

# BILL

No. 12 of 1927

An Act respecting the Duties of Agents in the Sale of  
Products of the Soil

(Assented to \_\_\_\_\_, 1927.)

**H**IS MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Alberta,  
enacts as follows:

**1.** This Act may be cited as "*The Sales on Consignment Act, 1927.*"

**2.** In this Act, unless the context otherwise requires, the expression—

- (a) "Consigned" shall mean shipped, consigned or entrusted to a mercantile agent for sale, re-consignment or other disposition;
- (b) "Consignment" shall mean a separate lot or shipment of products consigned;
- (c) "Mercantile Agent" shall include a broker or agent to negotiate and make contracts for the sale of products of which he is not entrusted with the possession or control; a factor or agent to sell or dispose of products of which he is entrusted with the possession or control; and shall include a jobber or person whose normal business is to buy or sell products in wholesale quantities when handling or disposing of products on commission, and an agent of a broker, factor or jobber.
- (d) "Minister" shall mean the Minister of Agriculture;
- (e) "Principal" shall mean a person whether within or without the Province, who ships, consigns or entrusts products to a mercantile agent within the Province, for sale, re-consignment or other disposition;
- (f) "Producer" shall include rancher, farmer, grower and market gardener;
- (g) "Products" shall mean—
  - (i) fruits and vegetables of all kinds and, without limiting the generality of the foregoing, include berries, grapes, tomatoes, melons and cucumbers;
  - (ii) any agricultural product or farm produce except milk, cream and grain, and except live stock when sold in a public stock yard in Alberta.

**3.—(1)** Every person who acts as, or holds himself out as a mercantile agent shall be deemed *prima facie* to be a mercantile agent and to come within the provisions of this Act.

(2) Where any person purchases any products from any producer and undertakes to pay the whole or any part of the purchase price out of the resale price, he shall be deemed to be a mercantile agent for the purpose of accounting and making payment to the producer; and for that purpose the producer shall be deemed to be a principal, and the products purchased shall be deemed to be a consignment.

(3) The rendering of an account of sales of products or other document indicating that the person rendering the same has acted in respect of products as an agent for the person to whom the same is rendered shall in all proceedings be *prima facie* evidence against the first mentioned person that he so acted as a mercantile agent.

4. This Act shall apply to every transaction between a principal and a mercantile agent, notwithstanding any agreement to the contrary; and any provision in a contract purporting to deprive a principal of the benefit of its provisions, or to relieve a mercantile agent from the duties, obligations or liabilities imposed by it, shall be void.

5. Every mercantile agent, whether acting for a principal within or without the Province, shall, in addition to all other legal duties, perform the duties prescribed in this Act.

6.—(1) Every mercantile agent shall—

- (a) give to each consignment an individual number, and cause the same to be placed upon all separate packages in the consignment and all documents and entries relating thereto in such a manner as to identify the same;
- (b) keep such books of account as will fully and truly exhibit and explain his transactions and financial position, including a book or books containing entries from day to day in sufficient detail of all products received, and of all moneys received and disbursed and statements of annual and other stock-takings;
- (c) make and keep such original or duplicate original receipts, invoices, vouchers, credit notes, account sales and other records as will truly explain and account for the disposition of each consignment;
- (d) keep a consignment record book, in which shall be entered the name and address of the principal, the nature, description and quantity of each consignment and particulars of each sale or other disposition.

(2) The books and records referred to in subsection (1) of this section shall be kept in legible characters and figures.

(3) For a period of six years after final report to his principal in respect of any consignment every mercantile agent shall keep at his usual place of business or at some other convenient place in the same municipality the books and records referred to in subsection (1) of this section.

(4) The books and records required by this section to be kept shall, as against the mercantile agent, be *prima facie* evidence of the facts and transactions therein recorded, set out or indicated.

7.—(1) If any consignment arrives in a damaged or deteriorated condition it shall be the duty of the mercantile agent forthwith—

- (a) to notify the principal of the fact, giving particulars of the quantities damaged or in a deteriorated condition, the apparent reduction in market value, and the apparent cause of the damage or deterioration; and
- (b) in the case of car-lot consignments, to notify the nearest inspector of the Dominion Department of Agriculture, giving the information required by paragraph (a).

(2) In the case of less than car-lot consignments this section shall be deemed to have been complied with if the information required by paragraph (a) of subsection (1) is given by an account of sales rendered within two days after the consignment is received.

(3) In every case in which the provisions of this section have not been complied with, it shall as against the mercantile agent be presumed *prima facie* that on the arrival of the consignment it was not in a damaged or deteriorated condition.

8. If on the last day of any month a portion of any consignment, received prior to the first day of that month, remains unsold or undisposed of, the mercantile agent shall within five days thereafter render to his principal an account in writing showing the then disposition of the products in the consignment, the amounts received therefor, and the quantities and condition of the different products on hand and undisposed of. Such account shall be rendered monthly while any products remain on hand or undisposed of.

9.—(1) Every mercantile agent shall within ten days after the sale or other final disposition of any consignment separately, accurately and fully account in writing to his principal for and with respect to the consignment. Such account shall include sufficient particulars of all sales made and of all losses, rebates, allowances, expenses, disbursements and deductions, the rates and amounts of commission charged and retained, and the amounts due and remitted to the principal.

(2) No fee, commission, remuneration or profit and no loss, rebate, allowance, expense, disbursement or other deduction not disclosed in writing to the principal shall be allowed to or be retainable by any mercantile agent; and the

amount of any fee, commission, remuneration, profit, loss, rebate, allowance, expense, disbursement, or other deduction not so disclosed may be recovered by the principal as moneys had and received by the agent to the use of the principal.

**10.** Every mercantile agent shall, within five days after a written request by his principal, furnish in writing such information and particulars not already furnished in writing to the principal regarding the consignment and the condition and disposition thereof, and the amounts received therefor as the principal may require.

**11.—(1)** All moneys realized from the sale or other disposition of the products of his principal shall in the hands of every mercantile agent be trust funds, and the principal shall be deemed to be a *cestui que* trust with the right to demand an accounting and payment, and to follow the moneys.

(2) Every mercantile agent shall keep the moneys realized from the sale or other disposition of the products of his principal apart from his own moneys, and shall as soon as they are received pay over the same or an equivalent amount to his principal or deposit the same or an equivalent amount in a trust account in a chartered bank; and, except as hereinafter provided a mercantile agent shall not make use of or apply the moneys or any portion thereof to any purpose other than payment to or on behalf of his principal.

(3) Notwithstanding the foregoing provisions of this section, every mercantile agent may apply the moneys realized from the sale or other disposition of any consignment in payment of any commission or remuneration to which he may be lawfully entitled in respect of the consignment, and in payment of any disbursements or expenses which he may be lawfully entitled to charge to his principal in respect of the consignment.

**12.** Every mercantile agent by whom moneys are payable to a principal in respect of a consignment shall remit the same to or to the order of the principal not later than ten days after the said moneys are received by the said mercantile agent.

**13.** No mercantile agent shall be entitled to have or retain any fee, commission, remuneration or profit unless he has substantially complied with the provisions of sections 6 to 12 inclusive, and any fee, commission, remuneration or profit obtained or retained where there has not been such compliance may be recovered by the principal as moneys had and received by the mercantile agent to the use of the principal.

**14.—(1)** No mercantile agent shall purchase any consigned products without the prior consent of the principal, given after full and clear disclosure by the mercantile agent to the principal of all material circumstances.

(2) The onus of establishing such disclosure and the consent of the principal shall be upon the mercantile agent.

(3) Where any mercantile agent has purchased consigned products without complying with the provisions of this section, any profit made by him shall belong to and may be recovered by the principal; but any loss shall be borne by the mercantile agent.

(4) Every mercantile agent who purchases any consigned products shall within ten days thereafter render to the principal an account in writing stating clearly that the mercantile agent has purchased for his own account, and indicating precisely and in detail the goods so purchased, the prices paid therefor and the amounts due and owing to the principal in respect thereof.

(5) Nothing in this section shall affect the validity of any sale or other disposition of any consigned products for valuable consideration made by a mercantile agent to any person acting in good faith.

**15.** Every mercantile agent and every director, officer, shareholder, employee and agent of a mercantile agent, who furnishes a principal with false or misleading information regarding any consignment or the disposition thereof or the moneys received therefor shall be guilty of an offence against this Act, unless he furnishes a reasonable explanation of the error and proves that there was no intent to deceive or mislead.

**16.** Every mercantile agent, under obligation to give impartial distribution of any products to or among any persons or class of persons, who, without justification, discriminates in price, adjustments, facilities for purchase, supply or otherwise, between or among such persons or members of such class shall be guilty of an offence against this Act.

**17.** If, in any action brought by or on behalf of any principal before the expiration of six years from the sale or other final disposition of any consignment, it appears that the mercantile agent has not substantially complied with the provisions of section 6, it shall as against the mercantile agent be deemed, *prima facie*, that the products or portion thereof as to which there is any dispute were sold or otherwise disposed of at such prices as products in good condition of a similar description are shown by or on behalf of the principal to have been sold or disposed of at or about the same time; and the burden of proving a sale or other disposition at other prices, and of proving any losses, deterioration, rebates, allowances, expenses, disbursements and deductions, shall lie upon the mercantile agent, and to the full extent to which the mercantile agent fails to discharge such burden of proof the principal shall recover judgment.

**18.** At the request of his principal, or on the production by any person of an authorization thereunto from the principal, every mercantile agent, and every director, officer, employee and agent of the mercantile agent shall admit the principal or authorized person, as the case may be, to all parts of the premises of, or used or occupied by or on behalf of, the mercantile agent, where there are or have been stored or kept any products, or where there are or have been kept any records of the mercantile agent, and shall permit him to inspect the said premises and their contents; and the mercantile agent or director, officer, employee or agent of the mercantile agent shall at the same time produce and submit for inspection of the principal or authorized person, as the case may be, all records relating to or containing any reference to the products of the principal or the disposition made of them, or to the proceeds thereof.

**19.**—(1) The Minister may from time to time by writing appoint and authorize any person or persons to inspect the books, records and premises of mercantile agents. Such appointment may be made generally or by description and without naming the person or persons whose books, records and premises are to be examined.

(2) On the production by any person of the authority of the Minister every mercantile agent and every director, officer, employee and agent of a mercantile agent shall admit such authorized person to all parts of the premises of, or used or occupied by or on behalf of, the mercantile agent where there are or have been stored or kept any products, or where there are or have been kept books or any records of the mercantile agent, and the mercantile agent or director, officer, employee or agent of the mercantile agent shall at the same time produce and submit for inspection of such authorized person all books and records relating to or containing any reference to transactions dealing with consigned products.

**20.** Every mercantile agent and every director, officer, employee and agent of a mercantile agent who, in violation of the provisions of this Act, refuses or neglects to admit a principal or any person authorized by him or by the Minister or who refuses or neglects to produce or submit for the inspection of the principal or any authorized person, any book or record, or who refuses or neglects to furnish the principal or authorized person with the means and assistance necessary for making any entry or inspection, or who prevents or impedes the principal or authorized person in his inspection, shall be guilty of an offence against this Act.

**21.** Every mercantile agent shall cause a copy of this Act to be posted up, and to be kept posted up, in a conspicuous place on his premises, and it shall be the duty of every mercantile agent to cause his directors, officers, employees and agents to become acquainted with the provisions thereof.

**22.** Every director, officer, employee and agent of every mercantile agent shall comply with the provisions of this Act, and shall, so far as he has authority over any other person, cause the same to be complied with; and every such director, officer, employee, or agent who fails to comply with any provision of this Act shall be guilty of an offence against this Act.

**23.** Where an offence against this Act is committed by a mercantile agent, the director, officer, employee or agent of the mercantile agent in charge of the business of the mercantile agent at the place at which the offence is committed shall *prima facie* be deemed to be a party to the offence so committed and shall be personally liable to the penalties prescribed for the offence as a principal offender; and the books and records of such mercantile agent shall, as against the director, officer, employee or agent, be *prima facie* evidence of the facts and transactions therein recorded, set out, or indicated, but nothing in this section shall relieve the mercantile agent or the person who actually committed the offence from liability therefor.

**24.** Every offence against this Act, committed by any director, officer, employee or agent of a corporation acting as mercantile agent shall be deemed to be the offence of the corporation, and the corporation shall be answerable for and be liable to the penalty for the offence; but nothing in this section shall absolve the actual offender from liability in respect of the offence.

**25.—(1)** So far as the legislative authority of this Province extends, no corporation authorized to carry on the business of mercantile agent, the major or a substantial portion of whose shares is held—

- (a) by or on behalf of any person or persons, shareholders in any corporation carrying on within or without the Province a wholesale or jobbing business in products; or
- (b) by or on behalf of any person, partnership or corporation or group of corporations carrying on within or without the Province a wholesale or jobbing business in products; or
- (c) by or on behalf of any partnership or corporation which is part of or a member of or belongs to a group or organization of partnerships or corporations carrying on within or without the Province a wholesale or jobbing business in products—

shall carry on the business of mercantile agent in the Province; and no corporation authorized to carry on the business of mercantile agent, which is part of or a member of, or belongs to a group or organization of partnerships or corporations, or both, carrying on within or without the Province a wholesale or jobbing business in products, shall carry on the business of mercantile agent in the Province.

(2) No mercantile agent shall sell, consign, or otherwise dispose of the products of his principal to—

- (a) any partnership or corporation which is substantially owned, operated or controlled by the same person or group or class of persons, or organization, as substantially owns, operates, or controls the mercantile agent;
- (b) any partnership or corporation which is part of or a member of, or belongs to, any group or organization of partnerships or corporations, or both, to which the mercantile agent belongs or of which the mercantile agent is a member or part.

(3) The Supreme Court shall have such jurisdiction as may be necessary to give effect to the provisions of this section, and in addition to any other relief may, on the summary application of the Attorney General, order the dissolution of any corporation incorporated under the laws of the Province which contravenes the provisions of this section and the cancellation of any registration of any corporation, which contravenes the provisions of this section.

(4) Every mercantile agent contravening the provisions of this section shall be guilty of an offence against this Act.

**26.** Nothing in this Act shall apply to the marketing through co-operative associations, or through corporations controlled or operated by co-operative associations, of the products of the members of such associations.

**27.—(1)** Any person guilty of an offence against this Act or neglecting, refusing or omitting to comply with any of the provisions of this Act, or committing any breach or contravention of any of the provisions thereof shall on summary conviction be liable, if an individual, to a penalty not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both; and if a corporation, to a fine not exceeding one hundred thousand dollars.

(2) In the case of any offence punishable under this section, the complaint shall be made or the information shall be laid within six months from the time when the matter of complaint or information came to the knowledge of the principal, provided that no complaint may be made or information laid more than six years after the matter of complaint or information arose.

**28.** The Lieutenant Governor in Council shall have power to repeal any section or sections of *The Produce Merchants Act, 1922*, being chapter 212 of the Revised Statutes of Alberta, 1922, as from a date to be fixed by proclamation.

**29.** This Act shall come into force upon a date to be fixed by Proclamation of the Lieutenant Governor in Council.



No. 12.

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FIRST SESSION  
SIXTH LEGISLATURE  
17 GEORGE V  
1927

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**BILL**

An Act respecting the Duties of  
Agents in the Sale of Products of  
the Soil.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. HOADLEY

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EDMONTON:  
W. D. MCLEAN, ACTING KING'S PRINTER  
A.D. 1927