

MISSISSIPPI GRAIN DEALERS LAW

§75-45-301. Title.

This article shall be known as the "Mississippi Grain Dealers Law of 1978."

§75-45-303. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Person" shall mean any person, firm, association or corporation.

(b) "Grain" shall mean all grains for which standards have been established pursuant to the United States Grain Standards Act as amended, and rice as defined by the Agriculture Marketing Act of 1946, as amended.

(c) "Grain dealer" shall mean any person engaged in the business of buying grain from producers thereof for resale or for milling or processing. A producer of grain buying grain for his own use as seed or feed shall not be considered as being engaged in the business of buying grain for resale or for milling or processing.

(d) "Producer" shall mean the owner, tenant or operator of land in this state who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon.

(e) "Department" shall mean the Mississippi Department of Agriculture and Commerce.

(f) "Commissioner" shall mean the Commissioner of the Mississippi Department of Agriculture and Commerce, or his designated representative.

§75-45-304. Licensing requirements for grain dealers.

No person shall operate as a grain dealer without first having obtained a license pursuant to this chapter; provided, however, that grain dealers licensed under the provisions of the United States Warehouse Act, as amended, or the Mississippi Grain Warehouse Law shall not be required to have a license issued pursuant to this chapter.

§75-45-305. Surety bond; certificate of deposit; letter of credit.

(1) Every person licensed as a grain dealer shall have filed with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the State of Mississippi. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, payable to the commissioner, as trustee. The principal amount of the certificate of deposit or the amount of the letter of credit shall be the same as that required for a surety

bond under this article and the interest thereon shall be made payable to the purchaser thereof. Such bond shall be a principal amount (to the nearest One Thousand Dollars (\$1,000.00)) equal to ten percent (10%) of the aggregate dollar amount paid, by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year or in the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not theretofore engaged in such business, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than Twenty-five Thousand Dollars (\$25,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00), except as otherwise authorized by this article. The commissioner shall determine the sufficiency of any letter of credit.

(2) The commissioner may, when he questions a grain dealer's ability to pay producers for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the commissioner. Failure to post such additional bond or certificate of deposit or irrevocable letter of credit, constitutes grounds for suspension or revocation of a license issued under this article.

(3) Any required bond or bonds shall be executed by the grain dealer as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the commissioner for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain dealer with the provisions of this article and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the commissioner of its intention to cancel the bond and all liability thereunder shall terminate sixty (60) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(4) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of Twenty-five Thousand Dollars (\$25,000.00). Such request shall be accompanied by a financial statement of the applicant made within six (6) months of the date of such request certified by a certified public accountant. If such financial statement discloses net assets and a net worth of an amount equal to at least three (3) times the amount of the bond required by this article and the commissioner is otherwise satisfied as to the financial ability and resources of the applicant, the commissioner may waive that portion of the required bond in excess of Twenty-five Thousand Dollars (\$25,000.00). However, in the case of a grain dealer whose net worth is not equal to three (3) times the amount of bond required, the commissioner may allow such grain dealer to waive in One Thousand Dollar (\$1,000.00) increments a portion of the bond required in excess of Twenty-five Thousand Dollars (\$25,000.00). The percentage factor to be applied to the bond required in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of Twenty-five Thousand Dollars (\$25,000.00). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of Twenty-five Thousand Dollars (\$25,000.00) may be waived. The grain dealer shall then provide to the commissioner a surety bond in the amount of Twenty-five Thousand Dollars (\$25,000.00) plus any additional bond required in excess thereof.

(5) Any grain dealer who purchases grain from producers only in connection with or as an incident to some other business and whose total purchases of grain from producers during any fiscal year do not

exceed an aggregate amount of One Hundred Thousand Dollars (\$100,000.00) may satisfy the bonding requirements of this article by filing with the commissioner a bond, or certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, at the rate of One Thousand Dollars (\$1,000.00) for each Ten Thousand Dollars (\$10,000.00) or fraction thereof of the dollar amount to be purchased, with a minimum bond, certificate of deposit or irrevocable letter of credit of One Thousand Dollars (\$1,000.00) and a current financial statement.

(6) Failure of a grain dealer to file a bond, or certificate of deposit, or letter of credit, and to keep such bond, certificate of deposit or line of credit in force, or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this article.

(7) When the commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the commissioner shall determine through appropriate legal procedures the producers and the amount of defaulted payment and as trustee of the bond shall immediately after such determination call for the dealer's surety bond or bonds, or other pledged financial assets, to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed the producers be less than the principal amount of the bond or bonds or pledged financial assets, then the surety bank, or banking corporation shall be obligated to pay only the amount of the default.

§75-45-307. Issuance and renewal of license.

If the department is satisfied:

- (a) that the applicant is of good business reputation,
- (b) that the applicant has adequate bonding under Sec. 75-45-305,
- (c) that the applicant maintains a permanent business location in this state, and
- (d) that the applicant has sufficient financial resources to guarantee payment to producers for grain purchased from them,

the commissioner shall issue a license to the applicant or shall renew the applicant's license. Licenses shall be issued or renewed annually for a period ending ninety (90) days after the last day of the applicant's fiscal year. The license or renewal thereof issued by the department under this section shall be posted in the principal office of the licensee in this state. A certificate shall be posted in each location listed on a licensee's application where he engages in the business of buying grain. In the case of a licensee operating a truck or tractor trailer unit the licensee is required to have a certificate that the license is in effect and that a bond or certificate of deposit has been filed and is carried in each truck or tractor trailer unit used in connection with the purchase of grain from producers. Upon request of a licensee and payment of the fee thereof, the commissioner shall issue to the licensee a certificate that a license has been issued or renewed and a bond filed as required by this article.

§75-45-309. Examinations; inspections; suspension or revocation of license; hearings.

(1) Every licensed grain dealer shall be examined by the commissioner each year. The cost of such examination shall be included in the annual license fee. The commissioner, at his discretion, may make additional examinations at any time. If any discrepancy is found as a result of additional examination, the cost of such examination is to be paid by the grain dealer.

(2) The commissioner may inspect the premises used by any grain dealer in the conduct of his business at any time and the books, accounts, records and papers of every such grain dealer shall at all times during business hours be subject to inspection by the commission. Each grain dealer may also be required to make such reports of his activities, obligations and transactions as deemed necessary by the commissioner to protect the producer as set forth in the rules and regulations.

(3) If a grain dealer violates any of the provisions of this article, his license and certificate of license may be removed from his premises by any department employee charged with the enforcement of this act and returned to the department. Such removal shall constitute a suspension of the license.

(4) The commissioner may upon his own motion, and shall upon the verified complaint in writing of any person setting forth facts which if proved would constitute grounds for refusal, suspension or revocation of a license under this article, investigate the actions of any applicant or any person or persons applying for, holding or claiming to hold a license.

(5) The commissioner within ten (10) days after removing and suspending a license as provided in this section or before refusing to issue or renew or before otherwise suspending or revoking a license shall set a date for a hearing thereon and at least ten (10) days prior to the date set for the hearing, shall notify in writing the applicant for or holder of a license, thereafter called the respondent, that a hearing will be held on the date designated to determine whether the respondent is privileged to hold such license and shall afford the respondent opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by personal service on the respondent or by mailing the same by registered or certified mail to the place of business last theretofore specified by the respondent in the last application or notification to the department.

(6) At the time and place fixed in the notice, the commissioner shall proceed to hear the matter and any charges made and both the respondent and any complainant shall be accorded opportunity to present in person or by counsel such statements, testimony, evidence and argument as may be pertinent to the matter or charges or to any defenses thereto. The commissioner may continue such hearing from time to time.

§75-45-311. Failure to make payment to producer.

If a grain dealer should fail or refuse to make payment to a producer for grain purchased when such payment is requested by the producer and the request is made within one hundred sixty (160) days of the date of sale or the date of delivery of such grain to the dealer, whichever is later, but in case of deferred pricing, delayed pricing, priced-later, or similar contractual arrangements, no more than two hundred seventy (270) days after the date of delivery, the producer may notify the commissioner in writing, by certified mail when possible, of such failure or refusal within the period of one hundred sixty (160) days or ten (10) days thereafter. The commissioner upon receiving such notice shall take whatever action is necessary. The producer furnishing such written notice within the prescribed length of time is entitled to the benefits of the grain dealer's bond. However, if a producer fails to furnish written

notice to the commissioner within the prescribed time, then such producer is not entitled to any benefits under the grain dealer's bond. Grain dealer liability under priced-later contracts, open-priced contracts, deferred price contracts, or similar agreements shall accrue under the bond in effect at the date of default as determined by the commissioner.

§75-45-313. Commissioner's powers and duties; rules and regulations.

The commissioner shall carry out and enforce the provisions of this article and is hereby empowered to promulgate rules and regulations to carry out necessary inspections and to appoint and fix the duties of his personnel and provide such equipment as may be necessary to assist him in enforcing the provisions thereof.

§75-45-315. Prohibited acts; penalties; injunctions.

(1) Any person who engages in business as a grain dealer without securing a license or who does not have a valid license or is in violation of this article or the rules and regulations promulgated thereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the commissioner or his duly authorized agent in performance of his duty in connection with this article or its rules and regulations, or any grain dealer who refuses to permit inspection of his premises, books, accounts or records as provided in this article shall, upon conviction thereof, be guilty of a misdemeanor and be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first violation, and not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00) for each subsequent violation or imprisoned in a penal institution other than the state penitentiary for not more than six (6) months, or both. In case of a continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense.

(2) It shall be the duty of the Attorney General to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution he may give the grain dealer an opportunity to present his views at an informal hearing.

(3) The commissioner may apply for and the circuit court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rules and regulations promulgated under the article notwithstanding the existence of other remedies at law. Any such injunction is to be issued without notice and without bond.

(4) The commissioner may apply for, and the appropriate chancery court may grant, a temporary or permanent injunction restraining a grain dealer from disposing of any grain owned, in whole or in part, or held, or in his possession, whether owned in whole or in part, or from anyone removing any grain in which the grain dealer or producers from which he has purchased grain have an interest, in violation of any of the provisions of this article. Such injunction is to be issued without notice and without bond.