

AMENDMENTS

1995—Subsec. (a). Pub. L. 104-48, §§4(c), 5(b), substituted “the anniversary date of the license at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required)” for “any anniversary date thereof unless the annual fee has been paid” in provisions before first proviso, “the necessity of renewing the license and of paying the renewal fee (if such fee is required)” for “the necessity of paying the annual fee” in first proviso and “renewal fee (if required)” for “annual fee” and “plus \$50” for “plus \$5” in second proviso.

Subsec. (b). Pub. L. 104-48, §12(c)(1), inserted “is prohibited from employment with a licensee under section 499h(b) of this title or” after “with the applicant,” in introductory provisions.

Subsec. (c). Pub. L. 104-48, §12(c)(2), inserted at end “The Secretary may not issue a license to an applicant under this subsection if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 499h(b) of this title.”

1991—Subsec. (a). Pub. L. 102-237 substituted “annual” for “annual” before “fee has been paid”.

1978—Subsec. (a). Pub. L. 95-598, §303(a), inserted “, unless the Secretary finds upon examination of the circumstances of such bankruptcy, which he shall examine if requested to do so by said licensee, that such circumstances do not warrant such termination”.

Subsec. (e). Pub. L. 95-598, §303(b), inserted “and if he finds that the circumstances of such bankruptcy warrant such a refusal.”

1962—Subsec. (a). Pub. L. 87-725, §5, inserted proviso that the license of any licensee shall terminate, if he, or in case the licensee is a partnership, any partner, is discharged as a bankrupt.

Subsec. (b). Pub. L. 87-725, §6, amended subsection generally, and among other changes, required refusal of a license upon showing responsible connection by the applicant, or by any person responsibly connected with him, with a person guilty of the specified conduct, without requiring that the applicant was responsible in whole or in part for such conduct, and upon the grounds specified in clause (C) relating to being found guilty in a Federal court of having violated the provisions of sections 491, 493 to 497 of this title, provided that the provisions regarding flagrant or repeated violation of section 499b of this title shall not apply where the license in such case was suspended and the suspension period has expired or is not in effect, and eliminated provisions which, notwithstanding the grounds for refusal specified in the section, permitted the Secretary to issue a license upon the applicant furnishing a bond or other satisfactory assurance that his business would be conducted in accordance with this chapter, and that he would pay reparation orders previously issued against him or which could be issued against him within two years after receiving the license, but such license could not be issued until after the expiration of one year from the revocation or from the finding that the applicant was responsible, for any flagrant or repeated violation of section 499b of this title.

Subsec. (c). Pub. L. 87-725, §7, substituted provisions which permit a license to be issued to an applicant ineligible under subsec. (b) of this section, upon expiration of the two year period applicable to him, if he furnishes a surety bond as assurance that his business will be conducted in accordance with this chapter and that he will pay all reparation orders issued against him in connection with transactions occurring within four years following issuance of license, subject to appeal under section 499g(c) of this title, or if no bond is given, permit issuance of the license after three years from the applicable order, or decision of the court on appeal, and which provide that if a bond is terminated without the Secretary’s approval, the license is automatically canceled and cannot be re-issued during the four year period without a new bond, that the Secretary may

order an increase or a reduction in the bond, and that a licensee notified to increase the bond must do so in a reasonable time or his license will be suspended until such bond is provided, for provisions which required the Secretary to refuse a license to an applicant, or if the applicant was a partnership, or an association or a corporation, to a partner or officer or any person holding a responsible position therein, respectively, found within two years of being guilty of violating sections 491 to 497 or 499n(b) of this title.

1956—Subsec. (a). Act July 30, 1956, §2(b), substituted “the fee provided in section 499c(b) of this title, plus \$5” for “a fee of \$20”.

Subsec. (d). Act July 30, 1956, §3, included within term “applicant” any general partner of a partnership, and officers or holders of more than 10 per centum of the stock of a corporation, and permitted the Secretary to refuse to issue a license to an applicant who was convicted of a felony in any State or Federal court.

Subsec. (e). Act July 30, 1956, §4, added subsec. (e).

1950—Subsec. (a). Act June 15, 1950, increased fee for late registration from \$15 to \$20, and provided for its disposition in the fund.

1937—Subsec. (a). Act Aug. 20, 1937, inserted first and second provisos.

Subsec. (b). Act Aug. 20, 1937, among other changes, inserted “Such bond shall be in an amount sufficient in the judgment of the Secretary of Agriculture to insure payment of such reparation orders” at the end.

Subsecs. (c), (d). Act Aug. 20, 1937, amended subsecs. (c) and (d) generally.

1936—Subsec. (b). Act June 19, 1936, among other changes, inserted “if he finds” after “or (3)” and “or (5)” after “section 499b”.

1934—Subsec. (b). Act Apr. 13, 1934, §4, among other changes, added cls. (3) and (4).

Subsecs. (c) to (e). Act Apr. 13, 1934, §§5-7, added subsecs. (c) to (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 499e. Liability to persons injured

(a) Amount of damages

If any commission merchant, dealer, or broker violates any provision of section 499b of this title he shall be liable to the person or persons injured thereby for the full amount of damages (including any handling fee paid by the injured person or persons under section 499f(a)(2) of this title) sustained in consequence of such violation.

(b) Remedies

Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this chapter are in addition to such remedies.

(c) Trust on commodities and sales proceeds for benefit of unpaid suppliers, sellers, or agents; preservation of trust; jurisdiction of courts

(1) It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricul-

tural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association, as defined in section 1141j(a) of title 12, and its members.

(3) The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust. When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings, and other documents relating to the transaction.

(4) In addition to the method of preserving the benefits of the trust specified in paragraph (3), a licensee may use ordinary and usual billing or invoice statements to provide notice of the licensee's intent to preserve the trust. The bill or invoice statement must include the information required by the last sentence of paragraph (3) and contain on the face of the statement the following: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these com-

modities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

(5) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust.

(June 10, 1930, ch. 436, §5, 46 Stat. 534; Aug. 20, 1937, ch. 719, §7, 50 Stat. 728; Pub. L. 98-273, §1, May 7, 1984, 98 Stat. 165; Pub. L. 102-237, title X, §1011(3), Dec. 13, 1991, 105 Stat. 1898; Pub. L. 104-48, §§6, 8(b), Nov. 15, 1995, 109 Stat. 427, 429.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 555 of this title.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104-48, §8(b), inserted "(including any handling fee paid by the injured person or persons under section 499f(a)(2) of this title)" after "damages".

Subsec. (c)(3). Pub. L. 104-48, §6(a), (b), struck out "and has filed such notice with the Secretary" before "within thirty calendar days" in first sentence and inserted after first sentence "The written notice to the commission merchant, dealer, or broker shall set forth information in sufficient detail to identify the transaction subject to the trust."

Subsec. (c)(4), (5). Pub. L. 104-48, §6(c), added par. (4) and redesignated former par. (4) as (5).

1991—Subsec. (c)(2). Pub. L. 102-237 substituted "as" for "(as" before "defined".

1984—Subsec. (c). Pub. L. 98-273 added subsec. (c).

1937—Subsec. (a). Act Aug. 20, 1937, struck out "paragraph (1), (2), (3), or (4) of" after "provisions of".

§ 499f. Complaints, written notifications, and investigations

(a) Reparation complaints

(1) Petition; process

Any person complaining of any violation of any provision of section 499b of this title by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(2) Filing and handling fees

A person submitting a petition to the Secretary under paragraph (1) shall include a filing fee of \$60 per petition. If the Secretary determines under paragraph (1) that the facts contained in the petition warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of \$300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved