

# "Arkansas Grain Dealers Act

Chapter 24 Arkansas Grain Dealers Act

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A.C.A. Tit. 2, Subtit. 2, Ch. 24 Note (2015)

- GRAIN DEALERS-

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## **2-24-101. Title.**

This chapter shall be known and may be cited as the "Arkansas Grain Dealers Act".

**HISTORY:** Acts 2015, No. 601, § 1.

## **2-24-102. Definitions.**

As used in this chapter:

(1) (A) "Dealer" means a person that operates as a grain buyer.

(B) "Dealer" does not include a person licensed under the following:

(i) The United States Warehouse Act, 7 U.S.C. § 241 et seq.; or

(ii) The Arkansas Public Grain Warehouse Law, § 2-17-201 et seq.;

(2) "End user" means a person that:

(A) Is the ultimate user of the grain; or

(B) Offers the grain for sale to the general public as a retail sale;

(3) "Facility" means one (1) or more locations in the state that are operated by a grain dealer;

(4) "Grain" means corn, wheat, oats, barley, rye, rice, sorghum, soybeans, oil seeds, and other agricultural commodities approved by the State Plant Board; and

(5) "Person" means an individual, partnership, corporation, association, or other legal form of business.

**HISTORY:** Acts 2015, No. 601, § 1

## **2-24-103. Administration -- Exemption.**

(a) The State Plant Board shall:

(1) Administer this chapter; and

(2) Create a publicly accessible database of:

(A) Dealers licensed under this chapter;

(B) Persons licensed under the United States Warehouse Act, 7 U.S.C. § 241 et seq.; and

(C) Persons licensed under the Arkansas Public Grain Warehouse Law, § 2-17-201 et seq.

(b) An end user is exempt from the requirements of this chapter.

**HISTORY:** Acts 2015, No. 601, § 1.

#### **2-24-104. License required.**

(a) (1) A dealer shall obtain a license from the State Plant Board under this chapter before entering into a contract for or purchasing grain.

(2) A dealer that exists as of the effective date of this chapter has sixty (60) days from March 23, 2015 to obtain a license.

(b) (1) A license is valid from July 1 of the year of application until June 30 of the following year.

(2) However, an initial license received between January 1 and June 30 is valid only until June 30 of the year in which the license was obtained.

**HISTORY:** Acts 2015, No. 601, § 1.

#### **2-24-105. Applications for licenses -- Renewal.**

(a) The State Plant Board shall issue a license to a dealer that satisfies the requirements of this chapter and the rules promulgated by the board.

(b) A dealer seeking licensure under this chapter shall submit an application to the board on the form prescribed by the board.

(c) (1) A dealer shall renew its license annually as long as the dealer is operating in the state.

(2) A dealer shall apply for renewal of a license issued under this chapter by submitting an application for renewal on the form prescribed by the board.

(3) An application for renewal shall be received by the board on or before June 30.

(4) The board shall renew the license of a dealer that satisfies the requirements of this chapter and the rules promulgated by the board.

(d) The board may establish nominal application and renewal fees to offset the costs of administering this chapter.

**(e)** If a dealer does not renew its license by the deadline stated in subsection (c) of this section, then the dealer's license is terminated, and it shall not be reinstated until the dealer submits an application for renewal and meets all other requirements of this chapter and the rules promulgated by the board.

**HISTORY:** Acts 2015, No. 601, § 1.

### **2-24-106. Bond requirement.**

The State Plant Board may require a surety bond, financial reserve, or other evidence of creditworthiness for dealers.

**(a)** It is a violation of this chapter to:

**(1)** Operate as a dealer without a license issued under this chapter;

**(2)** Knowingly violate this chapter; or

**(3)** Knowingly refuse to allow inspection of a dealer's premises, books, accounts, or other records during an audit by the State Plant Board under this chapter.

**(b)** A person that commits a violation under subsection (a) of this section is guilty of a Class D felony.

**(c)** A person that negligently violates this chapter upon conviction is guilty of a Class A misdemeanor.

**(d) (1)** A person who violates this chapter or a rule promulgated under this chapter upon conviction is guilty of a violation and shall be punished by a fine of not more than one hundred dollars (\$100).

**(2) (A)** In addition to or in lieu of any other lawful disciplinary action, the board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of a statute, rule, or order enforceable by the board under this chapter.

**(B) (i)** The board shall establish by rule a schedule designating the minimum and maximum civil penalty that may be assessed under this subsection for violation of each statute, rule, or order over which it has regulatory control under this chapter.

**(ii)** The board may promulgate any other rules necessary to carry out the intent of this subsection.

**(C)** If a civil penalty lawfully assessed under subdivision (d)(2)(A) of this section is not paid, the civil penalty is recoverable in the name of the state by the Attorney General in Pulaski County Circuit Court or in the circuit court of the county in which the violation occurred.

**(D)** A civil penalty paid or recovered under this subsection shall be deposited into the State Treasury to be credited to the Miscellaneous Agencies Fund Account.

**HISTORY:** Acts 2015, No. 601, § 1.

## **2-24-107. Reporting -- Audits and inspections.**

**(a)** A dealer shall report to the State Plant Board annually on the form prescribed by the board.

**(b)** The board may audit and inspect each dealer annually and as necessary.

**HISTORY:** Acts 2015, No. 601, § 1.

## **2-24-108. Violations -- Penalties.**

**(a)** It is a violation of this chapter to:

**(1)** Operate as a dealer without a license issued under this chapter;

**(2)** Knowingly violate this chapter; or

**(3)** Knowingly refuse to allow inspection of a dealer's premises, books, accounts, or other records during an audit by the State Plant Board under this chapter.

**(b)** A person that commits a violation under subsection (a) of this section is guilty of a Class D felony.

**(c)** A person that negligently violates this chapter upon conviction is guilty of a Class A misdemeanor.

**(d) (1)** A person who violates this chapter or a rule promulgated under this chapter upon conviction is guilty of a violation and shall be punished by a fine of not more than one hundred dollars (\$100).

**(2) (A)** In addition to or in lieu of any other lawful disciplinary action, the board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of a statute, rule, or order enforceable by the board under this chapter.

**(B) (i)** The board shall establish by rule a schedule designating the minimum and maximum civil penalty that may be assessed under this subsection for violation of each statute, rule, or order over which it has regulatory control under this chapter.

**(ii)** The board may promulgate any other rules necessary to carry out the intent of this subsection.

**(C)** If a civil penalty lawfully assessed under subdivision (d)(2)(A) of this section is not paid, the civil penalty is recoverable in the name of the state by the Attorney General in Pulaski County Circuit Court or in the circuit court of the county in which the violation occurred.

**(D)** A civil penalty paid or recovered under this subsection shall be deposited into the State Treasury to be credited to the Miscellaneous Agencies Fund Account.

**HISTORY:** Acts 2015, No. 601, § 1.

## **2-24-109. Suspension of license.**

**(a) (1)** The State Plant Board may temporarily suspend a dealer's license without a hearing if the board determines that the public health, safety, or welfare requires immediate action.

**(2)** If the board temporarily suspends a dealer's license under subdivision (a)(1) of this section, the board shall notify the dealer immediately by certified mail of the temporary suspension and the date, time, and location of the hearing to be held under subdivision (a)(3) of this section.

**(3)** If a dealer's license is temporarily suspended under subdivision (a)(1) of this section, a hearing on the suspension of the dealer's license shall be held within ten (10) days of the temporary suspension of the dealer's license.

**(b) (1)** Based on the information contained in the complaint submitted against a dealer, the board may suspend the license of the dealer without a hearing five (5) days after sending written notice by certified mail, nonrestricted delivery, to the dealer if the dealer:

**(A)** Does not have the required bond on file with the board; or

**(B)** Refuses to submit to an audit or inspection by the board under this chapter.

**(2)** A suspension of a dealer's license under subdivision (b)(1) of this section shall not exceed sixty (60) days without a hearing.

**(c)** A hearing under this section and an appeal of the board's decision to suspend a dealer's license under this section is governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**HISTORY:** Acts 2015, No. 601, § 1.

## **2-24-110. Receivership.**

**(a)** Following the suspension of a dealer's license under this chapter, the State Plant Board may file a verified petition in a court of competent jurisdiction requesting the appointment of a receiver to take custody of the assets of the dealer and provide for the disposition of the assets under the supervision of the court.

**(b)** A petition for the appointment of a receiver shall be filed in the county in which the dealer is located.

**(c)** Upon receiving a petition for the appointment of a receiver under this section, a court may issue any temporary orders necessary to preserve or protect the assets in receivership, the value of the assets in receivership, and the rights of the dealer's creditors until a plan of disposition is approved.

**(d)** The board may be appointed as receiver in an action brought under this section.

**HISTORY:** Acts 2015, No. 601, § 1.

## **2-24-111. Cease and desist.**

The State Plant Board may order a dealer to cease and desist any activity that is in violation of this chapter.

**HISTORY:** Acts 2015, No. 601, § 1.

**2-24-112. Slow-pay hotline.**

(a) The State Plant Board shall establish a slow-pay hotline for a person to notify the board that a dealer is more than thirty (30) days late on the dealer's contractual obligation for payment of grain to the person.

(b) A dealer shall provide notice to each person from which the dealer purchases grain on the availability of the slow-pay hotline established under this section.

**HISTORY:** Acts 2015, No. 601, § 1.

**2-24-113. Recordkeeping.**

(a) The State Plant Board shall promulgate rules concerning the records a dealer is required to maintain for the proper administration of this chapter.

(b) A dealer shall:

(1) Maintain the records required by the board under this section for five (5) years;  
and

(2) Make the records available to the board on request.

**HISTORY:** Acts 2015, No. 601, § 1.

**2-24-114. Rules.**

The State Plant Board shall promulgate rules to implement and administer this chapter.

**HISTORY:** Acts 2015, No. 601, § 1.

**RULES ON GRAIN DEALERS IN ARKANSAS**

(Promulgated and adopted under authority of  
The Arkansas Grain Dealer Act A.C.A. § 2-24-101 et seq.)

**SECTION I. GENERAL PURPOSE AND INTENT**

The Arkansas Grain Dealers Act is established to regulate grain dealers in the state of Arkansas that are not licensed under the Arkansas Public Grain Warehouse Law, the United States Warehouse Act and are not end users of grain. The Director of the Arkansas State Plant Board is appointed as the administrator of this law. The director shall administer this chapter and shall be the ultimate authority in the administration of this chapter. The agency may employ all necessary employees, counsel, and consultants to carry out the provisions of this law and is vested with the power necessary to fully and effectively carry out the provisions and objectives of this chapter.

**SECTION II. ORGANIZATION AND DESIGNATION OF DUTIES**

The Arkansas Grain Dealers Act will be administered by the Arkansas State Plant Board. The Director or appointed representative is hereby designated as having the authority to carry out the activities needed to administer the Arkansas Grain Dealers Act. All proceedings and hearings will be conducted in accordance with A.C.A. § 2-24-101 et seq. and A.C.A. § 25-15-201 et seq.

**SECTION III. LICENSING AND BONDING**

Application Form, GD-1 or GD-2, is to be used in securing a license under this Act, whether for a new license or the renewal of a license. This form will be supplied, upon request by the applicant, by the Plant Board. For renewals the form will be sent to all licensees from the previous year prior to the renewal deadline. Renewal applications should be delivered to the Plant Board at least thirty (30) days before the current license expires. The licensing period shall be from July 1 through June 30 of each year, with the exception of those licenses issued during the inception of the rules. Those licenses will be inclusive of the time between their issuance and June 30, 2016.

Each application for a license or license renewal shall be accompanied with a financial statement and signed report of a CPA or registered public accountant which must be a representation of an examined audit report, a review report or a compilation report. Additional reports required are a balance sheet, a schedule of notes payable, a statement of cash flows and other reports that may be stipulated by the Plant Board. All financial reports for year two and beyond of licensing are to be submitted to the Plant Board within

120 days of the company's fiscal year end. All financial statements must be in bound copy or in electronic pdf from the accountant. New companies, just being established and having less than one complete fiscal year of operation, need only a trial balance and estimated purchases for their first year to apply for a license. All financial records will be handled as dictated by A.C.A. 25-19-101 et seq. (Arkansas Freedom of Information Act.)

The Bond Form, Letter of Credit Form, and a Certificate of Deposit Form for the purpose of securing bonding for the grain dealer will be supplied in the application packet. Only one type of bonding is required.

Bonding requirements are as follows:

<b>Purchases of Grain In dollars (Range)</b>		<b>Bonding in dollars</b>
1	5,000,000	\$50,000.00
5,000,001	20,000,000	\$100,000.00
20,000,001	40,000,000	\$200,000.00
40,000,001	60,000,000	\$400,000.00
60,000,001	80,000,000	\$600,000.00
80,000,001	100,000,000	\$800,000.00
100,000,001	and over	\$1,000,000.00

#### SECTION IV. FEES

As required by law, the application fee for a newly established business (a business with less than one (1) fiscal year of operation) is \$150.00. The fee for an established business (a business with more than one (1) fiscal year of operation) is as follows:

Purchases of Grain In dollars (Range)		License Fee
1	5,000,000	\$250.00
5,000,001	20,000,000	\$300.00
20,000,001	40,000,000	\$400.00
40,000,001	60,000,000	\$500.00
60,000,001	80,000,000	\$600.00
80,000,001	100,000,000	\$700.00
100,000,001	and over	\$800.00

One examination is to be made each year on each licensed dealer, the cost of which is included in the application fee. Additional examinations may be made at any time and at the discretion of the Director. If during the additional examinations a material discrepancy is found, the licensed dealer will be required to reimburse the State Plant Board at the rate of \$40.00 per hour for the time required to make the additional examination(s).

#### SECTION V. PENALTIES AND VIOLATIONS

##### **Violations**

Operating without a license, refusing to provide records during an audit, or knowingly violating the grain dealers act is a Class D felony. A person who negligently violates this law is guilty of a Class A misdemeanor. Upon conviction both are punishable by a criminal fine up to \$100 dollars. Civil penalties may apply as well. The director may issue a cease and desist order for any violation of this law.

## **Minor Violations**

Upon the first offense, violations that are clerical and believed to be accidental in nature will be considered to be minor violations. Examples of such violations include, but are not limited to, the loss of voided scale tickets, settlements or contracts and not conducting business as prescribed by the grain dealer act.

**Penalty Violations:** Violations that fall under the civil penalty matrix.

- A. Second violation of the minor violations.
- B. Failure to pay on the due date of the payment agreement.
- C. Knowingly falsifying records.
- D. Refusal to allow inspection of records.
- E. Operating without a license.

**Penalty Matrix** (See Appendix 1)

## **SECTION VI. SUSPENSION OF LICENSE**

A. A grain dealer's license may be temporarily suspended without a hearing if the director determines that public health, safety, or welfare is at risk. Upon the temporary suspension the director shall by certified mail notify dealer of said suspension and notify the dealer of the time and date of the hearing concerning the suspension. The hearing shall occur within ten days of the suspension.

B. A grain dealer's license may be suspended without a hearing five days after sending a notice by certified mail that surety has expired or if the grain dealer refuses to submit to an audit of their records. License shall not be suspended for more than 60 days without a hearing.

## **SECTION VII. SLOW PAY HOTLINE**

The slow-pay hotline number will be on every license that the State Plant Board issues to grain dealers. Also, grain dealers must have the slow-pay hotline number on all purchase agreements. The hotline number will be published and provided to all licensees upon establishment of the number.

## **SECTION VIII. RECORD KEEPING**

### **Recordkeeping and Retention Requirements**

Grain dealers will provide all records required by the director upon request and are required to keep said records for a period of not less than 5 fiscal years of the dealer. Required records will include all purchase contracts, all sales contracts, all scale tickets, all settlement sheets, all delivery tickets and any other document acquired in relation to the buying and selling of each lot of grain handled.

## Purchase Contracts

- A. A purchase contract is a written document which lists all conditions and requirements being agreed to in the transaction to transfer title of a grain lot from a seller to a buyer. The document must show the document preparation date, all other items shown in paragraph B and any other conditions relevant to the transaction agreed to by the seller and buyer. Contracts shall be between the buyer and the seller and contract details are not constructed by these rules.
- B. It shall be the responsibility of grain dealers to draw up an agreement in writing which shall contain a statement informing the seller all title to the grain is being relinquished to the buyer. All agreements must have a lien holder statement. All agreements must have the slow-pay hotline number, labeled as such, on the contract. When applicable all contracts must have a date for the payment to be made. That payment date may be any date that is agreeable to the parties involved and is not to be determined by these rules, except that if no payment date is specified, then the payment date will be considered to be thirty (30) days after the contract preparation date. The Director may require any additional information from a grain dealer that is deemed necessary to protect the interest of the seller of grain in these transactions. All contracts shall be pre-numbered with no number duplication. The Director or the appointed representative shall approve the kind of contract form to be used by grain dealers. Contracts include, but are not limited to, deferred pricing contracts, deferred payment or booking contracts, and basis contracts. Parties have thirty (30) days, after date of preparation, to get documents signed. If conditions dictate grain be moved prior to securing signatures on the contract, a statement to that effect must be included in the executed contract.
- C. Scale tickets used to document measurement of grain quantities transferred from one entity to another shall originate at a facility using scales that have been inspected and placed in service in accordance with Arkansas Bureau of Standards rules. These scale tickets must be numbered with a unique number that is identifiable and traceable to the facility issuing the ticket.

Destination Contracts –These are written documents prepared to transfer title of a quantity of grain from a Grain Dealer or current title holder to a subsequent buyer.

All destination contracts must be kept on file. These destination contracts, upon delivery of contracted grain, must be supported by additional records that show which purchased grain lots (as indicated by referenced purchase contract numbers) were used to fill the particular sale covered by the destination contract. Additional records such as records listing the transporter of the grain, quantity of grain carried in each load if multiple loads are used to move the total quantity of grain sold are to be kept with the destination contracts. Details of grain transferred, i.e. scale tickets, purchase contract numbers, delivery details, settlement sheets (summaries) and other documents used in the purchase, used to fill the total quantity of the destination contract are to be kept by the dealer.

Delivery Tickets – These documents are to confirm the transfer and receipt of grain from one entity to another with sufficient description to allow positive identification of the grain lot being transferred.

Each grain dealer shall issue to all sellers of grain to the dealer a pre-numbered officially approved delivery ticket which shall be issued in numerical order. All officially approved delivery tickets must contain the original and no fewer than two copies. Delivery tickets shall list, with copies attached, official scale tickets or an official load summary showing the receipt of the grain covered by the delivery ticket.

- A. A sample copy of the officially approved delivery ticket used by the grain dealer shall be kept on file with the Director.
- B. Each officially approved delivery ticket shall contain the following information:
  - 1. The name and address of the grain dealer.
  - 2. Date grain was delivered.
  - 3. The kind, quantity, grade or grade factors necessary (if applicable) to determine the bushels, pounds or CWT of grain delivered.
  - 4. All officially approved delivery tickets must denote the contract number the delivered grain should be applied to.
- C. An officially approved delivery ticket must be issued on all grain purchased by the grain dealer.
- D. All officially approved delivery tickets that have been voided must be kept on file at the grain dealer's principal place of business.
- E. A copy of all approved delivery tickets issued must be kept on file in numerical order at the grain dealer's principal place of business.

Settlements – Settlements are documents that fully explain the grain purchase transaction between the parties involved in the transaction.

All grain dealer purchases must be confirmed by preparation of a written settlement document. The documents will be completed in a numerical sequence as they are prepared. All settlements must have the name of the grain seller(s). All purchase settlements must have the date when payment was made and the check number or other means of payment is noted. All settlements must list the purchase contract number(s) applicable to the settlement. All settlements must have a delivery sheet or load summary to attest all scale tickets for all grain being purchased by the settlement.

Daily Position Record – A written record, prepared on a daily basis, to reflect the agreements made for grain purchases that day and agreements to be filled as of that date. Dealers may use a form made available by the Plant Board for this function. Use of this form will constitute compliance with this requirement.

## **SECTION IX. FINANCIAL REQUIREMENTS**

All grain dealers purchasing less than \$100,000,000 worth of grain are required to maintain a minimum net worth of \$25,000. A grain dealer, who purchases more than \$100,000,000 worth of grain, will maintain a minimum net worth of \$50,000. To be licensed, a grain dealer who does not meet the minimum financial requirements must post additional bond to cover the short fall in the minimum net worth. This additional bond may be an amendment to the original bond or it may be a new bond to cover the deficiency amount.

## **SECTION X. OUT OF STATE GRAIN DEALERS**

If the grain dealer does not maintain an office in this state and does not have a statutory agent in this state, the application shall include a written appointment of a statutory agent upon whom process, notice, or demand may be served. The statutory agent shall be an individual residing in this state or a corporation whose principal place of business is located in the state. If the identity or address of the statutory agent changes, the grain dealer shall, within 3 days, file with the Plant Board a written appointment of the new statutory agent or written notice of the new address, as applicable.

## **SECTION XI. BUSINESS HOURS**

All grain dealers are required to be available for business transactions on days the commodity market is open and in a time frame that would allow sellers to utilize market pricing to facilitate transactions.

## **SECTION XII. RECEIVERSHIP**

Following the suspension of a dealer's license, the State Plant Board may file a verified petition in a court of competent jurisdiction requesting the appointment of a receiver to take custody of the assets of the dealer and provide for the disposition of the assets under the supervision of the court.

A petition for the appointment of a receiver shall be filed in the county in which the dealer, or the registered agent, is located.

Upon receiving a petition for the appointment of a receiver, a court may issue any temporary orders necessary to preserve or protect the assets in receivership, the value of the assets in receivership, and the rights of the dealer's creditors until a plan of disposition is approved.

The board may be appointed as a receiver.

## APPENDIX 1

## ARKANSAS GRAIN DEALERS ACT CIVIL PENALTY MATRIX

VIOLATIONS	1 <sup>ST</sup> LEVEL OF ENFORCEMENT		2 <sup>ND</sup> LEVEL OF ENFORCEMENT		3 <sup>RD</sup> LEVEL OF ENFORCEMENT		4 <sup>TH</sup> LEVEL OF ENFORCEMENT	
	Action Options	Penalty	Action Options	Penalty	Action Options	Penalty	Action Options	Penalty
Recordkeeping mistakes that are clerical and believed to be accidental in nature. Ex: Lost scale tickets, incomplete contracts, settlement mistakes, DPR inaccurate, etc.	A	---	B&C	\$100 to \$600	B,C&D	\$600 to \$900	B,C&D	\$1,000
Failure to pay seller on Due Date.	A,B	\$100 to \$300	B,C,D&E	\$200 to \$600	B,C,D&E	\$600 To \$1,000	B,C,D&E	\$1,000
Knowingly falsifying records.	B,C&D	\$500	B,C,D&E	\$500 to \$800	B,C,D&E	\$800 to \$1,000	B,C,D&E	\$1,000
Refusal to allow inspection of records.	B,C&D	\$100 to \$300	B,C&D	\$400 to \$600	B,C,D&E	\$600 to \$900	B,C,D&E	\$1,000
Operating without a license	B	\$300 to \$500	B&E	\$500 to \$700	B&E	\$800 to \$1,000	B&E	\$1,000

- Each violation moves grain dealer to the next level of enforcement
- Each individual violation is removed 3 years from the date the violation was first proven.

- A. Warning Letter
- B. Hearing before the board
- C. License Suspension
- D. Revocation of license
- E. Referral to Prosecuting Attorney