

## CHAPTER 27

## WHOLESALE PRODUCE DEALERS

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**27.001 PUBLIC POLICY.**

The legislature recognizes that perishable agricultural products are important sources of revenue to a large number of citizens of this state engaged in producing, processing, manufacturing, or selling such products and that such products cannot be repossessed in case of default. It is therefore declared to be the policy of the legislature that certain financial protection be afforded those who are producers on the farm; farmer cooperatives which are not wholesale produce dealers as described in section 27.01, subdivision 8; and licensed wholesale produce dealers, including the retail merchant purchasing produce directly from farmers. The provisions of this chapter which relate to perishable agricultural commodities shall be liberally construed to achieve these ends and shall be administered and enforced with a view to carrying out the above declaration of policy.

**History:** 1969 c 471 s 1; 1975 c 227 s 1

**27.01 DEFINITIONS.**

Subdivision 1. **Terms.** Except where otherwise provided; for the purpose of sections 27.03 to 27.15 and 27.19 to 27.20 the terms defined in this section have the meanings given to them.

Subd. 2. **Produce.** "Produce" means:

- (1) perishable fresh fruits and vegetables;
- (2) milk and cream and products manufactured from milk and cream; and
- (3) poultry and poultry products.

Subd. 3. **Person.** The term "person" means an individual, firm, corporation, copartnership, or association.

Subd. 4. **Voluntary extension of credit.** The term "voluntary extension of credit" means a written agreement between the seller and the licensee wherein the time of payment for the purchase price of produce is extended beyond the due date.

Subd. 5. **Due date.** "Due date" means ten days from the date of delivery of produce by the seller to the licensee if the due date is not specified in the contract. For purposes of this definition a signed invoice with a due date is a contract.

If produce is consigned, "due date" means ten days from the date the sale is made by the broker or handler, except as to milk processing plants, where the due date means 15 days following the monthly day of accounting subsequent to deliveries following the date fixed by each milk processing plant for that accounting.

Subd. 6. **Milk processing plant.** The term "milk processing plant" means any establishment where any or all of the following are manufactured: Butter, cheese, dry milk, or ice cream, or where milk or cream, or any product of milk, is processed or prepared for market.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of the department of agriculture.

Subd. 8. **Wholesale produce dealer.** (a) "Wholesale produce dealer" or "dealer at wholesale" means:

- (1) a person who buys or contracts to buy produce in wholesale lots for resale;
- (2) a person engaging in the business of a broker or agent, who handles or deals in produce for a commission or fee;
- (3) a truck owner or operator who buys produce in wholesale lots for resale; and
- (4) a person engaged in the business of a cannery, food manufacturer, or food processor, who purchases produce in wholesale lots as a part of that business.

(b) For purposes of paragraph (a), "wholesale lots" means purchases from Minnesota sellers must total more than \$12,000 annually.

(c) "Wholesale produce dealer" or "dealer at wholesale" does not include:

(1) a truck owner and operator who regularly engages in the business of transporting freight, including produce, for a transportation fee only, and who does not purchase, contract to purchase, or sell produce;

(2) a marketing cooperative association in which substantially all of the voting stock is held by patrons who patronize the association and in which at least 75 percent of the business of the association is transacted with member or stockholder patrons;

(3) a person who purchases Minnesota seasonally grown perishable fresh fruits and vegetables, and pays cash, including lawful money of the United States, a cashier's check, a certified check, or a bank draft;

(4) a person who handles and deals in only canned, packaged, or processed produce or packaged dairy products that are no longer perishable as determined by the commissioner by rule; or

(5) retail merchants who purchase produce, defined in subdivision 2, directly from farmers, which in the aggregate does not exceed \$500 per month.

Subd. 9. **Farmer.** The term "farmer" means any individual or partnership engaged in the business of producing or growing agricultural produce whether individually, collectively, or as part of a joint growing venture; or any corporation whose principal business is the production of such products.

Subd. 10. **Seller.** "Seller" means a farmer or wholesale produce dealer, whether the person is the owner of the produce or produces it for another person who holds title to it.

**History:** (6240-18 1/2a) 1931 c 394 s 2; 1939 c 251 s 2; 1943 c 479 s 1; 1953 c 345 s 1; 1961 c 113 s 1; 1961 c 128 s 9; 1961 c 163 s 1; 1965 c 787 s 1; 1969 c 471 s 2; 1975 c 227 s 2-4; 1Sp1981 c 4 art 1 s 38; 1990 c 530 s 2-5

27.02 [Repealed, 1969 c 471 s 5]

### 27.03 DEALER REGULATION.

Subdivision 1. **License.** A person may not engage in, or purport to be engaged in, or hold out as being engaged in, the business of a dealer at wholesale, or as being a dealer at wholesale, unless licensed and bonded by the commissioner.

Subd. 2. [Repealed, 1986 c 322 s 4]

Subd. 3. **Brokers.** (a) A wholesale produce dealer operating as a broker, upon negotiating the sale of farm products, shall issue to both buyer and seller a written memorandum of sale before the close of the next business day showing price, date of delivery, quality, and other details of the transaction.

(b) The memorandum required in paragraph (a) must have an individual identifying number printed upon it. Numbers must be organized and printed on the memoranda so that each memorandum can be identified and accounted for sequentially. Unused or damaged memoranda must be retained by the broker for accounting purposes.

(c) A wholesale produce dealer operating as a broker may not alter the terms of a transaction specified on the original memorandum of sale required in paragraph (a) without the consent of both parties to the transaction. Upon making a change, the broker is required to issue a clearly marked corrected memorandum of sale indicating the date and time when the adjustment or change was made. The broker shall transmit the corrected memorandum to both the buyer and seller before the close of the next business day.

**Subd. 4. Payments for produce.** If there is a contract between a seller and a wholesale produce dealer to buy produce, the wholesale produce dealer must pay for the produce that is delivered to the wholesale produce dealer at the time and in the manner specified in the contract with the seller. If the due date is not set by the contract, the wholesale produce dealer shall pay for the produce by ten days after delivery or taking possession of the produce. A payment received after the due date must include payment of 12 percent annual interest prorated for the number of days past the due date.

**History:** (6240-18 1/2b) 1931 c 394 s 3; 1975 c 227 s 5; 1985 c 233 s 4; 1986 c 444; 1990 c 530 s 6-8

#### 27.04 APPLICATION FOR LICENSE.

**Subdivision 1. Issuance.** The commissioner shall issue a wholesale produce dealer's license to engage in the business of a dealer at wholesale to persons submitting an application, paying the prescribed fee, and complying with the conditions in this section.

**Subd. 2. Application contents.** (a) The application must be in writing, accompanied by the prescribed fee, and state:

- (1) the place or places where the applicant intends to carry on the business for which the license is desired;
- (2) the estimated amount of business to be done monthly;
- (3) the amount of business done during the preceding year, if any;
- (4) the full names of the persons constituting the firm for a partnership, and for a corporation the names of the officers of the corporation and where incorporated;
- (5) a financial statement showing the value and character of the assets and the amount of liabilities of the applicant;
- (6) the income and expenses for the most recent year;
- (7) the names and addresses of all shareholders who own at least five percent of a corporate applicant's shares of stock;
- (8) whether the applicant or any of its officers, partners, or agents have been involved in any litigation relating to the business of a wholesale produce dealer in the previous five years; and
- (9) any other information relevant to the conduct of its business as a wholesale produce dealer in the previous five years, as the commissioner may require.

(b) If a contract is used in a transaction, a copy of the contract must also be filed with the commissioner.

(c) Financial data required of an applicant under this section is classified as private data with regard to data on individuals and as nonpublic data with regard to data not on individuals under section 13.02.

**Subd. 3. Filing.** Applications shall be filed annually.

**History:** (6240-18 1/2c) 1931 c 394 s 4; 1935 c 186 s 1; 1955 c 233 s 1; 1955 c 846 s 1; 1957 c 561 s 1; 1959 c 17 s 1; 1969 c 471 s 3; 1969 c 1148 s 6; 1975 c 227 s 6; 1986 c 444; 1990 c 530 s 9

#### 27.0405 INVESTIGATIONS.

**Subdivision 1. Production and review of information.** (a) Upon special order, the commissioner may require persons engaged in the business of a dealer at wholesale to file at the time and in the manner the commissioner directs, sworn or unsworn reports

or answers in writing to specific questions on any matter which the commissioner may investigate.

(b) For the purposes of this section, the commissioner or the commissioner's authorized agents may audit and review any records relating to the financial condition of any dealer at wholesale and any transactions between the dealer and persons entitled to the protections of this chapter, if the records are in the possession of or under the case, custody, or control of the dealer or the dealer's authorized agent.

Subd. 2. **False and incomplete information.** A person may not willfully make any false entries or statements or fail to make full and true entries and statements in a report, answer required, or document demanded under this chapter.

Subd. 3. **Preservation of documents.** A person may not remove from the state, mutilate, or alter a document relevant to an investigation, hearing, or proceeding conducted under chapter 27.

**History:** 1990 c 530 s 10

### 27.041 BONDS; LICENSES.

Subdivision 1. **Bonds.** (a) The applicant required to be bonded shall execute and file with the commissioner a surety bond to the state of Minnesota to be approved by the commissioner, the amount, form, and effective date to be determined by the commissioner with the maximum not to exceed \$1,000,000. In lieu of the surety bond, the commissioner may accept a duly executed letter of credit. The bond or letter of credit shall be conditioned on the faithful performance of the applicant's duties as a dealer at wholesale, including:

(1) the observance of all laws relating to the carrying on of the business of a dealer at wholesale;

(2) payment when due, unless it appears to the commissioner that a voluntary extension of credit has been given on the produce by the seller to the licensee beyond the due date;

(3) the prompt settlement and payment of all claims and charges due the state for services rendered or otherwise;

(4) the prompt reporting of sales as required by law to all persons consigning produce to the licensee for sale on commission; and

(5) the prompt payment to the persons entitled thereto of the proceeds of the sales, less lawful charges, disbursements, and commissions.

(b) The bond shall cover all wholesale produce business subject to the protection outlined in section 27.001 which is:

(1) transacted within this state; or

(2) transacted in part within this state and in part within the states and provinces contiguous with this state and sold by Minnesota sellers.

Subd. 1a. **Additional bonds.** (a) The commissioner, after determining a bond given by a licensee is inadequate for the proper protection of the public, may require the licensee to give additional bonds in amounts as determined by the commissioner, with sureties to be approved by the commissioner, and conditioned as provided in this section.

(b) To set or change the amount of a bond, the commissioner may require a licensee to provide verified statements of the licensee's business.

(c) Failure of the licensee to furnish the information or to give a new or additional bond is cause for:

(1) suspension of the licensee's license for as long as the failure continues; or

(2) revocation of the license, on ten days' notice to the licensee and opportunity to be heard.

(d) If the commissioner determines it is in the public's interest, the commissioner may suspend the license after giving notice and holding a hearing.

Subd. 2. **Licenses.** (a) The license, or a certified copy of the license, must be kept posted in the office of the licensee at each place within the state where the licensee transacts business. A wholesale produce dealer may not appoint, delegate, or authorize a person, firm, or company to purchase produce unless a certified copy, identification card, or truck decal has been issued at the request of the wholesale produce dealer to that person, firm, or company acting as the buyer or agent.

(b) A license expires June 30 following its issuance and must be renewed July 1 of each year.

(c) A license issued under this subdivision is automatically void upon the termination of the surety bond covering the licensed operation.

(d) The fee for each license must include a \$50 registration fee and an additional fee of .025 percent of the total annual dollar amount of produce purchased the previous year from sellers within the state of Minnesota subject to this chapter. Fees may not exceed \$1,500 per license. In addition, a fee of \$20 shall be charged for each certified copy of a license, \$5 for each license identification card, and \$10 for each license identification truck decal.

(e) A penalty amounting to ten percent of the fees due may be imposed by the commissioner for each month for which the fees are delinquent.

(f) A licensee who sells, disposes of, or discontinues the licensee's business during the lifetime of a license shall, at the time the action is taken, notify the commissioner in writing, and upon demand produce before the commissioner a full statement of all assets and liabilities as of the date of transfer or discontinuance of the business.

**History:** 1975 c 227 s 7; 1981 c 356 s 265; 1983 c 293 s 52; 1986 c 444; 1987 c 358 s 83; 1990 c 530 s 11

**27.05** [Repealed, 1990 c 530 s 27]

#### **27.06 COMPLAINTS TO COMMISSIONER, HEARING; ACTION ON BOND.**

A person claiming to be damaged by a breach of the conditions of a bond given by a licensee may submit a complaint to the commissioner within 40 days after the due date. The complaint must be a written statement of the facts constituting the complaint. After receiving a filed complaint, the commissioner shall investigate the charges made and may have the matter heard as a contested case pursuant to chapter 14 if an affected party requests a hearing.

**History:** (6240-18 1/2e) 1931 c 394 s 6; 1935 c 186 s 2; 1955 c 233 s 3; 1961 c 163 s 3; 1969 c 471 s 4; 1975 c 227 s 8; 1977 c 346 s 4; 1982 c 424 s 130; 1986 c 444; 1990 c 530 s 12

#### **27.069 DEFINITION OF PRODUCE FOR GRADING AND INSPECTION LAWS.**

For the purposes of Minnesota Statutes 1961, sections 27.07 to 27.10, and acts amendatory thereof, the term "produce" means decorative forest products and the products of farms and waters of this state.

**History:** 1965 c 787 s 2

#### **27.07 GRADES ESTABLISHED; INSPECTION.**

Subdivision 1. **Commissioner's power.** The commissioner shall have power to establish grades on all produce and when deemed necessary shall provide for inspecting and grading produce subject to sale at such marketing points within the state as the commissioner may designate.

Subd. 2. **Certificates.** The commissioner shall provide for the issuing of certificates of inspection showing the grade, quality, and conditions of the produce, and may charge and collect a reasonable fee therefor, a schedule thereof to be adopted and published from time to time. Such certificates of inspection shall be prima facie evidence in all courts of this state as to the grade, quality, and condition of the produce at the time the inspection was made.

Subd. 3. **Application for inspector's services.** Any person who wants produce to be inspected may apply to the commissioner for the service of an inspector and, if it appears to the commissioner that the volume of the produce is sufficient to justify the request, the commissioner may grant the service upon terms and conditions fixed by the commissioner and this section.

Subd. 4. **Deposit agreement.** The commissioner may require an agreement, prior to the establishment of the inspection service, requiring the user of the inspection service to at all times have on deposit with the department a sufficient amount of money to pay the estimated costs of such inspection service for a period of not less than 15 days in advance. When any such agreement shall terminate by action of either party thereto, the commissioner shall pay to the depositor any money remaining to the depositor's credit after the deduction of the costs at the time such agreement terminates.

Subd. 5. **Fees.** Fees for inspection shall be determined by the commissioner and shall be reviewed and adjusted every six months. In determining the fees to be charged, the commissioner shall take into consideration fees charged in other states offering similar inspection services to the end that the fees charged will provide a competitive marketing position for Minnesota produce.

Subd. 6. **Cooperative agreements; fees; account.** The commissioner may collect fees as provided for in cooperative agreements between the commissioner and the United States Department of Agriculture for the inspection of fresh fruits, vegetables, and other products. The fees must be deposited in the state treasury and credited to a fruit and vegetables inspection account. The money in the account, including interest earned, is appropriated to the commissioner to carry out the cooperative agreements.

**History:** (6240-18 1/2f) 1931 c 394 s 7; 1955 c 232 s 1; 1961 c 163 s 4; 1975 c 204 s 97; 1977 c 234 s 1; 1986 c 444; 1987 c 358 s 84

## 27.08 DEALERS MAY FILE BRANDS OR LABELS.

Any person producing, manufacturing, or handling, in this state, any of the products mentioned in section 27.01, except cheese and butter, and preparing, packing, and offering the same for sale, may file with the commissioner a brand or label, and the applicant may place upon this brand or label such descriptive or locative matter as shall be approved by the commissioner. The commissioner may issue to such applicant for brands and labels a permit to use the same, subject to such rules and restrictions as to quality of product so branded as the commissioner may determine. The brand or label shall be recorded in the office of the commissioner and any person who shall, without authority of the commissioner, brand and label therewith products or commodities of a quality below the standard permitted under the brand or label, shall be subject to the penal provisions of section 27.19.

**History:** (6240-18 1/2g) 1931 c 394 s 8; 1961 c 163 s 5; 1985 c 248 s 70

## 27.09 INSPECTION CERTIFICATE.

When produce is ready for sale, or is on its way to market, the owner thereof, or the conveyor, or the prospective buyer, or any other interested party, may call for and shall be entitled to inspection of such produce and to an inspection certificate, as provided for in section 27.07.

**History:** (6240-18 1/2h) 1931 c 394 s 9

## 27.10 PRODUCE EXAMINED, WHEN.

When produce is shipped to or received by a dealer at wholesale for handling, purchase, or sale in this state at any market point therein giving inspection service, as provided for in section 27.07, and the dealer at wholesale finds the same to be in a spoiled, damaged, unmarketable, or unsatisfactory condition, unless both parties shall waive inspection before sale or other disposition thereof, the dealer shall cause the same to be examined by an inspector assigned by the commissioner for that purpose, and the inspector shall execute and deliver a certificate to the applicant thereof stating the day,

the time and place of the inspection, and the condition of the produce and mail or deliver a copy of the certificate to the shipper thereof.

**History:** (6240-18 1/2i) 1931 c 394 s 10; 1986 c 444

#### **27.11 SHIPMENTS ON CONSIGNMENT.**

When any dealer at wholesale to whom produce has been shipped or consigned for sale on a commission basis or on consignment or under any circumstances wherein the title to the produce remains with the shipper, has received the same, the dealer shall, within a reasonable time thereafter, make a written report to the shipper, which report shall include the exact time of arrival, the quantity, quality, and price per unit of the produce and at the same time shall pay the shipper the net amount due.

**History:** (6240-18 1/2j) 1931 c 394 s 11; 1986 c 444

#### **27.12 SHIPPER MAY COMPLAIN TO COMMISSIONER.**

When a shipper, after demand therefor, shall have received no remittance or report of sale, or shall be dissatisfied with the remittance, sale, or report, the shipper may complain in writing to the commissioner, who shall investigate the matter complained of.

**History:** (6240-18 1/2k) 1931 c 394 s 12; 1986 c 444

#### **27.13 INVESTIGATION OF COMPLAINTS; SUSPENSION OR REVOCATION OF LICENSE.**

The commissioner is authorized to receive complaints against any persons dealing in, shipping, transporting, storing, or selling produce, and shall have authority to make any and all necessary investigations relative to the handling of, or storing, shipping, or dealing in produce at wholesale and shall, at all times, have access to all buildings, yards, warehouses, storage and transportation facilities in which any produce is kept, stored, handled or transacted. For the purpose of enforcing the provisions of sections 27.01 to 27.15 and 27.19, the commissioner shall have the authority, upon complaint being filed for any alleged violation of the provisions thereof, or the rules issued thereunder, or upon information furnished by an inspector of the department of agriculture, to suspend while violation continues or revoke any license issued by the commissioner upon ten days notice to the licensee and an opportunity to be heard. Where the public interest requires it the commissioner may suspend a license after such notice pending hearing and decision. The commissioner shall have, and is hereby granted, full authority to issue subpoenas requiring the attendance of witnesses before the commissioner, with books, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and shall have full authority to administer oaths and to take testimony; and the commissioner shall thereafter give the complainant a written report of the investigation. Such report shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas of the commissioner shall be guilty of contempt as in proceedings in district courts of the state and may be punished in like manner.

**History:** (6240-18 1/2l) 1931 c 394 s 13; 1955 c 232 s 2; 1961 c 113 s 1; 1961 c 163 s 6; 1985 c 248 s 70; 1986 c 444

#### **27.131 MEDIATION AND ARBITRATION.**

A contract for produce between a buyer and a seller must contain language providing for resolution of contract disputes by either mediation or arbitration. If there is a contract dispute, either party may make a written request to the department for mediation or arbitration, as specified in the contract to facilitate resolution of the dispute.

**History:** 1990 c 530 s 13

**27.133 PARENT COMPANY LIABILITY.**

If a wholesale produce dealer is a subsidiary of another corporation, partnership, or association, the parent corporation, partnership, or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the wholesale produce dealer fails to pay or perform according to the terms of the contract and this chapter.

*History: 1990 c 530 s 14*

**27.137 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to this section and section 27.138.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subd. 3. **Due date.** "Due date" has the definition given in section 27.01, subdivision 5.

Subd. 4. **Person.** "Person" means an individual, partnership, corporation, firm, or association.

Subd. 5. **Proceeds.** "Proceeds" means whatever is received upon the sale, exchange, collection, or transfer of produce, products of produce, or proceeds from the produce or products of produce.

Subd. 6. **Produce.** "Produce" means perishable fruits and vegetables, milk and cream and products manufactured from milk and cream, and poultry and poultry products.

Subd. 7. **Products of produce.** "Products of produce" means products derived from produce through manufacturing, processing, or packaging.

Subd. 8. **Seller.** "Seller" means a farmer or wholesale produce dealer, whether the person is the owner of the produce or produces it for another person who holds title to the produce.

Subd. 9. **Trust assets.** "Trust assets" means produce, products of produce, and proceeds from the produce or products of produce.

Subd. 10. **Wholesale produce dealer.** "Wholesale produce dealer" has the meaning given in section 27.01, subdivision 8, and includes the person whether or not the person is licensed.

*History: 1990 c 530 s 15*

**27.138 WHOLESALE PRODUCE DEALERS' TRUST.**

Subdivision 1. **Trust establishment and maintenance.** (a) The produce and products of produce of a wholesale produce dealer and proceeds are held in trust for the benefit of unpaid sellers.

(b) The trust assets are to be maintained as a nonsegregated floating trust. Commingling of the trust assets is contemplated.

(c) The wholesale produce dealer must maintain the trust assets in a manner that makes the trust assets freely available to satisfy the amounts owed to unpaid sellers and may not divert trust assets in a manner that impairs the ability of unpaid sellers to recover amounts due.

(d) A wholesale produce dealer must maintain the trust assets in trust until payment has been made in full to unpaid sellers. Payment is not made if a seller receives a payment instrument that is dishonored.

(e) A wholesale produce dealer holds trust assets in trust for the seller, except that the wholesale produce dealer may transfer title to trust assets if the proceeds of the transfer are maintained as trust assets. Until a seller is paid, a wholesale produce dealer does not transfer title to trust assets:

(1) in a transaction made to another wholesale produce dealer;

(2) in a transaction intended to impair the ability of unpaid sellers to recover amounts due; or

(3) for which the value is inadequate to satisfy filed beneficiaries notices.

**Subd. 2. Sellers' rights to trust assets.** (a) An unpaid seller may recover trust assets for the net amount unpaid after the due date after allowing deductions of contemplated expenses or advances made in connection with the transaction. An amount is considered unpaid if a seller receives a payment instrument that is dishonored.

(b) An unpaid seller may recover trust assets after filing a beneficiaries notice with the wholesale produce dealer to whom the produce was transferred, the commissioner, and the appropriate filing office under section 336.9-401 as if the trust were a security interest in the trust assets by 40 days after the due date for the payment to the seller or 40 days after a payment instrument to the seller for the produce is dishonored, whichever is later.

**Subd. 3. Beneficiaries notice.** (a) A beneficiaries notice must be in writing and in a form prescribed by the commissioner after consultation with the secretary of state.

(b) The beneficiaries notice must contain:

(1) the name and address of the seller;

(2) the name and address of the wholesale produce dealer maintaining the trust assets;

(3) the produce, amount of produce, amount to be paid the seller, and the due date of transactions that are unpaid or, if appropriate, the date a payment instrument was dishonored; and

(4) a description of the trust assets.

(c) The filing officer shall enter on the beneficiaries notice the time of day and date of filing. The filing officer shall accept filings, amendments, and terminations of a beneficiaries notice and charge the same filing fees as provided in section 336.9-403 for a financing statement. A beneficiaries notice is void and may be removed from the filing system 18 months after the date of filing. The beneficiaries notice may be physically destroyed 30 months after the date of filing.

**Subd. 4. Priority of unpaid sellers' interests in trust assets.** (a) The unpaid sellers' interest in trust assets is paramount to all other liens, security interests, and encumbrances in the trust assets. An unpaid seller who recovers trust assets recovers them free of any liens, security interests, or encumbrances.

(b) If the trust assets are inadequate to pay unpaid sellers the amount due, the unpaid sellers shall share proportionately in the trust assets.

**Subd. 5. Recovery actions.** An action to recover trust assets may be brought in district court in a county where trust assets are located after the beneficiaries notice is filed. The beneficiaries notice may be amended, except the amount due, by leave of the court in furtherance of justice. An action to recover trust assets is barred if it is not brought by 18 months after the date the beneficiaries notice is filed.

**Subd. 6. Terminations of beneficiaries notice.** A seller must terminate a beneficiaries notice by ten days after the amount due for the wholesale produce dealer is paid. The commissioner may terminate a beneficiaries notice upon request and demonstration by the wholesale produce dealer that the amounts due under the beneficiaries notice have been paid.

**History:** 1990 c 530 s 16

## 27.14 RULES.

In the manner provided by law, the commissioner, from time to time, shall make and publish uniform rules, not inconsistent with law, for carrying out and enforcing the provisions of sections 27.01 to 27.15 and 27.19 and governing the rates charged by, and the buying, selling, advertising and trading practices of, dealers at wholesale.

**History:** (6240-18 1/2m) 1931 c 394 s 14; 1961 c 163 s 7; 1985 c 248 s 70

## 27.15 COOPERATION WITH OTHER AUTHORITIES.

The commissioner may cooperate with the United States department of agriculture

and with other federal authorities and with the state and municipal authorities of this and other states, and do and perform such acts and things as may be necessary and proper in carrying out the purpose of sections 27.01 to 27.15 and 27.19.

**History:** (6240-18 1/2n) 1931 c 394 s 15; 1955 c 232 s 3; 1961 c 163 s 8

**27.16** [Renumbered 29.201]

**27.17** [Renumbered 29.203]

**27.18** [Renumbered 29.205]

### **27.185 SEIZURE AND CONFISCATION OF MOTOR VEHICLES.**

**Subdivision 1. Seizure.** A sheriff, on request of the commissioner, must seize all motor vehicles in the name of the state that are used to sell or transport produce in violation of this chapter.

**Subd. 2. Procedure for confiscation of property seized.** The sheriff must hold the seized property, subject to the order of the court having jurisdiction where the offense was committed. The property held is confiscated when the commissioner complies with this section and the person from whom it was seized is convicted of the offense.

**Subd. 3. Complaint against property.** The commissioner shall file with the court a separate complaint against the property held. The complaint must identify the property, describe its use in the violation, and specify the time and place of the violation. A copy of the complaint must be served upon the defendant or the owner of the property.

**Subd. 4. Release of property after posting bond.** At any time after seizure of the property specified in this section, the property must be returned to the owner or person having the legal right to possession upon execution of a valid bond to the state with a corporate surety. The bond must be approved by a judge of the court of jurisdiction, conditioned to abide by an order and judgment of the court and to pay the full value of the property at the time of seizure. The bond must be for \$100 or for a greater amount not more than twice the value of the property seized.

**Subd. 5. Court order.** (a) If the person arrested is acquitted, the court shall dismiss the complaint against the property and order it returned to the person legally entitled to it.

(b) Upon conviction of the person, the court shall issue an order directed to any person that may have any right, title, or interest in, or lien upon, the seized property. The order must describe the property and state that it was seized and that a complaint against it has been filed. The order shall require a person claiming right, title, or interest in, or lien upon, the property to file with the court administrator an answer to the complaint, stating the claim, within ten days after the service of the order. The order shall contain a notice that if the person fails to file an answer within the time limit, the property may be ordered sold by the commissioner.

(c) The court order must be served upon any person known or believed to have any right, title, interest, or lien in the same manner as provided for service of a summons in a civil action, and upon unknown persons by publication, in the same manner as provided for publication of a summons in a civil action.

**Subd. 6. Court ordered sale after no answer.** If an answer is not filed within the time provided in subdivision 5, the court administrator shall notify the court and the court shall order the commissioner to sell the property. The net proceeds of the sale shall be deposited in the state treasury and credited to the game and fish fund.

**Subd. 7. Hearing after answer.** If an answer is filed within the time provided in subdivision 5, the court shall schedule a hearing within ten to 30 days after the time expired for filing the answer. The court, without a jury, shall determine whether any of the property was used in a violation specified in the complaint and whether the owner had knowledge or reason to believe that the property was being used, or intended to be used, in the violation. The court shall order the commissioner to sell the property that was unlawfully used with knowledge of the owner and to return to the owner property that

was not unlawfully used with the knowledge of the owner. If the property is to be sold, the court shall determine the priority of liens against the property and whether the lienholders had knowledge that the property was being used or was intended to be used. Lienholders that had knowledge of the property's use in the violation are not to be paid. The court order must state the priority of the liens to be paid.

**Subd. 8: Proceeds of sale.** After determining the expense of seizing, keeping, and selling the property, the commissioner must pay the liens from the proceeds according to the court order. The remaining proceeds shall be deposited in the state treasury and credited to the general fund.

**Subd. 9. Cancellation of security interests.** A sale under this section cancels all liens on and security interests in the property sold.

**History:** 1990 c 530 s 17

### 27.19 VIOLATIONS, PENALTIES.

**Subdivision 1. Prohibited acts.** (a) A person subject to the provisions of this section and sections 27.01 to 27.15 may not:

- (1) operate or advertise to operate as a dealer at wholesale without a license;
  - (2) make any false statement or report as to the grade, condition, markings, quality, or quantity of produce, as defined in section 27.069, received or delivered, or act in any manner to deceive a consignor or purchaser;
  - (3) refuse to accept a shipment contracted for by the person, unless the refusal is based upon the showing of a state inspection certificate secured with reasonable promptness after the receipt of the shipment showing that the kind and quality of produce, as defined in section 27.069, is other than that purchased or ordered by the person;
  - (4) fail to account or make a settlement for produce within the required time;
  - (5) violate or fail to comply with the terms or conditions of a contract entered into by the person for the purchase or sale of produce;
  - (6) purchase for a person's own account any produce received on consignment, either directly or indirectly, without the consent of the consignor;
  - (7) issue a false or misleading market quotation, or cancel a quotation during the period advertised by the person;
  - (8) increase the sales charges on produce shipped to the person by means of "dummy" or fictitious sales;
  - (9) receive decorative forest products and the products of farms and waters from foreign states or countries for sale or resale, either within or outside of the state, and give the purchaser the impression, through any method of advertising or description, that the produce is of Minnesota origin;
  - (10) fail to notify in writing all suppliers of produce of the protection afforded to suppliers by the person's licensee bond, including: availability of a bond, notice requirements, and any other conditions of the bond;
  - (11) make a false statement to the commissioner on an application for license or bond or in response to written questions from the commissioner regarding the license or bond;
  - (12) commit to pay and not pay in full for all produce committed for; or
  - (13) discriminate between different sections, localities, communities, or cities, or between persons in the same community, by purchasing produce from farmers of the same grade, quality, and kind, at different prices, except that price differentials are allowed if directly related to the costs of transportation, shipping, and handling of the produce and a person is allowed to meet the prices of a competitor in good faith, in the same locality for the same grade, quality, and kind of produce. A showing of different prices by the commissioner is prima facie evidence of discrimination.
- (b) A separate violation occurs with respect to each different person involved, each purchase or transaction involved, and each false statement.

**Subd. 2. Civil penalty.** (a) A person who violates a provision of this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed \$500 per violation.

(b) In addition, the person's license may be suspended, revoked, or canceled by the commissioner, upon ten days' notice and opportunity to be heard. Action under this subdivision is a civil penalty.

(c) A civil penalty amount received by the commissioner under this section must be deposited in the wholesale produce dealer account.

**Subd. 3. Criminal penalty.** (a) A person who willfully violates a provision of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(b) Upon conviction, or upon conviction in a federal court for violation of the federal statutes relative to fraudulent use of the mails or in any court of other criminal acts under a federal food or drug statute or a statute of this state administered by the commissioner of agriculture pertaining to the conduct of the person's business, the commissioner may immediately revoke and cancel the license of the person convicted, without further hearing.

**Subd. 4. Settlements.** (a) The commissioner or the commissioner's authorized representative may enter into a written agreement with a person in settlement of an alleged violation whether or not a hearing is held. An agreement must be construed as a "no contest" pleading and may encompass sanctions, penalties, and affirmative actions that are mutually satisfactory and are consistent with the intent and purpose of this chapter.

(b) The agreement is final and conclusive with respect to the action, except upon a showing of fraud or malfeasance or misrepresentation of a material fact. The matter agreed upon in the agreement may not be reopened or modified by an officer, employee, or agent of the state. In an action, suit, or proceeding, the agreement and any determination or payment made under the agreement is final and conclusive and may not be annulled, modified, set aside, or disregarded.

**History:** (6240-18 1/2o) 1931 c 394 s 16; 1955 c 232 s 4; 1959 c 17 s 2; 1961 c 113 s 1; 1961 c 163 s 9; 1965 c 787 s 3; 1975 c 227 s 9; 1985 c 248 s 70; 1986 c 444; 1990 c 530 s 18

## 27.20 ENFORCEMENT.

The commissioner shall be charged with the enforcement of the provisions of sections 27.01 to 27.15 and 27.19 and of the rules made and published thereunder. Upon complaint made it shall be the duty of the county attorney to prosecute all cases arising in the attorney's county for violation of sections 27.01 to 27.15 and 27.19, or of the rules made and published thereunder. The commissioner and duly authorized agents and inspectors appointed by the commissioner for the purpose of enforcing the provisions of sections 27.01 to 27.15 and 27.19 shall have the power of police officers in this enforcement.

**History:** (6240-18 1/2p) 1931 c 394 s 17; 1935 c 186 s 3; 1955 c 232 s 5; 1961 c 163 s 10; 1985 c 248 s 70; 1986 c 444