

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 194

(By Mr. Bratherton)



PASSED March 3, 1939

In Effect ninety days from Passage

194

ENROLLED
House Bill No. 197

(BY MR. BROTHERTON)

[Passed March 3, 1939; in effect ninety days from passage.]

AN ACT defining a public market, providing for the issuing of permits for public markets and the licensing of weighmen, auctioneers, and graders employed at public markets; providing for the establishment of a market zone surrounding a public market handling livestock; providing for the prevention and control of contagious diseases of livestock; providing for the refusal, suspension, or revocation of permits and licenses; providing for annual meetings of public market owners; prescribing the powers and duties of the commissioner of agriculture, and penalties for violations; providing for the payment of fees; and repealing acts and parts of acts inconsistent herewith.

Be it enacted by the Legislature of West Virginia:

Section 1. *Public Market Defined.* A public market is any

2 place of business where livestock, poultry, and other agricul-
3 tural or horticultural products are received and sold at public
4 auction.

Sec. 2. Public Markets Subject to Regulation by the State.

2 All public markets, as defined in section one, are hereby de-
3 clared to be affected with a public interest and subject to
4 regulation by the state for the general welfare as in this act
5 provided.

Sec. 3. Operation of Public Markets. No public market
2 shall hereafter be operated in this state by any person, part-
3 nership, firm, association, or corporation except in accordance
4 with the provisions of this act.

Sec. 4. Permits to Operate. It shall be unlawful for any
2 public market to be operated in this state without first having
3 obtained from the commissioner of agriculture of West Vir-
4 ginia a permit therefor. Upon the filing of an application for
5 such permit, the commissioner shall fix a time and place for
6 hearing thereon and, after hearing, if it appear that the
7 public interest require the same and that there is sufficient
8 need for such market in the locality in which it is proposed

9 to be established, shall grant such permit, or deny the same
10 if the contrary appear.

Sec. 5. *Permits Granted by Commissioner of Agriculture.*

2 All public markets in bona fide operation during the year one
3 thousand nine hundred thirty-eight, shall, on application and
4 proof of such operation, be granted such permit by the com-
5 missioner.

Sec. 6. *Fee for Permits.* All permittees shall pay to the
2 commissioner a fee of ten dollars on or before the first day of
3 July of each year.

Sec. 7. *Revocation or Suspension of Permits.* The commis-
2 sioner may at any time, for violations of this act, upon not
3 less than fifteen days' notice to the grantee of such permit
4 and an opportunity to be heard, revoke or suspend any
5 permit theretofore granted.

Sec. 8. *Applicant to Furnish Surety Bond.* Before the
2 granting of any such permit, the applicant shall execute
3 and deliver to the commissioner a surety bond conditioned
4 as the commissioner may require and acceptable to him, pay-
5 able to the state of West Virginia, for the benefit of the
6 consignors at said market of livestock, poultry, and other

7 agricultural and horticultural products, who have been
8 wronged or damaged by any fraud or fraudulent practices
9 of the market and so adjudged by a court of competent juris-
10 diction and who shall have the right of action for damage for
11 compensation against such bond. A holder of a permit, who
12 shall have been in operation not less than twelve months, shall
13 maintain and deliver such bond to said commissioner as afore-
14 said in an amount not to exceed the average of his or its
15 weekly sales during the preceding calendar year.

Sec. 9. *Appeals from Order of the Commissioner.* Any
2 party feeling aggrieved by the entry of a final order by the
3 commissioner, affecting him or it, may present a petition in
4 writing to the supreme court of appeals, or to a judge thereof
5 in vacation, within thirty days after the entry of such order,
6 praying for the suspension of such final order. The applicant
7 shall deliver a copy of such petition to the commissioner
8 before presenting the same to the court or the judge. The
9 court or judge shall fix a time for the hearing on the applica-
10 tion, but such hearing, unless by agreement of the parties,
11 shall not be held, sooner than five days after its presentation ;
12 and notice of the time and place of such hearing shall be

13 forthwith delivered to the commissioner, so that the com-
14 missioner may be represented at such hearing. If the court
15 or the judge after such hearing be of the opinion that a
16 suspending order should issue, the court or the judge may
17 require bond, upon such conditions and in such penalty, and
18 impose such terms and conditions upon the petitioner, as are
19 just and reasonable. For such hearing the commissioner shall
20 file with the clerk of said court all papers, documents, evi-
21 dence, and records or certified copies thereof as were before
22 the commissioner at the hearing or investigation resulting in
23 the entry of the order from which the petitioner appeals.
24 The commissioner shall file with the court before the day
25 fixed for the final hearing a written statement of his reasons
26 for the entry of such order, and after arguments by counsel
27 the court shall decide the matter in controversy as may seem
28 to be just and right.

Sec. 10. *Licensing of Weighman and Auctioneers; Fees for*

2 *Licenses.* It shall be unlawful for any person to serve in the
3 capacity of weighman, or auctioneer at any public market
4 without first having secured a license. Applications for such
5 licenses shall be made on forms furnished by the commissioner

6 and shall be accompanied by a fee of two dollars and fifty cents
7 for either weighman or auctioneer and shall contain such in-
8 formation as may be required.

9 All livestock sold by weight at any public market shall be
10 sold subject to weight at place of sale on day sold by
11 auctioneer.

Sec. 11. *Licensing Persons to Grade or Standardize Prod-*
2 *ucts Sold.* It shall be unlawful for any public market to
3 represent that livestock, poultry, and other agricultural and
4 horticultural products are being sold at such market on grades,
5 classifications, or standards adaptable to such products unless
6 such grading, classifying, or standardizing has been made
7 or approved by a person licensed by the commissioner. Appli-
8 cations for such a license shall be made on forms furnished
9 by the commissioner and shall be accompanied by a fee of
10 two dollars and fifty cents and shall contain such information
11 as may be required.

Sec. 12. *Licenses Issued for One Year; Refusal to Grant*
2 *License; Revocation or Suspension of Licenses.* All licenses
3 issued in accordance with the provisions of this act shall be
4 for a period of one year and shall expire on June thirtieth

5 next following date of issue. All applications for the renewal
6 of any such licenses shall be made in the same manner as
7 for the original license.

8 The commissioner may refuse to grant a license or may
9 revoke or suspend any license issued under the provisions
10 of this act, for the violation of any of the provisions of this
11 act or of any of the rules and regulations adopted pursuant
12 to the provisions of this act: *Provided*, That before such
13 suspension or revocation becomes effective the party shall be
14 notified by the commissioner of his intention to refuse, revoke,
15 or suspend and the party shall be given ten days in which
16 to request a hearing before the commissioner, which request
17 shall be made in writing by registered mail. The commis-
18 sioner is hereby authorized to summon witnesses for and to
19 take testimony at such hearings.

Sec. 13. It shall be unlawful for any weighman, grader, or
2 auctioneer, licensed in accordance with the provisions of this
3 act, to buy or trade in any livestock or other agricultural
4 and horticultural products, graded, weighed, or auctioned
5 by him, either for himself or partnership at any public market
6 in which he is employed, or to mis-weigh or falsely report

7 any weights or otherwise fraudulently manipulate the scales
8 to produce a weight other than the true and actual weight
9 of any livestock, poultry, or other agricultural and horti-
10 cultural products consigned to and sold at any public market.

Sec. 14. For the purpose of preventing the spread of in-
2 fectionous disease among livestock and poultry when and where
3 the same is sold at a public market the commissioner shall
4 have authority and shall establish and define an area sur-
5 rounding a public market inside of which area, so defined,
6 it shall be unlawful for any person, firm, association, part-
7 nership, or corporation to buy or sell to, or exchange with,
8 another, unless such person, firm, association, partnership
9 or corporation shall comply with all the provisions of this
10 act and the rules and regulations as provided in this act.

11 At any public market where livestock is received, sold,
12 offered or exposed for sale for purposes other than slaughter,
13 the same shall be inspected for livestock diseases by a licensed
14 and accredited veterinarian who shall be employed by the
15 commissioner of agriculture and shall have authority to carry
16 out the provisions of this section and enforce the provisions

17 of article nine, chapter nineteen of the code of West Virginia,
18 one thousand nine hundred thirty-one.

19 The management of such market shall collect a fee of fifty
20 cents per head for cattle when tested for bangs disease, and
21 ten cents per head for hogs when treated for the prevention
22 of cholera. In addition thereto they shall collect from the
23 purchaser the actual cost of vaccines or biological products
24 used in the testing of such animals. Such vaccines or bio-
25 logical products shall be approved by the commissioner.

26 It shall be the duty of each veterinarian to keep a record
27 of all animals tested by him on forms furnished by the com-
28 missioner ; such records shall be made in duplicate, the original
29 to be forwarded to the commissioner, and the duplicate to
30 be furnished to the public market at which such testing was
31 done.

32 On the first day of each month the public market shall
33 forward to the commissioner all moneys due for testing done
34 during the previous month.

Sec. 15. The commissioner shall annually, on or before the
2 fifteenth day of January, call together in public meeting the
3 president and manager, or other officials, of livestock auction

4 markets within the state for the purpose of establishing uni-
5 form standards and grades of livestock and uniform market
6 practices and procedure for the operation of livestock auction
7 markets in this state.

Sec. 16. It shall be the duty of, and the officers of a public
2 market are hereby required, to keep complete and accurate
3 records of all transactions at a public market. The commis-
4 sioner or his agents shall have at all reasonable hours, the
5 right to enter the premises of any public market to examine
6 the books and records of such market, and to make any other
7 inspections necessary, for the purpose of carrying out the
8 provisions of this act.

Sec. 17. The commissioner shall be charged with the en-
2 forcement of this act. He shall have full authority and power
3 to make and enforce rules and regulations necessary to carry
4 out the provisions of this act, and may employ such agents
5 or other assistants as he may deem necessary for the proper
6 enforcement of this act.

7 In the event any of the provisions or requirements of this
8 act should be a duplication or in conflict with the authority
9 exercised by the Secretary of Agriculture under the Packers

10 and Stockyard act of the United States Congress, then the
11 provisions and requirements of this act shall not apply.

Sec. 18. All fees collected by the commissioner by virtue
2 of this act shall be paid into the state treasury and credited
3 to a special fund to be appropriated as provided by law for
4 the purpose of paying the salaries and expenses of the com-
5 missioner's employees in administering this act.

Sec. 19. Any person, firm, association, or corporation vio-
2 lating any of the provisions of this act, or of the rules and
3 regulations adopted pursuant to the provisions thereof, shall
4 be guilty of a misdemeanor, and upon conviction thereof shall
5 be punished by a fine of not less than fifty dollars nor more
6 than two hundred dollars for the first offense, and not less
7 than four hundred dollars nor more than one thousand dollars
8 for the second offense.

Sec. 20. If any provisions of this act are declared uncon-
2 stitutional or the applicability thereof to any person or cir-
3 cumstances is held invalid, the constitutionality of the
4 remainder of the act and the applicability thereof to other
5 persons and circumstances shall not be affected thereby.

Sec. 21. All acts or parts of acts inconsistent with this act

2 are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. Ellisenman

Chairman Senate Committee

Deed B. Walter

Chairman House Committee

Originated in the

House of Delegates

Takes effect

ninety days from passage.

Chambliss

Clerk of the Senate

Geo. S. Huce

Clerk of the House of Delegates

Wm. M. Brown

President of the Senate

James Kay Thomas

Speaker House of Delegates

The within

Approved

this the

13th

day of

March

, 1939.

James S. Lee

Governor.



Filed in the office of the Secretary of State
of West Virginia. **MAR 14 1939**

Wm. S. O'BRIEN,
Secretary of State