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**Jane Dee Hull
Secretary of State**

CHAPTER 229

HOUSE BILL 2143

AN ACT

AMENDING SECTIONS 3-2711 THROUGH 3-2714 AND 3-2717, ARIZONA REVISED STATUTES; REPEALING SECTIONS 3-2715 AND 3-2716, ARIZONA REVISED STATUTES; AMENDING TITLE 3, CHAPTER 15, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 3-2715; CHANGING THE ARTICLE HEADING OF TITLE 3, CHAPTER 15, ARTICLE 5, ARIZONA REVISED STATUTES, TO "HAY AGENTS, BROKERS AND DEALERS"; RELATING TO HAY AGENTS, BROKERS AND DEALERS.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 3-2711, Arizona Revised Statutes, is amended to
3 read:

4 3-2711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Agent" means any person who, on behalf of any licensee, receives,
7 contracts for or solicits any hay from a producer of such product or who
8 negotiates the consignment or purchase of any hay on behalf of any licensee.

9 2. "Associate director" means the associate director of the division.

10 3. "Broker" means any person who negotiates the purchase of any hay
11 for ~~resale~~ SALE purposes from a producer without taking actual title to such
12 hay.

13 4. ~~"Consumer"~~ "CUSTOMER" means any person who buys hay for such
14 person's own use and not for resale in any form.

15 5. "Dealer" means any person who obtains from the producer title,
16 possession, control or delivery of any hay at a designated price for the
17 purpose of ~~resale~~ SALE or who buys or agrees to buy any hay from the producer
18 of the hay at a designated price for ~~resale~~ SALE.

1 6. "Division" means the plant industries division of the Arizona
2 department of agriculture.

3 7. "Hay" means herbage, sometimes including the seeds of grasses and
4 other forage plants, as legumes, harvested and used for feed, either in a
5 dry or green condition. ~~This HAY~~ includes hay pressed into cubes or disks
6 ~~and~~ to be used as feed FOR LIVESTOCK.

7 8. "Producer" means any person who is engaged in the business of
8 growing or producing any hay.

9 9. "Sell" includes offer for sale, expose for sale, have in possession
10 for sale, exchange, barter or trade.

11 Sec. 2. Section 3-2712, Arizona Revised Statutes, is amended to read:

12 3-2712. Annual licensing; application; fee; record keeping;
13 publication of licensees' names; hay law fund

14 A. No person shall act as a hay broker or dealer ~~within this state~~
15 without first obtaining a license from the plant industries division of the
16 Arizona department of agriculture.

17 B. Applications for the license shall be made in writing upon forms
18 prescribed by the department, accompanied by a license fee as provided by
19 this section AND SECURITY PRESCRIBED BY SECTION 3-2714.

20 C. The annual license fee shall be not less than ten dollars and not
21 more than fifty dollars as determined by the director for each applicant and
22 one dollar for each certified copy of the license issued to the applicant.
23 The license or certified copy thereof shall be in possession of each broker
24 and such broker's agents and each dealer and such dealer's agents while
25 transacting business under the terms of this article. Licenses shall expire
26 on December 31 following issuance thereof. A new license may be obtained for
27 an additional period of one year upon written application therefor, payment
28 of the annual fee and payment of a fee of one dollar for each certified copy
29 to be in possession of the broker, dealer or agent ~~during the conduct of his~~
30 ~~WHILE CONDUCTING~~ business. ~~All licensed brokers or dealers shall~~ On the date
31 of delivery or issuance of a certified copy of a license to an agent or
32 agents, THE LICENSED BROKER OR DEALER SHALL register with the division the
33 name and address of any agent or agents acting in their behalf who ~~has in his~~
34 ~~or her~~ HAVE IN THEIR possession a certified copy of the broker's or dealer's
35 license. The broker or dealer is responsible for any acts of his or her
36 employees and agents in these transactions.

37 D. Each applicant for a license shall state:

38 1. The name and address of the applicant. ~~—~~

39 2. ~~The location of each place or~~ location where the business of the
40 applicant is being or is intended to be conducted. ~~and~~

41 3. That the applicant will in the conduct of the business comply with
42 this article and the rules adopted under this article.

43 E. Each person whose name appears on the licenses shall keep, for a
44 period of one year from the date of the transaction, complete records of each

1 load of hay ~~handled~~ SOLD including tonnage and value and shall submit a copy
2 of these records to the division before receiving a new license. All records
3 pertaining to the loads of hay ~~involved~~ SOLD shall be accessible for
4 inspection by the director or authorized agents during customary business
5 hours at the address listed on the license.

6 F. THE DIRECTOR SHALL ASSESS A LICENSE HOLDER WHO DOES NOT SUBMIT THE
7 ANNUAL LICENSE RENEWAL FEES TO THE DEPARTMENT BY DECEMBER 31 A PENALTY OF TEN
8 PER CENT OF THE AMOUNT OF THE LICENSE FEE PER MONTH FOR NOT MORE THAN THREE
9 MONTHS. PENALTIES COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE
10 HAY LAW FUND ESTABLISHED BY SUBSECTION G OF THIS SECTION.

11 G. THE HAY LAW FUND IS ESTABLISHED CONSISTING OF MONIES COLLECTED
12 PURSUANT TO THIS SECTION. THE DIRECTOR SHALL ADMINISTER THE FUND. ON NOTICE
13 FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE
14 FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL
15 BE CREDITED TO THE FUND. MONIES IN THE FUND ARE APPROPRIATED TO THE
16 DEPARTMENT TO BE SPENT UNDER THE DIRECTION OF THE DIRECTOR TO CARRY OUT THE
17 PROVISIONS OF THIS ARTICLE.

18 ~~F.~~ H. The department may publish in pamphlet form as often as it
19 deems necessary a list of all licensees and agents that are licensed pursuant
20 to this article together with all necessary rules which concern the
21 enforcement of this article.

22 Sec. 3. Section 3-2713, Arizona Revised Statutes, is amended to read:

23 3-2713. Exemptions

24 This article does not apply to:

25 1. A farmer, A rancher, ~~dairyman~~ or A DAIRY OR feedlot operator
26 ~~engaged in an agricultural pursuit~~ who purchases hay for use in his OR HER
27 own operation.

28 2. A RETAIL DEALER WHO SELLS HAY, IF ALL THE PRODUCERS DEALING WITH
29 THE RETAIL DEALER FILE WITH THE RETAIL DEALER BY JANUARY 10 OF EACH YEAR OR
30 AT THE TIME OF THE FIRST HAY PURCHASE OF EACH YEAR AN AFFIDAVIT INDICATING
31 THEY WAIVE THE PROTECTION OF THIS ARTICLE. THE RETAILER SHALL KEEP THIS
32 AFFIDAVIT ON FILE FOR TWO YEARS.

33 3. A HAY BROKER OR DEALER WHOSE GROSS ANNUAL REVENUE FROM SELLING HAY
34 DOES NOT EXCEED TEN THOUSAND DOLLARS.

35 Sec. 4. Section 3-2714, Arizona Revised Statutes, is amended to read:

36 3-2714. Security of applicant; action for damages

37 A. Before a license shall be issued to a hay broker or dealer, the
38 applicant shall execute and deliver to the department either a surety bond
39 satisfactory to the director or a letter of credit, certificate of deposit,
40 investment certificate or share account in an amount determined pursuant to
41 this section. The bond shall be conditioned upon the faithful and honest
42 handling of hay in accordance with this article. The bond shall be to the
43 state for its use and benefit and THAT of any producer or ~~consumer of hay~~
44 CUSTOMER covered by this article. The letter of credit, certificate of

1 deposit, investment certificate or share account shall be payable or assigned
2 to the state treasurer and issued by either:

3 1. A bank OR SAVINGS AND LOAN ASSOCIATION doing business in this state
4 and insured by the federal deposit insurance corporation., ~~a savings and loan~~
5 ~~association doing business in this state and insured by the federal savings~~
6 ~~and loan insurance corporation or~~

7 2. A credit union doing business in this state and insured by the
8 national credit union administration.

9 B. A producer or ~~consumer of hay~~ claiming CUSTOMER WHO CLAIMS to be
10 injured by the violation of any of the conditions of ~~the bond~~ ANY SECURITY
11 INSTRUMENT UNDER THIS SECTION or of ANY PROVISION OF this article BY AN
12 AGENT, BROKER OR DEALER may bring an action ~~upon the bond~~ against ~~both~~
13 ~~principal and surety~~ THE AGENT, BROKER OR DEALER in a court of competent
14 jurisdiction to recover the damages caused by the violation. ~~If a letter of~~
15 ~~credit, certificate of deposit, investment certificate or share account has~~
16 ~~been deposited with the department, a producer or consumer, after obtaining~~
17 ~~a judgment for damages against the broker or dealer, may petition the court~~
18 ~~to direct the state treasurer to pay amounts deposited with the department~~
19 ~~to satisfy the judgment.~~ THE DIRECTOR SHALL NOT REMIT THE SECURITY TO THE
20 AGENT, BROKER OR DEALER UNTIL THE DIRECTOR RECEIVES WRITTEN NOTIFICATION OF
21 THE PARTIES' SETTLEMENT OF THE CLAIM OR A COURT JUDGMENT RESOLVING THE CLAIM.
22 AFTER GRANTING A JUDGMENT FOR DAMAGES AGAINST THE AGENT, BROKER OR DEALER,
23 THE COURT SHALL DIRECT THE BONDHOLDER OR STATE TREASURER, AS APPLICABLE, TO
24 PAY THE AMOUNTS TO THE PRODUCER OR CUSTOMER TO SATISFY THE JUDGMENT.

25 C. IF THE DEPARTMENT BRINGS AN ENFORCEMENT ACTION AGAINST THE AGENT,
26 BROKER OR DEALER FOR A VIOLATION OF THIS ARTICLE, THE SECURITY SHALL NOT BE
27 REMITTED TO THE AGENT, BROKER OR DEALER UNTIL THE DIRECTOR CONDUCTS A HEARING
28 AND RENDERS A DECISION ON THE ALLEGED VIOLATION. IF THE DIRECTOR FINDS THAT
29 THE AGENT, BROKER OR DEALER HAS VIOLATED THIS ARTICLE, THE DIRECTOR MAY ORDER
30 THAT ANY PENALTIES ASSESSED UNDER SECTION 3-2715 BE PAID OUT OF THE SECURITY.

31 ~~C.~~ D. The person executing a certificate of deposit, investment
32 certificate or share account is entitled to receive any interest it accrues
33 and may withdraw the deposit on satisfactory performance of all obligations
34 imposed on him pursuant to this article or on replacing the deposit with a
35 surety bond as required by this section.

36 ~~D.~~ E. The director shall set the amount of the bond, letter of
37 credit, certificate of deposit, investment certificate or share account
38 required by subsection A in an amount of not less than ten thousand dollars
39 but not more than one hundred thousand dollars. If the applicant has no
40 prior history of hay transactions, the director shall require a bond, letter
41 of credit, certificate of deposit, investment certificate or share account
42 in the amount of twenty thousand dollars. If the application is for renewal
43 of a license or if the applicant has been previously licensed under this
44 article, the director shall, within the limits prescribed in this subsection,

1 determine the amount of the bond, letter of credit, certificate of deposit,
2 investment certificate or share account by dividing the dollar amount of hay
3 ~~sold~~ PURCHASED FROM ARIZONA PRODUCERS during the most recent year in which
4 the applicant did business by twelve and increasing the quotient to the next
5 multiple of five thousand.

6 ~~E~~ F. The surety bond, letter of credit, certificate of deposit,
7 investment certificate or share account shall remain in effect for ninety
8 days after the termination or expiration of a license AND AS PROVIDED BY
9 SUBSECTIONS B AND C OF THIS SECTION.

10 Sec. 5. Repeal

11 Sections 3-2715 and 3-2716, Arizona Revised Statutes, are repealed.

12 Sec. 6. Title 3, chapter 15, article 5, Arizona Revised Statutes, is
13 amended by adding a new section 3-2715, to read:

14 3-2715. Violations; civil penalties

15 A. EXCEPT AS PROVIDED IN SUBSECTION B, THE DIRECTOR MAY ASSESS A CIVIL
16 PENALTY OF AT LEAST FIFTY DOLLARS BUT NOT MORE THAN THREE HUNDRED DOLLARS FOR
17 EACH VIOLATION AGAINST A HAY AGENT, BROKER OR DEALER WHO, AFTER A HEARING,
18 IS FOUND BY A PREPONDERANCE OF THE EVIDENCE TO HAVE VIOLATED ANY PROVISION
19 OF THIS ARTICLE.

20 B. IF THE DIRECTOR FINDS, AFTER A HEARING AND ON A PREPONDERANCE OF
21 THE EVIDENCE, THAT A HAY AGENT, BROKER OR DEALER HAS COMMITTED FRAUD,
22 DECEPTION OR MISREPRESENTATION IN PROCURING A LICENSE, THE DIRECTOR MAY:

23 1. ASSESS A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND FIVE HUNDRED
24 DOLLARS FOR EACH CUSTOMER INJURED BY THE VIOLATION.

25 2. REVOKE, SUSPEND OR RESTRICT THE LICENSE, DENY THE ISSUANCE OR
26 RENEWAL OF THE LICENSE OR IMPOSE A PERIOD OF PROBATION.

27 C. ALL MONIES COLLECTED AS CIVIL PENALTIES UNDER THIS SECTION SHALL
28 BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE STATE GENERAL FUND.

29 Sec. 7. Section 3-2717, Arizona Revised Statutes, is amended to read:

30 3-2717. Violation; classification; venue of suits

31 A. Any hay ~~broker, dealer or~~ agent, BROKER OR DEALER who violates any
32 of the provisions of this article is guilty of a class 2 misdemeanor unless
33 the person is exempt as provided in this article. Each violation shall
34 constitute a separate offense.

35 B. Civil suits and criminal prosecutions which arise by virtue of any
36 provision of this article may be commenced and tried in any of the following:

37 1. The county where the product was received by the licensee or agent.

38 2. The county in which the principal place of business of such
39 licensee or agent is located.

40 3. The county in which the violation of this article occurred.

41 Sec. 8. Heading change

42 The heading of title 3, chapter 15, article 5, Arizona Revised
43 Statutes, is changed from "LICENSING AND BONDING OF HAY AND FEED GRAIN
44 BROKERS" to "HAY AGENTS, BROKERS AND DEALERS".