

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 192

(By Mr. Milleson)



PASSED March 4, 1939

In Effect ninety days from Passage

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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:

Article 2. Markets.

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

6 products, poultry and poultry products, fruits and fruit pro-
7 ducts, vegetables and vegetable products, grains and hays and
8 the products derived therefrom, tobacco, syrups, honey, and
9 other products derived from the business of farming; includ-
10 ing such other products as may be manufactured, derived, or
11 prepared from agricultural products, raw or processed, which
12 are used as food for man or other animals.

13 (c) Commissioner means the "Commissioner of Agricul-
14 ture" of the state of West Virginia.

15 (d) Commission merchant means any person, firm, cor-
16 poration, association, or partnership engaged in the business
17 of receiving agricultural products on consignment and sell-
18 ing or distributing the same for a commission.

Sec. 2. Duties of Commissioner. In order to develop and
2 encourage home industry and to protect and promote the in-
3 terests of producers and provide consumers with food pro-
4 ducts of uniform grade and quality at fair and reasonable
5 prices, it shall be the duty of the commissioner and he shall
6 have authority to promote, regulate, and supervise a system
7 of marketing agricultural products in the state of West Vir-
8 ginia. He shall assist producers and handlers in the grading,

9 classification, and standardization of agricultural products at
10 public markets, concentration points, packing, grading and
11 processing plants and other places where agricultural pro-
12 ducts are assembled for distribution.

Sec. 3. *Commissioner to Cooperate with Federal Authorities.*

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

Sec. 4. *Commissioner may Establish Quarantines.* For the

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

Sec. 5. *Inspection of Agricultural Products.* The commis-
2 sioner may comply with the request of any person for of-
3 ficial inspection of agricultural products and he or his agents
4 shall have authority to inspect and determine the grade and
5 quality of agricultural products at public markets, concen-
6 tration points, packing, grading, and processing plants and
7 other places where agricultural products are assembled for
8 distribution; the commissioner shall establish and publish a
9 schedule of charges for such inspection and grading service;
10 and it shall be his duty and he shall have authority to collect

11 such charges for such inspection and grading services, which
12 moneys shall be paid into the state treasury and reappro-
13 priated to the department of agriculture for the administra-
14 tion of this act.

Sec. 6. *Powers of Commissioner.* The commissioner or his
2 agents shall during business hours have access to any place,
3 premises, or conveyances where agricultural products are
4 produced, handled, stored, transported, distributed, or sold,
5 and to examine the books and records of any person affected
6 by the provisions of this act. They shall have the power and
7 authority to detain, embargo, or quarantine agricultural pro-
8 ducts when suspected of or found to be in violation of the
9 provisions of this act, by affixing thereto a tag or other ap-
10 propriate marking and giving notice thereof in writing. It
11 shall be unlawful for any person to remove or dispose of such
12 detained, embargoed, or quarantined agricultural product by
13 sale or otherwise without the permission of the commissioner
14 or his agent or the courts. When an agricultural product de-
15 tained, embargoed, or quarantined, as aforesaid, has been
16 found by such agent to be in violation of the provisions of

17 this act, he shall petition any court of competent jurisdic-
18 tion, for the condemnation or disposal of such product.

Sec. 7. *Agricultural Products That May Not be Sold.* It

2 shall be unlawful for any person to sell, offer, or expose for
3 sale, or exchange or have in his possession with intent to
4 sell, offer or expose for sale or exchange any agricultural pro-
5 duct in this state which is:

6 (1) Infected with any contagious or communicable di-
7 sease; or

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

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

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

16 (5) If any valuable constituent has been in whole or in
17 part omitted or abstracted therefrom; or

18 (6) If any substance has been substituted wholly or in
19 part therefor; or

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

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

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

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

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

29 (12) If the labeling thereon does not identify the pro-
30 ducer, manufacturer or handler thereof, and an accurate
31 statement of the quantity of the contents in terms of weight,
32 measure, or numerical count; or

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

37 Nothing herein contained shall prohibit the sale of live-
38 stock for immediate slaughter in accordance with the meat

39 inspection regulations of the United States Department of
40 Agriculture.

Sec. 8. *Publications of Commissioner.* It shall be the duty
2 of the commissioner to publish bulletins setting forth the quo-
3 tations for agricultural products sold in the principal mar-
4 kets of the state. The bulletins shall also contain informa-
5 tion concerning the available surplus of the principal agri-
6 cultural products and the demand for such products in the
7 markets of the state, and other markets where agricultural
8 products are customarily sold. The commissioner may
9 periodically prepare and distribute bulletins containing:

10 (1) The official grades, classifications and standards for
11 agricultural products.

12 (2) The methods for marking, advertising, and using such
13 grades, classifications, and standards.

14 (3) Lists of the principal markets in the state and the
15 principal markets outside of the state where agricultural pro-
16 ducts are sold or distributed.

17 (4) Such other information which may be of value or
18 assistance in the production, handling, and marketing of ag-
19 ricultural products.

Sec. 9. *Inspectors, Graders, Assistants.* The commissioner
2 may employ and he shall have authority to certify such in-
3 spectors, graders, and assistants as are necessary to enforce
4 the provisions of this act. He shall prescribe their duties and
5 fix their salaries. It shall be unlawful for any person to repre-
6 sent that he is an inspector, grader, or agent of the commis-
7 sioner unless he is certified by the commissioner.

Sec. 10. *Commissioner Charged With Enforcement.* The
2 commissioner of agriculture shall be charged with the enforce-
3 ment of this act and shall have authority to make and en-
4 force rules and regulations for the administration of this act.

Sec. 11. *Penalties.* Any person who shall violate any of
2 the provisions of this act, or who shall obstruct or hinder the
3 commissioner or any officer or employee, in the performance
4 of his duties under this act, shall be guilty of a misdemeanor,
5 and, upon conviction thereof, shall, for the first offense, be
6 fined not more than one hundred dollars, and upon convic-
7 tion for each subsequent offense be fined not more than five
8 hundred dollars, and in addition to such fine may be con-
9 fined 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
2 business of a commission merchant in this state dealing in
3 the sale, purchase, or consignment of agricultural products
4 shall before carrying on such business procure a license from
5 the commissioner. Application for such license shall be made
6 on forms prescribed by the commissioner and shall be ac-
7 companied by a fee of ten dollars. Such license shall be re-
8 newed annually on or before the first day of July.

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

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

5 against him.

6 (2) Made false, fraudulent or improper charges or re-
7 turns for the handling, sale, storage, or other services in
8 connection with agricultural products.

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

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

14 (5) Made false or misleading statements concerning mar-
15 ket conditions, with the intent to deceive.

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

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

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

24 (9) Has reconsigned agricultural products without the
25 written consent of the consignor or without notice to the con-

26 signor that all or a part of his shipment has been reconsigned.

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

Sec. 4. *Recovery on Bond.* A person injured by the failure
2 of a commission merchant to pay over the full amount re-
3 ceived on any sale, less commissions and charges may recover
4 on the bond of the commission merchant the amount due him
5 by a suit brought in the name of the State of West Virginia
6 for the use of the injured person. No recovery shall be had
7 on the bond in excess of the penalty thereof. In case of mul-
8 tiple claims in excess of the bond, each claimant shall re-
9 cover his pro rata share.

Sec. 5. *Penalties for Violation of Act.* A commission mer-
2 chant who violates any of the provisions of this act shall be
3 guilty of a misdemeanor, and upon conviction shall be fined
4 not more than one hundred dollars for the first offense, and
5 not less than one hundred dollars nor more than two hundred
6 dollars for each subsequent offense. Each transaction en-

7 gaged in by an unlicensed commission merchant shall con-
8 stitute a separate offense.

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

14 If any clause, sentence, paragraph or part of this act shall
15 for any reason, be adjudged by any court of competent juris-
16 diction to be invalid, such judgment shall not affect, impair,
17 or invalidate the remainder of this act, but shall be confined
18 in its operation to the clause, sentence, paragraph, or any
19 part thereof directly involved in the controversy in which
20 said judgment has been rendered.

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

E. H. Roseman
Chairman Senate Committee

Wm. D. Baker
Chairman House Committee

Originated in the *House of Delegates*

Takes effect *ninety days from* passage.

Charles H. Smith
Clerk of the Senate

Geo. A. Stace
Clerk of the House of Delegates

Wm. H. Harrison
President of the Senate

James T. Thomas
Speaker House of Delegates

The within *approved* this the *13th*
day of *March*, 1939.

James A. White
Governor.

