

Representative Craig W. Buttars proposes the following substitute bill:

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 ceiling on the**
9 **amount of the surety bond or other security agreement required before a license is issued**
10 **to a dealer. The act allows the commissioner of the Department of Agriculture and Food**
11 **to increase original bond requirements for a dealer's license if the original bond is**
12 **inadequate. The act gives the commissioner the authority to call a bond if renewal is not**
13 **made. The act requires the filing of annual reports by dealers with the department.**

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

15 AMENDS:

16 **4-7-8**, as last amended by Chapter 79, Laws of Utah 1996

17 **4-7-9**, as last amended by Chapter 25, Laws of Utah 1990

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

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

20 **4-7-8. Applicant for dealer's license to post security -- Increase in amount of**
21 **security posted -- Action on security authorized -- Duties of commissioner -- Option to**
22 **require posting new security if action filed -- Effect of failure to post new security --**
23 **Commissioner's authority to call bond if not renewed.**

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



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

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

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

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

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

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

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

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

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

45 (3) (3) A consignor claiming damages, as a result of fraud, deceit, or willful
46 negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may
47 bring an action upon the bond or other security posted for damages against both the principal
48 and surety.

49 (4) (4) (a) If it is reported to the department by a consignor that a dealer has failed to
50 pay in a timely manner for any product of agriculture received for sale, the commissioner shall:

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

52 and

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

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

57 from the dealer.

58 ~~[(4)]~~ (5) (a) If an action is filed upon the bond or other security posted, the
59 commissioner may require the filing of new security.

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

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

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

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

68 **4-7-9. Dealers -- Records mandated -- Records subject to inspection.**

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

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

72 (b) the date received;

73 (c) the condition and quantity upon arrival;

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

75 (e) the sale price;

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

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

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

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

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

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

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

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

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

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

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

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