

*** Current Through the 2013 Regular Session ***

TITLE 2. AGRICULTURE
CHAPTER 9. DEALERS IN AGRICULTURAL PRODUCTS
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 2-9-1 (2013)

§ 2-9-1. Definitions

As used in this article, the term:

- (1) "Agricultural products" includes fruits, vegetables, pecans, and cotton but does not include dairy products, tobacco, grains, eggs, and other basic farm crops.
- (2) "Dealer in agricultural products" 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 agricultural products purchased from the producer or his or her agent or representative or 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. The term "dealer in agricultural products" also includes any person buying, selling, processing, or shelling pecan nuts, including any and every kind and variety of pecan nuts.
- (3) "Net return basis" means a purchase for sale of agricultural products from a producer or shipper at a price which is not fixed or stated at the time the agricultural products are shipped from the point of origin. The term includes all purchases made "at the market price," "at net worth," and on similar terms indicating that the buyer is the final arbiter of the price to be paid.
- (4) "On consignment" means any receiving or sale of agricultural products for the account of a person, other than the seller, wherein the seller acts as the agent for the owner.
- (5) "Producer" means any producer of agricultural products.

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O.C.G.A. § 2-9-2 (2013)

§ 2-9-2. License required

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

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O.C.G.A. § 2-9-3 (2013)

§ 2-9-3. Application for license

Every dealer in agricultural products desiring to transact business in this state shall file an application for such 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 kind or kinds of agricultural products the applicant proposes to handle;
- (2) The full name or title of the applicant or, if the applicant is an association or partnership, the name of each member of such association or partnership or, if the applicant is a corporation, the name of each officer of the corporation;
- (3) The names of the local agent or agents of the applicant, if any; and
- (4) The municipalities within which places of business of the applicant will be located, together with the street or mailing address of each such place of business.

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O.C.G.A. § 2-9-4 (2013)

§ 2-9-4. Issuance of license

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-7, he or she shall issue to such applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-5, a state license entitling the applicant to conduct business as a dealer in agricultural products. An annual fee not to exceed \$400.00 shall be required before a license is issued. Such license shall be valid until revoked or suspended as provided in this article, or until the annual license renewal fee is unpaid.

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O.C.G.A. § 2-9-5 (2013)

§ 2-9-5. Bond -- Required

Before any license is issued the applicant shall make and deliver to the Commissioner a surety bond 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. The bond shall be in such amount as the Commissioner may determine, not exceeding an amount equal to the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the applicant; provided, however, that the minimum amount of such bond shall be \$10,000.00 and the maximum amount of such bond shall be \$230,000.00; provided, further, that in the case of pecans, such bond shall not exceed \$500,000.00. Such bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to producers or their agents or representatives of the proceeds of all agricultural products handled or sold by such dealer. However, in lieu of a surety bond, the Commissioner may accept a cash bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond. 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 and such person shall be ineligible to reapply for such license for a period of four years after such revocation.

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O.C.G.A. § 2-9-6 (2013)

§ 2-9-6. 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 2-9-5 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 such 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, giving the party complained of 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 each case, who shall have 15 days thereafter 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 bring an action 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 in full the valid claims of producers, the Commissioner may direct that the proceeds of such bond shall be divided pro rata among such producers.

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O.C.G.A. § 2-9-7 (2013)

§ 2-9-7. Denial, suspension, or revocation of license -- Grounds generally

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 condition, quality, or quantity of goods 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; or
- (7) Directly or indirectly sold agricultural products 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.

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O.C.G.A. § 2-9-8 (2013)

§ 2-9-8. Denial, suspension, or revocation of license -- Notice and hearing

Before the Commissioner refuses a license or suspends 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 that the applicant or licensee has committed any violation of this article or any of the rules or regulations promulgated hereunder, the Commissioner may refuse, suspend, or revoke such license. He shall give immediate notice of his action to the applicant or licensee.

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O.C.G.A. § 2-9-9 (2013)

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

(a) Every dealer in agricultural products, upon the receipt of agricultural products on a consignment basis and as he handles and disposes of the same, shall make and preserve for at least one year a record thereof, specifying:

- (1) The name and address of the producer consigning such agricultural products;

- (2) The date of receipt;
 - (3) The kind and quality of such products;
 - (4) The amount of goods 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 such shipment, shall be mailed to the producer within 48 hours after the sale of such agricultural products, unless otherwise agreed in writing.

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O.C.G.A. § 2-9-9.1 (2013)

§ 2-9-9.1. Bale identification numbers on ginned cotton

Upon ginning cotton into bales, the ginner shall assign each bale a permanent bale identification number. No bale shall be removed from a gin except when accompanied by a cotton bale voucher issued by the gin, containing the permanent bale identification number and issued in the name of the cotton producer. Except for removal to a bonded warehouse in the name of the cotton producer, transfers or sales from the cotton producer after ginning shall be endorsed by his or her signature on the cotton bale voucher or forms authorized by the Commissioner of Agriculture.

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O.C.G.A. § 2-9-10 (2013)

§ 2-9-10. 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 agricultural products;
 - (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 goods 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 goods received; or
 - (7) Other alleged injurious transactions.
- (b) For the purposes specified in subsection (a), 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 or licensee, and may take testimony thereon under oath.

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O.C.G.A. § 2-9-11 (2013)

§ 2-9-11. Inspections of damaged shipments; certificate

Whenever produce is shipped to or received by a licensed dealer for handling, purchase, or sale in this state at any market point and the dealer finds the produce to be in a spoiled, damaged, unmarketable, or unsatisfactory condition, unless both parties waive inspection before sale or other disposition thereof, the dealer shall cause the produce to be examined by an inspector assigned by the Commissioner for that purpose. The inspector shall execute and deliver a certificate to the applicant stating the day, the time, and the place of the inspection and the condition of the produce and shall mail or deliver a copy of such certificate to the shipper.

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O.C.G.A. § 2-9-11.1 (2013)

§ 2-9-11.1. Ownership of agricultural product harvested by dealer, agent or employee, or independent contractor retained by dealer; prompt payment; certificate of receipt and quality

(a) In the absence of a written contract between the producer and a dealer in agricultural products to the contrary, any agricultural product which is harvested by a dealer, an agent or employee of a dealer, or an independent contractor retained by a dealer or which is delivered to a dealer or an agent or employee thereof on the farm or at a facility of the dealer shall become the property of the dealer at the time of delivery and the dealer shall become obligated to pay the agreed-upon price as provided in subsection (b) of this Code section.

(b) A dealer in agricultural products shall make prompt payment for agricultural products purchased in this state. Prompt payment shall mean payment 20 days following delivery, as provided in subsection (a) of this Code section, unless explicitly stated otherwise in a written contract agreed to by the producer and dealer in agricultural products.

(c) Unless explicitly stated otherwise in a written contract, at the time of delivery as specified in subsection (a) of this Code section, the dealer and the producer in agricultural products shall jointly issue a certificate of receipt and quality to the producer or the producer's agent. The certificate of receipt and quality shall contain information, including but not limited to the:

- (1) Name and address of the dealer in agricultural products;
- (2) Name and address of the producer;
- (3) Delivery date and time of receipt;
- (4) Description of the product as to identity, quantity, quality, condition, and grade of the product;
- (5) Price per unit; and
- (6) Terms of the transaction.

Information contained in the certificate of receipt and quality pertaining to quality, quantity, and price shall be presumed to be satisfied unless such agricultural product is inspected and a certificate stating the product is in a different condition is issued by an inspector pursuant to Code Section 2-9-11 within 48 hours of delivery of the agricultural product to the dealer.

(d) This Code section does not preclude the producer from commencing and maintaining an action against the dealer as in any civil action.

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O.C.G.A. § 2-9-12 (2013)

§ 2-9-12. Sale or possession of substandard products prohibited

(a) It shall be unlawful for any dealer in agricultural products to sell, offer for sale, or possess any agricultural product that does not comply with the standards of quality established by the Commissioner under authority of law or with the laws and rules and regulations pertaining to such product.

(b) It is the intent and purpose of this Code section to prevent the sale of agricultural products that do not comply with the laws, standards of quality, and rules and regulations pertaining thereto.

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O.C.G.A. § 2-9-13 (2013)

§ 2-9-13. Rules and regulations

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

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O.C.G.A. § 2-9-14 (2013)

§ 2-9-14. 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.

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O.C.G.A. § 2-9-15 (2013)

§ 2-9-15. Applicability of article

(a) This article shall not apply to:

(1) Farmers or groups of farmers in the sale of agricultural products grown by themselves;

(2) Persons who buy for cash, paying at the time of purchase in United States currency, certified check, cashier's check, or the equivalent; or

(3) Holders of food sales establishment licenses issued pursuant to Article 2 of Chapter 2 of Title 26, the "Georgia Food Act," who conduct no business at the wholesale level and who have fewer than ten employees.

(b) No warehouse that is in full compliance with the provisions of Article 1 of Chapter 4 of Title 10 shall be required to obtain a license or maintain a surety bond under this article.

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O.C.G.A. § 2-9-16 (2013)

§ 2-9-16. Penalty

Any dealer in agricultural products 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.