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c 6 The Farm Products Grades and Sales Amendment Act, 1974

Ontario

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CHAPTER 6

An Act to amend
The Farm Products Grades and Sales Act

Assented to April 19th, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of The Farm Products Grades and Sales Act, being chapter 161 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1972, chapter 37, section 1, is repealed and the following substituted therefor:

1. In this Act,

(a) “Arbitration Board” means the Produce Arbitration Board established under this Act;

(b) “Board” means the Produce Licence Review Board established under this Act;

(c) “contracting party” means,

(i) a producer of farm products who has entered into a contract with a licensee, or

(ii) a licensee who has entered into a contract with a producer of farm products, respecting the marketing of any farm product;

(d) “controlled-atmosphere fruit” means fruit that has been stored in a sealed compartment of a controlled-atmosphere storage plant for a period of at least ninety days from the date of the sealing thereof where the oxygen content of the air in the sealed compartment did not exceed 5 per cent during the storage;

(e) “controlled-atmosphere storage plant” means premises and buildings constructed and equipped
for cold storage of fruit in sealed compartments within which the oxygen content of the air is mechanically controlled;

(f) "dealer" means a person who purchases or accepts for sale a farm product from the producer thereof, other than a person who purchases a farm product for his own consumption;

(g) "Director" means the Director of the Farm Products Inspection Branch of the Ministry of Agriculture and Food;

(h) "farm product" means such animals, animal products, Christmas trees, fruit, fruit products, grains, honey, maple products, seeds, tobacco, vegetables, vegetable products, wood or any class thereof and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations;

(i) "grade" means, except in subsection 4 of section 2, a grade established under this Act;

(j) "grader" means a grader appointed under this Act;

(k) "inspector" means an inspector appointed under this Act;

(l) "licence" means a licence issued under this Act and "licensee" has a corresponding meaning;

(m) "marker" means a marker issued under this Act;

(n) "Minister" means the Minister of Agriculture and Food;

(o) "motor vehicle" means a motor vehicle as defined in The Highway Traffic Act;

(p) "package" includes any box, crate or other receptacle used for or suitable for use in the marketing, transporting or shipping of a farm product;

(q) "regulations" means the regulations made under this Act.

2. Clauses m, n, o and p of subsection 1 of section 2 of the said Act are repealed and the following substituted therefor:
(m) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor;

(n) prescribing the terms and conditions on which licences are issued;

(o) prescribing grounds for refusal to renew, suspension or revocation of licences in addition to the grounds mentioned in section 9b or 9d;

(p) providing for the issuing of markers for motor vehicles owned or leased by persons licensed as dealers and prescribing the fees payable therefor;

(pa) prohibiting any person licensed as a dealer from transporting any farm product in a motor vehicle upon a highway in Ontario unless a marker has been issued respecting the vehicle and requiring any markers to be displayed in such manner as may be prescribed;

(pb) requiring removal of any marker issued to a person whose licence as a dealer has been suspended or revoked;

(pc) prescribing the form of and conditions in the bill of lading to be used in transporting or shipping a farm product in respect of which a bill of lading is not required under The Public Commercial Vehicles Act;

(pd) prescribing records to be kept by dealers;

(pe) prescribing forms and providing for their use.

3. The said Act is amended by adding thereto the following sections:

9a.—(1) No person shall commence or continue to carry on business as a dealer unless he is the holder of a licence as a dealer issued by the Director.

(2) The Director shall issue a licence as a dealer to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

(a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;
(b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;

(c) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;

(d) where the applicant was previously the holder of a licence and,

(i) such licence was revoked, or

(ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence, under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or

(e) the applicant is not financially responsible.

(3) Subject to section 9b, the Director shall renew a licence as a dealer on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee.

9b. The Director may refuse to renew or may suspend or revoke a licence as a dealer if, after a hearing, he is of the opinion that,

(a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;

(b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened, or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;
(c) the licensee has failed to comply with an award of the Arbitration Board;

(d) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or

(e) any ground for refusing to issue a licence under subsection 2 of section 9a exists.

9c.—(1) No person shall commence or continue to engage in the operation of a controlled-atmosphere storage plant unless he is the holder of a licence as an operator of a controlled-atmosphere storage plant issued by the Director.

(2) No person shall commence or continue to engage in the packing or repacking of controlled-atmosphere fruit for sale by him unless he is the holder of a licence as a packer of controlled-atmosphere fruit issued by the Director.

(3) The holder of a licence as an operator of a controlled-atmosphere storage plant shall be deemed to be the holder of a licence as a packer of controlled-atmosphere fruit.

(4) The Director shall issue a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of the opinion that,

(a) the applicant, or where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;

(b) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with the law;

(c) the applicant does not possess or will not have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;

(d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations;

(e) where the applicant was previously the holder of a licence and,
(i) such licence was revoked, or

(ii) the applicant or, where the applicant is a corporation, any officer, servant or director thereof or any person who will be in any way associated with the applicant in connection with the business, was convicted of an offence,

under this Act and the grounds for such cancellation or conviction warrant a refusal to issue the licence; or

(f) the applicant is not financially responsible.

(5) Subject to section 9d, the Director shall renew a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee.

9d. The Director may refuse to renew or may suspend or revoke a licence as an operator of a controlled-atmosphere storage plant or as a packer of controlled-atmosphere fruit if, after a hearing, he is of the opinion that,

(a) the licensee has ceased to possess or have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations;

(b) the licensee, or where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with the business to contravene any provision of this Act or the regulations or of any other law in force in Ontario applying to the carrying on of such business or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence;

(c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or

(d) any ground for refusing to issue a licence under subsection 2 of section 9c exists.

9e. Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee
has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal.

9f.—(1) The notice of a hearing by the Director under section 9a, 9b, 9c or 9d shall afford the applicant or licensee a reasonable opportunity to show or achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

9g. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations.

9h.—(1) A board to be known as the "Produce Licence Review Board" is hereby established and shall consist of not fewer than three persons appointed by the Lieutenant Governor in Council, none of whom are members of the public service in the employ of the Ministry of Agriculture and Food.

(2) The Lieutenant Governor in Council may appoint one of the members of the Board as chairman and another of the members as vice-chairman.

(3) A majority of the members of the Board constitutes a quorum.

(4) The members of the Board shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

9i.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within thirty days after receipt of the decision of the Director, appeal to the Board.
(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection 1, either before or after expiration of such time, where it is satisfied that there are prima facie grounds for appeal and that there are reasonable grounds for applying for the extension.

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing de novo to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs the decision of the Director is effective until the appeal is disposed of.

9j.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceeding before the Board under this Act.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of The Statutory Powers Procedure Act, 1971.

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argu-
ment of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

9k.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Supreme Court in accordance with the rules of court.

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

(3) The chairman of the Board shall certify to the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board’s record, shall constitute the record in the appeal.

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of.

9l.—(1) A board to be known as the “Produce Arbitration Board” is hereby established and shall consist of three persons appointed by the Lieutenant Governor in Council.

(2) One of the members of the Arbitration Board shall be the holder of a licence as a dealer, one of the members shall be a producer of farm products and none of the members shall be members of the public service.

(3) The Lieutenant Governor in Council may appoint one of the members of the Arbitration Board as chairman.

(4) The members of the Arbitration Board shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

9mr.—(1) Every contract between two contracting parties shall be deemed to provide that, where the parties have submitted to arbitration a matter in dispute to be resolved, any dispute arising out of any term of the contract.
condition of the contract whether express or implied, the matter in dispute shall be submitted for arbitration by the Arbitration Board and The Arbitrations Act applies, except where it is inconsistent with this Act.

(2) Either contracting party may refer the matter in dispute to the Arbitration Board by serving notice thereof upon the other contracting party and the Director.

(3) A notice under subsection 2 shall contain a statement of the matter in dispute and the name and address of the contracting party serving the notice.

(4) Where the Director receives a notice under subsection 2, he shall forthwith notify the members of the Arbitration Board accordingly.

(5) All costs of the reference and award are in the discretion of the Arbitration Board which may direct to and by whom and in what manner those costs or any part thereof shall be paid or may direct that no costs shall be paid as between the contracting parties.

(6) Notwithstanding The Arbitrations Act, no fees are payable by the parties to the members of the Arbitration Board for their services but the Arbitration Board may include in any award a direction to pay to the Treasurer of Ontario for the services of the Arbitration Board an amount which shall not exceed the total remuneration and expenses payable to the members of the Arbitration Board under subsection 4 of section 9 respecting the reference and award.

9n. An appeal lies from an award of the Arbitration Board and section 16 of The Arbitrations Act applies as if it were agreed by the terms of a submission that there may be an appeal from the award.

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

5. This Act may be cited as The Farm Products Grades and Sales Amendment Act, 1974.