

By: Senator(s) Thames

To: Agriculture

SENATE BILL NO. 2410
(As Passed the Senate)

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.