

**"CHAPTER 145
REGULATION OF FARM PRODUCE**

Part I. Regulation of Dealers

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Note

Chapter heading amended by L 1999, c 186, §3.

"PART I. REGULATION OF DEALERS

Note

Sections 145-1 to 145-15 designated as Part I by L 1999, c 186, §4.

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

"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.

"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.

"Commission merchant" means any person who receives on consignment or solicits from the producer thereof any farm product 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.

"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.

"Consumer" means any person purchasing farm products for the person's own family use or consumption.

"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.

"Department" means the department of agriculture.

"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) sugarcane or sugarcane products; or (4) pineapple or pineapple products, other than fresh pineapple purchased from a producer for resale in its natural state.

"Processed" means to can, preserve, freeze, pickle, dry, or otherwise prepare with or without added ingredients.

"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.

"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.

"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. [L 1951, c 74, pt of §1; am L 1955, c 99, §1; RL 1955, §23-1; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-1; am L 1972, c 39, §1; gen ch 1985]

Revision Note

Definitions rearranged.

" **§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 of the department.

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

- (1) Commission merchants and brokers: 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, agent, 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. [L 1951, c 74, pt of §1; RL 1955, §23-2; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-2; am L 1972, c 39, §2; am L 1983, c 258, §2; am L 1984, c 116, §1]

" **§145-3 Records.** Every produce dealer shall keep a record of each lot, shipment, or consignment of farm produce received

or taken by the produce dealer, which shall be in such form and in such detail as may be prescribed by the department of agriculture. [L 1951, c 74, pt of §1; RL 1955, §23-3; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-3; gen ch 1985]

" **§145-4 Bonding of commission merchant and broker.** Before any license is issued to any commission merchant or broker, the applicant shall execute and deliver to the department a surety bond in the 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 this State as surety. The bond shall be conditioned upon compliance with this chapter and upon the faithful and honest handling or negotiation of the purchase or sale 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 or broker 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 or failure by a broker to pay producer-consignor creditors for farm products delivered to and paid for by a buyer as a result of a negotiated sale by the broker on behalf of the producer, the department shall proceed forthwith to ascertain the names and addresses of all producer-consignor creditors of the commission merchant or broker, together with the amounts due and owing to them and each of them by the commission merchant or broker, and shall request all the producer-consignor creditors to file a verified statement of their respective claims with the department. The request shall be addressed to each known producer-consignor creditor at its last known address. If a producer-consignor creditor so addressed fails, refuses, or neglects to file in the office of the department its 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 producer-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 producer-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 or broker 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 the commission merchant's or broker's license. [L 1951, c 74, pt of §1; RL 1955, §23-4; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-4; am L 1983, c 258, §3; am L 1984, c 116, §2; gen ch 1985]

" **§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. [L 1951, c 74, pt of §1; RL 1955, §23-5; HRS §145-5; am L 1972, c 39, §3]

" **§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. [L 1951, c 74, pt of §1; RL 1955, §23-6; HRS §145-6; am L 1972, c 39, §4]

" **§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. [L 1951, c

74, pt of §1; RL 1955, §23-7; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-7; am L 1972, c 39, §5]

Case Notes

Cited: 46 H. 292, 307, 380 P.2d 156.

" **§145-8 Duty of department.** The department of agriculture shall administer and enforce this chapter. [L 1951, c 74, pt of §1; RL 1955, §23-8; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-8]

" **§145-9 Complaints and investigations.** The department of agriculture may receive verified complaints from any producer against any commission merchant, dealer, broker, agent, processor, or retail merchant or any person assuming or attempting to act as such and upon receipt of the verified complaint may make any and all necessary investigations relative to the complaint. In conducting any investigation, the department or its authorized agent may examine any ledgers, books, accounts, memoranda, and other documents, farm produce, scales, measures, and any other articles and things used in connection with the business of the person of whom the complaint has been made. [L 1951, c 74, pt of §1; RL 1955, §23-9; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-9]

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

(b) The department may, after notice and opportunity for 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. [L 1951, c 74, pt of §1; RL 1955, §23-10; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §145-10; am L 1983, c 258, §4; am L 1985, c 110, §1]

Cross References

Administrative procedure, see chapter 91.

" **§145-11 Nuisance may be enjoined, abated.** Violation of this chapter is declared a public nuisance and may be enjoined

or abated in like manner as other public nuisances. [L 1951, c 74, pt of §1; RL 1955, §23-11; HRS §145-11]

Rules of Court

Injunction, see HRCF rule 65.

" **§145-12 Misdemeanor.** Any person who violates this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both. [L 1951, c 74, pt of §1; RL 1955, §23-12; HRS §145-12]

" **§145-13 Remedies and penalties not exclusive.** The penalties and remedies provided in this chapter with respect to any violation of this chapter shall not be deemed exclusive of each other or of any other civil or criminal rights, remedies, or penalties provided or allowed by law with respect to any such violation. [L 1951, c 74, pt of §1; RL 1955, §23-13; HRS §145-13]

" **§145-14 Disposition of fees and charges.** All fees, charges, expenses, and other moneys collected pursuant to this chapter shall be deposited with the state director of finance to the credit of the general fund. [L 1951, c 74, pt of §1; RL 1955, §23-14; am L 1963, c 114, §1 and c 193, §13; HRS §145-14]

" **[§145-15] Rules and regulations.** The department shall have the necessary powers to make rules and regulations as may be necessary to carry out the intent and purpose of this chapter, including but not limited to the following:

- (1) Definition of terms;
- (2) Establishing licensing requirements, licensing fees, bonding requirements and bonding procedures;
- (3) Establishing criteria and limitations on claims for credit due to loss or dumping of farm products;
- (4) Providing for the department on its own motion or upon the verified complaint of any interested party, to conduct investigations, audit records and conduct hearings;
- (5) Providing for the denial, revocation or suspension of licenses. [L 1971, c 103, §1]

"PART II. OWNERSHIP AND MOVEMENT OF AGRICULTURAL COMMODITIES

§145-21 Definitions. For purposes of this part:

"Agricultural commodity" means any fruit, nut, or vegetable that is the food product of any tree, vine, or plant, or any aquacultural, horticultural, silvicultural, or floricultural product.

"Person" means any individual, firm, corporation, partnership, or association. [L 1999, c 186, pt of §2; am L 2003, c 20, §1]

" **§145-22 Agricultural commodities; ownership and movement certification.** (a) Every person, upon sale of any agricultural commodity or upon transportation of lots of any agricultural commodity of more than two hundred pounds or with a value of at least \$100 that is marketed for commercial purposes, shall complete a certificate describing the commodity, the amount and value of the commodity, and shall include:

- (1) The seller's name, residence address, telephone number, and license plate number of any vehicle used by the seller to deliver the commodity to the place of purchase;
- (2) The name of the farm owner and address of origin;
- (3) The name of the buyer or consignee, and destination; and
- (4) The signature of the seller and, upon sale, the signature of the buyer or consignee.

(b) Prior to completing the certificate, the buyer or consignee shall also require the seller to verify the seller's identity by having the seller present a valid photo identification card or license issued to the seller by a federal or state government agency. If the commodity being offered for sale has a value of \$300 or more, the seller shall also provide the buyer with a photocopy of the identification card or license of the seller.

(c) No prospective buyer or consignee shall purchase an agricultural commodity from a seller if the seller does not provide a copy of the ownership and movement certification and verification as required by subsections (a) and (b). Every prospective buyer or consignee shall report an attempted sale that does not meet the requirements of subsections (a) and (b) to the police.

(d) Two copies of the certificate shall accompany the shipment, and one copy each shall be retained by the seller and the buyer or consignee. One of the copies of the certificate shall be presented upon request to a state or county law enforcement officer or other officer, employee, or any other person authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.

(e) This section shall not apply to the retail sale of an agricultural commodity to the final consumer. [L 1999, c 186, pt of §2; am L 2003, c 20, §2; am L 2012, c 125, §2]

" **§145-23 Lack of proof of ownership as a violation.** The failure of any person who sells, transports, or possesses after sale or transport, agricultural commodities to maintain a certificate of ownership or other written proof of ownership of the agricultural commodity, as described in section 145-22, is a violation of this part and also prima facie evidence of an offense under section 708-831(1)(e). [L 1999, c 186, pt of §2; am L 2003, c 20, §3; am L 2012, c 125, §3]

" **[§145-24] Authorization to inspect.** Every law enforcement officer or other officer or employee as described in section 145-25 having probable cause to believe that the possession, sale, or transportation of agricultural commodities is unlawful, may take reasonable steps to detain the person having possession, selling, or transporting the agricultural commodities and request from the person being detained proof of ownership of the commodities. [L 1999, c 186, pt of §2]

" **§145-25 Enforcement; criminal penalties.** Violations of this part or any rule adopted pursuant thereto shall be criminal offenses as follows:

- (1) A violation in which the value of the agricultural commodity exceeds \$100 shall be a class C felony; and
- (2) A violation in which the value of the agricultural commodity is \$100 or less shall be a misdemeanor. [L 1999, c 186, pt of §2; am L 2003, c 20, §4; am L 2012, c 125, §4]

" **§145-26 REPEALED.** L 2012, c 125, §7.

" **§145-27 Authorization to seize and hold commodities; disposition.** (a) Upon reasonable belief that a person is in unlawful possession of agricultural commodities a law enforcement officer or other officer or employee shall be authorized to hold the agricultural commodity for not longer than forty-eight hours to investigate and ascertain the ownership of the agricultural commodity. If the lawful owner is determined and located, the agricultural, aquacultural, or horticultural commodity shall be released to the lawful owner.

(b) If for any reason the agricultural commodity is not released to the lawful owner after being in the custody of the law enforcement officer or other officer or employee for forty-

eight hours, or less in the case of highly perishable commodities, the commodity may be sold at fair market value to any retailer, wholesaler, or packer of the commodity. All of the proceeds derived from the sale shall be held by the law enforcement officer or other officer or employee for not longer than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The owner may be held responsible for any costs and expenses that may be incurred by the law enforcement officer or other officer or employee. Any proceeds of sale not recovered within six months for lack of a claim or for insufficient proof shall be treated as unclaimed property of the State.

(c) Any commodity that remains unsold after being offered for sale pursuant to this section may be donated to a nonprofit charitable organization or destroyed at the discretion of the law enforcement officer or other officer or employee.

(d) For the purposes of this section, "officer or employee" means any officer or employee of the department of agriculture or any other person authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto. [L 1999, c 186, pt of §2; am L 2012, c 125, §5]

" **§145-28 REPEALED.** L 2012, c 125, §8.