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### **Amending Article 4 of Chapter 7, Colorado Revised Statutes 1963, as Amended, Concerning Commission Merchants, Dealers, and Brokers.**

Colorado General Assembly

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## CHAPTER 43

## AGRICULTURE II — PRODUCTS AND MARKETING

## COMMISSION MERCHANTS, BROKERS, AND DEALERS

(House Bill) No. 1343. By Representatives Porter, Baer, Massari, McNeill, Neal, and Quinlan; also Senators Rockwell, Anderson, and Denny.)

## A N A C T

AMENDING ARTICLE 4 OF CHAPTER 7, COLORADO REVISED STATUTES 1963, AS AMENDED, CONCERNING COMMISSION MERCHANTS, DEALERS, AND BROKERS.

*Be it enacted by the General Assembly of the State of Colorado:*

Section 1. 7-4-1 (3) and (8), Colorado Revised Statutes 1963, as amended, are amended, and the said 7-4-1 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

7-4-1. Definitions.—(3) The term “farm produce” or “farm products” shall include all agricultural, horticultural, viticultural, fruit and vegetable products of the soil, livestock and livestock products, MILK, and honey, but shall not include poultry and poultry products, or timber products, ~~milk and milk products~~. OR NURSERY STOCK.

(8) The term “dealer” means any person engaged in the business of buying any farm produce from the owner for PROCESSING OR resale, AND ANY PERSON ENGAGED IN THE BUSINESS OF RECEIVING AND TAKING POSSESSION OF ANY FARM PRODUCE FROM THE OWNER FOR STORAGE OR SAFE KEEPING; but the term “dealer” shall not include bona fide retail grocery merchants; ~~or processors or manufacturers of farm products other than livestock acquired on the hoof, having a fixed or established place of business in this state.~~

(12) The term “processing” means the operation of grading, packing, packaging, drying, canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of, farm produce for the purpose of reselling the product.

Section 2. 7-4-2 (1) (e), Colorado Revised Statutes 1963, is amended to read:

7-4-2. Exemptions.—(1) (e) Any person engaged in business ~~as or by a common carrier in interstate commerce~~ OF TRANSPORTATION ONLY AND OPERATING UNDER AUTHORITY ISSUED BY THE INTERSTATE COMMERCE COMMISSION, OR PRIVATE CARRIERS OPERATING INTRASTATE UNDER PUBLIC UTILITIES COMMISSION

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

AUTHORITY, AND WHO IS NOT OTHERWISE ENGAGED AS COMMISSION MERCHANT, DEALER, BROKER, OR AGENT, AS DEFINED IN THIS ARTICLE.

Section 3. 7-4-4 (3), Colorado Revised Statutes 1963, is amended to read:

7-4-4. Fees—renewal license.—(3) Any person adjudged a bankrupt, or any person against whose bondsman or bondsmen a claim or claims have been collected by the commissioner in accordance with the provisions of section 7-4-6 THIS ARTICLE, shall not be licensed by the commissioner during the period of three years from the date of such adjudication or collection, EXCEPT THAT THE COMMISSIONER MAY, IN HIS DISCRETION AND CONSISTENT WITH THE PURPOSES OF THIS ARTICLE, ISSUE A TEMPORARY LICENSE TO SUCH PERSON FOR SUCH PERIOD AND SUBJECT TO SUCH RESTRICTIONS AS THE COMMISSIONER DEEMS REASONABLE AND NECESSARY. Any licensee who has a verified complaint pending against him with the commissioner shall not be issued a renewal license until the complaint has been settled to the satisfaction of the commissioner.

Section 4. 7-4-5 (6) (b), (c), (d), and (e), Colorado Revised Statutes 1963, as amended, are amended to read:

7-4-5. Commission merchants', dealers', and brokers' bonds—exemptions.—(6) (b) The bond shall be conditioned upon the compliance with the provisions of this article and upon the faithful and honest handling of farm products in accordance with the terms of this article, and for any and all inspection fees due the people of the state of Colorado by the said dealer and for all costs and reasonable attorney fees, incident to suit upon said bond. Said bond shall be to the state in favor of every producer, ~~or~~ dealer, OR BROKER of farm products within the state of Colorado.

(c) Any producer, ~~or~~ dealer, OR BROKER of farm products within the state of Colorado claiming to be injured by the fraud, deceit, or willful negligence of any dealer OR BROKER may bring action, through the commissioner, for collection against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud, deceit, or willful negligence, or the failure to comply with the provisions of this article.

(d) In case of failure by a dealer or broker to pay a producer, ~~or~~ dealer, OR BROKER, OR ACCOUNT TO HIM for farm products received from said producer, ~~or~~ dealer, OR BROKER, the commissioner shall proceed forthwith to ascertain the names and addresses of all producers, dealers, or brokers, together with the accounts UNACCOUNTED FOR OR due and owing to them and each of them by such dealer or broker, and shall request all such producers, ~~or~~ dealers, OR BROKERS to file a verified statement of their respective claims with the commissioner. Such request shall be addressed to each known producer, ~~or~~ dealer, OR BROKER at his last known address. If a producer, ~~or~~ dealer, OR BROKER so addressed fails, refuses, or neglects to file in the office of the commissioner within six months from the date of such request, the commissioner shall thereupon be relieved of further duty or action hereunder on behalf of said producer, ~~or~~ dealer, OR BROKER. Where, by reason of the absence of records or other circumstances making it impossible or unreasonable for the commissioner to ascertain the names and addresses of all said producers, ~~or~~ dealers OR BROKERS, the commissioner, after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of informa-

tion then in his possession, and thereafter shall not be liable or responsible for the claims or the handling of claims which may subsequently appear or be discovered. Upon ascertaining of all claims, assessments, and statements in the manner herein set forth, the commissioner 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 said 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 the demand, the commissioner shall thereupon bring an action on the bond in behalf of said producer, ~~or~~ dealer, OR BROKER.

(e) Upon any action being commenced on said bond, the commissioner may require the filing of a new bond, and immediately upon the recovery in any action on such bond such dealer or broker, shall file a new bond, and upon failure to file the same within ten days in either case, such failure shall constitute grounds for the suspension or revocation of his license.

Section 5. 7-4-6 (1) and (2), Colorado Revised Statutes 1963, are amended to read:

**7-4-6. Investigations and examinations.**—(1) For the purpose of enforcing the provisions of this article, the commissioner is authorized to receive verified complaints from producers against any commission merchant, dealer, broker, or agent or any person, assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to said complaint. At all times the commissioner shall have free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities in which any produce is kept, stored, handled, PROCESSED, or transported. He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles, or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and upon proper showing, the court may enter an order compelling the witness to appear and testify, or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court. Copies of records, inspection certificates, certified reports, findings, and all papers on file in the office of the commissioner shall be prima facie evidence of the matters therein contained.

(2) The commissioner on his own motion may, or upon the verified complaint of an interested party shall, investigate, examine, or inspect any transaction involving solicitation, receipt, sale, or attempted sale of farm products by any persons acting or assuming to act as a commission merchant, dealer, broker, or agent; failure to make proper and true account of sales OR STORAGE and settlement thereof as in this article required; the intentional making of false statements as to condition, and quantity of any farm products received or in storage; the intentional making of false statements as to market conditions; failure to make payment for farm products within the time required by this article; or investigate, examine, or inspect any and all other injurious transactions, and in furtherance of any such investigation, examination, or inspection, the commissioner or any authorized representative, may examine that portion of the ledgers, books, accounts, memoranda, and other documents, farm products, scales, measures, and other articles and things in connection with the business of such person relating to the transactions involved.

Section 6. 7-4-9 (1) (c), Colorado Revised Statutes 1963, is amended to read:

**7-4-9. Denial or revocation of license.**—(1) (c) That the applicant, or licensee, has failed or refused to render a true account of sales OR STORAGE or to make a settlement thereon, or to pay for farm products received within the time and in the manner required by this article;

Section 7. 7-4-15 (1) (a), Colorado Revised Statutes 1963, is amended, and 7-4-15 (1), is further amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**7-4-15. Penalties.**—(1) (a) Any person is guilty of a misdemeanor and is punishable by a fine of NOT LESS THAN ONE HUNDRED DOLLARS AND not more than five hundred dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, who acts as a commission merchant, dealer, broker, or agent without a license, or who:

(i) Acts as or engages in the business of commission merchant, dealer, broker, or agent without having obtained a license or without having executed and delivered a surety bond as provided in this article.

Section 8. **Repeal.**—7-4-2 (1) (b), and (c), and 7-4-15 (1) (c), Colorado Revised Statutes 1963, are repealed.

Section 9. **Effective date.**—This act shall take effect July 1, 1969.

Section 10. **Safety clause.**—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 1969