

SHB 1100 - S COMM AMD
By Committee on Agriculture

ADOPTED 04/08/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 20.01.010 and 1991 c 174 s 1 are each amended to read
4 as follows:

5 As used in this title the terms defined in this section have the
6 meanings indicated unless the context clearly requires otherwise.

7 (1) "Director" means the director of agriculture or (~~his~~) a duly
8 authorized representative.

9 (2) "Person" means any natural person, firm, partnership, exchange,
10 association, trustee, receiver, corporation, and any member, officer,
11 or employee thereof or assignee for the benefit of creditors.

12 (3) "Agricultural product" means any unprocessed horticultural,
13 vermicultural and its byproducts, viticultural, berry, poultry, poultry
14 product, grain, bee, grass seed, lawn seed, turf seed, forage seed,
15 cereal seed, oil seed, fiber seed, forb seed, flower seed, and other
16 kinds of crop seed commonly recognized within this state as
17 agricultural seed or vegetable seed, or other agricultural products,
18 and includes mint or mint oil processed by or for the producer thereof
19 and hay and straw baled or prepared for market in any manner or form
20 and livestock.

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

25 (5) "Consignor" means any producer, person, or his agent who sells,
26 ships, or delivers to any commission merchant, dealer, cash buyer, or
27 agent, any agricultural product for processing, handling, sale, or
28 resale.

29 (6) "Commission merchant" means any person who receives on
30 consignment for sale or processing and sale from the consignor thereof

1 any agricultural product for sale on commission on behalf of the
2 consignor, or who accepts any farm product in trust from the consignor
3 thereof for the purpose of resale, or who sells or offers for sale on
4 commission any agricultural product, or who in any way handles for the
5 account of or as an agent of the consignor thereof, any agricultural
6 product.

7 (7) "Dealer" means any person other than a cash buyer, as defined
8 in subsection (10) of this section, who solicits, contracts for, or
9 obtains from the consignor thereof for reselling or processing, title,
10 possession, or control of any agricultural product, or who buys or
11 agrees to buy any agricultural product from the consignor thereof for
12 sale or processing and includes any person, other than one who acts
13 solely as a producer, who retains title in an agricultural product and
14 delivers it to a producer for further production or increase. For the
15 purposes of this chapter, the term dealer includes any person who
16 purchases livestock on behalf of and for the account of another, or who
17 purchases cattle in another state or country and imports these cattle
18 into this state for resale.

19 (8) "Limited dealer" means any person (~~operating~~) who buys,
20 agrees to buy, or pays for the production or increase of any
21 agricultural product by paying to the consignor at the time of
22 obtaining possession or control of any agricultural product the full
23 agreed price of the agricultural product and who operates under the
24 alternative bonding provision in RCW 20.01.211.

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

29 (10) "Cash buyer" means any person other than a commission
30 merchant, dealer, or broker, who obtains from the consignor thereof for
31 the purpose of resale or processing, title, possession, or control of
32 any agricultural product or who contracts for the title, possession, or
33 control of any agricultural product, or who buys or agrees to buy for
34 resale any agricultural product by paying to the consignor at the time
35 of obtaining possession or control of any agricultural product the full
36 agreed price of the agricultural product, in coin or currency, lawful
37 money of the United States. However, a cashier's check, certified

1 check, credit card, or bankdraft may be used for the payment. For the
2 purposes of this subsection, "agricultural product," does not include
3 hay, grain, straw, or livestock.

4 (11) "Agent" means any person who, on behalf of any commission
5 merchant, dealer, broker, or cash buyer, acts as liaison between a
6 consignor and a principal, or receives, contracts for, or solicits any
7 agricultural product from the consignor thereof or who negotiates the
8 consignment or purchase of any agricultural product on behalf of any
9 commission merchant, dealer, broker, or cash buyer and who transacts
10 all or a portion of that business at any location other than at the
11 principal place of business of his employer. With the exception of an
12 agent for a commission merchant or dealer handling horticultural
13 products, an agent may operate only in the name of one principal and
14 only to the account of that principal.

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

18 (13) "Fixed or established place of business" for the purpose of
19 this chapter means any permanent warehouse, building, or structure, at
20 which necessary and appropriate equipment and fixtures are maintained
21 for properly handling those agricultural products generally dealt in,
22 and at which supplies of the agricultural products being usually
23 transported are stored, offered for sale, sold, delivered, and
24 generally dealt with in quantities reasonably adequate for and usually
25 carried for the requirements of such a business, and that is recognized
26 as a permanent business at such place, and carried on as such in good
27 faith and not for the purpose of evading this chapter, and where
28 specifically designated personnel are available to handle transactions
29 concerning those agricultural products generally dealt in, which
30 personnel are available during designated and appropriate hours to that
31 business, and shall not mean a residence, barn, garage, tent, temporary
32 stand or other temporary quarters, any railway car, or permanent
33 quarters occupied pursuant to any temporary arrangement.

34 (14) "Processor" means any person, firm, company, or other
35 organization that purchases agricultural crops from a consignor and
36 that cans, freezes, dries, dehydrates, cooks, presses, powders, or

1 otherwise processes those crops in any manner whatsoever for eventual
2 resale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 All fees and other moneys received by the department under (~~the~~
16 ~~provisions of~~) this chapter shall be paid to the director and (~~shall~~
17 ~~be~~) used solely for the purpose of carrying out (~~the provisions of~~)
18 this chapter and the rules adopted (~~hereunder or for departmental~~
19 ~~administrative expenses during the 1993-95 biennium~~) under this
20 chapter. All civil fines received by the courts as the result of
21 notices of infractions issued by the director shall be paid to the
22 director, less any mandatory court costs and assessments.

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

25 Any change in the organization of any firm, association, exchange,
26 corporation, or partnership licensed under (~~the provisions of~~) this
27 chapter shall be reported to the director and the licensee's surety or
28 sureties within thirty days.

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

31 (1) In lieu of the bonding provision required by RCW 20.01.210, any
32 dealer who buys, agrees to buy, or pays for the production or increase
33 of any agricultural product by paying to the consignor at the time of
34 obtaining possession or control of any agricultural product the full

1 agreed price of the agricultural product may file a bond in an amount
2 equal to the dealer's maximum monthly purchases, divided by ((fifteen))
3 twelve, but the minimum bond ((provided by)) under this section shall
4 be ((in a minimum of seven thousand five hundred)) no less than ten
5 thousand dollars.

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

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

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

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

28 (2) Any consignor who believes he or she has a valid claim against
29 the bond of a commission merchant or dealer in hay or straw, shall file
30 a claim with the director within twenty days of the licensee's default.
31 In the case of a claim against the bond of a commission merchant or
32 unlimited dealer in hay or straw, default occurs when the licensee
33 fails to make payment within thirty days of the date the licensee took
34 possession of the hay or straw. In the case of a claim against a
35 limited dealer in hay or straw, default occurs when the licensee fails
36 to make payment upon taking possession of the hay or straw. Upon

1 ~~verifying the consignor's claim either through investigation or, if~~
2 ~~necessary, an administrative action, the director shall, within ten~~
3 ~~working days of the filing of the claim, make demand for payment of the~~
4 ~~claim by the licensee's surety without regard to any other potentially~~
5 ~~valid claim. Any subsequent claim will likewise result in a demand~~
6 ~~against the licensee's surety, subject to the availability of any~~
7 ~~remaining bond proceeds.))~~

8 (2) In the case of a claim against the bond of a commission
9 merchant or dealer in hay or straw, default occurs when the licensee
10 fails to make payment within thirty days of the date the licensee took
11 possession of the hay or straw or at a date agreed to by both the
12 consignor and commission merchant or dealer in written contract. In
13 the case of a claim against a limited dealer in hay or straw, default
14 occurs when the licensee fails to make payment upon taking possession
15 of the hay or straw.

16 (3) Upon the filing of a claim under this subsection against any
17 commission merchant or dealer handling any agricultural product, the
18 director may, after investigation, proceed to ascertain the names and
19 addresses of all consignor creditors of such commission merchant and
20 dealer, together with the amounts due and owing to them by such
21 commission merchant and dealer, and shall request all such consignor
22 creditors to file a verified statement of their respective claims with
23 the director. Such request shall be addressed to each known consignor
24 creditor at his last known address.

25 (4) For claims against a bond that have been filed by consignors
26 prior to the sixty-day deadline established in RCW 20.01.250, the
27 director shall investigate the claims and, within thirty days of
28 verifying the claims, demand payment for the valid claims by the
29 licensee's surety. The director shall distribute the proceeds of the
30 valid bond claims to the claimants on a pro rata basis within the
31 limits of the claims and the availability of the bond proceeds. If a
32 claim is filed after the sixty-day deadline established in RCW
33 20.01.250, the director may investigate the claim and may demand
34 payment for a valid claim. The director shall distribute the proceeds
35 of any such payment made by the surety to the claimant on a first-to-
36 file, first-to-be-paid basis within the limits of the claim and the

1 availability of any bond proceeds remaining after the pro rata
2 distribution. All distributions made by the director under this
3 subsection are subject to RCW 20.01.260.

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

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

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

3 (1) A copy of a manifest of cargo, on a form prescribed by the
4 director, shall be carried on any vehicle transporting agricultural
5 products purchased by a dealer or cash buyer, or consigned to a
6 commission merchant from the consignor thereof when prescribed by the
7 director. A bill of lading may be carried in lieu of a manifest of
8 cargo for an agricultural product other than hay or straw.

9 (2) Except as provided in subsection (3) of this section, the
10 commission merchant, dealer, or cash buyer of agricultural products
11 shall issue a copy of ((such)) the manifest or bill of lading to the
12 consignor of ((such)) the agricultural products and the original shall
13 be retained by the licensee for a period of ((one)) three years during
14 which time it shall be surrendered upon request to the director.
15 ((Such)) The manifest of cargo ((shall be)) is valid only when signed
16 by the licensee or his or her agent and the consignor or his or her
17 authorized representative of ((such)) the agricultural products.

18 (3) The commission merchant or dealer of hay or straw shall issue
19 a copy of a manifest to the consignor. The original copy shall be
20 retained by the commission merchant or dealer for a period of three
21 years during which time it shall be surrendered upon request to the
22 director. The manifest of cargo is valid only when signed by the
23 licensee or his or her agent and the consignor or his or her authorized
24 representative of hay or straw.

25 (4) Manifest forms will be provided to licensees at the actual cost
26 for the manifests plus necessary handling costs incurred by the
27 department.

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

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

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

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

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

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

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

11 (3) Any person who violates the provisions of RCW 20.01.040,
12 20.01.080, 20.01.120, 20.01.125, 20.01.410, or 20.01.610 has committed
13 a civil infraction.

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

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

18 Any person found to have committed a civil infraction under this
19 chapter shall be assessed a monetary penalty. No monetary penalty so
20 assessed may exceed (~~one~~) five thousand dollars. The director shall
21 adopt a schedule of monetary penalties for each violation of this
22 chapter classified as a civil infraction and shall submit the schedule
23 to the proper courts. Whenever a monetary penalty is imposed by the
24 court, the penalty is immediately due and payable. The court may, at
25 its discretion, grant an extension of time, not to exceed thirty days,
26 in which the penalty must be paid. Failure to pay any monetary
27 penalties imposed under this chapter shall be punishable as a
28 misdemeanor.

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

31 The director or (~~his~~) appointed officers may stop a vehicle
32 transporting (~~hay or straw~~) agricultural products upon the public
33 roads of this state if there is reasonable cause to believe the
34 carrier, seller, or buyer may be in violation of this chapter. Any

1 operator of a vehicle failing or refusing to stop when directed to do
2 so has committed a civil infraction.

3 NEW SECTION. **Sec. 11.** The department of agriculture shall study
4 the subject of establishing an indemnity fund to provide financial
5 recovery for producers of agricultural seeds, including those who
6 produce the seeds under bailment contracts, in cases where the
7 producers are not paid in full for the sale of their seeds or are not
8 paid in full under bailment contracts for producing the seeds. The
9 examination shall include an identification of potential means of
10 providing moneys for such an indemnity fund and how the costs of
11 providing and maintaining such a fund would be borne. The department
12 shall establish an advisory committee composed of representatives of
13 growers of and dealers in the types of agricultural seeds grown in this
14 state to assist it in the study. If general agreement among the
15 members of the advisory committee and the department cannot be reached
16 regarding establishing such a fund, the department and the committee
17 shall examine alternative means of providing such financial recovery
18 for producers of agricultural seeds.

19 The department shall report the recommendations resulting from the
20 study, including any recommended legislation in bill form, to the
21 governor and to the appropriate committees of the legislature by
22 December 1, 2003."

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23 On page 1, line 2 of the title, after "products;" strike the
24 remainder of the title and insert "amending RCW 20.01.010, 20.01.130,
25 20.01.140, 20.01.211, 20.01.240, 20.01.320, 20.01.410, 20.01.460,
26 20.01.490, and 20.01.610; creating a new section; and prescribing
27 penalties."

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