

By Senator Smith

14-1002-05

See HB

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

1 agricultural products; limiting the time a
2 complaint may be held in abeyance; authorizing
3 review of a final order; clarifying
4 distribution of bond or certificate of deposit
5 proceeds; amending s. 604.22, F.S.; revising
6 recordkeeping requirements of licensees;
7 clarifying application of provisions; amending
8 ss. 604.23 and 604.25, F.S.; clarifying
9 application of provisions; amending s. 604.30,
10 F.S.; clarifying that a violator of provisions
11 regulating dealers in agricultural products may
12 be a person, partnership, corporation, or other
13 business entity; increasing the maximum
14 administrative fine and the fine for continued
15 violation of an administrative order; providing
16 an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 604.15, Florida Statutes, is
21 amended to read:

22 604.15 Dealers in agricultural products;
23 definitions.--For the purpose of ss. 604.15-604.34, the
24 following words and terms, when used, shall be construed to
25 mean:

26 ~~(1)(3)~~ "Agricultural products" means the natural
27 products of the farm, nursery, grove, orchard, vineyard,
28 garden, and apiary (raw or manufactured); sod; tropical
29 foliage; horticulture; hay; livestock; milk and milk products;
30 poultry and poultry products; the fruit of the saw palmetto
31 (meaning the fruit of the *Serenoa repens*); ~~and~~ limes (meaning

1 the fruit Citrus aurantifolia, variety Persian, Tahiti,
2 Bearss, or Florida Key limes); and any other nonexempt
3 agricultural products produced in the state, except tobacco,
4 ~~tropical foliage,~~ sugarcane, timber and timber by-products,
5 forest products as defined in s. 591.17, and citrus other than
6 limes.

7 ~~(2)(1)~~ "Dealer in agricultural products" means any
8 person, partnership, corporation, or other business entity,
9 whether itinerant or domiciled within this state, engaged
10 within this state in the business of purchasing, receiving, or
11 soliciting agricultural products from the producer or the
12 producer's ~~her or his~~ agent or representative for resale or
13 processing for sale; acting as an agent for such producer in
14 the sale of agricultural products for the account of the
15 producer on a net return basis; or acting as a negotiating
16 broker between the producer or the producer's ~~her or his~~ agent
17 or representative and the buyer.

18 ~~(3)(6)~~ "Delivery ticket" means a document provided to
19 a grain producer by a grain dealer in conjunction with the
20 delivery of grain to the grain dealer.

21 ~~(4)(2)~~ "Department" means the Department of
22 Agriculture and Consumer Services.

23 ~~(5)(7)~~ "Grain" means any food or feed grains, which
24 include, but are not limited to, soybeans, corn, wheat, oats,
25 and rye.

26 ~~(6)(8)~~ "Grain dealer" means any person engaged in this
27 state in:

28 (a) Buying, receiving, selling, exchanging,
29 negotiating, or processing for resale, or soliciting the sale,
30 resale, exchange, or transfer of, grain purchased from the
31 producer or the producer's ~~her or his~~ agent or representative

1 or received from the producer to be handled on a net return
2 basis; or

3 (b) Receiving grain for storage.

4 (7) "Negotiating broker" means any person in the state
5 engaged in the business of negotiating sales and purchases of
6 agricultural products with a dealer in agricultural products
7 for or on behalf of the producer or the producer's agent or
8 representative. The negotiating broker never takes title to
9 the agricultural product involved in the sale or purchase or
10 handles the proceeds therefrom.

11 (8)(4) "Net return basis" means the sale of
12 agricultural products for the account of a ~~producer person,~~
13 other than the seller, wherein the seller acts as the agent
14 for the ~~producer owner~~ and pays the ~~producer owner~~ of such
15 products the net proceeds after subtracting all authorized and
16 allowable deductions.

17 (9)(5) "Producer" means any ~~grower producer~~ of
18 agricultural products produced in the state.

19 (10) "Producer's agent" means the seller of
20 agricultural products for the account of a producer or group
21 of producers on a net return basis, wherein the producer's
22 agent acts as the agent for the producer or group of producers
23 and pays the producer of such products all of the net proceeds
24 after subtracting all authorized and allowable deductions.
25 Allowable deductions may include, but are not limited to:
26 packing charges, shipping charges, boxes, crates, billing,
27 commission fees, cooling charges, pallets, and other
28 deductible charges or fees agreed upon by the producer and
29 producer's agent.

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

1 604.16 Exceptions to provisions of ss.
2 604.15-604.34.--Except for s. 604.22(2), the provisions of ss.
3 604.15-604.34 do not apply to:

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

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

14 Section 3. Section 604.18, Florida Statutes, is
15 amended to read:

16 604.18 Application; form; contents.--Every dealer in
17 agricultural products, desiring to transact business within
18 the state directly with a Florida producer, a producer's agent
19 or representative, or a negotiating broker, shall, prior to
20 transacting any business as such, file an application for such
21 license with the department. License shall be renewed annually
22 on its anniversary date. The application shall be on a form
23 furnished by the department and, together with such other
24 information as the department shall require, shall state:

25 (1) The kind or kinds of agricultural products the
26 applicant proposes to handle.†

27 (2) The full name or title of the person, partnership,
28 corporation, or other business entity and applicant, ~~or if the~~
29 ~~applicant be an association or copartnership, the name of each~~
30 ~~member of such association or copartnership, or if the~~
31 ~~applicant be a corporation,~~ the name and mailing address of

1 ~~each owner, partner, officer, or managing agent. officer of~~
2 ~~the corporation;~~

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

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

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

10 (6) The primary mailing address and physical address
11 for each place of business. A dealer in agricultural products
12 must have on file with the department the address of the
13 dealer's primary place of business prior to engaging in
14 business as a dealer in agricultural products in this state.
15 Prior to changing the address of the primary place of
16 business, the dealer must notify the department of the address
17 of the new primary place of business. All documents relating
18 to the provisions of ss. 604.15-604.34 and chapter 120 shall
19 be served to the last address of record; to a corporation's
20 registered agent or the registered agent's substitute; in the
21 absence of a registered agent, to an owner, officer, partner,
22 employee, or managing agent of the business entity; or as
23 designated by the applicant in the applicant's application.

24 (7) The dollar amount of business done by a renewal
25 applicant with Florida producers and their agents or
26 representatives during the month in which the maximum dollar
27 amount of agricultural products was purchased or handled as a
28 dealer in agricultural products or the dollar amount of
29 business estimated to be done by a first-time applicant with
30 Florida producers and their agents or representatives during
31 the month in which the estimated maximum dollar amount of

1 agricultural products will be purchased or handled as a dealer
2 in agricultural products.

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

5 604.19 License; fee; bond; certificate of deposit;
6 penalty.--Unless the department refuses the application on one
7 or more of the grounds provided in this section, it shall
8 issue to an applicant, upon the payment of required ~~proper~~
9 fees and the execution and delivery of a bond or certificate
10 of deposit as provided in this section, a state license
11 entitling the applicant to conduct business as a dealer in
12 agricultural products for a 1-year period to coincide with the
13 effective period of the bond or certificate of deposit
14 furnished by the applicant. During the 1-year period covered
15 by a license, if the supporting surety bond or certificate of
16 deposit is canceled for any reason, the license shall
17 automatically expire on the date the surety bond or
18 certificate of deposit terminates, unless an acceptable
19 replacement is in effect before the date of termination so
20 that continual coverage occurs for the remaining period of the
21 license. A surety company shall give the department a 30-day
22 written notice of cancellation by certified mail in order to
23 cancel a bond. Cancellation of a bond or certificate of
24 deposit shall not relieve a surety company or financial
25 institution of liability for purchases or sales occurring
26 while the bond or certificate of deposit was in effect. The
27 license fee, which must be paid for the principal place of
28 business for a dealer in agricultural products, shall be based
29 upon the amount of the dealer's surety bond or certificate of
30 deposit furnished by each dealer under the provisions of s.
31 604.20 and may not exceed ~~\$500~~ \$300. For each additional place

1 | in which the applicant desires to conduct business and which
2 | the applicant names in the application, the additional license
3 | fee must be paid but may not exceed ~~\$100~~\$50 annually. Should
4 | any dealer in agricultural products fail, refuse, or neglect
5 | to apply and qualify for the renewal of a license on or before
6 | the date of expiration thereof, a penalty not to exceed \$100
7 | ~~\$35~~ shall apply to and be added to the original license fee
8 | and shall be paid by the applicant before the renewal license
9 | may be issued. The department by rule shall prescribe fee
10 | amounts sufficient to fund ss. 604.15-604.34.

11 | Section 5. Section 604.20, Florida Statutes, is
12 | amended to read:

13 | 604.20 Bond or certificate of deposit prerequisite;
14 | amount; form.--

15 | (1) Before any license is issued, the applicant
16 | therefor shall make and deliver to the department a surety
17 | bond or certificate of deposit in the amount of at least
18 | \$3,000 or in such greater amount as the department may
19 | determine, ~~not exceeding the maximum amount of business done~~
20 | ~~or estimated to be done in any month by the applicant. No bond~~
21 | or certificate of deposit may be in an amount less than
22 | \$3,000. The penal sum of the bond or certificate of deposit to
23 | be furnished to the department by an applicant for license as
24 | a dealer in agricultural products shall be in an amount equal
25 | to twice the dollar amount of agricultural products handled
26 | for a Florida producer or a producer's agent or
27 | representative, by purchase or otherwise, during the month of
28 | maximum transaction in such products during the preceding
29 | 12-month period. An applicant for licensure who has not
30 | handled agricultural products for a Florida producer or a
31 | producer's agent or representative, by purchase or otherwise,

1 during the preceding 12-month period shall furnish a bond or
2 certificate of deposit in an amount equal to twice the
3 estimated dollar amount of such agricultural products to be
4 handled, by purchase or otherwise, during the month of maximum
5 transaction during the next immediate 12 months. Such bond or
6 certificate of deposit shall be provided or assigned in the
7 exact name in which the dealer will conduct business subject
8 to the provisions of ss. 604.15-604.34. Such bond must be
9 executed by a surety ~~company~~ ~~corporation~~ authorized to
10 transact business in the state. For the purposes of ss.
11 604.19-604.21, the term "certificate of deposit" means a
12 certificate of deposit at any recognized financial institution
13 doing business in the United States. ~~No certificate of deposit~~
14 may be accepted in connection with an application for a
15 dealer's license unless the issuing institution is properly
16 insured by either the Federal Deposit Insurance Corporation or
17 the Federal Savings and Loan Insurance Corporation. Such bond
18 or any certificate of deposit assignment or agreement shall be
19 upon a form prescribed or approved by the department and shall
20 be conditioned to secure the faithful accounting for and
21 payment, in the manner prescribed by s. 604.21(9), to
22 producers or their agents or representatives of the proceeds
23 of all agricultural products handled or purchased by such
24 dealer and to secure payment to dealers who sell agricultural
25 products to such dealer. Such bond or certificate of deposit
26 assignment or agreement shall include terms binding the
27 instrument to the Commissioner of Agriculture. A certificate
28 of deposit shall be presented with an assignment of
29 applicant's rights in the certificate in favor of the
30 Commissioner of Agriculture on a form prescribed by the
31 department and with a letter from the issuing institution

1 acknowledging that the assignment has been properly recorded
2 on the books of the issuing institution and will be honored by
3 the issuing institution. Such assignment shall be irrevocable
4 while the dealer's license is in effect and for an additional
5 period of 6 months after the termination or expiration of the
6 dealer's license provided no complaint is pending against the
7 licensee. If a complaint is pending, the assignment shall
8 remain in effect until all actions on the complaint have been
9 finalized. The certificate of deposit may be released by the
10 assignee of the financial institution to the licensee or the
11 licensee's successors, assignee, or heirs if no claims are
12 pending against the licensee before the department at the
13 conclusion of 6 months after the last effective date of the
14 license. No certificate of deposit shall be accepted that
15 contains any provision that would give the issuing institution
16 any prior rights or claim on the proceeds or principal of such
17 certificate of deposit. The department shall determine by rule
18 the maximum amount of bond or certificate of deposit required
19 of a dealer and whether an annual ~~or continuous~~ bond or
20 certificate of deposit will be required.

21 (2) The amount of such bond or certificate of deposit
22 shall, upon the order of the department at any time, be
23 increased, if in its discretion the department finds such
24 increase to be warranted by the dollar amount ~~volume~~ of
25 agricultural products being handled, by purchase or otherwise,
26 by the licensee. In the same manner, the amount of such bond
27 or certificate of deposit may be decreased when a decrease in
28 the dollar amount ~~volume~~ of products handled, by purchase or
29 otherwise, warrants such decrease. These provisions apply to
30 any bond or certificate of deposit, regardless of the
31

1 anniversary date of its issuance, expiration, cancellation, or
2 renewal.

3 (3) In order to effectuate the purposes of this
4 section, the department or its agents may require from any
5 applicant or licensee verified statements of the dollar amount
6 ~~volume of the applicant's or licensee's her or his~~ business or
7 may review the applicant's ~~applicant~~ or licensee's records at
8 the applicant's or licensee's her or his place of business
9 during normal business hours to determine the actual dollar
10 amount of agricultural products handled, by purchase of
11 otherwise for the purpose of determining her or his volume of
12 ~~business~~. The failure of a licensee to furnish such statement,
13 to make such records available, or to make and deliver a new
14 or additional bond or certificate of deposit shall be cause
15 for suspension of the licensee's license. If the department
16 finds such failure to be willful, the license may be revoked.

17 (4) The department may issue a conditional license to
18 an applicant who is unable to provide a single bond or
19 certificate of deposit in the full amount required by the
20 calculation in subsection (1). The conditional license shall
21 remain in effect for a 1-year period to coincide with the
22 effective period of the bond or certificate of deposit
23 furnished by the applicant. The applicant must provide at
24 least the minimum \$3,000 bond or certificate of deposit as
25 provided in subsection (1) together with one of the following:

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

30 (b) A notarized affidavit stating that any subject
31 agricultural products, handled by purchase or otherwise,

1 exceeding one-half of the amount of the bond or certificate of
2 deposit will be handled under the exemption provisions set
3 forth in s. 604.16(2); or

4 (c) A second bond or certificate of deposit in such an
5 amount that, when the penal sum of the second bond or
6 certificate of deposit is added to the penal sum of the first
7 bond or certificate of deposit, the combined penal sum will
8 equal twice the dollar amount of agricultural products handled
9 for a Florida producer or a producer's agent or
10 representative, by purchase or otherwise, during the month of
11 maximum transaction in such products during the preceding
12 12-month period.

13
14 The department or its agents may require from any licensee who
15 is issued a conditional license verified statements of the
16 volume of the licensee's business or may review the licensee's
17 records at the licensee's place of business during normal
18 business hours to determine the licensee's adherence to the
19 conditions of the license. The failure of a licensee to
20 furnish such statement or to make such records available shall
21 be cause for suspension of the licensee's conditional license.
22 If the department finds such failure to be willful, the
23 conditional license may be revoked.

24 Section 6. Section 604.21, Florida Statutes, is
25 amended to read:

26 604.21 Complaint; investigation; hearing.--

27 (1)(a) Any person, partnership, corporation, or other
28 business entity claiming ~~herself or himself~~ to be damaged by
29 any breach of the conditions of a bond or certificate of
30 deposit assignment or agreement given by a ~~licensed~~ dealer in
31 agricultural products as hereinbefore provided may enter

1 | complaint thereof against the dealer and against the surety
2 | company, if any, to the department, which complaint shall be a
3 | written statement of the facts constituting the complaint.
4 | Such complaint shall include all agricultural products defined
5 | in s. 604.15(1), as well as any additional charges necessary
6 | to effectuate the sale unless these additional charges are
7 | already included in the total delivered price. Such complaint
8 | shall be filed within 6 months from the date of sale in
9 | instances involving direct sales or from the date on which the
10 | agricultural product was received by the dealer in
11 | agricultural products, as agent, to be sold for the producer.
12 | No complaint shall be filed pursuant to this section unless
13 | the transactions involved total at least ~~\$500~~~~\$250~~ and
14 | occurred in a single license year. Before a complaint can be
15 | processed, the complainant must provide the department with a
16 | \$50 filing fee. In the event the complainant is successful in
17 | proving the claim, the dealer in agricultural products shall
18 | reimburse the complainant for the \$50 filing fee as part of
19 | the settlement of the claim.

20 | **(b)** To be considered timely filed, a complaint
21 | together with any required affidavits or notarizations must be
22 | received by the department within 6 months after the date of
23 | sale by electronic transmission, facsimile, regular mail,
24 | certified mail, or private delivery service. If the complaint
25 | is sent by a service other than electronic mail or facsimile,
26 | the mailing shall be postmarked or dated on or before the
27 | 6-month deadline to be accepted as timely filed.

28 | **(c)** When multiple claims exist by a producer, a
29 | producer's agent or representative, or a dealer and the
30 | combined adjudicated amounts exceed the total amount of any
31 | bond and certificate of deposit, sales occurring 120 or more

1 days after the oldest sale stated in any complaint filed by
2 the same producer, producer's agent or representative, or
3 dealer shall not be considered for payment from the proceeds
4 of the bond or certificate of deposit in the event that the
5 surety company or financial institution is called on to make
6 payment.

7 (d) A person, partnership, corporation, or other
8 business entity filing a complaint shall submit to the
9 department the following documents: three completed complaint
10 affidavits on a form provided by the department with an
11 original signature of an owner, partner, general partner, or
12 corporate officer and an original notarization on each
13 affidavit. If the complaint is filed by electronic
14 transmission or facsimile, the original affidavits and
15 original notarizations shall be filed with the department not
16 later than the close of business of the tenth business day
17 following the electronic transmission or facsimile filing.
18 Attached to each complaint affidavit shall be copies of all
19 documents to support the complaint. Supporting documents may
20 be copies of invoices, bills of lading, packing or shipping
21 documents, demand letters, or any other documentation to
22 support the claim. In cases in which there are multiple
23 invoices being claimed, a summary list of all claimed invoices
24 must accompany the complaint.

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

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

4 (g) The surety company or financial institution shall
5 be responsible for payment of properly established complaints
6 filed against a dealer, notwithstanding the dealer's filing of
7 a bankruptcy proceeding.

8 (2) Upon the filing of such complaint in the manner
9 herein provided, the department shall investigate the matters
10 complained of; whereupon, if, in the opinion of the
11 department, the facts contained in the complaint warrant such
12 action, the department shall serve notice of the filing of
13 complaint ~~send~~ to the dealer against whom the complaint has
14 been filed at the last address of record in question, by
15 ~~certified mail, notice of the filing of the complaint.~~ Such
16 notice shall be accompanied by a true copy of the complaint. A
17 copy of such notice and complaint shall also be served ~~sent~~ to
18 the surety company, if any, that provided the bond for the
19 dealer, which surety company shall become party to the action.
20 Such notice of the complaint shall inform the dealer of a
21 reasonable time within which to answer the complaint by
22 advising the department in writing that the allegations in the
23 complaint are admitted or denied or that the complaint has
24 been satisfied. Such notice shall also inform the dealer and
25 the surety company or financial institution, if any, of a
26 right to a hearing on the complaint, if requested.

27 (3) If the dealer files an answer admitting ~~admits~~ the
28 allegations of the complaint and the department determines
29 through inquiry of the complainant that the dealer has failed
30 ~~but fails~~ to satisfy same within 21 days after receipt of the
31 notice of the filing of a complaint by any party whose

1 substantial interests are determined ~~the time fixed~~ by the
2 department, the department shall thereupon order payment by
3 the dealer of the amount found owed. In the event a party
4 files a request that the complaint be held in abeyance pending
5 a settlement agreement, the period of abeyance shall not
6 exceed 6 months and successive periods of abeyance shall not
7 be granted.

8 (4) If the dealer files an answer and, ~~in her or his~~
9 ~~answer~~, denies the allegations of the complaint and waives a
10 hearing, the department may order a hearing or enter an order
11 based on the facts and circumstances set forth in the
12 complaint and the respondent's answer thereto. If the
13 department determines the complaint has not been established
14 or fails to meet the provisions of this section, the order
15 shall, among other things, dismiss the proceedings. If the
16 department determines that the allegations of the complaint
17 have been established, it shall enter its findings of fact
18 accordingly and thereupon enter its order adjudicating the
19 amount of indebtedness due to be paid by the dealer to the
20 complainant.

21 (5) Any order entered by the department pursuant to
22 this section shall become final and effective on the date
23 filed with the department's agency clerk ~~14 days after issue~~
24 ~~if neither the department nor a party whose material interest~~
25 ~~is affected by the order requests a hearing on the order~~
26 ~~within 14 days following the date of issue.~~

27 (6) Any party whose substantial ~~material~~ interest is
28 affected by a proceeding pursuant to this section shall be
29 granted a hearing upon request as provided by chapter 120.
30 Such hearing shall be conducted pursuant to chapter 120. The
31 final order of the department, when issued pursuant to the

1 recommended order of an administrative law judge, shall be
2 final and effective on the date filed with the department's
3 agency clerk. Any party to these proceedings adversely
4 affected by the final order is entitled to seek review of the
5 final order pursuant to s. 120.68 and the Florida Rules of
6 Appellate Procedure. Should a complaint forwarded by the
7 department to the Division of Administrative Hearings be
8 settled prior to a hearing pursuant to chapter 120, the
9 department shall issue a notice closing the complaint file
10 upon receipt of the administrative law judge's order closing
11 the complaint file, and the matter before the department shall
12 be closed accordingly ~~upon issuance.~~

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

16 (8) Upon the failure by a dealer to comply with an
17 order of the department directing payment, the department
18 shall, in instances involving bonds, call upon the surety
19 company to pay over to the department out of the bond posted
20 by the surety company for such dealer or, in instances
21 involving certificates of deposit, call upon the financial
22 institution issuing such certificate to pay over to the
23 department out of the certificate under the conditions of the
24 assignment or agreement, the amount called for in the order of
25 the department, not exceeding the amount of the bond or the
26 principal of the certificate of deposit. If the bond or the
27 principal of the certificate of deposit is insufficient to pay
28 in full the amount due each complainant as set forth in the
29 order of the department, the department shall distribute the
30 proceeds pro rata among such complainants. The proceeds from a
31 bond or the principal from a certificate of deposit shall be

1 paid directly to the department to be distributed by it to
2 successful complainants, except the accrued interest on a
3 certificate of deposit shall be paid to the dealer. Such funds
4 shall be considered trust funds in the hands of the department
5 for the exclusive purpose of satisfying duly established
6 complaints. Payments made to the department pursuant to this
7 section shall be considered payments made upon demand and may
8 not be considered voluntary payments.

9 (9) Payments from a surety company or proceeds from a
10 certificate of deposit shall be paid first to the producer or
11 the producer's agent or representative in the amount of the
12 producer's claims in full if such proceeds are sufficient for
13 such purpose and, if not, then in pro rata shares to such
14 producer or producer's agent or representative. If additional
15 proceeds exist in the hands of the department after all claims
16 of a producer and a producer's agent or representative have
17 been paid in full, the balance of such proceeds shall be paid
18 to claimants who are licensed dealers in agricultural
19 products, either in whole or in pro rata portion, as the
20 aggregate of their claims may bear to the amount of such
21 additional proceeds.

22 ~~(10)(9)~~ Nothing in this section may be construed as
23 relieving a surety company from responsibility for payment on
24 properly established complaints against dealers involved in a
25 federal bankruptcy proceeding and against whom the department
26 is prohibited from entering an order.

27 ~~(11)(10)~~ Upon the failure of a surety company to
28 comply with a demand for payment of the proceeds on a bond for
29 a dealer in agricultural products, a complainant who is
30 entitled to such proceeds, in total or in part, may, within a
31 reasonable time, file in the circuit court a petition or

1 | complaint setting forth the administrative proceeding before
2 | the department and ask for final order of the court directing
3 | the surety company to pay the bond proceeds to the department
4 | for distribution to the complainants. If in such suit the
5 | complainant is successful and the court affirms the demand of
6 | the department for payment, the complainant shall be awarded
7 | all court costs incurred therein and also a reasonable
8 | attorney's fee to be fixed and collected as part of the costs
9 | of the suit. In lieu of such suit, the department may enforce
10 | its final agency action in the manner provided in s. 120.69.

11 | Section 7. Section 604.22, Florida Statutes, is
12 | amended to read:

13 | 604.22 Dealers to keep records; contents.--

14 | (1) Each licensee, while acting as agent for a
15 | producer, shall make and preserve for at least 1 year a record
16 | of each transaction, specifying the name and address of the
17 | producer for whom she or he acts as agent; the date of
18 | receipt; the kind, quality, and quantity of agricultural
19 | products received; the name and address of the purchaser of
20 | each package of agricultural products; the price for which
21 | each package was sold; the amount of any additional charges
22 | necessary to effectuate the sale; the amount and explanation
23 | of any adjustments given; and the net amount due from each
24 | purchaser. An account of sales shall be furnished each
25 | producer within 48 hours after the sale of such agricultural
26 | products unless otherwise agreed to in a written contract or
27 | verifiable oral agreement. Such account of sales shall clearly
28 | show the sale price of each lot of agricultural products sold;
29 | all adjustments to the original price, along with an
30 | explanation of such adjustments; and an itemized showing of
31 | all marketing costs deducted by the licensee, along with the

1 net amount due the producer. The licensee shall make the
2 payment to the producer within 5 days of the licensee's
3 receipt of payment unless otherwise agreed to in a written
4 contract or verifiable oral agreement.

5 (2)(a) The provisions of s. 604.16(2), (3), and (4)
6 notwithstanding, any person, partnership, corporation, or
7 other business entity, except a person described in s.
8 604.16(1), who possesses and offers for sale agricultural
9 products is required to possess and display, upon the request
10 of any department representative or state, county, or local
11 law enforcement officer, an invoice, bill of sale, manifest,
12 or other written document showing the date of sale, the name
13 and address of the seller, and the kind and quantity of
14 products for all such agricultural products.

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

18 Section 8. Section 604.23, Florida Statutes, is
19 amended to read:

20 604.23 Examination of records, sales, accounts, books,
21 and other documents.--The department shall have power to
22 investigate, upon complaint of any interested person or upon
23 its own initiative, the record of any dealer in agricultural
24 products ~~applicant or licensee~~, or any transaction involving
25 the solicitation, receipt, sale or attempted sale of
26 agricultural products, the failure to make proper and true
27 accounts and settlements at prompt and regular intervals, the
28 making of false statements as to condition, quality or
29 quantity of goods received or while in storage, the making of
30 false statements as to market conditions with intent to
31 deceive, or the failure to make payment for goods received, or

1 other alleged injurious transactions. For such purposes the
2 department or its agents may examine, at the place or places
3 of business of the dealer in agricultural products, the
4 ~~applicant or licensee, her or his~~ ledgers, books of accounts,
5 memoranda, and other documents which relate to the transaction
6 involved, and may take testimony thereon under oath.

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

9 604.25 Refusal to grant, or suspension or revocation
10 of, license.--

11 (1) The department may decline to grant a license or
12 may suspend or revoke a license already granted if the
13 applicant or licensee has:

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

17 (d) Made any false statement or statements as to
18 condition, quality, or quantity of goods received or held for
19 sale when ~~she or he could have ascertained~~ the true condition,
20 quality, or quantity could have been ascertained by reasonable
21 inspection;

22 Section 10. Section 604.30, Florida Statutes, is
23 amended to read:

24 604.30 Penalties; injunctive relief; administrative
25 fines.--

26 (1) Any dealer in agricultural products who violates
27 the provisions of ss. 604.15-604.34, or who interferes with an
28 agent of the department in the enforcement of ss.
29 604.15-604.34, is guilty of a misdemeanor of the second
30 degree, punishable as provided in s. 775.082 or s. 775.083,
31 and for a second or subsequent offense is guilty of a

1 | misdemeanor of the first degree, punishable as provided in s.
2 | 775.082 or s. 775.083.

3 | (2) In addition to the remedies provided in this
4 | chapter and notwithstanding the existence of any adequate
5 | remedy at law, when the department has probable cause to
6 | believe that any person, partnership, corporation, or other
7 | business entity has violated any provision of this chapter or
8 | any rule adopted pursuant thereto, the department may issue
9 | and deliver to such person, partnership, corporation, or other
10 | business entity a notice to cease and desist from such
11 | violation. For the purpose of enforcing a cease and desist
12 | order, the department may file a proceeding in the name of the
13 | state seeking issuance of an injunction or writ of mandamus
14 | against any person, partnership, corporation, or other
15 | business entity who violates any provisions of such order, and
16 | such injunction shall be issued without bond.

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

24 | (b) Whenever any administrative order has been made
25 | and entered by the department imposing a fine pursuant to this
26 | subsection, the order shall specify the amount of the fine and
27 | a time limit of no more than 15 days for the payment thereof.
28 | Upon the failure of the dealer involved to pay the fine within
29 | that time, the dealer's license as dealer in agricultural
30 | products shall be subject to suspension or revocation and a
31 | fine not to exceed \$100 ~~of \$50~~ a day shall be imposed on the

1 dealer while the dealer ~~she or he~~ is in violation of such
2 order.
3 Section 11. This act shall take effect October 1,
4 2005.

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