

**CHAPTER 917**

**H.B. No. 1803**

An Act relating to the handling and marketing of certain fruits and vegetables and the payment of claims against certain persons licensed to handle those fruits or vegetables; providing penalties.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subsection (b), Section 101.003, Agriculture Code, is amended to read as follows:

(b) This section does not apply to:

(1) a retailer, unless the retailer:

(A) ~~[(1)]~~ has annual sales of vegetables and citrus fruit that comprise 75 percent or more of the retailer's total sales; or

(B) ~~[(2)]~~ employs a buying agent who buys directly from a producer; or  
(2) a producer who handles or deals exclusively in the producer's own products.

**SECTION 2.** Sections 101.004, 101.005, and 101.006, Agriculture Code, are amended to read as follows:

**Sec. 101.004. LICENSE CATEGORIES.** (a) A person who is required by Section 101.003 of this code to be licensed shall apply to the department for licensing in the category described by this section that is appropriate to the actions of the person.

(b) ~~Unless the person's actions are described by another subsection of this section, a person shall apply for licensing as a dealer.~~

~~[(c) A person shall apply for licensing as a handler if the person buys or ships vegetables for canning, handling, or processing.~~

~~[(d)] A person shall apply for licensing as a commission merchant if the person:~~

(1) purchases vegetables on credit;

(2) takes possession of vegetables for consignment or handling on behalf of the producer or owner of the vegetables; or

(3) takes possession of vegetables for consignment or handling in a manner that does not require or result in payment to the producer, seller, or consignor of the full amount of the purchase price in United States currency at the time of delivery or at the time that the vegetables pass from the producer, seller, or consignor to the person.

(c) ~~[(e)]~~ A person shall apply for licensing as a cash ~~[vegetable]~~ dealer if the person:

~~[(1)]~~ purchases vegetables ~~[only from a licensee;]~~ and

~~[(2)]~~ pays for the vegetables in United States currency before or at the time of delivery or taking possession.

(d) A person shall apply for licensing as a retailer if the person:

(1) has annual sales of vegetables and citrus fruit that comprise 75 percent or more of the retailer's total sales; or

(2) employs a buying agent who buys directly from a producer.

**Sec. 101.005. APPLICATION FOR LICENSE.** (a) A person required under Section 101.003 of this code to be licensed shall apply for a license to the department on a form furnished by the department. The application must be made under oath and contain the following information:

(1) the full name of the applicant and whether the applicant is an individual, partnership, corporation, exchange, or association;

(2) the full name and address of the principal business office of the applicant;

(3) the address of the applicant's principal business office in this state;

(4) if the applicant is a foreign corporation, the state in which the corporation is chartered and the name and address of an agent in this state for service of legal process; ~~and~~

(5) the length of time that the applicant has been engaged in business in this state; and

(6) the category of license for which the applicant is applying.

(b) In addition to providing the information under Subsection (a) of this section, each applicant shall answer the following questions on the application:

(1) "Have you previously been licensed in this state to handle vegetables?"

(2) "If you answered that you have been previously licensed, has any license issued to you in this state ever been suspended or revoked?"

(3) "If you have answered that a license issued to you in this state has been suspended or revoked, when, where, and for what reason was the license suspended or revoked?"

~~[(c) A person applying for a license as a cash dealer must indicate in the application that a cash dealer license is applied for.]~~

**Sec. 101.006. LICENSE FEE.** (a) Except as otherwise provided by this section, a person applying for a license shall include with the license application a license fee of \$75.

(b) ~~[A producer is not required to pay a license fee in order to be licensed as a dealer or handler if the producer handles or deals exclusively in the producer's own product.]~~

~~(e)~~ The license fee for a cash ~~vegetable~~ dealer is \$25.

~~(c)~~ ~~(d)~~ Except as otherwise provided by this section, a person who applies for a license as a commission merchant or retailer under both this chapter and Chapter 102 of this code is entitled to pay a single license fee of \$75. The person's license shall reflect that the person is licensed to handle both citrus fruit and vegetables.

~~(d)~~ ~~(e)~~ A person who applies for a license under Subsection ~~(b)~~ ~~(e)~~ of this section a subsection ~~(b)~~ ~~(e)~~ of Section 102.006 of this code is entitled to pay a single license fee of \$25. The person's license shall reflect that the person is licensed to handle both citrus fruit and vegetables.

SECTION 3. Section 101.008, Agriculture Code, is amended by adding Subsection (c) to read as follows:

*(c) To renew a license after the license has expired, the applicant must pay a late fee of \$25 per day for each day after the expiration date of the license. A late fee under this subsection may not exceed \$500.*

SECTION 4. Subsection (a), Section 101.010, Agriculture Code, is amended to read as follows:

(a) In accordance with the rules of the department, a person licensed as a commission merchant or retailer ~~licensee~~ may apply to the department for a reasonable number of identification cards for:

- (1) transporting agents to act for the licensee in the transporting of vegetables; and
- (2) buying agents to act for the licensee in any act requiring licensing under Section 101.003 of this code.

SECTION 5. Subsection (a), Section 101.020, Agriculture Code, is amended to read as follows:

- (a) A person commits an offense if the person:
- (1) acts in violation of Section 101.003 of this code without first obtaining a license or after receiving notice of cancellation of a license;
  - (2) acts or assumes to act as a commission merchant without first obtaining a license as a commission merchant;
  - (3) acts or assumes to act as a transporting agent or buying agent without first obtaining an identification card;
  - (4) as a transporting agent or buying agent, fails and refuses to turn over to the department an identification card in accordance with Section 101.010~~(e)~~ of this code;
  - (5) as a licensee, fails to furnish information under Section 101.017 of this code before the 11th day following the date of demand;
  - (6) as a licensee, fails to settle with a producer or seller on the grade and quality of vegetables in the manner provided by Section 101.015 of this code;
  - (7) as a cash ~~vegetable~~ dealer, pays for vegetables by a means other than United States currency; ~~or~~
  - (8) as a licensee, transporting agent, or buying agent, violates a provision of this chapter;
  - (9) acts or assumes to act as a retailer without first obtaining a license as a retailer; or
  - (10) acts or assumes to act as a cash dealer without first obtaining a license as a cash dealer.

SECTION 6. Subsection (b), Section 102.003, Agriculture Code, is amended to read as follows:

- (b) This section does not apply to:
- (1) a retailer, unless the retailer:
    - (A) has annual sales of citrus fruit and vegetables that comprise 75 percent or more of the retailer's total sales; or
    - (B) employs a buying agent who buys directly from a producer;
  - (2) a person shipping less than six standard boxes of citrus fruit in any one separate shipment; ~~or~~
  - (3) a person who ships a noncommercial shipment of citrus fruit; or
  - (4) a producer who handles or deals exclusively in the producer's own products.

SECTION 7. Sections 102.004 and 102.006, Agriculture Code, are amended to read as follows:

Sec. 102.004. LICENSE CATEGORIES. (a) A person who is required by Section 102.003 of this code to be licensed shall apply to the department for licensing in the category described by this section that is appropriate to the actions of the person.

(b) ~~Unless the person's actions are described by another subsection of this section, a person shall apply for licensing as a dealer.~~

~~(c) A person shall apply for licensing as a handler if the person buys or ships citrus fruit for canning or processing.~~

~~(d)~~ A person shall apply for licensing as a commission merchant if the person:

- (1) purchases citrus fruit on credit;
- (2) takes possession of citrus fruit for consignment or handling on behalf of the producer or owner of the fruit; or
- (3) takes possession of citrus fruit for consignment or handling in a manner or under a contract that does not require or result in payment to the producer, seller, or consignor of the full amount of the purchase price in United States currency at the time of delivery or at the time the citrus fruit passes from the producer or seller to the person.

~~(c)~~ ~~(e)~~ A person shall apply for licensing as a cash ~~[citrus]~~ dealer if the person:

- ~~(1)~~ purchases citrus fruit ~~[only from a licensee;~~
- ~~(2)~~ receives the citrus fruit ~~at the licensee's place of business;]~~ and
- ~~(3)~~ pays for the citrus fruit in United States currency before or at the time of delivery or taking possession.

~~(d)~~ A person shall apply for licensing as a retailer if the person:

- (1) has annual sales of citrus fruit and vegetables that comprise 75 percent or more of the retailer's total sales; or
- (2) employs a buying agent who buys directly from a producer.

Sec. 102.006. LICENSE FEE. (a) Except as otherwise provided by this section, a person applying for a license shall include with the license application a license fee of \$75.

~~(b) [A citrus grower is not required to pay a license fee in order to be licensed to handle the grower's citrus fruit if the grower:~~

- ~~(1) handles and markets only citrus fruit grown by that grower; and~~
- ~~(2) handles 1,000 or fewer standard boxes, or the equivalent, during a 12-month period.~~

~~(e)~~ The license fee for a cash ~~[citrus]~~ dealer is \$25.

~~(c)~~ ~~(d)~~ Except as otherwise provided by this section, a person who applies for a license as a commission merchant or retailer under both this chapter and Chapter 101 of this code is entitled to pay a single license fee of \$75. The person's license shall reflect that the person is licensed to handle both citrus fruit and vegetables.

~~(d)~~ ~~(e)~~ A person who applies for a license under Subsection ~~(b)~~ ~~(e)~~ of this section a subsection ~~(b)~~ ~~(e)~~ of Section 101.006 of this code is entitled to pay a single license fee of \$25. The person's license shall reflect that the person is licensed to handle both citrus fruit and vegetables.

**SECTION 8.** Section 102.008, Agriculture Code, is amended by adding Subsection (c) to read as follows:

*(c) To renew a license after the license has expired, the applicant must pay a late fee of \$25 per day for each day after the expiration date of the license. A late fee under this subsection may not exceed \$500.*

**SECTION 9.** Subsection (a), Section 102.010, Agriculture Code, is amended to read as follows:

(a) In accordance with the rules of the department, a person licensed as a commission merchant or retailer ~~[licensee]~~ may apply to the department for a reasonable number of identification cards for:

- (1) transporting agents to act for the licensee in the transporting of citrus fruits; and
- (2) buying agents to act for the licensee in any act requiring licensing under Section 102.003 of this code.

**SECTION 10.** Subsection (a), Section 102.021, Agriculture Code, is amended to read as follows:

(a) A person commits an offense if the person:

- (1) acts in violation of Section 102.003 of this code without a license or after receiving notice of cancellation of a license;
- (2) acts or assumes to act as a commission merchant without a license as a commission merchant;
- (3) acts or assumes to act as a transporting agent or buying agent without an identification card or after receiving notice of cancellation of an identification card;

(4) as a transporting agent or buying agent, fails and refuses to turn over to the department an identification card in accordance with Section 102.010(e) of this code;

(5) as a licensee, fails to furnish information under Section 102.018 of this code before the 11th day following the date of demand;

(6) as a licensee, buys citrus fruit by weight and does not have the fruit weighed on state-tested scales;

(7) as a licensee, fails to settle with a producer or seller on the grade and quality of citrus fruit in the manner provided by Section 102.015 of this code;

(8) as a cash [~~citrus~~] dealer, pays for citrus fruit by a means other than United States currency;

(9) fails to maintain records required by Section 102.017(b) of this code; [~~or~~]

(10) as a licensee, transporting agent, or buying agent, violates a provision of this subchapter;

(11) acts or assumes to act as a retailer without a license as a retailer; or

(12) acts or assumes to act as a cash dealer without a license as a cash dealer.

**SECTION 11.** Subsections (a) and (b), Section 103.002, Agriculture Code, is amended to read as follows:

(a) The produce recovery fund is a special trust fund with the state treasurer administered by the department, without appropriation, for the payment of claims against commission merchants and retailers licensed under Chapter 101 or 102 of this code.

(b) Fees collected under Section 101.008, 102.008, or 103.011 of this code and 50 percent of the fines collected under Section 101.020, 102.021, or 103.013 of this code shall be deposited in the fund.

**SECTION 12.** Subsection (a), Section 103.003, Agriculture Code, is amended to read as follows:

(a) The Produce Recovery Fund Board is composed of six members appointed by the governor with the advice and consent of the senate. Two members must be producers, two must be commission merchants or retailers licensed under Chapter 101 or 102 of this code, and two must be members of the general public.

**SECTION 13.** Section 103.005, Agriculture Code, is amended to read as follows:

Sec. 103.005. INITIATION OF CLAIM. A person who deals with a commission merchant or retailer licensed under Chapter 101 or 102 of this code in the purchasing, handling, selling, and accounting for sales of vegetables or citrus fruit and who is aggrieved by an action of the commission merchant or retailer as a result of a violation of terms or conditions of a contract made by the commission merchant or retailer may initiate a claim against the fund by filing with the department:

(1) a sworn complaint against the commission merchant or retailer; and

(2) a filing fee of \$15.

**SECTION 14.** Subsection (a), Section 103.006, Agriculture Code, is amended to read as follows:

(a) After a claim is initiated, the department shall investigate the complaint and determine the amount due the aggrieved party. If the amount determined by the department is disputed by the commission merchant or retailer or the aggrieved party, the board shall conduct a hearing on the claim and determine the amount due the aggrieved party.

**SECTION 15.** Sections 103.007, 103.008, 103.009, and 103.010, Agriculture Code, are amended to read as follows:

Sec. 103.007. PAYMENT OF CLAIM [~~; REFUND OF FILING FEE~~]. (a) If the amount determined by the department's investigation to be due the aggrieved party is not disputed by the commission merchant or retailer or the aggrieved party, the department shall pay the claim within the limits prescribed by this chapter.

(b) If a hearing is held on a disputed amount, the department shall pay to the aggrieved party the amount determined by the board, within the limits prescribed by this chapter.

~~[(e) The department shall refund the filing fee to an aggrieved party who is awarded recovery from the fund.]~~

Sec. 103.008. LIMITS ON CLAIM PAYMENTS. (a) In making payments from the fund the department may not pay the aggrieved party more than 60 percent of any claim for more than \$1,000 [~~\$100~~].

(b) The total payment of all claims arising from the same transaction may not exceed \$20,000 [~~\$10,000~~].

(c) The total payment of claims against a single commission merchant *or retailer* not exceed \$50,000 [~~\$25,000~~] in any one year.

(d) The department may not pay a claim against:

(1) a commission merchant *or retailer* who was not licensed at the time of the transaction on which the claim is based; or

(2) a cash dealer licensed under Chapter 101 or 102 of this code.

(e) Payments from the fund during a fiscal year may not exceed the amount of money deposited into the fund during that fiscal year, except that surplus funds remaining at the end of each fiscal year are available for the payment of claims during any succeeding year.

Sec. 103.009. REIMBURSEMENT OF FUND AND PAYMENT TO COMPLAINING PARTY BY LICENSEE [~~COMMISSION MERCHANT~~]. (a) If the department pays a claim against a commission merchant *or retailer*, the commission merchant *or retailer* shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the department; and

(2) immediately pay the aggrieved party any amount due that party or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the department.

(b) Payments made to the fund or to the aggrieved party under this section shall include interest at the rate of eight percent a year.

(c) If the commission merchant *or retailer* does not reimburse the fund or pay the aggrieved party, or does not agree to do so, in accordance with this section, the department shall issue an order canceling the [~~commission merchant's~~] license of the commission merchant *or retailer* and may not issue a new license to that person for four years from the date of cancellation. If the commission merchant *or retailer* is a corporation, an officer or director of the corporation or a person owning more than 25 percent of the stock in the corporation may not be licensed as a commission merchant *or retailer* under Chapter 101 or 102 of this code during the four-year period in which the corporation is ineligible for licensing.

Sec. 103.010. SUBROGATION OF RIGHTS. If the department pays a claim against a commission merchant *or retailer*, the department is subrogated to all rights of the aggrieved party against the commission merchant *or retailer* to the extent of the amount paid to the aggrieved party.

**SECTION 16.** Subsection (a), Section 103.013, Agriculture Code, is amended to read as follows:

(a) A person commits an offense if the person acts or assumes to act as a commission merchant *or retailer* under Chapter 101 or 102 of this code without first paying the fee required by this chapter.

**SECTION 17.** Subsection (c), Section 101.008, and Subsection (c), Section 102.008, Agriculture Code, as added by this Act, apply only to the renewal of a license that expires on or after the effective date of this Act. A license that expired before the effective date of this Act is subject to the law in effect when the license expired, and the former law is continued in effect for that purpose.

**SECTION 18.** This Act takes effect September 1, 1985.

**SECTION 19.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 17, 1985, by a non-record vote; passed by the Senate on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: September 1, 1985