

## LEGISLATIVE BILL 439

Approved by the Governor April 7, 2005

Introduced by Kremer, 34; Hudkins, 21; Stuhr, 24

AN ACT relating to grain; to amend sections 75-902, 75-903, 75-905, and 88-543, Reissue Revised Statutes of Nebraska, and sections 88-526 and 88-528, Revised Statutes Supplement, 2004; to change provisions relating to grain dealers and grain warehouses; to provide requirements relating to direct delivery grain; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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 means the Public Service Commission;
- (2) Direct delivery grain has the same meaning as in section 88-526;
- (3) Direct delivery obligation has the same meaning as in section

88-526;

(4) Grain includes, but is not 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)~~ (5)(a) Grain dealer means any person, partnership, limited liability company, corporation, or association, ~~other than a custom feeder of livestock or poultry or a grain warehouse licensed under the Grain Warehouse Act or located in Nebraska and licensed under the United States Warehouse Act that does not buy, sell, or transport grain other than grain that is received at its licensed warehouse facilities, who~~ (a) that (i) buys grain from its the owner or producer of the grain within this state for purposes of selling such grain, ~~(b)~~ (ii) transports grain into this state for purposes of selling such grain, or ~~(c)~~ (iii) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.

(b) Grain dealer does not include (i) a custom feeder of livestock or poultry or (ii) a warehouse licensee under the Grain Warehouse Act or a warehouse licensee under the United States Warehouse Act of a warehouse located in Nebraska if the warehouse licensee does not buy, sell, or transport grain other than grain that is received at its licensed warehouse facilities;

(6) In-store transfer has the same meaning as in section 88-526; ~~and~~

~~(4)~~ (7) Post-direct delivery storage position has the same meaning as in section 88-526; and

(8) Producer 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. If the applicant is an individual, the application shall include the applicant's social security number. To procure and maintain a license, each grain dealer shall:

(1) Pay an annual fee of sixty dollars which shall be due on or before the date established by the commission for each license and a registration fee not to exceed forty 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 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 thirty-five thousand dollars or seven percent of grain purchases or exchanges by the grain dealer in the preceding license year, whichever is greater, not to exceed three hundred thousand dollars. Amounts used in the calculation of the security shall include all direct delivery grain purchases and exchanges valued on the date delivery is made. Amounts used in the calculation of the security shall not include any transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is created by an in-store transfer on the same date as the delivery of the direct delivery grain. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than thirty days after the date of the last shipment of any contract. 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 a reviewed or audited fiscal year-end financial statement prepared by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. If licensing as a partnership, corporation, or limited liability company, the financial statement shall be prepared in conformity with accounting principles generally accepted in the United States. The financial statement shall include: (a) A statement of income showing profit or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement of proprietor's capital or retained earnings; (e) the volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year; (f) the volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain; and ~~(f)~~ (g) the accountant's certification, assurances, opinions, and comments and the notes with respect to the financial statement. If the volume and dollar value of the grain purchases is not reported, the grain dealer shall file the maximum grain dealer security as required by the Grain Dealer Act.

If an applicant for a grain dealer license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its reviewed or audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission.

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 thirty days 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 thirty days after its issuance; and

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

(3) The grain dealer's security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed thirty days after the date of the last shipment of the contract.

Sec. 4. Section 88-526, Revised Statutes Supplement, 2004, is amended to read:

88-526. As used in the Grain Warehouse Act, unless the context otherwise requires:

(1) Commission ~~shall mean~~ means the Public Service Commission;

(2) Direct delivery grain means all grain that is bought, sold, or transported in the name of a warehouse licensee, other than grain that is received at the licensed warehouse facilities;

(3) Direct delivery obligation means the obligation of a warehouse licensee or grain dealer to transfer title to warehouse-owned grain to a producer by an in-store transfer upon the delivery of direct delivery grain. A direct delivery obligation is treated as a grain dealer obligation until such time as it is satisfied by an in-store transfer;

(4) Grain ~~shall mean~~ means 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;

(5) Grain dealer has the same meaning as in section 75-902;

~~(3)~~ (6) Grain in storage ~~shall mean~~ means any grain which has been received at any warehouse and to which title has not been transferred to the warehouseman by signed contract or priced scale ticket;

(7) In-store transfer means a method by which a warehouse licensee transfers title to warehouse-owned grain to any person in satisfaction of a direct delivery obligation between the warehouse licensee or grain dealer and the producer, and the grain remains in the warehouse;

(8) Post-direct delivery storage position means a storage position acquired through an in-store transfer in satisfaction of a direct delivery obligation;

~~(4)~~ (9) Warehouse ~~shall mean~~ means any grain elevator, mill, grist mill, building, or receptacle in which grain is held in storage for more than ten consecutive days;

~~(5)~~ (10) Warehouse licensee ~~shall mean~~ means any warehouseman who is licensed pursuant to the Grain Warehouse Act; and

~~(6)~~ (11) Warehouseman ~~shall mean~~ means any person, partnership, limited liability company, corporation, or association who (a) receives grain for storage or stores or offers to store grain for legal consideration for another person, partnership, limited liability company, 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. 5. Section 88-528, Revised Statutes Supplement, 2004, is amended to read:

88-528. Each applicant for a license and each warehouse licensee shall annually file an application with the commission and shall submit to a criminal background check as set forth in section 88-528.01. The application shall be in the form prescribed by the commission to do business under the Grain Warehouse Act and shall include an audited or reviewed fiscal year-end financial statement prepared in accordance with generally accepted accounting practices in the United States by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. If the applicant files a reviewed fiscal year-end financial statement, the applicant shall also provide additional security pursuant to section 88-530 in such amount as the commission requires. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. The financial statement shall include: (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) the accountant's certifications, assurances, opinions, comments, and notes with regard to such financial statement. An applicant may also submit a valuation of assets by competent appraisal acceptable to the commission for inclusion in computing net worth for the purpose of meeting any net worth requirements imposed by the act or rules and regulations of the commission. If a valuation of assets is submitted, no more than seventy percent of appraised value shall be used in determining compliance with net worth requirements. 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.

If an applicant for a license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission. A parent company may also submit a valuation of assets on behalf of an applicant that is a wholly owned subsidiary of the parent company.

Sec. 6. Section 88-543, Reissue Revised Statutes of Nebraska, is amended to read:

88-543. (1) No warehouse licensee or partner, limited liability company member, officer, or agent thereof shall: ~~issue~~

(a) 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 or partner, limited liability company member, officer, or agent thereof 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;

(b) Create a post-direct delivery storage position without issuing proper documentation consistent with rules and regulations adopted and promulgated by the commission;

(c) Create a post-direct delivery storage position at any time the warehouse licensee does not have sufficient warehouse-owned grain or grain in open storage to cover the storage position created for the benefit of the producer; or

(d) Record grain as being received or loaded out that has not been physically deposited in or physically removed from the warehouse.

(2) Any warehouse licensee or partner, limited liability company member, officer, or agent thereof who knowingly and willingly violates this section shall be guilty of a Class IV felony.

Sec. 7. Original sections 75-902, 75-903, 75-905, and 88-543, Reissue Revised Statutes of Nebraska, and sections 88-526 and 88-528, Revised Statutes Supplement, 2004, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.