WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 192

(By Mr. illustrate)

PASSED March 1939

In Effect ninety days from Passage
AN ACT to amend and reenact articles two and three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to markets and the sale of farm products by commission merchants.

Be it enacted by the Legislature of West Virginia:

That articles two and three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:


   Section 1. Definitions. For the purpose of this act the following definitions shall prevail:

   (a) Person includes individual, partnership, corporation and association.

   (b) Agricultural products include livestock and livestock...
products, poultry and poultry products, fruits and fruit products, vegetables and vegetable products, grains and hays and the products derived therefrom, tobacco, syrups, honey, and other products derived from the business of farming; including such other products as may be manufactured, derived, or prepared from agricultural products, raw or processed, which are used as food for man or other animals.

(c) Commissioner means the "Commissioner of Agriculture" of the state of West Virginia.

(d) Commission merchant means any person, firm, corporation, association, or partnership engaged in the business of receiving agricultural products on consignment and selling or distributing the same for a commission.

Sec. 2. Duties of Commissioner. In order to develop and encourage home industry and to protect and promote the interests of producers and provide consumers with food products of uniform grade and quality at fair and reasonable prices, it shall be the duty of the commissioner and he shall have authority to promote, regulate, and supervise a system of marketing agricultural products in the state of West Virginia. He shall assist producers and handlers in the grading,
classification, and standardization of agricultural products at
public markets, concentration points, packing, grading and
processing plants and other places where agricultural prod-
ucts are assembled for distribution.

Sec. 3. Commissioner to Cooperate with Federal Authorities.

2 In carrying out the provisions of this act the commissioner
shall cooperate with the United States department of Agri-
culture and its several bureaus and divisions and the depart-
ments of the several states. The commissioner shall investi-
gate the methods employed by the United States department
of Agriculture for the promotion of economical and efficient
marketing of agricultural products and he shall have author-
ity to establish and publish weights, grades, standards, classifi-
cations, and rules and regulations for the production, handling,
and distribution of agricultural products in this state, and he
shall, so far as the same are applicable and practicable, util-
ize and apply the rules, regulations, classifications, standards
and grades, and official methods of examinations and analysis
of the United States department of agriculture and its sev-
eral bureaus and divisions.

Sec. 4. Commissioner may Establish Quarantines. For the
purpose of protecting the health of the state and to prevent
the infection, contamination or reduction in the standards
of products produced within the state, the commissioner of
agriculture may, acting within the police power of the state,
inspect and establish quarantines over all agricultural pro-
ducts and the means of their importation. In the establish-
ment of such quarantine or inspection the commissioner shall
give notice in writing of such quarantine or inspection area,
specify its boundaries, the duration of the inspection, and the
purpose thereof, and provide for notification of the proper
authorities and the posting of the area.

Sec. 5. Inspection of Agricultural Products. The commis-
sioner may comply with the request of any person for official inspection of agricultural products and he or his agents
shall have authority to inspect and determine the grade and
quality of agricultural products at public markets, concentra-
tion points, packing, grading, and processing plants and
other places where agricultural products are assembled for
distribution; the commissioner shall establish and publish a
schedule of charges for such inspection and grading service;
and it shall be his duty and he shall have authority to collect
such charges for such inspection and grading services, which moneys shall be paid into the state treasury and reappropriated to the department of agriculture for the administration of this act.

Sec. 6. *Powers of Commissioner.* The commissioner or his agents shall during business hours have access to any place, premises, or conveyances where agricultural products are produced, handled, stored, transported, distributed, or sold, and to examine the books and records of any person affected by the provisions of this act. They shall have the power and authority to detain, embargo, or quarantine agricultural products when suspected of or found to be in violation of the provisions of this act, by affixing thereto a tag or other appropriate marking and giving notice thereof in writing. It shall be unlawful for any person to remove or dispose of such detained, embargoed, or quarantined agricultural product by sale or otherwise without the permission of the commissioner or his agent or the courts. When an agricultural product detained, embargoed, or quarantined, as aforesaid, has been found by such agent to be in violation of the provisions of
this act, he shall petition any court of competent jurisdic-
tion, for the condemnation or disposal of such product.

Sec. 7. Agricultural Products That May Not be Sold. It
shall be unlawful for any person to sell, offer, or expose for
sale, or exchange or have in his possession with intent to
sell, offer or expose for sale or exchange any agricultural pro-
duct in this state which is:

(1) Infected with any contagious or communicable dis-

(2) Which consists in whole or in part of any filthy, put-
rid or decomposed substance; or

(3) Which has been prepared, packed, or held under un-
sanitary conditions whereby it may have become contamina-
ated or rendered injurious to health; or

(4) If it or its container is composed in whole or in part,
of any poisonous or deleterious substance injurious to health;
or

(5) If any valuable constituent has been in whole or in
part omitted or abstracted therefrom; or
(6) If any substance has been substituted wholly or in part therefore; or

(7) If damage or inferiority has been concealed in any manner; or

(8) If its labeling is false or misleading; or

(9) If it is offered for sale under the name of another food; or

(10) If it is an imitation of another food, unless its label bears in prominent type the word "imitation"; or

(11) If its container is so made, formed, or filled as to be misleading; or

(12) If the labeling thereon does not identify the producer, manufacturer or handler thereof, and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; or

(13) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

Nothing herein contained shall prohibit the sale of live-stock for immediate slaughter in accordance with the meat
Sec. 8. Publications of Commissioner. It shall be the duty of the commissioner to publish bulletins setting forth the quotations for agricultural products sold in the principal markets of the state. The bulletins shall also contain information concerning the available surplus of the principal agricultural products and the demand for such products in the markets of the state, and other markets where agricultural products are customarily sold. The commissioner may periodically prepare and distribute bulletins containing:

1. The official grades, classifications and standards for agricultural products.
2. The methods for marking, advertising, and using such grades, classifications, and standards.
3. Lists of the principal markets in the state and the principal markets outside of the state where agricultural products are sold or distributed.
4. Such other information which may be of value or assistance in the production, handling, and marketing of agricultural products.
Sec. 9. *Inspectors, Graders, Assistants.* The commissioner may employ and he shall have authority to certify such inspectors, graders, and assistants as are necessary to enforce the provisions of this act. He shall prescribe their duties and fix their salaries. It shall be unlawful for any person to represent that he is an inspector, grader, or agent of the commissioner unless he is certified by the commissioner.

Sec. 10. *Commissioner Charged With Enforcement.* The commissioner of agriculture shall be charged with the enforcement of this act and shall have authority to make and enforce rules and regulations for the administration of this act.

Sec. 11. *Penalties.* Any person who shall violate any of the provisions of this act, or who shall obstruct or hinder the commissioner or any officer or employee, in the performance of his duties under this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined not more than one hundred dollars, and upon conviction for each subsequent offense be fined not more than five hundred dollars, and in addition to such fine may be confined in the county jail for not more than ninety days.

**Article 3. Sale of Farm Products by Commission Merchants.**
Section 1. License Required; Fee. A person engaged in the
business of a commission merchant in this state dealing in
the sale, purchase, or consignment of agricultural products
shall before carrying on such business procure a license from
the commissioner. Application for such license shall be made
on forms prescribed by the commissioner and shall be ac-
accompanied by a fee of ten dollars. Such license shall be re-
newed annually on or before the first day of July.

Sec. 2. Applicant’s Bond. Prior to the issuance of a license
for commission merchant, the applicant shall execute and de-
liver to the commissioner a surety bond conditioned as the
commissioner may require and acceptable to him, payable to
the state of West Virginia, for the benefit of consignors who
have been wronged or damaged by fraud or fraudulent prac-
tices of the commission merchant and so adjudged by a court
of competent jurisdiction and who shall have the right of
action for damage for compensation against such bond.

Sec. 3. When License May be Refused. The commissioner
may refuse to grant a license or may revoke a license already
granted when he is satisfied that the applicant or licensee has:
(1) Failed to satisfy a money judgment properly served
against him.

(2) Made false, fraudulent or improper charges or returns for the handling, sale, storage, or other services in connection with agricultural products.

(3) Failed or refused to render an account of sales or make prompt settlement thereon.

(4) Knowingly made false or misleading statements as to the condition, quality, or quantity of agricultural products received, handled, stored, or held by him for sale.

(5) Made false or misleading statements concerning market conditions, with the intent to deceive.

(6) Combined or conspired to fix prices either directly or indirectly.

(7) Purchased for his own account agricultural products received by him upon consignment without prior notice to the consignor in writing, or at an agreed price fixed by the consignor.

(8) Made fictitious sales or has been guilty of collusion to defraud the consignor.

(9) Has reconsigned agricultural products without the written consent of the consignor or without notice to the con-
signor that all or a part of his shipment has been reconsigned.

(10) Sold consigned goods to another person, exchange, association, or corporation in which the consignee has a financial interest without notice in writing to the consignor of such interest.

Sec. 4. Recovery on Bond. A person injured by the failure of a commission merchant to pay over the full amount received on any sale, less commissions and charges may recover on the bond of the commission merchant the amount due him by a suit brought in the name of the State of West Virginia for the use of the injured person. No recovery shall be had on the bond in excess of the penalty thereof. In case of multiple claims in excess of the bond, each claimant shall recover his pro rata share.

Sec. 5. Penalties for Violation of Act. A commission merchant who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred dollars for each subsequent offense. Each transaction en-
engaged in by an unlicensed commission merchant shall con-
stitute a separate offense.

All moneys collected under this act shall be deposited with
the treasurer of the state of West Virginia and shall be kept
in a separate fund to be designated as the "general mar-
keting fund" and reappropriated to the department of agri-
culture for the administration of this act.

If any clause, sentence, paragraph or part of this act shall
for any reason, be adjudged by any court of competent juris-
diction to be invalid, such judgment shall not affect, impair,
or invalidate the remainder of this act, but shall be confined
in its operation to the clause, sentence, paragraph, or any
part thereof directly involved in the controversy in which
said judgment has been rendered.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...........................this the 13th
day of................................., 1939.

Governor.

Filed in the office of the Secretary of State
of West Virginia MAR 14 1939
Wm. S. O'Brien, Secretary of State