

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 632 Session of  
2017

---

INTRODUCED BY SCHWANK, VOGEL, HUGHES, RAFFERTY, BLAKE, BOSCOLA,  
STREET, FONTANA, FARNESE, TARTAGLIONE AND VULAKOVICH,  
APRIL 20, 2017

---

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, APRIL 20, 2017

---

AN ACT

1 Providing for grain dealer bonding; imposing penalties; and  
2 providing remedies.

3 TABLE OF CONTENTS

4 Section 1. Short title.

5 Section 2. Definitions.

6 Section 3. Bonding requirement.

7 Section 4. Acquisition of additional facility.

8 Section 5. Posting of bond.

9 Section 6. Cancellation of bond.

10 Section 7. Compliance.

11 Section 8. Depositor lien.

12 Section 9. Issuance of receipts or tickets by dealer.

13 Section 10. Commingling of different lots.

14 Section 11. Return of grain to depositor.

15 Section 12. Replacement receipts or tickets.

16 Section 13. Dealer going out of business or suspending  
17 operations.

1 Section 14. Disclosure of interests.  
2 Section 15. Disclosure of insolvency.  
3 Section 16. Civil remedies for default or violation by dealer.  
4 Section 17. Criminal penalties.  
5 Section 18. Effective date.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Grain Dealer  
10 Bonding Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Bailee." A person to whom grain is delivered in trust for  
16 storage with title remaining in the name of the depositor.

17 "Bailor." A person who delivers grain to a bailee in trust  
18 for storage grain with title remaining in the name of the  
19 depositor.

20 "Bond." An agreement pledging surety for financial loss  
21 which:

22 (1) Is caused by the act or default of a dealer.

23 (2) Meets all requirements of this act.

24 "Broker." A person that for commission or other compensation  
25 markets grain or solicits or negotiates the marketing of grain  
26 for or on behalf of a producer.

27 "Buyer-warehouse." A person that operates as both a  
28 warehouse and grain handler.

29 "Dealer." Includes a person that is a broker, buyer-  
30 warehouse, grain handler or warehouse. The term does not include

1 the following:

2 (1) A person that buys or markets less than 5,000  
3 bushels of grain annually.

4 (2) A person that buys grain for the sole purpose of  
5 feeding livestock or poultry that the person owns or is  
6 responsible to raise, keep or maintain, if the person:

7 (i) derives a major portion of the person's income  
8 from selling or raising livestock or poultry or their  
9 byproducts; and

10 (ii) does not offer storage, deferred pricing,  
11 delayed payment or contracts or other instruments that  
12 are linked to the commodity futures or commodity options  
13 market.

14 (3) A person whose contracts for grain are exclusively  
15 subject to the Perishable Agricultural Commodities Act, 1930  
16 (46 Stat. 531, 7 U.S.C. § 499a et seq.).

17 "Default." Includes the following:

18 (1) Noncompliance by the dealer with the bonding  
19 requirements of this act.

20 (2) Failure by the dealer to make timely payment of  
21 money or timely delivery of grain due under obligations to  
22 depositors.

23 (3) The filing of an action in bankruptcy by or against  
24 the dealer.

25 (4) An action to appoint a trustee, receiver or other  
26 person to manage the fiscal affairs of the dealer.

27 (5) A public declaration by the dealer of insolvency.

28 (6) In the absence of a good faith dispute, failure by  
29 the dealer to pay debts in the ordinary course of business.

30 (7) An attempt by the dealer to dissolve business

1 operations.

2 (8) An attempt by the dealer to make a transfer or incur  
3 a debt that would be fraudulent to a producer under the  
4 provisions of 12 Pa.C.S. Ch. 51 (relating to fraudulent  
5 transfers).

6 "Deferred price agreement." A written contract between a  
7 dealer and a depositor which covers the sale and transfer of  
8 title of grain and states in written terms the service charges  
9 and the method for pricing the grain at a later date.

10 "Deferred pricing." A purchase by a dealer in which title to  
11 the grain passes to the dealer according to the terms of a  
12 deferred price agreement and the price to be paid to the  
13 depositor is not determined:

14 (1) at the time the grain is received by the dealer; or

15 (2) within 10 days of receipt.

16 "Depositor." Any of the following:

17 (1) A person that delivers grain to a dealer:

18 (i) for storage, conditioning, shipment or sale; or

19 (ii) under an agreement in which the dealer will  
20 market the grain delivered.

21 (2) A person that owns or is the legal holder of a  
22 ticket or receipt.

23 (3) A dealer that stores grain owned solely by the  
24 dealer or owned, jointly or in common with others in a  
25 facility owned or controlled by that dealer or another  
26 dealer.

27 "Facility." A location which is used by a dealer for storage  
28 of grain or grain assets or for transaction of business  
29 operations. With respect to locations outside this Commonwealth,  
30 the term only includes the proportionate share of the location's

1 grain storage capacity which is holding or storing grain for  
2 Pennsylvania depositors.

3 "Farm organization." A Statewide organization representing  
4 and having as primary members persons engaged in agricultural  
5 production.

6 "Grain." Includes corn, wheat, oats, barley, rye, sorghum,  
7 sunflower, speltz, canola, millet, buckwheat, safflower,  
8 rapeseed, triticale and flax. The term does not include canning  
9 crops for processing or grain which is purchased for sale as  
10 seed.

11 "Grain bank grain." Grain which is:

12 (1) owned by a depositor for use in the formulation of  
13 feed; and

14 (2) stored by the warehouse to be returned to the  
15 depositor on demand.

16 "Grain buyer." A person that is engaged in the business of  
17 grain handling.

18 "Grain handling." Any of the following:

19 (1) Engaging in or participating in the business of  
20 purchasing grain for sale, resale, processing or any other  
21 use.

22 (2) Engaging in or participating in the business of  
23 receiving grain or title or equity in grain for the purpose  
24 of marketing or sale to another.

25 (3) Operating as a bailee for the receiving, storing,  
26 shipping or conditioning of grain.

27 "Negotiable receipt." A receipt which states that the grain  
28 received will be delivered to the bearer of the receipt.

29 "Nonnegotiable receipt." A receipt which does not state that  
30 the grain received will be delivered to the bearer of the

1 receipt.

2 "Obligation." Money due to be paid or grain due to be  
3 delivered by the dealer to a depositor as a result of a sales,  
4 marketing, bailment or other agreement under which grain has  
5 been delivered by the depositor to the dealer.

6 "Official grain standards of the United States." The  
7 standards of quality or condition for grain fixed and  
8 established by the United States Secretary of Agriculture under  
9 the United States Grain Standards Act (39 Stat. 482, 7 U.S.C. §  
10 71 et seq.).

11 "Person." An individual, partnership, corporation,  
12 association or other form of business enterprise.

13 "Premises." A definite portion of land with appurtenances,  
14 including a structure erected on the land.

15 "Producer." A person that is involved in the agricultural  
16 production of grain on land which the person owns or leases.

17 "Receipt." A document, whether negotiable or nonnegotiable,  
18 issued by a dealer for grain received by the dealer for storage  
19 under a bailment agreement.

20 "Storage." The deposit of grain into a facility either for  
21 the account of the dealer operating the facility or for the  
22 account of the depositor.

23 "Ticket." A document issued by a dealer which indicates the  
24 amount of grain received by the dealer.

25 "Warehouse." A facility or group of facilities which are:

26 (1) used for receiving, storing, shipping or handling  
27 grain; or

28 (2) used for grain storage.

29 Section 3. Bonding requirement.

30 (a) General.--A dealer must, as a condition of doing

1 business in this Commonwealth, obtain a bond issued by a surety  
2 company authorized to do business in this Commonwealth under  
3 this section. No person may conduct business as a dealer or  
4 perform another activity related to operation as a dealer unless  
5 the person has obtained and has in effect a bond which meets the  
6 requirements of this act.

7 (b) Conditions.--A bond obtained under this act must comply  
8 with all of the following:

9 (1) Be conditioned upon the dealer's faithful  
10 performance of all obligations to depositors arising from  
11 grain handling.

12 (2) Apply to all obligations of the dealer arising from  
13 the effective date of the bond, regardless of whether the  
14 dealer's facility exist on the effective date of the bond or  
15 are assumed prior to the date the bond is canceled.

16 (3) Continuously remain in effect against the dealer,  
17 including times during which the dealer violates this act,  
18 temporarily suspends business operations or is subject to a  
19 cease and desist order.

20 (4) Not be subject to cancellation, except as under  
21 section 6.

22 (c) Amount of the bond.--

23 (1) Except as set forth in paragraph (2), the amount of  
24 the bond must be the greater of:

25 (i) the dealer's highest monthly average of  
26 outstanding obligations to depositors incurred during the  
27 previous calendar year; or

28 (ii) the amount calculated in subparagraph (i)  
29 multiplied by the ratio of the maximum volume of grain  
30 that the dealer is currently capable of holding or

1 storing at all facilities operated by the dealer to the  
2 maximum volume of grain which the dealer was capable of  
3 holding or storing at all facilities operated by the  
4 dealer on December 31 of the previous calendar year.

5 (2) In no event may the bond be less than \$10,000 for  
6 each facility currently being used by a dealer to hold or  
7 store grain.

8 (d) Facilities.--No dealer may operate a facility for which  
9 bonding has not been secured in the amount prescribed in  
10 subsection (c).

11 Section 4. Acquisition of additional facility.

12 Notwithstanding the provisions of section 7 to the contrary,  
13 a dealer may not hold or store grain in an additional facility  
14 or a facility which the dealer has not continuously used for  
15 holding or storage of grain unless the dealer has increased the  
16 amount of the bond in accordance with section 3(c).

17 Section 5. Posting of bond.

18 (a) Required postings and notices.--A dealer shall post a  
19 copy of its bond at each facility operated by the dealer within  
20 this Commonwealth. The copy shall be posted in a conspicuous  
21 place, accessible for observation by persons depositing and  
22 marketing grain. The dealer shall provide a copy of the bond,  
23 upon request, to any depositor or prospective depositor.

24 (b) Content of posting.--The posting shall include a copy of  
25 the bond and denote all of the following:

26 (1) The name and address of the main business office of  
27 the dealer.

28 (2) The name and address of all facilities the dealer  
29 operates.

30 (3) The amount of the bond secured by the dealer.



1 (4) A statement that the dealer is in compliance with  
2 this act.

3 (c) Prohibited postings and notices.--

4 (1) A dealer may not do any of the following:

5 (i) Display or provide or attempt to display or  
6 provide a copy of a bond which is suspended, canceled,  
7 revoked or otherwise no longer in effect.

8 (ii) Direct or attempt to direct a person to display  
9 or provide a copy of a bond which is suspended, canceled,  
10 revoked or otherwise no longer in effect.

11 (iii) Give out or post or direct a person to give  
12 out or post false or misleading information concerning  
13 the bond or the dealer's operations.

14 (2) Each violation of paragraph (1) shall be a separate  
15 offense.

16 Section 6. Cancellation of bond.

17 A bond may only be canceled after the expiration of at least  
18 30 days from the date the surety mailed a notice of intent to  
19 cancel, by registered mail, to the dealer.

20 Section 7. Compliance.

21 By January 31 of each year, a dealer shall review and  
22 determine whether the amount of bond secured by the dealer  
23 complies with the amount required under section 3. Upon  
24 determination that the amount of the bond is insufficient to  
25 comply with section 3, the dealer shall secure the additional  
26 bonding required under section 3 by April 30 of the year in  
27 which the determination is made.

28 Section 8. Depositor lien.

29 (a) Liens against the bond.--A lien shall exist against a  
30 bond secured by a dealer in favor of all depositors to whom the

1 dealer has outstanding obligations. The lien shall arise at the  
2 time of delivery of the grain by a depositor and shall terminate  
3 when the outstanding obligation has been satisfied. No security  
4 interest, lien or other encumbrance shall defeat the lien  
5 established under this subsection. The priority of distribution  
6 of bond assets among respective depositors may not relate to the  
7 date the depositor's claim arises but may be determined by the  
8 priority of distribution established under subsection (b).

9 (b) Distribution of bond assets.--To the extent that the  
10 amount of bond assets are insufficient to satisfy all claims by  
11 depositors arising from outstanding obligations by the dealer,  
12 the following shall determine the order of distribution of bond  
13 assets:

14 (1) First priority for distribution of bond assets shall  
15 be:

16 (i) Depositors whose claims arise from an agreement  
17 for sale of grain to the dealer or marketing of grain by  
18 the dealer and who possess receipts or tickets covering  
19 grain owned, held or stored by the dealer.

20 (ii) Depositors that possess receipts or tickets  
21 indicating ownership of grain under a bailment agreement  
22 or other storage obligation by the dealer.

23 (iii) Depositors that surrendered receipts to the  
24 dealer as a part of a grain transaction and were not  
25 fully paid for the grain.

26 (2) Second priority for distribution of bond assets  
27 shall be to depositors that:

28 (i) possess written evidence of agreement for sale  
29 of grain to the dealer or marketing of grain by the  
30 dealer other than receipts or tickets, including delayed

1 price agreements or similar grain delivery contracts; and  
2 (ii) completed delivery and pricing within 30 days  
3 immediately prior to the default of the dealer.

4 (3) To the extent not necessary to satisfy depositors  
5 having first and second priority of distribution, depositors  
6 that possess written evidence of agreement for sale of grain  
7 to the dealer or marketing of grain by the dealer shall  
8 participate in the pro rata distribution of the remainder of  
9 the bond assets in an amount not to exceed the value of the  
10 claims.

11 (c) Resolution of claims.--Adversary proceedings to recover  
12 bond assets pursuant to a lien established under subsection (a)  
13 may be filed by the depositor in a court of competent  
14 jurisdiction.

15 Section 9. Issuance of receipts or tickets by dealer.

16 (a) General requirements for issuance.--A dealer shall issue  
17 a receipt or ticket for each delivery of grain received by the  
18 dealer which results in an obligation by the dealer to a  
19 depositor. The receipt or ticket may be issued at the time the  
20 grain is received by the dealer. The dealer shall inspect, grade  
21 and determine the net weight or volume of grain being received  
22 by the dealer prior to issuance of the receipt or ticket.

23 (b) Requirement for issuance of receipt.--A dealer issuing a  
24 ticket for grain received for storage under a bailment agreement  
25 shall, upon request of a depositor to whom a ticket was issued,  
26 issue a receipt for the grain described in the ticket. The  
27 dealer may not be required to issue a receipt for a ticket which  
28 describes grain bank grain.

29 (c) Contents of receipts.--A receipt shall contain the  
30 following:

1           (1) The name of the dealer receiving the grain and the  
2 location of the facility where the grain is received.

3           (2) The date of issuance of the receipt.

4           (3) The type, grade and net weight or volume of the  
5 grain received by the dealer as established by the official  
6 grain standards of the United States.

7           (4) The rate of storage charges or the basis for the  
8 charges.

9           (5) A statement that the receipt is negotiable or  
10 nonnegotiable, conspicuously printed or stamped on it.

11           (6) If the receipt is negotiable, language that the  
12 grain is deliverable or payable to the bearer of the  
13 document.

14           (7) The signature of the dealer or an authorized agent.

15           (8) The name of the depositor from whom the grain is  
16 received and the signature of the depositor or an authorized  
17 agent.

18           (9) The payment terms.

19           (10) The price or value of the grain received or, if the  
20 price or value is not known or is uncertain at the time of  
21 delivery, the formula for calculating the price or value at a  
22 future date.

23           (11) The time that payment or transfer of grain by the  
24 dealer is due.

25           (12) A statement that the dealer has the right to  
26 terminate storage and collect outstanding charges against a  
27 lot of grain with 60 days' notice to the depositor.

28           (13) A statement that the dealer is required to provide  
29 a copy of a bond secured to protect the deposition of grain  
30 for which the receipt is issued to the depositor, owner or

1 receipt holder or ticket holder upon request.

2 (d) Contents of tickets.--A ticket shall contain the  
3 following:

4 (1) The name of the dealer receiving the grain and the  
5 location of the facility where the grain is received.

6 (2) The date of issuance of the receipt.

7 (3) The type, grade and net weight or volume of the  
8 grain delivered as established by the official grain  
9 standards of the United States.

10 (4) A statement conspicuously printed or stamped on the  
11 ticket that the ticket is not a negotiable receipt or  
12 negotiable instrument.

13 (5) The signature of the dealer or an authorized agent.

14 (6) The name of the depositor from whom the grain is  
15 received and the signature of the depositor or an authorized  
16 agent.

17 (7) A statement on the ticket which accurately describes  
18 that the grain is being received by the dealer under a sales,  
19 marketing, bailment or other agreement between the dealer and  
20 depositor.

21 (8) The price or value of the grain received or if the  
22 price or value is not known or is uncertain at the time of  
23 delivery, the formula for calculating the price or value at a  
24 future date.

25 (9) A statement that the dealer has the right to  
26 terminate storage and collect outstanding charges against a  
27 lot of grain with 60 days' notice to the depositor.

28 (10) A statement that the dealer is required to provide  
29 a copy of a bond secured to protect the deposit of grain for  
30 which the receipt is issued to the depositor, owner or

1 receipt holder or ticket holder upon request.

2 Section 10. Commingling of different lots.

3 Different lots of the same type of grain delivered to a  
4 dealer may be commingled by type of grain unless the receipt or  
5 ticket states that the identity of the lot of grain is to be  
6 preserved.

7 Section 11. Return of grain to depositor.

8 Upon demand and after payment of all applicable charges,  
9 grain shall be returned to the depositor at the facility where  
10 the grain was received unless otherwise agreed upon in writing.

11 Section 12. Replacement receipts or tickets.

12 (a) General.--Except as provided in subsection (b), a dealer  
13 may not issue a receipt or ticket for grain for which a previous  
14 receipt or ticket has been issued.

15 (b) Lost or stolen receipts or tickets.--

16 (1) If a receipt or ticket is lost, stolen or destroyed,  
17 the dealer shall, upon request, issue to the depositor whose  
18 interests are currently protected a replacement receipt or  
19 ticket. The replacement receipt or ticket entitles the owner  
20 to all rights appertaining to the original instrument being  
21 replaced. The replacement receipt or ticket shall contain the  
22 same information as was contained in the original instrument  
23 and shall conspicuously state that the instrument is a  
24 replacement for the original receipt or ticket.

25 (2) As a condition for replacement of a negotiable  
26 receipt, the issuing dealer may require the person claiming  
27 an interest in the original receipt to do the following:

28 (i) Provide a written affidavit which:

29 (A) confirms the person is lawfully entitled to  
30 the original receipt and has not negotiated or

1 endorsed the original receipt;

2 (B) describes the circumstances under which the  
3 original receipt was lost or destroyed; and

4 (C) if the receipt was lost, states the actions  
5 taken by the person to find the receipt.

6 (ii) Indemnify the dealer for all loss or liability  
7 which the dealer may incur as a result of the issuance of  
8 a replacement receipt.

9 (iii) Pay reasonable administrative expenses related  
10 to the issuance of a replacement receipt.

11 (c) Warranty.--By issuance of a replacement receipt or  
12 ticket, the dealer warrants all of the following:

13 (1) The replacement instrument accurately replicates the  
14 instrument originally issued.

15 (2) The replacement instrument imposes no greater  
16 obligation on the dealer than the obligation imposed under  
17 the original instrument.

18 Section 13. Dealer going out of business or suspending  
19 operations.

20 (a) Suspension or termination of operations.--A dealer that  
21 intends to suspend or terminate operations shall, at least 30  
22 days prior to the date of the suspension or termination, notify  
23 all depositors and all known holders of receipts and tickets  
24 issued by the dealer.

25 (b) Holder of receipt not known.--If all holders of receipts  
26 are not known, the dealer shall publish notices of suspension or  
27 termination on two consecutive weeks at least 14 days in advance  
28 of suspension or termination in newspapers of general  
29 circulation in locations where each facility operated by the  
30 dealer in this Commonwealth is situated. If no newspaper is

1 published in the facility's location, the dealer shall publish  
2 the required notices in a newspaper of general circulation in  
3 the county in which the dealer's facility is located.

4 Section 14. Disclosure of interests.

5 (a) Lien, mortgage or title.--A person may not knowingly  
6 deposit grain to which the person does not have title or upon  
7 which there is a lien or mortgage, either for sale or for  
8 storage under a bailment agreement, without disclosing that the  
9 person does not have title or that the grain is subject to lien  
10 or mortgage.

11 (b) Dealer posting notice.--A dealer shall post in a  
12 conspicuous place at each facility operated by the dealer within  
13 this Commonwealth a notice of the prohibitions applicable to  
14 depositors under this section. The notice shall be in large type  
15 that is easily readable for depositors in the conduct of  
16 business with the dealer.

17 Section 15. Disclosure of insolvency.

18 A dealer who is insolvent may accept deposits of grain,  
19 except those deposits made to satisfy or to provide security for  
20 an antecedent debt owed to the dealer.

21 Section 16. Civil remedies for default or violation by dealer.

22 (a) Action against the bond.--Upon default by the dealer, a  
23 depositor may bring an action to enforce a lien provided to the  
24 depositor under this act to satisfy a claim arising from an  
25 obligation to the depositor incurred by the dealer.

26 (b) Injunctive relief.--A depositor may bring an action in  
27 equity to compel a dealer to comply with the requirements of  
28 this act or to enjoin a dealer from any further violation of  
29 this act.

30 (c) Civil penalties.--A depositor who successfully brings an



1 action in equity under subsection (b) shall be entitled to  
2 recover from the dealer a civil penalty of not less than \$50 nor  
3 more than \$500 for each day that the dealer is in violation.

4 (d) Recovery of reasonable attorney fees and related  
5 expenses.--A plaintiff or petitioner that prevails in an action  
6 brought under subsection (a) or (b) may recover against the  
7 defendant reasonable attorney fees and other costs incurred as a  
8 result of the action.

9 (e) Standing.--A farm organization shall have standing to  
10 pursue a legal or equitable remedy authorized in this section on  
11 behalf of depositor. The Attorney General or a district attorney  
12 may pursue legal or equitable remedy authorized in this section  
13 on behalf of a depositor.

14 (f) Remedies cumulative.--The remedies provided in this  
15 section are in addition to other remedies provided in other laws  
16 or in equity.

17 Section 17. Criminal penalties.

18 A person that violates any of the following provisions of  
19 this act commits a misdemeanor of the third degree:

- 20 (1) Section 3(a) or (d).
- 21 (2) Section 4.
- 22 (3) Section 5(c).
- 23 (4) Section 12(a).
- 24 (5) Section 14(a).
- 25 (6) Section 15.

26 Section 18. Effective date.

27 This act shall take effect as follows:

- 28 (1) The following provisions shall take effect in 90  
29 days:

- 30 (i) Section 3(a) and (d).

1 (ii) Section 4.

2 (iii) Section 5.

3 (2) This section shall take effect immediately.

4 (3) The remainder of this act shall take effect in 60  
5 days.