

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Hardin**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO ESTABLISH THE ARKANSAS GRAIN DEALER LICENSING
9 AND BONDING LAW; TO REQUIRE GRAIN DEALERS TO BE LICENSED;
10 TO REQUIRE A SURETY BOND BE POSTED TO INSURE PAYMENT FOR
11 GRAIN SOLD; TO AUTHORIZE RECEIVERS TO BE APPOINTED; AND
12 FOR OTHER PURPOSES."

13

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

15

16 SECTION 1. As used in this act, unless the context otherwise requires:

17 (1) "Commission" means the Arkansas State Plant Board.

18 (2) "Commissioner" means the Arkansas State Plant Board Director.

19 (3) "Grain" means any grain for which the United State Department of
20 Agriculture has established standards, including, but not limited to, corn,
21 wheat, oats, soybeans, rye, barley, grain sorghum, flaxseed, sunflower seed,
22 dry edible beans, rice, mixed grain, other food grains, and oil seeds.

23 (4) "Grain dealer" or "dealer" means any person who buys grain for
24 resale except as provided in this act; sells grain on behalf of the owners and
25 receives, manages or disburses the proceeds of sale; acts as a collective
26 bargaining agent on behalf of the owners of grain in the marketing of such
27 grain or merchandises or buys grain for processing, including, but not limited
28 to, feed, seed and products for human consumption as defined by regulations
29 promulgated under this act.

30 (5) "Combined warehouse" means any person who holds a state warehouse
31 license under the Arkansas Public Grain Warehouse Law, Arkansas Code §§2-17-
32 210 et seq., and who acts as a grain dealer as defined by law.

33 (6) "Merchandiser" means a person engaged in the buying and selling of
34 farmer-produced grain and who may or may not operate a warehouse or vehicle
35 used in the transportation of grain.

1 (7) "Person" shall mean an individual, corporation, partnership or any
2 other legal entity organized under law.

3 (8) "License" means a license issued under this act.

4 (9) "Broker" means a person who is engaged by others, on a commission
5 basis, to negotiate contracts relating to property for which he will not have
6 custody, either actual or constructive. A "broker" is not a person:

7 (A) who has possession and absolute control of merchandise shipped to
8 him to sell and collect the price, a commission merchant to whom grain is
9 consigned for sale; (B) who receives a salary instead of a commission or
10 brokerage; or

11 (C) who acts for one principal to the exclusion of all others.

12

13 SECTION 2. The Arkansas State Plant Board shall exercise general
14 supervision over the operations of a dealer. The supervisory and regulatory
15 powers authorized by this act shall be the responsibility of the Arkansas
16 State Plant Board. The Arkansas State Plant Board shall inspect or cause to
17 be inspected any dealer operating in this state and may require the filing of
18 reports pertaining to the operation of the business. All persons licensed
19 under the United States Warehouse Act as a public grain warehouseman shall
20 conform to all sections of this act, except those areas of the law which shall
21 be exempted through rules and regulations. Where the Arkansas State Plant
22 Board has received a complaint or there is reasonable cause to believe that a
23 person is or has been operating as a dealer without a license to do business
24 in this state, the Arkansas State Plant Board may inspect the books, papers
25 and any other records of such person and conduct any other investigation as
26 deemed necessary to determine if such person is or has been operating as a
27 dealer. The Arkansas State Plant Board shall adopt rules and regulations to
28 provide for the efficient administration and regulation of the provisions of
29 this act and may designate an employee of the Arkansas State Plant Board to
30 act for the Arkansas State Plant Board in any details connected with such
31 administration, including the issuance of licenses and approval of grain
32 dealers bonds in the name of the Arkansas State Plant Board.

33

34 SECTION 3. No person shall engage in business as a "dealer" in this
35 state without having obtained a license issued by the Arkansas State Plant

1 Board. Engaging in the business of a dealer in this state shall include any
2 purchasing of grain for resale which takes place in whole or in part in this
3 state. Each application for a license to engage in business as a dealer shall
4 be filed with the Arkansas State Plant Board and shall be in a form prescribed
5 by the Arkansas State Plant Board. The application shall include the name of
6 the applicant, its principal officers, if the applicant is a partnership, and
7 the location of the principal office and place of business of the applicant
8 and such other additional information as the Arkansas State Plant Board may
9 require. Separate license shall be required for each location in which the
10 records are normally kept for transactions of the dealer. The application
11 shall also list the number of trucks or tractor trailer units to be used in
12 transporting grain purchased for resale. The application shall be accompanied
13 by a complete financial statement of the applicant setting forth, but not
14 limited to the assets subject to execution, liabilities and net worth of the
15 applicant. The financial statement must be prepared according to generally
16 accepted accounting principles and must be at least a review statement
17 prepared by a CPA, RPA, or Public Accountant. Assets shall be shown at
18 original cost, less depreciation. Upon a petition filed with the Arkansas
19 State Plant Board, the Arkansas State Plant Board may allow asset valuations
20 in accordance with a competent appraisal, but shall not exceed insured value.
21 Grain delivered on deferred pricing contracts shall be shown as a liability
22 and valued at the applicable current market price of the grain as of the date
23 the financial statement is prepared. In order to receive and retain a
24 license, an applicant must have and maintain a net worth of at least twenty-
25 five thousand dollars (\$25,000) or provide bond, in addition to that required
26 by Section 5 of this act, in the amount of two thousand dollars (\$2,000) for
27 each one thousand dollars (\$1,000) or fraction thereof for deficiency of the
28 net worth requirements. In the event the total assets are found to be less
29 than the total liabilities of the dealer, the Arkansas State Plant Board shall
30 immediately suspend such dealer's license. The Arkansas State Plant Board may
31 require additional information or verification and may request a certified
32 audit if deemed necessary with respect to the financial resources of the
33 applicant and the applicant's ability to pay for grain purchased by them. If,
34 upon review of the dealer's financial position, record, books, and accounts,
35 the Arkansas State Plant Board determines that the dealer fails to have the

1 ability to make payment for grain purchased, the Arkansas State Plant Board
2 may temporarily suspend the dealer's license. At the time the license is
3 suspended, the Arkansas State Plant Board shall set the date for a hearing to
4 determine if the license should be permanently revoked. Judicial review of
5 Arkansas State Plant Board actions shall be governed by the Arkansas
6 Administrative Procedure Act.

7

8 SECTION 4. The provisions of this act shall not apply to the following:

9 (1) A "broker" as defined in this act.

10 (2) A person solely engaged in buying or selling grain on futures
11 contracts on a contract market. A contract market is limited to a contract
12 market designated by Commodity Futures Trading Commission pursuant to
13 Commodity Exchange Act (7 USC §1 et seq. as amended).

14 (3) A person buying or selling grain only as a farm manager.

15 (4) A person acting as an executor, administrator, trustee, guardian,
16 or conservator of an estate.

17 (5) A person who purchases one thousand (1,000) bushels of grain or
18 less annually.

19

20 SECTION 5. (a) Any person applying for a license to operate as a
21 dealer in accordance with this act shall, as a condition to the granting of
22 the license, file with the Arkansas State Plant Board a bond payable to the
23 state of Arkansas with a corporate surety authorized to do business in the
24 state in a penal sum of a minimum of twenty-five thousand dollars (\$25,000)
25 or five percent (5%) of the amount of the dealer's purchases, based on the
26 preceding year's business, up to a maximum of one hundred thousand dollars
27 (\$100,000) per license, whichever is greater. The bond shall be conditioned
28 that the applicant will pay the purchase price of any grain to the seller.
29 The aggregate liability of the surety shall in no event exceed the sum of such
30 bond. One bond, cumulative as to minimum requirements, shall be required
31 where a person has multiple licenses, but in no event shall the total amount
32 of bond exceed one hundred thousand dollars (\$100,000). No bond shall be
33 canceled by a surety until at least thirty (30) days after the Arkansas State
34 Plant Board and the dealer have received notice of cancellation by certified
35 mail. A dealer's bond filed with the Arkansas State Plant Board shall be

1 continuous until canceled by the surety. The liability of the surety on any
2 bond required by the provisions of this act shall not accumulate for each
3 successive license period during which the bond is in force.

4 (b) In lieu of the bond as required in this section, an applicant for a
5 license may be a self-insurer by posting with the Commissioner as follows:

- 6 (1) Actual cash;
- 7 (2) Any combination of securities the market value of which is
8 readily ascertainable and, if negotiable by delivery or assignment, of the
9 kinds described in the following sections of the Arkansas Code Annotated:
10 (A) United States government obligations, §23-63-806;
11 (B) Municipal or county utilities, §23-63-809;
12 (C) Local industrial development bonds, §23-63-811;
13 (D) International bonds, §23-63-813; and
14 (E) Corporate bonds and debentures, §23-63-814;
- 15 (3) A letter of credit; or
- 16 (4) A certificate of deposit.

17 (c) The Commissioner has authority to establish requirements for
18 letters of credit and certificates of deposit including, but not limited to,
19 termination dates of letters of credit, notice requirements before termination
20 date of letters of credit, and negotiation and possession of certificates of
21 deposits. The Commissioner has the authority to approve banks or other
22 entities issuing the letter of credit or certificates of deposit.

23

24 SECTION 6. Upon the filing of the application and compliance with the
25 terms and conditions of this act and rules of the Arkansas State Plant Board,
26 the Arkansas State Plant Board shall issue a license to the applicant. The
27 license shall terminate on June 30 of each year. A dealer's license may be
28 renewed annually by the filing of a renewal application on a form prescribed
29 by the Arkansas State Plant Board. The renewal application shall be
30 accompanied by a financial statement, evidence of a surety bond on file with
31 the Arkansas State Plant Board, and the renewal fee. An application for
32 renewal shall be received by the Arkansas State Plant Board before the
33 thirtieth (30th) day of June. A dealer's license which has terminated may be
34 reinstated by the Arkansas State Plant Board upon receipt of a proper renewal
35 application, a current financial statement, evidence of a surety bond on file

1 with the Arkansas State Plant Board, the renewal fee and a penalty fee. The
2 penalty fee shall be in the amount of five dollars (\$5.00) per day for each
3 day after the thirtieth (30th) day of June, to and including the day the
4 dealer has met the foregoing requirements, provided that such materials are
5 filed within thirty (30) days from the date of termination of the dealer's
6 license. The Arkansas State Plant Board may cancel a license upon written
7 request of the licensee unless a complaint or information is filed against the
8 licensee alleging a violation of a provision of this act.

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10 SECTION 7. The Arkansas State Plant Board shall be authorized to set
11 and collect reasonable fees, by regulation, for the licensing of grain dealers
12 and for the issuance of vehicle decals for each grain dealer's truck used to
13 transport grain purchased for resale. Provided, however, a combination
14 warehouse shall not be assessed an additional license fee for dealing in grain
15 with the exception of vehicle decals or other registration as stated in
16 Section 8.

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18 SECTION 8. The dealer's license shall be posted in a conspicuous
19 location in the place of business. A dealer's license is not transferable.
20 Each vehicle used by a license holder shall be equipped with a special decal
21 or other registration identification as prescribed by the Arkansas State Plant
22 Board so as to be readily visible. The registration shall not be transferred
23 from one vehicle previously bearing identification. If the registration for a
24 vehicle becomes defaced or destroyed, a duplicate shall be obtained from the
25 Arkansas State Plant Board upon request and payment of the vehicle decal fee.

26

27 SECTION 9. (a) A person licensed as a grain dealer shall pay the
28 purchase price to the owner or his or her agent for grain upon delivery or
29 demand of the owner or agent, but not later than thirty (30) days after
30 delivery by the owner or agent unless in accordance with the terms of a duly
31 executed deferred payment or deferred pricing contract.

32 (b) The contract shall contain the following:

- 33 (1) the buyer and seller's name and address;
- 34 (2) the conditions of delivery;
- 35 (3) the amount and kind of grain delivery;

- 1 (4) the price per bushel or basis of value;
- 2 (5) the date payment is to be made; and
- 3 (6) such other information as may be required by regulation of
- 4 the Commission.

5 (c) The contract must be pre-numbered, issued in consecutive order, and
6 signed by both parties and executed in duplicate. One (1) copy shall be
7 retained by the grain dealer and one (1) copy shall be delivered to the
8 seller.

9 (d) In the event of revocation, termination or cancellation of grain
10 dealer license, the payment date for all deferred payment or deferred pricing
11 contracts shall be advanced to a date no later than thirty (30) days after the
12 effective date of such revocation, termination or cancellation and the
13 purchase price for all unpriced grain shall be determined as of the effective
14 date of revocation, termination or cancellation in accordance with all other
15 provisions of the contract. However, if the business of the grain dealer is
16 sold to another licensed grain dealer, deferred payment or deferred pricing
17 contracts may be assigned to the purchaser of the business.

18 (e) As used in this section, "delivery" means the transfer of title to
19 and possession of grain by the seller to the grain dealer. As used in this
20 section, "payment" means the actual payment to tender of payment by the grain
21 dealer to the seller of the agreed purchase price, or in the case of disputes
22 as to sales of grain, the undisputed portion of the purchase price without
23 reduction for any separate claim of the grain dealer against the seller.

24

25 SECTION 10. The Arkansas State Plant Board may inspect the books,
26 accounts, records and premises used by any dealer in the conduct of the
27 business during ordinary business hours or upon notice to the dealer at any
28 other time set by the Arkansas State Plant Board. Any person transporting
29 grain other than a producer or his or her agent shall have in his possession
30 bills of lading or other documents covering such commodities in transit and
31 such documents shall be available for inspection by the Arkansas State Plant
32 Board upon request. Any dealer licensed in this state who does not have a
33 place of business within the state shall make available and furnish to the
34 Arkansas State Plant Board upon request all such books, accounts, records and
35 papers of grain transactions within this state at any reasonable time and

1 place that the Arkansas State Plant Board may set for inspection thereof.

2

3 SECTION 11. (a) Upon information filed with the Arkansas State Plant
4 Board by the Director or upon receipt of a verified complaint filed by any
5 person, the Arkansas State Plant Board may, after a notice and hearing,
6 suspend or revoke the license of any person licensed under this act for the
7 violation of or failure to comply with the provisions of this act or any rule
8 or regulation adopted under this act.

9 (b) The information or verified complaint shall be filed with the
10 Arkansas State Plant Board in triplicate and shall state the grounds for
11 suspension or revocation. The Arkansas State Plant Board shall notify the
12 licensee of the complaint and furnish him with a copy, by certified mail, of
13 the information or the complaint and a copy of the order of the Arkansas State
14 Plant Board fixing the time and date for a hearing. The hearing shall be set
15 at least five (5) days from the date of receipt of notification.

16 (c) If the Arkansas State Plant Board determines after filing of the
17 information or complaint that the public health, safety or welfare requires
18 immediate action, the Arkansas State Plant Board may temporarily suspend a
19 license without a hearing. After such determination, a hearing upon the
20 information or complaint shall be held within ten (10) days of such temporary
21 suspension.

22 (d) If a decision of suspension or revocation is appealed, the Arkansas
23 State Plant Board shall certify the complete record of the hearing before the
24 Arkansas State Plant Board to the clerk of the proper court as determined by
25 Arkansas Administrative Procedure Act, Arkansas Code §§25-15-201 et seq.

26 (e) The Arkansas State Plant Board may suspend the license of a dealer
27 upon information and with five (5) days written notice by certified mail non-
28 restricted delivery to dealer and without a hearing if the dealer fails to
29 have sufficient bond on file with the Arkansas State Plant Board or if the
30 dealer fails to submit to an inspection. A suspension of license shall not
31 exceed sixty (60) days without notice and hearing as provided by this act and
32 Arkansas Administrative Procedures Act.

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34 SECTION 12. (a) Upon revocation, termination or cancellation of a
35 dealer's license, any claim for the purchase price of grain against the dealer

1 shall be made in writing and filed with the dealer and with the surety on the
2 dealer's bond within sixty (60) days after revocation, termination or
3 cancellation of the license. Upon revocation, termination or cancellation of
4 a dealer's license, the amount owed the seller for grain purchased by the
5 dealer under a deferred payment or deferred pricing contract shall be
6 determined as provided under Section 8 of this act and shall be subject to the
7 provisions for filing claim within the time period as herein provided, the
8 same as if such deferred payment or deferred pricing contract had not been
9 issued. Failure to make such timely claim shall relieve the surety of all
10 obligations to the claimant. However, this section shall not be construed to
11 reduce the aggregate liability of the surety to the claimants below the face
12 amount of the bond then in effect.

13 (b) Upon revocation of a dealer's license, the Arkansas State Plant
14 Board shall cause notice of such revocation to be published once each week for
15 two consecutive weeks in a newspaper of general circulation within the state
16 of Arkansas and in a newspaper of general circulation within the county of the
17 dealer's principal place of business, when the dealer's principal place of
18 business is located in the state of Arkansas. The notice shall state the name
19 and address of the dealer, the effective date of revocation and the name and
20 address of the surety on the dealer's bond. The notice shall also state that
21 any claims against the dealer shall be made in writing and sent by ordinary
22 mail or delivered personally, within sixty (60) days after revocation, to the
23 dealer and the surety on the dealer's bond.

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25 SECTION 13. Any person who willfully and knowingly engages in business
26 as a dealer without obtaining a license or any person who willfully and
27 knowingly violates other provisions of this act of any dealer who willfully
28 and knowingly refuses to permit inspection of his premises, books, accounts or
29 records, as provided in this act, shall be guilty of a misdemeanor and upon
30 conviction, be punished by a fine of not less than fifty dollars (\$50.00) nor
31 more than five hundred dollars (\$500) or by imprisonment in the county jail
32 for not more than six (6) months, or by both. Any person violating the
33 provisions of this act may be restrained by an injunction.

34 A dealer license shall not be issued to any person whose license has been
35 revoked within a period of five (5) years from date of such revocation. Upon

1 proper application filed for a license following five (5) years from date of
2 revocation, the Arkansas State Plant Board shall hold a hearing within thirty
3 (30) days from receipt of said application to determine if such a license
4 shall be issued. If, after such hearing, the Arkansas State Plant Board
5 determines it is in the best interest of the public, it may deny the issuance
6 of a license to said dealer. Judicial review of the Arkansas State Plant
7 Board's action may be sought in accordance with the terms of the Arkansas
8 Administrative Procedure Act, Arkansas Code §§25-15-201 et seq.

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10 SECTION 14. The Arkansas State Plant Board may designate, by
11 resolution, certain of its employees in the Marketing Division to enforce this
12 act and the regulations promulgated hereunder.

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14 SECTION 15. Nothing in this act shall be construed to imply any
15 guarantee or obligation on the part of the state of Arkansas, or any of its
16 agencies, employees or officials, either elective or appointive, in respect to
17 any agreement or undertaking to which the provision of this act relates.

18

19 SECTION 16. (a) The Arkansas State Plant Board may, following summary
20 suspension of a license or following a suspension or revocation of a license,
21 file a verified petition in the court of competent jurisdiction requesting the
22 appointment of a receiver to take custody of the assets of the dealer and
23 provide for the disposition of those assets under supervision or approval of
24 the court. The petition shall be filed in the county in which the dealer is
25 located. The court shall act on the petition within fifteen (15) days from
26 date the petition is filed. Upon the filing of the petition, the court shall
27 issue, ex parte, such temporary orders as may be necessary to preserve or
28 protect the assets in receivership or the value thereof and the rights of
29 creditors until a plan of disposition is approved. The court may appoint the
30 Arkansas State Plant Board as receiver. Copies of the petition and any notice
31 of hearing shall be served upon the dealer and the surety company issuing the
32 dealer's bond in the manner required for service on an original notice.

33 (b) The dealer's bond shall be exempt from any claims except for grain
34 sold to the dealer. Proceeds from the dealer's bond shall be paid out to
35 persons holding claim against the bond for the unpaid portion of sale of grain

1 to the dealer to satisfy such claims or by pro rata payment of such claimants.

2 (c) The receiver shall, within thirty (30) days from appointment, file
3 with the court a plan for liquidation of assets and payment of claims. The
4 plan shall include, but is not limited to, the following:

5 (1) Final date for filing of any claims and date for creditor's
6 hearing in the matter. When appointed as a receiver under this chapter, the
7 receiver shall cause notification of the appointment to be published once each
8 week for two (2) consecutive weeks in a newspaper of general circulation in
9 each of the counties in which the dealer maintains a business location and in
10 a newspaper of general circulation in this state.

11 (2) The time and method for notice to be provided to claimants.

12 (d) The court shall within fifteen (15) days approve the plan submitted
13 by the receiver or provide a time period of not more than ten (10) days for
14 any modification of the plan to satisfy the court for administration of the
15 plan to fully protect the claimants.

16 (e) If the Arkansas State Plant Board is appointed as receiver, the
17 Arkansas State Plant Board may designate an employee to appear on behalf of
18 the Arkansas State Plant Board in any proceeding before the court with respect
19 to the receivership and to exercise the functions of the Arkansas State Plant
20 Board as receiver under this act, except the Commissioner shall approve the
21 proposed plan for distribution of any cash proceeds and shall approve the
22 proposed final report.

23 (f) The action of the Arkansas State Plant Board with the petition for
24 the appointment of a receiver and all actions of the Arkansas State Plant
25 Board as receiver, if appointed and functions as receiver pursuant to such
26 appointment, shall not be subject to the provisions of the Administrative
27 Procedure Act.

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29 SECTION 17. (a) When a receiver is appointed under this act, the
30 surety on the bond of the dealer shall be joined as a party defendant by the
31 receiver. If required by the court, the surety shall pay the bond proceeds on
32 so much thereof as the court finds necessary into the court and when so paid,
33 the surety shall be absolutely discharged from any further liability under the
34 bond to the extent of payment.

35 (b) Failure to timely file a claim shall defeat the claim with respect

1 to the surety bond.

2 (c) The receiver may, with the approval of the court, continue the
3 operation of all or any part of the business of the dealer on a temporary
4 basis and take any other course of action or procedure which will serve the
5 interest of the creditors.

6 (d) The receiver shall be entitled to reimbursement out of proceeds
7 held in receivership for all expenses incurred as court costs or in disposing
8 of the assets and for all other costs directly attributed to the receivership.
9 The right of reimbursement of the receiver shall be prior to any claims
10 against the proceeds of sales thereof and shall constitute a claim against the
11 surety bond of the dealer.

12 (e) At the termination of the receivership, the receiver shall file a
13 final report containing the details of its action, together with such
14 additional information as the court may require. The receiver shall file a
15 copy of such report with the court.

16

17 SECTION 18. The non-criminal provisions of this act shall be liberally
18 interpreted to protect the interest of the farmer and to insure that farmers
19 are timely and fully paid for their grains.

20

21 SECTION 19. All provisions of this act of a general and permanent
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
23 Code Revision Commission shall incorporate the same in the Code.

24

25 SECTION 20. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.

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31 SECTION 21. All laws and parts of laws in conflict with this act are
32 hereby repealed.

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