

OCCUPATIONS CODE

TITLE 11. REGULATION OF SALES AND SOLICITATION

CHAPTER 1801. COMMISSION MERCHANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1801.001. DEFINITIONS. In this chapter:

(1) "Commission merchant" means a person engaged in the business of selling any goods on consignment and for a commission.

(2) "Goods" includes produce, wares, merchandise, sugar, and cotton.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.002. APPLICATION OF CHAPTER. A commission merchant shall meet the requirements of this chapter except to the extent that the person's business as a commission merchant is regulated by another provision of law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. BOND

Sec. 1801.051. BOND REQUIRED. A commission merchant shall file a bond with the county judge of each county in which the commission merchant maintains an office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.052. BOND TERMS AND CONDITIONS. (a) A bond filed under this subchapter must:

(1) be in the amount of \$3,000;

(2) be conditioned on the commission merchant performing duties required by Subchapter C, except Sections [1801.103\(a\)](#), (c), and (d); and

(3) be payable to the county judge of each county in which the commission merchant maintains an office as trustee for any person who may be entitled to recover under the bond.

(b) The bond must be made with:

(1) a solvent surety company doing business in this state; or

(2) two or more good and sufficient sureties, each of whom:

(A) is a resident of this state; and

(B) makes an affidavit stating that the surety has assets, not subject to exemption, that are at least equal to the amount of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.053. BOND APPROVAL. The bond must be approved by the county judge of each county in which the commission merchant maintains an office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.054. RECORDING OF BOND. The county judge shall file the bond with the county clerk in the same manner as an instrument to perfect a security interest under Chapter 9, Business & Commerce Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.055. SUIT ON BOND. (a) A person damaged by a breach of a condition of the bond may bring suit and recover under the bond.

(b) The suit shall be filed in the county in which the bond is filed.

(c) A bond is not void on first recovery and may be sued on until the total amount is exhausted.

(d) If the amount of the bond is reduced to \$1,500 or less, the commission merchant shall file a new bond in an amount equal to \$3,000. The new bond is liable for all future contracts entered into by the commission merchant and a consignor.

(e) A commission merchant who does not file a new bond under Subsection (d) may not do business in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. COMMISSION MERCHANT DUTIES

Sec. 1801.101. CONTRACT PERFORMANCE. A commission merchant shall perform all contracts with a consignor of goods.
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.102. SALE OF GOODS. On shipment of a consignment, a commission merchant shall promptly receive and sell the goods under the terms of the consignment contract.
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.103. STATEMENTS AND RECEIPTS REGARDING CONSIGNMENT. (a) A person who consigns goods to a commission merchant shall send to the commission merchant a written statement stating the quantity, the quality or class, and the condition of the consigned goods.

(b) On receipt of the statement, the commission merchant shall promptly notify the consignor of any objection the commission merchant has to the stated class, quality, or quantity and the condition of the consigned goods. If the commission merchant fails to object, the statement is prima facie evidence of the class, quality, or quantity and the condition of the consigned goods.

(c) On receipt by the commission merchant of the goods, the commission merchant shall give to the agent of the carrier delivering the goods a receipt for the goods. The receipt must state the quality, quantity, grade, and condition of the goods.

(d) The agent of the carrier shall keep the receipt on file in the carrier's office for six months from the date of receiving the receipt. The receipt may be inspected by a person interested in the shipment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.104. ACCOUNTING. (a) As soon as the goods are sold, the commission merchant shall send to the consignor a complete itemized account of the sale.

(b) The itemized account must include the price received and the date of the sale.

(c) If the commission merchant sells cotton, sugar, or other

produce by weight, the itemized account must:

(1) include the weight of the cotton, sugar, or other produce in gross and the tare allowed; and

(2) be accompanied by the certificate or memorandum of the weight and condition of the cotton, sugar, or other produce required by law, signed by the weigher who weighed the cotton, sugar, or other produce.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.105. REMITTANCE OF SALE PROCEEDS. Not later than the fifth day after the date of the sale of consigned goods, a commission merchant shall send to the consignor the total amount received from the sale less the commission merchant's commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. ACTIONS AGAINST COMMISSION MERCHANTS

Sec. 1801.151. REQUIREMENT TO OBTAIN WRITTEN LICENSE. (a) A commission merchant must obtain the express written license from the owner or consignor of goods, or a person authorized by the owner or consignor, before the commission merchant may, directly or indirectly, purchase or reserve an interest in the consigned goods in the merchant's name or in the name or through the instrumentality of another, for the merchant's benefit or for the benefit of another, or as an agent of any other person.

(b) On violation by a commission merchant of Subsection (a), the owner of the goods is entitled to recover from the commission merchant a penalty in an amount equal to half of the value of the goods.

(c) An action for a penalty under Subsection (b) must be brought in the county in which:

(1) the sale took place; or

(2) the commission merchant resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.152. FALSE CHARGES. (a) A commission merchant may not charge for mending or patching, roping bales, cooperage or

repairing bales, labor, hauling, cartage, storage, or marking or weighing unless the work is actually done.

(b) A charge specifically describing work performed must be made on a bill regardless of any contrary usage or custom to make the charge by rate or average.

(c) A person who violates this section is subject to a penalty of not less than \$100 or more than \$500. The owner or consignor may recover the penalty by filing suit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.153. SALE WITHOUT BOND. A person who sells any consigned goods for commission without first making and filing the bond required by Section 1801.051 shall be fined not less than \$100 or more than \$500.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.154. CONSIGNOR'S REMEDIES. (a) If a commission merchant fails to comply with a provision of Subchapter C, except Section 1801.103(a), (c), or (d), the commission merchant and the surety company or sureties required by Section 1801.052 are:

(1) liable for all actual damages incurred by the consignor resulting from the failure; and

(2) subject to a penalty of not less than \$100 or more than \$500.

(b) The consignor may recover the damages and penalty by filing suit for the actual damages and penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.