

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 584

An Act to amend the Code of Virginia by adding in Chapter 26 of Title 3.1 an article numbered 5, consisting of sections numbered 3.1-722.29 through 3.1-722.43, relating to cotton handlers.

[H 1037]

Approved April 7, 2000

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 26 of Title 3.1 an article numbered 5, consisting of sections numbered 3.1-722.29 through 3.1-722.43, as follows:

Article 5.

Cotton Handlers.

§ 3.1-722.29. Definitions.

As used in this article, the following terms shall have the following meanings:

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Cotton gin" means a facility where cotton seed and cotton lint are produced from raw cotton.

"Cotton handler" means any person or facility, including any cotton-marketing cooperative and any cotton-marketing association, doing business as a cotton gin, cotton merchant, or cotton warehouse.

"Cotton merchant" means any person who buys cotton from a producer for the purpose of resale, or acts as a broker or agent for a producer in arranging the sale of cotton. "Cotton merchant" does not include a person that buys cotton for his own use.

"Cotton warehouse" means any enclosure in which producer-owned cotton is stored or held for longer than forty-eight hours.

§ 3.1-722.30. License required.

No person may do business as a cotton handler without first obtaining a license from the Commissioner as herein provided.

§ 3.1-722.31. Application; license fee and bond.

A. Every person intending to do business as a cotton handler, shall, on or before September 1, 2000, make application to the Commissioner for a license on a form provided by the Commissioner. Thereafter, such application shall be submitted by every cotton handler on or before July 1 of each year. The application shall specify:

1. An address at which the applicant will receive correspondence by first-class mail;

2. Every address at which the records of the cotton handler will be kept;

3. Every address, including street address, building number, and city or town:

a. In the case of a cotton gin, where the cotton will be ginned; or

b. In the case of a cotton warehouse, where the cotton will be warehoused;

4. The full name and first-class mail address, including the street, city or town, and state, of a person who is authorized to receive service of process on behalf of the cotton handler; and

5. The form of business organization that the cotton handler will assume. If the applicant will be doing business as a sole proprietorship, he shall disclose the full name of the sole proprietor and the name under which the sole proprietor will be doing business. If the applicant will be doing business as a partnership, he shall disclose the full name of each of the partners, the name of the partnership, and the name under which the partnership will be doing business. If the applicant will be doing business as a corporation, he shall disclose the full name of each of the officers of the corporation, the name of the corporation, and the name under which the corporation will be doing business. If the applicant will be doing business as a limited liability company or foreign limited liability company, he shall disclose the full name of the manager of the company, the name of the company, and the name under which the company will be doing business as a cotton handler. If the company has no manager, the applicant shall disclose the full names of the members of the company.

B. The applicant shall submit with the application a nonrefundable application fee of fifty dollars.

C. Every person making application for a license as a cotton handler who will be doing business as a cotton gin or cotton merchant shall furnish at the time of application for license a bond in the amount of \$50,000 in accordance with § 3.1-722.35. Nothing in this subsection shall require a person doing business as a cotton gin to be separately licensed or bonded as a cotton merchant.

D. Except as otherwise provided in subsection E, every person making application for a license as a cotton handler doing business as a cotton warehouse shall furnish, at the time of application for the license, proof of insurance with a company licensed to do business in the Commonwealth in an amount equal to the fair market value of the maximum amount of cotton that can be stored in the warehouse, and a bond in the amount of \$500,000 in accordance with § 3.1-722.35.

E. In lieu of satisfying the requirements of subsection D, a cotton handler doing business solely as a cotton warehouse may furnish proof of a valid license issued pursuant to the United States Warehouse Act (USWA). A cotton handler governed by this subsection shall notify the Commissioner of any change in the status of its USWA license within twenty-four hours after being notified by the United States Department of Agriculture.

§ 3.1-722.32. Expiration of license.

Any license granted by the Commissioner pursuant to this article shall expire on June 30 following the date of issuance.

§ 3.1-722.33. Additional information to be reported by cotton gin each license year.

Prior to beginning ginning for the current license year, the cotton gin will provide to the Commissioner the last bale tag number used in the previous year and first bale tag number to be used in the current year.

§ 3.1-722.34. Board may adopt regulations.

The Board may adopt regulations for the implementation of this article.

§ 3.1-722.35. Execution and terms of bond; action thereon.

Bonds required by § 3.1-722.31 shall be executed by the applicant as principal and by a surety company authorized and qualified to do business in the Commonwealth as surety. The applicant shall file on or before July 1 of each licensing year a copy of this bond with the Commissioner, and the Commissioner shall be designated as the trustee of this bond. The bond shall be conditioned upon compliance with the provisions of this article and upon prompt and accurate settlement with the consignor. Any consignor of cotton claiming that a cotton handler has failed to comply with the provisions of this article or any regulations adopted pursuant thereto, or has failed to settle promptly and accurately with the consignor, may bring action therefor upon the cotton handler's bond against either the principal, or the surety, or both, in any court of competent jurisdiction.

§ 3.1-722.36. Duties and powers of Commissioner with respect to bonds.

The Commissioner may accept the proceeds from any bond on which he is trustee and deposit the proceeds in the state treasury with interest in favor of the bond claimants. The Commissioner may institute and prosecute suits for actions in the name of the Commonwealth on behalf of the claimants known and approved by him in any appropriate court for any purpose in connection with the collection or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a produce dealer to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has actual notice thereof and believes the claim to be valid. If the Commissioner believes the claim to be invalid, in whole or in part, he shall so notify the claimant. Notwithstanding any other provision of law, the Commissioner shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by him.

§ 3.1-722.37. Investigation by Commissioner; right of entry and inspection.

A. For the purpose of enforcing the provisions of this article or any regulation adopted pursuant thereto, the Commissioner, upon receiving a complaint or upon his own motion, may, either personally or through his agent, investigate any violation of the provisions of this article. Such investigation may include:

- 1. The inspection of the books and records of any cotton handler;*
- 2. The inspection of any cotton, including the weighing and reweighing of a representative sample of cotton bales stored at the cotton handler's premises; and*
- 3. The inspection of any place where cotton or any record related thereto is or has been kept, stored, transported, or otherwise handled. In making such an inspection, the Commissioner or his agent may enter any premises, including, but not limited to, any building, yard, warehouse, storage facility, or transportation facility, in which cotton or any record related thereto is or has been kept, stored, transported, or otherwise handled. In exercising such right of entry, the Commissioner shall enter the premises during its hours of operation.*

B. Any cotton handler who is the subject of an investigation by the Commissioner shall, upon request, assist the Commissioner or his agent in making any inspection authorized by this section.

§ 3.1-722.38. Records to be kept by cotton handler.

A. Every cotton gin shall keep an accurate daily record of the cotton received from each consignor and ginned. The record shall contain:

- 1. The name and address of the consignor of the cotton;*
- 2. The date that the cotton gin received the cotton;*
- 3. The condition, quality, and quantity of the cotton on arrival at the cotton gin;*
- 4. The gross weight of the vehicle containing the cotton, the tare weight for the vehicle used to transport the cotton, and the net weight of the cotton delivered to the cotton gin for final processing into bales of finished cotton;*
- 5. A lot number or other identifying mark given to each consignment of cotton by the cotton gin, which shall appear on all tags, tickets, or statements and on any other essential records needed to show what cotton was ginned by the cotton gin on behalf of the consignor;*
- 6. The sequentially numbered tag or mark assigned to the cotton bale;*

7. A report of the finished cotton including the weight, grade, quality and condition;
8. A report of credit given for seed obtained during ginning process. If the actual weight of the seed is not determined, the record shall indicate the factor used to calculate weight and the final calculation;
and

9. An itemized statement of the charges to be paid to the cotton gin by the consignor in connection with ginning the cotton.

If, at any time, the cotton gin alters any record required by this subsection, the cotton gin shall create an addendum to the record indicating the nature of the alteration and the date the alteration was made and sign the addendum to the record with the full name of the natural person making the addendum.

B. Every cotton warehouse, having received any cotton for storage, shall promptly make and keep an accurate record, showing in detail the following information with reference to the handling and storage of the cotton:

1. A daily inventory record consisting of all cotton stored in the warehouse recorded by bale tag number;

2. The receiving record with transactions recorded by bale tag number; and

3. The transfer record with transactions recorded by bale tag number.

C. Every cotton merchant, having received any cotton for transfer, shall promptly make and keep an accurate record, showing in detail the following information with reference to the handling and sales of the cotton:

1. The sales record with transactions recorded by bale tag number; and

2. The payable record with transactions recorded by bale tag number.

D. Every cotton handler shall retain all records, including tags or tickers, covering each transaction with each consignor, for a period of three years after the date that the record is required to be made.

§ 3.1-722.39. Record and accounts to be provided to consignor.

A. Every cotton gin shall:

1. Within 48 hours after ginning the cotton, make available to the consignor the record required under § 3.1-722.38; and

2. Unless the consignor agrees otherwise in writing, within ten days after ginning cotton, deliver to the consignor a copy of such record and an account of all cotton ginned for the consignor.

B. Unless the consignor agrees otherwise in writing, every cotton handler shall, within ten days after transferring or selling cotton on behalf of the consignor, deliver to the consignor a copy of the record required under § 3.1-722.38 and an account of the consignor's cotton transferred or sold.

§ 3.1-722.40. Certificate establishing condition, quality, grade, etc., to be furnished.

Every cotton gin shall, at the time of ginning, obtain a sample of each bale of ginned cotton for the purpose of determining condition, quality, and grade. Unless such sample is graded by the United States Department of Agriculture, the burden of proof shall be upon the cotton gin to prove the accuracy of its accounting as to any transaction which may be questioned by the consignor, the Commissioner or his agent, relating to condition, quality or grade of ginned cotton.

§ 3.1-722.41. Identification of finished bales of cotton.

Every cotton gin shall determine the weight of each bale of finished cotton immediately following the making of the bale, shall number sequentially all finished cotton bales, and shall affix to each bale a sequentially numbered tag for the purpose of identifying the individual bale of finished cotton. The tag shall also identify the origin module. The burden of proof shall be upon the cotton gin to prove the accuracy of its accounting.

§ 3.1-722.42. Denial, suspension, or revocation of a license.

The Commissioner may deny, suspend, or revoke the license of any cotton handler if the cotton handler violates any provision of § 3.1-722.40 or § 3.1-722.43. The Commissioner shall afford reasonable notice of an informal fact-finding conference pursuant to § 9-6.14:11 to any cotton handler prior to and in connection with the denial, suspension, or revocation of the cotton handler's license.

§ 3.1-722.43. Offenses and punishment.

Any cotton handler shall be guilty of a Class 1 misdemeanor if he:

1. Markets, obligates for sale, or otherwise disposes of producer-owned cotton without the written consent of the producer;

2. Does business as a cotton handler without the license required by this article;

3. Imposes false charges for the handling of cotton;

4. Fails to account promptly, accurately, fully, and properly and to make settlement therefor;

5. Intentionally makes any false statement with regard to grade, condition, markings, quality, or quantity of cotton received, ginned, packed, shipped, or otherwise handled, to the consignor of cotton with respect to the consignor's cotton, or to the Commissioner or his agent;

6. Fails to make or keep records as required by this article;

7. In any instance in which the cotton handler offers to buy the consignor's cotton, fails to disclose to the consignor that the person, firm, or corporation making the offer is composed substantially of the same persons, as stockholders, members, or otherwise, who compose the cotton handler business;

8. *Refuses the Commissioner or his agent the right of entry afforded by this article;*
9. *Knowingly provides false information on an application for license pursuant to this article;*
10. *Fails to give reasonable written notice of any change in the style, name, or personnel of the cotton handler to the Commissioner or his agent or to the surety on the bond required by this article;*
or
11. *Violates any provision of this article or regulation adopted pursuant thereto.*