

By: Senator(s) Thames

To: Agriculture

SENATE BILL NO. 2410

1 AN ACT TO AMEND SECTION 75-45-304, MISSISSIPPI CODE OF 1972,  
 2 TO REVISE LICENSING REQUIREMENTS FOR CERTAIN GRAIN DEALERS; TO  
 3 AMEND SECTION 75-45-305, MISSISSIPPI CODE OF 1972, TO REVISE  
 4 BONDING REQUIREMENTS FOR GRAIN DEALERS; TO AMEND SECTION  
 5 75-45-307, MISSISSIPPI CODE OF 1972, TO REQUIRE A FEE FOR ISSUANCE  
 6 OR RENEWAL OF A GRAIN DEALER'S LICENSE; TO AMEND SECTION  
 7 75-45-311, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CERTAIN  
 8 DISTRIBUTIONS OF THE PROCEEDS OF A GRAIN DEALER'S BOND TO  
 9 PRODUCERS; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 SECTION 1. Section 75-45-304, Mississippi Code of 1972, is  
 12 amended as follows:

13 75-45-304. No person shall operate as a grain dealer without  
 14 first having obtained a license pursuant to this chapter \* \* \*.

15 SECTION 2. Section 75-45-305, Mississippi Code of 1972, is  
 16 amended as follows:

17 75-45-305. (1) Every person licensed as a grain dealer shall  
 18 have filed with the department a surety bond signed by the dealer  
 19 as principal and by a responsible company authorized to execute  
 20 surety bonds within the State of Mississippi. A grain dealer may  
 21 file with the department, in lieu of a surety bond, a certificate  
 22 of deposit or irrevocable letter of credit from any bank or  
 23 banking corporation insured by the Federal Deposit Insurance  
 24 Corporation, payable to the commissioner, as trustee. The  
 25 principal amount of the certificate of deposit or the amount of  
 26 the letter of credit shall be the same as that required for a  
 27 surety bond under this article and the interest thereon shall be  
 28 made payable to the purchaser thereof. Such bond shall be a  
 29 principal amount (to the nearest One Thousand Dollars (\$1,000.00))

30 equal to ten percent (10%) of the aggregate dollar amount paid, by  
31 the dealer to producers for grain purchased from them during the  
32 dealer's last completed fiscal year or in the case of a dealer who  
33 has been engaged in business as a grain dealer for less than one  
34 (1) year or who has not theretofore engaged in such business, ten  
35 percent (10%) of the estimated aggregate dollar amount to be paid  
36 by the dealer to producers for grain purchased from them during  
37 the next fiscal year. Such bond shall not be less than One  
38 Hundred Thousand Dollars (\$100,000.00) nor more than Five Hundred  
39 Thousand Dollars (\$500,000.00). Such security shall be furnished  
40 on the conditions that the dealer shall be licensed under this  
41 chapter and that the licensee shall pay for any grain purchase  
42 upon demand not less than forty-five (45) days after taking  
43 possession of the grain purchased.

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

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

66 \* \* \*

67       (4) Any grain dealer who purchases grain from producers only  
68 in connection with or as an incident to some other business and  
69 whose total purchases of grain from producers during any fiscal  
70 year do not exceed an aggregate amount of One Hundred Thousand  
71 Dollars (\$100,000.00) may satisfy the bonding requirements of this  
72 article by filing with the commissioner a bond, or certificate of  
73 deposit or irrevocable letter of credit from any bank or banking  
74 corporation insured by the Federal Deposit Insurance Corporation,  
75 at the rate of One Thousand Dollars (\$1,000.00) for each Ten  
76 Thousand Dollars (\$10,000.00) or fraction thereof of the dollar  
77 amount to be purchased, with a minimum bond, certificate of  
78 deposit or irrevocable letter of credit of One Thousand Dollars  
79 (\$1,000.00) and a current financial statement.

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

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

98       SECTION 3. Section 75-45-307, Mississippi Code of 1972, is  
99 amended as follows:

100 75-45-307. If the department is satisfied:

101 (a) That the applicant is of good business reputation;

102 (b) That the applicant has adequate bonding under  
103 Section 75-45-305;

104 (c) That the applicant maintains a permanent business  
105 location in this state; and

106 (d) That the applicant has sufficient financial  
107 resources to guarantee payment to producers for grain purchased  
108 from them, the commissioner shall issue a license to the applicant  
109 or shall renew the applicant's license. Licenses shall be issued  
110 or renewed annually for a period ending ninety (90) days after the  
111 last day of the applicant's fiscal year. A fee of Thirty Dollars  
112 (\$30.00) shall be paid upon the issuance or renewal of a license.

113 The license or renewal thereof issued by the department under  
114 this section shall be posted in the principal office of the  
115 licensee in this state. A certificate shall be posted in each  
116 location listed on a licensee's application where he engages in  
117 the business of buying grain. In the case of a licensee operating  
118 a truck or tractor trailer unit the licensee is required to have a  
119 certificate that the license is in effect and that a bond or  
120 certificate of deposit has been filed and is carried in each truck  
121 or tractor trailer unit used in connection with the purchase of  
122 grain from producers. Upon request of a licensee and payment of  
123 the fee thereof, the commissioner shall issue to the licensee a  
124 certificate that a license has been issued or renewed and a bond  
125 filed as required by this article.

126 SECTION 4. Section 75-45-311, Mississippi Code of 1972, is  
127 amended as follows:

128 75-45-311. (1) If a grain dealer should fail or refuse to  
129 make payment to a producer for grain purchased when such payment  
130 is requested by the producer and the request is made within  
131 forty-five (45) days of the date of sale or the date of delivery  
132 of such grain to the dealer, whichever is later, but in case of

133 deferred pricing, delayed pricing, priced-later, or similar  
134 contractual arrangements, no more than two hundred seventy (270)  
135 days after the date of delivery, or that time set by contract  
136 between the parties, the producer may notify the commissioner in  
137 writing, by certified mail when possible, of such failure or  
138 refusal within the period of forty-five (45) days or ten (10) days  
139 thereafter. The commissioner upon receiving such notice shall  
140 take whatever action is necessary. The producer furnishing such  
141 written notice within the prescribed length of time is entitled to  
142 the benefits of the grain dealer's bond.

143 (2) \* \* \* If a producer fails to furnish written notice to  
144 the commissioner within the prescribed time, then such producer is  
145 not entitled to any benefits under the grain dealer's bond. Grain  
146 dealer liability under priced-later contracts, open-priced  
147 contracts, deferred price contracts, or similar agreements shall  
148 accrue under the bond in effect at the date of default as  
149 determined by the commissioner.

150 (3) If a grain dealer has become liable to more than one (1)  
151 producer by reason of breaches of the conditions of the bond, and  
152 the bond is insufficient to pay the entire liability to all  
153 producers entitled to the protection of the bond, the proceeds of  
154 the bond shall be apportioned among the bona fide claimants.

155 SECTION 5. This act shall take effect and be in force from  
156 and after July 1, 1999.