

LEGISLATIVE BILL 1123

Approved by the Governor March 25, 1996

Introduced by Agriculture Committee: Dierks, 40, Chairperson; Hudkins, 21; Schellpeper, 18; Schmitt, 41; Vrtiska, 1

AN ACT relating to grain; to amend sections 75-902, 75-903, 75-905, 88-525, 88-527, and 88-551, Reissue Revised Statutes of Nebraska; to change provisions relating to grain dealers and grain warehouses; to provide powers and duties; to create a fund; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 75-902, Reissue Revised Statutes of Nebraska, is amended to read:

75-902. For purposes of the Grain Dealer Act, unless the context otherwise requires:

- (1) Commission shall mean means the Public Service Commission;
- (2) Grain shall include includes, but is not be limited to, all unprocessed beans, whole corn, milo and other sorghum, wheat, rye, barley, oats, millet, safflower seed and processed plant pellets, alfalfa pellets, and any other bulk pelleted agricultural storable commodity, except grain which has been processed or packaged for distribution as seed;
- (3) Grain dealer shall mean means any person, other than a custom feeder of livestock or poultry, a state grain warehouse licensed in Nebraska, or a public grain warehouse licensee located in Nebraska which is licensed under the United States Warehouse Act, who (a) buys grain from its owner or producer within this state for purposes of selling such grain, (b) transports grain into this state for purposes of selling such grain, or (c) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain; and
- (4) Producer shall mean means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land.

Sec. 2. Section 75-903, Reissue Revised Statutes of Nebraska, is amended to read:

75-903. All grain dealers doing business in this state shall be licensed by the commission. To procure and maintain a license, each grain dealer shall:

- (1) Pay an annual fee of thirty dollars which shall be due on or before the date established by the commission June 30 of each year for each license and a registration fee not to exceed twenty dollars per year for each vehicle used by such licensee to transport grain. Such fees shall be paid to the State Treasurer and credited to the state General Fund;
- (2) Equip each vehicle used by the licensee for grain transportation with a commercial license plate registered with the Department of Motor Vehicles, except that a licensee who resides in another state shall license such vehicles according to the laws of his or her state of residence;
- (3) Affix a grain dealer plate issued by the commission to each vehicle used by the licensee;
- (4) File security which may be a bond issued by a corporate surety company and payable to the commission, an irrevocable letter of credit, or a certificate of deposit, subject to the approval of the commission, for the benefit of any producer or owner within this state who files a valid claim arising from a sale to or purchase from a grain dealer. The security shall be in the amount of twenty-five ~~thirty-five~~ thousand dollars or four ~~seven~~ percent of grain purchases by the grain dealer in the preceding license year as reported on a form prescribed by the commission, whichever is greater, not to exceed one hundred fifty thousand dollars. Such security shall be furnished on the condition that conditions that ~~(a)~~ the licensee will pay for any grain purchased upon demand, not later than ten ~~thirty~~ days after taking possession of the grain purchased, ~~and (b) the licensee owns, free of liens, any grain which the licensee offers for sale.~~ The liability of the surety shall cover purchases and sales made or arranged by the grain dealer during the time the bond is in force. A grain dealer's bond filed with the commission shall be in continuous force and effect until canceled by the surety. The liability of the surety on any bond required by this section shall not accumulate for each successive license period during which the bond is in force; and
- (5) File, as the commission may by rule or regulation require, a

financial statement of the licensee's operations as a grain dealer.

Sec. 3. Section 75-905, Reissue Revised Statutes of Nebraska, is amended to read:

75-905. (1) Except as provided in subsection (2) of this section, no seller shall have recourse to the grain dealer's security unless the seller:

(a) Demands that payment from the grain dealer be made within ten thirty days of after the date the grain dealer takes possession of the seller's grain;

(b) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within ten thirty days of after its issuance; and

(c) Notifies the commission within ten thirty days of after any apparent loss to be covered under the terms of the grain dealer's security.

(2) When grain is delivered to a grain dealer in multiple shipments comprising one contract, the seller shall not have recourse to the grain dealer's security unless the seller notifies the commission within forty-five thirty days of after the date of the first last shipment of any apparent loss to be covered under the terms of the grain dealer's security.

Sec. 4. Section 88-525, Reissue Revised Statutes of Nebraska, is amended to read:

88-525. Sections 88-525 to 88-552 and section 7 of this act shall be known and may be cited as the Grain Warehouse Act.

Sec. 5. Section 88-527, Reissue Revised Statutes of Nebraska, is amended to read:

88-527. (1) No person shall operate a warehouse nor act as a warehouseman without a license issued pursuant to the Grain Warehouse Act. 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.

(2) 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.

(3) 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.

(4) The commission may enter into agreements and contracts with regulators in states which border Nebraska for the purpose of licensing or examining any public grain warehouseman which operates facilities in such states. The commission shall assume all jurisdiction over any warehouseman headquartered in Nebraska regarding his or her warehouse activity. A warehouseman headquartered and licensed in another state which acquires facilities in Nebraska is under the jurisdiction of the headquarter state under the terms of such agreement or contract.

Sec. 6. Section 88-551, Reissue Revised Statutes of Nebraska, is amended to read:

88-551. Except as provided in sections 88-527 and 88-552 and section 7 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. 7. (1) The commission may enter into contracts with public or private entities which provide a benefit for both parties for purposes of performing audit or examination work. The commission shall conduct the work as time permits and shall not allow the work to conflict with the commission's primary responsibility of performing grain warehouse examinations within the prescribed statutory time.

(2) Fees from audit or examination contracts shall be remitted by the commission to the State Treasurer for credit to the Grain Warehouse Auditing Fund which is created. The fund shall be available to the commission to buy material and equipment for performing audits and examinations or to offset the cost of performing audits and examinations. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 8. Original sections 75-902, 75-903, 75-905, 88-525, 88-527,