

SENATE BILL REPORT

SB 5196

As Reported By Senate Committee On:
Agriculture, February 18, 2003

Title: An act relating to regulating the sale, processing, or purchase of agricultural products.

Brief Description: Regulating the sale, processing, or purchase of agricultural products.

Sponsors: Senators Swecker, Rasmussen, Sheahan, Jacobsen and Brandland; by request of Department of Agriculture.

Brief History:

Committee Activity: Agriculture: 1/30/03, 2/18/03 [DPS].

SENATE COMMITTEE ON AGRICULTURE

Majority Report: That Substitute Senate Bill No. 5196 be substituted therefor, and the substitute bill do pass.

Signed by Senators Swecker, Chair; Brandland, Vice Chair; Jacobsen, Rasmussen and Sheahan.

Staff: Evan Sheffels (786-7486)

Background: Generally, the Commission Merchants Act (CMA), 20.01 RCW, protects agricultural producers against theft, fraud, and unfair business practices by those engaged in the process of buying and selling agricultural products. With certain exceptions, any person acting as a commission merchant, dealer, broker, or cash buyer for agricultural commodities must comply with the licensing and bonding requirements of the state's commission merchant laws (RCW 20.01.040). The Department of Agriculture (WSDA) administers the CMA program, which is funded by license fees.

Under current law, the bond proceeds available to compensate injured hay or straw producers are distributed on a first-filed-first-paid basis. Producers who file after bond proceeds are exhausted receive no compensation. Hay or straw claims must be filed with WSDA within 20 days of the payment default date. Default is currently defined as a licensee's failure to pay within 30 days of taking possession of the hay or straw.

The CMA currently authorizes the department director, or appointed officers, to stop a vehicle transporting hay or straw where there is reasonable cause to believe a CMA violation has been or is being committed. A vehicle operator who fails to stop as directed has committed a civil infraction. Under the CMA, the maximum penalty for a civil infraction is set at \$1,000.

Under the Washington Criminal Code, RCW 9A.56.060, the unlawful issuance of a bank check can be either a class C felony (checks over \$250) or a gross misdemeanor (checks for \$250 or less).

Summary of Substitute Bill: Agricultural crop and vegetable seeds are expressly listed in the "agricultural product" section of the CMA definitions.

Where the department determines that valid claims exist against a commission merchant or dealer, the director is required to distribute available bond proceeds on a pro rata, rather than a first-come-first-served, basis.

Default, or a licensee's failure to pay a consignor/producer, is set by statute at 30 days after the date a licensee took possession of hay or straw. The parties may set an alternative default date by written contract. With regard to limited dealers, default occurs immediately upon possession without payment to a consignor/producer. The provision requiring a hay or straw consignor/producer to file a default claim within 20 days is eliminated. In addition, the provision requiring the agency to demand payment against a licensee's hay or straw bond within 10 working days of the filing of a claim is eliminated.

A limited dealer is defined as any person operating under alternative bonding provisions "who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price." Alternative bonding criteria are changed so that the bond amount must equal the limited dealer's maximum monthly purchases divided by 12 (rather than 15). The minimum alternative bond amount is raised from \$7,500 to \$10,000.

Vehicles transporting agricultural products (other than hay or straw) for a commission merchant, dealer, or cash buyer are authorized to carry bills of lading instead of manifests of cargo. With regard to hay or straw, a manifest of cargo must be issued, and not a bill of lading. Representatives of the consignor are authorized to sign the manifest on behalf of the consignor. WSDA will provide manifests to licensees at the department's actual cost, plus any handling charges incurred by the department. Licensees must retain the original manifest or bill of lading for three years. Currently, licensees must keep the original for one year.

If the director is denied access during an authorized investigation, the director is authorized to apply to any court of competent jurisdiction for a search warrant authorizing access to the premises and records. The court is authorized to issue the warrant. The department's authority to stop vehicles is expanded from vehicles transporting hay and straw to vehicles transporting any agricultural product. Authorization is provided for the prosecution of the unlawful issuance of a bank check under the Washington criminal code. The maximum monetary penalty for a civil infraction under the CMA is raised from \$1,000 to \$5,000.

Cash buyers are authorized to make payment by credit card. Changes in the organization of a licensee must be reported to the WSDA within 30 days.

Substitute Bill Compared to Original Bill: The substitute bill adds forb and flower seeds to the "agricultural product" definition. The director is given 30 working days after the claim verification process is completed to make a demand upon the licensee's surety for payment of the claim. Subsequent claims that were not addressed through the claim verification process will be subject to the availability of remaining bond proceeds.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill increases grower protections and updates and revises the Commission Merchants Act, which is 100 percent funded by fees. It clarifies that seed entities are covered by the CMA, so that seed growers get the same protections other growers receive under the CMA. The pro rata distribution of bond proceeds will help ensure that all growers get a share when a valid claim exists, and that none are totally left out when a regulated entity goes bankrupt.

Testimony Against: Seed dealers are not opposed to the majority of the bill, but we would rather not be included in the bill. Seed dealers are already regulated by other programs. Perhaps an indemnity fund should be considered.

Testified: Brad Bonsell, Eric Colter, WNISA (con as to seed); Jerry Buendel, WA State Dept. of Agriculture (pro); Leslie Emerick, WSDA (pro).