

SENATE BILL No. 1082

March 8, 2000, Introduced by Senator GAST and referred to the Committee on Government Operations.

A bill to amend 1913 PA 184, entitled

"An act to regulate the business of selling farm products on commission, providing all commission merchants dealing in farm products shall be licensed, to provide against and punish fraud and deception in the sale of farm products on commission, and defining the duties of the state dairy and food commissioner relative thereto,"

by amending sections 1, 2, 3, 4, 5, 6, and 8 (MCL 445.331, 445.332, 445.333, 445.334, 445.335, 445.336, and 445.338).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Commission merchant" means every person, firm, association, and corporation — licensed under this act to receive, sell, or offer for sale on commission within this state any kind of farm produce.

(B) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE OR ANY DESIGNEE OF THE DIRECTOR.

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1 (C) ~~-(b)-~~ "Farm produce" means all agricultural,
2 horticultural, vegetable, and fruit products of the soil, and
3 meats, poultry, eggs, dairy products, nuts, and honey, but
4 ~~shall~~ DOES not include timber or floricultural products.

5 Sec. 2. (1) On and after October ~~first~~ 1, 1913, ~~no~~ A
6 person, firm, association, or corporation ~~,~~ whose principal
7 place of business ~~shall be~~ IS located in any city in this state
8 ~~,~~ shall NOT receive, sell, or offer for sale on commission
9 within this state any kind of farm produce ~~,~~ without a license
10 as provided in this ~~article~~ ACT.

11 (2) Every person, firm, association, and corporation in this
12 state receiving farm produce for sale on commission shall annu-
13 ally on or before October ~~first,~~ 1 file an application with the
14 ~~state dairy and food commissioner~~ DIRECTOR for a license to do
15 a commission business in farm produce. ~~Such~~ THE application
16 shall state the kind or kinds of produce which the applicant pro-
17 poses to handle, the full name of the person or corporation
18 applying for such license ~~,~~ and, if the applicant ~~be~~ IS a
19 firm or association, the full name of each member of the firm or
20 association, the city and street number at which the business is
21 to be conducted, and such other facts as the ~~state dairy and~~
22 ~~food commissioner~~ DIRECTOR shall prescribe. ~~Such~~ THE appli-
23 cant shall further satisfy the ~~state dairy and food~~
24 ~~commissioner~~ DIRECTOR of his or ~~its~~ HER character, responsi-
25 bility, and good faith in seeking to carry on a commission
26 business.

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1 (3) The ~~state dairy and food commissioner~~ DIRECTOR shall
2 ~~thereupon~~ issue to ~~such~~ THE applicant, ~~on~~ UPON payment of
3 ~~15 dollars~~ \$15.00, in cities of less than 20,000 population,
4 and ~~25 dollars~~ \$25.00, in cities of more than 20,000 popula-
5 tion, a license entitling the applicant to conduct the business
6 of receiving and selling farm produce on commission at the place
7 named in the application until ~~the tenth day of~~ October ~~next~~
8 10 OF THE following YEAR. ~~Such~~ A license shall not be issued
9 ~~, however,~~ to any applicant if, during the preceding year, a
10 complaint from any consignor of farm produce for sale on commis-
11 sion ~~shall have~~ HAS been filed with the ~~state dairy and food~~
12 ~~commissioner~~ DIRECTOR against ~~such~~ THE applicant for any of
13 the grounds specified in section 4 ~~hereof,~~ and ~~such~~ THAT com-
14 plaint ~~shall have~~ HAS been established as true and just to the
15 satisfaction of the ~~commissioner~~ DIRECTOR after ~~such complaint~~
16 ~~shall have been investigated~~ INVESTIGATION by the ~~commissioner~~
17 DIRECTOR in the manner provided by section 3. ~~of this act.~~

18 Sec. 3. The ~~commissioner and his assistants shall have~~
19 ~~power to~~ DIRECTOR MAY investigate, upon the complaint of an
20 interested person ~~,~~ or of his OR HER own motion, the record of
21 any person, firm, or corporation applying for a license ~~,~~ or
22 any transaction involving the solicitation, receipt, transporta-
23 tion, sale, or attempted sale of farm produce on a commission
24 basis, including the making of charges in selling, carting, or
25 other services, the failure to make proper and true accounts and
26 settlements at prompt and regular intervals, the making of false
27 statements as to condition, quality, or quantity of goods

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1 received or while in storage, the making of false statements as
2 to market conditions, or the failure to make payment for goods
3 received or other alleged injurious transactions. ~~and for such~~
4 ~~purpose~~ THE DIRECTOR may examine the ledgers, books of account,
5 memoranda, or other documents of any commission merchant and may
6 take testimony ~~therein~~ under oath ~~but~~ FOR PURPOSES OF AN
7 INVESTIGATION UNDER THIS SECTION, EXCEPT THAT information relat-
8 ing to the general business of any such person ~~,~~ contained in
9 such investigation and not relating to the immediate purpose
10 thereof ~~shall be deemed of a~~ IS CONSIDERED confidential ~~nature~~
11 ~~by the commissioner, his assistants and employees~~ AND IS NOT
12 SUBJECT TO DISCLOSURE BY THE DIRECTOR. When a complaint is filed
13 with the ~~commissioner~~ DIRECTOR, he OR SHE shall attempt to
14 secure an explanation or adjustment. ~~if failing this~~ IF AN
15 EXPLANATION OR ADJUSTMENT DOES NOT RESOLVE THE MATTER, within 10
16 days he OR SHE shall cause a copy thereof, together with a notice
17 of a time and place for a hearing on such complaint, to be served
18 personally ~~,~~ or by mail ~~,~~ upon ~~such~~ THE commission
19 merchants. If served by mail, ~~such~~ THE complaint and notice
20 shall be directed to ~~such~~ THE commission merchant at his OR HER
21 place of business ~~and the~~ WITH postage prepaid ~~thereon.~~ ~~Such~~
22 ~~service shall be made~~ at least 7 days before the hearing. At
23 the time and place appointed for such hearing, which shall be
24 within the county where the commission merchant is licensed to do
25 business, the ~~commissioner or his assistants~~ DIRECTOR shall
26 hear the parties to ~~such~~ THE complaint, ~~shall have power to~~
27 MAY administer an oath, and shall ~~enter in the office of the~~

1 ~~state dairy and food commissioner~~ MAKE a decision either
2 dismissing ~~such~~ THE complaint or ~~specifying the~~ MAKING A
3 FINDING OF fact ~~which he deemed~~ established ~~on such~~ AT THE
4 hearing.

5 Sec. 4. The ~~state dairy and food commissioner~~ DIRECTOR
6 may decline to grant a license or may revoke a license already
7 granted ~~, where he is satisfied of the existence of the follow=~~
8 ~~ing cases or either of them~~ UNDER ANY OF THE FOLLOWING
9 CIRCUMSTANCES:

10 (A) ~~1. Where false~~ FALSE charges have been imposed for
11 handling or services, or charges other than as by a schedule
12 agreed on by the parties, or other than those customary in the
13 trade. ~~—~~

14 (B) ~~2. Where there~~ THERE has been a failure to account
15 promptly and properly or to make settlements with intent to
16 defraud. ~~—~~

17 (C) ~~3. Where there~~ THERE have been false statements as to
18 condition, quality, or quantity of goods received or held for
19 sale on commission. ~~—~~

20 (D) ~~4. Where there~~ THERE have been false or misleading
21 statements as to market condition with intent to deceive. ~~—~~

22 (E) ~~5. Where there~~ THERE have been combinations to fix
23 prices below the market level. ~~—~~

24 (F) ~~6. Where there~~ THERE has been a continual course of
25 dealings of such nature as to satisfy the ~~commissioner~~ DIRECTOR
26 of THE inability of the commission merchant to properly conduct

1 the business ~~—~~, or of an intent to deceive or defraud customers.

2 ~~—~~

3 (G) ~~7. Where the~~ THE commission merchant directly or
4 indirectly purchases the goods for his OR HER own account without
5 prior authority ~~therefor,~~ TO DO SO or without notifying the
6 consignor ~~thereof~~ OF THE GOODS.

7 Sec. 5. The action of the ~~commissioner~~ DIRECTOR in refus-
8 ing to grant a license ~~—~~, or in revoking a license ~~granted~~
9 ISSUED under this act ~~—, shall be~~ IS subject to review by ~~a~~
10 ~~writ of certiorari, and if~~ LEAVE OF COURT. IF such proceedings
11 are ~~begun; until the final determination of certiorari proceed-~~
12 ~~ings and all appeals therefrom~~ COMMENCED, the license of ~~such~~
13 THE commission merchant ~~shall be deemed~~ IS CONSIDERED to be in
14 full force and effect ~~—~~, or, if ~~such~~ THE license ~~shall have~~
15 ~~been refused, such~~ WAS DENIED, THE commission merchant ~~shall~~
16 ~~not be deemed~~ IS NOT CONSIDERED to have violated the ~~provisions~~
17 ~~of this act,~~ PROVISION prohibiting the transaction of such busi-
18 ness without a license ~~—, provided~~ SO LONG AS the fee for ~~such~~
19 THE license ~~shall have been~~ WAS paid.

20 Sec. 6. The ~~dairy and food commissioner~~ DIRECTOR shall
21 publish in pamphlet form as often as he OR SHE thinks is neces-
22 sary ~~—~~, a list of all the licensed commission merchants.

23 Sec. 8. If any shipper of farm produce to a commission mer-
24 chant ~~be~~ IS dissatisfied with any statement relative to the
25 sale of such shipment, he OR SHE may apply to the ~~state dairy~~
26 ~~and food commissioner~~ DIRECTOR, in writing, within 60 days of
27 making such shipment, for an investigation. The ~~state dairy and~~

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1 ~~food commissioner~~ DIRECTOR shall treat such application as a
2 complaint ~~,~~ and shall ~~cause a full investigation of~~
3 INVESTIGATE the transaction ~~complained of to be made either by~~
4 ~~himself, or 1 of his assistants~~ in the manner provided FOR by
5 section ~~5 of this act~~ 3.