

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.

