

By the Committee on Judiciary; and Senator Smith

590-2331-05

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 appropriation and authorizing additional
17 positions; providing an effective date.

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

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

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

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

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

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

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

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

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

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

29 (a) Buying, receiving, selling, exchanging,
30 negotiating, or processing for resale, or soliciting the sale,
31 resale, exchange, or transfer of, grain purchased from the

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

4 (b) Receiving grain for storage.

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

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

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

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

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

3 604.16 Exceptions to provisions of ss.
4 604.15-604.34.--Except for s. 604.22(2), the provisions of ss.
5 604.15-604.34 do not apply to:

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

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

16 Section 3. Section 604.18, Florida Statutes, is
17 amended to read:

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

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

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

1 ~~member of such association or copartnership, or if the~~
2 ~~applicant be a corporation, the name and mailing address of~~
3 ~~each owner, partner, officer, or managing agent. officer of~~
4 ~~the corporation;~~

5 (3) The names of buyers or other local agents of the
6 applicant, if any.†

7 (4) The cities and towns within which places of
8 business of the applicant will be located, together with the
9 street or mailing address of each.†~~and~~

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

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

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

1 Florida producers and their agents or representatives during
2 the month in which the estimated maximum dollar amount of
3 agricultural products will be purchased or handled as a dealer
4 in agricultural products.

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

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

1 deposit furnished by each dealer under the provisions of s.
2 604.20 and may not exceed~~\$500~~~~\$300~~. For each additional place
3 in which the applicant desires to conduct business and which
4 the applicant names in the application, the additional license
5 fee must be paid but may not exceed~~\$100~~~~\$50~~ annually. Should
6 any dealer in agricultural products fail, refuse, or neglect
7 to apply and qualify for the renewal of a license on or before
8 the date of expiration thereof, a penalty not to exceed~~\$100~~
9 ~~\$35~~ shall apply to and be added to the original license fee
10 and shall be paid by the applicant before the renewal license
11 may be issued. The department by rule shall prescribe fee
12 amounts sufficient to fund ss. 604.15-604.34.

13 Section 5. Section 604.20, Florida Statutes, is
14 amended to read:

15 604.20 Bond or certificate of deposit prerequisite;
16 amount; form.--

17 (1) Before any license is issued, the applicant
18 therefor shall make and deliver to the department a surety
19 bond or certificate of deposit in the amount of at least
20 ~~\$5,000~~~~\$3,000~~ or in such greater amount as the department may
21 determine, ~~not exceeding the maximum amount of business done~~
22 ~~or estimated to be done in any month by the applicant. No bond~~
23 or certificate of deposit may be in an amount less than
24 \$5,000. The penal sum of the bond or certificate of deposit to
25 be furnished to the department by an applicant for license as
26 a dealer in agricultural products shall be in an amount equal
27 to twice the dollar amount of agricultural products handled
28 for a Florida producer or a producer's agent or
29 representative, by purchase or otherwise, during the month of
30 maximum transaction in such products during the preceding
31 12-month period. An applicant for licensure who has not

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

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

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

1 any bond or certificate of deposit, regardless of the
2 anniversary date of its issuance, expiration, cancellation, or
3 renewal.

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

18 (4) The department may issue a conditional license to
19 an applicant who is unable to provide a single bond or
20 certificate of deposit in the full amount required by the
21 calculation in subsection (1). The conditional license shall
22 remain in effect for a 1-year period to coincide with the
23 effective period of the bond or certificate of deposit
24 furnished by the applicant. The applicant must provide at
25 least the minimum \$5,000 bond or certificate of deposit as
26 provided in subsection (1) together with one of the following:

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

31

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

6 (c) A second bond or certificate of deposit in such an
7 amount that, when the penal sum of the second bond or
8 certificate of deposit is added to the penal sum of the first
9 bond or certificate of deposit, the combined penal sum will
10 equal twice the dollar amount of agricultural products handled
11 for a Florida producer or a producer's agent or
12 representative, by purchase or otherwise, during the month of
13 maximum transaction in such products during the preceding
14 12-month period.

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

26 Section 6. Section 604.21, Florida Statutes, is
27 amended to read:

28 604.21 Complaint; investigation; hearing.--

29 (1)(a) Any person, partnership, corporation, or other
30 business entity claiming ~~herself or himself~~ to be damaged by
31 any breach of the conditions of a bond or certificate of

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

22 (b) To be considered timely filed, a complaint
23 together with any required affidavits or notarizations must be
24 received by the department within 6 months after the date of
25 sale by electronic transmission, facsimile, regular mail,
26 certified mail, or private delivery service. If the complaint
27 is sent by a service other than electronic mail or facsimile,
28 the mailing shall be postmarked or dated on or before the
29 6-month deadline to be accepted as timely filed.

30 (c) When multiple claims exist by a producer, a
31 producer's agent or representative, or a dealer and the

1 combined adjudicated amounts exceed the total amount of any
2 bond and certificate of deposit, sales occurring 120 or more
3 days after the oldest sale stated in any complaint filed by
4 the same producer, producer's agent or representative, or
5 dealer shall not be considered for payment from the proceeds
6 of the bond or certificate of deposit in the event that the
7 surety company or financial institution is called on to make
8 payment.

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

27 (e) A dealer in agricultural products who is in
28 compliance with ss. 604.15-604.34 may file a complaint with
29 the department against another licensed dealer in agricultural
30 products. However, payment from a bond or certificate of
31 deposit to a dealer shall occur only after all claims of

1 producers or producers' agents or representatives have been
2 paid in full except as provided pursuant to paragraph (c).

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

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

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

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

1 ~~but fails~~ to satisfy same within 21 days after receipt of the
2 notice of the filing of a complaint by any party whose
3 substantial interests are determined ~~the time fixed~~ by the
4 department, the department shall thereupon order payment by
5 the dealer of the amount found owed. In the event a party
6 files a request that the complaint be held in abeyance pending
7 a settlement agreement, the period of abeyance shall not
8 exceed 6 months and successive periods of abeyance shall not
9 be granted.

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

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

29 (6) Any party whose substantial ~~material~~ interest is
30 affected by a proceeding pursuant to this section shall be
31 granted a hearing upon request as provided by chapter 120.

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

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

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

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

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

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

29 ~~(11)(10)~~ Upon the failure of a surety company to
30 comply with a demand for payment of the proceeds on a bond for
31 a dealer in agricultural products, a complainant who is

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

13 | Section 7. Section 604.22, Florida Statutes, is
14 | amended to read:

15 | 604.22 Dealers to keep records; contents.--

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

1 explanation of such adjustments; and an itemized showing of
2 all marketing costs deducted by the licensee, along with the
3 net amount due the producer. The licensee shall make the
4 payment to the producer within 5 days of the licensee's
5 receipt of payment unless otherwise agreed to in a written
6 contract or verifiable oral agreement.

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

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

20 Section 8. Section 604.23, Florida Statutes, is
21 amended to read:

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

1 false statements as to market conditions with intent to
2 deceive, or the failure to make payment for goods received, or
3 other alleged injurious transactions. For such purposes the
4 department or its agents may examine, at the place or places
5 of business of the dealer in agricultural products, the
6 ~~applicant or licensee, her or his~~ ledgers, books of accounts,
7 memoranda, and other documents which relate to the transaction
8 involved, and may take testimony thereon under oath.

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

11 604.25 Refusal to grant, or suspension or revocation
12 of, license.--

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

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

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

24 Section 10. Section 604.30, Florida Statutes, is
25 amended to read:

26 604.30 Penalties; injunctive relief; administrative
27 fines.--

28 (1) Any dealer in agricultural products who violates
29 the provisions of ss. 604.15-604.34, or who interferes with an
30 agent of the department in the enforcement of ss.
31 604.15-604.34, is guilty of a misdemeanor of the second

1 degree, punishable as provided in s. 775.082 or s. 775.083,
2 and for a second or subsequent offense is guilty of a
3 misdemeanor of the first degree, punishable as provided in s.
4 775.082 or s. 775.083.

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

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

26 (b) Whenever any administrative order has been made
27 and entered by the department imposing a fine pursuant to this
28 subsection, the order shall specify the amount of the fine and
29 a time limit of no more than 15 days for the payment thereof.
30 Upon the failure of the dealer involved to pay the fine within
31 that time, the dealer's license as dealer in agricultural

1 products shall be subject to suspension or revocation and a
2 fine not to exceed \$100 ~~of \$50~~ a day shall be imposed on the
3 dealer while the dealer ~~she or he~~ is in violation of such
4 order.

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

10 Section 12. This act shall take effect October 1,
11 2005.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 1780

16 Committee Substitute for Senate Bill 1780 is different from
17 Senate Bill 1780 in that it:

- 18 1. Raises the bond or certificate of deposit amount required
19 in Section 5 from \$3,000 to \$5,000.
- 20 2. Appropriates \$285,000 from the General Inspection Trust
21 Fund to the Department of Agriculture and Consumer
22 Services, and four additional full-time-equivalent
23 positions for the purpose of implementing this act.
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