

CHAPTER 223

COMMISSION MERCHANTS

223.01 COMMISSION MERCHANT.

HISTORY. 1899 c. 225 ss. 1, 4, 6; R.L. 1905 s. 2114; 1913 c. 432 s. 1; G.S. 1913 s. 4598; 1915 c. 370 s. 1; 1921 c. 213 s. 1; 1923 c. 113 s. 1; G.S. 1923 s. 6197; M.S. 1927 s. 6197.

This act is constitutional. *State ex rel v Wagener*, 77 M 483, 80 NW 633, 778; *State v Edwards*, 94 M 225, 102 NW 697.

The classification of products subject to sections 27.02 to 27.20 is not arbitrary or fanciful, but based upon reasonable and substantial grounds. *State v Marcus*, 210 M 580, 299 NW 241.

This contract between a manufacturer of hog cholera serum and virus with a retailer providing for the sale by the retailer of manufacturer's products partakes of the nature of contract of sale and factorage. There is mutuality of consideration. The contract is not invalid for lack of mutuality of consideration; nor because it did not fix any definite or ascertainable amount of goods to be sold; nor for uncertainty; nor because the manufacturer reserved the right to approve orders. *Marrinan Medical Supply v Fort Dodge Serum Co.* 47 F 458.

A \$25,000 bond permits the sale of hay and straw as well as grain, and an \$8,000 bond is required only where the commission merchant's activities are limited to hay and straw. 1934 OAG 728, July 1, 1933 (215a-4).

Where a railroad company leased land on its right of way on which plaintiff built and operated a warehouse, it did not contract as a carrier, and consequently the provision in the lease against liability was valid. There could be no recovery on account of a fire set by the railway company's maintenance men. *Michigan Millers v Canadian Northern*, 58 F Supp. 329.

Gaming; dealings in commodity futures; illegality of contracts. 18 MLR 544.

223.02 LICENSE; BOND.

HISTORY. 1899 c. 225 ss. 1, 4, 6; R.L. 1905 s. 2114; 1913 c. 432 s. 1; G.S. 1913 s. 4598; 1915 c. 370 s. 1; 1921 c. 213 s. 1; 1923 c. 113 s. 1; G.S. 1923 s. 6197; M.S. 1927 s. 6197.

This law contemplates an actual purchaser other than the consignee and the purchase by him of such grain after close of business hours at the highest price of the day upon the board of trade is not a sale within the meaning of this act, and report of such sale to the consignor is not a compliance with the provisions of this section. *State v Edwards*, 94 M 225, 102 NW 697.

The indemnity bond here involved is governed by the same rules of construction as are ordinary life and fire policies. *Kramer Equity Elevator v Indemnity Insurance*, 178 M 136, 226 NW 396.

The commissioner determines as a question of fact whether an applicant for a license and bond is or is not a grain commission merchant. OAG July 21, 1936 (215a4).

223.03 FORM OF APPLICATION FOR LICENSE; CONDITIONS IN BONDS; SEPARATE LICENSES REQUIRED.

HISTORY. 1899 c. 225 ss. 1, 4; R.L. 1905 s. 2115; 1913 c. 432 s. 2; G.S. 1913 s. 4599; 1915 c. 370 s. 2; 1921 c. 213 s. 2; G.S. 1923 s. 6198; M.S. 1927 s. 6198.

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223.04 COMMISSION MAY REQUIRE CONFIDENTIAL STATEMENTS.

HISTORY. 1899 c. 225 s. 4; R.L. 1905 s. 2116; G.S. 1913 s. 4600; 1915 c. 370 s. 3; 1921 c. 213 s. 3; G.S. 1923 s. 6199; M.S. 1927 s. 6199.

223.05 STATEMENT BY LICENSEE TO CONSIGNOR.

HISTORY. 1899 c. 225 s. 2; R.L. 1905 s. 2117; 1913 c. 432 s. 3; G.S. 1913 s. 4601; 1915 c. 370 s. 4; 1921 c. 213 s. 4; G.S. 1923 s. 6200; M.S. 1927 s. 6200.

The requirement of a licensed commission merchant must render a true statement to the consignor within 24 hours of making a sale, showing the amount of grain sold, the price received, the name and address of the purchaser, and the date, hour, and minute when sold, and must furnish vouchers for charges and expenses, is a valid and constitutional act. *State v Edwards*, 94 M 225, 102 NW 697.

The defendant, having accepted the contract and attempted to enforce it, cannot escape responsibility for the acts of its agents on the ground that their misrepresentations were beyond their authority. *Luebke v Case*, 178 M 40, 226 NW 415.

223.06 COMPLAINT; INVESTIGATION; REPORT.

HISTORY. 1899 c. 225 s. 3; R.L. 1905 s. 2118; G.S. 1913 s. 4602; 1915 c. 370 s. 5; G.S. 1923 s. 6201; M.S. 1927 s. 6201.

The provision for filing an affidavit is merely directory and the failure to file same is not fatal to a right of action on the bond. *Farmers Cooperative v Enge*, 122 M 316, 142 NW 328.

223.07 SUIT ON BOND; AMOUNT TO BE APPORTIONED.

HISTORY. 1899 c. 225 s. 5; 1901 c. 277; R.L. 1905 s. 2119; G.S. 1913 s. 4603; 1915 c. 370 s. 6; G.S. 1923 s. 6202; M.S. 1927 s. 6202.

The provision relative to the filing by the shipper of an affidavit with the commission is directory and not mandatory; and suit may be instituted on the bond without such filing. *Kramer v Indemnity Insurance*, 178 M 136, 226 NW 396.

This statute gives a right of action on the bond to a person injured by the defective work of a master electrician licensed under a bond written by the defendant insurance company. Although the state is named as obligee, it is so named for itself and those entitled by statute to maintain an action on the required bond. *Graybar v St. Paul Mercury*, 208 M 478, 294 NW 654.

223.08 REFUSAL TO PERMIT INSPECTION OF BOOKS; "COMMISSION MERCHANT," "COMMISSION COMPANY" PROHIBITED; MISDEMEANOR.

HISTORY. 1899 c. 225 s. 7; R.L. 1905 s. 2120; 1913 c. 432 s. 4; G.S. 1913 s. 4604; 1915 c. 370 s. 7; G.S. 1923 s. 6203; M.S. 1927 s. 6203.

223.09 COMMISSION MERCHANTS PROHIBITED FROM BEING INTERESTED IN SALES.

HISTORY. 1917 c. 19 s. 1; G.S. 1923 s. 6204; M.S. 1927 s. 6204.

Section 223.09 does not apply to cooperatives. OAG Jan. 17, 1944 (215b-3); OAG June 7, 1944 (215b-3).

223.10 PENALTY FOR VIOLATION.

HISTORY. 1917 c. 19 s. 2; G.S. 1923 s. 6205; M.S. 1927 s. 6205.

223.11 INDEBTEDNESS A LIEN UPON MEMBERSHIP, WHICH MAY BE SOLD.

HISTORY. 1919 c. 283 s. 1; G.S. 1923 s. 6206; M.S. 1927 s. 6206.

The provisions of this section giving shippers of grain a first lien upon memberships in grain exchanges to secure indebtedness arising from the consignment

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of grain to the owners of such memberships is constitutional. *Tait v Schmahl*, 164 M 122, 204 NW 637.

The provision for the sale of membership to satisfy the lien in accordance with the rules of exchange governing the sale of membership is not a delegation of judicial power. *Tait v Schmahl*, 164 M 122, 204 NW 637.

223.12 LICENSES FOR PURCHASE OF FLAX STRAW OR FLAX TOW FOR RE-SALE; PENALTIES.

HISTORY. 1943 c. 546.