

2015 Regular Session

HOUSE BILL NO. 765

BY REPRESENTATIVE ANDERS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AGRICULTURE/FOREST DEPT: Amends the Agricultural Commodities Dealer and Warehouse Law

1 AN ACT

2 To amend and reenact R.S. 3:3402(17) and (18), 3403(A)(5), 3405(A)(3), (4), and (B)(7),

3 3409 through 3412, and 3414.4 and to enact R.S. 3:3402(19) and 3412.1, relative to

4 the Agricultural Commodities Dealer and Warehouse Law; to provide for security

5 and provisional stock insurance requirements; to remove the bond requirement from

6 the law; to provide a purpose and additional guidelines for the self-insurance fund;

7 to provide guidelines for reimbursement for agricultural commodities and to provide

8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 3:3402(17) and (18), 3403(A)(5), 3405(A)(3), (4), and (B)(7), 3409

11 through 3412, and 3414.4 are hereby amended and reenacted and R.S. 3:3402(19) and

12 3412.1 are hereby enacted to read as follows:

13 §3402. Definitions

14 * * *

15 (17) "Security" means any financial instrument or document issued for the

16 benefit of or given to the commission by a licensee or participation in any self-

17 insurance fund program authorized by this Chapter as assurance for the fulfillment

18 of the obligations imposed on the licensee by applicable law or regulations.

1 (4) Issue licenses to grain dealers, provided that such persons shall ~~be~~
2 ~~bonded~~ provide security and be insured as required under this Chapter.

3 * * *

4 B. The commission may:

5 * * *

6 (7) Sue to recover on or enforce on behalf of any producer, solely for the use
7 and benefit of the producer, who is injured by the breach of any obligation secured
8 by the bond security required under this Chapter and to sue any licensee to recover
9 any payment of a claim from the Self-Insurance Fund or the Grain and Cotton
10 Indemnity Fund, or both, pursuant to the provisions of R.S. 3:3412 and 3:3412.1
11 respectively.

12 * * *

13 §3409. Security and provisional stock insurance required as a condition of license,
14 time of filing; amount of security; approval; notice of cancellation; changes
15 in licensed capacity; failure to maintain security and insurance in full force
16 and effect.

17 A. Prior to issuance of the license, an applicant for a warehouse, grain dealer,
18 or cotton merchant license shall furnish to and file with the commission security and
19 provisional stock insurance as a condition for issuance of the license.

20 B. The security shall be for the faithful performance of all duties and
21 obligations of the prospective licensee, and for compliance with this Chapter and the
22 rules and regulations adopted by the commission pursuant to this Chapter.

23 C. The security required by this Chapter shall be in favor of the commission
24 and shall be in the form of one of the following:

25 (1) A surety bond, issued by a bonding or surety company authorized to do
26 business in this state.

27 (2) A certificate of deposit from a financial institution whose deposits are
28 insured by an agency of the federal government.

1 (3) An irrevocable letter of credit from a financial institution whose deposits
2 are insured by an agency of the federal government.

3 (4) Participation in the Self-Insurance Fund in accordance with and as
4 provided by R.S. 3:3410.1.

5 (5) Any other security determined to be adequate by the commission.

6 D. The security provided by the applicant for a warehouse license shall cover
7 the same facilities covered by the warehouse license.

8 (1) The amount of the security shall be determined by the total licensed
9 capacity of the facilities to be covered by the security, as follows:

10 (a) Twenty cents per bushel for the first million bushels of licensed capacity.

11 (b) Fifteen cents per bushel for the second million bushels of licensed
12 capacity.

13 (c) Ten cents per bushel for all bushels over two million bushels of licensed
14 capacity.

15 (2) Whenever the licensed warehouse capacity changes, the amount of the
16 security shall be amended to conform to the current licensed capacity of the facility
17 or facilities covered by the security.

18 (3) In any case, the net amount of the security shall not be less than twenty-
19 five thousand dollars and not more than five hundred thousand dollars.

20 E. The security provided by an applicant for a license as a grain dealer or
21 cotton merchant shall be in the amount of fifty thousand dollars.

22 F. The security furnished by an applicant shall be approved by the
23 commission prior to the issuance of the license.

24 G. Each form of security shall provide for ninety days written notice to the
25 commission prior to cancellation.

26 H. The commission shall be the sole owner of the security and shall be the
27 sole party entitled to sue upon, recover, or enforce the security. Any other person or
28 party, including, without limitation, any licensee, person, producer, cotton farmer or
29 agent, or creditor who has a claim against a licensee, shall have no ownership or

1 other interest in the security and shall have no right to sue upon, recover, or enforce
2 the security, except pursuant to the commission's administrative procedures.

3 (1) The security furnished by each licensee shall be for the exclusive use and
4 benefit of any person, producer, or cotton farmer or agent that has a claim against
5 that licensee pursuant to the provisions of this Chapter and as determined by the
6 commission pursuant to its administrative procedures.

7 (2) Any claim on the security by a person against a warehouse licensee, a
8 producer against a grain dealer licensee, or a cotton farmer or agent against a cotton
9 merchant licensee shall be submitted to the commission pursuant to its administrative
10 procedures and, after being determined by the commission to be a valid claim under
11 this Chapter, shall be paid from the commission's recovery on the security.

12 (3) Should the claim against the licensee not be satisfied in full through the
13 commission's administrative procedures the claimant shall retain all other rights
14 possessed under the law without prejudice.

15 I. The commission shall require every licensee to maintain a sufficient
16 amount of provisional stock insurance issued by an insurance company authorized
17 to do business in this state to provide adequate protection against fire and other
18 disasters, for the full market value of all agricultural commodities physically in the
19 possession of the licensee, which insurance shall provide for thirty days written
20 notice to the commission prior to cancellation.

21 J.(1) The security and provisional stock insurance shall be:

22 (a) Kept in full force and effect as a condition of continuing licensure.

23 (b) Open for public inspection by the commission.

24 (2) The licensee shall pay all fees and expenses involved in providing the
25 security and provisional stock insurance.

26 K. The commission may suspend or revoke the license of any licensee who
27 fails to maintain the required security and insurance in full force and effect.

1 ~~§3410. Bond required as a condition of warehouse license, time of filing, amount~~
2 ~~of bond, minimum and maximum, approval, notice of cancellation, changes~~
3 ~~in licensed capacity, insurance, alternate security, failure to maintain bond~~
4 ~~and insurance in full force and effect~~

5 ~~A. Each applicant for a warehouse license shall, prior to issuance of the~~
6 ~~license, execute and file with the commission a surety bond, issued by a bonding or~~
7 ~~surety company authorized to do business in this state and conditioned upon (1) the~~
8 ~~faithful performance of all duties and obligations to the patrons of the warehouse,~~
9 ~~and (2) compliance with this Chapter and the rules and regulations adopted pursuant~~
10 ~~hereto.~~

11 ~~B. The bond shall cover the same facilities covered by the warehouse~~
12 ~~license.~~

13 ~~C. The amount of the bond shall be determined by the total licensed capacity~~
14 ~~of the facilities to be covered by the bond, as follows:~~

15 ~~(1) Twenty cents per bushel for the first million bushels of licensed capacity.~~

16 ~~(2) Fifteen cents per bushel for the second million bushels of licensed~~
17 ~~capacity.~~

18 ~~(3) Ten cents per bushel for all bushels over two million bushels of licensed~~
19 ~~capacity.~~

20 ~~D. In any case, the net amount of the bond shall not be less than twenty-five~~
21 ~~thousand dollars and not more than five hundred thousand dollars.~~

22 ~~E. Each bond shall be approved by the commission prior to the issuance of~~
23 ~~the warehouse license.~~

24 ~~F. Each bond shall provide for ninety days written notice to the commission~~
25 ~~prior to cancellation.~~

26 ~~G. Whenever the licensed warehouse capacity changes, the amount of the~~
27 ~~bond shall be amended to conform with the current licensed capacity of the facility~~
28 ~~or facilities covered by the bond.~~

1 H. ~~The commission may accept alternate security in lieu of the bond required~~
2 ~~under Subsection C of this Section. The alternate security shall be in the same~~
3 ~~amount as the amount of the bond required in Subsection C of this Section and shall~~
4 ~~be in one of the following forms:~~

5 (1) ~~A certificate of deposit from a lending institution whose deposits are~~
6 ~~insured by an agency of the federal government.~~

7 (2) ~~An irrevocable letter of credit from a lending institution whose deposits~~
8 ~~are insured by an agency of the federal government.~~

9 (3) ~~A first mortgage on immovable property which is located in Louisiana~~
10 ~~and which has an appraised value of at least one hundred fifty percent of the amount~~
11 ~~of the bond. The appraisal shall be made by an independent appraiser jointly~~
12 ~~designated by the commission and the applicant. The applicant shall provide a title~~
13 ~~insurance policy issued by a company authorized to do business in Louisiana in the~~
14 ~~amount of the required bond with the commission being an insured under the policy.~~
15 ~~The applicant shall pay all fees involved in providing such security.~~

16 I. ~~The commission shall require the licensed warehouse to maintain~~
17 ~~provisional stock insurance issued by an insurance company authorized to do~~
18 ~~business in this state for protection against fire and other disasters in an amount~~
19 ~~proportionate to the licensed capacity of the facility, for the full market value of all~~
20 ~~commodities located in the licensed facility, which insurance shall provide for thirty~~
21 ~~days written notice to the commission prior to cancellation.~~

22 J. ~~The commission may suspend or revoke the license of any warehouse~~
23 ~~which fails to maintain the required bond and insurance in full force and effect.~~

24 R.S. 3:3409 §3410. Warehouse license required prior to operation of warehouse;
25 demonstration of competency; renewal; fees; licensed capacity; prohibition

26 A. No person shall operate a warehouse wherein any agricultural
27 commodities or other farm products are stored and a fee is charged for such storage
28 unless licensed under this Chapter or under the United States Warehouse Act, as
29 amended.

1 B. The applicant for a warehouse license shall file the application described
2 in R.S. 3:3408 and demonstrate its competency to engage in the business of
3 operating a warehouse.

4 C. Each license issued by the commission ~~under~~ pursuant to this Section
5 shall specify on the face thereof that it is a warehouse license and shall be posted in
6 all warehouse locations.

7 D. Each warehouse license issued by the commission shall be valid until
8 June 30 following date of issue and shall be renewed on or before July 1 of each
9 year.

10 E. The fee for the issuance and the annual renewal of any warehouse license
11 shall be two hundred dollars.

12 F. Each license shall cover all facilities which are owned and/or leased by
13 the entity to whom the license is issued and used by the entity in the conduct of its
14 business as a warehouse.

15 G. Each license shall specify the licensed capacity of each facility covered
16 by the license.

17 ~~H. The bond and provisional stock insurance required under R.S. 3:3410
18 shall be executed and filed with the commission prior to issuance of the license and
19 shall be kept in full force and effect as a condition of continuing licensure.~~

20 ~~I. Repealed by Acts 2010, No. 767, §2, eff. June 30, 2010.~~

21 ~~J.~~ H. No warehouse license shall be issued unless the facility to be licensed
22 is suitable for the storage of the agricultural commodity to be stored therein. The
23 commission may suspend or revoke any warehouse license whenever any licensed
24 facility becomes unsuitable for storage of the agricultural commodity for which it is
25 designed.

26 ~~K.~~ I. No person holding a warehouse license shall engage in any other
27 activities regulated under this Chapter unless he holds a license issued by the
28 commission to engage in such activities.

1 ~~R.S. 3:3411~~ §3410.1. License to buy or sell agricultural commodities; posting
2 requirements for grain dealers; duration of license; ~~bond required as a condition of~~
3 ~~a grain dealer license, time of filing, amount of bond, notice of cancellation, alternate~~
4 ~~security; failure to maintain bond and stock insurance~~

5 A. No person shall engage in the business of buying ~~and/or~~ or selling
6 agricultural commodities from producers unless licensed by the commission. ~~Cotton~~
7 ~~merchants shall be licensed as provided in R.S. 3:3411.1~~

8 B. Each applicant for a grain dealer license shall file the application
9 described in R.S. 3:3408 and demonstrate its competency to engage in the business
10 of buying or selling agricultural commodities prior to licensure.

11 C. Each license issued by the commission ~~under~~ pursuant to this Section
12 shall specify on the face thereof that it is a grain dealer license, and shall be posted
13 by the licensee in its principal place of business in this state.

14 D. Each license issued by the commission shall be valid until June thirtieth
15 following the date of issue and shall be renewed on or before July first of each year.

16 E. The fee for issuance and renewal of each license shall be two hundred
17 dollars.

18 ~~F. Prior to the issuance of the license, each applicant for a grain dealer~~
19 ~~license shall execute and file with the commission a surety bond in the amount of~~
20 ~~fifty thousand dollars, issued by a bonding or surety company authorized to do~~
21 ~~business in this state and conditioned upon (1) the faithful performance of all duties~~
22 ~~and obligations to producers, and (2) compliance with this Chapter and the rules and~~
23 ~~regulations adopted pursuant hereto. Each bond shall provide for ninety days written~~
24 ~~notice to the commission prior to cancellation.~~

25 ~~G. The commission may accept alternate security from grain dealers in lieu~~
26 ~~of the bond required under Subsection F of this Section. The alternate security shall~~
27 ~~be in the same amount as the amount of the bond required in Subsection F of this~~
28 ~~Section and shall be in one of the following forms:~~

1 ~~(1) A certificate of deposit from a lending institution whose deposits are~~
2 ~~insured by an agency of the federal government.~~

3 ~~(2) An irrevocable letter of credit from a lending institution whose deposits~~
4 ~~are insured by an agency of the federal government.~~

5 ~~(3) A first mortgage on immovable property which is located in Louisiana~~
6 ~~and which has an appraised value of at least one hundred fifty percent of the amount~~
7 ~~of the bond. The appraisal shall be made by an independent appraiser jointly~~
8 ~~designated by the commission and the applicant. The applicant shall provide a title~~
9 ~~insurance policy issued by a company authorized to do business in Louisiana in the~~
10 ~~amount of the required bond with the commission being an insured under the policy.~~
11 ~~The applicant shall pay all fees involved in providing such security.~~

12 ~~H. The commission shall require every licensed grain dealer to maintain a~~
13 ~~sufficient amount of provisional stock insurance issued by an insurance company~~
14 ~~authorized to do business in this state to provide adequate protection against fire and~~
15 ~~other disasters, for the full market value of all agricultural commodities physically~~
16 ~~in the possession of the grain dealer, which insurance shall provide for thirty days~~
17 ~~written notice to the commission prior to cancellation.~~

18 ~~I. The commission may suspend or revoke the license of any grain dealer~~
19 ~~who fails to maintain the required bond and insurance in full force and effect.~~

20 ~~J. F.~~ Each grain dealer who issues grades for grain shall employ a grain
21 grader and sampler who is certified to grade and sample the grains for which the
22 grain dealer issues grades.

23 ~~R.S. 3:3411.1~~ §3410.2. License required prior to engaging in business of
24 buying or selling cotton; security requirements; agent agreements

25 ~~A.(1)~~ A. Any cotton merchant who purchases or contracts to purchase, either
26 directly or through a cotton agent, cotton grown or to be grown in this state shall be
27 licensed by the commission before purchasing or contracting to purchase such
28 cotton. The license shall authorize cotton merchants and their cotton agents to
29 purchase or enter into contracts to purchase cotton grown or to be grown in this state.

1 ~~(2)(a)~~ B. Each license issued by the commission under this Section shall
2 specify on the face thereof that it is a cotton merchant license. A copy of the license
3 shall be posted by the licensee in all places of business.

4 ~~(b)~~ C. Each license issued by the commission shall be valid until June
5 thirtieth following the date of issue and shall be renewed on or before July first of
6 each year.

7 ~~(c)~~ D. The fee for issuance and renewal of each license shall be two hundred
8 dollars.

9 ~~B.(1) Before such a license shall be issued to a cotton merchant, the~~
10 ~~applicant shall furnish a bond in the amount of fifty thousand dollars conditioned~~
11 ~~upon:~~

12 ~~(a) The good faith performance of contracts entered into with cotton farmers~~
13 ~~for cotton sold.~~

14 ~~(b) Compliance with this Chapter and the rules and regulations adopted~~
15 ~~pursuant hereto.~~

16 ~~(2) The premiums and all expenses of the bond shall be borne by the cotton~~
17 ~~merchant. The bond shall be signed by a surety company authorized to do business~~
18 ~~in this state with security in favor of the commission, and shall be subject to the~~
19 ~~approval of the commission as to form and sufficiency. Such bond shall be filed~~
20 ~~with the commission where it shall be subject to public inspection. Each bond shall~~
21 ~~provide for no less than ninety days written notice to the commission prior to~~
22 ~~cancellation.~~

23 ~~C.(1) The commission may accept alternate security from a cotton merchant~~
24 ~~in lieu of the bond required under Subsection B of this Section. The alternate~~
25 ~~security shall be in the same amount as the bond required in Subsection B of this~~
26 ~~Section and shall be either:~~

27 ~~(a) A certificate of deposit from a lending institution whose deposits are~~
28 ~~insured by an agency of the federal government.~~

1 ~~(b) An irrevocable letter of credit from a lending institution whose deposits~~
2 ~~are insured by an agency of the federal government.~~

3 ~~(c) Any other security determined to be adequate by the commission.~~

4 ~~(2) The cotton merchant shall pay all fees involved in providing such~~
5 ~~security.~~

6 ~~D.~~ E. The commission may require the cotton merchant to submit to an
7 examination and audit of its accounts, books, and records.

8 E. F. No cotton merchant shall purchase cotton grown or to be grown by
9 producers in this state without having obtained the prescribed license from the
10 commission as described in Subsection A of this Section. The commission may, for
11 cause, revoke the license.

12 F. G. Each cotton agent shall have a written notarized agency agreement with
13 all cotton merchants on whose behalf said cotton merchant acts. No cotton agent
14 shall purchase cotton grown or to be grown in this state until he has obtained a
15 written notarized agency agreement in a form approved by the commission. The
16 commission may require the cotton agent entering into an agency agreement to
17 submit to an examination and audit of his accounts, books, and records. The cost of
18 any examination and audit shall be borne by the cotton agent. The commission may,
19 for cause, revoke the authority of the cotton agent under any written notarized
20 agency agreement.

21 ~~R.S. 3:3412~~ §3411. Grounds for not issuing license

22 The commission may refuse to issue a license to any applicant for a
23 warehouse license, cotton merchant license, or grain dealer license if the commission
24 finds that the warehouse proposed for licensure is not suitable for the storage of
25 agricultural commodities, or if the commission finds that the applicant for a
26 warehouse license, cotton merchant license, or a grain dealer license cannot
27 demonstrate a net worth of at least one hundred thousand dollars, or is incompetent
28 to conduct such warehouse, cotton merchant, or grain dealer business in accordance
29 with this Chapter or the rules and regulations adopted pursuant hereto; or if there is

1 any other sufficient reason within the intent of this Chapter for not issuing such
2 warehouse, cotton merchant, or grain dealer license.

3 ~~R.S. 3:3410.1 §3412.~~ Self-insurance fund

4 A. The commission may operate a program of self-insurance for warehouses,
5 grain dealers, and cotton merchants licensed under this Chapter for the sole purpose
6 of ensuring the availability of funds necessary to meet a licensee's obligations with
7 respect to the reimbursement of any person who stored agricultural commodities in
8 the warehouse or reimbursement of a producer who sold agricultural commodities
9 to a licensee, and who was not fully compensated.

10 B. ~~The insurance shall be limited to the amount of the bonds required by R.S.~~
11 ~~3:3410, 3411, and 3411.1, and shall be accepted in lieu of those bonds. The~~
12 insurance coverage claims against a licensee related to insolvency shall be limited
13 to the amount of security required of the licensee by R.S. 3:3409.

14 C. The commission shall adopt rules and regulations, in accordance with the
15 Administrative Procedure Act, necessary for the efficient administration of the self-
16 insurance program. Such rules shall include:

17 (1) Procedures for claims on the self-insurance program.

18 (2) Reimbursement limitations.

19 (3) Administration of the self- insurance program.

20 (4) The establishment of civil penalties for violations of the provisions of the
21 self-insurance program.

22 D. A person or producer shall be eligible to receive indemnity payments
23 from the self-insurance program if the licensee becomes insolvent and, as a result of
24 the insolvency, is not fully compensated for sums owed to him by the licensee
25 pursuant to any contract between the person or producer and the licensee involving
26 agricultural commodities.

27 E. Upon a determination of the insolvency of a licensee, the commission
28 shall make the proceeds of the self-insurance program available for use in meeting
29 the licensee's obligations specified in Subsection F of this Section.

1 F. If claims for indemnity payments from the self-insurance program exceed
2 the amount of available proceeds, the commission shall prorate the claims as
3 provided for in the Administrative Procedure Act and pay the prorated amounts. As
4 future proceeds are collected, the commission shall continue to forward indemnity
5 payments to each eligible person until the person receives the maximum amount
6 payable in accordance with this Section.

7 G. Expenses incurred by the commission in administering the self-insurance
8 program shall be reimbursable from the funds collected under the program.
9 Administrative expenses shall be paid in priority to all other payments.

10 H. A licensee who knowingly or intentionally refuses or fails to pay into the
11 self-insurance program any funds due pursuant to this Chapter shall be subject to
12 civil penalties.

13 I. Money paid from the self-insurance program in satisfaction of a valid
14 claim shall constitute a debt obligation of the licensee against whom the claim was
15 made. The commission may take action on behalf of the self-insurance program
16 against such person to recover the amount of payment made plus reasonable costs,
17 including court costs, incurred by the commission in obtaining recovery; legal
18 interest from the date of payment of any claim; and reasonable attorney fees. As a
19 condition of payment of a claim from the self-insurance program, the claimant shall
20 subrogate his interest, if any, to the commission in a cause of action against all
21 parties, to the amount of the loss that the claimant was reimbursed by the self-
22 insurance program.

23 ~~C.~~ J. The commission may charge fees for participation in the program
24 established in this Section. The amount of the fees shall be fixed by rule adopted in
25 accordance with the Administrative Procedure Act.

26 ~~D.~~ K. The fees charged under this Section shall be subject to the following
27 provisions:

28 (1) All fees shall be deposited immediately upon receipt in the state treasury.

1 (2) After compliance with the requirements of Article VII, Section 9 of the
2 Constitution of Louisiana relative to the Bond Security and Redemption Fund, and
3 prior to monies being placed in the state general fund, an amount equal to that
4 deposited as required by Paragraph (1) of this Subsection shall be credited to a
5 special fund hereby created in the state treasury to be known as the Agricultural
6 Commodity Commission Self-Insurance Fund. The monies in this fund shall be used
7 solely as provided in Paragraph (3) of this Subsection and only in the amounts
8 appropriated by the legislature. All unexpended and unencumbered monies in this
9 fund at the end of each fiscal year shall remain in this fund. The monies in this fund
10 shall be invested by the state treasurer in the same manner as monies in the state
11 general fund, and interest earned on the investment of these monies shall be credited
12 to this fund, again, following compliance with the requirement of Article VII,
13 Section 9 relative to the Bond Security and Redemption Fund.

14 (3) The monies in the Agricultural Commodity Commission Self-Insurance
15 Fund shall be used solely for the administration and operation of the program of self
16 insurance provided for in this Section.

17 ~~R.S. 3:3410.2~~ §3412.1. Grain and Cotton Indemnity Fund; creation; assessment;
18 rules and regulations; suspension of assessment; eligibility for
19 reimbursement; availability of money; prorated claims; reimbursement for
20 administrative expenses; failure to pay; subrogation

21 A. The commission may operate a Grain and Cotton Indemnity Fund for
22 grain dealers and cotton merchants licensed under this Chapter for the sole purpose
23 of having funds available for use in meeting the licensee's obligations with respect
24 to the reimbursement of any producer who sold agricultural commodities to the
25 licensee and who was not fully compensated.

26 B. The commission shall charge an assessment at the rate of one twenty-fifth
27 of one percent on the value of all agricultural commodities regulated under this
28 Chapter which are sold to grain dealers and cotton merchants. The assessments shall
29 be due and payable to the commission by the licensee at the first point of sale.

1 C. The assessments charged under this Section shall be subject to the
2 following provisions:

3 (1) All assessments collected pursuant to this Section shall be deposited
4 immediately upon receipt in the state treasury.

5 (2) After compliance with the requirements of Article VII, Section 9 of the
6 Constitution of Louisiana relative to the Bond Security and Redemption Fund, and
7 prior to monies being placed in the state general fund, an amount equal to that
8 deposited as required by Paragraph (1) of this Subsection shall be credited to a
9 special fund hereby created in the state treasury to be known as the Grain and Cotton
10 Indemnity Fund. The monies in this fund shall be used solely as provided in
11 Paragraph (3) of this Subsection and only in the amounts appropriated by the
12 legislature. All unexpended and unencumbered monies in this fund at the end of
13 each fiscal year shall remain in this fund. The monies in this fund shall be invested
14 by the state treasurer in the same manner as monies in the state general fund, and
15 interest earned on the investment of these monies shall be credited to this fund,
16 again, following compliance with the requirement of Article VII, Section 9 of the
17 Constitution of Louisiana relative to the Bond Security and Redemption Fund.

18 (3) The monies in the Grain and Cotton Indemnity Fund shall be used solely
19 for the administration and operation of the Grain and Cotton Indemnity Fund
20 provided for in this Section.

21 (4) The assessment shall not apply to grain or cotton purchased or contracted
22 prior to August 15, 2008.

23 D. The commission shall adopt rules and regulations, in accordance with the
24 Administrative Procedure Act, necessary for the efficient administration of the Grain
25 and Cotton Indemnity Fund. Such rules shall include:

26 (1) Procedures for claims on the Grain and Cotton Indemnity Fund.

27 (2) Reimbursement limitations ~~for each producer.~~

28 (3) Any rules and regulations necessary for the administration of the Grain
29 and Cotton Indemnity Fund.

1 (4) The establishment of civil penalties for violations of this Section.

2 E. At the end of the calendar quarter in which the Grain and Cotton
3 Indemnity Fund reaches a level of six million dollars, the commission shall suspend
4 collection of the assessment required by this Section. If after suspension of
5 collection the balance in the fund is less than three million dollars, the commission
6 shall require collection of the assessment.

7 F. A producer shall be eligible to receive indemnity payments from the Grain
8 and Cotton Indemnity Fund if:

9 (1) The licensed grain dealer becomes insolvent after January 1, 2008.

10 (2) The licensed cotton merchant becomes insolvent.

11 (3) The licensed grain dealer or cotton merchant, as a result of the
12 insolvency, does not fully compensate the producer in accordance with a sale of of
13 agricultural commodities.

14 G. Upon the insolvency of a licensed grain dealer or cotton merchant, the
15 commission shall make the proceeds of the Grain and Cotton Indemnity Fund
16 available for use in meeting the licensee's obligations with respect to the
17 reimbursement of any producer who sold grain or cotton to the licensee and who was
18 not fully compensated.

19 H. If claims for indemnity payments from the Grain and Cotton Indemnity
20 Fund exceed the amount in the fund, the commission shall prorate the claims and pay
21 the prorated amounts. As future assessments are collected, the commission shall
22 continue to forward indemnity payments to each eligible person until the person
23 receives the maximum amount payable in accordance with this Section.

24 I. Expenses incurred by the commission in administrating the Grain and
25 Cotton Indemnity Fund shall be reimbursable from the fund. Administrative
26 expenses shall be paid in priority to all other payments.

27 J. Any licensee who knowingly or intentionally refuses or fails to collect the
28 assessment required under this Section or to submit any assessment collected from

1 producers to the commission for deposit in the Grain and Cotton Indemnity Fund
2 shall be subject to civil penalties.

3 K. Money paid from the Grain and Cotton Indemnity Fund in satisfaction of
4 a valid claim constitutes a debt obligation of the person against whom the claim was
5 made. The commission may take action on behalf of the fund against a person to
6 recover the amount of payment made, plus ~~costs and attorney fees.~~ Any recovery for
7 reimbursement to the fund shall include interest computed at the United States
8 Treasury two-year note rate following rules promulgated by the department. Upon
9 reasonable costs, including court costs, incurred by the commission in obtaining
10 recovery, legal interest from the date of payment of any claim, and reasonable
11 attorney fees. As a condition of payment of a claim from the Grain and Cotton
12 Indemnity Fund, the claimant shall subrogate its interest, if any, to the commission
13 in a cause of action against all parties, to the amount of the loss that the claimant was
14 reimbursed by the fund.

15 * * *

16 §3414.4. Prompt payment for cotton; suit on bond; private action; attorney fees

17 A. Any cotton merchant or cotton agent who purchases cotton from a
18 producer shall pay the producer for the cotton within ten working days after the day
19 the cotton is delivered, or pursuant to the contract of sale.

20 B. Any producer from whom cotton was purchased or contracted to be
21 purchased and to whom money is due for cotton sold for future delivery as a result
22 of the nonperformance of the cotton merchant or cotton agent shall ~~have recourse on~~
23 ~~the bond or alternate security required to be furnished by this Chapter to the extent~~
24 ~~of the loss suffered by the producer, but such recovery against the bonding company~~
25 ~~or alternate security shall not exceed the amount of the bond or the alternate security~~
26 be entitled to submit a claim on the security to the commission pursuant to its
27 administrative procedures. Limitation of liability as to the ~~bonding company or~~
28 ~~alternate~~ security shall not restrict suits against the cotton merchant or cotton agent
29 for losses incurred in excess of the amount of the ~~bond or alternate~~ security. Suit

1 may be brought in any parish where the crop or any part thereof was grown or any
 2 other venue authorized by law. ~~One or more recoveries upon such bond or alternate~~
 3 ~~security shall not vitiate same, but no recovery nor the aggregate of multiple~~
 4 ~~recoveries upon such bond or alternate security shall ever exceed the full amount~~
 5 ~~thereof.~~ Upon suits being filed in excess of the amount of the bond or alternate
 6 security, the commission may require a new ~~bond or other~~ security in an amount
 7 sufficient to secure the aggregate amount of such suits, and if such additional
 8 security is not given within thirty days of demand therefor, the commission may
 9 cancel the license of the cotton merchant. In the case of the insolvency of a cotton
 10 merchant, any cotton producer or cotton landowner having contracts for future
 11 delivery shall be entitled to submit a claim on the security to the commission
 12 pursuant to its administrative procedures and participate in the recovery on the bond
 13 ~~or alternate security funds~~ to the extent of his pro rata losses under his contract.

14 C. Should the ~~bond or alternate~~ security proceeds recovered be insufficient
 15 to satisfy all claims in full, any producer who has received only partial satisfaction
 16 shall retain all other rights possessed under the law without prejudice.

17 D. The commission may bring an action on the ~~bond~~ security ~~on behalf of~~
 18 ~~the cotton producers or cotton landowners~~ in any court of competent jurisdiction.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 765 Engrossed

2015 Regular Session

Anders

Abstract: Creates security and provisional stock insurance requirements for warehouse, grain dealers, and cotton merchant licenses. Removes the bond requirement from the Agricultural Commodities Dealer and Warehouse Law and replaces it with security and provisional stock insurance requirements. Creates a purpose for the self-insurance fund, and adds additional guidelines that the Louisiana Agricultural Commodities Commission must follow. Provides guidelines for reimbursement for agricultural commodities from the self-insurance fund and the grain and cotton indemnity fund. Provides a definition of "security".

Present law requires agricultural warehouses and grain dealers to be bonded as a condition for a license. Proposed law modifies present law replacing the bond requirement with a requirement that the warehouses, grain dealers, and cotton merchants provide security and provisional stock insurance as a condition for a license.

Proposed law modifies present law by changing the requirement for a commodities dealer appointed to the La. Agricultural Commodities Commission from a commodity broker who is licensed to trade on a commodity exchange and familiar with the trading of future contracts affecting commodities to a commodity trader who executes future trades related to a hedging program for purchases or sales of commodities.

Present law requires the commission to operate a program of self-insurance for warehouses, grain dealers, and cotton merchants limited to the amount of bonds required in present law. Proposed law modifies present law by removing the bond requirement and adding guidelines for reimbursement.

Proposed law modifies present law by adding the purpose of the self-insurance fund as solely for having funds available for use in meeting a licensee's obligations for reimbursement of any person who stored agricultural commodities in a warehouse or a producer who sold agricultural commodities to the licensee and was not fully compensated.

Present law authorizes the commission to take action on behalf of the Grain and Cotton Indemnity Fund against a person to recover the amount of payment made, plus costs and attorney fees, with interest computed at the U.S. Treasury two-year note rate. Proposed law replaces present law by authorizing the commission to recover the amount of payment made, plus reasonable costs, including court costs, legal interest, and reasonable attorney fees.

Present law grants recourse on the bond or alternate security required to the extent of the loss suffered by the producer to any producer from whom cotton was purchased or contracted to be purchased as a result of nonperformance of the cotton merchant or cotton agent.

Proposed law replaces present law by directing the producer to submit a claim on the security to the commission pursuant to its administrative procedures as a result of nonperformance of the cotton merchant or cotton agent.

Proposed law provides a definition for "security" for purposes of the agricultural commodities dealer and warehouse law.

Proposed law redesignates present law as follows:

From R.S. 3:3409 to R.S. 3:3410

From R.S. 3:3410.1 to R.S. 3:3412

From R.S. 3:3410.2 to R.S. 3:3412.1

From R.S. 3:3411 to R.S. 3:3410.1

From R.S. 3:3411.1 to R.S. 3:3410.2

From R.S. 3:3412 to R.S. 3:3411

(Amends R.S. 3:3402(17) and (18), 3403(A)(5), 3405(A)(3), (4), and (B)(7), 3409-3412, and 3414.4; Adds R.S. 3:3402(19) and 3412.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Agriculture, Forestry, Aquaculture, and Rural Development to the original bill:

1. Make technical changes.

2. Change the requirement for a commodities dealer appointed to the La. Agricultural Commodities Commission from a commodity broker who is licensed to trade on a commodity exchange and who is familiar with the trading of future contracts affecting commodities to a commodity trader who executes future trades related to a hedging program for purchases or sales of commodities.