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Requirements for Grain Dealers:

New York



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Requirements for Grain Dealers: New York

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N.Y. A.G.M. Law Ch. 69, Art. 20

Current with legislation effective 2/28/2024 from the 2024 Regular Session, subject to changes made by Iowa Code Editor for Code 2025.

§ 244. Statement of policy and application of article

1. This article is enacted in the exercise of the police power of the state and its purposes generally are to suppress and prevent unfair and fraudulent practices in the marketing within this state of farm products produced therein and to safeguard the producers and dealers of this state in certain marketing transactions relative to such farm products. This article shall apply only to transactions concerning farm products produced within this state, or concerning livestock produced outside the state when such transactions are either entered into or attempted within the state, and where such transactions involve a dealer doing business within this state. Farm products shipped from a point within this state shall be presumed to have been produced within the state.

2.

(a) This article shall not apply to the sale of farm products at auction held at the premises of the owner of said farm products and where said sales do not exceed one sale a year, nor to any agricultural cooperative corporation as defined in subdivision (a) of section one hundred eleven of the cooperative corporations law when receiving, processing, and marketing farm products of its producer members, nor to persons required to file and maintain a mandatory surety under the federal packers and stockyards act with respect to their transactions regulated under that act.



(b) The licensing, bonding and stated grape price provisions of this article shall not apply to: (i) any person whose annual dealings in farm products do not exceed the sum of twenty thousand dollars; or (ii) any agricultural cooperative with respect to the receipt, processing and marketing of grapes or grape products of its producer members or non-members of such cooperative on the basis of their patronage, provided, however, that the annual purchase of grape or grape products from non-members of such cooperative shall not exceed the sum of one hundred thousand dollars; or (iii) a charitable not-for-profit organization which receives for distribution donated farm salvage, as defined in section two hundred seventeen of this chapter.

§ 245. Definitions

1. “Farm products” includes all agricultural, horticultural, floricultural, and vegetable and fruit products of the soil, Christmas trees, livestock and meats, poultry, nuts, honey, maple tree sap and maple products produced therefrom, wool, hides, hay, straw and grains; but shall not include eggs, dairy products or timber products, except as hereinabove set forth.
2. “Dealer” means any person who buys or receives farm products from a producer for resale, or arranges, facilitates or brokers the sale of farm products from a producer to a dealer or any other person; and shall also include “commission merchants”, “net-return dealers”, “brokers” and “processors”. A “commission merchant” means any person engaged in the business of receiving farm products for sale on commission, however computed. A “net-return dealer” means a dealer who solicits or receives shipments of farm products under a promise to pay for the same on the basis of current market prices on receipt or at a price bearing some specified premium above or below established market quotations. A “broker” means any person engaged in the business of negotiating sales and purchases of farm products for or on behalf of the vendor or the purchaser. A “processor” means any person who bakes, brines, bottles, cans, concentrates, dehydrates, dresses, dries, freezes, juices, packages, pickles, preserves, presses or waxes and/or encloses such stabilized farm products, or their derivative products, in any container, whether or not hermetically sealed, provided, however, that a person who buys farm products only for sale, including sale in a processed form, at retail to the ultimate consumer shall not be deemed a dealer for purposes of this article. Sale at retail to the ultimate consumer shall not include sales to industrial, institutional, commercial or agricultural users.
3. “Prompt payment” means payment within thirty days of the date farm products sold by a producer to a dealer are delivered to such dealer, or other person as the purchaser may designate, or such other period of time as otherwise agreed upon in a writing signed by the dealer and the producer on or before delivery of said farm products, provided that in no event shall such period exceed one hundred twenty days from said date of delivery.



4. "Producer" means any person who grows farm products or sells livestock within this state.
5. "Person" means any individual, corporation, partnership or association.
6. "Poultry" means any live or slaughtered domesticated chicken, duck, turkey, goose, pheasant, squab or guinea hen.
- 7, 8. Repealed by L.2006, c. 273, § 1, eff. July 26, 2006
9. "Bond" means a bond executed by a surety company authorized to do business in this state.
10. "Letter of credit" means an irrevocable letter of credit conforming to article five of the uniform commercial code, and executed by a bank or trust company authorized to do business in this state.

§ 246. Unlawful conduct

It shall be unlawful:

1. For any person to act as a dealer unless licensed pursuant to the provisions of this article.
2. For any dealer to make any fraudulent charge in respect to any farm product.
3. For any dealer to reject or fail to account and make prompt payment, without reasonable cause, for any farm products, bought or contracted to be bought or negotiated to be bought by such dealer.
4. For any dealer to discard, dump or destroy, without reasonable cause, any farm products received by him or her.
5. For any dealer to make any false or misleading statement, or other misrepresentation concerning the condition, quality, grade, quantity or disposition of or condition of the market for any farm products received by or bought or contracted to be bought by such dealer, or the purchase or sale of which is negotiated by such dealer.
6. For any dealer directly or indirectly to purchase for his or her own account farm products received by him or her for sale on commission, without prior authority from or without notifying the consignor thereof.

§ 247. Power of commissioner to investigate

The commissioner and his or her authorized representatives shall have access to and may enter at all reasonable hours all places where farm products are being held, packaged, processed or stored, or where such farm products are being bought, sold or handled, and shall have access to the books, papers, records and documents relating to transactions involving farm products, and shall have the power to inspect and copy the same, and may take testimony under oath concerning any matter related to the administration and enforcement of this article. Any information relating to the business disclosed by such



investigation shall be held by the commissioner as confidential except that such information may be disclosed in the administration and enforcement of this article. In the event any person refuses the commissioner or his or her authorized representatives access to any premises, the commissioner may apply to the state supreme court for an administrative inspection warrant which shall be granted upon a showing by the commissioner that the premises sought to be inspected are or may be utilized by such person to conduct any activity subject to regulation under this article.

§ 247-a. Liability to person injured

Any dealer, who violates any provisions of section two hundred forty-six of this article, shall be liable to the person injured thereby for the full amount of damages resulting from such violation.

§ 248. Dealers to be licensed and to provide security and to deposit fee

1.

(a) No person shall act as a dealer unless licensed as provided in this article. Application shall be made upon such forms and at such times as prescribed by the commissioner. Renewal applications shall be submitted to the commissioner at least thirty days prior to the expiration of the existing license. No action will be taken on applications deemed incomplete by the commissioner. The applicant shall furnish evidence of his or her good character, financial statements, prepared and certified by a certified public accountant when required by the commissioner, and evidence that he or she has adequate physical facilities for receiving and handling farm products or processing farm products if he or she is to act as a dealer. The commissioner, if so satisfied, shall issue to such applicant, upon the filing of a bond or letter of credit and upon payment of a fee to be deposited into the agricultural producers security fund as hereinafter provided, a license entitling the applicant to conduct the business of a dealer in farm products for a period of one year. Notwithstanding any other provision of this section, an applicant who intends to pay and a licensee who pays upon delivery for purchases of farm products from producers, in cash, or cash equivalent, including only certified or bank check, money order, electronic funds transfer, or by debit card, shall be exempt from filing a bond or letter of credit. In the event that a licensee who has been so exempted from filing a bond or letter of credit fails to pay cash or a cash equivalent upon delivery for any purchase of farm products from a producer, such licensee shall file a bond or letter of credit as otherwise required by this section with the commissioner no later than ten business days from the date the commissioner notifies the licensee that such bond or letter of credit is required.

(b) The commissioner is authorized to stagger the commencement of the license year among licensees, and shall prorate the license application fee and agricultural producers security fund fee accordingly. Notwithstanding any other



provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all license fees received pursuant to this section in the agricultural producers security fund.

2. Before commencing or doing any business for the time for which a license has been issued, said license shall be enclosed in a suitable wood or metal frame having a clear glass space and a substantial wood or metal back so that the whole of said license may be seen therein, and shall be posted and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same.

§ 249. Granting, revoking or suspending licenses

The commissioner may decline to grant or renew a license, or revoke or suspend a license already granted, upon due notice and opportunity for a hearing to the applicant or licensee, and upon finding of one or more of the following:

1. That the licensee or applicant has violated any provision of section two hundred forty-six of this article.
2. That the licensee has made a general assignment for the benefit of creditors or is insolvent or where a money judgment has been secured against him or her, upon which an execution has been returned unsatisfied and the time to appeal therefrom has expired.
3. That there has been a continued course of dealing or operation of the business of the applicant or licensee of such a nature as to satisfy the commissioner of the inability or the unwillingness of the applicant or licensee to conduct his or her business in compliance with the provisions of this chapter, or of such rules and regulations as the commissioner may adopt.
4. That there has been a continued failure to keep records required by the commissioner or by law.
5. That the applicant or licensee has failed to provide such security as required by the commissioner pursuant to this article.
6. That the applicant or licensee has been a party to or is conspiring to enter a combination to fix prices contrary to law.
7. That the applicant or licensee has solicited, purchased or received farm products contracted to another licensee.
8. That the applicant or licensee has failed to comply with any other provisions of this chapter, article or rules and regulations promulgated thereunder.
9. That the applicant or licensee has made any false or misleading statement in his or her application to the commissioner for a license, or concerning any matter enumerated in this article.
10. That the applicant or licensee or any individual holding any position or interest or power of control of the applicant or licensee



had previously been responsible in whole or in part for any act on account of which a license may have been suspended or revoked pursuant to the provisions of this article.

11. That the licensee has violated the posting requirements of section two hundred forty-eight of this article.

§ 250. Form and amount of security; agricultural producers security fund; scope of coverage

1.

(a) The bond or letter of credit required by section two hundred forty-eight of this article shall be upon a form prescribed by the commissioner and shall be in the sum fixed by the commissioner, provided that the sum shall not be less than three thousand dollars nor more than four hundred thousand dollars, and shall be conditioned on the faithful compliance by the licensee with the provisions of this article. Upon notice, the commissioner may increase the security based upon review of the applicant's or licensee's financial statements and other materials in support of its application. In the case of an applicant or licensee owned in whole or in part by a producer, said producer may execute a waiver of his or her right to recover from the applicant or licensee's security and the agricultural producers security fund and the amount of the security said applicant or licensee is required to provide shall be adjusted accordingly.

(b) In addition to the bond or letter of credit required by section two hundred forty-eight of this article, a fee for deposit in the agricultural producers security fund shall be paid annually to the commissioner at the time application is made for a license. Such fee shall be determined on the basis of the annual dollar volume of purchases of farm products as shown in the application for license under this article in accordance with the following schedule:

Annual Volume	Fee
\$5,000,000 and over	\$2,500
3,000,000- 4,999,999	1,750
1,000,000- 2,999,999	1,000
500,000- 999,999	750
300,000- 499,999	500
50,000- 299,999	300
20,000- 49,999	200

(c) In lieu of filing the bond or letter of credit required by section two hundred forty-eight of this article and paying the fee as



provided for in paragraph (b) of this subdivision, the applicant may elect to file a bond or letter of credit in the amount determined by the commissioner, but which shall not be less than an amount covering ninety percent of the previous year's dollar volume of purchases of New York state farm products.

(d) Upon initial application for a license under this article, the applicant who elects to participate in the agricultural producers security fund shall pay into the fund an amount equal to one-half the fee determined in paragraph (b) of this subdivision, based on an applicant's good faith estimate of his or her annual dollar volume of purchases.

(e) There is hereby established in the joint custody of the comptroller and commissioner of taxation and finance a fund to be designated as the agricultural producers security fund. The commissioner shall deposit all moneys received from dealers pursuant to paragraph (b) of this subdivision into the fund. The moneys so received and deposited in the agricultural producers security fund shall not be deemed state funds. The comptroller shall be empowered to invest such funds pursuant to section ninety-eight-a of the state finance law consistent with the purposes of this article. The commissioner is hereby authorized to draw upon such funds, in his or her discretion, to purchase credit insurance for the benefit of the agricultural producers security fund. The expense of administering the licensing and bonding provisions of this article shall be paid from the fund upon vouchers certified by the commissioner. Payments from the fund for administrative expenses shall not exceed five percent of the maximum amount authorized for the fund. The commissioner shall make an annual report of the receipts to and disbursements from the fund, including the costs of administration of the fund, which report shall be made available to each dealer and to any other person having an interest in the fund, and any person who may request a copy of that report.

(f) At any time the fund exceeds four million dollars on the one hundred twentieth day prior to the commencement of the next license year, the commissioner shall suspend collection of the security fund fee, unless he or she has reason to believe that pending claims may reduce the fund below that amount.

2. When and as required by the commissioner, a licensee shall file with the commissioner a verified statement of his or her disbursements during a period to be prescribed by the commissioner which shall contain the names of the producers from whom farm products were received or purchased and the amount due to the producers. Prior to acceptance of such statement for filing, the commissioner may require, at the expense of the licensee, the submission of an audit by a certified public accountant. If, in the judgment of the commissioner, it appears from such statement or from facts otherwise ascertained by him or her that the security afforded to producers delivering or selling farm products to such licensee does not protect



such producers to the extent intended by this section, the commissioner may require such licensee to give an additional bond or letter of credit in a sum to be determined by the commissioner, but in no event shall the combined bonds for the licensee exceed four hundred thousand dollars.

3. If satisfied from an investigation of the financial condition, character and record of the person applying for a license that (a) such person is solvent and possessed of sufficient assets reasonably to assure compensation to producers of farm products; and (b) the gross volume of farm products purchased from producers by said applicant will not exceed one hundred thousand dollars during the license year, the commissioner, in his or her discretion, may relieve such applicant from the provision of this section requiring the filing of a bond or letter of credit.

4. The commissioner, at least annually, shall publish the names of all licensees and the amount of their security and shall, upon request, furnish such list to any person.

§ 250-a. Trust upon farm products and sales proceeds for the benefit of producers

1. Farm products received by a dealer in all transactions and all inventories of food or other products derived from farm products and any receivables or proceeds from the sale of such farm products, food or other products shall be held by such dealer in trust for the benefit of all unpaid producers of such farm products until full payment of the amounts owing in connection with such transactions has been received by such producers.

2. To preserve the trust benefit provided by this section, a producer must within sixty days from the date by which the dealer was obligated by statute, regulation or written agreement to make payment to the producer, give written notice to the dealer that the producer is electing the trust benefit. The written notice shall set forth information in sufficient detail to identify the transaction subject to the trust. Notwithstanding any other provision of this subdivision, nothing shall prevent a producer from providing notice of the trust benefit election to a dealer prior to the date by which the dealer was obligated to make payment.

3. Trust beneficiaries shall have a cause of action to enforce payment from the trust. The supreme court is hereby vested with jurisdiction to entertain such actions. A producer who prevails in an action to enforce payment from the trust shall recover from the dealer related costs, fees and disbursements and may recover reasonable attorney fees as determined by the court.

§ 250-b. Producer claims against security and agricultural producers security fund

1.

(a) A producer who has not received full payment of amounts due for farm products in accordance with the prompt



payment provisions of sections two hundred forty-five and two hundred forty-six of this article shall immediately notify the commissioner in writing of such default in payment. The notification shall set forth the dates of the transactions, the dealer to whom the farm products were sold and/or delivered, the type of product delivered, the amount and the price agreed upon for such product.

(b) If the commissioner has reason to believe that a licensed dealer has defaulted in making payments for farm products to producers, the commissioner shall give notice to producers to file verified claims within thirty days of such notice. The commissioner shall examine the claims so filed, determine the amount due upon such claims, and certify the amounts due each claimant. No claims against the security or the agricultural producers security fund shall be allowed for sales of farm products: (i) to any unlicensed person; (ii) that occurred more than one hundred twenty days after the earliest transaction between the producer and the dealer that remains unpaid as of the date the claim is filed, whether or not that earliest unpaid transaction is included in the claim; or (iii) where a claim is submitted more than three hundred sixty-five days after sale and delivery, but in no event beyond the expiration of the thirty day period provided in the notice published by the commissioner pursuant to this section.

(c) Claims shall be chargeable first against any initial or additional bond or letter of credit provided by the defaulting dealer, and in the event such security is not sufficient to pay the amount owed to all producers, the amounts recovered shall be divided pro rata among all claimants. Any remaining amount of the certified claim shall be payable as set forth in paragraph (d) of this subdivision. The commissioner may bring an action upon the bonds or letter of credit and for purposes of such action his or her determination certifying the amounts due shall be presumptive evidence of the facts stated therein. In the event that the issuer of the bond or letter of credit fails or refuses to honor its obligation to pay under the bond or letter of credit within thirty days from the date of the commissioner's demand for payment, the commissioner may pay from the agricultural producers security fund the amount of the demand and bring an action to recover the amount of the demand from the issuer of the bond or letter of credit. Any recovery in such action shall be deposited in the agricultural producers security fund.

(d) The remainder of such claims against a licensee who elects not to be subject to the additional bonding requirements which are not satisfied by the bond or letter of credit or alternative security shall be processed first against any credit insurance purchased pursuant to this article and any balance thereafter against the agricultural producers security fund. Payment of individual claims against the fund shall not exceed eighty percent of the difference between the total amount recovered on that claim against the bond or



other security and the amount determined to be owed pursuant to paragraph (b) of this subdivision. In the event that the fund is not sufficient to pay such amounts owed to the claimants, recovery from the fund shall be divided pro rata.

2. If any claim is paid from the agricultural producers security fund, the defaulting licensee shall be liable to the commissioner for the benefit of the fund for the amount of claims so paid. If the defaulting licensee has not paid the commissioner within fifteen days after personal service upon him or her of the commissioner's certification of payment of a claim from the fund for which the licensee has been found liable to the claimant, the commissioner may issue a warrant under seal of the department directed to the sheriff of any county of the state commanding him or her to levy upon and sell the real and personal property of the defaulting licensee, found within his or her county, for the payment of the amount of such claim with interest and the cost of executing the warrant, and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The commissioner may file with the clerk of any county a copy of such warrant, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the defaulting licensee designated in the warrant, and in appropriate columns the amount of the licensee's liability to the commissioner for claims, interest and costs, and the date when such copy is filed. Thereupon, the amount of such warrant so docketed shall become a lien, relating back to and deemed perfected as of the date of the dealer's earliest default in payment to producers as determined by the commissioner, upon and shall bind the real and personal property and chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. Upon such filing of a copy of a warrant, the commissioner shall have the same remedies to enforce the licensee's liability as if he or she had recovered judgment against the licensee for the amount of the warrant.

§ 250-c. Stationery and advertising to show license

Where a licensee displays on his or her stationery or in his or her advertising the words licensed or bonded, or a combination of the words licensed and bonded, said licenses shall have printed on said stationery or in said advertising the following statement: "New York State Licensed and Bonded Farm Products Dealer".

§ 250-d. Record and report of sales; preservation of records by dealers

Every dealer shall, upon receipt of farm products and as he or she handles and disposes of the same, make and preserve for at least three years a record thereof, specifying the date of receipt, the kind and quantity of such farm products, and the name and address of the producer or other person from which said farm



products were received, and any fees relative to the sale and the date and method of payment, including any offsets in the purchase price. In the event a dealer is also a producer of farm products, such dealer-producer shall maintain a separate record for those farm products produced by him or her.

§ 250-e. Records to be kept by dealer-processors; deductions for payments to cooperatives

1. It shall be unlawful for a dealer to purchase or receive, or for a seller to deliver, farm products for processing as defined by this article unless the party receiving or purchasing such farm products thereupon furnishes the party selling or delivering said farm products with a certificate legibly printed in the English language upon which there shall be stated the true name of the party purchasing or receiving such farm products for processing; the processing plant license number of said party; the date the farm products are purchased or received; the price to be paid for such farm products except where the farm products are delivered to a cooperative corporation by a member patron or except where the farm products are delivered pursuant to a written contract of purchase and sale which specifies the method by which full payment will be calculated; the method of payment and a payment schedule; the name of the product or products purchased or received; the quantity of the product or products purchased or received; and the name and address of the party from whom the farm products are purchased or received.

2. A member of an agricultural cooperative corporation may by contract with such cooperative corporation, or by separate authorization in writing to the licensee, authorize any person licensed pursuant to this article to make deductions from money due such member for farm products received or purchased by such licensee for processing. The amount of such deductions and the names of the members from whose account deductions are to be made, shall be set forth in a written certificate presented to the licensee by the cooperative, or in the separate written authorization filed with the licensee by the individual member of the cooperative. The licensee shall deduct from moneys due such member of the cooperative the amounts so authorized and shall forward all moneys so deducted to the designated cooperative on or before the fifteenth of the month following the month for which payment is due, together with a statement showing the amounts and agreed prices of farm products received or purchased from the member by the licensee.

3. Every processor shall, at the time of making final payment according to agreements or contracts with each producer from whom he or she has received or purchased farm products, deliver a statement to such producer showing the total quantity of farm products purchased or received, the price per unit, the credits claimed and the manner of computing the amount of such final payment.

4. A producer delivering apples to a dealer or a dealer's designee for processing shall, at the time of delivery, receive from the dealer or the dealer's designee a certificate of official inspection which shall state the



grade of the apples delivered as determined by an official federal or state inspection conducted at the time of delivery. In the absence of a written document signed by the producer and the dealer or the dealer's designee stating the standards to be used in such inspection, the current standards for processing apples adopted by the United States Department of Agriculture shall be used.

§ 250-f. Stated grape price

Notwithstanding any provision of subdivision one of section two hundred fifty-e of this article, except with respect to such cooperative member patrons, it shall be unlawful for any processor doing business in New York to purchase or receive or attempt to purchase or receive grapes grown in New York state unless the processor sets forth and makes available to any selling or delivering party, not later than August fifteenth in the year in which the grapes are to be delivered, the sum total in dollars and cents of all amounts paid or to be paid per unit; provided, however, that a processor and a producer may negotiate without restriction a price for up to five tons of grapes per variety, not to exceed a maximum of twenty tons of grapes total, other than the price originally set forth pursuant to this section provided that any such negotiated prices shall be set forth in writing by the processor no later than the date of delivery of said grapes. Where a selling or delivering party has a contract for delivery of such grapes to a processor, the processor shall, not later than August fifteenth in the year in which such grapes are to be delivered, mail to the delivering or selling party written notice of the stated grape price and of the opportunity to refuse to so deliver with respect thereto. Such notice may also be provided by facsimile, or other electronic means to selling or delivering parties who have the ability to accept notice in that manner and have agreed to accept service by such means. The processor shall also provide to the commissioner by mail, facsimile, or other electronic means, no later than August fifteenth of each year in which such grapes are to be delivered, a written statement of the stated grape price to be paid for such grapes.

§ 250-g. Release of security by commissioner

If upon investigation by the commissioner, the licensee is found to have fully paid all the producers of farm products received or purchased by him or her, the commissioner may cancel the license of such licensee upon request of the licensee and release security deposited with a bank or trust company pursuant to section two hundred fifty of this article, other than contributions to the agricultural producers security fund. Such contributions to the agricultural producers security fund shall not be construed to create a legal and equitable interest in such funds for any licensee or producer.

§ 250-h. Review

The determination of the commissioner in refusing to grant, suspending or revoking a license, or in determining a claim filed pursuant to this article shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules.

The determination of the commissioner shall be final, unless within thirty days from the date of service thereof on the applicant, licensee, claimant, or any other person adversely affected, a proceeding is instituted to review such determination.



§ 250-i. Rules and regulations

The commissioner is hereby authorized, after public hearing, to adopt such rules and regulations as he or she may deem necessary to administer the provisions of this article. Such rules and regulations shall be filed and open for public inspection at the principal offices of the department and with the secretary of state.

§ 250-j. Penalties

Each transaction by a dealer may be considered a separate violation subjecting the dealer to liability pursuant to section thirty-nine of this chapter, in addition to remedies provided in this article.

§ 250-k. Remedies

The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provisions of this article or of any rule or regulation promulgated hereunder. In addition to any other remedy prescribed in article three of this chapter, or otherwise, if necessary to protect the producers or dealers of this state, the commissioner may apply for relief by injunction without alleging or proving that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county, as provided by the civil practice law and rules, or to the supreme court in the third department.

