

1                                   **AGRICULTURAL PRODUCTS DEALER'S ACT**

2   **AMENDMENTS**

3   2003 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Craig W. Buttars**

6           Eli H. Anderson

                  James R. Gowans

                                  Peggy Wallace

7           Glenn A. Donnelson

                  Darin G. Peterson

8   **This act modifies the Agricultural Products Dealer's Act by increasing the <sup>h</sup> [floor and] <sup>h</sup>**  
9   **ceiling on the amount of the surety bond or other security agreement required before a**  
10 **license is issued to a dealer. The act allows the commissioner of the Department of**  
11 **Agriculture and Food to increase original bond requirements for a dealer's license if the**  
12 **original bond is inadequate. The act gives the commissioner the authority to call a bond**  
13 **if renewal is not made. The act requires the filing of annual reports by dealers with the**  
14 **department <sup>h</sup> [and disallows a packer buyer to be double licensed or double bonded] <sup>h</sup> .**

15   This act affects sections of Utah Code Annotated 1953 as follows:

16   AMENDS:

17           **4-7-8**, as last amended by Chapter 79, Laws of Utah 1996

18           **4-7-9**, as last amended by Chapter 25, Laws of Utah 1990

19           <sup>h</sup> [~~4-7-14, as last amended by Chapter 41, Laws of Utah 1995~~] <sup>h</sup>

20   *Be it enacted by the Legislature of the state of Utah:*

21           Section 1. Section **4-7-8** is amended to read:

22           **4-7-8. Applicant for dealer's license to post security -- Increase in amount of**  
23 **security posted -- Action on security authorized -- Duties of commissioner -- Option to**  
24 **require posting new security if action filed -- Effect of failure to post new security --**  
25 **Commissioner's authority to call bond if not renewed.**

26           (1) (a) Before a license is issued to a dealer, the applicant must post a corporate surety  
27 bond, irrevocable letter of credit, trust fund agreement, or any other security agreement



28 considered reasonable in an amount not less than ~~h~~ [f] \$10,000 [f] ~~h~~ nor more than  
 28a [\$100,000]  
 29 \$200,000, as determined by the commissioner or as required by the Packers and Stockyards  
 30 Act, 1921, 7 U.S.C. Section 181 et seq.

31 (b) Any bond shall be written by a surety licensed under the laws of Utah and name the  
 32 state, as obligee, for the use and benefit of producers.

33 (c) The bond or other security posted shall be conditioned upon:

34 ~~(a)~~ (i) the faithful performance of contracts and the faithful accounting for and  
 35 handling of any product of agriculture consigned to the dealer;

36 ~~(b)~~ (ii) the performance of the obligations imposed under this chapter; and

37 ~~(c)~~ (iii) the payment of court costs and attorney's fees to the prevailing party incident  
 38 to any suit upon the bond or other security posted.

39 (2) (a) The commissioner may require a dealer who is issued a license to increase the  
 40 amount of the bond or other security posted under Subsection (1)(a) if the commissioner  
 41 determines the bond or other security posted is inadequate to secure performance of the dealer's  
 42 obligations.

43 (b) The commissioner shall notify the Packers and Stockyards Administration of an  
 44 increase made under Subsection (2)(a).

45 (c) The commissioner may suspend a dealer's license for failure to comply with  
 46 Subsection (2)(a) within ten days after notice is given to the dealer.

47 ~~(2)~~ (3) A consignor claiming damages, as a result of fraud, deceit, or willful  
 48 negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may  
 49 bring an action upon the bond or other security posted for damages against both the principal  
 50 and surety.

51 ~~(3)~~ (4) (a) If it is reported to the department by a consignor that a dealer has failed to  
 52 pay in a timely manner for any product of agriculture received for sale, the commissioner shall:

53 (i) ascertain the name and address of each consignor who is a creditor of the dealer;  
 54 and

55 (ii) request a verified written statement setting forth the amount claimed due from the  
 56 dealer.

57 (b) Upon receipt of the verified statements, the commissioner shall bring an action  
 58 upon the bond or other security posted on behalf of the consignors who claim amounts due

59 from the dealer.

60 ~~[(4)]~~ (5) (a) If an action is filed upon the bond or other security posted, the  
61 commissioner may require the filing of new security.

62 (b) Immediately upon recovery in the action, the commissioner shall require the dealer  
63 to file a new bond or other security.

64 (c) Failure, in either case, to file the bond or other security within ten days after  
65 demand is cause for suspension of the license until a new bond or other security is filed.

66 (d) If the bond or other security posted under this section is not renewed within ten  
67 days of its expiration date, unless the commissioner states in writing that this is unnecessary,  
68 the commissioner § [shall] MAY § obtain § , AFTER A HEARING, § the full amount of the bond or  
68a other security before it expires.

69 Section 2. Section 4-7-9 is amended to read:

70 **4-7-9. Dealers -- Records mandated -- Records subject to inspection.**

71 (1) ~~Each~~ A dealer who receives any product of agriculture for sale shall promptly  
72 record:

73 (a) the name and address of the consignor;

74 (b) the date received;

75 (c) the condition and quantity upon arrival;

76 (d) the date of sale for account of the producer-consignor;

77 (e) the sale price;

78 (f) an itemized statement of the charges to be paid by the producer-consignor;

79 (g) the lot number or other means used for identification of the product;

80 (h) the nature and amount of any claims the dealer has against third persons for  
81 overcharges or damages; and

82 (i) if the dealer has a direct or indirect financial interest in the business of the  
83 purchaser, or, if the purchaser has a similar financial interest in the business of the dealer, the  
84 name and address of the purchaser.

85 (2) (a) The records required by this section shall be retained for a period of one year  
86 following the date of consignment and shall be available during business hours for inspection  
87 by the department.

88 (b) A consignor involved in a consignment subject to inquiry may inspect relevant  
89 records.

90 (3) (a) A dealer shall file an annual report of the records required under Subsection (1)  
 91 with the department on a form prescribed and furnished by it.

92 (b) The dealer shall file the report by April 15 following the end of a calendar year, or  
 93 if the records are kept on a fiscal year basis, by 90 days after the close of the fiscal year.

94 (c) The commissioner may, for good cause shown or by the commissioner's own  
 95 motion, grant an extension to the filing deadline under Subsection (3)(b).

96 (d) For purposes of this Subsection (3), "dealer" does not include a packer buyer  
 97 registered to purchase livestock for slaughter only.

98 (e) The department shall accept reports as required by the Packers and Stockyards  
 99 Administration for livestock under the Packers and Stockyards Act, 9 C.F.R. Sec. 201.97.

100 (f) The reports required under this Subsection (3) may be subject to audit and establish  
 101 the basis for bond adequacy.

102 **h [Section 3. Section 4-7-14 is amended to read:**

103 ~~4-7-14. Prohibited acts:~~

104 ~~(1) A person licensed under this chapter may not:~~

105 ~~(a) make false charges incident to the sale, handling, or storage of products of~~  
 106 ~~agriculture;~~

107 ~~(b) wilfully fail to comply with the requirements of Section 4-7-9 or 4-7-10;~~

108 ~~(c) fail to file a schedule of commissions and charges;~~

109 ~~(d) reconsign products of agriculture without the consent of the producer-consignor for~~  
 110 ~~the purpose of charging more than one commission;~~

111 ~~(e) make any false statement to the detriment of the producer regarding current market~~  
 112 ~~conditions for products of agriculture or about the condition or quantity of the products~~  
 113 ~~consigned for the account of the producer;~~

114 ~~(f) engage in fraud or misrepresentation in the procurement or attempted procurement~~  
 115 ~~of a license; or~~

116 ~~(g) act as a dealer or agent and, with intent to defraud, make, draw, utter, or deliver any~~  
 117 ~~check, draft, or order for the payment of money from any bank or other depository to the owner~~  
 118 ~~for the purchase price of any farm products or any part thereof, when at the time of the making,~~  
 119 ~~drawing, uttering, or delivery the maker or drawer does not have sufficient funds in or credit~~  
 120 ~~with the bank or other depository for the payment of the check, draft, or order in full upon its ] h~~

- 121    ~~h [ presentation:~~
- 122    ~~—— (2) (a) The making, drawing, uttering, or delivery of a check, draft, or order in the~~
- 123    ~~circumstances specified in this section shall be evidence of an intent to defraud.~~
- 124    ~~—— (b) As used in [this section] Subsection (1)(g), "credit" means an arrangement or~~
- 125    ~~understanding with the bank or depository for the payment of the check, draft, or order.~~
- 126    ~~—— (3) (a) A packer buyer, registered with the department to purchase livestock for~~
- 127    ~~slaughter only, or livestock fed with intent to slaughter, may not hold any other license or bond~~
- 128    ~~regarding the purchase of livestock.~~
- 129    ~~—— (b) (i) For purposes of this Subsection (3), a packer buyer is considered a salaried~~
- 130    ~~employee of a packer and can purchase only on orders for that packer.~~
- 131    ~~—— (ii) The packer buyer may not purchase livestock for slaughter or livestock fed with~~
- 132    ~~intent for slaughter for any other person while in the employ of the packer.~~
- 133    ~~—— (c) If a packer buyer chooses to purchase livestock other than as prescribed by this~~
- 134    ~~Subsection (3), the individual shall:~~
- 135    ~~—— (i) terminate employment with the packer; and~~
- 136    ~~—— (ii) obtain a license as a dealer under this chapter.] h~~

**Legislative Review Note**  
as of 11-20-02 4:25 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of 12-12-02 3:35 PM

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

**Mixed Membership Committee Note**  
as of 12-12-02 3:35 PM

The Agricultural Sustainability Task Force recommended this bill.

Membership:	12 legislators	9 non-legislators	
Legislative Vote:	8 voting for	0 voting against	4 absent

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**Fiscal Note****Agricultural Products Dealer's Act Amendments***28-Jan-03***Bill Number HB0017***12:11 PM*

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**State Impact**

Provisions of this bill can be handled within existing budgets.

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**Individual and Business Impact**

This bill may require individual dealers, and applicants for new licenses, to post a higher amount of surety bond or other security agreement. Dealers may incur some additional costs in preparing and submitting annual reports. Packer buyers will be restricted to buying livestock only for the packer for whom they are licensed and bonded.

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**Office of the Legislative Fiscal Analyst**