

Senate Bill 2002

AN ACT ENTITLED THE "MISSISSIPPI GRAIN PRODUCER INDEMNITY ACT"; TO PROVIDE INDEMNIFICATION FOR GRAIN PRODUCERS IN MISSISSIPPI AGAINST THE FINANCIAL FAILURE OF GRAIN DEALERS AND WAREHOUSES IN ORDER TO IMPROVE THE ECONOMIC STABILITY OF AGRICULTURE; TO PROVIDE DEFINITIONS; TO ESTABLISH THE MISSISSIPPI GRAIN INDEMNITY FUND BOARD TO ADMINISTER THE MISSISSIPPI GRAIN INDEMNITY FUND AND TO PROVIDE FOR ITS MEMBERSHIP, POWERS AND DUTIES; TO ESTABLISH THE MISSISSIPPI GRAIN INDEMNITY FUND IN THE STATE TREASURE AND TO AUTHORIZE ASSESSMENTS AGAINST GRAIN PRODUCERS TO FUND THE PROGRAM; TO PROVIDE FOR A MINIMUM BALANCE IN THE FUND AND FOR THE SUSPENSION OF ASSESSMENTS UNDER CERTAIN CONDITIONS; TO PROVIDE FOR REINSURANCE FOR THE PAYMENT OF CLAIMS; TO PRESCRIBE THE DUTIES OF THE MISSISSIPPI GRAIN INDEMNITY FUND BOARD AND THE MISSISSIPPI DEPARTMENT OF INSURANCE TO ADMINISTER THE PROVISIONS OF THIS ACT; TO PROVIDE FOR THE COMPENSATION OF CLAIMANTS WHO HAVE INCURRED A FINANCIAL LOSS DUE TO A FAILURE OF A GRAIN DEALER OR WAREHOUSEMAN; TO PROVIDE APPLICATION AND PAYMENT PROCEDURES; TO PROVIDE FOR SUBROGATION OF CLAIMS ON BEHALF OF THE FUND; TO AMEND SECTIONS 75-44-29 AND 75-45-305, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT GRAIN WAREHOUSEMAN'S SURETY BOND AND GRAIN DEALER'S SURETY BOND UNDER APPLICABLE LICENSURE LAW SHALL BE PAYABLE TO THE MISSISSIPPI GRAIN INDEMNITY FUND CREATED UNDER THIS ACT; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

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

SECTION 3. As used in this act:

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

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

(c) "Grain" shall mean corn, wheat, soybeans, oats, rice and all grains for which standards have been established under the United States Grain Standards Act and the Agriculture Marketing Act, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Two (2) grain producers who are residents of the State of Mississippi and are participating in the grain indemnity program, appointed by the Lieutenant Governor from the state at large.

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

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

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

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

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

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

(e) To employ on a full-time or part-time basis a qualified staff attorney and such other staff as it may deem necessary to carry out the purposes of this act and to contract with one or more reputable insurance consulting firms as may be necessary;

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

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

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

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

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

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

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

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

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

(2) There shall be levied upon every grain producer in the State of Mississippi who does not opt out of participation in writing as provided in subsection (3) of this section an assessment of two tenths of one percent (.02%) of market price per bushel on all grain to be collected at the site of first purchase. The board shall provide for the collection of the assessment for the purpose of financing or contributing to the financing of the Mississippi Grain Indemnity Fund. The monies in the Mississippi Grain Indemnity Fund shall not be available for any purpose other than for the payment of claims and for the administration of this act. These funds may be invested and reinvested at the discretion of the State Treasurer in any investment of public funds authorized by law, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the fund. In order to avoid or lessen the possibility and amount of assessments reinstated or increased as authorized by this act, the Mississippi Commissioner of Insurance shall approve rates for policies of reinsurance issued by the board at least adequate to fund annual reinsurance above a self-insured retention of Twenty Million Dollars (\$20,000,000) that combined with any readily available reserves of the board, is sufficient to cover at least the probable maximum losses from a grain warehouseman or grain dealer failure expected to occur as predicted by a model or method approved by the Commissioner of Insurance for the properties covered by the board at the time the reinsurance was negotiated. The commissioner may approve rates in excess of the minimums required by this section as consistent with his duties and the insurance laws of the State of Mississippi.

(3) Any qualified grain producer or grain producer organization may make application to the board requesting nonparticipation in the Mississippi Grain Indemnity program and an exemption from the assessment of the amount specified in subsection (2) of this section. Said application for exemption shall be executed by all applicants on a voluntary basis on or before March 1 of each year on forms prescribed by the board.

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

(5) The assessment authorized under this section shall continue on grain producers until the Mississippi Grain Indemnity Fund is more than Twenty Million Dollars (\$20,000,000.00). If and when the fund is more than Twenty Million Dollars (\$20,000,000.00), the board shall temporarily suspend the assessment and may in its discretion refund assessments paid in excess of that amount. In the event the amount in the fund shall subsequently drop below the Twenty Million Dollar (\$20,000,000.00) threshold, the board may reinstitute the assessment, however the assessment shall not exceed the assessment rate established by subsection (2) of this section. The assessments by the board pursuant to this section are in addition to any other fees or assessments required by law. When the fund is equal to or exceeds Twenty Million Dollars (\$20,000,000.00), the board shall reimburse the State General Fund from the Mississippi Grain Indemnity Fund by any appropriations made by the Legislature to the board for the commencement of operation of the program and reimbursement for financial loss.

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

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

SECTION 6. Any grain producer or person possessing warehouse receipts covering grain owned or stored by the warehouseman or grain dealer may make a claim to the Mississippi Grain Indemnity Board for compensation for any financial loss due to a failure of such grain warehouseman or grain dealer. For purposes of this section, "failure" means an inability to financially satisfy a claimant in accordance with applicable statute or regulation or contract within the time limits provided therein. Market losses shall not be deemed to be a failure of such grain warehouseman or grain dealer. The grain producer or person possessing warehouse receipts shall have ninety (90) days from the failure to make the claim to the board. Within thirty (30) days of the board's approval of a valid claim, the board shall, in accordance with this section, compensate from the Mississippi Grain Indemnity Fund any claimant who has incurred a financial loss due to a failure of a grain warehouseman or grain dealer. Any claimant who has incurred a financial loss due to the failure of a grain warehouseman and who has surrendered a warehouse receipt for payment or holds a warehouse receipt and cannot receive value shall be compensated for one hundred percent (100%) of the claim. To the extent that there is an insufficient balance in the Mississippi Grain Indemnity Fund to compensate all claims at any date during the fiscal year, the board is authorized to adjust the maximum amount per claimant proportionately in order for each claimant to receive an equal pro rata share at the time of a failure of a grain warehouseman or grain dealer. Until such time as the Mississippi Grain Indemnity Fund has a balance equal to or in excess of Twenty Million Dollars (\$20,000,000.00), the board shall make compensation to claimants under this section from the State General Fund up to a maximum amount of Five Million Dollars (\$5,000,000.00) in the aggregate, pursuant to specific appropriation therefor by the Legislature.

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

SECTION 8. Section 75-44-29, Mississippi Code of 1972, is amended as follows:

75-44-29. (1) Before any person is granted a license pursuant to Section 75-44-23 such person shall give a bond to the commissioner executed by the grain warehouseman as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the * * * Mississippi Grain Indemnity Fund Board established in this act for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain warehouseman with the provisions of this chapter and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the Commissioner of Agriculture and Commerce of its intention to cancel the bond and all liability thereunder shall terminate thirty-five (35) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

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

(a) Cash;

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

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

(d) Federal Treasury Bills; or

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

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

SECTION 9. Section 75-45-305, Mississippi Code of 1972, is amended as follows:

75-45-305. (1) Every person licensed as a grain dealer shall have filed with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the State of Mississippi. The surety bond shall be in favor of and payable to the Mississippi Grain Indemnity Fund Board established in this act. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, payable to the commissioner, as trustee. The principal amount of the certificate of deposit or the amount of the letter of credit shall be the same as that required for a surety bond under this article and the interest thereon shall be made payable to the purchaser thereof. Such bond shall be a principal amount (to the nearest One Thousand Dollars (\$1,000.00)) equal to ten percent (10%) of the aggregate dollar amount paid, by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year or 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 theretofore engaged in such business, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than Twenty-five Thousand Dollars (\$25,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00), except as otherwise authorized by this article. The commissioner shall determine the sufficiency of any letter of credit.

(2) The commissioner may, when he questions a grain dealer's ability to pay producers for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the commissioner. Failure to post such additional bond or certificate of deposit or irrevocable letter of credit, constitutes grounds for suspension or revocation of a license issued under this article.

(3) Any required bond or bonds shall be executed by the grain dealer as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the * * * Mississippi Grain Indemnity Fund Board established under this act for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain dealer with the provisions of this article and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the commissioner of its intention to cancel the bond and all liability thereunder shall terminate sixty (60) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(4) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of Twenty-five Thousand Dollars (\$25,000.00). Such request shall be accompanied by a financial statement of the applicant made within six (6) months of the date of such request certified by a certified public accountant. If such financial statement discloses net assets and a net worth of an amount equal to at least three (3) times the amount of the bond required by this article and the commissioner is otherwise satisfied as to the financial ability and resources of the applicant, the commissioner may waive that portion of the required bond in excess of Twenty-five Thousand Dollars (\$25,000.00). However, in the case of a grain dealer whose net worth is not equal to three (3) times the amount of bond required, the commissioner may allow such grain dealer to waive in One Thousand Dollar (\$1,000.00) increments a portion of the bond required in excess of Twenty-five Thousand Dollars (\$25,000.00). The percentage factor to be applied to the bond required in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of Twenty-five Thousand Dollars (\$25,000.00). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of Twenty-five Thousand Dollars (\$25,000.00) may be waived. The grain dealer shall then provide to the commissioner a surety bond in the amount of Twenty-five Thousand Dollars (\$25,000.00) plus any additional bond required in excess thereof.

(5) Any grain dealer who purchases grain from producers only in connection with or as an incident to some other business and whose total purchases of grain from producers during any fiscal year do not exceed an aggregate amount of One Hundred Thousand Dollars (\$100,000.00) may satisfy the bonding requirements of this article by filing with the commissioner a bond, or certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, at the rate of One Thousand Dollars (\$1,000.00) for each Ten Thousand Dollars (\$10,000.00) or fraction thereof of the dollar amount to be purchased, with a minimum bond, certificate of deposit or irrevocable letter of credit of One Thousand Dollars (\$1,000.00) and a current financial statement.

(6) Failure of a grain dealer to file a bond, or certificate of deposit, or letter of credit, and to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this article.

(7) When the commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has defaulted payment and the commissioner shall determine through appropriate legal procedures the producers and the amount of defaulted payment and as trustee of the bond shall immediately after such determination call for the dealer's surety bond or bonds, or other pledged financial assets, to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed the producers be less than the principal amount of the bond or bonds or pledged financial assets, then the surety bank, or banking corporation shall be obligated to pay only the amount of the default.

SECTION 10. This act shall take effect and be in force from and after July 1, 2022.