

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1151**

Introduced by Kremer, 34

Read first time January 20, 2004

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 75-902,  
2 88-535, and 88-543, Reissue Revised Statutes of Nebraska,  
3 and section 88-526, Revised Statutes Supplement, 2003; to  
4 change provisions of the Grain Dealer Act and the Grain  
5 Warehouse Act; to repeal the original sections; and to  
6 declare an emergency.  
7 Be it enacted by the people of the State of Nebraska,

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

3                   75-902. For purposes of the Grain Dealer Act, unless the  
4 context otherwise requires:

5                   (1) Commission means the Public Service Commission;

6                   (2) Grain includes, but is not limited to, all  
7 unprocessed beans, whole corn, milo and other sorghum, wheat, rye,  
8 barley, oats, millet, safflower seed and processed plant pellets,  
9 alfalfa pellets, and any other bulk pelleted agricultural storable  
10 commodity, except grain which has been processed or packaged for  
11 distribution as seed;

12                  (3) Grain dealer means any person, partnership, limited  
13 liability company, corporation, or association, other than a custom  
14 feeder of livestock or poultry or a grain warehouse licensed under  
15 the Grain Warehouse Act or located in Nebraska and licensed under  
16 the United States Warehouse Act that does not buy, sell, or  
17 transport grain other than grain that is received at its licensed  
18 warehouse facilities, who (a) buys grain from its owner or producer  
19 within this state for purposes of selling such grain, (b)  
20 transports grain into this state for purposes of selling such  
21 grain, or (c) acts as an employee or agent of a buyer or seller for  
22 purposes of collective bargaining in the marketing of grain; ~~and~~

23                  (4) Received means grain received when physically  
24 deposited at the licensee's licensed warehouse or when the licensee  
25 accounts for and documents the receipt of direct delivery grain by  
26 the creation of a storage position in the name of the tenderer of  
27 the grain with grain that is physically present and stored  
28 commingled in the licensee's warehouse that is of the same quantity

1 and quality of the grain tendered by direct delivery; and

2           (5) Producer means the owner, tenant, or operator of land  
3 in this state who has an interest in and receives all or part of  
4 the proceeds from the sale of grain produced on that land.

5           Sec. 2. Section 88-526, Revised Statutes Supplement,  
6 2003, is amended to read:

7           88-526. As used in the Grain Warehouse Act, unless the  
8 context otherwise requires:

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

11           (2) Direct delivery grain means all grain that is bought,  
12 sold, or transported in the name of the warehouse licensee other  
13 than grain that is physically deposited at the warehouse licensee's  
14 licensed warehouse facility;

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

21           ~~(3)~~ (4) Grain in storage ~~shall mean~~ means any grain which  
22 has been received at any warehouse and to which title has not been  
23 transferred to the warehouseman by signed contract or priced scale  
24 ticket;

25           (5) Received means grain received when physically  
26 deposited at the licensee's licensed warehouse or when the licensee  
27 accounts for and documents the receipt of direct delivery grain  
28 tendered for storage by the creation of a storage position in the

1 name of the tenderer of the grain with grain that is physically  
 2 present and stored commingled in the licensee's warehouse that is  
 3 of the same quantity and quality of the grain tendered by direct  
 4 delivery;

5           ~~(4)~~ (6) Warehouse ~~shall mean~~ means any grain elevator,  
 6 mill, grist mill, building, or receptacle in which grain is held in  
 7 storage for more than ten consecutive days;

8           ~~(5)~~ (7) Warehouse licensee ~~shall mean~~ means any  
 9 warehouseman who is licensed pursuant to the Grain Warehouse Act;  
 10 and

11           ~~(6)~~ (8) Warehouseman ~~shall mean~~ means any person,  
 12 partnership, limited liability company, corporation, or association  
 13 who (a) receives grain for storage or stores or offers to store  
 14 grain for legal consideration for another person, partnership,  
 15 limited liability company, corporation, or association in a  
 16 warehouse where delivered or (b) receives grain for shipment to  
 17 other points for storage, consignment, or resale either in or out  
 18 of this state.

19           Sec. 3. Section 88-535, Reissue Revised Statutes of  
 20 Nebraska, is amended to read:

21           88-535. Each warehouse licensee shall, at the time ~~of~~  
 22 ~~the delivery of grain to~~ grain is received or upon the shipment of  
 23 grain from a warehouse, issue a lawful scale ticket to the owner or  
 24 consignee of such grain, except when the delivery or shipment is by  
 25 rail or water. The scale tickets shall contain all information  
 26 prescribed by the commission. The commission may, by rule and  
 27 regulation, prescribe procedures for the issuance of scale tickets  
 28 or other documentation for the receipt of direct delivery grain. A

1 scale ticket issued by a warehouse licensee shall be prima facie  
 2 evidence of the holder's claim of title to the goods described in  
 3 such ticket.

4 Sec. 4. Section 88-543, Reissue Revised Statutes of  
 5 Nebraska, is amended to read:

6 88-543. (1) No warehouse licensee or partner, limited  
 7 liability company member, officer, or agent thereof shall:

8 (a) Issue issue a receipt for grain not actually  
 9 received. If at any time there is less grain in a warehouse than  
 10 outstanding receipts issued for grain, there shall be a presumption  
 11 that the warehouse licensee or partner, limited liability company  
 12 member, officer, or agent thereof has wrongfully removed grain, has  
 13 wrongfully caused grain to be removed, or has issued receipts for  
 14 grain not actually received, and has violated this section;

15 (b) Receive grain tendered for storage via direct  
 16 delivery without documenting the receipt by creation of a storage  
 17 position for the tenderer with warehouse-owned grain and then  
 18 consummating the receipt by issuing a warehouse receipt, scale  
 19 tickets, or other evidence of the storage position in the benefit  
 20 of the tenderer; or

21 (c) Receive grain tendered via direct delivery at any  
 22 time the warehouse licensee does not have sufficient  
 23 warehouse-owned grain or grain in open storage to cover the storage  
 24 position created in the benefit of the tenderer.

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

1                   Sec. 5. Original sections 75-902, 88-535, and 88-543,  
2 Reissue Revised Statutes of Nebraska, and section 88-526, Revised  
3 Statutes Supplement, 2003, are repealed.

4                   Sec. 6. Since an emergency exists, this act takes effect  
5 when passed and approved according to law.