

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/9/15
A Bill

SENATE BILL 555

By: Senators Caldwell, Maloch
By: Representatives M.J. Gray, D. Douglas, Hillman

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS GRAIN DEALERS ACT; TO
REGULATE GRAIN DEALERS; TO DECLARE AN EMERGENCY; AND
FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS GRAIN DEALERS ACT;
TO REGULATE GRAIN DEALERS; AND TO DECLARE
AN EMERGENCY.

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

SECTION 1. Arkansas Code Title 2 is amended to add an additional
chapter to read as follows:

Chapter 24

Arkansas Grain Dealers Act

2-24-101. Title.

This chapter shall be known and may be cited as the "Arkansas Grain
Dealers Act".

2-24-102. Definitions.

As used in this chapter:

(1)(A) "Dealer" means a person that operates as a grain buyer.

(B) "Dealer" does not include a person licensed under the

following:

(i) The United States Warehouse Act, 7 U.S.C. § 241



et seq.; or

(ii) The Arkansas Public Grain Warehouse Law, § 2-17-201 et seq.;

(2) "End user" means a person that:

(A) Is the ultimate user of the grain; or

(B) Offers the grain for sale to the general public as a retail sale;

(3) "Facility" means one (1) or more locations in the state that are operated by a grain dealer;

(4) "Grain" means corn, wheat, oats, barley, rye, rice, sorghum, soybeans, oil seeds, and other agricultural commodities approved by the State Plant Board; and

(5) "Person" means an individual, partnership, corporation, association, or other legal form of business.

2-24-103. Administration – Exemption.

(a) The State Plant Board shall:

(1) Administer this chapter; and

(2) Create a publicly accessible database of:

(A) Dealers licensed under this chapter;

(B) Persons licensed under the United States Warehouse Act, 7 U.S.C. § 241 et seq.; and

(C) Persons licensed under the Arkansas Public Grain Warehouse Law, § 2-17-201 et seq.

(b) An end user is exempt from the requirements of this chapter.

2-24-104. License required.

(a)(1) A dealer shall obtain a license from the State Plant Board under this chapter before entering into a contract for or purchasing grain.

(2) A dealer that exists as of the effective date of this chapter has sixty (60) days from the effective date of this chapter to obtain a license.

(b)(1) A license is valid from July 1 of the year of application until June 30 of the following year.

(2) However, an initial license received between January 1 and June 30 is valid only until June 30 of the year in which the license was

obtained.

2-24-105. Applications for licenses – Renewal.

(a) The State Plant Board shall issue a license to a dealer that satisfies the requirements of this chapter and the rules promulgated by the board.

(b) A dealer seeking licensure under this chapter shall submit an application to the board on the form prescribed by the board.

(c)(1) A dealer shall renew its license annually as long as the dealer is operating in the state.

(2) A dealer shall apply for renewal of a license issued under this chapter by submitting an application for renewal on the form prescribed by the board.

(3) An application for renewal shall be received by the board on or before June 30.

(4) The board shall renew the license of a dealer that satisfies the requirements of this chapter and the rules promulgated by the board.

(d) The board may establish nominal application and renewal fees to offset the costs of administering this chapter.

(e) If a dealer does not renew its license by the deadline stated in subsection (c) of this section, then the dealer's license is terminated, and it shall not be reinstated until the dealer submits an application for renewal and meets all other requirements of this chapter and the rules promulgated by the board.

2-24-106. Bond requirement.

The State Plant Board may require a surety bond, financial reserve, or other evidence of creditworthiness for dealers.

2-24-107. Reporting – Audits and inspections.

(a) A dealer shall report to the State Plant Board annually on the form prescribed by the board.

(b) The board may audit and inspect each dealer *annually and as necessary.*

2-24-108. Violations – Penalties.

(a) It is a violation of this chapter to:

(1) Operate as a dealer without a license issued under this chapter;

(2) Knowingly violate this chapter; or

(3) Knowingly refuse to allow inspection of a dealer's premises, books, accounts, or other records during an audit by the State Plant Board under this chapter.

(b) A person that commits a violation under subsection (a) of this section is guilty of a Class D felony.

(c) A person that negligently violates this chapter upon conviction is guilty of a Class A misdemeanor.

(d)(1) A person who violates this chapter or a rule promulgated under this chapter upon conviction is guilty of a violation shall be punished by a fine of not more than one hundred dollars (\$100).

(2)(A) In addition to or in lieu of any other lawful disciplinary action, the board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of a statute, rule, or order enforceable by the board under this chapter.

(B)(i) The board shall establish by rule a schedule designating the minimum and maximum civil penalty that may be assessed under this subsection for violation of each statute, rule, or order over which it has regulatory control under this chapter.

(ii) The board may promulgate any other rules necessary to carry out the intent of this subsection.

(C) If a civil penalty lawfully assessed under subdivision (d)(2)(A) of this section is not paid, the civil penalty is recoverable in the name of the state by the Attorney General in Pulaski County Circuit Court or in the circuit court of the county in which the violation occurred.

(D) A civil penalty paid or recovered under this subsection shall be deposited into the State Treasury to be credited to the Miscellaneous Agencies Fund Account.

2-24-109. Suspension of license.

(a)(1) The State Plant Board may temporarily suspend a dealer's license without a hearing if the board determines that the public health, safety, or welfare requires immediate action.

(2) If the board temporarily suspends a dealer's license under subdivision (a)(1) of this section, the board shall notify the dealer immediately by certified mail of the temporary suspension and the date, time, and location of the hearing to be held under subdivision (a)(3) of this section.

(3) If a dealer's license is temporarily suspended under subdivision (a)(1) of this section, a hearing on the suspension of the dealer's license shall be held within ten (10) days of the temporary suspension of the dealer's license.

(b)(1) Based on the information contained in the complaint submitted against a dealer, the board may suspend the license of the dealer without a hearing five (5) days after sending written notice by certified mail, nonrestricted delivery, to the dealer if the dealer:

(A) Does not have the required bond on file with the board; or

(B) Refuses to submit to an audit or inspection by the board under this chapter.

(2) A suspension of a dealer's license under subdivision (b)(1) of this section shall not exceed sixty (60) days without a hearing.

(c) A hearing under this section and an appeal of the board's decision to suspend a dealer's license under this section is governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

2-24-110. Receivership.

(a) Following the suspension of a dealer's license under this chapter, the State Plant Board may file a verified petition in a court of competent jurisdiction requesting the appointment of a receiver to take custody of the assets of the dealer and provide for the disposition of the assets under the supervision of the court.

(b) A petition for the appointment of a receiver shall be filed in the county in which the dealer is located.

(c) Upon receiving a petition for the appointment of a receiver under this section, a court may issue any temporary orders necessary to preserve or protect the assets in receivership, the value of the assets in receivership, and the rights of the dealer's creditors until a plan of disposition is approved.

(d) The board may be appointed as receiver in an action brought under this section.

2-24-111. Cease and desist.

The State Plant Board may order a dealer to cease and desist any activity that is in violation of this chapter.

2-24-112. Slow-pay hotline.

(a) The State Plant Board shall establish a slow-pay hotline for a person to notify the board that a dealer is more than thirty (30) days late on the dealer's contractual obligation for payment of grain to the person.

(b) A dealer shall provide notice to each person from which the dealer purchases grain on the availability of the slow-pay hotline established under this section.

2-24-113. Recordkeeping.

(a) The State Plant Board shall promulgate rules concerning the records a dealer is required to maintain for the proper administration of this chapter.

(b) A dealer shall:

(1) Maintain the records required by the board under this section for five (5) years; and

(2) Make the records available to the board on request.

2-24-114. Rules.

The State Plant Board shall promulgate rules to implement and administer this chapter.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that agriculture is an essential part of Arkansas's economy; that protecting Arkansas farmers is in the best interests of the state; that grain dealers must be regulated to protect Arkansas farmers and the state's economy from the devastating financial impact that the failure of one (1) or more of these grain dealers could have on the farmers' financial well-being and the state's economy; and that this act is immediately necessary because failure to adequately regulate these

grain dealers could have immediate and far-reaching effects on Arkansas's economy and the financial stability of the state's agriculture community. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Caldwell