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HB 1231, Engrossed 1

2005 Legislature

1 A bill to be entitled
2 An act relating to dealers in agricultural products;
3 amending s. 604.15, F.S.; revising definitions; expanding
4 the list of products covered by the law; defining the
5 terms "negotiating broker" and "producer's agent";
6 amending s. 604.16, F.S.; revising exceptions to
7 provisions regulating dealers; amending s. 604.18, F.S.,
8 relating to applications for dealer licensure; requiring
9 dealers to provide mailing and location address
10 information; requiring dealers to provide certain
11 information relating to the dollar amount of business done
12 or to be done; amending s. 604.19, F.S.; providing
13 requirements relating to cancellation of a bond or
14 certificate of deposit; increasing license fees and
15 delinquent renewal penalties; amending s. 604.20, F.S.;
16 increasing the minimum amount of a bond or certificate of
17 deposit for licensure; providing a calculation for the
18 amount of a bond or certificate of deposit; adding
19 requirements relating to bond or certificate of deposit
20 assignment or agreement; authorizing the Department of
21 Agriculture and Consumer Services to issue a conditional
22 license under certain conditions; amending s. 604.21,
23 F.S.; increasing the minimum claim amount and requiring a
24 complaint filing fee; providing requirements for
25 submission of a complaint and payment for multiple claims;
26 authorizing a dealer in agricultural products to file a
27 complaint against another dealer in agricultural products;
28 limiting the time a complaint may be held in abeyance;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | authorizing review of a final order; clarifying
 30 | distribution of bond or certificate of deposit proceeds;
 31 | amending s. 604.22, F.S.; revising recordkeeping
 32 | requirements of licensees; clarifying application of
 33 | provisions; amending ss. 604.23 and 604.25, F.S.;
 34 | clarifying application of provisions; amending s. 604.30,
 35 | F.S.; clarifying that a violator of provisions regulating
 36 | dealers in agricultural products may be a person,
 37 | partnership, corporation, or other business entity;
 38 | increasing the maximum administrative fine and the fine
 39 | for continued violation of an administrative order;
 40 | providing an appropriation and authorizing full-time
 41 | equivalent positions; providing an effective date.

43 | Be It Enacted by the Legislature of the State of Florida:

45 | Section 1. Section 604.15, Florida Statutes, is amended to
 46 | read:

47 | 604.15 Dealers in agricultural products; definitions.--For
 48 | the purpose of ss. 604.15-604.34, the following words and terms,
 49 | when used, shall be construed to mean:

50 | (1)~~(3)~~ "Agricultural products" means the natural products
 51 | of the farm, nursery, grove, orchard, vineyard, garden, and
 52 | apiary (raw or manufactured); sod; tropical foliage;
 53 | horticulture; hay; livestock; milk and milk products; poultry
 54 | and poultry products; the fruit of the saw palmetto (meaning the
 55 | fruit of the Serenoa repens); ~~and~~ limes (meaning the fruit
 56 | Citrus aurantifolia, variety Persian, Tahiti, Bearss, or Florida

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57 | Key limes); and any other nonexempt agricultural products
 58 | produced in the state, except tobacco, ~~tropical foliage,~~
 59 | sugarcane, timber and timber by-products, forest products as
 60 | defined in s. 591.17, and citrus other than limes.

61 | (2)~~(1)~~ "Dealer in agricultural products" means any person,
 62 | partnership, corporation, or other business entity, whether
 63 | itinerant or domiciled within this state, engaged within this
 64 | state in the business of purchasing, receiving, or soliciting
 65 | agricultural products from the producer or the producer's ~~her or~~
 66 | ~~his~~ agent or representative for resale or processing for sale;
 67 | acting as an agent for such producer in the sale of agricultural
 68 | products for the account of the producer on a net return basis;
 69 | or acting as a negotiating broker between the producer or the
 70 | producer's ~~her or his~~ agent or representative and the buyer.

71 | (3)~~(6)~~ "Delivery ticket" means a document provided to a
 72 | grain producer by a grain dealer in conjunction with the
 73 | delivery of grain to the grain dealer.

74 | (4)~~(2)~~ "Department" means the Department of Agriculture
 75 | and Consumer Services.

76 | (5)~~(7)~~ "Grain" means any food or feed grains, which
 77 | include, but are not limited to, soybeans, corn, wheat, oats,
 78 | and rye.

79 | (6)~~(8)~~ "Grain dealer" means any person engaged in this
 80 | state in:

81 | (a) Buying, receiving, selling, exchanging, negotiating,
 82 | or processing for resale, or soliciting the sale, resale,
 83 | exchange, or transfer of, grain purchased from the producer or

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84 the producer's ~~her or his~~ agent or representative or received
 85 from the producer to be handled on a net return basis; or

86 (b) Receiving grain for storage.

87 (7) "Negotiating broker" means any person in the state
 88 engaged in the business of negotiating sales and purchases of
 89 agricultural products with a dealer in agricultural products for
 90 or on behalf of the producer or the producer's agent or
 91 representative. The negotiating broker never takes title to the
 92 agricultural product involved in the sale or purchase or handles
 93 the proceeds therefrom.

94 (8)-(4) "Net return basis" means the sale of agricultural
 95 products for the account of a producer ~~person~~, other than the
 96 seller, wherein the seller acts as the agent for the producer
 97 ~~owner~~ and pays the producer ~~owner~~ of such products the net
 98 proceeds after subtracting all authorized and allowable
 99 deductions.

100 (9)-(5) "Producer" means any grower ~~producer~~ of
 101 agricultural products produced in the state.

102 (10) "Producer's agent" means the seller of agricultural
 103 products for the account of a producer or group of producers on
 104 a net return basis, wherein the producer's agent acts as the
 105 agent for the producer or group of producers and pays the
 106 producer of such products all of the net proceeds after
 107 subtracting all authorized and allowable deductions. Allowable
 108 deductions may include, but are not limited to: packing charges,
 109 shipping charges, boxes, crates, billing, commission fees,
 110 cooling charges, pallets, and other deductible charges or fees
 111 agreed upon by the producer and producer's agent.

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112 Section 2. Subsections (2) and (4) of section 604.16,
 113 Florida Statutes, are amended to read:

114 604.16 Exceptions to provisions of ss. 604.15-
 115 604.34.--Except for s. 604.22(2), the provisions of ss. 604.15-
 116 604.34 do not apply to:

117 (2) A dealer in agricultural products ~~All persons~~ who pays
 118 ~~buy for cash and pay~~ at the time of purchase with United States
 119 cash currency or a cash equivalent, such as a money order,
 120 cashier's check, wire transfer, electronic funds transfer, or
 121 debit card.

122 (4) ~~Dealers who operate exclusively on a retail basis and~~
 123 who purchase less than \$1,000 worth of agricultural products
 124 from Florida producers or their agents or representatives during
 125 the peak month of such purchases within the calendar year.

126 Section 3. Section 604.18, Florida Statutes, is amended to
 127 read:

128 604.18 Application; form; contents.--Every dealer in
 129 agricultural products, ~~desiring to transact business within the~~
 130 state directly with a Florida producer, a producer's agent or
 131 representative, or a negotiating broker, shall, prior to
 132 transacting any business as such, file an application for such
 133 license with the department. License shall be renewed annually
 134 on its anniversary date. The application shall be on a form
 135 furnished by the department and, together with such other
 136 information as the department shall require, shall state:

137 (1) The kind or kinds of agricultural products the
 138 applicant proposes to handle. ~~+~~

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139 (2) The full name or title of the person, partnership,
 140 corporation, or other business entity and applicant, ~~or if the~~
 141 ~~applicant be an association or copartnership, the name of each~~
 142 ~~member of such association or copartnership, or if the applicant~~
 143 ~~be a corporation,~~ the name and mailing address of each owner,
 144 partner, officer, or managing agent. ~~officer of the corporation,~~

145 (3) The names of buyers or other local agents of the
 146 applicant, if any. ~~;~~

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

150 (5) The federal employer's identification number of the
 151 applicant, if any.

152 (6) The primary mailing address and physical address for
 153 each place of business. A dealer in agricultural products must
 154 have on file with the department the address of the dealer's
 155 primary place of business prior to engaging in business as a
 156 dealer in agricultural products in this state. Prior to changing
 157 the address of the primary place of business, the dealer must
 158 notify the department of the address of the new primary place of
 159 business. All documents relating to the provisions of ss.
 160 604.15-604.34 and chapter 120 shall be served to the last
 161 address of record; to a corporation's registered agent or the
 162 registered agent's substitute; in the absence of a registered
 163 agent, to an owner, officer, partner, employee, or managing
 164 agent of the business entity; or as designated by the applicant
 165 in the applicant's application.

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166 (7) The dollar amount of business done by a renewal
167 applicant with Florida producers and their agents or
168 representatives during the month in which the maximum dollar
169 amount of agricultural products was purchased or handled as a
170 dealer in agricultural products or the dollar amount of business
171 estimated to be done by a first-time applicant with Florida
172 producers and their agents or representatives during the month
173 in which the estimated maximum dollar amount of agricultural
174 products will be purchased or handled as a dealer in
175 agricultural products.

176 Section 4. Section 604.19, Florida Statutes, is amended to
177 read:

178 604.19 License; fee; bond; certificate of deposit;
179 penalty.--Unless the department refuses the application on one
180 or more of the grounds provided in this section, it shall issue
181 to an applicant, upon the payment of required ~~proper~~ fees and
182 the execution and delivery of a bond or certificate of deposit
183 as provided in this section, a state license entitling the
184 applicant to conduct business as a dealer in agricultural
185 products for a 1-year period to coincide with the effective
186 period of the bond or certificate of deposit furnished by the
187 applicant. During the 1-year period covered by a license, if the
188 supporting surety bond or certificate of deposit is canceled for
189 any reason, the license shall automatically expire on the date
190 the surety bond or certificate of deposit terminates, unless an
191 acceptable replacement is in effect before the date of
192 termination so that continual coverage occurs for the remaining
193 period of the license. A surety company shall give the

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194 department a 30-day written notice of cancellation by certified
 195 mail in order to cancel a bond. Cancellation of a bond or
 196 certificate of deposit shall not relieve a surety company or
 197 financial institution of liability for purchases or sales
 198 occurring while the bond or certificate of deposit was in
 199 effect. The license fee, which must be paid for the principal
 200 place of business for a dealer in agricultural products, shall
 201 be based upon the amount of the dealer's surety bond or
 202 certificate of deposit furnished by each dealer under the
 203 provisions of s. 604.20 and may not exceed \$500 ~~\$300~~. For each
 204 additional place in which the applicant desires to conduct
 205 business and which the applicant names in the application, the
 206 additional license fee must be paid but may not exceed \$100 ~~\$50~~
 207 annually. Should any dealer in agricultural products fail,
 208 refuse, or neglect to apply and qualify for the renewal of a
 209 license on or before the date of expiration thereof, a penalty
 210 not to exceed \$100 ~~\$35~~ shall apply to and be added to the
 211 original license fee and shall be paid by the applicant before
 212 the renewal license may be issued. The department by rule shall
 213 prescribe fee amounts sufficient to fund ss. 604.15-604.34.

214 Section 5. Section 604.20, Florida Statutes, is amended to
 215 read:

216 604.20 Bond or certificate of deposit prerequisite;
 217 amount; form.--

218 (1) Before any license is issued, the applicant therefor
 219 shall make and deliver to the department a surety bond or
 220 certificate of deposit in the amount of at least \$5,000 ~~\$3,000~~
 221 or in such greater amount as the department may determine, ~~not~~

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222 ~~exceeding the maximum amount of business done or estimated to be~~
 223 ~~done in any month by the applicant.~~ No bond or certificate of
 224 deposit may be in an amount less than \$5,000. The penal sum of
 225 the bond or certificate of deposit to be furnished to the
 226 department by an applicant for license as a dealer in
 227 agricultural products shall be in an amount equal to twice the
 228 dollar amount of agricultural products handled for a Florida
 229 producer or a producer's agent or representative, by purchase or
 230 otherwise, during the month of maximum transaction in such
 231 products during the preceding 12-month period. An applicant for
 232 license who has not handled agricultural products for a Florida
 233 producer or a producer's agent or representative, by purchase or
 234 otherwise, during the preceding 12-month period shall furnish a
 235 bond or certificate of deposit in an amount equal to twice the
 236 estimated dollar amount of such agricultural products to be
 237 handled, by purchase or otherwise, during the month of maximum
 238 transaction during the next immediate 12 months. Such bond or
 239 certificate of deposit shall be provided or assigned in the
 240 exact name in which the dealer will conduct business subject to
 241 the provisions of ss. 604.15-604.34. Such bond must be executed
 242 by a surety company ~~corporation~~ authorized to transact business
 243 in the state. For the purposes of ss. 604.19-604.21, the term
 244 "certificate of deposit" means a certificate of deposit at any
 245 recognized financial institution doing business in the United
 246 States. No certificate of deposit may be accepted in connection
 247 with an application for a dealer's license unless the issuing
 248 institution is properly insured by either the Federal Deposit
 249 Insurance Corporation or the Federal Savings and Loan Insurance

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250 Corporation. Such bond or any certificate of deposit assignment
 251 or agreement shall be upon a form prescribed or approved by the
 252 department and shall be conditioned to secure the faithful
 253 accounting for and payment, in the manner prescribed by s.
 254 604.21(9), to producers or their agents or representatives of
 255 the proceeds of all agricultural products handled or purchased
 256 by such dealer and to secure payment to dealers who sell
 257 agricultural products to such dealer. Such bond or certificate
 258 of deposit assignment or agreement shall include terms binding
 259 the instrument to the Commissioner of Agriculture. A certificate
 260 of deposit shall be presented with an assignment of applicant's
 261 rights in the certificate in favor of the Commissioner of
 262 Agriculture on a form prescribed by the department and with a
 263 letter from the issuing institution acknowledging that the
 264 assignment has been properly recorded on the books of the
 265 issuing institution and will be honored by the issuing
 266 institution. Such assignment shall be irrevocable while the
 267 dealer's license is in effect and for an additional period of 6
 268 months after the termination or expiration of the dealer's
 269 license provided no complaint is pending against the licensee.
 270 If a complaint is pending, the assignment shall remain in effect
 271 until all actions on the complaint have been finalized. The
 272 certificate of deposit may be released by the assignee of the
 273 financial institution to the licensee or the licensee's
 274 successors, assignee, or heirs if no claims are pending against
 275 the licensee before the department at the conclusion of 6 months
 276 after the last effective date of the license. No certificate of
 277 deposit shall be accepted that contains any provision that would

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278 | give the issuing institution any prior rights or claim on the
 279 | proceeds or principal of such certificate of deposit. The
 280 | department shall determine by rule the maximum amount of bond or
 281 | certificate of deposit required of a dealer and whether an
 282 | annual ~~or continuous~~ bond or certificate of deposit will be
 283 | required.

284 | (2) The amount of such bond or certificate of deposit
 285 | shall, upon the order of the department at any time, be
 286 | increased, if in its discretion the department finds such
 287 | increase to be warranted by the dollar amount ~~volume~~ of
 288 | agricultural products being handled, by purchase or otherwise,
 289 | by the licensee. In the same manner, the amount of such bond or
 290 | certificate of deposit may be decreased when a decrease in the
 291 | dollar amount ~~volume~~ of products handled, by purchase or
 292 | otherwise, warrants such decrease. These provisions apply to any
 293 | bond or certificate of deposit, regardless of the anniversary
 294 | date of its issuance, expiration, cancellation, or renewal.

295 | (3) In order to effectuate the purposes of this section,
 296 | the department or its agents may require from any applicant or
 297 | licensee verified statements of the dollar amount ~~volume~~ of the
 298 | applicant's or licensee's ~~her or his~~ business or may review the
 299 | applicant's ~~applicant~~ or licensee's records at the applicant's
 300 | or licensee's ~~her or his~~ place of business during normal
 301 | business hours to determine the actual dollar amount of
 302 | agricultural products handled, by purchase or otherwise ~~for the~~
 303 | ~~purpose of determining her or his volume of business.~~ The
 304 | failure of a licensee to furnish such statement, to make such
 305 | records available, or to make and deliver a new or additional

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306 bond or certificate of deposit shall be cause for suspension of
307 the licensee's license. If the department finds such failure to
308 be willful, the license may be revoked.

309 (4) The department may issue a conditional license to an
310 applicant who is unable to provide a single bond or certificate
311 of deposit in the full amount required by the calculation in
312 subsection (1). The conditional license shall remain in effect
313 for a 1-year period to coincide with the effective period of the
314 bond or certificate of deposit furnished by the applicant. The
315 applicant must provide at least the minimum \$5,000 bond or
316 certificate of deposit as provided in subsection (1) together
317 with one of the following:

318 (a) A notarized affidavit limiting the handling of
319 agricultural products, by purchase or otherwise, during their
320 largest month to a minimum of one-half the amount of the bond or
321 certificate of deposit provided by the applicant;

322 (b) A notarized affidavit stating that any subject
323 agricultural products, handled by purchase or otherwise,
324 exceeding one-half of the amount of the bond or certificate of
325 deposit will be handled under the exemption provisions set forth
326 in s. 604.16(2); or

327 (c) A second bond or certificate of deposit in such an
328 amount that, when the penal sum of the second bond or
329 certificate of deposit is added to the penal sum of the first
330 bond or certificate of deposit, the combined penal sum will
331 equal twice the dollar amount of agricultural products handled
332 for a Florida producer or a producer's agent or representative,
333 by purchase or otherwise, during the month of maximum

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334 transaction in such products during the preceding 12-month
 335 period.

336
 337 The department or its agents may require from any licensee who
 338 is issued a conditional license verified statements of the
 339 volume of the licensee's business or may review the licensee's
 340 records at the licensee's place of business during normal
 341 business hours to determine the licensee's adherence to the
 342 conditions of the license. The failure of a licensee to furnish
 343 such statement or to make such records available shall be cause
 344 for suspension of the licensee's conditional license. If the
 345 department finds such failure to be willful, the conditional
 346 license may be revoked.

347 Section 6. Section 604.21, Florida Statutes, is amended to
 348 read:

349 604.21 Complaint; investigation; hearing.--

350 (1) (a) Any person, partnership, corporation, or other
 351 business entity claiming herself or himself to be damaged by any
 352 breach of the conditions of a bond or certificate of deposit
 353 assignment or agreement given by a licensed dealer in
 354 agricultural products as hereinbefore provided may enter
 355 complaint thereof against the dealer and against the surety
 356 company, if any, to the department, which complaint shall be a
 357 written statement of the facts constituting the complaint. Such
 358 complaint shall include all agricultural products defined in s.
 359 604.15(1), as well as any additional charges necessary to
 360 effectuate the sale unless these additional charges are already
 361 included in the total delivered price. Such complaint shall be

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362 | filed within 6 months from the date of sale in instances
363 | involving direct sales or from the date on which the
364 | agricultural product was received by the dealer in agricultural
365 | products, as agent, to be sold for the producer. No complaint
366 | shall be filed pursuant to this section unless the transactions
367 | involved total at least \$500 ~~\$250~~ and occurred in a single
368 | license year. Before a complaint can be processed, the
369 | complainant must provide the department with a \$50 filing fee.
370 | In the event the complainant is successful in proving the claim,
371 | the dealer in agricultural products shall reimburse the
372 | complainant for the \$50 filing fee as part of the settlement of
373 | the claim.

374 | (b) To be considered timely filed, a complaint together
375 | with any required affidavits or notarizations must be received
376 | by the department within 6 months after the date of sale by
377 | electronic transmission, facsimile, regular mail, certified
378 | mail, or private delivery service. If the complaint is sent by a
379 | service other than electronic mail or facsimile, the mailing
380 | shall be postmarked or dated on or before the 6-month deadline
381 | to be accepted as timely filed.

382 | (c) When multiple claims exist by a producer, a producer's
383 | agent or representative, or a dealer and the combined
384 | adjudicated amounts exceed the total amount of any bond and
385 | certificate of deposit, sales occurring 120 or more days after
386 | the oldest sale stated in any complaint filed by the same
387 | producer, producer's agent or representative, or dealer shall
388 | not be considered for payment from the proceeds of the bond or

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389 certificate of deposit in the event that the surety company or
390 financial institution is called on to make payment.

391 (d) A person, partnership, corporation, or other business
392 entity filing a complaint shall submit to the department the
393 following documents: three completed complaint affidavits on a
394 form provided by the department with an original signature of an
395 owner, partner, general partner, or corporate officer and an
396 original notarization on each affidavit. If the complaint is
397 filed by electronic transmission or facsimile, the original
398 affidavits and original notarizations shall be filed with the
399 department not later than the close of business of the tenth
400 business day following the electronic transmission or facsimile
401 filing. Attached to each complaint affidavit shall be copies of
402 all documents to support the complaint. Supporting documents may
403 be copies of invoices, bills of lading, packing or shipping
404 documents, demand letters, or any other documentation to support
405 the claim. In cases in which there are multiple invoices being
406 claimed, a summary list of all claimed invoices must accompany
407 the complaint.

408 (e) A dealer in agricultural products who is in compliance
409 with ss. 604.15-604.34 may file a complaint with the department
410 against another licensed dealer in agricultural products.
411 However, payment from a bond or certificate of deposit to a
412 dealer shall occur only after all claims of producers or
413 producers' agents or representatives have been paid in full
414 except as provided pursuant to paragraph (c).

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415 (f) Filing a complaint with the department does not
416 constitute an election of remedies when the same or similar
417 complaint is filed in another venue.

418 (g) The surety company or financial institution shall be
419 responsible for payment of properly established complaints filed
420 against a dealer, notwithstanding the dealer's filing of a
421 bankruptcy proceeding.

422 (2) Upon the filing of such complaint in the manner herein
423 provided, the department shall investigate the matters
424 complained of; whereupon, if, in the opinion of the department,
425 the facts contained in the complaint warrant such action, the
426 department shall serve notice of the filing of complaint ~~send~~ to
427 the dealer against whom the complaint has been filed at the last
428 address of record in question, by certified mail, notice of the
429 filing of the complaint. Such notice shall be accompanied by a
430 true copy of the complaint. A copy of such notice and complaint
431 shall also be served ~~sent~~ to the surety company, if any, that
432 provided the bond for the dealer, which surety company shall
433 become party to the action. Such notice of the complaint shall
434 inform the dealer of a reasonable time within which to answer
435 the complaint by advising the department in writing that the
436 allegations in the complaint are admitted or denied or that the
437 complaint has been satisfied. Such notice shall also inform the
438 dealer and the surety company or financial institution, ~~if any,~~
439 of a right to a hearing on the complaint, if requested.

440 (3) If the dealer files an answer admitting ~~admits~~ the
441 allegations of the complaint and the department determines
442 through inquiry of the complainant that the dealer has failed

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443 ~~but fails~~ to satisfy same within 21 days after receipt of the
444 notice of the filing of a complaint by any party whose
445 substantial interests are determined ~~the time fixed~~ by the
446 department, the department shall thereupon order payment by the
447 dealer of the amount found owed. In the event a party files a
448 request that the complaint be held in abeyance pending a
449 settlement agreement, the period of abeyance shall not exceed 6
450 months and successive periods of abeyance shall not be granted.

451 (4) If the dealer files an answer and ~~, in her or his~~
452 ~~answer,~~ denies the allegations of the complaint and waives a
453 hearing, the department may order a hearing or enter an order
454 based on the facts and circumstances set forth in the complaint
455 and the respondent's answer thereto. If the department
456 determines the complaint has not been established or fails to
457 meet the provisions of this section, the order shall, among
458 other things, dismiss the proceedings. If the department
459 determines that the allegations of the complaint have been
460 established, it shall enter its findings of fact accordingly and
461 thereupon enter its order adjudicating the amount of
462 indebtedness due to be paid by the dealer to the complainant.

463 (5) Any order entered by the department pursuant to this
464 section shall become final and effective on the date filed with
465 the department's agency clerk ~~14 days after issue if neither the~~
466 ~~department nor a party whose material interest is affected by~~
467 ~~the order requests a hearing on the order within 14 days~~
468 ~~following the date of issue.~~

469 (6) Any party whose substantial ~~material~~ interest is
470 affected by a proceeding pursuant to this section shall be

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471 granted a hearing upon request as provided by chapter 120. Such
472 hearing shall be conducted pursuant to chapter 120. The final
473 order of the department, when issued pursuant to the recommended
474 order of an administrative law judge, shall be final and
475 effective on the date filed with the department's agency clerk.
476 Any party to these proceedings adversely affected by the final
477 order is entitled to seek review of the final order pursuant to
478 s. 120.68 and the Florida Rules of Appellate Procedure. Should a
479 complaint forwarded by the department to the Division of
480 Administrative Hearings be settled prior to a hearing pursuant
481 to chapter 120, the department shall issue a notice closing the
482 complaint file upon receipt of the administrative law judge's
483 order closing the complaint file, and the matter before the
484 department shall be closed accordingly ~~upon issuance.~~

485 (7) Any indebtedness set forth in a departmental order
486 against a dealer shall be paid by the dealer within 15 days
487 after such order becomes final.

488 (8) Upon the failure by a dealer to comply with an order
489 of the department directing payment, the department shall, in
490 instances involving bonds, call upon the surety company to pay
491 over to the department out of the bond posted by the surety
492 company for such dealer or, in instances involving certificates
493 of deposit, call upon the financial institution issuing such
494 certificate to pay over to the department out of the certificate
495 under the conditions of the assignment or agreement, the amount
496 called for in the order of the department, not exceeding the
497 amount of the bond or the principal of the certificate of
498 deposit. If the bond or the principal of the certificate of

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499 deposit is insufficient to pay in full the amount due each
500 complainant as set forth in the order of the department, the
501 department shall distribute the proceeds pro rata among such
502 complainants. The proceeds from a bond or the principal from a
503 certificate of deposit shall be paid directly to the department
504 to be distributed by it to successful complainants, except the
505 accrued interest on a certificate of deposit shall be paid to
506 the dealer. Such funds shall be considered trust funds in the
507 hands of the department for the exclusive purpose of satisfying
508 duly established complaints. Payments made to the department
509 pursuant to this section shall be considered payments made upon
510 demand and may not be considered voluntary payments.

511 (9) Payments from a surety company or proceeds from a
512 certificate of deposit shall be paid first to the producer or
513 the producer's agent or representative in the amount of the
514 producer's claims in full if such proceeds are sufficient for
515 such purpose and, if not, then in pro rata shares to such
516 producer or producer's agent or representative. If additional
517 proceeds exist in the hands of the department after all claims
518 of a producer and a producer's agent or representative have been
519 paid in full, the balance of such proceeds shall be paid to
520 claimants who are licensed dealers in agricultural products,
521 either in whole or in pro rata portion, as the aggregate of
522 their claims may bear to the amount of such additional proceeds.

523 (10)-(9) Nothing in this section may be construed as
524 relieving a surety company from responsibility for payment on
525 properly established complaints against dealers involved in a

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526 federal bankruptcy proceeding and against whom the department is
 527 prohibited from entering an order.

528 (11)~~(10)~~ Upon the failure of a surety company to comply
 529 with a demand for payment of the proceeds on a bond for a dealer
 530 in agricultural products, a complainant who is entitled to such
 531 proceeds, in total or in part, may, within a reasonable time,
 532 file in the circuit court a petition or complaint setting forth
 533 the administrative proceeding before the department and ask for
 534 final order of the court directing the surety company to pay the
 535 bond proceeds to the department for distribution to the
 536 complainants. If in such suit the complainant is successful and
 537 the court affirms the demand of the department for payment, the
 538 complainant shall be awarded all court costs incurred therein
 539 and also a reasonable attorney's fee to be fixed and collected
 540 as part of the costs of the suit. In lieu of such suit, the
 541 department may enforce its final agency action in the manner
 542 provided in s. 120.69.

543 Section 7. Section 604.22, Florida Statutes, is amended to
 544 read:

545 604.22 Dealers to keep records; contents.--

546 (1) Each licensee, while acting as agent for a producer,
 547 shall make and preserve for at least 1 year a record of each
 548 transaction, specifying the name and address of the producer for
 549 whom she or he acts as agent; the date of receipt; the kind,
 550 quality, and quantity of agricultural products received; the
 551 name and address of the purchaser of each package of
 552 agricultural products; the price for which each package was
 553 sold; the amount of any additional charges necessary to

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554 effectuate the sale; the amount and explanation of any
 555 adjustments given; and the net amount due from each purchaser.
 556 An account of sales shall be furnished each producer within 48
 557 hours after the sale of such agricultural products unless
 558 otherwise agreed to in a written contract or verifiable oral
 559 agreement. Such account of sales shall clearly show the sale
 560 price of each lot of agricultural products sold; all adjustments
 561 to the original price, along with an explanation of such
 562 adjustments; and an itemized showing of all marketing costs
 563 deducted by the licensee, along with the net amount due the
 564 producer. The licensee shall make the payment to the producer
 565 within 5 days of the licensee's receipt of payment unless
 566 otherwise agreed to in a written contract or verifiable oral
 567 agreement.

568 (2) (a) The provisions of s. 604.16(2), (3), and (4)
 569 notwithstanding, any person, partnership, corporation, or other
 570 business entity, except a person described in s. 604.16(1), who
 571 possesses and offers for sale agricultural products is required
 572 to possess and display, upon the request of any department
 573 representative or state, county, or local law enforcement
 574 officer, an invoice, bill of sale, manifest, or other written
 575 document showing the date of sale, the name and address of the
 576 seller, and the kind and quantity of products for all such
 577 agricultural products.

578 (b) Any person who violates the provisions of this
 579 subsection is guilty of a misdemeanor of the second degree,
 580 punishable as provided in s. 775.082 or s. 775.083.

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581 Section 8. Section 604.23, Florida Statutes, is amended to
 582 read:

583 604.23 Examination of records, sales, accounts, books, and
 584 other documents.--The department shall have power to
 585 investigate, upon complaint of any interested person or upon its
 586 own initiative, the record of any dealer in agricultural
 587 products ~~applicant or licensee,~~ or any transaction involving the
 588 solicitation, receipt, sale or attempted sale of agricultural
 589 products, the failure to make proper and true accounts and
 590 settlements at prompt and regular intervals, the making of false
 591 statements as to condition, quality or quantity of goods
 592 received or while in storage, the making of false statements as
 593 to market conditions with intent to deceive, or the failure to
 594 make payment for goods received, or other alleged injurious
 595 transactions. For such purposes the department or its agents may
 596 examine, at the place or places of business of the dealer in
 597 agricultural products, the ~~applicant or licensee, her or his~~
 598 ledgers, books of accounts, memoranda, and other documents which
 599 relate to the transaction involved, and may take testimony
 600 thereon under oath.

601 Section 9. Paragraphs (a) and (d) of subsection (1) of
 602 section 604.25, Florida Statutes, are amended to read:

603 604.25 Refusal to grant, or suspension or revocation of,
 604 license.--

605 (1) The department may decline to grant a license or may
 606 suspend or revoke a license already granted if the applicant or
 607 licensee has:

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608 (a) Suffered a monetary ~~money~~ judgment ~~to be~~ entered
 609 against the applicant or licensee ~~her or him~~ upon which
 610 execution has been returned unsatisfied;

611 (d) Made any false statement or statements as to
 612 condition, quality, or quantity of goods received or held for
 613 sale when ~~she or he could have ascertained~~ the true condition,
 614 quality, or quantity could have been ascertained by reasonable
 615 inspection;

616 Section 10. Section 604.30, Florida Statutes, is amended
 617 to read:

618 604.30 Penalties; injunctive relief; administrative
 619 fines.--

620 (1) Any dealer in agricultural products who violates the
 621 provisions of ss. 604.15-604.34, or who interferes with an agent
 622 of the department in the enforcement of ss. 604.15-604.34, is
 623 guilty of a misdemeanor of the second degree, punishable as
 624 provided in s. 775.082 or s. 775.083, and for a second or
 625 subsequent offense is guilty of a misdemeanor of the first
 626 degree, punishable as provided in s. 775.082 or s. 775.083.

627 (2) In addition to the remedies provided in this chapter
 628 and notwithstanding the existence of any adequate remedy at law,
 629 when the department has probable cause to believe that any
 630 person, partnership, corporation, or other business entity has
 631 violated any provision of this chapter or any rule adopted
 632 pursuant thereto, the department may issue and deliver to such
 633 person, partnership, corporation, or other business entity a
 634 notice to cease and desist from such violation. For the purpose
 635 of enforcing a cease and desist order, the department may file a

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636 proceeding in the name of the state seeking issuance of an
 637 injunction or writ of mandamus against any person, partnership,
 638 corporation, or other business entity who violates any
 639 provisions of such order, and such injunction shall be issued
 640 without bond.

641 (3) (a) In addition to the penalties provided in this
 642 section, the department may, after notice and hearing, impose a
 643 fine not exceeding \$2,500 ~~\$1,000~~ for the violation of any of the
 644 provisions of ss. 604.15-604.34 or the rules adopted thereunder
 645 against any dealer in agricultural products; such fine, when
 646 imposed and paid, shall be deposited by the department into the
 647 General Inspection Trust Fund.

648 (b) Whenever any administrative order has been made and
 649 entered by the department imposing a fine pursuant to this
 650 subsection, the order shall specify the amount of the fine and a
 651 time limit of no more than 15 days for the payment thereof. Upon
 652 the failure of the dealer involved to pay the fine within that
 653 time, the dealer's license as dealer in agricultural products
 654 shall be subject to suspension or revocation and a fine not to
 655 exceed \$100 ~~of \$50~~ a day shall be imposed on the dealer while
 656 the dealer ~~she or he~~ is in violation of such order.

657 Section 11. The sum of \$285,000 is appropriated from the
 658 General Inspection Trust Fund to the Department of Agriculture
 659 and Consumer Services, and four additional full-time equivalent
 660 positions are authorized, for the purpose of implementing this
 661 act during the 2005-2006 fiscal year.

662 Section 12. This act shall take effect October 1, 2005.