~(five)~~) ten dollars.

Sec. 4. Section 6, chapter 139, Laws of 1959 and RCW 20.01.060 are each amended to read as follows:

Any person licensed as a commission merchant, dealer, 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 (~~(twenty-five)~~) thirty dollars. Such applicant shall further comply with those parts of this chapter regulating the licensing of the other particular classifications involved.

Sec. 5. Section 8, chapter 139, Laws of 1959 and RCW 20.01.080 are each amended to read as follows:

Any person applying for a commission merchant's license shall include in his application a schedule of commissions, together with

an itemized list of all charges for services rendered to a consignor and shall post a copy of such charges on his premises where it is available to consignors. Such commissions and charges shall not be changed or varied for the license period except by written contract between the consignor or his agent and the licensee or thirty days after written notice to the director, and proper posting of such changes, as prescribed by the director, on the licensee's premises. Charges for services rendered and not listed on the schedule of commissions and charges filed with the director shall be rendered only on an actual cost to the licensee basis.

Sec. 6. Section 8, chapter 232, Laws of 1963 and RCW 20.01.125 are each amended to read as follows:

Every dealer and commission merchant dealing in hay or straw shall obtain a certified vehicle tare weight (~~notwithstanding RCW 45-80-4607~~) and a certified vehicle gross weight for each load hauled.

Sec. 7. Section 13, chapter 139, Laws of 1959 and RCW 20.01.130 are each amended to read as follows:

All (~~sums~~) moneys received by the department (~~in license fees~~) under the provisions of this chapter shall be paid to the state treasurer and be deposited in a special fund to be known as the commission merchants account and shall be used solely for the purpose of carrying out the provisions of this chapter and rules and regulations adopted hereunder.

Sec. 8. Section 5, chapter 232, Laws of 1963 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 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 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 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 ((only)) also be released and discharged from all liability to the state accruing on such bond ((upon compliance with the provisions of RCW 49-72-440 concerning notice and proof of service, as enacted or hereafter amended)) 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 ((in RCW 49-72-440 concerning notice and proof of service as enacted or hereafter amended, and)) 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. 9. Section 5, chapter 232, Laws of 1963 and RCW 20.01.212 are each amended to read as follows:

If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181) as amended on the effective date of this act, and acts as a commission merchant and/or a dealer only in livestock as defined in said Packers and Stockyards Act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW 20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting

as order buyer as well as dealer may also act as an order buyer for others under the provisions of this 1971 amendatory act, and all persons who act as order buyers of livestock shall license under this 1971 amendatory act as a livestock dealer: PROVIDED, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture naming the director as trustee. Such bond shall be in a sum equal to or greater than the sum of the bond required in RCW 20.01.210 (~~r~~ and subject to the same requirements for notice and cancellation of a bond in said RCW 20.04.240). It shall be a (~~misdemeanor~~) violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without first having notified the director and furnishing him with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing.

Sec. 10. Section 7, chapter 232, Laws of 1963 and RCW 20.01.214 are each amended to read as follows:

Upon any bond claim being denied by the director the claimant must appeal such action to the superior court in the county where this claimant resides in this state or Thurston County, within sixty days after receipt of written notice of such rejection or such rejection shall become final and binding upon the claimant.

Sec. 11. Section 33, chapter 139, Laws of 1959 and RCW 20.01.330 are each amended to read as follows:

The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he is satisfied after a hearing, as herein provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of agricultural products received, handled, sold or stored by him.

(4) That the applicant, or licensee, directly or indirectly has purchased for his own account agricultural products received by him upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly

notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was intentionally guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or wilful negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examination or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers

necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by check with insufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted an agent to in fact operate his own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer in livestock, hay, grain, or straw has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director.

Sec. 12. Section 41, chapter 139, Laws of 1959 and RCW 20.01.410 are each amended to read as follows:

A copy of a manifest of cargo, on a form prescribed by the director, shall be carried on any vehicle transporting agricultural products purchased by a dealer or cash buyer, or consigned to (~~or purchased by~~) a commission merchant from the consignor thereof when prescribed by the director. The commission merchant, dealer or cash buyer shall issue a copy of such manifest to the consignor of such agricultural products and the original shall be retained by the licensee for a period of one year during which time it shall be surrendered upon request to the director. Such manifest of cargo shall be valid only when signed by the licensee or his agent and the consignor of such agricultural products.

Sec. 13. Section 43, chapter 240, Laws of 1967 and RCW 20.01.475 are each amended to read as follows:

It shall be prima facie evidence that a licensee licensed under the provisions of (~~chapter 20.04 RCW~~) this 1971 amendatory act is acting (~~at all time~~) as such (~~licensee~~) in the handling of any agricultural product (~~if even though he may also be a producer of or acting in his capacity as a producer at the time he is handling such agricultural products~~).

NEW SECTION. Sec. 14. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

When a violation has occurred which results in improper payment or nonpayment and a claim is made to the department and the

payment is secured through the actions of the department the following charges will be made to the consignor for the action of the department in the matter:

(1) When reported within thirty days from time of default, no charge.

(2) When reported thirty days to one hundred eighty days from time of default, five percent.

(3) When reported after one hundred eighty days from time of default, ten percent.

NEW SECTION. Sec. 15. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

Notwithstanding any other provision of law, for the purposes of sections 16 through 20 of this 1971 amendatory act, the term "grower" and the term "producer" shall have the meanings ascribed thereto by this section:

(1) "Grower" means any person, firm, company, or other organization that is engaged in the production of agricultural crops (other than sugar beets or alfalfa), which must be planted, cultivated, and harvested within a twelve month period.

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

(b) The exemption provided for in RCW 20.01.030(1) shall not apply to a cooperative or association as defined therein, which acts as a processor defined herein, and markets such agricultural crops on behalf of the grower or on its own behalf.

NEW SECTION. Sec. 16. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

In order to carry out the purposes of this 1971 amendatory act, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him.

NEW SECTION. Sec. 17. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of this 1971 amendatory act, may require a processor to have filed with him:

(1) A copy of each contract he has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment he has given to growers

for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself.

NEW SECTION. Sec. 18. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

Any grower may file with the director on a form prescribed by him the acres of crops and/or quantity of crops to be harvested during the present or next growing season, which he understands a processor has orally committed himself to purchase.

NEW SECTION. Sec. 19. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

Any processor who, from the information filed with the director, appears to or has committed himself either orally or in writing to purchase more crops than his plants are capable of processing shall be in violation of this chapter and his dealer's license subject to denial, suspension, or revocation as provided for in RCW 20.01.330.

NEW SECTION. Sec. 20. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

Any processor who wilfully discriminates between growers with whom he contracts as to price, conditions for production, harvesting, and delivery of crops which is not supportable by economic cost factors shall be in violation of this chapter and the director may subsequent to a hearing deny, suspend, or revoke such processor's license to act as a dealer.

NEW SECTION. Sec. 21. There is added to chapter 139, Laws of 1959 and to chapter 20.01 RCW a new section to read as follows:

Sections 15 through 20 of this 1971 amendatory act shall take effect beginning on September 1, 1972.

Passed the House May 9, 1971.

Passed the Senate May 7, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

CHAPTER 183

[House Bill No. 773]

PROTECTION OF DEER AND ELK

AN ACT Relating to game; protecting deer and elk during certain periods of the year; and adding a new section to Title 77 RCW.

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

NEW SECTION. Section 1. There is added to Title 77 RCW a new