WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 197

(By Mr. Bratherton)

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

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

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

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

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

Sec. 8. *Applicant to Furnish Surety Bond.* Before the granting of any such permit, the applicant shall execute and deliver 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 the consignors at said market of livestock, poultry, and other
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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
forthwith delivered to the commissioner, so that the com-
missioner may be represented at such hearing. If the court
or the judge after such hearing be of the opinion that a
suspending order should issue, the court or the judge may
require bond, upon such conditions and in such penalty, and
impose such terms and conditions upon the petitioner, as are
just and reasonable. For such hearing the commissioner shall
file with the clerk of said court all papers, documents, evi-
dence, and records or certified copies thereof as were before
the commissioner at the hearing or investigation resulting in
the entry of the order from which the petitioner appeals.
The commissioner shall file with the court before the day
fixed for the final hearing a written statement of his reasons
for the entry of such order, and after arguments by counsel
the court shall decide the matter in controversy as may seem
to be just and right.

Sec. 10. Licensing of Weighman and Auctioneers; Fees for
Licenses. It shall be unlawful for any person to serve in the
capacity of weighman, or auctioneer at any public market
without first having secured a license. Applications for such
licenses shall be made on forms furnished by the commissioner
and shall be accompanied by a fee of two dollars and fifty cents for either weighman or auctioneer and shall contain such information as may be required.

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

Sec. 11. Licensing Persons to Grade or Standardize Products Sold. It shall be unlawful for any public market to represent that livestock, poultry, and other agricultural and horticultural products are being sold at such market on grades, classifications, or standards adaptable to such products unless such grading, classifying, or standardizing has been made or approved by a person licensed by the commissioner. Applications for such a license shall be made on forms furnished by the commissioner and shall be accompanied by a fee of two dollars and fifty cents and shall contain such information as may be required.

Sec. 12. Licenses Issued for One Year; Refusal to Grant License; Revocation or Suspension of Licenses. All licenses issued in accordance with the provisions of this act shall be for a period of one year and shall expire on June thirtieth
next following date of issue. All applications for the renewal
of any such licenses shall be made in the same manner as
for the original license.

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

Sec. 13. It shall be unlawful for any weighman, grader, or
auctioneer, licensed in accordance with the provisions of this
act, to buy or trade in any livestock or other agricultural
and horticultural products, graded, weighed, or auctioned
by him, either for himself or partnership at any public market
in which he is employed, or to mis-weigh or falsely report
any weights or otherwise fraudulently manipulate the scales
to produce a weight other than the true and actual weight
of any livestock, poultry, or other agricultural and horti-
cultural products consigned to and sold at any public market.

Sec. 14. For the purpose of preventing the spread of in-
fec tious disease among livestock and poultry when and where
the same is sold at a public market the commissioner shall
have authority and shall establish and define an area sur-
rounding a public market inside of which area, so defined,
it shall be unlawful for any person, firm, association, part-
nership, or corporation to buy or sell to, or exchange with,
another, unless such person, firm, association, partnership,
or corporation shall comply with all the provisions of this
act and the rules and regulations as provided in this act.
At any public market where livestock is received, sold,
offered or exposed for sale for purposes other than slaughter,
the same shall be inspected for livestock diseases by a licensed
and accredited veterinarian who shall be employed by the
commissioner of agriculture and shall have authority to carry
out the provisions of this section and enforce the provisions
of article nine, chapter nineteen of the code of West Virginia,
one thousand nine hundred thirty-one.
The management of such market shall collect a fee of fifty
cents per head for cattle when tested for bangs disease, and
ten cents per head for hogs when treated for the prevention
of cholera. In addition thereto they shall collect from the
purchaser the actual cost of vaccines or biological products
used in the testing of such animals. Such vaccines or bio-
logical products shall be approved by the commissioner.
It shall be the duty of each veterinarian to keep a record
of all animals tested by him on forms furnished by the com-
missioner; such records shall be made in duplicate, the original
to be forwarded to the commissioner, and the duplicate to
be furnished to the public market at which such testing was
done.
On the first day of each month the public market shall
forward to the commissioner all moneys due for testing done
during the previous month.

Sec. 15. The commissioner shall annually, on or before the
fifteenth day of January, call together in public meeting the
president and manager, or other officials, of livestock auction
markets within the state for the purpose of establishing uniform standards and grades of livestock and uniform market practices and procedure for the operation of livestock auction markets in this state.

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

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

In the event any of the provisions or requirements of this act should be a duplication or in conflict with the authority 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.

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...................................

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