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Indicates New Matter

AMENDED

May 3, 2022

**S. 1117**

Introduced by Senator Climer

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Read the first time March 29, 2022.

**A** **BILL**

TO AMEND ARTICLE 2, CHAPTER 41, TITLE 46 OF THE 1976 CODE, RELATING TO THE SOUTH CAROLINA GRAIN PRODUCERS GUARANTY FUND, TO EXPAND THE FUND TO INCLUDE COTTON PRODUCERS, TO ADD AN ASSESSMENT ON COTTON, TO INCREASE THE AMOUNT THE FUND MUST ACCUMULATE IN ORDER TO SUSPEND ASSESSMENTS, TO ESTABLISH THE SOUTH CAROLINA AGRICULTURAL COMMODITIES COMMISSION AS A SUCCESSOR TO THE STATE AGRICULTURAL COMMISSION AND TO PROVIDE FOR THE MEMBERSHIP, POWERS, AND DUTIES OF THE NEW COMMISSION, AND TO DEFINE NECESSARY TERMS; TO AMEND SECTION 46-41-60 OF THE 1976 CODE, RELATED TO SURETY BONDS FOR LICENSEES, TO PROVIDE THAT THE SURETY BOND VALUE IS BASED UPON A TIERED SYSTEM; AND TO AMEND SECTION 46-41-170 OF THE 1976 CODE, RELATED TO PENALTIES, TO MAKE CONFORMING CHANGES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 2, Chapter 41, Title 46 of the 1976 Code is amended to read:

“ARTICLE 2

South Carolina Grain and Cotton Producers Guaranty Fund

Section 46‑41‑200. There is created within the State Treasury a fund to be known as the ‘South Carolina Grain and Cotton Producers Guaranty Fund’ (fund).

Section 46‑41‑210. As used in this article:

(1) ‘Agricultural commodity’ or ‘commodity’ means cotton and all agricultural products commonly classed as grain, including corn, wheat, oats, soybeans, barley, and grain sorghum, produced within this State.

(2) ‘Agricultural commodity dealer’ or ‘commodity dealer’ means any person in this State engaged in buying, receiving, selling, exchanging, negotiating, processing for resale, or soliciting the sale, resale, exchange, or transfer of grain or cotton purchased from a producer or his agent or representative or received to be handled on a net return basis from the producer. An agricultural commodity dealer shall include cotton gins if the gin is engaged in the above‑described activity.

~~(1)~~(3) ‘Department’ means the South Carolina Department of Agriculture.

~~(2)~~(4) ‘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 or cotton dealers nearest the grain or cotton dealer involved in the loss.

~~(3)~~(5) ‘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)~~(6) ‘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)~~(7) ‘Producer’ means any producer of grain or cotton.

~~(7)~~(8) ‘Date of loss’ means the date the ~~grain~~ commodity 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.

Section 46‑41‑220. 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, and fifty cents per bale of cotton ~~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 for soybeans and grain shall be collected at the first point of sale ~~from the producer at the time of settlement with the producer~~. The assessment for cotton shall be collected at the time and place of ginning. The grain assessment must be reported and remitted to the department by the grain dealer as of the ~~month~~ calendar quarter in which the grain was delivered to the grain dealer, except as provided by Section 46‑41‑240. The cotton assessment must be reported and remitted to the department by the cotton gin as of the calendar quarter in which the cotton was ginned, except as provided by Section 46‑41‑240. The department shall remit the assessment to the State Treasurer to be credited to the fund.

Section 46‑41‑230. (A) 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~~ agricultural commodity 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~~ agricultural commodity 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 suffer losses on ~~have~~ ~~delivered~~ ~~grain~~ agricultural commodities for which they have paid assessments on ~~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~~ agricultural commodity dealer’s surety bond. When the fund reaches ~~four~~ twenty‑five million dollars, the assessment ceases. If the ~~four~~ twenty‑five 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~~ twenty‑five 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.

(B) When a loss is incurred for ~~grain~~ an agricultural commodity for which ~~has been delivered to a grain~~ ~~dealer licensed under this chapter~~ assessments have been paid within two years of the date of loss, 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 or bale of ~~grain~~ the agricultural commodity 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 or bale 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.

(C) 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.

(D) 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.

(E) 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.

Section 46‑41‑240. ~~(1)~~(A) The ~~grain~~ agricultural commodity dealer shall remit assessments and file with the ~~Department~~ department a report of ~~such~~ the assessments on ~~grain~~ agricultural commodities that he received ~~by him~~ by the ~~fifteenth~~ first day of January, April, July, and October ~~each calendar month~~ following any calendar ~~month~~ quarter in which the ~~grain~~ agricultural commodity dealer has received quantities of grain or cotton subject to assessments totaling fifty dollars or more. If ~~such~~ ~~grain~~ the agricultural commodity dealer has received quantities of grain or cotton subject to assessments totaling less than fifty dollars in any calendar ~~month~~ quarter, the assessments may be reported and remitted with the following ~~month’s~~ calendar quarter’s return. All assessments shall be remitted at least once every six ~~three~~ months.

~~(2)~~(B) In case any person subject to this section fails to make a report and remittance when required, the ~~Department~~ department shall determine the amount of ~~such~~ the assessment according to its best judgment and information and ~~such~~ that 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~~ the assessment and request a hearing to determine its amount and the penalty to be imposed. No payment shall be made until the ~~Department~~ department enters its order determining the amount of the payment ~~but such~~. However, the 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~~ department may suspend the dealer’s license under the provisions of Section 46‑41‑130.

Section 46‑41‑250. (A) 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~~ department as provided in this section.

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

(C) Upon filing of the application, the ~~Department~~ department must issue the applicant an exemption certificate specifying the producer, commodity exempted, and period of exemption. ~~Such~~ The 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.

(D) 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.

Section 46‑41‑260. (A) There is established within the Department of Agriculture the South Carolina Agricultural Commodities Advisory Commission to make recommendations to the department regarding the duties of the department in administering the Grain and Cotton Producers Guaranty Fund.

(B) The advisory commission shall consist of ten members, one of whom shall be the Commissioner of Agriculture, ex officio, and nine of whom shall be appointed by the commissioner, upon the advice and consent of the Senate. The commissioner shall appoint a:

(1) warehouseman or cotton ginner;

(2) producer upon the recommendation of the South Carolina Corn and Soybean Association;

(3) producer upon the recommendation of the South Carolina Farm Bureau Federation;

(4) financier who is familiar with the financing of businesses that store or market the commodities that are regulated under this chapter upon the recommendation of a South Carolina financial institution with agriculture background;

(5) commodity trader who executes future trades related to a hedging program for purchases or sales of commodities regulated under this chapter;

(6) owner or operator of an elevator that handles agricultural commodities;

(7) owner or operator of an inland elevator or barge‑loading river facility or a licensed South Carolina grain dealer upon the recommendation of the South Carolina Palmetto Agribusiness Council;

(8) producer appointed upon the recommendation of the South Carolina Poultry Federation;

(9) cotton merchant appointed from the State at large; and

(10) cotton producer appointed upon the recommendation of the South Carolina Board of the Southern Cotton Growers, Inc.

(C) The commissioner shall serve as chairman of the commission.

(D) Except as provided herein, vacancies shall be filled in the same manner as original appointments for the unexpired portion of the term. When a vacancy occurs, the organization authorized to make recommendations to the commissioner for an appointment to the vacant position shall make its recommendation to the commissioner within sixty days after the vacancy occurs. The commissioner shall then appoint a new member to fill the vacancy no later than sixty days after receiving the recommendation. If the commissioner fails to appoint a new member within sixty days, the Governor may appoint the new member. Members appointed by the Governor shall enjoy all of the powers, duties, rights, and privileges as members appointed by the commissioner. An appointment made by the Governor pursuant to this section may not be made pursuant to the provisions contained in Section 1‑3‑210.

(E) The commission shall meet four times per calendar year but may meet more frequently upon the call of the chairman. Five members shall constitute a quorum for the transaction of official business. All official actions of the commission shall require the affirmative vote of five members of the commission. Appointed members of the commission shall be entitled to receive a per diem not in excess of forty dollars and to be reimbursed for mileage expenses in accordance with the same travel regulations applying to state employees.”

SECTION 2. Section 46‑41‑60 of the 1976 Code is amended to read:

“Section 46‑41‑60. ~~(1)~~(A) Before any license shall be issued the applicant shall make and deliver to the commissioner a surety bond or equivalent security in ~~the~~ an amount of ~~twenty‑five~~ either twenty‑five thousand, fifty thousand, or one hundred 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~~ as determined by the method set forth below, 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. The amount of the bond required is determined based upon ten percent of the applicant’s annual business. If ten percent of annual business is twenty‑five thousand dollars or less, the applicant must obtain a twenty‑five thousand dollar bond. If ten percent of annual business is fifty thousand dollars or less, a fifty thousand dollar bond is required. If ten percent of annual business is more than fifty thousand dollars, a one hundred thousand dollar bond is required. ~~Such~~ The 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)~~(B) The amount of ~~such~~ the bond or equivalent security shall, upon the order of the commissioner at any time, be increased, if in his discretion the commissioner finds ~~such~~ that an increase ~~to be~~ is warranted by the volume of agricultural product being handled by the principal or maker of ~~such~~ the bond or equivalent security. In the same manner, the amount of ~~such~~ the 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 contained in this section shall apply to any bond or equivalent security, regardless of the anniversary date of its issuance, expiration, or renewal.

~~(3)~~(C) 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.”

SECTION 3. Section 46‑41‑170 of the 1976 Code is amended to read:

“Section 46‑41‑170. ~~(1)~~(A) 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)~~(B) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the ~~Commissioner~~ commissioner is ~~hereby~~ authorized to make application for injunction to a circuit court and ~~such~~ the 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)~~(C) The ~~Commissioner~~ 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 and Cotton 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.”

SECTION 4. (A) The Insurance Reserve Fund of the State Fiscal Accountability Authority is authorized to lend an amount up to four million dollars on a one‑time basis to the department for the use of the Grain and Cotton Producers Guaranty Fund herein established to pay claims approved by the department if the fund, through its assessments, is below four million dollars and has insufficient monies to pay the claims. The loan is to be repaid from monies from the guaranty fund within five years of the date of the loan in five annual installments with interest at the rate provided in Section 34‑31‑20(A). In the event the department fails to make any loan payment to the Insurance Reserve Fund within the prescribed time, the payment must be paid from the state general fund. The participants in the loan shall execute a document approved by the State Treasurer severally guaranteeing the loan. The Insurance Reserve Fund shall prepare a written loan agreement which must be executed by the department prior to entering into the loan authorized by this section.

(B) Any federal funds or other funds not derived from assessments received by the department to reimburse claims or losses under this chapter must be paid into the fund and used for loan payments or loan principal reduction to the extent any monies are due under subsection (A) to the Insurance Reserve Fund or the state general fund. Each commodity producer severally guaranteeing this loan shall have his pro rata share of the debt obligation reduced accordingly based on the amount of the federal or other payment. If no monies are due to the Insurance Reserve Fund or to the state general fund under subsection (A), such funds shall be used for claim payments.

SECTION 5. This act takes effect upon the approval of the Governor.

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