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15 SENATE/HOUSE BILL \_\_\_\_\_

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17 AN ACT TO CREATE THE MISSISSIPPI GRAIN INDEMNIFY ACT, 75-46-1  
18 et seq., MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** The following shall be codified as Section 75-46-1  
21 et seq., Mississippi Code of 1972.

22 **75-46-1. Title of Chapter.**

23 This chapter shall be known as the "Mississippi Grain  
24 Indemnity Act."

25 **75-46-3. Definitions.**

26 (1) "Claimant" means a producer:

27 (a) Who has suffered either a "contract loss" or  
28 "storage loss" as defined herein; and

29 (b) Has a claim that has been determined by the Board to  
30 meet all requirements of this chapter and any rules issued by the  
31 Board under this chapter.

32 (2) "Commissioner" means the Commissioner of Agriculture and  
33 Commerce for the State of Mississippi or his designee.

34 (3) "Contract loss" means a loss to a claimant when a failed  
35 first purchaser licensee has not fully paid the claimant for grain  
36 sold to the licensee under any type of contract.

37 (4) "Department" means the Mississippi Department of  
38 Agriculture and Commerce.

39           (5) "Failed" or "Failure" means:

40                 (a) Inability of a first purchaser licensee to satisfy

41 all obligations due to a claimant;

42                 (b) A declaration of insolvency of a first purchaser

43 licensee by the licensee or by the Commissioner;

44                 (c) Nonpayment of a first purchaser licensee's debts in

45 the ordinary course of business unless there is a good faith

46 dispute regarding the legitimacy of the debt;

47                 (d) Revocation or suspension of the first purchaser

48 licensee's license by the State of Mississippi or the United States

49 Department of Agriculture, if the licensee has outstanding

50 indebtedness owed to claimants;

51                 (e) Voluntary surrender of a first purchaser licensee's

52 license to the State of Mississippi or the United States Department

53 of Agriculture, if the licensee has outstanding indebtedness owed

54 to claimants; or

55                 (f) Insolvency, or nonvoluntary or voluntary bankruptcy

56 of a first purchaser licensee.

57           (6) "First purchaser licensee" means an entity that is the

58 first entity to purchase grain or is paid to store grain produced

59 in Mississippi from producers and is:

60                 (a) Licensed by the State of Mississippi to store grain

61 under chapter 44 of this title;

62                 (b) Licensed by the State of Mississippi to act as a

63 grain dealer under chapter 45 of this title; or

64                 (c) Licensed by the United States under the United

65 States Warehouse Act to store grain.

66           (7) "Grain" means whole kernel corn for all purposes

67 (excluding sweet corn, popcorn, and any other corn for human

68 consumption), grain sorghum, oats, soybeans, and wheat.

69           (8) "Mississippi Grain Indemnity Trust Fund (or 'Fund')" means

70 the Fund established as provided in this chapter.

71 (9) "Mississippi Grain Indemnity Trust Fund Board (or  
72 'Board')" means the Board established under Section 75-46-5 of this  
73 chapter.

74 (10) "Person" means a natural person, trust, partnership,  
75 corporation, or any other business entity.

76 (11) "Producer" means a person that is:

77 (a) An owner of land, a tenant on a farm, or an operator  
78 of a farm; and

79 (b) Receives from a first purchaser licensee proceeds  
80 from the sale of grain produced by the owner, tenant, or operator.

81 (12) "Storage loss" means a loss to a claimant when a failed  
82 first purchaser licensee has not fully satisfied the licensee's  
83 storage obligations to the claimant, less any allowable charges  
84 that have not been paid by the claimant.

85 **75-46-5. Establishment of the Mississippi Grain Indemnity**  
86 **Board and Fund.**

87 (1) There is hereby created the Mississippi Grain Indemnity  
88 Board, which is established for the purposes of providing money to  
89 pay agricultural producers for contract losses due to a failure of  
90 a grain dealer licensed by the State of Mississippi under chapter  
91 45 of this title and for contract and storage losses due to the  
92 failure of a grain warehouse operator licensed by the State of  
93 Mississippi under chapter 44 of this title or by the United States  
94 Department of Agriculture under the United States Warehouse Act.  
95 The Board shall consist of:

96 (a) The Commissioner who shall be the chairperson of the  
97 Board;

98 (b) Two members selected by the President of the  
99 Mississippi Farm Bureau;

100 (c) Two members selected by the President of the Delta  
101 Council; and

102 (d) Two members selected at-large by the Commissioner  
103 who shall be active Mississippi grain farmers.

104 Members of the initial Board shall be appointed as follows:  
105 Delta Council shall appoint members for terms of one (1) and three  
106 (3) years; Farm Bureau shall appoint members for two (2) and four  
107 (4) years; and the Commissioner shall appoint members for three (3)  
108 and one (1) years. Following the initial board, board members  
109 shall serve a term of four (4) years with staggered expiration  
110 dates. Members of the Board shall, while serving on business of  
111 the Board, be entitled to receive as compensation a per diem, as  
112 provided by law, in addition to any actual and necessary expenses  
113 incurred in the performance of the official duties of the Board.  
114 The Commissioner may call a meeting of the Board upon reasonable  
115 notice to the board members.

116 (2) There is hereby created a special trust fund entitled the  
117 "Mississippi Grain Indemnity Trust Fund." Funds collected by or  
118 appropriated to the Board shall be held in trust by the Board in  
119 the Mississippi Grain Indemnity Fund for use only to pay claimants  
120 as provided in this chapter, to make refunds as provided in Section  
121 75-46-7 of this chapter, and for administrative costs. Claimants  
122 shall be accorded rights under the Act.

123 The Fund shall consist of:

124 (a) money collected under this chapter;  
125 (b) interest earned on any money in the Fund;  
126 (c) any funds appropriated by the state legislature or any  
127 other source; and

128 (d) any bond proceeds or other financial obligation in  
129 favor of the Commissioner as provided in Sections 75-44-29 and 75-  
130 45-305.

131 (3) Amounts in the Fund may be invested and reinvested at the  
132 discretion of the State Treasurer. Interest from these investments  
133 shall be deposited in the Fund and shall be available for the same  
134 purposes as other moneys deposited in the Fund. The moneys in the  
135 Fund shall not be available for any purpose other than the payment  
136 of claims and the administration of this chapter.

137 (4) The Fund shall operate on a fiscal year basis of July 1 to  
138 June 30. The Board may accept and expend funds deposited into the  
139 Fund and funds not expended at the end of the fiscal year shall not  
140 lapse into the State General Fund, and any investment earnings or  
141 interest earned on such accounts shall be deposited to the credit  
142 of the Fund.

143 (5) A producer's decision to participate in the trust fund and  
144 program described herein is voluntary.

145 **75-46-7. Administration of the Mississippi Grain Indemnity**  
146 **Trust Fund.**

147 (1) The Fund shall be administered by the Board. All payments  
148 made to claimants under this chapter may only be made with Board  
149 approval, and the Board shall provide advice to the Commissioner on  
150 day-to-day operation of the Fund. The Board shall have the  
151 authority to contract with a third party to administer payments;  
152 handle the accounting functions, including but not limited to,  
153 financial reviews or audits, and financial filings or matters;  
154 and/or any other matters the Board deems appropriate.

155 (2) When the amount in the Fund exceeds \$20 million, the  
156 Board may make refunds to producers who have paid assessments in  
157 the manner the Board determines to be fair and equitable.

158 (3) The Commissioner shall be responsible for the day-to-day  
159 operation of the Fund including the disbursement of payments  
160 approved by the Board under subsection (1) of this section.  
161 Disbursements are allowed without specific appropriation by the  
162 legislature.

163 **75-46-9. Persons Responsible for Paying Assessments.**

164 Beginning on July 1, 2022, producers of grain shall be charged  
165 an assessment equal to two-tenths percent (0.2%) of the price on  
166 all marketed grain that is sold to a first purchaser licensee.

167 **75-46-11. Persons Responsible for Collecting and Submitting**  
168 **Assessments.**

169 Assessments shall be collected by the first purchaser licensee  
170 and by any agent or representative of the licensee. The first  
171 purchaser licensee shall deduct the assessment from the purchase  
172 price of the grain and shall document the amount of the assessment  
173 that was deducted on an invoice provided to the producer. The  
174 first purchaser licensee shall submit monthly assessments to the  
175 Department by the 20<sup>th</sup> day of the following month.

176 **75-46-13. Assessment Collection Period.**

177 (1) Assessments shall be collected when the Board has  
178 determined and announced that the amount in the Fund is less than  
179 \$18 million. Assessments shall be required to be collected and  
180 submitted until the Board determines that the amount in the Fund is  
181 \$20 million.

182 (2) If the amount in the Fund is less than \$18 million, or  
183 the Board has determined that the failure of a first purchaser  
184 licensee will likely result in the issuance of payments to  
185 claimants that will reduce the amount in the Fund to less than \$18  
186 million at the end of the current fiscal year, assessments shall be  
187 required beginning July 1 of the following fiscal year.

188 (3) If the amount in the Fund exceeds \$20 million at any time  
189 during a fiscal year when assessments are being collected,  
190 assessments shall continue until the end of such fiscal year  
191 without regard to the maximum amount authorized to be in the Fund.

192 **75-46-15. Retention of Assessment Records and Access for**  
193 **Inspection.**

194 (1) First purchaser licensees shall maintain a ledger of all  
195 assessments collected by the licensee that specifies the date of  
196 the collection, from whom the assessment was collected, and the  
197 amount of the assessment collected.

198 (2) At the request of the Board, first purchaser licensees  
199 shall make ledgers and related records available to the  
200 Commissioner or a designee of the Commissioner. The Commissioner  
201 shall only disclose information obtained from such ledgers and

202 related records to the Board, employees of the office of the  
203 Commissioner, law enforcement officials of the State of  
204 Mississippi, law enforcement officials of the United States, as  
205 directed by any court order, and as required by the Mississippi  
206 Public Records Act of 1983, Miss. Code Ann. §§25-61-1 et seq.

207 **75-46-17. Voluntary Participation in the Fund.**

208 (1) Participation in the Fund is voluntary. During any fiscal  
209 year in which assessments are collected under this chapter, a  
210 producer who does not desire to participate in the Fund shall  
211 notify the Commissioner by the preceding June 1 of such year  
212 (except with respect to the fiscal year beginning July 1, 2022 in  
213 which case the date of notification shall be as announced by the  
214 Commissioner) that the producer has opted out of the Fund by  
215 submission of a written notification on a form provided by the  
216 Commissioner. The election to opt-out shall be effective for only  
217 one (1) crop year. A producer who opts out of the Fund shall not  
218 be eligible to receive any payment with respect to grain produced  
219 during such crop year for a contract loss or storage loss resulting  
220 from the failure of a first purchaser licensee.

221 (2) A producer who opts out of the Fund has the obligation to  
222 notify any first purchaser licensee of the election to opt out of  
223 the Fund and the licensee may require the producer to provide a  
224 copy of the form referenced in subsection (1) of this section.

225 (3) If an assessment is collected by a first purchaser  
226 licensee from a producer who has opted out of the Fund, the  
227 producer may obtain a refund of the amount paid to the Commissioner  
228 in the manner established by the Board.

229 **75-46-19. Determination of Failure of a First Purchaser**  
230 **Licensee.**

231 The Commissioner shall be responsible for determining when a  
232 first purchaser licensee has failed. Upon making such a  
233 determination, the Commissioner shall issue a legal notice in a  
234 paper of general circulation once a week for two (2) consecutive

235 weeks in the county in which the first purchaser licensee operates  
236 setting forth the name of the failed first purchaser licensee and  
237 details on how a producer may file a claim for a payment from the  
238 Fund. The Commissioner shall take any other action the  
239 Commissioner deems to be appropriate to provide notice to affected  
240 producers.

241 **75-46-21. Claim Filing Process**

242 (1)The Commissioner shall issue rules the Commissioner  
243 determines to be necessary to provide for a simple and timely  
244 process to receive and adjudicate claims submitted in response to  
245 the failure of a first purchaser licensee. These rules shall  
246 include requirements that provide:

247 (a) A claim must be on a form prescribed by the Commissioner;

248 (b) A claim must be submitted not later than 90 days after  
249 the announcement made by the Commissioner under 75-46-19 of this  
250 act;

251 (c) A copy of any written agreement for the sale of grain to  
252 the failed first purchaser licensee by the producer must be  
253 included with the submitted form;

254 (d) For filing of an affidavit under penalty of perjury  
255 setting forth the terms and conditions of any oral contract for the  
256 sale of grain to the failed first purchaser licensee by the  
257 producer; and

258 (e) A copy of any warehouse receipt, scale ticket or other  
259 similar document showing the delivery of grain by the producer to  
260 the failed first purchaser licensee must be included with the  
261 claim.

262 (2) The Commissioner may extend the time for filing a claim  
263 upon a finding that extenuating circumstances exist that warrant an  
264 extension.

265 **75-46-23. Adjudication of Claims.**

266 (1) All claims submitted to the Commissioner shall be  
267 reviewed by Commissioner or designees of the Commissioner. The



268 Commissioner or the designees shall make a preliminary  
269 determination regarding the eligibility for payment from the Fund.  
270 If the preliminary determination provides that less than the full  
271 amount of the claimed loss should be paid, the determination shall  
272 set forth an explanation of why the lesser amount, if any, should  
273 be paid. The preliminary determination shall be provided to the  
274 Board for a final determination of eligibility for payment from the  
275 Fund.

276 (2) The Board or the Commissioner may request from a claimant  
277 additional information it determines necessary to adjudicate the  
278 claim and may provide an opportunity for the claimant to provide  
279 oral testimony to the Board or to a designee of the Board.

280 (3) If a claim is not approved for the full amount, the Board  
281 shall provide a written explanation to the claimant setting forth  
282 the basis for the final determination of the eligible amount of the  
283 claim.

284 (4) Within 30 days of the receipt of the final determination  
285 in which a claim has been denied in whole or only partially  
286 approved, claimant may file with the Board a request for  
287 reconsideration of the claim.

288 (5) A claimant that does not agree with the determination of  
289 the Board issued after reconsideration of the final determination  
290 may seek review of the determination issued by the Board after its  
291 reconsideration of the final determination by filing an appeal with  
292 the Circuit Court located in the county of the producer's  
293 residence. The Circuit Court shall render a decision based on the  
294 administrative record prepared by the Commissioner without a trial  
295 by jury. The circuit court's decision may then be appealed to the  
296 Mississippi Supreme Court. Any such appeal to circuit court or to  
297 the Supreme Court shall be in accordance with existing laws and  
298 regulations governing such appeals.

299 (6) (a) The Department shall have subpoena power for witnesses  
300 to attend hearings and for production of documents for any and all

301 proceedings under the Department's jurisdiction. The subpoenas  
302 shall be enforced by the chancery court of the residence of the  
303 witness.

304 (b) The Department shall have the authority to make  
305 application for administrative inspection warrants and  
306 administrative search warrants for any and all proceedings under  
307 the Department's jurisdiction. A judge or any state court of  
308 record, or any justice court judge within his jurisdiction, and  
309 upon proper oath or affirmation showing probable cause, may issue  
310 warrants for the purpose of conducting administrative inspections  
311 for the Department. For purposes of the issuance of  
312 administrative inspection or search warrants, probable cause exists  
313 upon showing a valid public interest in the effective enforcement  
314 of matters under the Department's jurisdiction. An administrative  
315 search warrant shall issue only upon an affidavit of a person  
316 having knowledge or information of the facts alleged, sworn to  
317 before the judge or justice court judge and establishing that the  
318 grounds for the application exist or that there is probable cause  
319 to believe they exist. The judge shall issue a warrant identifying  
320 the area, premises, building or conveyance to be searched, the  
321 purpose of the search, and, if appropriate, the type of property to  
322 be searched. When authorized by an administrative inspection or  
323 search warrant issued, an officer or employee of the Department,  
324 upon presenting the warrant and appropriate credentials to the  
325 owner, operator, or agent in charge, may enter the premises for the  
326 purpose of conducting an administrative inspection.

327 **75-46-25. Calculation of Payment.**

328 (1) Subject to Section 75-46-27, claims for storage losses  
329 shall be paid at 100 percent of the amount of loss of the claimant  
330 less any amount received by the claimant from any other source.  
331 The value of the grain subject to the claim shall be the market  
332 price of the grain as determined by the Board as of the date of  
333 failure of the first purchaser licensee. The Board may adjust the

334 value of the grain subject to the claim if there is sufficient  
335 evidence on a warehouse receipt, scale ticket or other similar  
336 document showing the quality of the grain.

337 (2) (a) Subject to Section 75-46-27, Claims for contract losses  
338 shall be paid at 100 percent of the amount of loss of the claimant  
339 less any amount received by the claimant from any other source  
340 including the sale of the grain to another entity. The Board shall  
341 use the purchase price set forth in the contract for sale to  
342 determine the amount of loss and if purchase price is not clearly  
343 set forth in the contract, the Board shall establish the price of  
344 grain to be used to determine the amount of the loss taking into  
345 account normal marketing practices in the area in which the first  
346 purchaser licensee conducted business.

347 (b) A claim for a contract loss shall not be approved by  
348 the Board if the claimant engaged in conduct or practices that  
349 differ from generally accepted marketing practices within the grain  
350 industry to an extent the claimant's actions have substantially  
351 contributed to the claimant's loss.

352 (c) A failed first purchaser licensee may not file a  
353 claim for payment from the Fund for any loss associated with a  
354 grain warehouse owned in whole or part by the licensee or an entity  
355 that is a grain dealer owned in whole or part by the licensee.

356 (d) Payments from the Fund shall be available for storage and  
357 contract losses incurred with respect to crops produced in the 2022  
358 and subsequent crop years.

359 **75-46-27. Insufficient Amount in the Fund for Full Payment.**

360 If the total amount of eligible claims exceeds the amount of  
361 funds available to the Board from the Fund, the Board shall make  
362 payments on a pro rata basis. Assessments subsequently collected  
363 and submitted to the Fund shall not be used to make an additional  
364 payment for prior payments made at less than the full amount.

365 **75-46-29. Failure to Collect and Submit Assessments.**

366 The failure of a first purchaser licensee to timely collect  
367 and submit assessments required by 75-46-11 of this act shall be  
368 basis for the Commissioner to revoke a license issued to the  
369 licensee under Sections 75-44-23 and 75-45-309.

370 **75-46-31. Slow Payment and Fraud Prevention Hotline.**

371 The Commissioner shall establish a toll-free hotline and other  
372 information collection processes for the purposes of receiving  
373 information concerning the failure of a first purchaser licensee to  
374 make timely payments for the purchase of grain and information  
375 concerning any suspected fraudulent activity of a first purchaser  
376 licensee. Upon receipt of information from the hotline, the  
377 Commissioner shall take such action as the Commissioner determines  
378 to be appropriate including referral of the matter to the Attorney  
379 General. Information received through the hotline or other  
380 information collection process shall not be subject to disclosure  
381 to the public except as determined appropriate by the Commissioner.

382 **75-46-33. Oversight.**

383 All the Board's books, records, accounts, and other papers  
384 shall be subject to inspection, copying and audit by the Office of  
385 the State Auditor at any time.

386 **75-46-35. Promulgation of Rules and Regulations.**

387 The Board may adopt any and all rules and regulations deemed  
388 necessary or desirable by the Board to carry out the powers and  
389 duties of the Board, including but not limited to, the collection  
390 and receipt of assessments, the procedure for adjudicating the  
391 claims of loss by the producers, the refunding of assessment to  
392 producers and the subrogation of procedures' claims against a  
393 warehouse or dealer in return for payment from the trust fund.

394 **SECTION 2.** This act shall take effect and be in force  
395 from and after July 1, 2022.