

Regular Session, 2010

SENATE BILL NO. 147

BY SENATOR THOMPSON

AGRICULTURAL COMMODITIES. Provides relative to changes in the Agricultural Commodity Dealer and Warehouse Law. (gov sig)

1 AN ACT
2 To amend and reenact R.S. 3:3402(4), 3403(C), 3405(B)(2), the introductory paragraph of
3 3407(A), 3410(D), 3410.2(D)(4), the introductory paragraph of 3410.2(F), 3411(B),
4 3414.3(L), 3414.4(B), 3419(D) and 3422(D) and to repeal Subpart B of Part V of
5 Chapter 6 of Title 3 of the Louisiana Revised Statutes of 1950, comprised of R.S.
6 3:691 through 695, Subpart C of Part V of Chapter 6 of Title 3 of the Louisiana
7 Revised Statutes of 1950, comprised of R.S. 3:697 through 699, 3405(B)(1), 3409(I),
8 3414.3(E) and 3415(B), relative to agricultural commodities; to provide for changes
9 in the Agricultural Commodity Dealer and Warehouse Law; to provide relative to
10 seizure of facilities; to repeal grain dealer license exams; to provide relative to
11 moisture measuring devices and to repeal obsolete provisions related thereto; to
12 repeal certain certification requirements related to grain sampling; to repeal certain
13 licensure requirements concerning weighmasters; to repeal certain policies for
14 sampling and grading grain; to repeal provision requiring design approval for scale
15 tickets; to provide for technical corrections; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 3:3402(4), 3403(C), 3405(B)(2), the introductory paragraph of

1 3407(A), 3410(D), 3410.2(D)(4), the introductory paragraph of 3410.2(F), 3411(B),
2 3414.3(L), 3414.4(B), 3419(D) and 3422(D) are hereby amended and reenacted to read as
3 follows:

4 §3402. Definitions

5 As used in this Chapter, the following terms shall have the meanings ascribed
6 below:

7 * * *

8 (4) "Commissioner" means the Louisiana commissioner of agriculture **and**
9 **forestry**.

10 * * *

11 §3403. Louisiana Agricultural Commodities Commission; creation; membership;
12 terms; panels of nominees; filling of vacancies; oaths of office; per
13 diem; quorum; domicile; meetings; successor to State Warehouse
14 Commission

15 * * *

16 C. The tenth member shall be the commissioner of agriculture **and forestry**,
17 who shall serve ex officio, but with all of the powers, rights, duties, and privileges
18 as appointed members, including the right to vote on all matters before the
19 commission.

20 * * *

21 §3405. Powers and duties of the commission

22 * * *

23 B. The commission may:

24 * * *

25 (2) Establish reasonable guidelines for and require the submission of
26 inventory reports ~~and position papers~~.

27 * * *

28 §3407. Seizure by commission

29 A. The commissioner, with the prior approval of the commission, ~~shall~~ **may**

1 institute legal proceedings by petition in the district court for the district in which the
2 licensee is located for an order authorizing the commissioner to effect a seizure of
3 the facilities of the licensee and to act as receiver thereof whenever any of the
4 following conditions occur:

5 * * *

6 §3410. Bond required as a condition of warehouse license, time of filing; amount
7 of bond, minimum and maximum; approval; notice of cancellation;
8 changes in licensed capacity; insurance; alternate security; failure to
9 maintain bond and insurance in full force and effect

10 * * *

11 D. In any case, the net amount of the bond shall **not** be ~~not~~ less than
12 twenty-five thousand dollars and not more than five hundred thousand dollars.

13 * * *

14 §3410.2. Grain and Cotton Indemnity Fund; creation; assessment; rules and
15 regulations; suspension of assessment; eligibility for reimbursement;
16 availability of money; prorated claims; reimbursement for
17 administrative expenses; failure to pay; subrogation

18 * * *

19 D. The commission shall adopt rules and regulations, in accordance with the
20 Administrative Procedure Act, necessary for the efficient administration of the Grain
21 and Cotton Indemnity Fund. Such rules shall include:

22 * * *

23 (4) ~~Establish~~ **The establishment of** civil penalties for violations of this
24 Section.

25 * * *

26 F. A ~~person~~ **producer** shall be eligible to receive indemnity payments from
27 the Grain and Cotton Indemnity Fund if:

28 * * *

29 §3411. License to buy or sell agricultural commodities; posting requirements for

1 grain dealers; duration of license; bond required as a condition of a
 2 grain dealer license, time of filing, amount of bond, notice of
 3 cancellation, alternate security; failure to maintain bond and stock
 4 insurance

* * *

6 B. Each applicant for a grain dealer license shall file the application
 7 described in R.S. 3:3408 and ~~either~~ demonstrate its competency to engage in the
 8 business of buying ~~and/or~~ **or** selling agricultural commodities ~~or satisfactorily~~
 9 ~~complete any examination that may be required by the commission~~ prior to licensure.

* * *

11 §3414.3. Grain sampling and grading

* * *

13 ~~L. No grain dealer shall sell grain in bulk within this state for livestock and~~
 14 ~~poultry feed without a statement of the specified grade. The grades shall be~~
 15 ~~determined as provided in this Section.~~ The department shall inspect, classify, and
 16 grade all grain subject to this Subsection. The department may charge a fee for
 17 inspecting, classifying, and grading grain. The fee shall be fixed by the commission
 18 by rule and shall be based on the actual cost of providing the service. The provisions
 19 of this Subsection shall not apply to grain sold for export nor to inbound grain
 20 intended for export shipment.

21 §3414.4. Prompt payment for cotton; suit on bond; private action; attorney fees

* * *

23 B. Any producer from whom cotton was purchased or contracted to be
 24 purchased and to whom money is due for cotton sold for future delivery as a result
 25 of the nonperformance of the cotton merchant or cotton agent shall have recourse on
 26 the bond or alternate security required to be furnished by this Chapter to the extent
 27 of the loss suffered by the **farmer producer**, but such recovery against the bonding
 28 company or alternate security shall not exceed the amount of the bond or the
 29 alternate security. Limitation of liability as to the bonding company or alternate

1 security shall not restrict suits against the cotton merchant or cotton agent for losses
 2 incurred in excess of the amount of the bond or alternate security. Suit may be
 3 brought in any parish where the crop or any part thereof was grown or any other
 4 venue authorized by law. One or more recoveries upon such bond or alternate
 5 security shall not vitiate same, but no recovery nor the aggregate of multiple
 6 recoveries upon such bond or alternate security shall ever exceed the full amount
 7 thereof. Upon suits being filed in excess of the amount of the bond or alternate
 8 security, the commission may require a new bond or other security in an amount
 9 sufficient to secure the aggregate amount of such suits, and if such additional
 10 security is not given within thirty days of demand therefor, the commission may
 11 cancel the license of the cotton merchant. In the case of the insolvency of a cotton
 12 merchant, any cotton producer or cotton landowner having contracts for future
 13 delivery shall be entitled to participate in the bond or alternate security funds to the
 14 extent of his pro rata losses under his contract.

* * *

16 §3419. Records required

* * *

18 D. Each warehouse, cotton merchant, and grain dealer shall permit any
 19 officer or authorized representative of the commission to enter all locations listed on
 20 the application of such warehouse, cotton merchant, or **grain** dealer and inspect,
 21 examine, and/or audit all contents, facilities, equipment, records, books, and accounts
 22 relating thereto. Such inspection, examination, and/or audit may be made on any
 23 business day, during normal working hours. The warehouse, cotton merchant, or
 24 grain dealer shall provide the necessary assistance required for any inspection,
 25 examination, and/or audit made in accordance with this Chapter or the rules and
 26 regulations adopted pursuant hereto.

* * *

28 §3422. Commission authorized to charge regulatory fees

* * *

1 D. **Every moisture measuring device used or held for use at any**
 2 **commercial facility which receives, holds, dries, stores, mills, processes or**
 3 **otherwise deals in agricultural commodities in this state, when such use or**
 4 **intended use is for the purpose of determining discounts or other price**
 5 **variances in connection with the purchase or sale of such commodity, shall be**
 6 **registered with the Louisiana Department of Agriculture and Forestry.** The
 7 commission shall register and inspect all moisture meters or other devices used to
 8 measure moisture in agricultural commodities on an annual basis. The commission
 9 may establish by rule and regulation a fee for the registration and inspection of
 10 moisture meters or other such devices not to exceed twenty dollars for registration
 11 and forty dollars for inspection.

12 Section 2. Subpart B of Part V of Chapter 6 of Title 3 of the Louisiana Revised
 13 Statutes of 1950, comprised of R.S. 3:691 through 695, Subpart C of Part V of Chapter 6 of
 14 Title 3 of the Louisiana Revised Statutes of 1950, comprised of R.S. 3:697 through 699,
 15 3405(B)(1), 3409(I), 3414.3(E) and 3415(B) are hereby repealed in their entirety.

16 Section 3. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Curry Johnson.

DIGEST

Thompson (SB 147)

Present law (R.S. 3:3407) requires the commissioner, with the prior approval of the
 commission, to institute legal proceedings for an order authorizing the commissioner to
 effect a seizure of the facilities of a licensee in certain circumstances.

Proposed law retains present law but makes this seizure permissive.

Proposed law deletes provision prohibiting grain dealers from selling grain in bulk within
 this state for livestock and poultry feed without a statement of the specified grade.

Present law (R.S. 3:692(A)) requires that every moisture measuring device used or held for
 use at any commercial facility which receives, holds, dries, stores, mills, processes or

otherwise deals in agricultural commodities in this state, when such use or intended use is for the purpose of determining discounts or other price variances in connection with the purchase or sale of such commodity, be registered with the department.

Proposed law (R.S. 3:3422(D)) retains present law but moves the provision.

Present law (R.S. 3:692) requires inspections to be made at least twice annually of all moisture measuring devices registered with the department.

Proposed law repeals present law.

Present law (R.S. 3:693) provides that a moisture measuring device shall be deemed defective whenever an inspector determines after inspection and testing that:

- (1) The moisture measuring device varies in tolerance in excess of ½ of 1 % with the testing device used by the inspector; or
- (2) The commercial facility does not have available the latest charts for the type of moisture measuring device being used; or
- (3) The facility does not have available accurate and proper scales and thermometers for use in conjunction with the type of moisture measuring device being used.

Requires that a defective measuring device which cannot be immediately corrected be sealed and tagged. Requires an owner or user who continues to use a defective device to keep a record of every commercial sample for which a moisture reading is taken with the defective device. Further requires an adjustment in figuring any discount or price variance for the commodity affected. Prohibits use for more than 30 days from the date it is determined to be defective. Requires notice to be posted that the device has been determined to be out of tolerance. Further requires moisture measuring devices which have been registered and inspected and have not been found defective to bear an official tag or sticker from the department, placed on the devices by the inspector that is readily visible, bearing the date of inspection and the name of the inspector.

Proposed law repeals present law.

Present law (R.S. 3:694) provides that when any commodity is purchased for which moisture measurement is customary or required and the seller is subject to discount according to the moisture content, this moisture content shall be determined only by a moisture measuring device which has been registered with the department. Provides that any person or facility which uses or authorizes the use of any moisture measuring device which has not been registered with the department, except as otherwise may be excluded herein, shall be guilty of a misdemeanor.

Proposed law repeals present law.

Present law (R.S. 3:695) provides for the following penalties:

- (1) Any person who shall hinder or obstruct any inspector in testing, inspecting, tagging or sealing any moisture measuring device shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500, or confined in the parish jail for not more than 90 days, or both.
- (2) Failure to register a moisture measuring device, use of an unregistered device or use of a defective device shall subject the owner or user thereof to a fine of \$200 a day for each day of violation.
- (3) Falsification, transference or alteration in any manner of an official tag or sticker on

a moisture measuring device by any person other than an inspector of the department shall be a misdemeanor and shall carry a penalty of not less than \$100 nor more than \$500, or confinement in the parish jail for not more than 90 days, or both.

Proposed law repeals present law.

Present law (R.S. 3:698) provides that under any contract for the purchase or sale of rice in Louisiana wherein the price established for such rice is based upon U.S.D.A. grades, and samples are drawn by qualified personnel of the department submitted to the U.S.D.A. for grading, the same shall be deemed official samples and the grade applying thereto shall be recognized as an official grade to the same extent as grades applying to samples drawn and submitted by personnel of the U.S.D.A.

Proposed law repeals present law.

Present law (R.S. 3:699) requires all personnel within the department authorized to draw samples of rice to be trained and certified as qualified to draw such samples. Requires the commissioner to establish procedures for annual certification thereof, and no one will be allowed to draw rice samples unless he has received the necessary certification. Authorizes the commissioner to establish by regulation uniform procedures for sampling rice and identifying the lots from which samples are drawn. Such procedures shall be in substantial conformance with the procedures used by the U.S.D.A. Allows the commissioner to set reasonable fees to cover administration cost.

Proposed law repeals present law.

Present law (R.S. 3:3405(1)) allows the La. Agricultural Commodities Commission to establish minimum scores necessary to satisfactorily pass any examination required by the commission and administer such examinations at times and places to be determined by the commission.

Proposed law repeals present law.

Present law (R.S. 3:3409(I)) prohibits issuance of warehouse licenses unless the warehouse staff includes a weighmaster licensed by the weights and measures division of the department, provided that the commission may waive the requirement for a licensed weighmaster for any warehouse which does not normally weigh or certify agricultural commodities or other farm products stored therein. Authorizes the commission to waive the requirement for licensure of the weighmaster by the weights and measures division of the department for any warehouse which employs a weighmaster licensed by the U.S.D.A.

Proposed law repeals present law.

Present law (R.S. 3:3414.3(E)) requires each grain dealer who issues grades for grain to adopt a policy for sampling and grading grain. Further requires each grain dealer to post the policy in a prominent place in the area in which grain is delivered.

Proposed law repeals present law.

Present law (R.S. 3:3415(B)) requires the design of each scale ticket to be approved by the La. Agricultural Commodities Commission.

Proposed law repeals present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 3:3402(4), 3403(C), 3405((B)(2), 3407(A)(intro para), 3410(D) 3410.2(D)(4), 3410.2(F)(intro para), 3411(B), 3413.3(L), 3414.4(B), 3419(D) and 3422(D); Repeals R.S.

3:691-695, 697-699, 3405(B)(1), 3409(I), 3414.3(E), and 3415(B))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Agriculture, Forestry,
Aquaculture, and Rural Development to the original bill.

1. Removes changes to the definition of grain.
2. Removes the repeal of the Louisiana Commodities Marketing Law.
3. Provides for technical corrections.