

No. 35

AN ACT

HB 612

Amending the act of May 27, 1937 (P.L.901, No.241), entitled "An act for the protection of producers of farm produce; providing for the licensing, the bonding or holding collateral of and the regulation of certain dealers in farm produce, as herein defined, within this Commonwealth; conferring powers, and imposing duties on the Department of Agriculture; providing for appeals and injunctions; and prescribing penalties," changing definitions, license dates, license fees and penalties, providing for hearing of complaints by the Department of Agriculture and for arbitration services by the department; and further providing for licenses, records and duties of the department.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1, act of May 27, 1937 (P.L.901, No.241), entitled "An act for the protection of producers of farm produce; providing for the licensing, the bonding or holding collateral of and the regulation of certain dealers in farm produce, as herein defined, within this Commonwealth; conferring powers, and imposing duties on the Department of Agriculture; providing for appeals and injunctions; and prescribing penalties," amended May 7, 1943 (P.L.204, No.105), is amended to read:

Section 1. Be it enacted, &c., That the following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) "Dealer in farm produce" means any person, association, copartnership or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange or transfer of any farm produce from the producer [**on consignment or on a net return basis**] **or his agent in wholesale or jobbing quantities.**

(b) "Department" means the Department of Agriculture of this Commonwealth.

(c) "Farm produce" includes all agricultural, horticultural, vegetable, fruit, and floriculture products of the soil; poultry, eggs, nuts, flowers, [**and**] honey, ***mushrooms and Christmas trees***, but shall not include timber products, tea, coffee, live stock, wool, ***grain***, milk or milk products.

(d) [**"Net return basis" means a purchase for sale of farm produce from a producer at an unfixd or unstated price at the time the produce is shipped from the point of origin, and it shall include all purchases made "at the market price," and on similar terms, which indicate that the buyer is the final arbiter of the price to be paid.**] "***Producer***" means any grower of farm produce in this Commonwealth for marketing.

(e) [**"On consignment" means a sending, transfer or delivery of farm produce by a producer to a dealer in farm produce, for the purpose of sale upon a commission basis.**] "***Wholesale***" or "***jobbing quantity***" means any

one unit of shipment, or purchase of farm produce, having a gross value of more than five hundred dollars (\$500).

[(f) "Producer" means any producer of farm produce in this Commonwealth.]

Section 2. Sections 2, 3, and 4 of the act are amended to read:

Section 2. The provisions of this act shall not apply to—

(a) The sale of farm produce for cash, cash to mean settlement in full, *in United States currency, certified check or United States postal money order*, on or before delivery;

(b) **[Farmers who sell farm produce raised by themselves, or who, at the time of such sales, sell farm produce raised by their neighbors on behalf of such neighbors;]** *Producers marketing farm produce of their own raising;*

(c) **[Seeds sold at retail;]** *Processors of farm produce when such shipments or purchases are covered by a written contract, duly signed by the producer;*

(d) **[Agricultural cooperative associations which market farm produce for their members.]** *Transactions subject to the provisions of the Federal "Perishable Agricultural Commodities Act of 1930."*

Section 3. **[On and after December thirty-first, one thousand nine hundred and thirty-seven, it]** *It* shall be unlawful for any dealer in farm produce to engage in business in this Commonwealth, unless he or it shall hold a license issued by the department as provided in this act.

Section 4. **[Every dealer]** *Dealers* in farm produce, desiring to transact business within this Commonwealth, shall annually on or before **[December first]** *April thirtieth*, file an application for such license with the department. The application shall be on a form furnished by the department, and, together with such other information as the department **[shall]** *may* require, shall state—

(a) The kind or kinds of farm produce which the applicant proposes to handle;

(b) The full name or title of the applicant, or if the applicant be an association or copartnership, the name of each member of such association or copartnership, or if the applicant be a corporation, the name of each officer of the corporation;

(c) The names of the local agent or agents of the applicant, if any;

(d) The cities, boroughs, towns, and townships within which places of business of the applicant will be located, together with the street or mailing address of each.

Section 3. Sections 5 and 7 of the act, amended May 7, 1943 (P.L.204, No.105), are amended to read:

Section 5. Unless the department refuses the application on one or more of the grounds hereinafter provided, it shall issue to such applicant, upon the payment of **[proper]** *required* fees, a license entitling the applicant to conduct business as a dealer in farm produce at each place named in the application. Such license shall **[be]** *continue* in force **[from the date issued**

until and including the thirty-first day of December of the same year] *until April thirtieth next following its date of issuance*. The fee for such license shall be [five dollars (\$5.00) for each place of business which the applicant conducts or names in the application] *twenty-five dollars (\$25.00)*.

Section 7. Every dealer in farm produce shall, upon the receipt of farm produce [for which payment is not made on delivery], and as he handles and disposes of the same, make and preserve for [at least two years] *a reasonable length of time* a record thereof, specifying the name and address of the producer, [consigning or shipping such farm produce] the date of receipt, *and* the kind and quality of such produce. [the amount of goods sold, the name and address of the purchaser, except that where sales total less than five dollars (\$5.00) in value, such sales may be made to order of "cash," the selling price thereof, and the items of expenses connected therewith. An "account sales," together with payment in settlement for said shipment, shall be mailed to the producer within forty-eight hours after the sale of such farm produce, unless otherwise agreed in writing.] *This record shall be prepared and maintained in such manner as to facilitate audit. Full payment shall be made to the producer promptly upon acceptance of farm produce. If the shipment is handled on consignment, joint account or net return basis, the record shall also give an accounting of the amount of goods sold, the selling price thereof, and the items of expenses connected therewith. Such an accounting of resale shall be furnished to the producer at or before time of final settlement.*

Section 4. Section 8 of the act is amended to read:

Section 8. The department shall have power to investigate upon complaint, in such form as it may require, of [an] *any financially* interested person or upon its own initiative, the record of any applicant or licensee, or any transaction involving the solicitation, receipt, sale or attempted sale of farm produce, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to [condition] *market conditions with intent to deceive, rejection of any farm produce without just cause, the making of false statements as to condition,* quality or quantity of goods received [or while in storage, the making of false statements as to market conditions with intent to deceive], or the failure to make payment for goods received, or other alleged [injurious transactions] *unethical practices*. For such purposes the department may examine, at the place or places of business of the applicant or licensee, his ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, and may take testimony thereon under oath.

Section 5. The act is amended by adding a section to read:

Section 8.1. Any person, or persons, complaining of any violation of any provision of section 8 by any dealer may at any time within one year after the alleged grievance occurs apply to the department by petition which shall briefly state the facts concerning such cause of complaint. Thereupon, if, in the opinion of the department, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded

by the department to the dealer complained of, who shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time, to be prescribed by the department.

Section 6. Section 9 of the act, amended May 7, 1943 (P.L.204, No.105), is amended to read:

Section 9. The department **[may] shall** decline to grant a license or **[may] shall** suspend or revoke a license already granted if it is satisfied that the applicant or licensee has either—

(1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied; or

(2) Made false charges for handling or *other* services rendered; or

(3) Failed to account promptly and properly, or to make settlements with any producer; or

(4) Made any false statement or statements as to condition, quality or quantity of goods received or held for sale when he could have ascertained the true condition, quality or quantity by reasonable inspection; or

(5) Made any false or misleading statement or statements as to market conditions **[or service rendered]**; or

(6) **[Been guilty of a fraud]** *Made any false statement or statements* in the application for or the procurement or the renewal of a license; or

(7) Directly or indirectly purchased farm produce received on consignment or on a net return basis for his own account, without prior authority, from the producer, consigning the same, or without notifying such producer; *or*

(8) Has rejected, dumped, discarded or destroyed any shipment of farm produce from the producer without just cause; or

(9) Has, within three years, been adjudicated or discharged as a bankrupt or was an officer, director, stockholder, partner or owner of a firm adjudicated or discharged as a bankrupt.

Section 7. Sections 10 and 11 of the act are amended to read:

Section 10. Before the department shall refuse, suspend or revoke any license it shall give ten days' notice, by registered mail, to the applicant or licensee of a time and place of hearing. At such hearing the applicant or licensee shall be privileged to appear in person or by or with counsel and to produce witnesses. If the department shall find the applicant or licensee shall have been guilty of any of the acts provided in section nine of this act, the department **[may] shall** refuse, suspend or revoke such license, and shall give immediate notice of its action to the applicant or licensee. *The department may at its discretion, grant a renewal of license, following revocation, if the applicant furnishes a bond of such nature, tenure and amount as may be determined by the secretary to offer adequate assurance that the business of the applicant will be conducted in accordance with the provisions of this act.*

Section 11. Any applicant or licensee aggrieved by any decision of the department, shall have the right of appeal therefrom, within thirty days from the date of notice, to the **[court of common pleas of Dauphin County.**

From a decision of the court of common pleas of Dauphin County an appeal may be taken by either party to the Superior or Supreme Court of Pennsylvania, as in other cases] *Commonwealth Court*.

No appeal shall act as a supersedeas, but pending final disposition of an appeal under this section, the department may, for special cause shown, grant, in writing, temporary permission, revocable at any time and subject to such terms and conditions as the department may prescribe, to transact business as a dealer in farm produce, but unless such permission be granted, any applicant to whom a license has been refused, and any licensee whose license has been revoked by the department, who shall do business as a dealer in farm produce, shall be liable therefor to the same extent as if no application had been filed.

Section 8. The act is amended by adding a section to read:

Section 11.1. Upon agreement, in writing, by the parties in dispute, the department may render arbitration services covering complaints wherein the amount claimed, exclusive of any sum not in dispute, does not exceed five hundred dollars (\$500.00). The department may require full settlement of the undisputed amount as a prerequisite to rendering such arbitration services.

Section 9. Section 12 of the act, amended May 7, 1943 (P.L.204, No.105), is amended to read:

Section 12. Any dealer in farm produce violating the provisions of section three of this act, or interfering with an agent of the department in the enforcement of this act, shall [for the first offense], upon conviction in a summary proceeding, be sentenced to pay a fine of not less than [fifty dollars (\$50.00)] *twenty-five dollars (\$25.00)* nor more than [three hundred dollars (\$300.00)] *two hundred dollars (\$200.00)* and costs of prosecution, and in default of payment of such fine and costs, shall be sentenced to undergo imprisonment in the county jail for a period not exceeding [sixty (60) days, and for a second or subsequent offense shall be guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000), or to undergo imprisonment not exceeding one year, or both, in the discretion of the court] *thirty (30) days*.

Section 10. Sections 13 and 14 of the act are amended to read:

Section 13. The Attorney General, at the request of the department, may, in the name of the Commonwealth, institute proceedings in equity in the [court of common pleas of Dauphin County] *Commonwealth Court* for the purpose of enjoining the conduct of business in this Commonwealth contrary to the provisions of this act, and for such purpose jurisdiction is hereby conferred upon said court. In such case the Attorney General shall not be required to give bond.

Section 14. The department shall [enforce] *adopt* and shall [adopt] *enforce* rules, and regulations deemed necessary to carry out the provisions of this act.

APPROVED—The 8th day of April, A. D. 1976.

MILTON J. SHAPP