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CHAPTER 41.

 DEALERS AND HANDLERS OF AGRICULTURAL PRODUCTS

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 46‑41‑10.** Definitions.

 For the purpose of this chapter the following words shall mean:

 (1) "Dealer in agricultural products" means any person, association, itinerant dealer, copartnership or corporation engaged in the State in the business of buying, receiving, selling, exchanging, negotiating, processing for resale or soliciting the sale, resale, exchange, or transfer of any agricultural products purchased from the producer or his agent or representative or received on consignment from the producer or his agent or representative or received to be handled on net return basis from the producer.

 (2) "Commissioner" means the Commissioner of Agriculture.

 (3) "Agricultural products" shall mean and include the natural products of the farm, orchard, vineyard, garden and apiary, raw and manufactured; livestock and poultry products but shall not include tobacco, cotton, dairy products and timber products.

 (4) "Net return basis" means a purchase for sale of agricultural products from a producer or shipper at an unfixed or unstated price at the time the agricultural products are shipped from the point of origin, and it shall include all purchases made "at the market price," "at net worth," and on similar terms, which indicate that the buyer is the final arbiter of the price to be paid.

 (5) "Consignment" means any transfer of agricultural products by the seller to the custody of another person who acts as the agent for the seller for the purpose of selling such agricultural products.

 (6) "Producer" means any producer of agricultural products produced in the State.

HISTORY: 1962 Code Section 3‑751; 1967 (55) 349; 1981 Act No. 156 Section 14A.

**SECTION 46‑41‑20.** Exceptions.

 The provisions of this chapter shall not apply to:

 (1) Resident farmers or groups of resident farmers in the sale or purchase of agricultural products.

 (2) All persons who buy for cash and pay at the time of delivery with United States currency and maintain on file in the office of the Commissioner an affidavit of this fact which shall be renewed on an annual basis.

 (3) A dealer in agricultural products who operates as a bonded licensee under the Federal Packers and Stockyards Act.

 (4) An operator of a roadside stand doing business within the State who pays for agricultural products by cash or check.

 (5) All persons who buy in small quantities for personal use or consumption.

HISTORY: 1962 Code Section 3‑752; 1967 (55) 349; 1981 Act No. 156 Sections 15, 16; 1983 Act No. 112 Section 3.

**SECTION 46‑41‑25.** Provisions not to apply to South Carolina miller.

 The provisions of Section 46‑41‑30 shall not apply to any South Carolina miller who receives and purchases grains from producers on a cash on delivery basis only and pays by check or draft and post conspicuously in his place of business a notice to the producer that the miller is (a) not a licensed dealer; (b) not bonded as a licensed dealer; (c) does not collect assessments for, nor offer the protection of the South Carolina Grain Producers Guaranty Fund, and gives the same notice in writing to the producer prior to receipt and purchase of each lot of grain, and registers with the Commissioner an affidavit of this fact which shall be renewed on an annual basis.

HISTORY: 1981 Act No. 156 Section 17; 2000 Act No. 381, Part II, Section 2(C), eff June 14, 2000.

**SECTION 46‑41‑30.** Unlawful to engage in business as dealer without license; penalties for violation.

 It is unlawful for a dealer in agricultural products to engage in that business without a state license issued by the commissioner. This requirement applies to all dealers in agricultural products who are not exempted by Sections 46‑41‑20 and 46‑41‑25.

 (1) A person violating the provisions of this section is guilty of a misdemeanor for a first offense and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than three years, or both.

 (2) Conviction for a second or subsequent offense is a felony and the person must be imprisoned not more than five years and fined not more than five thousand dollars.

HISTORY: 1962 Code Section 3‑753; 1967 (55) 349; 1968 (55) 2499; 1981 Act No. 156Section 18; 1993 Act No. 184, Section 78, eff January 1, 1994.

**SECTION 46‑41‑40.** Application for license.

 Every dealer in agricultural products, desiring to transact business within the State, shall, prior to transacting such business, file an application for a license with the Commissioner. License shall be renewed annually on its anniversary date. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

 (1) The kind of agricultural products the applicant proposes to handle;

 (2) The full name or title of the applicant, or if the applicant be an association or copartnership, the name of each member of such association or copartnership, or if the applicant be a corporation, the name of each officer of the corporation;

 (3) The name of the local agent of the applicant, if any;

 (4) The cities, and towns, within which places of business of the applicant will be located, together with the street or mailing address of each.

HISTORY: 1962 Code Section 3‑754; 1967 (55) 349.

**SECTION 46‑41‑50.** Issuance of license; fees; penalty for late renewal.

 Each application for a dealer's license under Section 46‑41‑40 or affidavit registered and filed under Section 46‑41‑25 shall be subject to an annual fee for the principal place of business for a dealer in agricultural products of fifty dollars. For each additional place of business named in the application, there shall be an additional ten dollars annual fee.

 Should any dealer in agricultural products fail, or neglect to apply and qualify for the renewal of a license, or register an affidavit of exception, on or before the date of expiration, a fine of one hundred dollars shall apply and be added to the original fee and shall be paid by the dealer before the renewal may be issued. An additional fine of one hundred dollars shall be applied for each month or part of a month beyond the first month after expiration.

HISTORY: 1962 Code Section 3‑755; 1967 (55) 349; 1981 Act No. 156 Section 19.

**SECTION 46‑41‑60.** Bond or equivalent security required.

 (1) Before any license shall be issued the applicant shall make and deliver to the commissioner a surety bond or equivalent security in the amount of twenty‑five thousand dollars or an amount equal to the maximum amount of business done or estimated to be done in any month by the applicant, whichever is less, executed by a surety corporation authorized to transact business in the State or provided by equivalent security approved by the commissioner with the advice of the State Treasurer. Such bond or equivalent security shall be upon a form prescribed or approved by the commissioner and shall be conditioned to secure the faithful accounting for any payment to producers, their agents or representatives, of the proceeds of all agricultural products handled or sold by such dealer.

 (2) The amount of such bond or equivalent security shall, upon the order of the commissioner at any time, be increased, if in his discretion the commissioner finds such increase to be warranted by the volume of agricultural product being handled by the principal or maker of such bond or equivalent security. In the same manner, the amount of such bond or equivalent security may be decreased when a decrease in volume of products handled warrants such decrease in bond or equivalent security. The provisions shall apply to any bond or equivalent security, regardless of the anniversary date of its issuance, expiration, or renewal.

 (3) In order to effectuate the purposes of this section, the commissioner or his agents may require from any licensee verified statements of the volume of his business, and failure to furnish such statement or make and deliver a new or additional bond or equivalent security shall be cause for suspension of license. If, at a hearing after reasonable notice, the commissioner finds such failure to be wilful, the license may be revoked.

HISTORY: 1962 Code Section 3‑756; 1967 (55) 349; 1981 Act No. 156 Section 20; 1982 Act No. 469 Section 5; 1992 Act No. 393, Section 1, eff June 1, 1992.

**SECTION 46‑41‑70.** Proceedings upon complaint for breach of condition of bond.

 Any person claiming himself to be damaged by any breach of the conditions of a bond given by a licensed dealer in agricultural products or by any alleged injurious practice or transaction by a dealer in agricultural products may enter a complaint to the Commissioner, which complaint shall be a written statement of the facts constituting such complaint. Such complaint shall be filed within six months from the date of the last transaction between the complaining producer and the dealer complaint against. Upon filing such complaint, the Commissioner shall investigate the charges made; whereupon, if in the opinion of the Commissioner the facts contained in the complaint warrant such action, a copy of the complaint shall be forwarded by the Commissioner to such dealer who shall be called upon to answer the complaint in writing within a reasonable time to be prescribed by the Commissioner. At his discretion the Commissioner may order a hearing before him giving the complainant and the respondent notice of the time and place of such hearing. At the conclusion of such hearing the Commissioner shall report his findings and make his order upon the matters complained of to the complainant and the respondent in each case, who shall then have fifteen days in which to make effective and satisfy the Commissioner's order. If such settlement is not effected within such time, the Commissioner or the producer may maintain a civil action against the principal and surety on the bond of the party against whom the order was directed, setting forth briefly in the complaint in such civil action the causes for which damages are complained. In any such suit, if the party who was successful before the Commissioner finally prevails, he shall be allowed court costs and a reasonable attorney's fee to be taxed and collected as a part of the cost of the suit. If the order of the Commissioner is against the producer and if the producer is not satisfied with such ruling, he may commence and maintain an action against the principal and surety on the bond of the parties complained of and the party prevailing shall be entitled to court costs and attorney's fee to be taxed and collected as a part of the suit. If the bond thus posted is insufficient to pay in full the valid claims of producers, the Commissioner shall direct that the proceeds of such bond be divided pro rata among such producers.

HISTORY: 1962 Code Section 3‑757; 1967 (55) 349; 1981 Act No. 156 Section 21.

**SECTION 46‑41‑80.** Consignment of products to another commission merchant or broker without consent of consignor prohibited.

 No dealer in agricultural products or commission merchant to whom any consignment of an agricultural product by a South Carolina producer, his agent or representative, has been made shall consign such consignment to another commission merchant or broker and receive, collect, or charge more than one commission or brokerage for making the sale thereof for the consignor, unless by written consent by such consignor.

HISTORY: 1962 Code Section 3‑758; 1967 (55) 349.

**SECTION 46‑41‑90.** Records shall be kept by dealers; when dealer shall make payment to producer.

 Every dealer in agricultural products must upon the receipt of agricultural products on consignment basis and as he handles and disposes of them, make and preserve for at least one year a record, specifying the name and address of the producer consigning the agricultural products, the date of receipt, and the kind and quality of such produce. Such consignment sales must be substantiated by a written contract on forms approved by the Department of Agriculture. The dealer must make payment in settlement for such shipment to the producer within ten days after the sale of such agricultural products, unless otherwise agreed in writing.

HISTORY: 1962 Code Section 3‑759; 1967 (55) 349; 1981 Act No. 156 Section 22; 1983 Act No. 112 Section 4.

**SECTION 46‑41‑95.** Records to be maintained by dealer; inspection of records.

 (1) Each licensed dealer shall maintain complete and current records to show all transactions of business as defined in item (1) of Section 46‑41‑10. All records shall be maintained on a daily basis as directed by the Commissioner. The Department of Agriculture shall by regulation establish the forms on which such records shall be kept.

 (2) All records shall be available for inspection by the Commissioner or his agents during ordinary business hours and any other time specified by the Commissioner or his agents in writing.

 (3) All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled.

HISTORY: 1981 Act No. 156 Section 23.

**SECTION 46‑41‑100.** Investigations by Commissioner; examination of documents.

 The Commissioner shall have power to investigate upon complaint of any interested person or upon his own initiative the record of any applicant, licensee or unlicensed person, partnership or corporation alleged or suspected to be a dealer in agricultural products, or any transaction involving the solicitation, receipt, sale or attempted sale of agricultural products, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions with intent to deceive, or the failure to make payment for goods received, or other alleged injurious transactions. For such purposes the Commissioner or his agents may examine, at the place or places of business of the applicant or licensee, his ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, and may take testimony under oath.

HISTORY: 1962 Code Section 3‑760; 1967 (55) 349; 1981 Act No. 156 Section 24.

**SECTION 46‑41‑110.** Inspection of despoliated products before sale.

 Whenever produce is shipped to or received by a licensed dealer for handling, purchase or sale in this State at any market point, and the dealer finds such to be in a spoiled, damaged, unmarketable or unsatisfactory condition, unless both parties shall waive inspection before sale or other disposition, he shall cause it to be examined by an inspector of the South Carolina Department of Agriculture or by a qualified inspector licensed by the United States Department of Agriculture, and such inspector shall execute and deliver a certificate to the applicant stating the day and the time and place of such inspection and the condition of such produce, and mail or deliver a copy of such certificate to the shipper.

HISTORY: 1962 Code Section 3‑761; 1967 (55) 349.

**SECTION 46‑41‑120.** Grounds for refusal; suspension or revocation of license.

 The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has either:

 (1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied; or

 (2) Made false charges for handling or services rendered; or

 (3) Failed to account promptly and properly, or to make settlements with any producer; or

 (4) Made any false statement or statements as to condition, quality or quantity of goods received or held for sale when he could have ascertained the true condition, quality or quantity by reasonable inspection; or

 (5) Made any false or misleading statement as to market conditions or service rendered; or

 (6) Been guilty of a fraud in the attempt to produce or the procurement of a license; or

 (7) Directly or indirectly sold agricultural products received on consignment or on a net return basis for his own account, without prior authority from the producer, consigning such products, or without notifying such producer; or

 (8) Failed to remain acceptable for coverage under the surety bond required by Section 46‑41‑60 or to cooperate with the bond provider.

HISTORY: 1962 Code Section 3‑762; 1967 (55) 349; 1981 Act No. 156 Section 25.

**SECTION 46‑41‑130.** Procedure for refusal, suspension or revocation of license; temporary suspension.

 (A) Before the commissioner refuses to issue a license or revokes a license he shall give ten days' notice, by registered mail, to the applicant or licensee of a time and place of hearing. At the hearing the applicant or licensee must be allowed to appear in person or by or with counsel and to produce witnesses. If the commissioner finds the applicant or licensee guilty of any of the acts provided in Section 46‑41‑120 or finds that the grain dealer has not paid the assessment prescribed by Section 46‑40‑60(B) of the Grain Dealers Guaranty Fund, the commissioner may refuse, suspend, or revoke the license and shall give immediate notice of his action to the applicant or licensee.

 (B) The commissioner may temporarily suspend and take possession of a license simultaneously with the institution of proceedings under this section or Section 46‑41‑70 if he finds there is imminent danger to public welfare.

HISTORY: 1962 Code Section 3‑763; 1967 (55) 349; 1981 Act No. 156 Section 26; 2002 Act No. 340, Section 9, eff June 30, 2002.

**SECTION 46‑41‑140.** Rules and regulations.

 The Commissioner shall adopt rules and regulations necessary to carry out the provisions of this chapter.

HISTORY: 1962 Code Section 3‑764; 1967 (55) 349.

**SECTION 46‑41‑150.** Employment of help and services.

 The Commissioner may employ all help and services as may be necessary and fix their compensation.

HISTORY: 1962 Code Section 3‑765; 1967 (55) 349.

**SECTION 46‑41‑160.** Disposition of license fees.

 All moneys received as license fees shall be placed in the general fund of the State.

HISTORY: 1962 Code Section 3‑766; 1967 (55) 349.

**SECTION 46‑41‑170.** Penalty; enforcement by injunction; probation; civil fine.

 (1) Any dealer in agricultural products violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall for the first offense be fined not less than one thousand dollars or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, imprisoned not exceeding six months, and for a second or subsequent offense shall, upon conviction thereof, be fined not less than three thousand dollars or imprisoned not exceeding one year, or both in the discretion of the court.

 (2) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the Commissioner is hereby authorized to make application for injunction to a circuit court and such circuit court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter, or any rule or regulation, such injunction to be issued without bond.

 (3) The Commissioner may, by issuing his order, place any licensee who violates any provision of the chapter or any unlicensed person found to have been dealing in agricultural products on probation or levy a civil fine of not more than one thousand dollars, or both. All monies received as civil fines shall be remitted to the State Treasurer to be credited to the Grain Producers Guaranty Fund established by Article 2 of this chapter. When the fund reaches six million dollars such civil fines shall be remitted to the general fund of the State. The licensee may appeal the levy of the civil fines to the circuit court of the county in which the alleged unlawful activity was performed.

HISTORY: 1962 Code Section 3‑767; 1967 (55) 349; 1981 Act No. 156 Section 27; 2000 Act No. 381, Part II, Section 2(C), eff June 14, 2000.

**SECTION 46‑41‑180.** Appointment of Commissioner as agent for service of process.

 Every dealer who is a nonresident or every resident dealer who subsequently becomes a nonresident of this State shall be deemed to have appointed the Commissioner of Agriculture as his true and lawful attorney in fact for the service of process upon him in any action in the courts of this State for any violation of the provisions of this chapter.

HISTORY: 1962 Code Section 3‑768; 1967 (55) 349.

ARTICLE 2.

 SOUTH CAROLINA GRAIN PRODUCERS GUARANTY FUND

**SECTION 46‑41‑200.** Establishment of South Carolina Grain Producers Guaranty Fund.

 There is created within the State Treasury a fund to be known as the "South Carolina Grain Producers Guaranty Fund" (fund).

HISTORY: 1981 Act No. 156 Section 28; 2000 Act No. 381, Part II, Section 2(B), eff June 14, 2000.

**SECTION 46‑41‑210.** Definitions.

 As used in this article:

 (1) "Department" means the South Carolina Department of Agriculture.

 (2) "Fair market value" means the value based on the average market price being paid to producers on a specified date by the three licensed grain dealers nearest the grain dealer involved in the loss.

 (3) "Grain" means any feed grains or oil seeds, except cotton seeds.

 (4) "Grain dealer" means any person engaged in this State in buying, receiving, selling, exchanging, negotiating, processing for resale, or soliciting the sale, resale, exchange, or transfer of grain purchased from the producer or his agent or representative or received to be handled on a net return basis from the producer.

 (5) "Loss" means any monetary loss over and beyond the amount protected by the dealer's bond as a result of doing business with a dealer which includes, but is not limited to, bankruptcy, embezzlement, or fraud.

 (6) "Producer" means any producer of grain.

 (7) "Date of loss" means the date the grain dealer filed a petition for bankruptcy; or, if bankruptcy is not declared, the date a check was returned for insufficient funds, or the date otherwise determined by the department.

HISTORY: 1981 Act No. 156 Section 28; 1988 Act No. 435, eff April 5, 1988.

**SECTION 46‑41‑220.** Assessment on grain.

 An assessment of one cent a bushel must be imposed on all soybeans and one‑half cent a bushel on all other grain delivered by producers to grain dealers licensed under this chapter other than grain for which a producer has received payment in currency or cashier's check on delivery, or received a state warehouse receipt issued in the producer's name or that of his designee. The grain dealer shall collect the assessment from the producer at the time of settlement with the producer. The assessment must be reported and remitted to the department by the grain dealer as of the month in which the grain was delivered to the grain dealer, except as provided by Section 46‑41‑240. The department shall remit the assessment to the State Treasurer to be credited to the fund.

HISTORY: 1981 Act No. 156 Section 28; 1982 Act No. 468, Section 2; 1983 Act No. 112 Section 6; 1988 Act No. 435, eff April 5, 1988.

**SECTION 46‑41‑230.** State Treasurer to administer fund; purpose; amount of fund; claims.

 The State Treasurer shall administer the investment of the fund. The department shall administer the collection of assessments and investigate losses for which payment is requested. Unless the grain dealer who allegedly occasioned the loss has filed for bankruptcy or is audited pursuant to other judicial proceedings, the department, in conjunction with the State Auditor's Office, shall conduct a financial audit of the grain dealer to verify the loss before it may request payment from the fund. The fund must bear all expenses incurred in conducting the audit. After verification, the department shall request that payment for verified losses be made by the State Treasurer to the person incurring a loss. The fund must be established for the benefit of producers who have delivered grain to grain dealers licensed under this chapter and compensate producers for losses relative to grain delivered to a grain dealer licensed under this chapter, except losses covered by the grain dealer's surety bond. When the fund reaches four million dollars the assessment ceases. If the four million dollars is attained prior to the end of a harvest season, the assessment continues until the end of that season. The assessment must be reinstituted as necessary to maintain a balance of four million dollars in the fund. The first one hundred thousand dollars collected in assessment must be paid into the general fund of the State. Any of these funds not appropriated for the employment of additional auditors for the Warehouse and Dealers and Handlers Division of the Department of Agriculture must be returned to the fund. All income, interest, or otherwise, derived from this fund must be reinvested in the fund.

 When a loss is incurred for grain which has been delivered to a grain dealer licensed under this chapter, the producer shall within ninety days present his claim, which must be under oath, to the department on a form supplied by the department. To verify his claim, the producer shall present any evidence of loss the department considers necessary. The price for each bushel of grain must be established on the day of the loss and must be for the fair market value on that day at the location of loss. The price for each bushel may not be higher than the contract price, if a price has been established. All persons filing claims under this section are bound by the value determined by the department.

 The department within thirty days from verification of loss shall request payment of one hundred percent of the approved claim. At no time may the fund be reduced to less than one hundred thousand dollars.

 If there is an insufficient amount of money in the fund to cover all claims, payments must be made on a pro rata basis up to one hundred percent of the total loss of each producer. If payment is not received in the amount of one hundred percent of total loss then additional amounts must be paid as funds become available until payment of one hundred percent of total loss is attained. Claims against the fund must be paid in the order in which they have been verified and approved.

 Upon approval of his claim by the department, the producer shall subrogate his interest, if any, to the department in a cause of action against any and all parties. An independent law firm may be hired and paid by the fund for the purpose of collecting losses subrogated to the department. Payments start when the fund exceeds one hundred thousand dollars.

HISTORY: 1981 Act No. 156 Section 28; 1988 Act No. 435, eff April 5, 1988.

**SECTION 46‑41‑240.** Grain dealer to remit and file report of assessments; penalty; hearing.

 (1) The grain dealer shall remit assessments and file with the Department a report of such assessments on grain received by him by the fifteenth day of each calendar month following any calendar month in which the grain dealer has received quantities of grain subject to assessments totaling fifty dollars or more. If such grain dealer has received quantities of grain subject to assessments totaling less than fifty dollars in any calendar month, the assessments may be reported and remitted with the following month's return. All assessments shall be remitted at least once every three months.

 (2) In case any person subject to this section fails to make a report and remittance when required, the Department shall determine the amount of such assessment according to its best judgment and information and such amount shall be prima facie correct, and the person who failed to make the report shall, within ten days after notice of the amount of the assessment is mailed to him, pay the assessment, together with a penalty of ten percent, or dispute such assessment and request a hearing to determine its amount and the penalty to be imposed. No payment shall be made until the Department enters its order determining the amount of the payment but such payment shall be made within ten days' notice of the order. On failure to remit payment within ten days of the receipt of notice of the order, the Department may suspend the dealer's license under the provisions of Section 46‑41‑130.

HISTORY: 1981 Act No. 156 Section 28.

**SECTION 46‑41‑250.** Election not to participate in fund; application for exemption.

 Notwithstanding any other provision of this chapter, any producer may elect not to participate in the fund for any calendar year by applying for an exemption with the South Carolina Department of Agriculture as provided in this section.

 The election consists of a written, notarized application upon a form designed and provided by the Department of Agriculture. The application must be filed with the Department before April 1 of the year for which the exemption is desired.

 Upon filing of the application, the Department must issue the applicant an exemption certificate specifying the producer, commodity exempted, and period of exemption. Such certificate, when presented to the grain dealer upon delivery of the grain, entitles the specified producer to an exemption from the dealer's and handler's assessment on the specified commodity.

 When an exemption is granted under this section the grain dealer must retain a copy of the exemption certificate for a period of not less than two years. Any producer who elects not to participate in the fund is not eligible to be reimbursed for any loss for the commodity exempted for that calendar year.

HISTORY: 1983 Act No. 112 Section 5.