

HOUSE BILL REPORT

SHB 1100

As Passed Legislature

Title: An act relating to regulating the sale, processing, or purchase of agricultural products.

Brief Description: Regulating the sale, processing, or purchase of agricultural products.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Schoesler, Grant, Rockefeller and Sump; by request of Department of Agriculture).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/28/03, 2/25/03 [DPS].

Floor Activity:

Passed House: 3/11/03, 93-0.

Senate Amended.

Passed Senate: 4/8/03, 47-0.

House Refused to Concur. Asks Senate to Recede.

Senate Amended.

Passed Senate: 4/26/03, 47-0.

House Concurred.

Passed House: 4/27/03, 98-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Alters certain bonding and payment requirements under the commission merchant laws and increases penalties for violations of these laws.
- Authorizes search warrants to be sought in certain circumstances; and expands the commodities for which vehicles carrying commodities may be stopped regarding violations of the commission merchant laws.
- Requires the Department of Agriculture to conduct a study regarding means of providing financial recovery for producers of agricultural seed in cases of non-payment.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Staff: Kenneth Hirst (786-7105).

Background:

With certain exceptions, no person may act as a commission merchant, dealer, broker, or cash buyer for agricultural commodities or as the agent of any of them, without being licensed by the Department of Agriculture (WSDA) under the state's commission merchant laws. Surety bonds are required for those licensed as commission merchants or dealers.

A "commission merchant" is a person who receives an agricultural product on consignment for sale on commission on behalf of the consignor, or for processing and sale. It is also a person who accepts a farm product in trust from a consignor for the purpose of resale, or who sells on commission an agricultural product, or who in any way handles an agricultural product for a consignor. In general, a "dealer" is a person other than a cash buyer who solicits, obtains, or contracts or agrees to obtain from a consignor the title, possession, or control of an agricultural product for resale, sale, or processing.

The Director of the WSDA or appointed officers may stop a vehicle transporting hay or straw on a public road if there is reasonable cause to believe that the carrier, seller, or buyer is in violation of the commission merchant laws. A vehicle operator who fails to stop when directed to do so has committed a civil infraction for which the maximum penalty is \$1,000.

Under the theft and robbery statutes, the unlawful issuance of a bank check in an amount greater than \$250 is a class C felony. The unlawful issuance of a bank check in an amount of \$250 or less is a gross misdemeanor.

Summary of Substitute Bill:

Penalties. Rather than being classified as a gross misdemeanor under the commission merchant laws, the unlawful issuance of a check or draft may be prosecuted in the same manner as prosecution for the unlawful issuance of a bank check under the theft and robbery laws which, in certain instances, is classified as a class C felony.

The maximum monetary penalty for a civil infraction under the commission merchant

laws is now \$5,000 (rather than \$1,000).

Search Warrants. If, in conducting an investigation regarding a transaction, the Director is denied access to records or places agricultural products are kept, the Director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises and records and the court may issue the search warrant.

Stopping Vehicles. The authority of the Director or the Director's officers to stop vehicles transporting hay or straw on public roads regarding violations of the commission merchant laws is now extended to stopping vehicles transporting any agricultural commodity governed by those laws. The director or such an appointed officer must work to ensure that vehicles carrying perishable agricultural products are detained no longer than is absolutely necessary for a prompt assessment of compliance with the commission merchant laws. If a vehicle carrying perishable agricultural products is found to be in violation of those laws, notices of civil infraction must be issued promptly and the vehicle must be allowed to continue toward its destination without further delay.

Payment. The date on which default occurs for a payment to a consignor by a commission merchant or dealer (other than a limited dealer) in hay or straw is either the current statutory deadline of 30 days of the date the person took possession of the hay or straw or a date agreed to by both the consignor and the merchant or dealer in a written contract. The form of payment that a cash buyer may make is expanded to include credit card payment.

Bonds. The criteria for the alternative bonding requirements available to certain dealers are altered. The bond must be in an amount equal to the dealer's maximum monthly purchases divided by 12 (rather than 15) and must be for at least \$10,000 (rather than at least \$7,500).

The Director is no longer required to demand payment of a claim by a licensee's surety regarding a default on such a payment for hay or straw within 10 working days of the filing of the claim, without regard to other potentially valid claims. The Director is now to distribute on a pro rata basis the proceeds of all of the valid bond claims that are timely filed against a commission merchant or dealer regarding an agricultural product. The distribution is to be done within 30 days of verifying the claims. Any monies available after this distribution may be paid on a first-to-file, first-to-be-paid basis for late claims.

Manifests. A bill of lading may be carried by a vehicle transporting agricultural products other than hay or straw for a commission merchant, dealer, or cash buyer in lieu of a manifest of cargo. The commission merchant, dealer, or cash buyer must retain a copy of the manifest or bill of lading for three years (rather than one year). A representative of the consignor may now sign the manifest for the consignor. The provisions regarding manifests for other agricultural products (but not bills of lading) expressly apply with

regard to consignments of hay or straw to commission merchants or dealers. Manifest forms will be provided to licensees at actual cost plus necessary handling charges incurred by the WSDA.

Other. A limited dealer under these laws is defined as being a person operating under alternative bonding requirements who pays the consignor for the production or increase of an agricultural product when the person obtains possession or control of the product by paying the full agreed price of the product. A change in the organization of a licensee that must be reported to the WSDA must now be reported within 30 days.

Study. The WSDA must conduct a study of alternative means of reducing the risk of producer nonpayment in seed company bankruptcies and increasing the financial recovery for the producers. The WSDA must evaluate: alternative methods of addressing issues relating to, including the establishing an indemnity fund; and how the costs of providing and maintaining such a fund would be borne; and whether establishing such a fund would be in addition to or as a substitute for any current bonding requirements for various types of seed crops and seed contracts, including bailment contracts. The WSDA must establish an advisory committee including representatives of seed producers and seed companies to assist it in the study and must report the results of the study to the Governor and the Legislature by December 1, 2003.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: 1) The bill revises and updates the commission merchant laws which provide protection against unlawful business practices. 2) Although 80 to 90 percent of the claims are settled through mediation under these laws, in the last three years, there have been millions of dollars in claims and millions of dollars in recoveries under them. 3) The seed industry had been regulated under these laws until a court decision in the 1980s found that it is not. During a recent very large bankruptcy in the seed industry, there was only one bond for millions of dollars in claims. The result was recovery of less than five cents on the dollar. 4) The civil infractions are used as a last resort (only about four per year) and are for those who fail to be licensed. 5) The change in the check payment penalty will allow local prosecutors to prosecute under laws they are familiar with, the robbery and theft laws.

Testimony Against: Those dealing in agricultural seeds should not be licensed and bonded under the commission merchant laws. Financial protection for producers should be provided, but not under those laws.

Testified: (In support) Leslie Emerick and Jerry Buendel, Department of Agriculture.

(Opposed) Brad Boswell, Washington-North Idaho Seed Association.