
SENATE BILL 5196

State of Washington

58th Legislature

2003 Regular Session

By Senators Swecker, Rasmussen, Sheahan, Jacobsen and Brandland; by request of Department of Agriculture

Read first time 01/17/2003. Referred to Committee on Agriculture.

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; 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, grass seed, lawn seed, turf seed, forage seed,
18 cereal seed, oil seed, fiber seed and other kinds of crop seed commonly
19 recognized within this state as agricultural seed or vegetable seed, or

1 other agricultural products, and includes mint or mint oil processed by
2 or for the producer thereof and hay and straw baled or prepared for
3 market in any manner or form and livestock.

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

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

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

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

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

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

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

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

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

31 (13) "Fixed or established place of business" for the purpose of
32 this chapter means any permanent warehouse, building, or structure, at
33 which necessary and appropriate equipment and fixtures are maintained
34 for properly handling those agricultural products generally dealt in,
35 and at which supplies of the agricultural products being usually
36 transported are stored, offered for sale, sold, delivered, and
37 generally dealt with in quantities reasonably adequate for and usually
38 carried for the requirements of such a business, and that is recognized

1 as a permanent business at such place, and carried on as such in good
2 faith and not for the purpose of evading this chapter, and where
3 specifically designated personnel are available to handle transactions
4 concerning those agricultural products generally dealt in, which
5 personnel are available during designated and appropriate hours to that
6 business, and shall not mean a residence, barn, garage, tent, temporary
7 stand or other temporary quarters, any railway car, or permanent
8 quarters occupied pursuant to any temporary arrangement.

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

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

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

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

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

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

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

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

3 (17) "Conditioner" means any person, firm, company, or other
4 organization that receives turf, forage, or vegetable seeds from a
5 consignor for drying or cleaning.

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

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

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

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

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

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

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

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

34 Any change in the organization of any firm, association, exchange,
35 corporation, or partnership licensed under (~~the provisions of~~) this

1 chapter shall be reported to the director and the licensee's surety or
2 sureties within thirty days.

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

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

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

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

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

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

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

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

25 (3) 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 (4) The director shall distribute the proceeds of bond claims to
35 valid claimants on a pro rata basis.

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

1 The director on his or her own motion or upon the verified
2 complaint of any interested party may investigate, examine, or inspect
3 (1) any transaction involving solicitation, receipt, sale, or attempted
4 sale of agricultural products by any person or persons acting or
5 assuming to act as a commission merchant, dealer, broker, cash buyer,
6 or agent; (2) the failure to make proper and true account of sales and
7 settlement thereof as required under this chapter (~~(and/or)~~) or rules
8 (~~(and regulations)~~) adopted (~~(hereunder)~~) under this chapter; (3) the
9 intentional making of false statements as to conditions and quantity of
10 any agricultural products received or in storage; (4) the intentional
11 making of false statements as to market conditions; (5) the failure to
12 make payment for products within the time required by this chapter; (6)
13 any and all other injurious transactions. In furtherance of (~~(any)~~)
14 such an investigation, examination, or inspection, the director or
15 (~~(his)~~) an authorized representative(~~(r)~~) may examine that portion of
16 the ledgers, books, accounts, memoranda and other documents,
17 agricultural products, scales, measures, and other articles and things
18 used in connection with the business of (~~(such)~~) the person relating to
19 the transactions involved. For the purpose of (~~(such)~~) the
20 investigation the director shall at all times have free and unimpeded
21 access to all buildings, yards, warehouses, storage, and transportation
22 facilities or any other place where agricultural products are kept,
23 stored, handled, or transported. If the director is denied access, the
24 director may apply to any court of competent jurisdiction for a search
25 warrant authorizing access to the premises and records. The court may
26 upon the application issue the search warrant for the purposes
27 requested. The director may also, for the purpose of (~~(such)~~) the
28 investigation, issue subpoenas to compel the attendance of witnesses,
29 as provided in RCW 20.01.170, (~~(and/or)~~) or the production of books or
30 documents, anywhere in the state.

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

33 (1) A copy of a manifest of cargo, on a form prescribed by the
34 director, or a bill of lading shall be carried on any vehicle
35 transporting agricultural products purchased by a dealer or cash buyer,
36 or consigned to a commission merchant from the consignor thereof when
37 prescribed by the director.

1 (2) The commission merchant, dealer, or cash buyer of agricultural
2 products shall issue a copy of ((such)) the manifest or bill of lading
3 to the consignor of ((such)) the agricultural products and the original
4 shall be retained by the licensee for a period of ((one)) three years
5 during which time it shall be surrendered upon request to the director.
6 ((Such)) The manifest of cargo ((shall be)) is valid only when signed
7 by the licensee or his or her agent and the consignor or his or her
8 authorized representative of ((such)) the agricultural products.

9 (3) The commission merchant or dealer of hay or straw shall issue
10 a copy of a manifest to the consignor. The original copy shall be
11 retained by the commission merchant or dealer for a period of three
12 years during which time it shall be surrendered upon request to the
13 director. The manifest of cargo is valid only when signed by the
14 licensee or his or her agent and the consignor or his or her authorized
15 representative of hay or straw.

16 (4) Manifests will be provided to licensees at the actual cost for
17 the manifests plus necessary handling charges incurred by the
18 department.

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

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

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

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

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

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

35 (d) With the intent to defraud the consignor, fails to comply with
36 the requirements set forth under RCW 20.01.010(10), 20.01.390, or
37 20.01.430.

1 (3) Any person who violates the provisions of RCW 20.01.040,
2 20.01.080, 20.01.120, 20.01.125, 20.01.410, or 20.01.610 has committed
3 a civil infraction.

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

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

8 Any person found to have committed a civil infraction under this
9 chapter shall be assessed a monetary penalty. No monetary penalty so
10 assessed may exceed (~~one~~) five thousand dollars. The director shall
11 adopt a schedule of monetary penalties for each violation of this
12 chapter classified as a civil infraction and shall submit the schedule
13 to the proper courts. Whenever a monetary penalty is imposed by the
14 court, the penalty is immediately due and payable. The court may, at
15 its discretion, grant an extension of time, not to exceed thirty days,
16 in which the penalty must be paid. Failure to pay any monetary
17 penalties imposed under this chapter shall be punishable as a
18 misdemeanor.

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

21 The director or (~~his~~) appointed officers may stop a vehicle
22 transporting (~~hay or straw~~) agricultural products upon the public
23 roads of this state if there is reasonable cause to believe the
24 carrier, seller, or buyer may be in violation of this chapter. Any
25 operator of a vehicle failing or refusing to stop when directed to do
26 so has committed a civil infraction.

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