

ACT 39

H. B. NO. 1955-72

A Bill for an Act Relating to the Regulation of Dealers in Agricultural Farm Produce.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 145-1, Hawaii Revised Statutes, is amended to read:

“Sec. 145-1 Definitions. For the purpose of this chapter, unless otherwise required by the context:

“‘Department’ means the department of agriculture;

“‘Producer’ means any person engaged in the business of growing or producing any farm produce in the State and shall include any agricultural cooperative organization composed of producers;

“‘Farm produce,’ or ‘farm product,’ means all agricultural, horticultural, and vegetable produce of the soil; poultry, poultry products, livestock, and livestock products, but shall not include (1) timber or timber products; (2) milk or milk products; (3) sugar cane or sugar cane products; or (4) pineapple or pineapple products, other than fresh pineapple purchased from a producer for resale in its natural state;

“‘Commission merchant’ means any person who receives on consignment or solicits from the producer thereof any farm products for sale on commission on behalf of the producer, or who accepts any farm product in trust from the producer thereof for the purpose of resale, or who sells or offers for sale on commission any farm product, or who in any way handles for the account of or as an agent of the producer thereof any farm product;

“‘Dealer’ means any person who solicits or obtains from the producer thereof title, possession or control of any farm product at a specified unit price for the purpose of resale in its natural state to other than the consumer thereof; provided, however, that no dealer shall obtain title, possession or control of any farm product except by contract of purchase, wherein the quantity and price to be paid by the dealer to the producer are designated in the contract;

“‘Broker’ means any person, other than a commission merchant or dealer, who negotiates the purchase or sale of any farm product; provided, however, that no broker may obtain possession of any farm product involved;

“‘Agent’ means any person who, on behalf of any commission merchant, dealer, broker, processor, or retail merchant receives, contracts for, or solicits any farm products from a producer thereof, or who negotiates the consignment or purchase of any farm product on behalf of any commission merchant, dealer, broker, processor, or retail merchant;

“‘Consignor’ means any person who ships or delivers to any commission merchant, dealer, processor, or retail merchant any farm product for handling, sale, or resale;

“‘Processor’ means any person who contracts for or obtains possession of any farm product from the producer thereof for resale in a processed form, but shall not include hotels, restaurants, or other persons furnishing meals, nor shall it include any person who processes any farm produce solely for sale directly to a consumer;

“‘Processed’ means to can, preserve, freeze, pickle, dry, or otherwise prepare with or without added ingredients;

“‘Retail merchant’ means any person who solicits or obtains from a producer thereof title, possession or control of any farm product at a specified unit price for sale at retail to a consumer. For the purposes of this definition, sales to the United States armed forces, restaurants, hotels, hospitals, or institutions are not retail sales;

“‘Consumer’ means any person purchasing farm products for his own family use or consumption.”

SECTION 2. Section 145-2, Hawaii Revised Statutes, is amended to read:

“**Sec. 145-2 Licenses.** No person shall act as a commission merchant,

dealer, broker, agent, processor, or retail merchant without having obtained a license as prescribed by rules and regulations of the department of agriculture.

“In addition to the general requirements applicable to all classes of applications as prescribed by regulation, the following requirements shall apply to each class of application noted:

“(1) Commission merchants: Each application shall include a schedule of commissions and charges for services, and the designated commissions and charges shall not be changed or varied for the license period except by written contract between the parties. In addition, each application shall be accompanied by the surety bond required by section 145-4.

“(2) Agents: Each application shall include the name and address of each commission merchant, dealer, or broker represented or sought to be represented by the agent, the written indorsement or nomination of the commission merchant, dealer, or broker, and such additional information as the department may consider proper or necessary. The department shall thereupon issue to the applicant a license entitling the applicant to conduct the business described in the application at the place named in the application for a year from the date thereof, or until the same is revoked for cause; provided, that the license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The department may also issue to each agent a card or cards which shall bear the signature of the agent, separate cards being required for each principal. Any agent shall show the card or cards upon the request of any interested person. Any agent who displays a void or expired license card shall be punished as provided in section 145-12.

“Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted thereunder. All indicia of the possession of a license shall be at all times the property of the State and each licensee shall be entitled to the possession thereof only for the duration of the license.

“For filing the application for license, each applicant shall pay a fee as prescribed by the department.

“Should any commission merchant, dealer, broker, or processor refuse, fail, or neglect to apply for the renewal of a pre-existing license within thirty days after the expiration thereof, a penalty of forty per cent shall apply to and be added to the original fee as prescribed by the department, and shall be paid by the applicant before the renewal license may be issued.

“Any person who has applied for and obtained a license within the classification of commission merchant, in the manner and upon payment of the fee set forth, may apply for and secure a license in the other classifications without payment of further fee, and upon further complying with those provisions of this part regulating the licensing of the other particular classification involved. All licenses held by any licensee under this section shall automatically expire on the expiration date for the particular license for which the license fee was paid.”

SECTION 3. Section 145-5, Hawaii Revised Statutes, is amended to read:

“Sec. 145-5 Reports of consignment sales. Every commission merchant shall make a written report to the producer for farm produce handled on consignment in behalf of said producer which shall be within such time and in such detail as may be prescribed by the department. Making a false or incorrect report shall constitute a misdemeanor under section 145-12.”

SECTION 4. Section 145-6, Hawaii Revised Statutes, is amended to read:

“Sec. 145-6 Remittances. Every commission merchant, dealer, broker, agent, processor, or retail merchant shall make payment in full to the producer within such time as may be prescribed by the department. Payment in full means payment of the price agreed upon by the producer and the commission merchant, dealer, broker, agent, processor, or retail merchant, except that, in the case of consignment transactions, the full amount realized from sales, including collections for damage claims, less the agreed commission and other charges, shall be paid.”

SECTION 5. Section 145-7, Hawaii Revised Statutes, is amended to read:

“Sec. 145-7 Credit for loss or dumping. No claim or credit in any payment, accounting, or settlement shall be made or taken against a producer by any commission merchant, dealer, processor, or retail merchant for any damage to, or loss, dumping, or disposal, of any farm produce unless such claim or credit has been agreed to in writing by the producer and the licensee has secured and is in possession of a certificate issued by an agent of the department of agriculture showing that the produce has no commercial value, or a certificate issued by a county or state health officer, or other duly authorized officer, stating that the produce has been destroyed or otherwise disposed of as unfit for human consumption.”

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect on January 1, 1973.

(Approved May 15, 1972.)

*Edited accordingly.