

**AGRICULTURAL PRODUCTS DEALER'S ACT
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

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This act modifies the Agricultural Products Dealer's Act by increasing the ceiling on the amount of the surety bond or other security agreement required before a license is issued to a dealer. The act allows the commissioner of the Department of Agriculture and Food to increase original bond requirements for a dealer's license if the original bond is inadequate. The act gives the commissioner the authority to call a bond if renewal is not made. The act requires the filing of annual reports by dealers with the department.

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

AMENDS:

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

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

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

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

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

(1) (a) Before a license is issued to a dealer, the applicant must post a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than \$10,000 nor more than [~~\$100,000~~] \$200,000, as determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

(b) Any bond shall be written by a surety licensed under the laws of Utah and name the

state, as obligee, for the use and benefit of producers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If the bond or other security posted under this section is not renewed within ten days of its expiration date, unless the commissioner states in writing that this is unnecessary, the commissioner may obtain, after a hearing, the full amount of the bond or other security before it expires.

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

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

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

- (a) the name and address of the consignor;
- (b) the date received;
- (c) the condition and quantity upon arrival;
- (d) the date of sale for account of the producer-consignor;
- (e) the sale price;
- (f) an itemized statement of the charges to be paid by the producer-consignor;
- (g) the lot number or other means used for identification of the product;
- (h) the nature and amount of any claims the dealer has against third persons for overcharges or damages; and
- (i) if the dealer has a direct or indirect financial interest in the business of the purchaser, or, if the purchaser has a similar financial interest in the business of the dealer, the name and address of the purchaser.

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

(b) A consignor involved in a consignment subject to inquiry may inspect relevant

records.

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

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

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

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

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

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