

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

144

By: Senator Hardin

For An Act To Be Entitled

"AN ACT TO ESTABLISH THE ARKANSAS GRAIN DEALER'S LICENSING ACT; TO PRESCRIBE THE DIRECTOR'S POWERS AND DUTIES IN REGULATING GRAIN DEALERS; TO REQUIRE THE LICENSING OF ARKANSAS GRAIN DEALERS; TO REQUIRE POSTING OF A SURETY BOND; TO SPECIFY THE REQUIREMENTS OF GRAIN PURCHASE CONTRACTS; TO ESTABLISH PENALTIES FOR VIOLATIONS OF THE ACT; AND FOR OTHER PURPOSES."

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

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

(1) "Auditors" means a person appointed by the director under this act to assist in the administration of this act, and whose duties include making inspections, audits, and investigations authorized under this act.

(2) "Authorized agent" means any person who has the legal authority to act on behalf of, or for the benefit of, another person;

(3) "Buyer" means any person who buys or contracts to buy grain;

(4) "Claimant" means any person who requests payment for grain sold by him to a dealer, but who does not receive payment because the purchasing dealer fails or refuses to make payment;

(5) "Current assets" means resources that are reasonably expected to be realized in cash, sold, or consumed (prepaid items) within one year of the balance sheet date;

(6) "Current liabilities" means obligations reasonably expected to be liquidated within one year and the liquidation of which is expected to require the use of existing resources, properly classified as current assets, or the creation of additional liabilities. Current liabilities include obligations that, by their terms, are payable on demand unless the creditor has waived, in writing, the right to demand payment within one year of the balance sheet

date;

(7) "Deferred payment contract" means a conditional grain sales transaction establishing an agreed upon price for the grain and delaying payment to an agreed upon later date or time period. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long as the following conditions are met:

(A) The contracts shall contain a statement informing the seller that he, the seller, is relinquishing all rights to the grain;

(B) The contracts shall be pre-numbered with no duplication of numbers; and

(C) The contracts shall be in a form prescribed and approved by the director and contain any additional information the director deems necessary, by regulation, to protect the interest of the seller;

(8) "Deferred pricing contract" means a conditional grain sales transaction wherein the seller retains the right to price the grain later at a mutually agreed upon method of price determination. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long as the following conditions are met:

(A) The contracts shall contain a statement informing the seller that he, the seller, is relinquishing all rights to the grain;

(B) The contracts shall be pre-numbered with no duplication of numbers; and

(C) The contracts shall be in a form prescribed and approved by the director and contain any additional information the director deems necessary, by regulation, to protect the interest of the seller;

(9) "Delivery date" means the date upon which the seller transfers physical possession, or the right of physical possession, of the last unit of grain in any given transaction;

(10) "Board" means the Arkansas State Plant Board;

(11) "Designated representative" means an employee or official of the board designated by the director to assist in the administration of this act;

(12) "Director" means the director of the Arkansas State Plant Board or his designated representative;

(13) "Generally accepted accounting principles" means the conventions, rules and procedures necessary to define accepted accounting practice, which include broad guidelines of general application as well as detailed practices

and procedures generally accepted by the accounting profession, and which have substantial authoritative support from the American Institute of Certified Public Accountants;

(14) "Grain" means all grains for which the United States Department of Agriculture has established standards under the United States Grain Standards Act, Sections 71 to 87, Title 7, United States Code, and any grain or seeds prescribed by law or regulation and rice, as defined by the standards of the United States Department of Agriculture;

(15) "Grain dealer" or "dealer" means any person engaged in the business of, or as a part of his business participates in, buying grain. "Grain dealer" or "dealer" shall not be construed to mean or include:

(a) Any person or entity who is a member of a recognized board of trade or futures exchange and whose trading in grain is limited solely to trading with other members of a recognized board of trade or futures exchange; provided, that transactions with a licensed warehouseman, licensed grain dealer, producer, or any other individual or entity who is not a member of a recognized board of trade or futures exchange shall be subject to this act. Exempted herein are all futures transactions;

(b) A producer of grain buying or selling grain for his own farming operation;

(c) A person buying or selling grain only as a farm manager, or as an executor, administrator, trustee, guardian, or conservator of an estate;

(d) A person buying grain, all or whose purchases are paid for by cash, paid in United States dollars, or by money order or cashier's check paid at time of physical transfer of the grain from the seller or his agent to the buyer or his agent;

(16) "Grain transport vehicle" means a truck, tractor-trailer unit, wagon, pup, or any other vehicle or trailer used by a dealer whether owned or leased by him, to transport grain which he has purchased; except that, bulk or bagged feed delivery trucks which are used principally for the purpose of hauling feed and any trucks for which the licensed gross weight does not exceed twenty-four thousand pounds (24,000) shall not be construed to be a grain transport vehicle;

(17) "Insolvent" or "insolvency" means (a) an excess of liabilities over assets or (b) the inability of a person to meet his financial obligations as they come due, or both (a) and (b);

(18) "Interested person" means any person having a contractual or other financial interest in grain sold to a dealer, licensed, or required to be licensed;

(19) "Location" means any site other than the principal office where the grain dealer engages in the business of purchasing grain;

(20) "Person" means any individual, partnership, corporation, cooperative, society, association, trustee, receiver, public body, political subdivision or any other legal or commercial entity of any kind whatsoever, and any member officer or employee thereof;

(21) "Producer" means any owner, tenant or operator of land who has an interest in and receives all or any part of the proceeds from the sale of grain produced thereon;

(22) "Public accountant" means any certified public accountant or registered public accountant permitted to engage in the practice of public accounting under authority of the Public Accountancy Act, Arkansas Code 17-16-101 et seq.;

(23) "Purchase" means to buy or contract to buy grain;

(24) "Sale" means the passing of title from the seller to the buyer in consideration of the payment or promise of payment of a certain price in money, or its equivalent;

(25) "Value" means any consideration sufficient to support a simple contract.

SECTION 2. This act constitutes an exercise of regulatory power for the purpose of protecting and enhancing grain production and marketing, and the agricultural economy of the State of Arkansas. This act is deemed necessary to protect and to preserve the public health, welfare, peace and safety of the general citizenry.

SECTION 3. (a) The director shall:

(1) Be responsible for the efficient administration of the supervisory and regulatory powers authorized by this act and the regulations promulgated hereunder;

(2) Issue a license, in accordance with the provisions of this act to any qualified applicant wishing to conduct business as a licensed grain dealer;

(3) Provide for the filing and approval of the surety bonds required by this act.

(b) The director may:

(1) Promulgate and adopt such rules and regulations in accordance with the provisions of the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201, et seq., as may be necessary for the efficient and effective enforcement of this act;

(2) Appoint one or more designated representatives to act for the director in any manner required to aid in the efficient administration of this act and the regulations promulgated hereunder;

(3) Require records or reports pertaining to grain purchases or grain sales that the director deems necessary to insure compliance with the provisions of this act and the regulations promulgated hereunder;

(4) Prescribe procedures for hearings to be held in accordance with the provisions of this act and the regulations promulgated hereunder;

(5) Issue subpoenas and bring before the board any person and take testimony either orally, by deposition, or by exhibit in the same manner as prescribed by law in judicial proceedings and civil cases in the proper courts of this state;

(6) Issue subpoenas duces tecum on any records relating to a grain dealer's business;

(7) Bring actions in the name of the State of Arkansas in the court of competent jurisdiction of any county wherein a grain dealer resides or is found in order to enforce compliance with this act and the regulations promulgated hereunder by restraining order or injunction, either temporary or permanent;

(8) Conduct, or appoint a designated representative to conduct administrative hearings pursuant to the provisions of this act and Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq.. Hearings may be conducted for the purpose of determining the liability of sureties which have filed bonds with the board on behalf of grain dealers licensed, or required to be licensed, under this act. Hearings may be conducted for the purpose of determining the validity of grain-related claims filed with the board against such grain dealers and sureties, as well as the subsequent disbursement of all available funds, pro rata or otherwise, to satisfy claims determined to be valid. An order issued by the director, or his designated

representative, as a result of such hearings shall be final and legally binding on all parties unless appealed as otherwise provided by law.

SECTION 4. (a) No person shall engage in business as a grain dealer in the State of Arkansas without having obtained a license therefore issued by the director under this act. Following an administrative hearing, the director may require the dealer to pay a penalty of not more than five hundred dollars (\$500) for each day the dealer is found to be operating without a license or bond. In determining whether to assess the penalty, the director shall ascertain whether the dealer has continued to operate without a license or bond after being informed by the board in writing by certified mail of the need for licensing or bonding. Any penalties collected by the director under this section shall be deposited in the General Revenue Fund Account of the State Apportionment Fund to the credit of the State of Arkansas. In the event a person penalized under this section fails to pay the penalty, the director may apply to a court of competent jurisdiction of any county for, and the court is authorized to enter, an order enforcing the assessed penalty.

(b) Each application for a license to engage in business as a grain dealer shall be filed with the director and shall be in a form prescribed by the director.

(c) The application for an initial license may be filed at any time prior to beginning business as a grain dealer; however, such license shall terminate as determined by the board, set out in the regulations. The grain dealer shall set forth on the original application the closing date for his fiscal year.

(d) At least sixty (60) days prior to the expiration of each license issued by the director under this act, the director shall notify the dealer of the date of expiration and furnish the dealer with the renewal application. The dealer shall submit the renewal application to the director at least thirty (30) days prior to the date of expiration of the license. The dealer shall be penalized in accordance with board regulations for each day the renewal application is submitted after the date the application for a renewal license is due. The date of submission of the renewal application shall be the date postmarked. Any person licensed under both the provision of this act and the Arkansas Public Grain Warehouse Law, Arkansas Code 2-17-201, et seq., and who submits a combination warehouse-grain dealers renewal application

shall not be assessed a penalty for late renewal in accordance with board regulations.

(e) The original application shall be accompanied by a filing fee set by board regulations.

SECTION 5. In the event that the applicant has been engaged in business as a grain dealer for a least one (1) year, the application shall set forth the aggregate dollar amount paid for grain purchased in Arkansas. In the event the applicant has been engaged in business for less than one (1) year, as a grain dealer, the application shall set forth the estimated aggregated dollar amount to be paid for grain purchased in Arkansas.

SECTION 6. (a) All applications shall be accompanied by a true and accurate financial statement of the applicant, prepared within six (6) months of the date of application, setting forth all the assets, liabilities and net worth of the applicant. All applications shall also be accompanied by a true and accurate statement of income and expenses for the applicant's most recently completed fiscal year. The financial statements required by this act shall be prepared in conformity with generally accepted accounting principles; except that, the director may promulgate rules allowing for the valuation of assets by competent appraisal.

(b) The financial statement required by subsection (a) of this section shall be audited, reviewed or compiled by a public accountant or a certified public accountant. The financial statement may not be audited, reviewed, compiled or prepared by the applicant, or an employee of the applicant, if an individual, or, if the applicant is a corporation or partnership, by an officer, shareholder, partner, or a direct employee of the applicant.

(c) The director may require any additional information or verification with respect to the financial resources of the applicant as deemed necessary for the effective administration of this act. The director may promulgate rules setting forth minimum standards of acceptance for the various types of financial statements filed in accordance with the provisions of this act. The director may promulgate rules requiring a statement of retained earnings, a statement of changes in financial position, and notes and disclosures to the financial statements for all licensed grain dealers or all grain dealers required to be licensed. The additional information or verification referred

to herein may include, but is not limited to, requiring that the financial statement information be reviewed or audited in accordance with standards established by the American Institute of Certified Public Accountants.

(d) All grain dealers shall provide the director with a copy of all financial statements and updates to financial statements utilized to secure the bonds required by this act.

(e) All financial statements submitted to the director for the purposes of this act shall be accompanied by a certification by the applicant or the chief executive officer of the applicant, subject to the penalty provision set forth in subsection (d) of section 28, that to the best of his knowledge and belief the financial statement accurately reflects the financial condition of the applicant for the fiscal period covered in the statement.

(f) Any person who knowingly prepared or assists in the preparation of an inaccurate or false financial statement which is submitted to the director for the purposes of this act, or who during the course of providing bookkeeping services or in compiling, reviewing, or auditing a financial statement which is submitted to the director for the purposes of this act, becomes aware of false information in the financial statement and does not disclose in notes accompanying the financial statements that such false information exists, or does not disassociate himself from the financial statements prior to submission, is guilty of a class C felony. Additionally, such persons are liable for any damages incurred by sellers of grain selling to a grain dealer who is licensed or allowed to maintain his license based upon inaccuracies or falsifications contained in the financial statements.

(g) Any licensed grain dealer or applicant for a grain dealer's license who purchases less than four hundred thousand dollars (\$400,000) worth of grain, during the dealer's last completed fiscal year, in the State of Arkansas must maintain a net worth equal to the greater of ten thousand dollars (\$10,000) or five percent (5%) of such grain purchases. If grain purchases during the dealer's last completed fiscal year are four hundred thousand dollars (\$400,000) or more, the dealer must maintain a net worth equal to the greater of twenty thousand dollars (\$20,000) or one percent (1%) of grain purchases. If the dealer or applicant is deficient in meeting this net worth requirement, he must post additional bond as required in Section 10.

SECTION 7. (a) The board shall make at least one complete examination of

each state licensed class I grain dealer each year. The examination shall be at the expense of the class I grain dealer who shall be charged a fee established by the director based upon the amount paid by the dealer for grain purchased in the State of Arkansas during the dealer's last completed fiscal year. In the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not previously engaged in such business, the fee shall be based on the estimated aggregate amount to be paid by the dealer for grain purchased in the State of Arkansas during the applicant's initial fiscal year. Class I grain dealers that hold a state warehouse license under the Arkansas Public Grain Warehouse Law, Arkansas Code 2-17-201 et seq., shall not be charged an additional fee for the annual grain dealer audit required by this section. The annual grain dealer audit for class I grain dealer holding a federal warehouse license under the United States Warehouse Act may be waived if the director is satisfied as to the quality of the audit performed under the U.S. Wholesale Act and receives a full copy of such audit. If the director deems it necessary to conduct a grain dealer audit of the class I grain dealer holding a warehouse license under the United States Warehouse Act, the director may collect a fee for such audit in accordance with the fee allowed for grain dealer audits in this section. The minimum examination fee shall be in accordance with board regulations. The examination shall include a measure-up of all grain, as may be elected by the class I dealer and as applicable. The board may make annual audits of class II, class III, or class IV dealers. The fee for any such audit shall be in accordance with board regulations.

(b) Any additional examinations deemed necessary by the board during any year shall be at the expense of the board. If upon any examination a discrepancy is found to exist, the director may collect a fee for that examination and for any subsequent examination deemed necessary to insure that the discrepancy is corrected. The fee for each such examination shall be computed in accordance with rates established by the board by rule. This subsection applies equally to class II, III, or IV grain dealers which may be examined by the board.,

(c) Any dealer may request additional examinations at the expense of the dealer. The director may collect a fee for each special or requested examination or for extra work beyond regular examination procedures in connection with regularly scheduled examinations, computed in accordance with

the rates established in accordance with board regulations.

(d) Upon completion of any examination which reveals a failure to comply with the provisions of this act, and the regulations promulgated hereunder, the director or any board auditor, within a reasonable time, shall present a written discrepancy report to the dealer, his employee or agent. The report shall specify the areas of noncompliance and shall give a specific period of time, reasonable and practical under the circumstances, within which corrective action is to be taken. A report of that corrective action shall be sent to the director. If, after further examination, the discrepancy still exists, the director may modify, suspend, or revoke the dealer's license, or the director may take whatever other action he deems necessary consistent with the provisions of this act until the dealer has corrected the discrepancy.

(e) The director is hereby authorized to issue subpoena duces tecum to any financial institutions, or to any other type of business entity, causing them to deliver any and all records of a licensee, or any and all records kept pertaining to a licensee or any person who in the opinion of the director may need to be licensed. Such financial institutions, or other business entities, are hereby authorized and required to deliver any and all such records to the director notwithstanding any law to the contrary. This section applies to persons or individual accounts or transactions as well as to corporate records where the licensee, or person, who in the opinion of the director, needs to be licensed, is conducting business in corporate form.

SECTION 8. (a) Every person licensed as a grain dealer shall have filed with the director a surety bond executed and signed by the grain dealer as principal and issued by a responsible corporate surety licensed to execute surety bonds in the State of Arkansas. It is a violation of this act for any person to engage in the business of being a grain dealer without a sufficient surety bond on file with the board, on a form prescribed and furnished by the director.

(b) Such bond shall be in favor of the State of Arkansas, except as authorized by Section 32, with the director as trustee for the benefit of all persons selling grain to the grain dealer, and their legal representatives, attorneys or assigns, and shall be conditioned upon the following:

(1) The dealer as a buyer paying to the seller the agreed-upon purchase price of the grain purchased from the seller;

(2) The grain dealer's faithful performance of his duties as a licensed grain dealer and his compliance with this act and regulations promulgated hereunder. This section applied to purchases made from the effective date of the bond until the bond is canceled, except as otherwise provided in this act.

(c) A surety bond required or allowed by this act shall be effective on the date of issue, shall not be affected by the expiration of the license period, and shall continue in full force and effect until canceled. The continuous nature of a bond, however, shall in no event be construed to allow the liability of the surety under a bond to accumulate for each successive license period during which the bond is in force, but shall be limited in the aggregate to the amount stated on the bond or as changed, from time to time, by appropriate endorsement or rider.

(d) The required bond shall be kept in force at all times while the dealer is conducting business as a licensed grain dealer. Failure to keep such bond in force is cause for revocation of the license, and the dealer is subject to the penalties provided in this act. No dealer may cancel an approved bond without the prior written approval of the director and the director's approval of a substitute bond.

(e) A grain dealer filing bonds required under this act or regulations promulgated thereunder who is also licensed under the Arkansas Public Grain Warehouse Law, Arkansas Code 2-17-201 et seq., may utilize the same corporate surety for all bonds required to be licensed under that law, and as a grain dealer.

(f) Upon written demand of the director for payment, the surety shall either pay over to the director the sum demanded up to the full face amount of the bond, or shall deposit the sum demanded in an interest-bearing account at the highest rate of interest available. When a surety pays the director upon demand, the director shall either interplead the sum in court or hold an administrative hearing for the determination of the liability of the surety, and the validity of claims against the bond, and upon the conclusion thereof, the director shall distribute the bond proceeds accordingly. The determination of the director shall be final, subject to the surety's or a claimant's right to appeal to a court of competent jurisdiction pursuant to the provisions of the Arkansas Public Grain Warehouse Law, Arkansas Code 2-17-201 et seq. Refusal or failure of the surety to pay the sum demanded to

the director within ten (10) days of receipt of the director's demand letter or the refusal or failure to deposit the sum demanded in an interest-bearing account at the highest rate of interest available shall be ground for withdrawal of the surety's license and authorization to conduct business in this state, and grounds for the court to penalize the surety, for refusal to pay or to deposit within the ten (10) days of demand, in the amount of twenty-five percent (25%) of the full face amount of the bond, plus interest at the rate of nine percent (9%), or at the rate that the director can establish he would have received had the money been paid or deposited by the surety, whichever rate of interest is higher. In the event that the surety pays as demanded and the director or court determines the surety is not liable, the director shall return to the surety the sum paid to the director plus all accumulated interest, or any pro rata part of the sum, plus interest, as applicable in the event of liability less than the sum demanded. In the event that the surety elects to deposit the demanded sum in an interest-bearing account and the director holds an administrative hearing determining the liability of the surety and the validity of claims, and upon the exhaustion of appeals, if any, the surety immediately shall pay to the director for distribution of claimants the amount for which the surety has been determined to be liable plus accumulated interest on that amount.

(g) Every bond filed shall contain a provision that it may not be canceled by the principal or surety company except upon ninety (90) days prior notice in writing, by certified mail, to the director. In the case of a surety giving notice of cancellation, a copy of such notice shall be mailed, by certified mail, on the same day to the principal. The cancellation does not affect the liability accrued or which may accrue under such bond before the expiration of the ninety (90) days. The notice shall contain the termination date. In the event such notice procedures are not followed, the bond shall remain in full force and effect until properly canceled.

(h) Whenever the director receives notice from a surety that it intends to cancel the bond of a dealer, the director shall automatically suspend the dealer's license if a new bond is not received by the director within thirty (30) days of receipt of the notice of intent to cancel. If a new bond is not received within sixty (60) days of receipt of the notice of intent to cancel, the director shall revoke the dealer's license. The director may cause an

inspection of the grain dealer at the end of this period sixty (60) day period. Such inspection may include an attempt to identify all possible grain sellers and related claimants of the dealer by advertising for same in local news media.

(i) Verbal or written surety bond binders issued by a surety on behalf of a grain dealer for original or replacement bonds are hereby recognized as legally effective in the State of Arkansas as if the bond were fully executed when such binders meet the following conditions:

(1) The dealer of principal has paid, or has promised to pay, the surety an agreed upon or tentatively agreed upon premium or other consideration;

(2) The surety provides the board, either in writing or verbally:

(A) A bond number;

(B) The amount of the bond;

(C) The effective date of the bond; and

(D) Either verbal or written assurance that the person

providing the preceding information has authority to commit the surety.

Such binders may be canceled only in the manner provided in subsection (h) of this section. The director may or may not accept such a binder depending on the particular circumstances involved and consistent with the orderly administration of this act.

SECTION 9. (a) This act and all regulations promulgated hereunder that apply to surety bonds shall also apply to certificates of deposit. Any certificate of deposit submitted in lieu of a surety bond required under this act shall be filed with the director as trustee for the benefit of all persons selling grain to the grain dealer. The certificates of deposit will be kept in the custody of the director.

(b) A grain dealer may, in lieu of the bond required under this act, submit an irrevocable letter of credit, payable to the director for the benefit of claimants, and issued by a federally or state chartered bank. The director may refuse to accept a letter of credit in lieu of the bond required by the act if the director finds that the issuing bank is or may become insolvent, or for any other reason may be unable to honor the terms of the letter of credit. The director may require an issuing bank to submit evidence of its financial condition, and the director may seek the cooperation of the

State Bank Department in evaluating the financial condition of an issuing bank. The director shall promulgate all necessary regulations pertaining to certificates of deposit, and irrevocable letters of credit.

SECTION 10. (a) The total amount of the surety bond required of a dealer licensed pursuant to this act shall be established by the director by rule, but in no event shall such bond be less than twenty thousand dollars (\$20,000) nor more than three hundred thousand dollars (\$300,000), except as otherwise authorized by this act.

(b) The formula for determining the amount of bond shall be established by the director by rule and shall be computed at a rate of no less than the principal amount to the nearest one thousand dollars (\$1,000), equal to not less than one percent (1%) and not more than five percent (5%) of the aggregate dollar amount paid by the dealer for grain purchased in the State of Arkansas. In the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not previously engaged in such business, not less than one percent and not more than five percent of the estimated aggregate dollar amount to be paid by the dealer for grain purchased in the State of Arkansas during applicant's initial fiscal year.

(c) Any licensed grain dealer or applicant who has, at any time, a net worth less than the amount required by subsection (g) of Section 6, shall be required to obtain a surety bond in the amount of one thousand dollars (\$1,000) for each one thousand dollars (\$1,000) or fraction thereof of the net worth deficiency. Failure to post such additional bond is grounds for refusal to license or the suspension or revocation of a license issued under this act. This additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section.

(d) The director may, when the question arises as to a grain dealer's ability to pay for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the director. Such additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section. The director must furnish to the dealer, by certified mail, a written statement of the reasons for requesting additional bond and the reasons for questioning the dealer's ability to pay. Failure to post such additional bond is a ground for modification, suspension or revocation by the director of a license issued

under this act. The determination of insufficiency of a bond and of the amount of the additional bond shall be based upon evidence presented to the director that a dealer:

(1) Is unable to meet his dollar or grain obligations as they become due;

(2) Has acted or is acting in a way which might lead to the impairment of his capital;

(3) As a result of his activity, inactivity, or purchasing and pricing practices and procedures, including, but not limited to, the dealer's deferred pricing or deferred payment practices and procedures, is or may be unable to honor his grain purchase obligations arising out of his dealer business. The amount of the additional bond required under this subsection shall not exceed the amount of the dealer's current loss position. Current loss position shall be the sum of the dealer's current liabilities less current assets or the amount by which he is currently unable to meet the grain purchase obligations arising out of his dealer business.

(e) One bond, cumulative as to minimum requirements, may be given where a dealer has multiple licenses; except however, that in computing the amount of the single bond the grain dealer may add together the total purchases of grain of all locations to be covered thereby and use the aggregate total purchases for the fiscal year for the purpose of computing bond. When a grain dealer elects to provide a single bond for a number of licensed locations, the total assets of all the licensed locations shall be subject to liabilities of each individual licensed location.

(f) Failure of a grain dealer to provide and file a bond and financial statement and to keep such bond in force shall be grounds for the suspension or revocation, by the director, of a license issued under this act.

(g) A dealer shall be required to post additional surety bond when he surpasses the estimated aggregate dollar amount to be paid for grain purchased as set forth in subsection (b) of this section. Such additional bond shall be determined by the director so as to effectively protect sellers of grain dealing with such dealer.

SECTION 11. (a) Any grain dealer who is of the opinion that his net worth is sufficient to guarantee payment for grain purchased by him may make a formal, written request to the director that he be relieved of the

obligation of filing a bond in excess of the minimum bond of twenty thousand dollars (\$20,000). Such request shall be accompanied by a financial statement of the applicant, prepared within four (4) months of the date of such request and accompanied by such additional information concerning the applicant and his finances as the director may require which may include the request for submission audited financial statement.

(b) If such financial statement discloses a net worth equal to be at least three (3) times the amount of the bond otherwise required by this act, and the director is otherwise satisfied as to the financial ability and resources of the applicant, the director may waive that portion of the required bond in excess of twenty thousand dollars (\$20,000).

SECTION 12. Any grain dealer whose total purchases of grain within Arkansas during any fiscal year, do not exceed any aggregate dollar amount of four hundred thousand dollars (\$400,000) may satisfy the bonding requirements of this act by filing with the director a bond at the rate of one thousand dollars (\$1,000) for each twenty thousand dollars (\$20,000) or fraction thereof of the dollar amount to be purchased, with a minimum bond of ten thousand dollars (\$10,000) required.

SECTION 13. (a) Upon receiving a dealer's original application for licensure, the director may make such examination and inquiries into the applicant's business, past business history, business reputation and may view all information available to the extent he deems necessary to determine that:

- (1) The application is sufficient;
- (2) The bond filed by the applicant is sufficient;
- (3) The applicant is capable of performing the services proposed;
- (4) The applicant has sufficient financial resources to guarantee payment for grain purchased;

- (5) The applicant is willing and able to comply with the provisions of this act and regulations promulgated hereunder;

- (6) The applicant, or, if the applicant is a corporation or partnership, officer, majority shareholder, board member, or partner has not been involved in improper or illegal manipulation of grain inventories and grain purchases which involved or resulted in any losses to grain sellers within the ten-year period of time immediately preceding the date the

director received the application.

(b) If the director is not satisfied with the applicant's qualifications as stated in this section, the application may be denied. If the application is denied, notice shall be mailed to the applicant setting forth the reasons for the denial of the license. Within fifteen (15) days of receipt of a notice of denial for license, the applicant may file a written application with the director for a hearing on the denial. The hearing shall be carried out in accordance with the provisions of the act, regulation promulgated hereunder, and Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq.

(c) Licenses shall be renewed annually in accordance with board regulations.

(d) A dealer making original application for license, and fulfilling all requirements for licensing as stated in this act, shall be issued a license effective from the date of application and terminating in accordance with board regulations.

(e) A dealer's license may be renewed annually by the filing of an application on a form prescribed by the director and accompanied by a true and accurate financial statement prepared in accordance with the requirements for financial statements set forth in Section 6.

(f) A separate license shall be required for each location in which the records are normally kept and from which grain payments are made for transactions of the dealer.

(g) A dealer's license is not transferable or assignable to any person, including successors in interest to the licensee.

(h) The director shall not issue a license, renew a license, or allow a license to remain in effect if the dealer or applicant fails to:

(1) Comply with the provisions of this act and the regulations promulgated hereunder; or

(2) Pay all required fees and assessed penalties.

(i) If the holder of any grain dealer's license is convicted of any violation of this act, or if the director determines that any holder of such license has violated any of the provisions of this act, or any of the rules and regulations adopted by the director under the provisions of this act, the director may at his discretion modify, suspend, cancel, revoke, or refuse to renew the license of the holder.

(j) Whenever the director shall modify, suspend, cancel, revoke or refuse to issue any license he shall prepare an order so providing which shall be signed by the director or some person designated by him, and the order shall state the reason or reasons for the modification, suspension, cancellation, revocation or refusal to issue the license. The order shall be sent by certified mail to the licensee or applicant at the address of the dealer licensed or applying for a license. Within thirty (30) days after the mailing of the order, the licensee, if aggrieved by the order of the director, may appeal as provided in the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq. At the time of the filing of the appeal, the party appealing shall give a bond for costs conditioned on his prosecuting the appeal without delay and paying all costs assessed against him. In addition, the licensee shall post a bond which shall remain in effect pending final disposition of all appeals, including review by the Arkansas Court of Appeals or Arkansas Supreme Court, or federal review, in an amount sufficient to cover all grain purchases and grain purchase obligations of the licensee as identified by the director. The posting of such bond is jurisdictional to the court's authority to entertain the appeal.

SECTION 14. (a) Each dealer shall have and conspicuously display in each of his business locations, within full and unobstructed sight of the public:

(1) Either the original or a certified copy of the dealer license as issued by the director;

(2) Such other materials of information as may be required by the director.

(b) Upon written request of a licensee and the payment of the proper fees the director shall issue to the licensee a certificate that a license has been issued or renewed as required by this act. The number of such certificates shall be based upon the dealer's request and need as shown by his application.

(c) A certificate of license issued or renewed shall be posted in each location listed on a licensee's application where he engages in the business of a grain dealer but does not keep records pertaining to his business or transactions as a grain dealer. In the case of a licensee operating various grain transporting vehicles, the licensee is required to have a certificate

that the license is in effect carried in each grain transporting vehicle used in connection with the purchase and transporting of grain.

(d) The certificate of license shall be displayed upon demand and shall contain information as deemed necessary by the director.

(e) Each grain transporting vehicle used by a licensee shall be equipped with a registration decal which shall be in the form and be displayed as prescribed by the director.

(f) All licenses, including, without limitation, registration decals and certificates of license, shall be and remain the property of the director and shall be subject to revocation, cancellation or repossession, as provided by this act.

SECTION 15. (a) A person licensed as a grain dealer shall make payment of the agreed-upon purchase price to the seller of grain within seventy-two (72) hours of delivery or within seventy-two (72) hours of demand of said seller or his authorized agent, unless a written grain purchase contract or valid deferred payment contract shall provide otherwise. A person licensed as a grain dealer shall establish and properly document the agreed-upon purchase price of all grain he buys as prescribed by the director or as otherwise provided by law. When a dealer has failed to make payment within seventy-two (72) hours of demand of the seller and such failure has come to the attention of the director, the director may request the dealer to make payment. Such request may be made verbally or in writing. The director may require the dealer to make payment with a certified or cashier's check, or in cash. The license may be modified, suspended or revoked if the dealer fails to make timely payment as requested by the director.

(b) A person licensed as a class II grain dealer shall establish and properly document the agreed-upon purchase price of the grain as provided in this section and make payment to the seller within ten days of delivery or upon demand of the seller or his authorized agent, whichever occurs first.

(c) Nothing contained in this act shall be construed to limit or prohibit the right of a seller of grain to make an oral demand for payment from a dealer, provided that the right to recover under the surety bond shall be based only upon written demand to the surety by the seller or by the board on behalf of the claimant.

(d) Recovery by a claimant on the bond shall not be his sole or exclusive remedy and shall not bar a civil action based upon rights or obligations arising under the grain purchase contract.

(e) Notwithstanding any provisions of this section, in the case of valid deferred price contracts the seller of grain shall have the right of recovery under the grain dealer's surety bond. Deferred price contracts shall be in writing and shall contain a statement informing the seller that the seller is relinquishing all rights in the grain.

(f) In the case of deferred payment contracts, a class I grain dealer and a seller of grain may agree that payment be deferred to a future date. The agreement shall be in writing and shall contain a statement informing the seller that the seller is transferring title to the buyer and that the seller is relinquishing all rights in the grain and that the class I dealer is required to carry bond on the grain for the benefit of the seller for twelve (12) months from the date the contract was entered into, and that after twelve (12) months, payment for the grain becomes a common claim against the dealer.

(g) In the event the license of a grain dealer is revoked by the director for any reason, all deferred payment contracts executed within the twelve (12) months prior to revocation shall be deemed priced unpaid obligations as of the effective date of the revocation and as such agreements are covered by the grain dealer's bond.

(h) For the purposes of this section, deferred price and deferred payment contracts are not deemed valid unless they contain all the required statements and are signed by both the buyer and seller or their authorized representatives. The director may require any additional information from a grain dealer that he deems necessary to protect the interests of the seller of grain in such transactions.

SECTION 16. (a) The grain dealer shall maintain at his principal place of business current and complete records with respect to all grain purchased, sold, and held by him.

(b) All books, records and accounts of a dealer shall be kept and held available for inspection for a period of not less than three (3) years after the close of the period for which such books or records were required.

SECTION 17. The director may appoint auditors familiar with the

purchase, sale, and handling of grain and knowledgeable with respect to this act and regulations promulgated hereunder to investigate, audit, and inspect persons as authorized by this act and the regulations promulgated hereunder. It shall be the duty of employees of the Arkansas Highway Police and its weigh station employees to cooperate with the director in the enforcement of this act.

SECTION 18. (a) The director or any auditor appointed pursuant to the provisions of section 17 may inspect the premises used by any person licensed under this act, or persons whom the director has reasonable cause to believe should be licensed under this act, in the conduct of his business at any time. The books, accounts, records and papers of every grain dealer shall at all times during business hours be subject to inspection as prescribed by the director.

(b) The director may perform such inspections as are necessary for the orderly administration of the provisions of this act based upon reports and other information available to him.

(c) Every person licensed under this act and such person's employees, agents, officers, partners, directors, and shareholders shall cooperate and hold themselves available to assist in the inspection, including allowing full and reasonable use of the weighing, sampling, and grading equipment, if any.

(d) Any dealer who is licensed in this state and who does not have a place of business within the state shall make available and furnish to the director or an auditor, upon request, all books, accounts, papers, and records of grain transactions within this state at any time and place that the director may designate.

(e) Each grain dealer may also be required to make such reports as deemed necessary by the director to protect the seller of grain as set forth in this act and the regulations promulgated hereunder.

(f) The transporter of grain in transit shall have in his possession bills of lading or other documents covering such grain in transit. Such documents shall be available for inspection by the director or his agent upon request.

(g) The director shall, upon the verified complaint in writing of any person setting forth facts which if proved would be in violation of the

provisions of this act, or regulations promulgated hereunder or would constitute grounds for refusal, suspension, or revocation of a license under this act, investigate the actions of any person applying for, holding, or claiming to hold a license; provided that the director is not required to investigate any complaint which does not appear to have a reasonable basis.

SECTION 19. (a) The director may apply for a restraining order or a temporary or permanent injunction against the operation of a dealer which is in violation of this act or regulations promulgated hereunder or in order to enforce this act or such regulations, notwithstanding the existence of other remedies at law. The restraining order or injunction may be prosecuted by the prosecuting attorney of the proper county upon request of the director.

(b) The director may apply for a restraining order or a temporary or permanent injunction enjoining a grain dealer from disposing of any grain owned, in whole or in part, or held or in his possession whether owned in whole or in part, or enjoining anyone from removing any grain in which the grain dealer or claimants from which he has purchased grain have an interest. The restraining order or injunction may be prosecuted by the prosecuting attorney of the proper county upon request of the director.

(c) The director shall have power in the conduct of any investigation or hearing authorized or held by him to:

- (1) Examine, or cause to be examined, under oath, any person;
- (2) Examine, or cause to be examined, books and records of any warehouseman;
- (3) Hear such testimony and take such evidence as will assist him in the discharge of his duties under this act;
- (4) Administer or cause to be administered oaths; and
- (5) Issue subpoenas to require the attendance of witnesses and the production of books.

(d) Any court of competent jurisdiction may, by order duly entered, require the attendance of witnesses and the production of relevant books and records subpoenaed by the director, and the court may compel obedience to its order by proceedings for contempt.

SECTION 20. (a) The director may, after a hearing or upon verified complaint filed by any person suspend or revoke the license of any person

licensed under this act for the violation of or failure to comply with the provisions of this act or regulations promulgated hereunder.

(b) Any information of a verified complaint stating the grounds for suspension or revocation shall be filed with the director. The director shall notify the licensee of the complaint and furnish him with a copy of the information of the complaint and a copy of the order of the director fixing the time for a hearing, which time shall be at least five (5) days but not more than thirty (30) days from the date of notification. Such written notification may be served by personal service on the licensee or by mailing the same by registered or certified mail to the place of business specified by the licensee in the last application or notification to the director.

(c) If at any time the director determines that the public good requires immediate action, and that there is reasonable cause to believe that there exists a violation of this act or regulations promulgated hereunder, and that the nature of the violation is such that there exists an immediate danger of loss to any claimant, the director may, upon the filing of the information or the complaint with the licensee, without hearing, temporarily suspend a license pending the determination of the complaint. Such temporary suspension shall be for not longer than ninety (90) days. When a license is suspended without hearing, however, the director shall grant a hearing to be held in accordance with the provisions of this act as soon thereafter as is possible, but not later than five (5) days after such temporary suspension.

(d) At the time and place fixed in the notice, the director shall proceed to hear the matter and any charges made, and both the licensee and complainant shall be accorded ample opportunity to present in person or by counsel such statement, testimony, evidence, and arguments as may be pertinent to the matter of charges or to any defense thereto. The director may continue such hearing from time to time.

(e) Any person aggrieved by the decision of the director may appeal the decision as provided in the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq.

(f) Upon revocation of a license, any claim shall be filed against the former licensee and the surety company within sixty (60) days after the date of revocation. Failure to timely file such claim shall defeat the claim for the purpose of recovery under the grain dealer's bond.

SECTION 21. (a) When a license is revoked or expires without having been renewed, the dealer shall terminate, in the manner prescribed by the director,