

## LEGISLATIVE BILL 164

Approved by the Governor April 14, 1987

Introduced by R. Johnson, 34

AN ACT relating to grain warehouses; to amend section 88-502.02, Revised Statutes Supplement, 1986; to adopt the Grain Warehouse Act; to eliminate provisions relating to public grain warehouses; to provide penalties; and to repeal the original section, and also sections 88-501, 88-505 to 88-512, 88-514, 88-516, 88-523, and 88-524, Reissue Revised Statutes of Nebraska, 1943, and sections 88-502, 88-502.01, 88-503, 88-504, 88-513, 88-515, and 88-517, Revised Statutes Supplement, 1986.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 28 of this act shall be known and may be cited as the Grain Warehouse Act.

Sec. 2. As used in the Grain Warehouse Act, unless the context otherwise requires:

(1) Commission shall mean the Public Service Commission;

(2) Grain shall mean wheat, corn, oats, soybeans, barley, rye, flax, or sorghum which has not been processed or packaged for the purpose of distribution as seed, including, but not limited to, edible beans, whole corn plant pellets, alfalfa pellets, millet, sunflower seed, safflower seed, and any other bulk pelleted agricultural storable commodity;

(3) Grain in storage shall mean any grain which has been received at any warehouse for which the actual sale price is not fixed and payment is not made within thirty days after the receipt of the grain;

(4) Warehouse shall mean any grain elevator, mill, grist mill, building, or receptacle in which grain is held in storage for more than ten consecutive days;

(5) Warehouse licensee shall mean any warehouseman who is licensed pursuant to the Grain Warehouse Act; and

(6) Warehouseman shall mean any person, partnership, corporation, or association who (a) receives grain for storage or stores or offers to store grain for legal consideration for another person, partnership, corporation, or association in a warehouse where delivered or (b) receives grain for shipment to

other points for storage, consignment, or resale either in or out of this state.

Sec. 3. Warehouses, except warehouses which are licensed under the United States Warehouse Act, shall be licensed and regulated by the commission. Such warehouses shall be inspected by the commission at least once every nine months.

The commission may make available to the United States government or any of its agencies, including the Commodity Credit Corporation, the results of inspections made and inspection reports submitted by employees of the commission upon payment of such fees as may be determined by the commission. The fees shall cover the actual cost of the services rendered in regard to providing the information.

The commission may charge for inspections conducted at the request of a warehouse licensee. The commission may assess a surveillance fee against the assets of a warehouse licensee for actual expenses incurred by the commission in suspending a license or terminating the operations of a warehouse licensee. The commission may enter into contracts for such purpose and shall keep a record of all surveillance fees collected. All surveillance fees collected by the commission shall be deposited in the Nebraska Grain Warehouse Surveillance Cash Fund.

Sec. 4. Each applicant for a license and each warehouse licensee shall annually file an application with the commission in the form prescribed by the commission to do business under the Grain Warehouse Act and shall include a report of an audit or review prepared in accordance with generally accepted accounting practices and conducted by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. Each report shall include, but not be limited to, the following: (1) A balance sheet; (2) a statement of income showing profit or loss; (3) a statement of retained earnings; (4) a statement of changes in the financial position; and (5) accountant's certifications, assurances, opinions, comments, and notes with regard to such report. Such application shall set forth the location of the warehouse to be used by the applicant, its relation to railroad trackage, its capacity, its general plan and equipment, and its ownership.

Sec. 5. The commission shall charge an annual license fee for each warehouse to be operated, except as provided in section 7 of this act. The fee for any license issued for less than twelve months shall be

prorated based on its duration. The annual license fee shall be as provided in this section.

Capacity in Bushels	Fee
0 - 10,000	\$ 30
10,001 - 25,000	38
25,001 - 50,000	45
50,001 - 75,000	53
75,001 - 100,000	60
100,001 - 150,000	68
150,001 - 200,000	75
200,001 - 250,000	83
250,001 - 300,000	90
300,001 - 350,000	98
350,001 - 400,000	105
400,001 - 450,000	113
450,001 - 500,000	120
500,001 - 600,000	128
600,001 - 700,000	135
700,001 - 800,000	143
800,001 - 900,000	150
900,001 - 1,000,000	158
1,000,001 - 2,000,000	225
2,000,001 - 3,000,000	263
3,000,001 - 4,000,000	300
4,000,001 - 5,000,000	338
5,000,001 - 6,000,000	375
6,000,001 - 7,000,000	413
7,000,001 - 8,000,000	450
8,000,001 - 9,000,000	488
9,000,001 - 10,000,000	525
10,000,001 - 11,000,000	563
11,000,001 - 15,000,000	713
15,000,001 - 20,000,000	900
20,000,001 - 25,000,000	1,088
25,000,001 - 30,000,000	1,275
30,000,001 - 40,000,000	1,650
40,000,001 - or more	2,250

Sec. 6. Each applicant shall show sufficient net worth or stockholders' equity to conform with the financial requirements which the commission shall establish by the adoption and promulgation of rules and regulations. Applicants shall file with the commission security in the form of a bond, certificate of deposit, or irrevocable letter of credit in such sum as the commission may require and in the form prescribed by the commission, which shall not be less than one thousand dollars for any warehouse licensee who receives grain from producers in wagon or truckload lots and not less than twenty-five thousand dollars for those who receive

grain in carload lots. Such bond, certificate of deposit, or letter of credit shall run to the State of Nebraska for the benefit of each person who stores grain in such warehouse and each person who holds a check for purchase of grain stored in such warehouse which was issued by the warehouse licensee not more than five business days prior to the cutoff date of operation of the warehouse, which shall be the date the commission officially closes the warehouse. Such bond, certificate of deposit, or letter of credit shall be conditioned upon (1) the warehouse licensee carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in such warehouse, (2) the delivery of the grain upon surrender of the warehouse receipt, and (3) the faithful performance by the warehouse licensee of all provisions of law relating to the storage of grain by such warehouse licensee and the rules and regulations of the commission. The commission may require increases in the amount of the security from time to time as it may deem necessary for the protection of the storers. The surety on a bond shall be a surety company licensed by the Department of Insurance. An irrevocable letter of credit or certificate of deposit shall be issued by a federally insured depository institution.

The security shall particularly describe the warehouse intended to be covered by the security. The liability of the surety on a bond shall not accumulate for each successive license period which the bond covers. The liability of the surety shall be limited to the amount stated on the bond or on an appropriate rider or endorsement to the bond.

Sec. 7. Only one license shall be required for the operation of all warehouses operated by one warehouse licensee if:

(1)(a) The warehouses are located in the same city, village, or legally described location or on the same siding;

(b) The warehouses are operated with the same working force;

(c) Only one set of books is kept for the warehouses; and

(d) Cost slips, scale tickets, warehouse receipts, and checks are issued in one series for grain received or stored in such warehouses; or

(2)(a) The warehouses are located within twenty-five miles of each other;

(b) Only one set of books is kept for the warehouses at a central location; and

(c) The warehouses are operated in conjunction with each other.

The license fee and security required of such warehouse licensee shall be computed on the basis of the separate capacities of each warehouse.

Sec. 8. Upon payment of the license fee and approval by the commission of the application and the bond, certificate of deposit, or irrevocable letter of credit, the license shall be issued. A new or renewed license shall expire twelve calendar months after the effective date of the issuance or renewal of such license. A license may be kept in continuous force and effect if the warehouse licensee files a proper application for renewal and security which the commission can approve prior to the date of termination.

Notice of the security in the form prescribed by the commission shall be posted in a conspicuous place in each warehouse showing the amount of security on the stored grain. Each warehouse licensee shall also post in a conspicuous place in each warehouse office the storage fees and receiving and load-out fees charged for each type of grain stored.

Sec. 9. No warehouse licensee shall increase storage capacity without first obtaining the approval of the commission and effecting such revisions in its security as may be required by the commission. Additional fees may be imposed for increases in storage capacity or for any other changes in the license in such reasonable amounts as may be prescribed by the commission.

Sec. 10. Payment to the seller for grain purchased by a warehouse licensee shall be made upon demand by the seller except as otherwise provided by written or oral contract between the parties.

Sec. 11. Each warehouse licensee shall, at the time of the delivery of grain to or the shipment of grain from a warehouse, issue a lawful scale ticket to the owner or consignee of such grain, except when the delivery or shipment is by rail or water. The scale tickets shall contain all information prescribed by the commission. A scale ticket issued by a warehouse licensee shall be prima facie evidence of the holder's claim of title to the goods described in such ticket.

Sec. 12. Within fifteen days after demand by the owner or deliverer of any grain to a warehouse for storage, the warehouse licensee shall issue a lawful negotiable or nonnegotiable receipt to such owner or deliverer of such grain. The receipt shall state the date of delivery, the name of the owner, and the grade.

gross weight, dockage, and net weight of the grain represented in the receipt. The commission shall prepare forms for such receipts which shall be used by all warehouse licensees and registered with the commission. The commission shall fix charges to be assessed and collected for such warehouse receipt forms not to exceed the cost of printing, delivering, and handling. Payment of such charges shall be made in advance of delivery of such receipt forms and shall entitle each such receipt to registration without any further charge or fee. The commission may make refunds of such charges for such unused receipt forms as may be returned to the commission. Any warehouse licensee may issue a receipt to himself or herself as the owner of grain stored in his or her own warehouse, which receipt shall be registered with the commission. Upon receiving any such grain warehouse receipt for registration and being satisfied that the provisions of the Grain Warehouse Act and any rules and regulations adopted and promulgated pursuant to the act have been complied with, the commission shall cause such receipt to be registered.

Sec. 13. When a negotiable warehouse receipt has been lost or destroyed, the commission may approve the delivery of the grain or the issuance of a duplicate receipt upon satisfactory proof of such loss or destruction if the party who requests it furnishes a bond with corporate or personal surety, to be approved by the commission, conditioned to indemnify the warehouse licensee or any holder or other person entitled to the grain against all loss, liability, or expense which may be sustained by reason of such delivery. The delivery of the grain or the issuance of a duplicate receipt pursuant to the approval of the commission shall not relieve the warehouse licensee from liability to a person to whom the negotiable receipt has been or will be negotiated for value without notice of the proceedings before the commission or of the delivery of the grain or the issuance of the duplicate receipt pursuant to such proceedings.

Sec. 14. A duplicate receipt shall not be issued by any warehouse licensee without prior approval by the commission. A receipt so issued, upon the face of which the word duplicate is plainly placed, shall be a representation and warranty by the warehouse licensee that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issuance of the duplicate.

Sec. 15. For the proper enforcement of the



Grain Warehouse Act, the commission shall designate and appoint a person experienced in the handling of grain as supervisor of warehouses. The supervisor may perform all duties required of the commission pursuant to the Grain Warehouse Act subject to the approval of the commission.

Sec. 16. Upon demand, presentation of receipts, and payment of lawful charges, the grain represented by such receipts or any part of such grain shall be immediately delivered to the owner or his or her order, and the part delivered shall not be subject to any further charge for storage after such demand for delivery has been made and facilities for receiving and shipping the grain have been provided. If demand is made for only a part of the grain represented by any receipt, the amount delivered shall be entered in a proper blank upon the face of such receipt and delivery of such grain acknowledged on the receipt by the person holding such receipt. For any grain not delivered within twenty-four hours after such demand, the warehouse licensee shall be liable, upon his, her, or its security, to the owner in damages not exceeding one cent per bushel for each day's delay unless he, she, or it delivers to different owners in the order demanded as rapidly as can be done by ordinary diligence. If terminal delivery of grain is demanded, the warehouse licensee shall issue and deliver to the owner or his or her order a surrender receipt, which shall conform to the receipt issued for the grain under section 12 of this act, making such grain deliverable in its net amount at any terminal market or transit point designated by the owner of such receipt. Such grain shall be subject to the usual freight, weighing, and switching charges when it arrives at the terminal so designated, and the freight shall be computed on the basis of the gross weight of the grain represented by such surrender receipt. The owner of the receipt may, at his, her, or its option, order the car in which the grain covered by the surrender receipt is to be transported, in which case the grain shall be delivered when the car so ordered is placed at the warehouse.

Sec. 17. Not less than once each year, the commission shall by order fix reasonable storage rates, and no warehouse licensee shall charge a lesser or greater rate, except upon application to and a hearing before the commission. If, after a hearing, the commission finds that a lesser or greater rate should be ordered, it shall enter a supplemental order fixing a different rate for such applicant. Such charges shall

be full compensation for the receiving, handling, storing, delivering, and insuring of grain. No discrimination shall be made between different customers by any state-licensed grain warehouse either in facilities, charges, or handling of any grain, except that members of a cooperative may be given preference in storage facilities in warehouses of the cooperative. The rates charged to any governmental agency shall be exempt from commission regulation.

Sec. 18. The property, books, records, accounts, papers, and proceedings of every warehouse shall, at all times during business hours, be subject to inspection by the commission.

Sec. 19. No warehouse licensee shall issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts issued for grain, there shall be a presumption that the warehouse licensee has wrongfully removed grain, has wrongfully caused grain to be removed, or has issued receipts for grain not actually received, and has violated this section. Any warehouse licensee who violates this section shall be guilty of Class IV felony.

Sec. 20. At the election of the warehouse licensee and under rules and regulations adopted and promulgated by the commission, storage in a warehouse operated by such licensee may be terminated on June 30 in any year, except that any storage contract on shelled corn in storage in such warehouse may be terminated under such rules and regulations either on March 31 or on June 30 in any year. Subject to such rules and regulations as the commission may adopt and promulgate, any storage contract on any or all such grain may be terminated by the owner at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such grain or notice to sell the same.

Sec. 21. The commission shall enforce the Grain Warehouse Act and shall adopt and promulgate rules and regulations to aid in the administration of the act. Any person who violates the Grain Warehouse Act shall be guilty of a Class IV felony, unless otherwise specifically provided, and shall be liable for any damages suffered by any person from such violation. Upon request of the commission, the Attorney General or any county attorney shall assist in the prosecution of any violations of the act.

Sec. 22. The commission may, upon complaint filed by it or any person and after a hearing, suspend



or revoke the license of any warehouse licensee for failure to comply with the requirements of the Grain Warehouse Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the warehouse licensee with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a license pending the determination of the complaint.

Sec. 23. If the commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse or if a license expires and is not renewed, the commission may close the warehouse and do one or more of the following:

(1) Take title to all grain stored in the warehouse at that time in trust for distribution on a pro rata basis to all valid owners, depositors, or storsers of grain who are holders of evidence of ownership of grain. Such distribution may be made in grain or in proceeds from the sale of grain;

(2) After notice and hearing (a) determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain, (b) require all or part of the warehouse security to be forfeited to the commission, and (c) distribute the security proceeds on such pro rata basis; or

(3) Commence a suit in district court for the benefit of owners, depositors, or storsers of grain.

The commission may deposit the proceeds from the security forfeiture under subdivision (2) of this section or the sale of grain under subdivision (1) of this section in an interest-bearing trust account for the benefit of the valid owners, depositors, or storsers of grain pending final determination of the valid owners, depositors, or storsers and distribution of such proceeds.

Sec. 24. (1) Any grain dealer, person, firm, corporation, or association in this state licensed under the United States Warehouse Act shall be exempt from the Grain Warehouse Act, except that each licensee under the United States Warehouse Act shall (a) annually notify the commission in writing of such license and shall

notify the commission at once in writing if the license is terminated, canceled, or suspended and (b) post notification of such licensee's bond under the United States Warehouse Act in a conspicuous place of business listing the total amount of bond on the stored grain.

(2) No warehouse licensee, licensee under the United States Warehouse Act, or grain dealer licensed pursuant to section 75-903 shall use end intake air probes which use a vacuum to collect a sample from a load of grain to determine foreign material content. The commission shall adopt and promulgate rules and regulations regarding approval of grain probes. Any person who violates this subsection shall be guilty of a Class I misdemeanor.

Sec. 25. On or before June 30 of each year, each warehouse shall send written notice to each person who stores grain in such warehouse at such person's last-known address specifying the type and amount of grain in storage, the location at which the grain is being stored, storage fees that will be charged commencing on July 1 of that year, and the amount of increase or decrease in such fees since July 1 of the previous year. Any warehouse licensee who violates this section shall be guilty of a Class V misdemeanor.

Sec. 26. The Department of Environmental Control and the commission shall, during the course of their regular inspections required by law, inspect warehouses for conditions which are or may be conducive to grain dust explosions. Such conditions shall include, but not be limited to, the presence at the warehouse of excessive grain dust, faulty equipment, or any other condition which could reasonably lead to an explosion if not corrected. The department and commission shall report any such condition to the State Fire Marshal as soon as practicable after each inspection.

Sec. 27. Except as provided in sections 3 and 28 of this act, all fees collected pursuant to the Grain Warehouse Act shall be paid to the State Treasurer and credited to the General Fund.

Sec. 28. That section 88-502.02, Revised Statutes Supplement, 1986, be amended to read as follows:

88-502-02- There is hereby created in the state treasury a fund to be known as the Nebraska Grain Warehouse Surveillance Cash Fund. Such fund shall be used solely for disbursing funds and receiving reimbursement for services performed by the Public Service Commission in the surveillance of grain

warehouses commission in the suspension or termination of a warehouse operation. All money received by the commission for such ~~service~~ services shall be deposited in such fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 29. That original section 88-502.02, Revised Statutes Supplement, 1986, and also sections 88-501, 88-505 to 88-512, 88-514, 88-516, 88-523, and 88-524, Reissue Revised Statutes of Nebraska, 1943, and sections 88-502, 88-502.01, 88-503, 88-504, 88-513, 88-515, and 88-517, Revised Statutes Supplement, 1986, are repealed.