

By: Senator(s) Younger, McCaughn, Suber,
Jackson (11th), Simmons (12th), Simmons
(13th), Jordan, McLendon, Thomas, Barnett,
Hickman

To: Agriculture

SENATE BILL NO. 2002

1 AN ACT ENTITLED THE "MISSISSIPPI GRAIN PRODUCER INDEMNITY
2 ACT"; TO PROVIDE INDEMNIFICATION FOR GRAIN PRODUCERS IN
3 MISSISSIPPI AGAINST THE FINANCIAL FAILURE OF GRAIN DEALERS AND
4 WAREHOUSES IN ORDER TO IMPROVE THE ECONOMIC STABILITY OF
5 AGRICULTURE; TO PROVIDE DEFINITIONS; TO ESTABLISH THE MISSISSIPPI
6 GRAIN INDEMNITY FUND BOARD TO ADMINISTER THE MISSISSIPPI GRAIN
7 INDEMNITY FUND AND TO PROVIDE FOR ITS MEMBERSHIP, POWERS AND
8 DUTIES; TO ESTABLISH THE MISSISSIPPI GRAIN INDEMNITY FUND IN THE
9 STATE TREASURE AND TO AUTHORIZE ASSESSMENTS AGAINST GRAIN
10 PRODUCERS TO FUND THE PROGRAM; TO PROVIDE FOR A MINIMUM BALANCE IN
11 THE FUND AND FOR THE SUSPENSION OF ASSESSMENTS UNDER CERTAIN
12 CONDITIONS; TO PROVIDE FOR REINSURANCE FOR THE PAYMENT OF CLAIMS;
13 TO PRESCRIBE THE DUTIES OF THE MISSISSIPPI GRAIN INDEMNITY FUND
14 BOARD AND THE MISSISSIPPI DEPARTMENT OF INSURANCE TO ADMINISTER
15 THE PROVISIONS OF THIS ACT; TO PROVIDE FOR THE COMPENSATION OF
16 CLAIMANTS WHO HAVE INCURRED A FINANCIAL LOSS DUE TO A FAILURE OF A
17 GRAIN DEALER OR WAREHOUSEMAN; TO PROVIDE APPLICATION AND PAYMENT
18 PROCEDURES; TO PROVIDE FOR SUBROGATION OF CLAIMS ON BEHALF OF THE
19 FUND; TO AMEND SECTIONS 75-44-29 AND 75-45-305, MISSISSIPPI CODE
20 OF 1972, TO PROVIDE THAT GRAIN WAREHOUSEMAN'S SURETY BOND AND
21 GRAIN DEALER'S SURETY BOND UNDER APPLICABLE LICENSURE LAW SHALL BE
22 PAYABLE TO THE MISSISSIPPI GRAIN INDEMNITY FUND CREATED UNDER THIS
23 ACT; AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** This act shall be known and may be cited as the
26 "Mississippi Grain Producer Indemnity Act."

27 **SECTION 2.** It is the purpose of this act to provide
28 protection and the existence of adequate funds for compensation



29 for losses by grain producers in Mississippi caused by the
30 financial failure of grain dealers and warehouses in order to
31 promote the state's welfare by improving the economic stability of
32 agriculture.

33 **SECTION 3.** As used in this act:

34 (a) "Person" means individuals, corporations,
35 partnerships and all associations of two (2) or more persons
36 having a joint or common interest.

37 (b) "Commissioner" shall mean the Commissioner of the
38 Mississippi Department of Insurance, or his designated
39 representative.

40 (c) "Grain" shall mean corn, wheat, soybeans, oats,
41 rice and all grains for which standards have been established
42 under the United States Grain Standards Act and the Agriculture
43 Marketing Act, as amended.

44 (d) "Board" shall mean the Mississippi Grain Indemnity
45 Fund Board established under this act.

46 (e) "Stored grain" shall mean any grain received in any
47 grain warehouse located in this state, if same is not purchased
48 and beneficially owned by the grain warehouseman.

49 (f) "Grain warehouse" shall mean any structure or
50 combination of structures operated together, including the
51 machinery and equipment used in connection therewith, in or by
52 means or which grain is unloaded, elevated, stored, loaded for



53 shipment, dried, leaned, weighed, treated, conditioned or
54 otherwise handled from producers of grain.

55 (g) "Grain warehouseman" shall mean any person who
56 operates a grain warehouse licensed under the provisions of
57 Section 75-44-1 et seq., Mississippi Code of 1972.

58 (h) "Grain dealer" shall mean any person engaged in the
59 business of buying grain from producers of grain for resale or for
60 milling or processing, licensed under the provisions of Section
61 75-45-301 et seq., Mississippi Code of 1972.

62 (i) "Grain producer" shall mean the owner, tenant or
63 operator of land in this state who has an interest in and receives
64 all or any part of the proceeds from the sale of the grain
65 produced thereon.

66 (j) "Department" shall mean the Mississippi Department
67 of Insurance.

68 (k) "Warehouse receipt" shall mean a negotiable grain
69 storage receipt or nonnegotiable scale ticket given by a grain
70 warehouse.

71 (l) "Failure" means an inability to financially satisfy
72 a claimant in accordance with applicable statute or regulation or
73 contract and the time limits provided therein.

74 (m) "Obligation" means an order placed, contract
75 awarded, service received, or similar transaction during a given
76 period that will require payments during the same or a future
77 period.



78 **SECTION 4.** (1) There is hereby created the Mississippi
79 Grain Indemnity Fund Board (board) to administer the provisions of
80 the Mississippi Grain Indemnity Fund Act.

81 (2) The board shall consist of eight (8) members as follows:

82 (a) The Mississippi Commissioner of Insurance, or his
83 designee, who shall serve in an ex officio nonvoting capacity.

84 (b) The Commissioner of Agriculture and Commerce, or
85 his designee, who shall serve in an ex officio nonvoting capacity.

86 (c) The State Treasurer, or his designee, who shall
87 serve in an ex officio nonvoting capacity.

88 (d) Three (3) grain producers who are residents of the
89 State of Mississippi and are participating in the program,
90 appointed by the Governor, one (1) from each Mississippi Supreme
91 Court District.

92 (e) Two (2) grain producers who are residents of the
93 State of Mississippi and are participating in the grain indemnity
94 program, appointed by the Lieutenant Governor from the state at
95 large.

96 (3) The Commissioner of Insurance shall determine the place
97 and time of the board's meetings and shall spread the same on its
98 minutes. A majority of the voting members shall constitute a
99 quorum, and final action of the board shall require the
100 affirmative vote of a majority of those present and voting. The
101 board shall elect a chairman and a vice chairman and such other
102 officers as it deems necessary, and shall establish rules of order



103 for conducting its meetings. The members of the board appointed
104 by the Governor and the Lieutenant Governor shall receive
105 reimbursement for travel expenses as provided in Section 25-3-41
106 for expenses incurred in carrying out duties as a member of the
107 Mississippi Grain Indemnity Fund Board.

108 (4) The board shall have the following powers and duties:

109 (a) To provide oversight over the Mississippi Grain
110 Indemnity Fund;

111 (b) To approve any award of a claim made from the
112 Mississippi Grain Indemnity Fund;

113 (c) To pay all necessary expenses attributable to the
114 operation of the Mississippi Grain Indemnity Fund;

115 (d) To approve all claimants' attorney fees in claims
116 against the fund;

117 (e) To employ on a full-time or part-time basis a
118 qualified staff attorney and such other staff as it may deem
119 necessary to carry out the purposes of this act and to contract
120 with one or more reputable insurance consulting firms as may be
121 necessary;

122 (f) To assess premiums prescribed in this act to be
123 paid by grain producers participating in the Mississippi Grain
124 Indemnity Fund and to collect and deposit such assessments;

125 (g) To make investments of the available funds in the
126 Mississippi Grain Indemnity Fund as authorized by law;



127 (h) To submit the board's budget request for the
128 initial year of operation and for the appropriation of such State
129 General Funds as may be required for the commencement of its
130 activities and to make compensation payments to claimants for
131 financial loss up to a maximum amount of Five Million Dollars
132 (\$5,000,000.00) in the aggregate as more specifically provided in
133 this act;

134 (i) To subrogate all rights of the claimant, who shall
135 assign all rights, title and interest in any judgment to the
136 board. The board shall have subrogation rights against a third
137 party for amounts paid out of the fund or out of any plan of
138 reinsurance;

139 (j) To initiate any action it may deem necessary to
140 compel the grain dealer or warehouseman against whom an awarded
141 claim arose to repay the Mississippi Grain Indemnity Fund;

142 (k) To initiate any action it may deem necessary to
143 compel the claimant whose claim arose due to a failure to
144 participate in any legal proceeding in relation to that claim; and

145 (l) To do all things necessary to carry out the intent
146 and purpose of this act.

147 (5) The board may contract with the Mississippi Department
148 of Insurance to administer and enforce the provisions of this act
149 and the department may be reimbursed for necessary expense from
150 the three percent (3%) monies set aside under Section 5(5) of this
151 act.



152 SECTION 5. (1) There is hereby created in the State
153 Treasure a special fund to be known as the "Mississippi Grain
154 Indemnity Fund." All assessments that the Mississippi Grain
155 Indemnity Board receives and collects under the provisions of
156 subsection (2), all funds received from the proceeds of surety
157 bonds executed by grain warehousemen and grain dealers pursuant to
158 law and any funds appropriated by the Legislature for the
159 operation of this act shall be deposited in the fund. All monies
160 in the fund may be expended by the board for any and all purposes
161 for which the board is authorized to expend funds under the
162 provisions of this act. All interest earned from the investment
163 of monies in the fund shall be credited to the fund. Monies
164 remaining in the fund at the end of a fiscal year shall not lapse
165 into the State General Fund.

166 (2) There shall be levied upon every grain producer in the
167 State of Mississippi who does not opt out of participation in
168 writing as provided in subsection (3) of this section an
169 assessment of two tenths of one percent (.02%) of market price per
170 bushel on all grain to be collected at the site of first purchase.
171 The board shall provide for the collection of the assessment for
172 the purpose of financing or contributing to the financing of the
173 Mississippi Grain Indemnity Fund. The monies in the Mississippi
174 Grain Indemnity Fund shall not be available for any purpose other
175 than for the payment of claims and for the administration of this
176 act. These funds may be invested and reinvested at the discretion



177 of the State Treasurer in any investment of public funds
178 authorized by law, and the interest from these investments shall
179 be deposited to the credit of the fund and shall be available for
180 the same purposes as all other money deposited in the fund. In
181 order to avoid or lessen the possibility and amount of assessments
182 reinstated or increased as authorized by this act, the
183 Mississippi Commissioner of Insurance shall approve rates for
184 policies of reinsurance issued by the board at least adequate to
185 fund annual reinsurance above a self-insured retention of Twenty
186 Million Dollars (\$20,000,000) that combined with any readily
187 available reserves of the board, is sufficient to cover at least
188 the probable maximum losses from a grain warehouseman or grain
189 dealer failure expected to occur as predicted by a model or method
190 approved by the Commissioner of Insurance for the properties
191 covered by the board at the time the reinsurance was negotiated.
192 The commissioner may approve rates in excess of the minimums
193 required by this section as consistent with his duties and the
194 insurance laws of the State of Mississippi.

195 (3) Any qualified grain producer or grain producer
196 organization may make application to the board requesting
197 nonparticipation in the Mississippi Grain Indemnity program and an
198 exemption from the assessment of the amount specified in
199 subsection (2) of this section. Said application for exemption
200 shall be executed by all applicants on a voluntary basis on or
201 before March 1 of each year on forms prescribed by the board.



202 (4) Until such time as the balance in the Mississippi Grain
203 Indemnity Fund is equal to or exceeds Twenty Million Dollars
204 (\$20,000,000.00), the board shall reimburse grain producers for
205 financial loss from the State General Fund in an amount not to
206 exceed Five Million Dollars (\$5,000,000.00) in the aggregate
207 subject to appropriation therefor by the Legislature, as
208 specifically provided in Section 6 of this act. When the balance
209 in the fund is equal to or exceeds Twenty Million Dollars
210 (\$20,000,000.00), there shall be no guarantee for reimbursement
211 for such financial loss from the State General Fund.

212 (5) The assessment authorized under this section shall
213 continue on grain producers until the Mississippi Grain Indemnity
214 Fund is more than Twenty Million Dollars (\$20,000,000.00). If and
215 when the fund is more than Twenty Million Dollars
216 (\$20,000,000.00), the board shall temporarily suspend the
217 assessment and may in its discretion refund assessments paid in
218 excess of that amount. In the event the amount in the fund shall
219 subsequently drop below the Twenty Million Dollar (\$20,000,000.00)
220 threshold, the board may reinstitute the assessment, however the
221 assessment shall not exceed the assessment rate established by
222 subsection (2) of this section. The assessments by the board
223 pursuant to this section are in addition to any other fees or
224 assessments required by law. When the fund is equal to or exceeds
225 Twenty Million Dollars (\$20,000,000.00), the board shall reimburse
226 the State General Fund from the Mississippi Grain Indemnity Fund



227 for any appropriations made by the Legislature to the board for
228 the commencement of operation of the program and reimbursement for
229 financial loss.

230 (6) The board is authorized to set aside an amount not to
231 exceed three percent (3%) of the year-end balance of the fund for
232 necessary expenses relating to the administration of the fund.

233 (7) In the event of the bankruptcy of a grain warehousemen
234 or grain dealer subject to a claim under this act, the fund shall
235 be subrogated to the rights of any grain producer or the person
236 possessing the warehouse receipt who has received payment from the
237 Mississippi Grain Indemnity Fund, to the extent of such payment.

238 **SECTION 6.** Any grain producer or person possessing warehouse
239 receipts covering grain owned or stored by the warehouseman or
240 grain dealer may make a claim to the Mississippi Grain Indemnity
241 Board for compensation for any financial loss due to a failure of
242 such grain warehouseman or grain dealer. For purposes of this
243 section, "failure" means an inability to financially satisfy a
244 claimant in accordance with applicable statute or regulation or
245 contract within the time limits provided therein. Market losses
246 shall not be deemed to be a failure of such grain warehouseman or
247 grain dealer. The grain producer or person possessing warehouse
248 receipts shall have ninety (90) days from the failure to make the
249 claim to the board. Within thirty (30) days of the board's
250 approval of a valid claim, the board shall, in accordance with
251 this section, compensate from the Mississippi Grain Indemnity Fund



252 any claimant who has incurred a financial loss due to a failure of
253 a grain warehouseman or grain dealer. Any claimant who has
254 incurred a financial loss due to the failure of a grain
255 warehouseman and who has surrendered a warehouse receipt for
256 payment or holds a warehouse receipt and cannot receive value
257 shall be compensated for one hundred percent (100%) of the claim.
258 To the extent that there is an insufficient balance in the
259 Mississippi Grain Indemnity Fund to compensate all claims at any
260 date during the fiscal year, the board is authorized to adjust the
261 maximum amount per claimant proportionately in order for each
262 claimant to receive an equal pro rata share at the time of a
263 failure of a grain warehouseman or grain dealer. Until such time
264 as the Mississippi Grain Indemnity Fund has a balance equal to or
265 in excess of Twenty Million Dollars (\$20,000,000.00), the board
266 shall make compensation to claimants under this section from the
267 State General Fund up to a maximum amount of Five Million Dollars
268 (\$5,000,000.00) in the aggregate, pursuant to specific
269 appropriation therefor by the Legislature.

270 **SECTION 7.** The Mississippi Grain Indemnity Fund Board is
271 authorized to promulgate rules and regulations in accordance with
272 the Mississippi Administrative Procedures Act as may be necessary
273 to effectively and efficiently administer and enforce this act.

274 **SECTION 8.** Section 75-44-29, Mississippi Code of 1972, is
275 amended as follows:



276 75-44-29. (1) Before any person is granted a license
277 pursuant to Section 75-44-23 such person shall give a bond to the
278 commissioner executed by the grain warehouseman as principal and
279 by a corporate surety licensed to do business in this state as a
280 surety. The bond shall be in favor of the * * * Mississippi Grain
281 Indemnity Fund Board established in this act for the benefit of
282 all persons interested, their legal representatives, attorneys or
283 assigns, conditioned upon the faithful compliance by the grain
284 warehouseman with the provisions of this chapter and the rules and
285 regulations of the State Department of Agriculture and Commerce
286 applicable thereto. The aggregate liability of the surety to all
287 depositors or storers of grain shall not exceed the sum of such
288 bond. The bond may be cancelled at any time by the surety by
289 giving written notice to the Commissioner of Agriculture and
290 Commerce of its intention to cancel the bond and all liability
291 thereunder shall terminate thirty-five (35) days after the mailing
292 of such notice except that such notice shall not affect any claims
293 arising under the bond, whether presented or not, before the
294 effective date of the cancellation notice.

295 (2) In lieu of the bond required in subsection (1) of this
296 section an applicant for a license may be a self-insurer by
297 posting with the commissioner any of the following:

298 (a) Cash;

299 (b) Certificates of deposit from any bank or banking
300 corporation insured by the Federal Deposit Insurance Corporation;



301 (c) Irrevocable letters of credit from any bank or
302 banking corporation insured by the Federal Deposit Insurance
303 Corporation;

304 (d) Federal Treasury Bills; or

305 (e) Notes, securities or bonds secured by the federal
306 government or the State of Mississippi.

307 Self insurers shall post an amount equivalent to the amount
308 of the bond required in Section 75-44-31.

309 **SECTION 9.** Section 75-45-305, Mississippi Code of 1972, is
310 amended as follows:

311 75-45-305. (1) Every person licensed as a grain dealer
312 shall have filed with the department a surety bond signed by the
313 dealer as principal and by a responsible company authorized to
314 execute surety bonds within the State of Mississippi. The surety
315 bond shall be in favor of and payable to the Mississippi Grain
316 Indemnity Fund Board established in this act. A grain dealer may
317 file with the department, in lieu of a surety bond, a certificate
318 of deposit or irrevocable letter of credit from any bank or
319 banking corporation insured by the Federal Deposit Insurance
320 Corporation, payable to the commissioner, as trustee. The
321 principal amount of the certificate of deposit or the amount of
322 the letter of credit shall be the same as that required for a
323 surety bond under this article and the interest thereon shall be
324 made payable to the purchaser thereof. Such bond shall be a
325 principal amount (to the nearest One Thousand Dollars (\$1,000.00))



326 equal to ten percent (10%) of the aggregate dollar amount paid, by
327 the dealer to producers for grain purchased from them during the
328 dealer's last completed fiscal year or in the case of a dealer who
329 has been engaged in business as a grain dealer for less than one
330 (1) year or who has not theretofore engaged in such business, ten
331 percent (10%) of the estimated aggregate dollar amount to be paid
332 by the dealer to producers for grain purchased from them during
333 the next fiscal year. Such bond shall not be less than
334 Twenty-five Thousand Dollars (\$25,000.00) nor more than One
335 Hundred Thousand Dollars (\$100,000.00), except as otherwise
336 authorized by this article. The commissioner shall determine the
337 sufficiency of any letter of credit.

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

345 (3) Any required bond or bonds shall be executed by the
346 grain dealer as principal and by a corporate surety licensed to do
347 business in this state as a surety. The bond shall be in favor of
348 the * * * Mississippi Grain Indemnity Fund Board established under
349 this act for the benefit of all persons interested, their legal
350 representatives, attorneys or assigns, conditioned upon the



351 faithful compliance by the grain dealer with the provisions of
352 this article and the rules and regulations of the State Department
353 of Agriculture and Commerce applicable thereto. The aggregate
354 liability of the surety shall not exceed the sum of such bond.
355 The bond may be cancelled at any time by the surety by giving
356 written notice to the commissioner of its intention to cancel the
357 bond and all liability thereunder shall terminate sixty (60) days
358 after the mailing of such notice except that such notice shall not
359 affect any claims arising under the bond, whether presented or
360 not, before the effective date of the cancellation notice.

361 (4) Any grain dealer who is of the opinion that his net
362 worth and assets are sufficient to guarantee payment to producers
363 for grain purchased by him may request the commissioner to be
364 relieved of the obligation of filing a bond in excess of the
365 minimum bond of Twenty-five Thousand Dollars (\$25,000.00). Such
366 request shall be accompanied by a financial statement of the
367 applicant made within six (6) months of the date of such request
368 certified by a certified public accountant. If such financial
369 statement discloses net assets and a net worth of an amount equal
370 to at least three (3) times the amount of the bond required by
371 this article and the commissioner is otherwise satisfied as to the
372 financial ability and resources of the applicant, the commissioner
373 may waive that portion of the required bond in excess of
374 Twenty-five Thousand Dollars (\$25,000.00). However, in the case
375 of a grain dealer whose net worth is not equal to three (3) times



376 the amount of bond required, the commissioner may allow such grain
377 dealer to waive in One Thousand Dollar (\$1,000.00) increments a
378 portion of the bond required in excess of Twenty-five Thousand
379 Dollars (\$25,000.00). The percentage factor to be applied to the
380 bond required in excess of Twenty-five Thousand Dollars
381 (\$25,000.00) shall be determined by dividing actual net worth by
382 the net worth required to waive all bond in excess of Twenty-five
383 Thousand Dollars (\$25,000.00). If the result of this computation
384 provides a percentage factor of eighty percent (80%) or greater,
385 then that same percentage of the bond in excess of Twenty-five
386 Thousand Dollars (\$25,000.00) may be waived. The grain dealer
387 shall then provide to the commissioner a surety bond in the amount
388 of Twenty-five Thousand Dollars (\$25,000.00) plus any additional
389 bond required in excess thereof.

390 (5) Any grain dealer who purchases grain from producers only
391 in connection with or as an incident to some other business and
392 whose total purchases of grain from producers during any fiscal
393 year do not exceed an aggregate amount of One Hundred Thousand
394 Dollars (\$100,000.00) may satisfy the bonding requirements of this
395 article by filing with the commissioner a bond, or certificate of
396 deposit or irrevocable letter of credit from any bank or banking
397 corporation insured by the Federal Deposit Insurance Corporation,
398 at the rate of One Thousand Dollars (\$1,000.00) for each Ten
399 Thousand Dollars (\$10,000.00) or fraction thereof of the dollar
400 amount to be purchased, with a minimum bond, certificate of



401 deposit or irrevocable letter of credit of One Thousand Dollars
402 (\$1,000.00) and a current financial statement.

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

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

421 **SECTION 10.** This act shall take effect and be in force from
422 and after July 1, 2022.

