

O.C.G.A. § 2-9-30

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-30. Definitions.

As used in this article, the term:

- (1) “Grain” means all products commonly classified as grain, including, but not limited to, wheat, corn, oats, barley, rye, field peas, soybeans, clover, and grain sorghum. The term does not include grain which has been produced or packaged for purchase or distribution as seed.
- (2) “Grain dealer” means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any grain purchased from the producer or his or her agent or representative, received on consignment from the producer or his or her agent or representative, or received to be handled on a net return basis from the producer.
- (3) “On consignment” means any receipt or sale of grain for the account of a person other than the seller in which the seller acts as the agent for the owner.
- (4) “Producer” means any producer of grain.

History

Ga. L. 1976, p. 512, § 1; Ga. L. 2013, p. 797, § 5/HB 268.

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O.C.G.A. § 2-9-31

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-31. License required.

It shall be unlawful for any dealer in grain who comes within the terms of this article to engage in such business in this state without a state license issued by the Commissioner.

History

Ga. L. 1976, p. 512, § 3.

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Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-32. Application for license.

- (a) Every grain dealer desiring to transact business in this state shall file an application for a license with the Commissioner. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:
- (1) The name of the business;
 - (2) The business address of the applicant;
 - (3) The complete telephone number of the applicant;
 - (4) The type of ownership, whether individual, partnership, corporation, or other;
 - (5) The name of the owner or, if a partnership or corporation, the name of the partners or stockholders;
 - (6) The names of the certified public weighers;
 - (7) The name of the manager; and
 - (8) The dollar value of business transacted from producers for the highest month during the preceding calendar year.
- (b)
- (1) Each applicant for a license or renewal shall furnish with his application a current financial statement which shall include:
 - (A) A balance sheet;
 - (B) A profit and loss statement of income;
 - (C) A statement of retained earnings; and
 - (D) A statement of changes in financial position.
 - (2) The chief executive officer for the business shall certify under penalties of perjury that the statements as prepared accurately reflect the financial condition of the business as of the date named and fairly represent the results of operations for the period named.
 - (3) Except as otherwise provided in this paragraph, each applicant shall have the financial statements required in paragraph (1) of this subsection audited by an independent certified public accountant. Alternatively, financial statements audited or reviewed by an independent public accountant will be accepted with the understanding that the applicant will be subject to an additional on-site examination by the Commissioner and to an audit by the Commissioner. Audits and reviews by independent certified public accountants and independent public accountants specified in this Code section shall be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, shall be furnished along with the statements. Applicants who cannot immediately meet these requirements may apply to the Commissioner for a temporary waiver of this provision. The Commissioner may grant such waiver for a temporary period not to exceed 180 days if the applicants can furnish evidence of good and substantial reasons therefor. This paragraph shall not be applicable

to any applicant who maintains a bond in the maximum amount required by subsection (a) of Code Section 2-9-34.

History

Ga. L. 1976, p. 512, § 4; Ga. L. 1983, p. 831, § 1; Ga. L. 1988, p. 748, § 1.

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O.C.G.A. § 2-9-33

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-33. Issuance, renewal, and expiration of license.

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-36, he or she shall issue to an applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-34, a state license entitling the applicant to conduct business as a dealer in grain. A fee in an amount fixed by rule or regulation of the Commissioner at not less than \$100.00 nor more than \$150.00 per annum shall be charged for such license. All such licenses shall be renewed annually on or before June 30. Any license which is not renewed on or before such date shall expire on June 30. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

History

Ga. L. 1976, p. 512, § 5; Ga. L. 1985, p. 643, § 1; Ga. L. 1992, p. 2132, § 1; Ga. L. 2010, p. 9, § 1-6/HB 1055.

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O.C.G.A. § 2-9-34

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-34. Bond — Required.

(a) Before any license is issued, the applicant shall make and deliver to the Commissioner a surety bond in the amount of 20 percent of the average of the highest dollar volume of grain purchases from producers made in any single month for each of the three preceding calendar years or such shorter period of years as the applicant has done business as a grain dealer, provided that the minimum amount of such bond shall be \$20,000.00 and the maximum amount of such bond shall be \$300,000.00. If a licensed grain dealer operates his or her grain-dealing activities at more than one physical location, he or she shall furnish a surety bond for each location of grain-dealing activities, each bond to be computed as stated in this Code section and each bond to be subject to the minimum and maximum amounts stated in this Code section. The bonds shall be executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of “good standing” issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. Such bonds shall be upon forms prescribed by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to the producers or their agents or representatives of the proceeds of all grain handled or sold by such dealer. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing.

(b) In lieu of a surety bond, the Commissioner may accept a cash bond which shall be subject in all respects to the same claims and actions as would exist against a surety bond.

(c) If the surety bond or cash bond of a licensed grain dealer is canceled, the license of such grain dealer shall immediately be revoked by operation of law without notice or hearing.

History

Ga. L. 1976, p. 512, § 6; Ga. L. 1977, p. 245, § 2; Ga. L. 1981, p. 927, § 1; Ga. L. 1983, p. 3, § 3; Ga. L. 1983, p. 831, § 2; Ga. L. 1985, p. 643, § 2; Ga. L. 1999, p. 800, § 4; Ga. L. 2013, p. 797, § 6/HB 268.

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O.C.G.A. § 2-9-35

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > *TITLE 2 Agriculture (Chs. 1 — 23)* > *CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2)* > *Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)*

2-9-35. Bond — Breach of conditions; complaint to Commissioner; hearing and settlement; action on bond; pro rata distribution of insufficient bond proceeds.

(a) Any person claiming that he or she has been damaged by a breach of the conditions of a bond given by a licensee as provided in Code Section 2-9-34 may enter a complaint to the Commissioner. Such complaint shall be a written statement of the facts constituting the complaint and must be made within 180 days of the alleged breach. If the Commissioner determines that the complaint is prima facie a breach of the bond, and the matter can not be amicably resolved within 15 days, the Commissioner shall publish a solicitation for additional complaints regarding breaches of the bond for a period of not less than five consecutive issues in a newspaper of general circulation and in such other publications as the Commissioner shall prescribe. Additional complaints must be filed within 60 days following initial public notification of a breach of the bond. Civil actions on the breach of such bond shall not be commenced less than 120 days nor more than 547 days from the initial date of public notification of such breach of the bond.

(b) Upon the filing of the complaint in the manner provided in this Code section, the Commissioner shall investigate the charges made and, at his discretion, order a hearing before him or his hearing officer, giving all parties concerned notice of the filing of such complaint and the time and place of such hearing. At the conclusion of the hearing, the Commissioner shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in the case, who shall have 15 days following such report in which to make effective and satisfy the Commissioner's conclusions.

(c) If such settlement is not effected within such time, the Commissioner or the producer may institute appropriate legal proceedings to enforce the claim. If the producer is not satisfied with the ruling of the Commissioner, he may commence and maintain an action against the principal and surety on the bond of the parties complained of, as in any civil action.

(d) If the bond or collateral posted is insufficient to pay the valid claims of producers in full, the Commissioner may direct that the proceeds of the bond shall be divided pro rata among the producers.

History

Ga. L. 1976, p. 512, § 9; Ga. L. 1985, p. 643, § 3; Ga. L. 1998, p. 556, § 2.

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O.C.G.A. § 2-9-36

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-36. Denial, suspension, or revocation of license — Grounds.

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has:

- (1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;
- (2) Made false charges for handling or services rendered;
- (3) Failed to account promptly and properly or to make settlements with any producer;
- (4) Made any false statement or statements as to the condition, quality, or quantity of grain received or held for sale, when he could have ascertained the true condition, quality, or quantity by reasonable inspection;
- (5) Made any false or misleading statement or statements as to market conditions or service rendered;
- (6) Been guilty of a fraud in the attempt to procure or in the procurement of a license;
- (7) Directly or indirectly sold grain received on consignment or on a net return basis for his own account, without prior authority from the producer consigning the same or without notifying such producer; or
- (8) Through any other action, violated this article.

History

Ga. L. 1976, p. 512, § 12.

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O.C.G.A. § 2-9-37

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-37. Denial, suspension, or revocation of license — Notice and hearing.

Before the Commissioner refuses or revokes any license, he shall give the applicant or licensee ten days' notice, by registered or certified mail or statutory overnight delivery, of a time and place of hearing. At such hearing the applicant or licensee shall be privileged to appear in person or by or with counsel and to produce witnesses. If the Commissioner finds the applicant or licensee to be in violation of this article, the Commissioner may refuse, suspend, or revoke such license. He shall give immediate notice of his action to the applicant or licensee.

History

Ga. L. 1976, p. 512, § 13; Ga. L. 1981, p. 927, § 2; Ga. L. 2000, p. 1589, § 3.

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Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-38. Grain to be weighed by certified public weigher.

All grain purchased from a producer by a dealer licensed under this article shall be weighed by a certified public weigher licensed in accordance with Article 2 of Chapter 2 of Title 10, relating to certified public weighers.

History

Ga. L. 1976, p. 512, § 7; Ga. L. 1992, p. 6, § 2.

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O.C.G.A. § 2-9-39

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-39. Scales.

Each grain dealer under this article must be equipped with or have available to him suitable scales which are in good order and so arranged that all grain can be weighed by the dealer. The scales belonging to or used by such grain dealer shall be subject to examination by representatives of the Commissioner and to disapproval by the Commissioner. If the Commissioner disapproves of any weighing apparatus, it shall not be used in ascertaining the weight of grain for the purpose of this article until such disapproval is withdrawn.

History

Ga. L. 1976, p. 512, § 8.

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O.C.G.A. § 2-9-40

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-40. Consignment records; settlement with producer.

(a) Upon the receipt of grain products on a consignment basis and as he handles and disposes of the grain products, every grain dealer shall make a record thereof and shall preserve such record for at least one year. The record shall specify:

- (1) The name and address of the producer consigning such grain;
- (2) The date of receipt;
- (3) The kind and quality of the grain;
- (4) The amount sold;
- (5) The name and address of the purchaser, provided that where sales total less than \$5.00 in value, such sales may be made to the order of "cash";
- (6) The selling price; and
- (7) The items of expenses connected therewith.

(b) An "account of sales," together with payment in settlement for the shipment, shall be mailed to the producer within 48 hours after the sale of the grain, unless otherwise agreed to in writing.

History

Ga. L. 1976, p. 512, § 10.

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O.C.G.A. § 2-9-41

Current through the 2022 Regular Session of the General Assembly.

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2-9-41. Investigations.

(a) Upon the complaint of any interested person or upon his own initiative, the Commissioner shall have the power to investigate:

- (1) The record of any applicant or licensee;
- (2) Any transaction involving the solicitation, receipt, sale, or attempted sale of grain;
- (3) The failure to pay proper and true accounts and settlements at prompt and regular intervals;
- (4) The making of false statements as to condition, quality, or quantity of grain received or in storage;
- (5) The making of false statements as to market conditions with intent to deceive;
- (6) The failure to make payment for grain received; or
- (7) Other alleged injurious transactions.

(b) For such purposes, the Commissioner or his agents may examine the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, at the place or places of business of the applicant, licensee, or unlicensed person, partnership, corporation, or other entity, and may take testimony thereon under oath.

History

Ga. L. 1976, p. 512, § 11; Ga. L. 1988, p. 748, § 2.

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O.C.G.A. § 2-9-42

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-42. Rules and regulations.

The Commissioner shall adopt and enforce rules and regulations deemed necessary to carry out this article.

History

Ga. L. 1976, p. 512, § 14.

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Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-42.1. Publication of names, locations, and manner of payment by licensed grain dealers.

The Commissioner may publish in print or electronically the names and locations of licensed grain dealers and the names and locations of those operations certifying that payment will be made on a cash or certified check basis.

History

Ga. L. 1981, p. 927, § 3; Ga. L. 2010, p. 838, § 10/SB 388.

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Current through the 2022 Regular Session of the General Assembly.

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2-9-43. Injunctions.

In addition to the other remedies provided in this article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to the superior court, which court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate this article or from failing or refusing to comply with this article or any rule or regulation adopted by the Commissioner as provided in this article. Such injunction shall be issued without bond.

History

Ga. L. 1976, p. 512, § 16.

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Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-44. Applicability of article.

This article shall not apply to:

- (1) Farmers in the sale of grain grown by themselves;
- (2) Persons who buy for cash, paying at the time of the purchase in United States currency, certified check, or cashier's check; or
- (3) Persons licensed and bonded in accordance with Article 1 of Chapter 4 of Title 10, the "Georgia State Warehouse Act."

History

Ga. L. 1976, p. 512, § 2; Ga. L. 1977, p. 245, § 1; Ga. L. 1982, p. 3, § 2; Ga. L. 1983, p. 831, § 3.

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Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 9 Dealers in Agricultural Products (Arts. 1 — 2) > Article 2 Grain Dealers (§§ 2-9-30 — 2-9-45)

2-9-45. Penalty.

Any dealer in grain who violates any of the provisions of this article or who interferes with an agent of the Commissioner in the enforcement of this article shall be guilty of a misdemeanor.

History

Ga. L. 1976, p. 512, § 16.

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