

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

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

SECTION 1. Agriculture is one of Hawaii's important industries. The local farmer must continue to profit from his enterprise if agriculture is to maintain its position in the State's economy. The farmer is at the mercy of the dealers for payment for their highly perishable products. Chapter 145, Hawaii Revised Statutes, is intended to assure fair and prompt payment for farm products.

The enforcement of this chapter has been hampered due to lack of administrative penalties and the reluctance of the public prosecutor to prosecute violators. Furthermore, the commission merchant surety bond requirement is set by statute at a level too low to offer adequate protection to claimants. Strengthening the law in these areas would improve its enforceability and offer increased protection for Hawaii's farmers.

The penalty clause for late renewal of license is not applied to all classes of business and should be amended for equity in applying the law.

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

"§145-2 Licenses. No person shall act as 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,] rule, 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, or retail merchant refuse, fail, or neglect to apply for the renewal of a preexisting 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 145-4, Hawaii Revised Statutes, is amended to read as follows:

"§145-4 Bonding of commission merchant. Before any license is issued to any commission merchant, the applicant shall execute and deliver to the department [of agriculture] a surety bond in the [sum of \$3,000] amount specified in the rules of the department, but not to exceed \$10,000, executed by the applicant as principal and by a surety company qualified and authorized to do business in the State as surety. The bond shall be conditioned upon compliance with this chapter and upon the faithful and honest handling of farm products in accordance with this chapter. The bond shall be to the State in favor of every producer-consignor of farm products grown within the State. Any producer-consignor of farm products grown within the State claiming to be injured by the fraud, deceit, or wilful negligence of any commission merchant may bring action upon the bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud, deceit, or wilful negligence, or the failure to comply with this chapter. In case of failure by a commission merchant to pay producer-consignor creditors for farm products received from the consignors to be sold, the department shall proceed forthwith to ascertain the names and addresses of all consignor creditors of the commission merchant, together with the amounts due and owing to them and each of them by the commission merchant, and shall request all the consignor creditors to file a verified statement of their respective claims with the department. The request shall be addressed to each known consignor creditor at his last known address. If a consignor creditor so addressed fails, refuses, or neglects to file in the office of the department his verified claim as requested by the department within ninety days from the date of such request, the department shall thereupon be relieved of further duty or action hereunder on behalf of the consignor creditor.

Upon ascertaining all claims and statements in the manner herein set forth, the department may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise the claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. Upon the refusal of the surety company to pay demand, the department shall thereupon bring an action on the bond in behalf of the consignor creditors. Upon any action being commenced on the bond, the department may require the filing of a new bond and immediately upon the recovery in any action on the bond such commission merchant shall file a new bond and upon failure to file the same within ten days in either case, such failure shall constitute ground for the suspension or revocation of his license."

SECTION 4. Section 145-10, Hawaii Revised Statutes, is amended to read as follows:

"§145-10 [Revocation or suspension of license.] Administrative penalties. (a) The department [of agriculture] may, after notice and hearing, revoke or suspend any license issued under this chapter for any violation of this chapter.

(b) The department may, after notice and hearing, fine any person who violates this chapter or any rule adopted under this chapter, not more than \$5,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 6. This Act shall take effect upon its approval; except that the level of the surety bond for commission merchants in Section 145-4, Hawaii Revised Statutes, shall remain at \$3,000 for 180 days after approval or until a new level can be established by rules of the department of agriculture, whichever comes first.

(Approved June 11, 1983.)