

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1100

58th Legislature
2003 Regular Session

Passed by the House April 27, 2003
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 26, 2003
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1100** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1100

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Schoesler, Grant, Rockefeller and Sump; by request of Department of Agriculture)

READ FIRST TIME 02/27/03.

1 AN ACT Relating to regulating the sale, processing, or purchase of
2 agricultural products; amending RCW 20.01.010, 20.01.130, 20.01.140,
3 20.01.211, 20.01.240, 20.01.320, 20.01.410, 20.01.460, 20.01.490, and
4 20.01.610; creating a new section; and prescribing penalties.

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

6 **Sec. 1.** RCW 20.01.010 and 1991 c 174 s 1 are each amended to read
7 as follows:

8 As used in this title the terms defined in this section have the
9 meanings indicated unless the context clearly requires otherwise.

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

12 (2) "Person" means any natural person, firm, partnership, exchange,
13 association, trustee, receiver, corporation, and any member, officer,
14 or employee thereof or assignee for the benefit of creditors.

15 (3) "Agricultural product" means any unprocessed horticultural,
16 vermicultural and its byproducts, viticultural, berry, poultry, poultry
17 product, grain, bee, or other agricultural products, and includes mint
18 or mint oil processed by or for the producer thereof and hay and straw
19 baled or prepared for market in any manner or form and livestock.

1 (4) "Producer" means any person engaged in the business of growing
2 or producing any agricultural product, whether as the owner of the
3 products, or producing the products for others holding the title
4 thereof.

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

9 (6) "Commission merchant" means any person who receives on
10 consignment for sale or processing and sale from the consignor thereof
11 any agricultural product for sale on commission on behalf of the
12 consignor, or who accepts any farm product in trust from the consignor
13 thereof for the purpose of resale, or who sells or offers for sale on
14 commission any agricultural product, or who in any way handles for the
15 account of or as an agent of the consignor thereof, any agricultural
16 product.

17 (7) "Dealer" means any person other than a cash buyer, as defined
18 in subsection (10) of this section, who solicits, contracts for, or
19 obtains from the consignor thereof for reselling or processing, title,
20 possession, or control of any agricultural product, or who buys or
21 agrees to buy any agricultural product from the consignor thereof for
22 sale or processing and includes any person, other than one who acts
23 solely as a producer, who retains title in an agricultural product and
24 delivers it to a producer for further production or increase. For the
25 purposes of this chapter, the term dealer includes any person who
26 purchases livestock on behalf of and for the account of another, or who
27 purchases cattle in another state or country and imports these cattle
28 into this state for resale.

29 (8) "Limited dealer" means any person (~~operating~~) who buys,
30 agrees to buy, or pays for the production or increase of any
31 agricultural product by paying to the consignor at the time of
32 obtaining possession or control of any agricultural product the full
33 agreed price of the agricultural product and who operates under the
34 alternative bonding provision in RCW 20.01.211.

35 (9) "Broker" means any person other than a commission merchant,
36 dealer, or cash buyer who negotiates the purchase or sale of any
37 agricultural product, but no broker may handle the agricultural
38 products involved or proceeds of the sale.

1 (10) "Cash buyer" means any person other than a commission
2 merchant, dealer, or broker, who obtains from the consignor thereof for
3 the purpose of resale or processing, title, possession, or control of
4 any agricultural product or who contracts for the title, possession, or
5 control of any agricultural product, or who buys or agrees to buy for
6 resale any agricultural product by paying to the consignor at the time
7 of obtaining possession or control of any agricultural product the full
8 agreed price of the agricultural product, in coin or currency, lawful
9 money of the United States. However, a cashier's check, certified
10 check, credit card, or bankdraft may be used for the payment. For the
11 purposes of this subsection, "agricultural product," does not include
12 hay, grain, straw, or livestock.

13 (11) "Agent" means any person who, on behalf of any commission
14 merchant, dealer, broker, or cash buyer, acts as liaison between a
15 consignor and a principal, or receives, contracts for, or solicits any
16 agricultural product from the consignor thereof or who negotiates the
17 consignment or purchase of any agricultural product on behalf of any
18 commission merchant, dealer, broker, or cash buyer and who transacts
19 all or a portion of that business at any location other than at the
20 principal place of business of his employer. With the exception of an
21 agent for a commission merchant or dealer handling horticultural
22 products, an agent may operate only in the name of one principal and
23 only to the account of that principal.

24 (12) "Retail merchant" means any person operating from a bona fide
25 or established place of business selling agricultural products twelve
26 months of each year.

27 (13) "Fixed or established place of business" for the purpose of
28 this chapter means any permanent warehouse, building, or structure, at
29 which necessary and appropriate equipment and fixtures are maintained
30 for properly handling those agricultural products generally dealt in,
31 and at which supplies of the agricultural products being usually
32 transported are stored, offered for sale, sold, delivered, and
33 generally dealt with in quantities reasonably adequate for and usually
34 carried for the requirements of such a business, and that is recognized
35 as a permanent business at such place, and carried on as such in good
36 faith and not for the purpose of evading this chapter, and where
37 specifically designated personnel are available to handle transactions
38 concerning those agricultural products generally dealt in, which

1 personnel are available during designated and appropriate hours to that
2 business, and shall not mean a residence, barn, garage, tent, temporary
3 stand or other temporary quarters, any railway car, or permanent
4 quarters occupied pursuant to any temporary arrangement.

5 (14) "Processor" means any person, firm, company, or other
6 organization that purchases agricultural crops from a consignor and
7 that cans, freezes, dries, dehydrates, cooks, presses, powders, or
8 otherwise processes those crops in any manner whatsoever for eventual
9 resale.

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

15 (a) A delivery receipt for the consignor that indicates the variety
16 of horticultural product delivered, the number of containers, or the
17 weight and tare thereof;

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

25 (c) Terms under which the commission merchant may use his judgment
26 in regard to the sale of the pooled horticultural product;

27 (d) The charges to be paid by the consignor as filed with the state
28 of Washington;

29 (e) A provision that the consignor shall be paid for his pool
30 contribution when the pool is in the process of being marketed in
31 direct proportion, not less than eighty percent of his interest less
32 expenses directly incurred, prior liens, and other advances on the
33 grower's crop unless otherwise mutually agreed upon between grower and
34 commission merchant.

35 (16) "Date of sale" means the date agricultural products are
36 delivered to the person buying the products.

37 (17) "Conditioner" means any person, firm, company, or other

1 organization that receives turf, forage, or vegetable seeds from a
2 consignor for drying or cleaning.

3 (18) "Seed bailment contract" means any contract meeting the
4 requirements of chapter 15.48 RCW.

5 (19) "Proprietary seed" means any seed that is protected under the
6 Federal Plant Variety Protection Act.

7 (20) "Licensed public weighmaster" means any person, licensed under
8 the provisions of chapter 15.80 RCW, who weighs, measures, or counts
9 any commodity or thing and issues therefor a signed certified
10 statement, ticket, or memorandum of weight, measure, or count upon
11 which the purchase or sale of any commodity or upon which the basic
12 charge of payment for services rendered is based.

13 (21) "Certified weight" means any signed certified statement or
14 memorandum of weight, measure or count issued by a licensed public
15 weighmaster in accordance with the provisions of chapter 15.80 RCW.

16 (22) "Licensee" means any person or business licensed under this
17 chapter as a commission merchant, dealer, limited dealer, broker, cash
18 buyer, or agent.

19 **Sec. 2.** RCW 20.01.130 and 1993 sp.s. c 24 s 929 are each amended
20 to read as follows:

21 All fees and other moneys received by the department under (~~the~~
22 ~~provisions of~~) this chapter shall be paid to the director and (~~shall~~
23 ~~be~~) used solely for the purpose of carrying out (~~the provisions of~~)
24 this chapter and the rules adopted (~~hereunder or for departmental~~
25 ~~administrative expenses during the 1993-95 biennium~~) under this
26 chapter. All civil fines received by the courts as the result of
27 notices of infractions issued by the director shall be paid to the
28 director, less any mandatory court costs and assessments.

29 **Sec. 3.** RCW 20.01.140 and 1959 c 139 s 14 are each amended to read
30 as follows:

31 Any change in the organization of any firm, association, exchange,
32 corporation, or partnership licensed under (~~the provisions of~~) this
33 chapter shall be reported to the director and the licensee's surety or
34 sureties within thirty days.

1 **Sec. 4.** RCW 20.01.211 and 1983 c 305 s 5 are each amended to read
2 as follows:

3 (1) In lieu of the bonding provision required by RCW 20.01.210, any
4 dealer who buys, agrees to buy, or pays for the production or increase
5 of any agricultural product by paying to the consignor at the time of
6 obtaining possession or control of any agricultural product the full
7 agreed price of the agricultural product may file a bond in an amount
8 equal to the dealer's maximum monthly purchases, divided by (~~fifteen~~)
9 twelve, but the minimum bond (~~(provided by)~~) under this section shall
10 be (~~(in a minimum of seven thousand five hundred)~~) no less than ten
11 thousand dollars.

12 (2) Any dealer using the bonding provisions of this section shall
13 file an affidavit with the director that sets forth the dealer's
14 maximum monthly purchases from or payments to consignors. The
15 affidavit shall be filed at the time of application and with each
16 renewal.

17 (3) Any dealer bonded under this section who is found to be in
18 violation of this chapter shall be required to comply with the bonding
19 requirements of RCW 20.01.210 for a minimum of two years.

20 **Sec. 5.** RCW 20.01.240 and 1986 c 178 s 12 are each amended to read
21 as follows:

22 (1) (~~(Except as provided in subsection (2) of this section,)~~) Any
23 consignor who believes he or she has a valid claim against the bond of
24 a commission merchant or dealer shall file a claim with the director.
25 (~~(Upon the filing of a claim under this subsection against any~~
26 ~~commission merchant or dealer handling any agricultural product, the~~
27 ~~director may, after investigation, proceed to ascertain the names and~~
28 ~~addresses of all consignor creditors of such commission merchant and~~
29 ~~dealer, together with the amounts due and owing to them by such~~
30 ~~commission merchant and dealer, and shall request all such consignor~~
31 ~~creditors to file a verified statement of their respective claims with~~
32 ~~the director. Such request shall be addressed to each known consignor~~
33 ~~creditor at his last known address.~~

34 (2) ~~Any consignor who believes he or she has a valid claim against~~
35 ~~the bond of a commission merchant or dealer in hay or straw, shall file~~
36 ~~a claim with the director within twenty days of the licensee's default.~~
37 ~~In the case of a claim against the bond of a commission merchant or~~

1 ~~unlimited dealer in hay or straw, default occurs when the licensee~~
2 ~~fails to make payment within thirty days of the date the licensee took~~
3 ~~possession of the hay or straw. In the case of a claim against a~~
4 ~~limited dealer in hay or straw, default occurs when the licensee fails~~
5 ~~to make payment upon taking possession of the hay or straw. Upon~~
6 ~~verifying the consignor's claim either through investigation or, if~~
7 ~~necessary, an administrative action, the director shall, within ten~~
8 ~~working days of the filing of the claim, make demand for payment of the~~
9 ~~claim by the licensee's surety without regard to any other potentially~~
10 ~~valid claim. Any subsequent claim will likewise result in a demand~~
11 ~~against the licensee's surety, subject to the availability of any~~
12 ~~remaining bond proceeds.))~~

13 (2) In the case of a claim against the bond of a commission
14 merchant or dealer in hay or straw, default occurs when the licensee
15 fails to make payment within thirty days of the date the licensee took
16 possession of the hay or straw or at a date agreed to by both the
17 consignor and commission merchant or dealer in written contract. In
18 the case of a claim against a limited dealer in hay or straw, default
19 occurs when the licensee fails to make payment upon taking possession
20 of the hay or straw.

21 (3) Upon the filing of a claim under this subsection against any
22 commission merchant or dealer handling any agricultural product, the
23 director may, after investigation, proceed to ascertain the names and
24 addresses of all consignor creditors of such commission merchant and
25 dealer, together with the amounts due and owing to them by such
26 commission merchant and dealer, and shall request all such consignor
27 creditors to file a verified statement of their respective claims with
28 the director. Such request shall be addressed to each known consignor
29 creditor at his last known address.

30 (4) For claims against a bond that have been filed by consignors
31 prior to the sixty-day deadline established in RCW 20.01.250, the
32 director shall investigate the claims and, within thirty days of
33 verifying the claims, demand payment for the valid claims by the
34 licensee's surety. The director shall distribute the proceeds of the
35 valid bond claims to the claimants on a pro rata basis within the
36 limits of the claims and the availability of the bond proceeds. If a
37 claim is filed after the sixty-day deadline established in RCW
38 20.01.250, the director may investigate the claim and may demand

1 payment for a valid claim. The director shall distribute the proceeds
2 of any such payment made by the surety to the claimant on a first-to-
3 file, first-to-be-paid basis within the limits of the claim and the
4 availability of any bond proceeds remaining after the pro rata
5 distribution. All distributions made by the director under this
6 subsection are subject to RCW 20.01.260.

7 **Sec. 6.** RCW 20.01.320 and 1959 c 139 s 32 are each amended to read
8 as follows:

9 The director on his or her own motion or upon the verified
10 complaint of any interested party may investigate, examine, or inspect
11 (1) any transaction involving solicitation, receipt, sale, or attempted
12 sale of agricultural products by any person or persons acting or
13 assuming to act as a commission merchant, dealer, broker, cash buyer,
14 or agent; (2) the failure to make proper and true account of sales and
15 settlement thereof as required under this chapter (~~and/or~~) or rules
16 (~~and regulations~~) adopted (~~hereunder~~) under this chapter; (3) the
17 intentional making of false statements as to conditions and quantity of
18 any agricultural products received or in storage; (4) the intentional
19 making of false statements as to market conditions; (5) the failure to
20 make payment for products within the time required by this chapter; (6)
21 any and all other injurious transactions. In furtherance of (~~any~~)
22 such an investigation, examination, or inspection, the director or
23 (~~his~~) an authorized representative(~~s~~) may examine that portion of
24 the ledgers, books, accounts, memoranda and other documents,
25 agricultural products, scales, measures, and other articles and things
26 used in connection with the business of (~~such~~) the person relating to
27 the transactions involved. For the purpose of (~~such~~) the
28 investigation the director shall at all times have free and unimpeded
29 access to all buildings, yards, warehouses, storage, and transportation
30 facilities or any other place where agricultural products are kept,
31 stored, handled, or transported. If the director is denied access, the
32 director may apply to any court of competent jurisdiction for a search
33 warrant authorizing access to the premises and records. The court may
34 upon the application issue the search warrant for the purposes
35 requested. The director may also, for the purpose of (~~such~~) the
36 investigation, issue subpoenas to compel the attendance of witnesses,

1 as provided in RCW 20.01.170, (~~and/or~~) or the production of books or
2 documents, anywhere in the state.

3 **Sec. 7.** RCW 20.01.410 and 1971 ex.s. c 182 s 12 are each amended
4 to read as follows:

5 (1) A copy of a manifest of cargo, on a form prescribed by the
6 director, shall be carried on any vehicle transporting agricultural
7 products purchased by a dealer or cash buyer, or consigned to a
8 commission merchant from the consignor thereof when prescribed by the
9 director. A bill of lading may be carried in lieu of a manifest of
10 cargo for an agricultural product other than hay or straw.

11 (2) Except as provided in subsection (3) of this section, the
12 commission merchant, dealer, or cash buyer of agricultural products
13 shall issue a copy of (~~such~~) the manifest or bill of lading to the
14 consignor of (~~such~~) the agricultural products and the original shall
15 be retained by the licensee for a period of (~~one~~) three years during
16 which time it shall be surrendered upon request to the director.
17 (~~Such~~) The manifest of cargo (~~shall be~~) is valid only when signed
18 by the licensee or his or her agent and the consignor or his or her
19 authorized representative of (~~such~~) the agricultural products.

20 (3) The commission merchant or dealer of hay or straw shall issue
21 a copy of a manifest to the consignor. The original copy shall be
22 retained by the commission merchant or dealer for a period of three
23 years during which time it shall be surrendered upon request to the
24 director. The manifest of cargo is valid only when signed by the
25 licensee or his or her agent and the consignor or his or her authorized
26 representative of hay or straw.

27 (4) Manifest forms will be provided to licensees at the actual cost
28 for the manifests plus necessary handling costs incurred by the
29 department.

30 **Sec. 8.** RCW 20.01.460 and 1989 c 354 s 43 are each amended to read
31 as follows:

32 (1) Any person who violates the provisions of this chapter or fails
33 to comply with the rules adopted under this chapter is guilty of a
34 gross misdemeanor, except as provided in subsections (2) (~~and (3)~~)
35 through (4) of this section.

1 (2) Any commission merchant, dealer, or cash buyer, or any person
2 assuming or attempting to act as a commission merchant, dealer, or cash
3 buyer without a license is guilty of a class C felony who:

4 (a) Imposes false charges for handling or services in connection
5 with agricultural products.

6 (b) Makes fictitious sales or is guilty of collusion to defraud the
7 consignor.

8 (c) Intentionally makes false statement or statements as to the
9 grade, conditions, markings, quality, or quantity of goods shipped or
10 packed in any manner.

11 (d) With the intent to defraud the consignor, fails to comply with
12 the requirements set forth under RCW 20.01.010(10), 20.01.390, or
13 20.01.430.

14 (3) Any person who violates the provisions of RCW 20.01.040,
15 20.01.080, 20.01.120, 20.01.125, 20.01.410, or 20.01.610 has committed
16 a civil infraction.

17 (4) Unlawful issuance of a check or draft may be prosecuted under
18 RCW 9A.56.060.

19 **Sec. 9.** RCW 20.01.490 and 1986 c 178 s 5 are each amended to read
20 as follows:

21 Any person found to have committed a civil infraction under this
22 chapter shall be assessed a monetary penalty. No monetary penalty so
23 assessed may exceed ~~((one))~~ five thousand dollars. The director shall
24 adopt a schedule of monetary penalties for each violation of this
25 chapter classified as a civil infraction and shall submit the schedule
26 to the proper courts. Whenever a monetary penalty is imposed by the
27 court, the penalty is immediately due and payable. The court may, at
28 its discretion, grant an extension of time, not to exceed thirty days,
29 in which the penalty must be paid. Failure to pay any monetary
30 penalties imposed under this chapter shall be punishable as a
31 misdemeanor.

32 **Sec. 10.** RCW 20.01.610 and 1986 c 178 s 14 are each amended to
33 read as follows:

34 The director or ~~((his))~~ appointed officers may stop a vehicle
35 transporting ~~((hay or straw))~~ agricultural products upon the public
36 roads of this state if there is reasonable cause to believe the

1 carrier, seller, or buyer may be in violation of this chapter. Any
2 operator of a vehicle failing or refusing to stop when directed to do
3 so has committed a civil infraction.

4 The director and appointed officers shall work to ensure that
5 vehicles carrying perishable agricultural products are detained no
6 longer than is absolutely necessary for a prompt assessment of
7 compliance with this chapter. If a vehicle carrying perishable
8 agricultural products is found to be in violation of this chapter, the
9 director or appointed officers shall promptly issue necessary notices
10 of civil infraction, as provided in RCW 20.01.482 and 20.01.484, and
11 shall allow the vehicle to continue toward its destination without
12 further delay.

13 NEW SECTION. **Sec. 11.** In recognition of the significant losses
14 incurred by seed producers in the state from a recent seed company
15 bankruptcy and the increasing diversity of and changes in the state's
16 seed industry, the department of agriculture shall conduct a study of
17 alternative methods of reducing the risk of nonpayment of producers
18 from seed company bankruptcies and increasing the financial recovery
19 for seed producers should such bankruptcies occur. The study shall
20 evaluate alternative methods of addressing issues relating to
21 nonpayment of producers, including the potential of establishing an
22 indemnity fund, and how the costs of providing and maintaining such a
23 fund would be borne. The department shall evaluate whether
24 establishing an indemnity fund would be in addition to or as a
25 substitute for any current bonding requirements for various types of
26 seed crops and seed contracts, including bailment contracts. The
27 department shall establish an advisory committee including
28 representatives of producers and seed companies of various types of
29 agricultural seeds grown in this state to assist it in the study.

30 The department shall report the results of the study, including any
31 recommended legislation in bill form, to the governor and to the
32 appropriate committees of the legislature by December 1, 2003.

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