

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 971 Session of
2003

INTRODUCED BY HARRIS, BASTIAN, BENNINGHOFF, CAPPELLI, CREIGHTON,
DeWEESE, EGOLF, GEIST, GORDNER, HERSHEY, KELLER, LEWIS,
McILHATTAN, O'NEILL, PALLONE, REED, SATHER, SEMMEL, STERN,
THOMAS, TIGUE, WASHINGTON AND YOUNGBLOOD, MARCH 25, 2003

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
MARCH 25, 2003

AN ACT

1 Providing for grain dealer bonding; imposing penalties; and
2 providing remedies.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Grain Dealer
11 Bonding Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Bailee." A person to whom grain is delivered in trust for
17 storage with title remaining in the name of the depositor.

18 "Bailor." A person who delivers grain to a bailee in trust
19 for storage grain with title remaining in the name of the
20 depositor.

21 "Bond." An agreement pledging surety for financial loss
22 which is:

23 (1) caused by the act or default of a dealer; and

24 (2) meets all requirements of this act.

25 "Broker." A person that for commission or other compensation
26 markets grain or solicits or negotiates the marketing of grain
27 for or on behalf of a producer.

28 "Buyer-warehouse." A person that operates as both a
29 warehouse and grain handler.

30 "Dealer." Includes any person that is a broker, buyer-

1 warehouse, grain handler or warehouse. The term does not include
2 the following:

3 (1) A person that buys or markets less than 5,000
4 bushels of grain annually.

5 (2) A person that buys grain for the sole purpose of
6 feeding livestock or poultry that the person owns or is
7 responsible to raise, keep or maintain, if the person:

8 (i) derives a major portion of the person's income
9 from selling or raising livestock or poultry or their
10 byproducts; and

11 (ii) does not offer storage, deferred pricing,
12 delayed payment or contracts or other instruments that
13 are linked to the commodity futures or commodity options
14 market.

15 (3) A person whose contracts for grain are exclusively
16 subject to the Perishable Agricultural Commodities Act, 1930
17 (46 Stat. 531, 7 U.S.C. § 499a et seq.).

18 "Default." Includes the following:

19 (1) Noncompliance by the dealer with the bonding
20 requirements of this act.

21 (2) Failure by the dealer to make timely payment of
22 money or timely delivery of grain due under obligations to
23 depositors.

24 (3) The filing of any action in bankruptcy by or against
25 the dealer.

26 (4) An action to appoint a trustee, receiver or other
27 person to manage the fiscal affairs of the dealer.

28 (5) A public declaration by the dealer of insolvency.

29 (6) In the absence of a good faith dispute, failure by
30 the dealer to pay debts in the ordinary course of business.

(7) An attempt by the dealer to dissolve business operations.

(8) An attempt by the dealer to make a transfer or incur a debt that would be fraudulent as to any producer under the provisions of 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers).

"Deferred price agreement." A written contract between a dealer and a depositor which covers the sale and transfer of title of grain and states in its written terms the service charges and the method for pricing the grain at a later date.

"Deferred pricing." A purchase by a dealer in which title to the grain passes to the dealer according to the terms of a deferred price agreement and the price to be paid to the depositor is not determined:

- (1) at the time the grain is received by the dealer; or
- (2) within ten days of receipt.

"Depositor." Any of the following:

(1) A person that:

(i) delivers grain to a dealer for storage, conditioning, shipment or sale; or

(ii) delivers grain to a dealer pursuant to an agreement in which the dealer will market the grain delivered.

(2) A person that owns or is the legal holder of a ticket or receipt.

(3) A dealer that stores grain owned solely by the dealer or owned, jointly or in common with others in a facility owned or controlled by that dealer or another dealer.

"Facility." A location which is used by a dealer for storage

1 of grain or grain assets or for transaction of business
2 operations. With respect to locations outside this Commonwealth,
3 the term shall only include the proportionate share of the
4 location's grain storage capacity which is holding or storing
5 grain for Pennsylvania depositors.

6 "Farm organization." A Statewide organization representing
7 and having as its primary members persons engaged in
8 agricultural production.

9 "Grain." Includes corn, wheat, oats, barley, rye, sorghum,
10 sunflower, speltz, canola, millet, buckwheat, safflower,
11 rapeseed, triticale and flax. The term does not include canning
12 crops for processing or grain which is purchased for sale as
13 seed.

14 "Grain bank grain." Grain which is:

15 (1) owned by a depositor for use in the formulation of
16 feed; and

17 (2) stored by the warehouse to be returned to the
18 depositor on demand.

19 "Grain buyer." A person that is engaged in the business of
20 grain handling.

21 "Grain handling." Any of the following:

22 (1) Engaging in or participating in the business of
23 purchasing grain for sale, resale, processing or any other
24 use.

25 (2) Engaging in or participating in the business of
26 receiving grain or title or equity in grain for the purpose
27 of marketing or sale to another.

28 (3) Operating as a bailee for the receiving, storing,
29 shipping or conditioning of grain.

30 "Negotiable receipt." A receipt which states that the grain

1 received will be delivered to the bearer of the receipt.

2 "Nonnegotiable receipt." A receipt which does not state that
3 the grain received will be delivered to the bearer of the
4 receipt.

5 "Obligation." Money due to be paid or grain due to be
6 delivered by the dealer to a depositor as a result of a sales,
7 marketing, bailment or other agreement pursuant to which grain
8 has been delivered by the depositor to the dealer.

9 "Official grain standards of the United States." The
10 standards of quality or condition for grain fixed and
11 established by the United States Secretary of Agriculture under
12 the United States Grain Standards Act (39 Stat. 482, 7 U.S.C. §
13 71 et seq.).

14 "Person." Any individual, partnership, corporation,
15 association or other form of business enterprise.

16 "Premises." A definite portion of land with its
17 appurtenances, including any structure erected on the land.

18 "Producer." A person that is involved in the agricultural
19 production of grain on land which the person owns or leases.

20 "Receipt." A document, whether negotiable or nonnegotiable,
21 issued by a dealer for grain received by the dealer for storage
22 under a bailment agreement.

23 "Storage." The deposit of grain into a facility either for
24 the account of the dealer operating the facility or for the
25 account of the depositor.

26 "Ticket." A document issued by a dealer which indicates the
27 amount of grain received by the dealer.

28 "Warehouse." A facility or group of facilities which are:
29 (1) used for receiving, storing, shipping or handling
30 grain; or

1 (2) used for grain storage.

2 Section 3. Bonding requirement.

3 (a) General.--A dealer must, as a condition of doing
4 business in this Commonwealth, obtain a bond issued by a surety
5 company authorized to do business in this Commonwealth under
6 this section. No person may conduct business as a dealer or
7 perform any other activity related to operation as a dealer
8 unless the person has obtained and has in effect a bond which
9 meets the requirements of this act.

10 (b) Conditions.--A bond obtained under this act must comply
11 with all of the following:

12 (1) Be conditioned upon the dealer's faithful
13 performance of all obligations to depositors arising from
14 grain handling.

15 (2) Apply to all obligations of the dealer arising from
16 the effective date of the bond and thereafter, regardless of
17 whether the dealer's facility or facilities exist on the
18 effective date of the bond or are thereafter assumed prior to
19 the date the bond is canceled.

20 (3) Continuously remain in effect against the dealer,
21 including times during which the dealer violates this act,
22 temporarily suspends business operations or is subject to a
23 cease and desist order.

24 (4) Not be subject to cancellation, except as provided
25 in section 6.

26 (c) Amount of the bond.--

27 (1) Except as set forth in paragraph (2), the amount of
28 the bond must be the greater of:

29 (i) the dealer's highest monthly average of
30 outstanding obligations to depositors incurred during the

1 previous calendar year; or

2 (ii) the amount calculated in subparagraph (i) times
3 the ratio of the maximum volume of grain that the dealer
4 is currently capable of holding or storing at all
5 facilities operated by the dealer to the maximum volume
6 of grain which the dealer was capable of holding or
7 storing at all facilities operated by the dealer on
8 December 31 of the previous calendar year.

9 (2) In no event may the bond be less than \$10,000 for
10 each facility currently being used by a dealer to hold or
11 store grain.

12 (d) Facilities.--No dealer may operate a facility for which
13 bonding has not been secured in the amount prescribed in
14 subsection (c).

15 Section 4. Acquisition of additional facility.

16 Notwithstanding the provisions of section 7 to the contrary,
17 a dealer may not hold or store grain in an additional facility
18 or a facility which the dealer has not continuously used for
19 holding or storage of grain unless the dealer has increased the
20 amount of the bond in accordance with section 3(c).

21 Section 5. Posting of bond.

22 (a) Required postings and notices.--A dealer shall post a
23 copy of its bond at each facility operated by the dealer within
24 this Commonwealth. The copy shall be posted in a conspicuous
25 place, accessible for observation by persons depositing and
26 marketing grain. The dealer shall provide a copy of the bond,
27 upon request, to any depositor or prospective depositor.

28 (b) Content of posting.--The posting shall include a copy of
29 the bond and denote all of the following:

30 (1) The name and address of the main business office of

1 the dealer.

2 (2) The name and address of all facilities the dealer
3 operates.

4 (3) The amount of the bond secured by the dealer.

5 (4) A statement that the dealer is in compliance with
6 this act.

7 (c) Prohibited postings and notices.--

8 (1) A dealer may not do any of the following:

9 (i) Display or provide or attempt to display or
10 provide a copy of a bond which is suspended, canceled,
11 revoked or otherwise no longer in effect.

12 (ii) Direct or attempt to direct a person to display
13 or provide a copy of a bond which is suspended, canceled,
14 revoked or otherwise no longer in effect.

15 (iii) Give out or post or direct a person to give
16 out or post false or misleading information concerning
17 the bond or the dealer's operations.

18 (2) Each violation of paragraph (1) shall be a separate
19 offense.

20 Section 6. Cancellation of bond.

21 A bond may only be canceled after the expiration of at least
22 30 days from the date the surety mailed a notice of intent to
23 cancel, by registered mail, to the dealer.

24 Section 7. Compliance.

25 By January 31 of each year, a dealer shall review and
26 determine whether the amount of bond secured by the dealer
27 complies with the amount required under section 3. Upon
28 determination that the amount of the bond is insufficient to
29 comply with section 3, the dealer shall secure the additional
30 bonding required under section 3 by April 30 of the year in

1 which the determination is made.

2 Section 8. Depositor lien.

3 (a) Liens against the bond.--A lien shall exist against a
4 bond secured by a dealer in favor of all depositors to whom the
5 dealer has outstanding obligations. The lien shall arise at the
6 time of delivery of the grain by a depositor and shall terminate
7 when the outstanding obligation has been satisfied. No security
8 interest, lien or other encumbrance shall defeat the lien
9 established under this subsection. The priority of distribution
10 of bond assets among respective depositors shall not relate to
11 the date the depositor's claim arises, but shall be determined
12 by the priority of distribution established in subsection (b).

13 (b) Distribution of bond assets.--To the extent that the
14 amount of bond assets are insufficient to satisfy all claims by
15 depositors arising from outstanding obligations by the dealer,
16 the following shall determine the order of distribution of bond
17 assets:

18 (1) First priority for distribution of bond assets shall
19 be:

20 (i) Depositors whose claims arise from an agreement
21 for sale of grain to the dealer or marketing of grain by
22 the dealer and who possess receipts or tickets covering
23 grain owned, held or stored by the dealer.

24 (ii) Depositors that possess receipts or tickets
25 indicating ownership of grain under a bailment agreement
26 or other storage obligation by the dealer.

27 (iii) Depositors that surrendered receipts to the
28 dealer as a part of a grain transaction but that were not
29 fully paid for the grain.

30 (2) Second priority for distribution of bond assets

shall be to depositors that:

(i) possess written evidence of agreement for sale of grain to the dealer or marketing of grain by the dealer other than receipts or tickets, including delayed price agreements or similar grain delivery contracts; and

(ii) completed delivery and pricing within 30 days immediately prior to the default of the dealer.

(3) To the extent not necessary to satisfy depositors having first and second priority of distribution, depositors that possess written evidence of agreement for sale of grain to the dealer or marketing of grain by the dealer shall participate in the pro rata distribution of the remainder of the bond assets in an amount not to exceed the value of their claims.

(c) Resolution of claims.--Adversary proceedings to recover bond assets pursuant to the lien established in subsection (a) may be filed by the depositor in a court of competent jurisdiction.

Section 9. Issuance of receipts or tickets by dealer.

(a) General requirements for issuance.--A dealer shall issue a receipt or ticket for each delivery of grain received by the dealer which results in an obligation by the dealer to a depositor. The receipt or ticket shall be issued at the time the grain is received by the dealer. The dealer shall inspect, grade and determine the net weight or volume of grain being received by the dealer prior to issuance of the receipt or ticket.

(b) Requirement for issuance of receipt.--A dealer issuing a ticket for grain received for storage under a bailment agreement shall, upon request of a depositor to whom a ticket was issued, issue a receipt for the grain described in the ticket. The

1 dealer shall not be required to issue a receipt for a ticket
2 which describes grain bank grain.

3 (c) Contents of receipts.--A receipt shall contain the
4 following:

5 (1) The name of the dealer receiving the grain and the
6 location of the facility where the grain is received.

7 (2) The date of issuance of the receipt.

8 (3) The type, grade and net weight or volume of the
9 grain received by the dealer as established by the official
10 grain standards of the United States.

11 (4) The rate of storage charges or the basis for the
12 charges.

13 (5) A statement that the receipt is negotiable or
14 nonnegotiable, conspicuously printed or stamped on it.

15 (6) If the receipt is negotiable, language that the
16 grain is deliverable or payable to the bearer of the
17 document.

18 (7) The signature of the dealer or an authorized agent.

19 (8) The name of the depositor from whom the grain is
20 received and the signature of the depositor or an authorized
21 agent.

22 (9) The payment terms.

23 (10) The price or value of the grain received or, if the
24 price or value is not known or is uncertain at the time of
25 delivery, the formula for calculating the price or value at a
26 future date.

27 (11) The time that payment or transfer of grain by the
28 dealer is due.

29 (12) A statement that the dealer has the right to
30 terminate storage and collect outstanding charges against any

1 lot of grain with 60 days' notice to the depositor.

2 (13) A statement that the dealer is required to provide
3 a copy of any bond secured to protect the deposition of grain
4 for which the receipt is issued to the depositor, owner or
5 receipt holder or ticket holder upon request.

6 (d) Contents of tickets.--A ticket shall contain the
7 following:

8 (1) The name of the dealer receiving the grain and the
9 location of the facility where the grain is received.

10 (2) The date of issuance of the receipt.

11 (3) The type, grade and net weight or volume of the
12 grain delivered as established by the official grain
13 standards of the United States.

14 (4) A statement conspicuously printed or stamped on the
15 ticket that the ticket is not a negotiable receipt or
16 negotiable instrument.

17 (5) The signature of the dealer or an authorized agent.

18 (6) The name of the depositor from whom the grain is
19 received and the signature of the depositor or an authorized
20 agent.

21 (7) A statement on the ticket which accurately describes
22 that the grain is being received by the dealer pursuant to a
23 sales, marketing, bailment or other agreement between the
24 dealer and depositor.

25 (8) The price or value of the grain received or if the
26 price or value is not known or is uncertain at the time of
27 delivery, the formula for calculating the price or value at a
28 future date.

29 (9) A statement that the dealer has the right to
30 terminate storage and collect outstanding charges against any

1 lot of grain with 60 days' notice to the depositor.

2 (10) A statement that the dealer is required to provide
3 a copy of any bond secured to protect the deposit of grain
4 for which the receipt is issued to the depositor, owner or
5 receipt holder or ticket holder upon request.

6 Section 10. Commingling of different lots.

7 Different lots of the same type of grain delivered to a
8 dealer may be commingled by type of grain unless the receipt or
9 ticket states that the identity of the lot of grain is to be
10 preserved.

11 Section 11. Return of grain to depositor.

12 Upon demand and after payment of all applicable charges,
13 grain shall be returned to the depositor at the facility where
14 the grain was received unless agreed otherwise in writing.

15 Section 12. Replacement receipts or tickets.

16 (a) General.--Except as provided in subsection (b), a dealer
17 may not issue a receipt or ticket for any grain for which a
18 previous receipt or ticket has been issued.

19 (b) Lost or stolen receipts or tickets.--

20 (1) If a receipt or ticket is lost, stolen or destroyed,
21 the dealer shall, upon request, issue to the depositor whose
22 interests are currently protected a replacement receipt or
23 ticket. The replacement receipt or ticket entitles the owner
24 to all rights appertaining to the original instrument being
25 replaced. The replacement receipt or ticket shall contain the
26 same information as was contained in the original instrument
27 and shall conspicuously state that the instrument is a
28 replacement for the original receipt or ticket.

29 (2) As a condition for replacement of a negotiable
30 receipt, the issuing dealer may require the person claiming

1 an interest in the original receipt to do the following:

2 (i) Provide a written affidavit which:

3 (A) confirms the person is lawfully entitled to
4 the original receipt and has not negotiated or
5 endorsed the original receipt;

6 (B) describes the circumstances under which the
7 original receipt was lost or destroyed; and

8 (C) if the receipt was lost, states the actions
9 taken by the person to find the receipt.

10 (ii) Indemnify the dealer for all loss or liability
11 which the dealer may incur as a result of the issuance of
12 a replacement receipt.

13 (iii) Pay reasonable administrative expenses related
14 to the issuance of a replacement receipt.

15 (c) Warranty.--By issuance of a replacement receipt or
16 ticket, the dealer warrants all of the following:

17 (1) The replacement instrument accurately replicates the
18 instrument originally issued.

19 (2) The replacement instrument imposes no greater
20 obligation on the dealer than the obligation imposed under
21 the original instrument.

22 Section 13. Dealer going out of business or suspending
23 operations.

24 (a) Suspension or termination of operations.--A dealer that
25 intends to suspend or terminate operations shall, at least 30
26 days prior to the date of the suspension or termination, notify
27 all depositors and all known holders of receipts and tickets
28 issued by the dealer.

29 (b) Holder of receipt not known.--If all holders of receipts
30 are not known, the dealer shall publish notices of suspension or

1 termination on two consecutive weeks at least 14 days in advance
2 of suspension or termination in newspapers of general
3 circulation in locations where each facility operated by the
4 dealer in this Commonwealth is situated. If no newspaper is
5 published in the facility's location, the dealer shall publish
6 the required notices in a newspaper of general circulation in
7 the county in which the dealer's facility is located.

8 Section 14. Disclosure of interests.

9 (a) Lien, mortgage or title.--A person may not knowingly
10 deposit grain to which the person does not have title or upon
11 which there is a lien or mortgage, either for sale or for
12 storage under a bailment agreement, without disclosing that the
13 person does not have title or that the grain is subject to lien
14 or mortgage.

15 (b) Dealer posting notice.--A dealer shall post in a
16 conspicuous place at each facility operated by the dealer within
17 this Commonwealth a notice of the prohibitions applicable to
18 depositors under this section. The notice shall be in large type
19 that is easily readable for depositors in the conduct of
20 business with the dealer.

21 Section 15. Disclosure of insolvency.

22 A dealer who is insolvent may accept deposits of grain,
23 except those deposits made to satisfy or to provide security for
24 an antecedent debt owed to the dealer.

25 Section 16. Civil remedies for default or violation by dealer.

26 (a) Action against the bond.--Upon default by the dealer, a
27 depositor may bring an action to enforce a lien provided to the
28 depositor under this act to satisfy a claim arising from an
29 obligation to the depositor incurred by the dealer.

30 (b) Injunctive relief.--A depositor may bring an action in

1 equity to compel a dealer to comply with the requirements of
2 this act or to enjoin a dealer from any further violation of
3 this act.

4 (c) Civil penalties.--A depositor who successfully brings an
5 action in equity under subsection (b) shall be entitled to
6 recover from the dealer a civil penalty of not less than \$50 nor
7 more than \$500 for each day that the dealer is in violation.

8 (d) Recovery of reasonable attorney fees and related
9 expenses.--A plaintiff or petitioner that prevails in an action
10 brought under subsection (a) or (b) may recover against the
11 defendant reasonable attorney fees and other costs incurred as a
12 result of the action.

13 (e) Standing.--A farm organization shall have standing to
14 pursue any legal or equitable remedy authorized in this section
15 on behalf of any depositor. The Attorney General or a district
16 attorney may pursue any legal or equitable remedy authorized in
17 this section on behalf of any depositor.

18 (f) Remedies cumulative.--The remedies provided in this
19 section are in addition to any other remedies provided in other
20 laws or in equity.

21 Section 17. Criminal penalties.

22 A person that violates any of the following provisions
23 commits a misdemeanor of the third degree:

24 (1) Section 3(a) or (d).

25 (2) Section 4.

26 (3) Section 5(c).

27 (4) Section 12(a).

28 (5) Section 14(a).

29 (6) Section 15.

30 Section 40. Effective date.

1 This act shall take effect as follows:

2 (1) The following provisions shall take effect in 90
3 days:

4 (i) Section 3(a) and (d).

5 (ii) Section 4.

6 (iii) Section 5.

7 (2) This section shall take effect immediately.

8 (3) The remainder of this act shall take effect in 60
9 days.