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Requirements for Grain Dealers:

Georgia



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A National Agricultural Law Center Research Publication
Requirements for Grain Dealers: Georgia

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GA. Code Ann. Tit. 2, Ch. 4, Art. 1; GA. Code Ann. Tit. 2, Ch. 9, Art. 2

Current through Laws 2020, Act 322.

§ 2-4-1. Short title

This chapter may be cited as the “Georgia Seed Development Act.”

§ 2-4-2. Georgia Seed Development Commission created; general powers

(a) As used in this chapter, the term “commission” means the Georgia Seed Development Commission.

(b) There is created a body corporate and politic and an instrumentality and public corporation of this state, to be known as the Georgia Seed Development Commission. It shall have perpetual existence. In such name, it may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts.

(c) The commission is assigned to the Department of Agriculture for administrative purposes only, as prescribed in Code Section 50-4-3.

§ 2-4-3. Membership; officers; bylaws; quorum; expenses; accountability; bonds; books and records; audit

(a) As used in this Code section, the term “licensee” means the designee of a holder of a license authorizing the production, conditioning, propagation, or marketing of crops, seed, turfgrass, or horticultural plants developed by the College of Agricultural and Environmental Sciences of the University of Georgia, where such license grants rights to intellectual property owned by the University of Georgia or a formally designated cooperative organization thereof.

(b) The commission shall be composed of the following 11 members:

(1) Two members to be appointed by the Governor, each of whom shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants;

(2) One member who shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants, to be appointed by the Lieutenant Governor;

(3) One member who shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants, to be appointed by the Speaker of the House of Representatives;

(4) The Commissioner of Agriculture;

(5) Two representatives of the crop, seed, turfgrass, or horticultural plant industry or of farm related organizations, one of whom shall be appointed by the Senate Agriculture and Consumer Affairs Committee, and one of whom shall be appointed by the House Committee on Agriculture and Consumer Affairs. Such representatives shall be licensees or shall otherwise have knowledge of the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants. Each committee shall make its appointment with a quorum present and a majority of those present concurring;

(6) One member who shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants, to be appointed by the Commissioner of Agriculture;

(7) The dean of the College of Agricultural and Environmental Sciences of the University of Georgia;

(8) The associate dean for research of the College of Agricultural and Environmental Sciences of the University of Georgia, as a nonvoting member; and

(9) An additional nonvoting member who is a crop, seed, turfgrass, or horticultural plant breeder employed by the College of Agricultural and Environmental Sciences of the University of Georgia, appointed by the dean of the College of Agricultural and Environmental Sciences of the University of Georgia, after consultation with the commission.

(c) The members of the commission shall enter upon their duties without further act or formality. The commission shall organize each even-numbered year at the meeting next following July 1 of such year, at which time the commission shall elect one of its members as chairperson and another as vice chairperson. It shall also elect a secretary and a treasurer, who need not be members. The offices of secretary and treasurer may be combined in one person. The commission may make such bylaws for its government as it deems necessary but is under no duty to do so.

(d) Five voting members of the commission shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted the commission by this chapter. No vacancy on the commission shall impair the right of a quorum to transact any and all business of the commission.

(e) The members shall not receive compensation for their services but shall be reimbursed for actual expenses incurred in the performance of their duties.

(f) Members of the commission shall be accountable as trustees. They shall cause adequate books and records of all transactions of the commission, including records of income and disbursements of every nature, to be kept. The books and records shall be inspected and audited by the state auditor at least once in each year. The commission may require that an employee, an officer, member of the commission, or any person doing business with the commission post a bond, in an amount to be determined by the commission, for the faithful performance of the duties imposed upon such employee, officer, member of the commission, or person doing business with the commission. The principal of such bond of an officer, employee, or member of the commission shall be paid by the commission.

§ 2-4-4. General powers and functions enumerated

The commission shall have, in addition to any other powers conferred in this chapter, the following powers:

- (1) To have a seal and to alter it at its pleasure;
- (2) To acquire by purchase, lease, gift, or otherwise and to hold, lease, and dispose of, in any manner, real and personal property of every kind and character for its corporate purposes;
- (3) To appoint such additional officers, who need not be members of the commission, as the commission deems advisable; to employ such experts, agents, and employees as in its judgment may be necessary to carry on properly the business of the commission; to fix the compensation for such officers, experts, agents, and employees; and to promote and discharge them;
- (4) To make such contracts and agreements as are legitimate and necessary for the purposes of this chapter and to make all other contracts and agreements as may be necessary to the proper performance of any action permitted by this chapter;
- (5) To exercise any power granted to private corporations which is not in conflict with the Constitution and laws of this state nor with other provisions of this chapter;
- (6) To do and perform all things necessary or convenient to carry out the powers conferred upon the commission by this chapter;
- (7) To promote scientific and educational objectives in connection with the production and distribution of foundation seed stocks;
- (8) To cooperate and contract with the experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia, the Department of Agriculture of this state, the United States Department of Agriculture, and any other agency of the state or federal government in making foundation seeds of superior varieties and hybrids available in adequate quantities, according to the requirements and needs of the farmers of this state;
- (9) To receive and to be the agent for breeder's seed and other parent material distributed from the experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia and other sources;
- (10) To contract for the production and promotion of foundation seed from breeder's seed;

(11) To purchase, process, and resell breeder's and foundation seeds from contract growers, the United States Department of Agriculture, experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia, and other breeders or from other sources, as the commission may deem necessary;

(12) To use the net proceeds from the sale of seed for necessary buildings, equipment, supplies, and expenses, as directed by the commission;

(13) To solicit, receive, collect, and disburse dues, funds, pledges, and other subscriptions of value in connection with carrying out the purposes of this chapter;

(14) To receive real and personal property, either by gift, grant, devise, or will, and to hold and dispose of the same in carrying out the purposes of the commission; and

(15) To buy, sell, and trade in all the elements necessary for the successful administration of the purposes of the commission.

§ 2-4-5. Purchases to be on sealed bids

All contracts for the purchase of supplies or equipment by the commission for any purpose whatever shall be made only after competitive sealed bids have been received.

§ 2-4-6. Operation on nonprofit basis; earnings transmitted to state treasury

It is the intent and purpose of the General Assembly that the commission shall be operated on a nonprofit basis. Any and all profits earned, beyond those required as a reasonable reserve for the future operations of the commission, shall be transmitted to the state treasury.

§ 2-4-7. Advisory board; membership; functions

The commission may appoint an advisory board, consisting of such number and qualifications of members as the commission may determine, to advise and consult with the commission in the performance of the commission's duties. The function of such a board shall be advisory only.

§ 2-4-8. Term of office of members of commission and advisory board

The appointed members of the commission shall serve for terms of two years each commencing on July 1 of each even-numbered year; and the appointed members of the advisory board, if any, shall serve at the pleasure of the commission.

§ 2-4-9. Conveyance of real property by Governor; reversion to state when not used

The Governor is authorized to convey to the commission on behalf of the state any real or personal property or interest therein owned by the state in furtherance of this chapter. The consideration for such conveyance shall be determined by the Governor and expressed in the conveyance, provided that such consideration shall be nominal, the benefits going to the state and its citizens constituting full and adequate consideration. If, within one year after a conveyance by the Governor, use of the property conveyed has not been made by the commission, such property or interest shall revert to the state.

§ 2-4-10. No state indebtedness to be created; credit of state not pledged

Nothing contained in this chapter shall be construed in any manner as authorizing the creation of a debt of the State of Georgia or a pledge of the credit of this state.

§ 2-9-1. Definitions

As used in this article, the term:

(1) "Agricultural products" includes fruits, vegetables, pecans, and cotton but does not include dairy products, tobacco, grains, eggs, and other basic farm crops.

(2) "Dealer in agricultural products" means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural products purchased from the producer or his or her agent or representative or received on consignment from the producer or his or her agent or representative or received to be handled on a net return basis from the producer. The term "dealer in agricultural products" also includes any person buying, selling, processing, or shelling pecan nuts, including any and every kind and variety of pecan nuts.

(3) "Net return basis" means a purchase for sale of agricultural products from a producer or shipper at a price which is not fixed or stated at the time the agricultural products are shipped from the point of origin. The term includes all purchases made "at the market price," "at net worth," and on similar terms indicating that the buyer is the final arbiter of the price to be paid.

(4) "On consignment" means any receiving or sale of agricultural products for the account of a person, other than the seller, wherein the seller acts as the agent for the owner.

(5) "Producer" means any producer of agricultural products.

§ 2-9-2. License required of agricultural dealers

It shall be unlawful for any dealer in agricultural products who comes within the terms of this article to engage in such business in this state without a state license issued by the Commissioner.

§ 2-9-3. Application for license, contents

Every dealer in agricultural products desiring to transact business in this state shall file an application for such license with the Commissioner. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

- (1) The kind or kinds of agricultural products the applicant proposes to handle;
- (2) The full name or title of the applicant or, if the applicant is an association or partnership, the name of each member of such association or partnership or, if the applicant is a corporation, the name of each officer of the corporation;
- (3) The names of the local agent or agents of the applicant, if any; and
- (4) The municipalities within which places of business of the applicant will be located, together with the street or mailing address of each such place of business.

§ 2-9-4. Issuance of license; bond; fee for license; revocation or suspension

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-7, he or she shall issue to such applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-5, a state license entitling the applicant to conduct business as a dealer in agricultural products. An annual fee not to exceed \$400.00 shall be required before a license is issued. Such license shall be valid until revoked or suspended as provided in this article, or until the annual license renewal fee is unpaid.

§ 2-9-5. Surety bond required for license; cash bond in lieu of surety bond

Before any license is issued the applicant shall make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of "good standing" issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the

Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. The bond shall be in such amount as the Commissioner may determine, not exceeding an amount equal to the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the applicant; provided, however, that the minimum amount of such bond shall be \$10,000.00 and the maximum amount of such bond shall be \$230,000.00; provided, further, that in the case of pecans, such bond shall not exceed \$500,000.00. Such bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to producers or their agents or representatives of the proceeds of all agricultural products handled or sold by such dealer. However, in lieu of a surety bond, the Commissioner may accept a cash bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing and such person shall be ineligible to reapply for such license for a period of four years after such revocation.

§ 2-9-6. Action on bond; complaint; notice and hearing; order of Commissioner

(a) Any person claiming that he or she has been damaged by a breach of the conditions of a bond given by a licensee as provided in Code Section 2-9-5 may enter a complaint to the Commissioner. Such complaint shall be a written statement of the facts constituting the complaint and must be made within 180 days of the alleged breach. If the Commissioner determines that the complaint is prima facie a breach of the bond, and the matter can not be amicably resolved within 15 days, the Commissioner shall publish a solicitation for additional complaints regarding breaches of the bond for a period of not less than five consecutive issues in a newspaper of general circulation and in such other publications as the Commissioner shall prescribe. Additional complaints must be filed within 60 days following initial public notification of a breach of the bond. Civil actions on the breach of such bond shall not be commenced less than 120 days nor more than 547 days from the initial date of public notification of such breach of the bond.

(b) Upon the filing of such complaint in the manner provided in this Code section, the Commissioner shall investigate the charges made and at his discretion order a hearing before him, giving the party complained of notice of the filing of such complaint and the time and place of such hearing. At the conclusion of the hearing the Commissioner shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in each case, who shall have 15 days thereafter in which to make effective and satisfy the Commissioner's conclusions.

(c) If such settlement is not effected within such time, the Commissioner or the producer may bring an action to enforce the claim. If the producer is not satisfied with the ruling of the

Commissioner, he may commence and maintain an action against the principal and surety on the bond of the parties complained of as in any civil action.

(d) If the bond or collateral posted is insufficient to pay in full the valid claims of producers, the Commissioner may direct that the proceeds of such bond shall be divided pro rata among such producers.

§ 2-9-7. Grounds for refusal or revocation of license

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has:

(1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;

(2) Made false charges for handling or services rendered;

(3) Failed to account promptly and properly or to make settlements with any producer;

(4) Made any false statement or statements as to condition, quality, or quantity of goods received or held for sale when he could have ascertained the true condition, quality, or quantity by reasonable inspection;

(5) Made any false or misleading statement or statements as to market conditions or service rendered;

(6) Been guilty of a fraud in the attempt to procure or in the procurement of a license; or

(7) Directly or indirectly sold agricultural products received on consignment or on a net return basis for his own account, without prior authority from the producer consigning the same or without notifying such producer.

§ 2-9-8. Revocation or refusal of license, hearings, notice and order

Before the Commissioner refuses a license or suspends or revokes any license, he shall give the applicant or licensee ten days' notice, by registered or certified mail or statutory overnight delivery, of a time and place of hearing. At such hearing the applicant or licensee shall be

privileged to appear in person or by or with counsel and to produce witnesses. If the Commissioner finds that the applicant or licensee has committed any violation of this article or any of the rules or regulations promulgated hereunder, the Commissioner may refuse, suspend, or revoke such license. He shall give immediate notice of his action to the applicant or licensee.

§ 2-9-9. Records of dealers; settlements mailed to producers

(a) Every dealer in agricultural products, upon the receipt of agricultural products on a consignment basis and as he handles and disposes of the same, shall make and preserve for at least one year a record thereof, specifying:

(1) The name and address of the producer consigning such agricultural products;

(2) The date of receipt;

(3) The kind and quality of such products;

(4) The amount of goods sold;

(5) The name and address of the purchaser, provided that where sales total less than \$5.00 in value, such sales may be made to the order of "cash";

(6) The selling price; and

(7) The items of expenses connected therewith.

(b) An "account of sales," together with payment in settlement for such shipment, shall be mailed to the producer within 48 hours after the sale of such agricultural products, unless otherwise agreed in writing.

§ 2-9-9.1. Requirements and restrictions relating to ginning of cotton and transfers and sales of cotton

Upon ginning cotton into bales, the ginner shall assign each bale a permanent bale identification number. No bale shall be removed from a gin except when accompanied by a cotton bale voucher issued by the gin, containing the permanent bale identification number and issued in the name of the cotton producer. Except for removal to a bonded warehouse in the name of the

cotton producer, transfers or sales from the cotton producer after ginning shall be endorsed by his or her signature on the cotton bale voucher or forms authorized by the Commissioner of Agriculture.

§ 2-9-10. Investigation by Commissioner; examination of documents at place of business of applicant or licensee; taking of testimony

(a) Upon the complaint of any interested person or upon his own initiative, the Commissioner shall have the power to investigate:

(1) The record of any applicant or licensee;

(2) Any transaction involving the solicitation, receipt, sale, or attempted sale of agricultural products;

(3) The failure to pay proper and true accounts and settlements at prompt and regular intervals;

(4) The making of false statements as to condition, quality, or quantity of goods received or in storage;

(5) The making of false statements as to market conditions with intent to deceive;

(6) The failure to make payment for goods received; or

(7) Other alleged injurious transactions.

(b) For the purposes specified in subsection (a), the Commissioner or his agents may examine the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, at the place or places of business of the applicant or licensee, and may take testimony thereon under oath.

§ 2-9-11. Inspection of unmarketable produce; certificate of inspector

Whenever produce is shipped to or received by a licensed dealer for handling, purchase, or sale in this state at any market point and the dealer finds the produce to be in a spoiled, damaged, unmarketable, or unsatisfactory condition, unless both parties waive inspection before sale or other disposition thereof, the dealer shall cause the produce to be examined by an inspector

assigned by the Commissioner for that purpose. The inspector shall execute and deliver a certificate to the applicant stating the day, the time, and the place of the inspection and the condition of the produce and shall mail or deliver a copy of such certificate to the shipper.

§ 2-9-11.1. Transfer of ownership of agricultural products; certificate that agricultural product is in spoiled, damaged, or unmarketable condition

(a) In the absence of a written contract between the producer and a dealer in agricultural products to the contrary, any agricultural product which is harvested by a dealer, an agent or employee of a dealer, or an independent contractor retained by a dealer or which is delivered to a dealer or an agent or employee thereof on the farm or at a facility of the dealer shall become the property of the dealer at the time of delivery and the dealer shall become obligated to pay the agreed-upon price as provided in subsection (b) of this Code section.

(b) A dealer in agricultural products shall make prompt payment for agricultural products purchased in this state. Prompt payment shall mean payment 20 days following delivery, as provided in subsection (a) of this Code section, unless explicitly stated otherwise in a written contract agreed to by the producer and dealer in agricultural products.

(c) Unless explicitly stated otherwise in a written contract, at the time of delivery as specified in subsection (a) of this Code section, the dealer and the producer in agricultural products shall jointly issue a certificate of receipt and quality to the producer or the producer's agent. The certificate of receipt and quality shall contain information, including but not limited to the:

(1) Name and address of the dealer in agricultural products;

(2) Name and address of the producer;

(3) Delivery date and time of receipt;

(4) Description of the product as to identity, quantity, quality, condition, and grade of the product;

(5) Price per unit; and

(6) Terms of the transaction.

Information contained in the certificate of receipt and quality pertaining to quality, quantity, and price shall be presumed to be satisfied unless such agricultural product is inspected and a certificate stating the product is in a different condition is issued by an inspector pursuant to Code Section 2-9-11 within 48 hours of delivery of the agricultural product to the dealer.

(d) This Code section does not preclude the producer from commencing and maintaining an action against the dealer as in any civil action.

§ 2-9-12. Sale or possession of agricultural products not conforming to standards

(a) It shall be unlawful for any dealer in agricultural products to sell, offer for sale, or possess any agricultural product that does not comply with the standards of quality established by the Commissioner under authority of law or with the laws and rules and regulations pertaining to such product.

(b) It is the intent and purpose of this Code section to prevent the sale of agricultural products that do not comply with the laws, standards of quality, and rules and regulations pertaining thereto.

§ 2-9-13. Rules and regulations

The Commissioner shall adopt and enforce rules and regulations deemed necessary to carry out this article.

§ 2-9-14. Injunction against violations

In addition to the other remedies provided in this article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to the superior court, which court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate this article or from failing or refusing to comply with this article or any rule or regulation adopted by the Commissioner as provided in this article. Such injunction shall be issued without bond.

§ 2-9-15. Exemptions

(a) This article shall not apply to:

(1) Farmers or groups of farmers in the sale of agricultural products grown by themselves;

(2) Persons who buy for cash, paying at the time of purchase in United States currency, certified check, cashier's check, or the equivalent; or

(3) Holders of food sales establishment licenses issued pursuant to Article 2 of Chapter 2 of Title 26, the "Georgia Food Act," who conduct no business at the wholesale level and who have fewer than ten employees.

(b) No warehouse that is in full compliance with the provisions of Article 1 of Chapter 4 of Title 10 shall be required to obtain a license or maintain a surety bond under this article.

§ 2-9-16. Violations relating to bonding and licensing of dealers in agricultural products

Any dealer in agricultural products who violates any of the provisions of this article or who interferes with an agent of the Commissioner in the enforcement of this article shall be guilty of a misdemeanor.

§ 2-9-30. Definitions

As used in this article, the term:

(1) "Grain" means all products commonly classified as grain, including, but not limited to, wheat, corn, oats, barley, rye, field peas, soybeans, clover, and grain sorghum. The term does not include grain which has been produced or packaged for purchase or distribution as seed.

(2) "Grain dealer" means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any grain purchased from the producer or his or her agent or representative, received on consignment from the producer or his or her agent or representative, or received to be handled on a net return basis from the producer.

(3) "On consignment" means any receipt or sale of grain for the account of a person other than the seller in which the seller acts as the agent for the owner.

(4) "Producer" means any producer of grain.

§ 2-9-31. License required of grain dealers

It shall be unlawful for any dealer in grain who comes within the terms of this article to engage in such business in this state without a state license issued by the Commissioner.

§ 2-9-32. Application for license; contents

(a) Every grain dealer desiring to transact business in this state shall file an application for a license with the Commissioner. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

(1) The name of the business;

(2) The business address of the applicant;

(3) The complete telephone number of the applicant;

(4) The type of ownership, whether individual, partnership, corporation, or other;

(5) The name of the owner or, if a partnership or corporation, the name of the partners or stockholders;

(6) The names of the certified public weighers;

(7) The name of the manager; and

(8) The dollar value of business transacted from producers for the highest month during the preceding calendar year.

(b)(1) Each applicant for a license or renewal shall furnish with his application a current financial statement which shall include:

(A) A balance sheet;

(B) A profit and loss statement of income;

(C) A statement of retained earnings; and

(D) A statement of changes in financial position.

(2) The chief executive officer for the business shall certify under penalties of perjury that the statements as prepared accurately reflect the financial condition of the business as of the date named and fairly represent the results of operations for the period named.

(3) Except as otherwise provided in this paragraph, each applicant shall have the financial statements required in paragraph (1) of this subsection audited by an independent certified public accountant. Alternatively, financial statements audited or reviewed by an independent public accountant will be accepted with the understanding that the applicant will be subject to an additional on-site examination by the Commissioner and to an audit by the Commissioner. Audits and reviews by independent certified public accountants and independent public accountants specified in this Code section shall be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, shall be furnished along with the statements. Applicants who cannot immediately meet these requirements may apply to the Commissioner for a temporary waiver of this provision. The Commissioner may grant such waiver for a temporary period not to exceed 180 days if the applicants can furnish evidence of good and substantial reasons therefor. This paragraph shall not be applicable to any applicant who maintains a bond in the maximum amount required by subsection (a) of Code Section 2-9-34.

§ 2-9-33. Issuance of license; bond; fee; renewal

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-36, he or she shall issue to an applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-34, a state license entitling the applicant to conduct business as a dealer in grain. A fee in an amount fixed by rule or regulation of the Commissioner at not less than \$100.00 nor more than \$150.00 per annum shall be charged for such license. All such licenses shall be renewed annually on or before June 30. Any license which is not renewed on or before such date shall expire on June 30. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

§ 2-9-34. Surety bond required for license; cash bond in lieu of surety bond; revocation of license

(a) Before any license is issued, the applicant shall make and deliver to the Commissioner a surety bond in the amount of 20 percent of the average of the highest dollar volume of grain purchases from producers made in any single month for each of the three preceding calendar years or such shorter period of years as the applicant has done business as a grain dealer, provided that the minimum amount of such bond shall be \$20,000.00 and the maximum amount

of such bond shall be \$300,000.00. If a licensed grain dealer operates his or her grain-dealing activities at more than one physical location, he or she shall furnish a surety bond for each location of grain-dealing activities, each bond to be computed as stated in this Code section and each bond to be subject to the minimum and maximum amounts stated in this Code section. The bonds shall be executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of "good standing" issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. Such bonds shall be upon forms prescribed by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to the producers or their agents or representatives of the proceeds of all grain handled or sold by such dealer. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing.

(b) In lieu of a surety bond, the Commissioner may accept a cash bond which shall be subject in all respects to the same claims and actions as would exist against a surety bond.

(c) If the surety bond or cash bond of a licensed grain dealer is canceled, the license of such grain dealer shall immediately be revoked by operation of law without notice or hearing.

§ 2-9-35. Action on bond; complaint; notice and hearing; order of Commissioner

(a) Any person claiming that he or she has been damaged by a breach of the conditions of a bond given by a licensee as provided in Code Section 2-9-34 may enter a complaint to the Commissioner. Such complaint shall be a written statement of the facts constituting the complaint and must be made within 180 days of the alleged breach. If the Commissioner determines that the complaint is prima facie a breach of the bond, and the matter can not be amicably resolved within 15 days, the Commissioner shall publish a solicitation for additional complaints regarding breaches of the bond for a period of not less than five consecutive issues in a newspaper of general circulation and in such other publications as the Commissioner shall prescribe. Additional complaints must be filed within 60 days following initial public notification of a breach of the bond. Civil actions on the breach of such bond shall not be commenced less than 120 days nor more than 547 days from the initial date of public notification of such breach of the bond.

(b) Upon the filing of the complaint in the manner provided in this Code section, the Commissioner shall investigate the charges made and, at his discretion, order a hearing before him or his hearing officer, giving all parties concerned notice of the filing of such complaint and the time and place of such hearing. At the conclusion of the hearing, the Commissioner shall

report his findings and render his conclusion upon the matter complained of to the complainant and respondent in the case, who shall have 15 days following such report in which to make effective and satisfy the Commissioner's conclusions.

(c) If such settlement is not effected within such time, the Commissioner or the producer may institute appropriate legal proceedings to enforce the claim. If the producer is not satisfied with the ruling of the Commissioner, he may commence and maintain an action against the principal and surety on the bond of the parties complained of, as in any civil action.

(d) If the bond or collateral posted is insufficient to pay the valid claims of producers in full, the Commissioner may direct that the proceeds of the bond shall be divided pro rata among the producers.

§ 2-9-36. Grounds for refusal or revocation of license

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has:

(1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;

(2) Made false charges for handling or services rendered;

(3) Failed to account promptly and properly or to make settlements with any producer;

(4) Made any false statement or statements as to the condition, quality, or quantity of grain received or held for sale, when he could have ascertained the true condition, quality, or quantity by reasonable inspection;

(5) Made any false or misleading statement or statements as to market conditions or service rendered;

(6) Been guilty of a fraud in the attempt to procure or in the procurement of a license;

(7) Directly or indirectly sold grain received on consignment or on a net return basis for his own account, without prior authority from the producer consigning the same or without notifying such producer; or

(8) Through any other action, violated this article.

§ 2-9-37. Revocation or refusal of license; hearing; notice and order

Before the Commissioner refuses or revokes any license, he shall give the applicant or licensee ten days' notice, by registered or certified mail or statutory overnight delivery, of a time and place of hearing. At such hearing the applicant or licensee shall be privileged to appear in person or by or with counsel and to produce witnesses. If the Commissioner finds the applicant or licensee to be in violation of this article, the Commissioner may refuse, suspend, or revoke such license. He shall give immediate notice of his action to the applicant or licensee.

§ 2-9-38. Grain purchased from producer by dealer to be weighed by certified public weigher

All grain purchased from a producer by a dealer licensed under this article shall be weighed by a certified public weigher licensed in accordance with Article 2 of Chapter 2 of Title 10, relating to certified public weighers.

§ 2-9-39. Dealers to be equipped with scales

Each grain dealer under this article must be equipped with or have available to him suitable scales which are in good order and so arranged that all grain can be weighed by the dealer. The scales belonging to or used by such grain dealer shall be subject to examination by representatives of the Commissioner and to disapproval by the Commissioner. If the Commissioner disapproves of any weighing apparatus, it shall not be used in ascertaining the weight of grain for the purpose of this article until such disapproval is withdrawn.

§ 2-9-40. Records of dealers; settlements with producers

(a) Upon the receipt of grain products on a consignment basis and as he handles and disposes of the grain products, every grain dealer shall make a record thereof and shall preserve such record for at least one year. The record shall specify:

(1) The name and address of the producer consigning such grain;

(2) The date of receipt;

(3) The kind and quality of the grain;

(4) The amount sold;

(5) The name and address of the purchaser, provided that where sales total less than \$5.00 in value, such sales may be made to the order of "cash";

(6) The selling price; and

(7) The items of expenses connected therewith.

(b) An "account of sales," together with payment in settlement for the shipment, shall be mailed to the producer within 48 hours after the sale of the grain, unless otherwise agreed to in writing.

§ 2-9-41. Investigation by Commissioner; examination of documents at place of business of applicant, licensee, etc.; taking of testimony

(a) Upon the complaint of any interested person or upon his own initiative, the Commissioner shall have the power to investigate:

(1) The record of any applicant or licensee;

(2) Any transaction involving the solicitation, receipt, sale, or attempted sale of grain;

(3) The failure to pay proper and true accounts and settlements at prompt and regular intervals;

(4) The making of false statements as to condition, quality, or quantity of grain received or in storage;

(5) The making of false statements as to market conditions with intent to deceive;

(6) The failure to make payment for grain received; or

(7) Other alleged injurious transactions.

(b) For such purposes, the Commissioner or his agents may examine the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, at the place or places of business of the applicant, licensee, or unlicensed person, partnership, corporation, or other entity, and may take testimony thereon under oath.

§ 2-9-42. Rules and regulations

The Commissioner shall adopt and enforce rules and regulations deemed necessary to carry out this article.

§ 2-9-42.1. Publication of names and locations of licensed grain dealers and manner of payment

The Commissioner may publish in print or electronically the names and locations of licensed grain dealers and the names and locations of those operations certifying that payment will be made on a cash or certified check basis.

§ 2-9-43. Injunction against violations

In addition to the other remedies provided in this article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to the superior court, which court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate this article or from failing or refusing to comply with this article or any rule or regulation adopted by the Commissioner as provided in this article. Such injunction shall be issued without bond.

§ 2-9-44. Exemptions

This article shall not apply to:

(1) Farmers in the sale of grain grown by themselves;

(2) Persons who buy for cash, paying at the time of the purchase in United States currency, certified check, or cashier's check; or

(3) Persons licensed and bonded in accordance with Article 1 of Chapter 4 of Title 10, the "Georgia State Warehouse Act."

§ 2-9-45. Violations relating to bonding and licensing of grain dealers

Any dealer in grain who violates any of the provisions of this article or who interferes with an agent of the Commissioner in the enforcement of this article shall be guilty of a misdemeanor.