

Senate Amendments to House Bill No. 1389

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

35 SECTION 1. This act shall be known and may be cited as the
36 "Mississippi Grain Producer Indemnity Act."

37 SECTION 2. It is the purpose of this act to provide
38 protection and the existence of adequate funds for compensation
39 for losses by grain producers in Mississippi caused by the
40 financial failure of grain dealers and warehouses in order to
41 promote the state's welfare by improving the economic stability of
42 agriculture.

43 SECTION 3. As used in this act:

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

47 (b) "Commissioner" shall mean the Commissioner of the
48 Mississippi Department of Insurance, or his designated
49 representative.

50 (c) "Grain" shall mean corn, wheat, soybeans, oats,
51 rice and all grains for which standards have been established

52 under the United States Grain Standards Act and the Agriculture
53 Marketing Act, as amended.

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

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

59 (f) "Grain warehouse" shall mean any structure or
60 combination of structures operated together, including the
61 machinery and equipment used in connection therewith, in or by
62 means or which grain is unloaded, elevated, stored, loaded for
63 shipment, dried, leaned, weighed, treated, conditioned or
64 otherwise handled from producers of grain.

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

68 (h) "Grain dealer" shall mean any person engaged in the
69 business of buying grain from producers of grain for resale or for
70 milling or processing, licensed under the provisions of Section
71 75-45-301 et seq., Mississippi Code of 1972.

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

76 (j) "Department" shall mean the Mississippi Department
77 of Insurance.

78 (k) "Warehouse receipt" shall mean a negotiable grain
79 storage receipt or nonnegotiable scale ticket given by a grain
80 warehouse.

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

84 (m) "Obligation" means an order placed, contract
85 awarded, service received, or similar transaction during a given
86 period that will require payments during the same or a future
87 period.

88 **SECTION 4.** (1) There is hereby created the Mississippi
89 Grain Indemnity Fund Board (board) to administer the provisions of
90 the Mississippi Grain Indemnity Fund Act.

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

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

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

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

98 (d) Three (3) grain producers who are residents of the
99 State of Mississippi and are participating in the program,
100 appointed by the Governor, one (1) from each Mississippi Supreme
101 Court District.

102 (e) Two (2) grain producers who are residents of the
103 State of Mississippi and are participating in the grain indemnity

104 program, appointed by the Lieutenant Governor from the state at
105 large.

106 (3) The Commissioner of Insurance shall determine the place
107 and time of the board's meetings and shall spread the same on its
108 minutes. A majority of the voting members shall constitute a
109 quorum, and final action of the board shall require the
110 affirmative vote of a majority of those present and voting. The
111 board shall elect a chairman and a vice chairman and such other
112 officers as it deems necessary, and shall establish rules of order
113 for conducting its meetings. The members of the board appointed
114 by the Governor and the Lieutenant Governor shall receive
115 reimbursement for travel expenses as provided in Section 25-3-41
116 for expenses incurred in carrying out duties as a member of the
117 Mississippi Grain Indemnity Fund Board.

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

119 (a) To provide oversight over the Mississippi Grain
120 Indemnity Fund;

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

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

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

127 (e) To employ on a full-time or part-time basis a
128 qualified staff attorney and such other staff as it may deem
129 necessary to carry out the purposes of this act and to contract

130 with one or more reputable insurance consulting firms as may be
131 necessary;

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

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

137 (h) To submit the board's budget request for the
138 initial year of operation and for the appropriation of such State
139 General Funds as may be required for the commencement of its
140 activities and to make compensation payments to claimants for
141 financial loss up to a maximum amount of Five Million Dollars
142 (\$5,000,000.00) in the aggregate as more specifically provided in
143 this act;

144 (i) To subrogate all rights of the claimant, who shall
145 assign all rights, title and interest in any judgment to the
146 board. The board shall have subrogation rights against a third
147 party for amounts paid out of the fund or out of any plan of
148 reinsurance;

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

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

155 (1) To do all things necessary to carry out the intent
156 and purpose of this act.

157 (5) The board may contract with the Mississippi Department
158 of Insurance to administer and enforce the provisions of this act
159 and the department may be reimbursed for necessary expense from
160 the three percent (3%) monies set aside under Section 5(5) of this
161 act.

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

176 (2) There shall be levied upon every grain producer in the
177 State of Mississippi who does not opt out of participation in
178 writing as provided in subsection (3) of this section an
179 assessment of two tenths of one percent (.02%) of market price per
180 bushel on all grain to be collected at the site of first purchase.

181 The board shall provide for the collection of the assessment for
182 the purpose of financing or contributing to the financing of the
183 Mississippi Grain Indemnity Fund. The monies in the Mississippi
184 Grain Indemnity Fund shall not be available for any purpose other
185 than for the payment of claims and for the administration of this
186 act. These funds may be invested and reinvested at the discretion
187 of the State Treasurer in any investment of public funds
188 authorized by law, and the interest from these investments shall
189 be deposited to the credit of the fund and shall be available for
190 the same purposes as all other money deposited in the fund. In
191 order to avoid or lessen the possibility and amount of assessments
192 reinstated or increased as authorized by this act, the
193 Mississippi Commissioner of Insurance shall approve rates for
194 policies of reinsurance issued by the board at least adequate to
195 fund annual reinsurance above a self-insured retention of Twenty
196 Million Dollars (\$20,000,000) that combined with any readily
197 available reserves of the board, is sufficient to cover at least
198 the probable maximum losses from a grain warehouseman or grain
199 dealer failure expected to occur as predicted by a model or method
200 approved by the Commissioner of Insurance for the properties
201 covered by the board at the time the reinsurance was negotiated.
202 The commissioner may approve rates in excess of the minimums
203 required by this section as consistent with his duties and the
204 insurance laws of the State of Mississippi.

205 (3) Any qualified grain producer or grain producer
206 organization may make application to the board requesting

207 nonparticipation in the Mississippi Grain Indemnity program and an
208 exemption from the assessment of the amount specified in
209 subsection (2) of this section. Said application for exemption
210 shall be executed by all applicants on a voluntary basis on or
211 before March 1 of each year on forms prescribed by the board.

212 (4) Until such time as the balance in the Mississippi Grain
213 Indemnity Fund is equal to or exceeds Twenty Million Dollars
214 (\$20,000,000.00), the board shall reimburse grain producers for
215 financial loss from the State General Fund in an amount not to
216 exceed Five Million Dollars (\$5,000,000.00) in the aggregate
217 subject to appropriation therefor by the Legislature, as
218 specifically provided in Section 6 of this act. When the balance
219 in the fund is equal to or exceeds Twenty Million Dollars
220 (\$20,000,000.00), there shall be no guarantee for reimbursement
221 for such financial loss from the State General Fund.

222 (5) The assessment authorized under this section shall
223 continue on grain producers until the Mississippi Grain Indemnity
224 Fund is more than Twenty Million Dollars (\$20,000,000.00). If and
225 when the fund is more than Twenty Million Dollars
226 (\$20,000,000.00), the board shall temporarily suspend the
227 assessment and may in its discretion refund assessments paid in
228 excess of that amount. In the event the amount in the fund shall
229 subsequently drop below the Twenty Million Dollar (\$20,000,000.00)
230 threshold, the board may reinstitute the assessment, however the
231 assessment shall not exceed the assessment rate established by
232 subsection (2) of this section. The assessments by the board

233 pursuant to this section are in addition to any other fees or
234 assessments required by law. When the fund is equal to or exceeds
235 Twenty Million Dollars (\$20,000,000.00), the board shall reimburse
236 the State General Fund from the Mississippi Grain Indemnity Fund
237 for any appropriations made by the Legislature to the board for
238 the commencement of operation of the program and reimbursement for
239 financial loss.

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

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

248 **SECTION 6.** Any grain producer or person possessing warehouse
249 receipts covering grain owned or stored by the warehouseman or
250 grain dealer may make a claim to the Mississippi Grain Indemnity
251 Board for compensation for any financial loss due to a failure of
252 such grain warehouseman or grain dealer. For purposes of this
253 section, "failure" means an inability to financially satisfy a
254 claimant in accordance with applicable statute or regulation or
255 contract within the time limits provided therein. Market losses
256 shall not be deemed to be a failure of such grain warehouseman or
257 grain dealer. The grain producer or person possessing warehouse
258 receipts shall have ninety (90) days from the failure to make the

259 claim to the board. Within thirty (30) days of the board's
260 approval of a valid claim, the board shall, in accordance with
261 this section, compensate from the Mississippi Grain Indemnity Fund
262 any claimant who has incurred a financial loss due to a failure of
263 a grain warehouseman or grain dealer. Any claimant who has
264 incurred a financial loss due to the failure of a grain
265 warehouseman and who has surrendered a warehouse receipt for
266 payment or holds a warehouse receipt and cannot receive value
267 shall be compensated for one hundred percent (100%) of the claim.
268 To the extent that there is an insufficient balance in the
269 Mississippi Grain Indemnity Fund to compensate all claims at any
270 date during the fiscal year, the board is authorized to adjust the
271 maximum amount per claimant proportionately in order for each
272 claimant to receive an equal pro rata share at the time of a
273 failure of a grain warehouseman or grain dealer. Until such time
274 as the Mississippi Grain Indemnity Fund has a balance equal to or
275 in excess of Twenty Million Dollars (\$20,000,000.00), the board
276 shall make compensation to claimants under this section from the
277 State General Fund up to a maximum amount of Five Million Dollars
278 (\$5,000,000.00) in the aggregate, pursuant to specific
279 appropriation therefor by the Legislature.

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

284 **SECTION 8.** Section 75-44-1, Mississippi Code of 1972, is
285 amended as follows:

286 75-44-1. This chapter shall be known as the "Mississippi
287 Grain * * * Handler Law of 2022."

288 **SECTION 9.** Section 75-44-3, Mississippi Code of 1972, is
289 amended as follows:

290 75-44-3. (1) The provisions of this * * * act shall apply
291 to all grain warehouses and to the operations of such grain
292 warehouses whether or not any of the grain therein is owned by
293 the * * * grain handler.

294 (2) The provisions and definitions of the Uniform Commercial
295 Code relating to warehouse receipts to the extent not inconsistent
296 with this * * * act shall govern warehouse receipts issued by
297 grain * * * handlers.

298 **SECTION 10.** Section 75-44-5, Mississippi Code of 1972, is
299 amended as follows:

300 75-44-5. When used in this chapter:

301 (a) "Person" includes individuals, corporations,
302 partnerships and all associations of two (2) or more persons
303 having a joint or common interest.

304 (b) The term "commissioner" shall mean the Commissioner
305 of the Mississippi Department of Agriculture and Commerce, or his
306 designated representative.

307 (c) "Grain" shall mean all grains for which standards
308 have been established pursuant to the United States Grain

309 Standards Act, as amended, and rice as defined by the Agriculture
310 Marketing Act of 1946, as amended.

311 (d) "Stored grain" shall mean any grain received in any
312 grain warehouse, located in this state, if same is not purchased
313 and beneficially owned by the grain * * * handler.

314 (e) "Grain handler" or "handler" means any person
315 engaged in the business of buying grain from producers thereof for
316 resale or for milling or processing or a person who operates a
317 warehouse or other facility or group of facilities in which grain
318 is or may be stored for compensation. A producer of grain buying
319 grain for his own use as seed or feed shall not be considered as
320 being engaged in business as a grain handler.

321 (* * * f) "Grain warehouse" shall mean any structure or
322 combination of structures operated together, including the
323 machinery and equipment used in connection therewith, in or by
324 means or which grain is unloaded, elevated, stored, loaded for
325 shipment, dried, cleaned, weighed, treated, conditioned or
326 otherwise handled from producers of grain.

327 * * *

328 (g) "Inspector" shall mean a person authorized by
329 the * * * grain handler to weigh, inspect, grade and/or
330 certificate the weight and grade of grain stored or to be stored
331 in a grain warehouse.

332 (h) "Warehouse receipt" shall mean a negotiable grain
333 storage receipt and/or a nonnegotiable scale ticket given by a
334 grain warehouse.

335 (i) "Surety bond" shall mean a guarantee issued by a
336 surety agency on behalf of a client, requiring the agency to pay a
337 sum of money to a third party in the event the client fails to
338 fulfill obligations required under this chapter.

339 **SECTION 11.** Section 75-44-7, Mississippi Code of 1972, is
340 amended as follows:

341 75-44-7. The commissioner shall carry out and enforce the
342 provisions of this * * * act and is hereby empowered to promulgate
343 rules and regulations to carry out necessary inspections and to
344 appoint and fix the duties of his personnel and provide such
345 equipment as may be necessary to assist him in enforcing the
346 provisions thereof.

347 **SECTION 12.** Section 75-44-9, Mississippi Code of 1972, is
348 amended as follows:

349 75-44-9. (1) No person shall (a) operate a grain warehouse
350 with over five hundred thousand (500,000) bushels of licensed
351 capacity; or (b) issue a warehouse receipt for such grain
352 warehouse; or (c) operate as a grain handler selling, transferring
353 or storing over five hundred thousand (500,000) bushels or more
354 annually, without first having obtained a license * * * under the
355 provisions of the United States Warehouse Act, as amended.

356 (2) No person shall (a) operate a grain warehouse with over
357 fifty thousand (50,000) and less than five hundred thousand
358 (500,000) bushels of licensed capacity; or (b) issue a warehouse
359 receipt for such grain warehouse; or (c) operate as a grain
360 handler selling, transferring or storing over fifty thousand

361 (50,000) and less than five hundred thousand (500,000) bushels
362 annually, without first having obtained either a license under the
363 provisions of the United States Warehouse Act, as amended, or a
364 grain handler license from the Mississippi Department of
365 Agriculture and Commerce under the provisions of this act.

366 (3) Any person who (a) operates a grain warehouse with less
367 than fifty thousand (50,000) bushels of licensed capacity; or (b)
368 issues a warehouse receipt for such grain warehouse; or (c)
369 operates as a grain handler selling, transferring or storing less
370 than fifty thousand (50,000) bushels annually, shall not be
371 required to have a license issued by the United States Warehouse
372 Act or by the Mississippi Department of Agriculture and Commerce
373 under this act.

374 **SECTION 13.** Section 75-44-11, Mississippi Code of 1972, is
375 amended as follows:

376 75-44-11. (1) Applications for combined grain handler
377 licenses under this * * * act are to be made on forms prescribed
378 by the commissioner for each separate warehouse and grain
379 handler's place of business, or, if an applicant owns more than
380 one (1) warehouse or grain handler's place of business at any one
381 (1) location, which does not exceed eight (8) miles in distance,
382 then all the warehouses and grain handler offices at that location
383 may be included in one (1) application. Every application is to
384 be accompanied by an application fee of * * * Five Hundred Dollars
385 (\$500.00) and a certified financial statement in a form prescribed

386 by the commissioner and such further information as the
387 commissioner may by regulation require.

388 (2) Grain handler licenses shall be nontransferable.

389 **SECTION 14.** Section 75-44-13, Mississippi Code of 1972, is
390 amended as follows:

391 75-44-13. Prior to the issuance of a license, every
392 applicant shall pay an annual license fee based upon the capacity
393 of the warehouse, such fee to be determined by the commissioner,
394 but not to exceed * * * Two Hundred Fifty Dollars (\$250.00).

395 **SECTION 15.** Section 75-44-15, Mississippi Code of 1972, is
396 amended as follows:

397 75-44-15. If a grain * * * handler desires to renew his
398 license for an additional year, application for such renewal shall
399 be made on a form prescribed by the commissioner. At least sixty
400 (60) days prior to the expiration of each license, the
401 commissioner shall notify each grain * * * handler of the date of
402 such expiration and furnish such grain * * * handler with the
403 renewal form.

404 **SECTION 16.** Section 75-44-17, Mississippi Code of 1972, is
405 amended as follows:

406 75-44-17. Before a license to * * * operate as a grain
407 handler is granted under Section 75-44-23, the grain * * * handler
408 shall file with the commissioner a copy of his schedule of charges
409 for storage and other services. If the grain * * * handler
410 desires to make any change in the schedule of charges during the
411 license period, he shall file with the commissioner a statement in

412 writing showing the change at least thirty (30) days prior to its
413 effective date. Each grain * * * handler shall keep conspicuously
414 posted the schedule of charges for storage and other services as
415 so filed, and shall strictly adhere to these charges.

416 **SECTION 17.** Section 75-44-19, Mississippi Code of 1972, is
417 amended as follows:

418 75-44-19. Immediately upon receipt of his license or of any
419 modification or extension thereof, the grain * * * handler shall
420 post same and thereafter keep it posted until suspended or
421 terminated in a conspicuous place in the office of the grain
422 warehouse or place of business to which such license applies where
423 receipts issued by such grain * * * handler are delivered to
424 depositors.

425 **SECTION 18.** Section 75-44-21, Mississippi Code of 1972, is
426 amended as follows:

427 75-44-21. (1) Each grain * * * handler shall have and
428 maintain above all exemptions and liabilities, total net assets
429 available for the payment of any indebtedness arising from the
430 conduct of the grain warehouse or grain handler's place of
431 business in an amount equal to at least Twenty Cents (20¢)
432 multiplied by the maximum number of bushels of grain for which the
433 grain * * * handler is licensed, provided that no person may be
434 licensed as a grain * * * handler under the regulations * * *
435 under this act unless he has available net assets of at least
436 Twenty Thousand Dollars (\$20,000.00); and provided further, that
437 any deficiency in net assets required above the minimum of Twenty

438 Thousand Dollars (\$20,000.00) may, at the discretion of the
439 commissioner, be supplied by a commensurate increase in the amount
440 of the grain * * * handler's bond furnished pursuant to Sections
441 75-44-29, 75-44-31, 75-44-33 and 75-44-35. In determining total
442 available net assets, credit may be given for insurable assets
443 such as buildings, machinery, equipment and merchandise inventory
444 only to the extent of the current market value of such assets and
445 only to the extent that such assets are protected by insurance
446 against loss or damage. Such insurance shall be in the form of
447 lawful policies issued by one or more insurance companies
448 authorized to do business and subject to service of process in
449 suits brought in this state, and which provide that no
450 cancellation shall be effective unless thirty (30) days' advance
451 notice of such cancellation is given to the commissioner.

452 (2) If a grain * * * handler is licensed or is applying for
453 license to operate two (2) or more grain warehouses or grain
454 handler's places of business, the maximum total number of bushels
455 which all such facilities will accommodate when stored in the
456 manner customary to the warehouses, or sold/transferred at the
457 grain handler's place of business, as determined by the
458 commissioner, shall be considered in determining whether the
459 grain * * * handler meets the available net assets requirement of
460 subsection (1) of this section.

461 (3) For the purposes of subsections (1) and (2) of this
462 section only, capital stock as such shall not be considered a
463 liability.

464 **SECTION 19.** Section 75-44-23, Mississippi Code of 1972, is
465 amended as follows:

466 75-44-23. (1) Upon satisfaction of Sections 75-44-9 through
467 75-44-21, and 75-44-29 through 75-44-33, and any applicable
468 regulations by an applicant, the commissioner shall issue a
469 license to operate a grain warehouse.

470 (2) If after proper application, the commissioner denies any
471 person, partnership, association or corporation a license to
472 operate a grain warehouse, the commissioner shall transmit
473 immediately to said applicant by certified mail an order so
474 providing which shall state the reasons for said denial. In the
475 event the applicant is dissatisfied at the decision of the
476 commissioner, the applicant may request a hearing within ninety
477 (90) days with the commissioner to appear and defend its
478 compliance with all appropriate regulations and/or give evidence
479 that all deficiencies have been corrected. If after said hearing,
480 the commissioner denies applicant a license, the commissioner
481 shall transmit immediately to applicant by certified mail an order
482 so providing which shall state the reasons for said denial. In
483 the event the applicant is dissatisfied at the decision of the
484 commissioner after the hearing, the applicant may appeal to the
485 chancery court of the county where the grain warehouse or grain
486 handler's place of business is located within thirty (30) days of
487 the date of said order in accordance with the provisions of
488 subsection (2) of Section 75-44-25.

489 **SECTION 20.** Section 75-44-25, Mississippi Code of 1972, is
490 amended as follows:

491 75-44-25. (1) If a grain * * * handler is convicted of any
492 crime involving fraud or deceit or if the commissioner determines
493 that any grain * * * handler has violated any of the provisions of
494 this chapter, or any of the rules and regulations adopted by the
495 commissioner pursuant to this chapter, the commissioner may, at
496 his discretion, suspend, cancel or revoke the license of such
497 grain * * * handler.

498 (2) All proceedings for the suspension, cancellation or
499 revocation of licenses shall be before the commissioner, and the
500 proceedings shall be in accordance with rules and regulations
501 which shall be adopted by the commissioner. No license shall be
502 cancelled or revoked except after a hearing before the
503 commissioner upon reasonable notice to the licensee and an
504 opportunity to appear and defend. The commissioner may
505 temporarily suspend the license of a licensee for good and
506 reasonable cause before notice or hearing and the licensee shall
507 be entitled to a hearing on such temporary suspension without
508 undue delay. Whenever the commissioner shall suspend, cancel or
509 revoke any license he shall prepare an order so providing which
510 shall state the reason or reasons for such suspension,
511 cancellation or revocation. Said order shall be sent, by
512 certified mail, by the commissioner to the licensee at the address
513 of the grain warehouse licensed. Within thirty (30) days after
514 the mailing of said order, the licensee, if dissatisfied with the

515 order of the commissioner, may appeal to the chancery court of the
516 county where the grain warehouse is located by filing a written
517 notice of appeal alleging the pertinent facts upon which such
518 appeal is grounded. At the time of the filing of the appeal, the
519 appellant shall give a bond for costs conditioned upon his
520 prosecution of the appeal without delay and payment of all costs
521 assessed against him. Appeal may be with supersedeas and shall be
522 subject to the provisions of Section 11-51-31.

523 (3) In case a license issued to a grain * * * handler
524 expires or is suspended, revoked or cancelled by the commissioner
525 or his designated representative, such license shall be
526 immediately returned to the commissioner and the grain * * *
527 handler shall forthwith comply with the provisions of Section
528 75-44-67.

529 **SECTION 21.** Section 75-44-27, Mississippi Code of 1972, is
530 amended as follows:

531 75-44-27. Upon satisfactory proof of the loss or destruction
532 of a license issued to a grain * * * handler, a duplicate thereof,
533 or a new license, may be issued under the same number.

534 **SECTION 22.** Section 75-44-29, Mississippi Code of 1972, is
535 amended as follows:

536 75-44-29. (1) Before any person is granted a license
537 pursuant to Section 75-44-23 such person shall give a bond to the
538 commissioner executed by the grain * * * handler as principal and
539 by a corporate surety licensed to do business in this state as a
540 surety in the amount prescribed in Section 75-44-31. The bond

541 shall be in favor of the * * * Mississippi Grain Indemnity Board
542 established in this act for the benefit of all persons interested,
543 their legal representatives, attorneys or assigns, conditioned
544 upon the faithful compliance by the grain * * * handler with the
545 provisions of this chapter and the rules and regulations of the
546 State Department of Agriculture and Commerce applicable thereto.
547 The aggregate liability of the surety to all depositors or storers
548 or purchasers of grain shall not exceed the sum of such bond. The
549 bond may be cancelled at any time by the surety by giving written
550 notice to the Commissioner of Agriculture and Commerce of its
551 intention to cancel the bond and all liability thereunder shall
552 terminate thirty-five (35) days after the mailing of such notice
553 except that such notice shall not affect any claims arising under
554 the bond, whether presented or not, before the effective date of
555 the cancellation notice.

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

559 (a) Cash;

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

562 (c) Irrevocable letters of credit from any bank or
563 banking corporation insured by the Federal Deposit Insurance
564 Corporation;

565 (d) Federal Treasury Bills; or

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

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

570 **SECTION 23.** Section 75-44-31, Mississippi Code of 1972, is
571 amended as follows:

572 75-44-31. (1) The amount of surety bond to be furnished for
573 each grain warehouse shall be fixed at a rate of Twenty-five Cents
574 (25¢) per bushel for the first * * * five hundred thousand
575 (500,000) bushels of licensed capacity; * * * provided that in no
576 case shall the amount of the bond be less than * * * Twenty-five
577 Thousand Dollars (\$25,000.00) or more than * * * One Hundred
578 Twenty-five Thousand Dollars (\$125,000.00), except as prescribed
579 in subsection (3) or (4) of this section. The licensed capacity
580 shall be equal to the maximum number of bushels of grain that the
581 grain warehouse can accommodate for storage or the amount sold or
582 transferred by the licensee acting as a grain handler. In no
583 event shall the liability of the surety accumulate for each
584 successive license period during which this bond is in force, but
585 shall be limited in the aggregate to the bond amount or changed by
586 appropriate rider or endorsement.

587 (2) A grain * * * handler who is licensed or is applying for
588 licenses to operate two (2) or more grain warehouses or places of
589 grain-handling business may give a single surety bond meeting the
590 requirements of this chapter to cover all such grain warehouses or
591 businesses within the state. In such cases all grain warehouses

592 or grain-handling businesses to be covered by the surety bond
593 shall be deemed to be one (1) warehouse or place of business for
594 purposes of determining the amount of bond required under
595 subsection (1) of this section.

596 (3) In case of a deficiency in the net assets required by
597 Section 75-44-21, there shall be added to the amount of the surety
598 bond, determined in accordance with subsection (1) of this
599 section, an amount equal to such deficiency. In any other case in
600 which the commissioner finds that conditions exist which warrant
601 requiring additional bond, there shall be added to the amount of
602 bond such further amount as is determined to be reasonable by the
603 commissioner.

604 (4) The commissioner may, when he questions a grain
605 handler's ability to pay producers for grain purchased, require a
606 grain handler to post an additional surety bond in a dollar amount
607 deemed appropriate by the commissioner. Failure to post such
608 additional surety bond or certificate of deposit or irrevocable
609 letter of credit, constitutes grounds for suspension or revocation
610 of a license issued under this act.

611 **SECTION 24.** Section 75-44-33, Mississippi Code of 1972, is
612 amended as follows:

613 75-44-33. If an application is made for an amendment to a
614 license and no bond previously filed by the grain * * * handler
615 under Sections 75-44-29 and 75-44-31 covers obligations arising
616 during the period covered by such amendment, the grain * * *

617 handler shall file with the commissioner an additional bond in
618 such amount as may be determined by the commissioner.

619 **SECTION 25.** Section 75-44-35, Mississippi Code of 1972, is
620 amended as follows:

621 75-44-35. (1) It shall be the duty of the grain * * *
622 handler to deliver grain to the holder of a warehouse receipt
623 within ten (10) days of the demand for the redemption of such
624 receipt. In the event the grain * * * handler fails to deliver
625 grain to the holder of a warehouse receipt within ten (10) days of
626 the demand, the holder of the warehouse receipt may make demand of
627 the surety for payment under the bond. The surety has the
628 responsibility to pay within fifteen (15) days following receipt
629 by the surety of the notice of the demand for redemption. Any
630 holder of a warehouse receipt issued by a grain * * * handler who
631 has made demand for redemption of such receipt, which demand was,
632 without lawful excuse, not satisfied within ten (10) days, shall
633 notify the commissioner in writing and shall have the right to
634 bring action against the grain * * * handler and the surety on the
635 grain * * * handler's bond for payment of the market value of the
636 grain represented by such warehouse receipt, such market value to
637 be determined as of the date of the demand, plus legal interest
638 accrued from the date of the demand. In the event the grain * * *
639 handler is a self-insurer as provided in Section 75-44-29 the
640 holder of a warehouse receipt shall have the right to bring action
641 against the grain * * * handler to the extent of the amount posted
642 in lieu of the bond. The commissioner shall pay to the holder of

643 the warehouse receipt, to the extent of the bond posted, any
644 judgment obtained by the holder of a warehouse receipt against a
645 self-insurer. The commissioner may also pay to the holder of a
646 warehouse receipt the amount of the market value of the grain
647 provided that the grain * * * handler agrees to such payment;
648 provided, however, the license of the grain * * * handler shall be
649 suspended upon such payment until such time as the * * * handler
650 posts a bond as provided in this chapter or posts with the
651 commissioner a sum equivalent to that paid by the commissioner on
652 behalf of such * * * grain handler.

653 (2) In all actions in which judgment is rendered against any
654 surety company under the provisions of this section, if it appears
655 from evidence that the surety company has * * * willfully and
656 without just cause refused to pay the loss upon demand, the court
657 in rendering judgment shall allow the plaintiff the amount of the
658 plaintiff's expenses, including court costs and attorney's fees,
659 to be recovered and collected as part of the costs. The amount of
660 any payment of costs and attorney's fees under this subsection
661 will not reduce the surety's remaining liability on its bond.

662 (3) If a grain handler should fail or refuse to make payment
663 to a producer for grain purchased when such payment is requested
664 by the producer and the request is made within thirty (30) days of
665 the date of sale or the date of delivery of such grain to the
666 handler, whichever is later, or other period of time specified by
667 contractual arrangement, the producer shall notify the
668 commissioner in writing of such failure or refusal within the

669 period of thirty (30) days thereafter. The commissioner upon
670 receiving such notice shall take whatever action is necessary to
671 investigate the claim and report the findings to the producer
672 within ten (10) days. Grain handler liability under priced-later
673 contracts, open-priced contracts, deferred price contracts, or
674 similar agreements shall accrue under the bond in effect at the
675 date of default as determined by the commissioner.

676 **SECTION 26.** Section 75-44-37, Mississippi Code of 1972, is
677 amended as follows:

678 75-44-37. (1) Every grain * * * handler shall at all times
679 keep the grain stored in the grain warehouse insured by an
680 insurance company authorized to do business in this state. The
681 grain is to be insured for its full-market value against loss by
682 fire, inherent explosion, lightning and windstorm, and failure to
683 do so shall make the grain * * * handler liable for the same. All
684 such policies shall provide that no cancellations shall be
685 effective unless thirty (30) days' prior notice is given the
686 commissioner.

687 (2) If fire, inherent explosion, lightning or windstorm
688 shall destroy or damage all or part of the grain stored in any
689 grain warehouse, the grain * * * handler shall, upon demand by the
690 holder of any warehouse receipt for such grain, and upon being
691 presented with the warehouse receipt, make settlement for the
692 fair-market value after deducting the warehouse charges.

693 **SECTION 27.** Section 75-44-39, Mississippi Code of 1972, is
694 amended as follows:

695 75-44-39. Every grain * * * handler shall receive for
696 storage or shipment, so far as the available capacity for storage
697 of the grain warehouse shall permit, all grain tendered to him in
698 the usual course of business; provided, however, a grain warehouse
699 owned and operated as a cooperative may decline to accept grain
700 tendered by a nonmember if such cooperative reasonably believes
701 that its available capacity will be required to serve the members
702 of the cooperative. All such grain is to be inspected, weighed
703 and graded by an inspector except that:

704 (a) The depositor and the grain * * * handler may agree
705 upon a sample taken from the lot of grain to be offered for
706 storage as being a true and representative sample.

707 (b) The depositor and the grain * * * handler may agree
708 upon the grade of the grain offered for storage and a warehouse
709 receipt may be issued on the agreed grade.

710 **SECTION 28.** Section 75-44-41, Mississippi Code of 1972, is
711 amended as follows:

712 75-44-41. Every grain * * * handler shall keep in a place of
713 safety complete, separate and correct records and accounts
714 pertaining to the grain warehouse including, but not limited to,
715 records and accounts of * * * the number of bushels of grain
716 received therein and withdrawn therefrom, all unissued receipts
717 and tickets in its possession, copies of all receipts and tickets
718 issued by it, and the receipts and tickets returned to and
719 cancelled by it. Such records shall be retained by the
720 grain * * * handler for a period of five (5) years.

721 **SECTION 29.** Section 75-44-43, Mississippi Code of 1972, is
722 amended as follows:

723 75-44-43. (1) Every grain warehouse shall be examined by
724 the commissioner each year. The cost of such examination shall be
725 included in the annual license fee. The commissioner, at his
726 discretion, may make additional examinations of any grain
727 warehouse at any time. If any discrepancy is found as a result of
728 additional examination, the cost of such examination is to be paid
729 by the grain * * * handler.

730 (2) Every grain warehouse shall at least annually send to
731 the commissioner a copy of its financial statement prepared by an
732 accountant licensed by the State of Mississippi and sworn to by
733 the accountant and grain * * * handler.

734 (3) The commissioner * * * shall also require an unqualified
735 audit by an accountant licensed by the State of Mississippi as a
736 requirement for licensing * * * to be submitted annually directly
737 to the commissioner. The commissioner shall inspect the
738 grain * * * handler's place of business, mode of conducting the
739 same, facilities, equipment, inventories, property, books,
740 records, accounts, papers and minutes of proceedings held at such
741 grain * * * handler's place of business, and any other records
742 deemed relevant to the operation of the grain * * * handler's
743 place of business by the commissioner.

744 (4) All scales used for the weighing of property in grain
745 warehouses shall be subject to tests by any scale inspector duly

746 appointed or authorized by the commissioner during regular
747 business hours.

748 **SECTION 30.** Section 75-44-45, Mississippi Code of 1972, is
749 amended as follows:

750 75-44-45. Each grain warehouse shall employ, during all
751 regular business hours, a grain inspector (who may be the
752 grain * * * handler himself if such grain * * * handler is a
753 natural person) who shall be responsible for the accuracy of
754 weights and grades noted on all warehouse receipts.

755 **SECTION 31.** Section 75-44-47, Mississippi Code of 1972, is
756 amended as follows:

757 75-44-47. (1) If the condition of any grain offered for
758 storage is such that it probably will affect the condition of
759 grain in the grain warehouse, the grain * * * handler shall not
760 receive such grain for storage or store such grain, provided,
761 however, that if the grain warehouse has separate bins or is
762 equipped with proper conditioning apparatus, the grain warehouse
763 may receive such grain for storage in such separate bins or may
764 condition it and then store it in such a manner as will not lower
765 the grade of other grain.

766 (2) It shall be the grain * * * handler's duty and
767 obligation to condition and maintain the quantity and quality of
768 all grain as receipted.

769 **SECTION 32.** Section 75-44-49, Mississippi Code of 1972, is
770 amended as follows:

771 75-44-49. (1) Every receipt issued for grain stored in a
772 grain warehouse shall conform to the requirements of Section
773 75-7-202 and in addition shall embody within its written or
774 printed terms:

775 (a) A statement that the holder of the receipt or the
776 depositor of the grain shall demand the delivery of the grain on
777 or before a date not later than one (1) year from the date
778 specified thereon by the grain * * * handler;

779 (b) The net weight, number of bushels, percentage of
780 dockage and the grading factors and the grade.

781 (2) A grain * * * handler shall not insert any language in
782 any warehouse receipt or make any contract with respect to any
783 warehouse receipt which purports to limit the liabilities or
784 responsibilities imposed on him by law.

785 (3) The possession of an indorsed warehouse receipt shall be
786 prima facie evidence of grain in storage and the rightful
787 ownership of such document and grain.

788 **SECTION 33.** Section 75-44-51, Mississippi Code of 1972, is
789 amended as follows:

790 75-44-51. The commissioner shall require that at least one
791 (1) actual or skeleton copy of all receipts shall be made and all
792 copies shall have clearly and conspicuously printed or stamped
793 thereon the words "Copy-Not Negotiable."

794 **SECTION 34.** Section 75-44-53, Mississippi Code of 1972, is
795 amended as follows:

796 75-44-53. The form of all receipts shall be approved by the
797 commissioner. The commissioner shall be authorized to have
798 printed by the state printer all warehouse receipts issued by
799 grain * * * handlers.

800 **SECTION 35.** Section 75-44-55, Mississippi Code of 1972, is
801 amended as follows:

802 75-44-55. If a grain * * * handler delivers only a part of a
803 lot of grain for which he has issued a negotiable receipt under
804 this chapter, he shall take up and cancel such receipt and issue a
805 new receipt in accordance with the provisions of Sections 75-44-49
806 through 75-44-65 for the undelivered portion of grain.

807 **SECTION 36.** Section 75-44-57, Mississippi Code of 1972, is
808 amended as follows:

809 75-44-57. A grain * * * handler shall not deliver grain for
810 which he has issued a negotiable receipt until the receipt has
811 been returned to him and cancelled, and shall not deliver grain
812 for which he has issued a nonnegotiable receipt until he has
813 received authority from the person lawfully entitled to such
814 delivery, or his authorized agent.

815 **SECTION 37.** Section 75-44-59, Mississippi Code of 1972, is
816 amended as follows:

817 75-44-59. The commissioner shall require that all warehouse
818 receipts issued by a grain warehouse shall be numbered
819 consecutively, and no two (2) receipts bearing the same number
820 shall be issued from the same warehouse during any one (1) year,
821 except in the case of a lost or destroyed receipt.

822 **SECTION 38.** Section 75-44-61, Mississippi Code of 1972, is
823 amended as follows:

824 75-44-61. The commissioner shall require that no warehouse
825 receipt shall be issued except upon actual delivery of grain into
826 storage in the warehouse from which it purports to be issued, nor
827 shall any receipt be issued for a greater quantity of grain than
828 was contained in the lot or parcel * * * or received for storage,
829 nor shall more than one (1) receipt be issued for the same lot of
830 grain, except in cases where a receipt for a part of a lot is
831 desired, and then the aggregate receipts for a particular lot
832 shall cover that lot and no more.

833 **SECTION 39.** Section 75-44-63, Mississippi Code of 1972, is
834 amended as follows:

835 75-44-63. A grain * * * handler may make a valid sale or
836 pledge of any warehouse receipts issued for grain of which
837 the * * * handler is the owner, either solely or jointly or in
838 common with others, and the recital of ownership in the receipt
839 shall constitute notice of the right to sell or pledge the same
840 and of the title or specific lien of the transferee or pledgee
841 upon the * * * grain handler's grain represented by the receipts.

842 **SECTION 40.** Section 75-44-65, Mississippi Code of 1972, is
843 amended as follows:

844 75-44-65. (1) If grain is offered for storage in any
845 licensed grain warehouse and the grain * * * handler does not have
846 storage space to handle the same, the grain * * * handler, with

847 the written consent of the owner, may accept grain for shipment to
848 another grain warehouse where storage is available.

849 (2) The receipt to cover grain to be transported to and
850 stored in another grain warehouse shall embody within its written
851 or printed terms, in addition to the requirements of Section
852 75-44-49, the name and location of the grain warehouse to which
853 the grain will be shipped for storage.

854 **SECTION 41.** Section 75-44-67, Mississippi Code of 1972, is
855 amended as follows:

856 75-44-67. Any * * * grain handler operating a grain
857 warehouse who desires to discontinue such operation at the
858 expiration of his license or whose license is suspended, revoked
859 or cancelled by the commissioner or his designated representative
860 shall notify the commissioner and all holders of warehouse
861 receipts and all parties storing grain in the grain warehouse, if
862 known, or if not known, by advertising in the newspaper or
863 newspapers of largest general circulation in the community in
864 which the grain warehouse is located once per week for three (3)
865 consecutive weeks, at least thirty (30) days prior to the date of
866 expiration of his license, of his intention to discontinue the
867 grain warehouse business, and the owners of the grain shall
868 remove, or cause to be removed, their grain from such grain
869 warehouse before the expiration of the license.

870 **SECTION 42.** Section 75-44-69, Mississippi Code of 1972, is
871 amended as follows:

872 75-44-69. No inspector or employee of the commissioner's
873 office shall disclose any information obtained by him in the
874 course of his employment related to the affairs or transactions of
875 any grain warehouse without first having obtained the express
876 permission in writing of such grain * * * handler.

877 **SECTION 43.** Section 75-44-71, Mississippi Code of 1972, is
878 amended as follows:

879 75-44-71. (1) Any person who issues a warehouse receipt for
880 grain without holding a valid grain * * * handler license or who
881 commits any willful violation of any provision of this chapter,
882 shall be guilty of a felony, and upon conviction thereof,
883 punishable by a fine of not more than * * * Fifty Thousand Dollars
884 (\$50,000.00) and/or imprisonment for not more than five (5) years.

885 (2) Any unintentional or negligent violation of this chapter
886 shall be a misdemeanor, and upon conviction thereof, punishable by
887 a fine of not more than * * * One Thousand Dollars (\$1,000.00)
888 and/or imprisonment for not more than one (1) year.

889 **SECTION 44.** Sections 75-45-301, 75-45-303, 75-45-304,
890 75-45-305, 75-45-307, 75-45-309, 75-45-311, 75-45-313 and
891 75-45-315, Mississippi Code of 1972, which are the "Mississippi
892 Grain Dealers Law of 1978," are hereby repealed.

893 **SECTION 45.** This act shall take effect and be in force from
894 and after July 1, 2022.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 REVISE THE REQUIREMENTS OF THE "MISSISSIPPI GRAIN
20 WAREHOUSE LAW" AND THE "MISSISSIPPI GRAIN DEALERS LAW" BY
21 PROVIDING FOR A COMBINED GRAIN HANDLER LICENSE ISSUED AND
22 REGULATED BY THE MISSISSIPPI COMMISSIONER OF AGRICULTURE AND
23 COMMERCE; TO AMEND SECTIONS 75-44-1 THROUGH 75-44-71, MISSISSIPPI
24 CODE OF 1972, TO PROVIDE DEFINITIONS, PRESCRIBE REQUIREMENTS FOR
25 THE NECESSITY OF OBTAINING A GRAIN HANDLER LICENSE, TO PRESCRIBE
26 CERTAIN APPLICATION AND RENEWAL FEES FOR SUCH LICENSES, TO
27 PRESCRIBE CERTAIN STATUTORY SURETY BOND AMOUNTS REQUIRED FOR
28 LICENSED GRAIN HANDLERS, TO REQUIRE GRAIN HANDLER LICENSEES TO
29 SUBMIT ANNUAL INDEPENDENT AUDITS WITH THE MISSISSIPPI DEPARTMENT
30 OF AGRICULTURE AND COMMERCE AS LICENSING AGENCY; TO REPEAL
31 SECTIONS 75-45-301 THROUGH 75-45-315, MISSISSIPPI CODE OF 1972,
32 WHICH IS THE "MISSISSIPPI GRAIN DEALERS LAW OF 1978"; AND FOR
33 RELATED PURPOSES.

SS26\HB1389A.1J

Eugene S. Clarke
Secretary of the Senate