

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 636

Introduced by Schrock, 38

Read first time January 22, 2003

Committee: Agriculture

A BILL

1 FOR AN ACT relating to grain; to amend sections 75-901, 75-902,
2 88-525 to 88-528, 88-536, and 89-1,104.01, Reissue
3 Revised Statutes of Nebraska, and sections 75-156 and
4 75-903, Revised Statutes Supplement, 2002; to change
5 provisions relating to the Public Service Commission,
6 grain warehousemen, grain dealers, and grain moisture
7 measuring devices; to provide for civil penalties; to
8 harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-156, Revised Statutes Supplement,
2 2002, is amended to read:

3 75-156. (1) In addition to other penalties and relief
4 provided by law, the Public Service Commission may, upon a finding
5 that the violation is proven by clear and convincing evidence,
6 assess a civil penalty of up to ten thousand dollars per day
7 against any person, motor carrier, regulated motor carrier, common
8 carrier, ~~or~~ contract carrier, grain dealer, or grain warehouseman
9 for each violation of (a) any provision of sections 75-301 to
10 75-390 administered by the commission or section 75-126 as such
11 section applies to any person or carrier specified in sections
12 75-301 to 75-390, (b) a commission order entered pursuant to the
13 Automatic Dialing-Announcing Devices Act, the Emergency Telephone
14 Communications Systems Act, the Intrastate Pay-Per-Call Regulation
15 Act, the Nebraska Telecommunications Regulation Act, the Nebraska
16 Telecommunications Universal Service Fund Act, or the
17 Telecommunications Relay System Act, (c) any term, condition, or
18 limitation of any certificate or permit issued by the commission
19 pursuant to sections 75-301 to 75-390, ~~or~~ (d) any rule, regulation,
20 or order of the commission issued under authority delegated to the
21 commission pursuant to sections 75-301 to 75-390, or (e) any rule,
22 regulation, or order of the commission issued under the authority
23 delegated to the commission pursuant to the Grain Dealer Act or the
24 Grain Warehouse Act. The civil penalty assessed under this section
25 shall not exceed two million dollars per year for each violation.
26 The amount of the civil penalty assessed in each case shall be
27 based on the severity of the violation charged. The commission may
28 compromise or mitigate any penalty prior to hearing if all parties

1 agree. In determining the amount of the penalty, the commission
2 shall consider the appropriateness of the penalty in light of the
3 gravity of the violation and the good faith of the violator in
4 attempting to achieve compliance after notification of the
5 violation is given.

6 (2) Upon notice and hearing in accordance with this
7 section and section 75-157, the commission may enter an order
8 assessing a civil penalty of up to one hundred dollars against any
9 person, firm, partnership, limited liability company, corporation,
10 cooperative, or association for failure to file an annual report as
11 required by section 75-116 and as prescribed by commission rules
12 and regulations or for failure to register as required by section
13 86-125 and as prescribed by commission rules and regulations. Each
14 day during which the violation continues after the commission has
15 issued an order finding that a violation has occurred constitutes a
16 separate offense. Any party aggrieved by an order of the
17 commission under this section, except an order assessing a civil
18 penalty issued under subdivision (1)(b) of this section, has the
19 rights of appeal set forth in section 75-136.01. For an order
20 assessing a civil penalty issued under subdivision (1)(b) of this
21 section, any party aggrieved may appeal. The appeal shall be in
22 accordance with the Administrative Procedure Act.

23 (3) When any person or party is accused of any violation
24 listed in this section, the commission shall notify such person or
25 party in writing (a) setting forth the date, facts, and nature of
26 each act or omission upon which each charge of a violation is
27 based, (b) specifically identifying the particular statute,
28 certificate, permit, rule, regulation, or order purportedly

1 violated, (c) that a hearing will be held and the time, date, and
 2 place of the hearing, (d) that in addition to the civil penalty,
 3 the commission may enforce additional penalties and relief as
 4 provided by law, and (e) that upon failure to pay any civil penalty
 5 determined by the commission, the penalty may be collected by civil
 6 action in the district court of Lancaster County.

7 Sec. 2. Section 75-901, Reissue Revised Statutes of
 8 Nebraska, is amended to read:

9 75-901. Sections 75-901 to 75-909 and sections 5 and 6
 10 of this act shall be known and may be cited as the Grain Dealer
 11 Act.

12 Sec. 3. Section 75-902, Reissue Revised Statutes of
 13 Nebraska, is amended to read:

14 75-902. For purposes of the Grain Dealer Act, unless the
 15 context otherwise requires:

16 (1) Commission means the Public Service Commission;

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

23 (3) Grain dealer means any person, partnership, limited
 24 liability company, corporation, or association, other than a ~~eustom~~
 25 ~~feeder of livestock or poultry,~~ a state grain warehouse licensed in
 26 Nebraska, or a grain warehouse located in Nebraska which is
 27 licensed under the Grain Warehouse Act or located in Nebraska and
 28 licensed under the United States Warehouse Act that does not buy,

1 sell, or transport grain other than grain that is received at its
 2 licensed warehouse facilities, who:

3 (a) ~~buys~~ Buys more than five thousand dollars of grain
 4 from its owner or producer within this state in a month for
 5 purposes of:

6 (i) Selling ~~selling~~ such grain;

7 (ii) Feeding such grain to livestock owned by another
 8 person; or

9 (iii) Processing such grain, except if such grain will be
 10 processed to feed the buyer's own livestock; 7

11 (b) ~~transports~~ Transports grain into this state for
 12 purposes of selling such grain; 7 or

13 (c) ~~acts~~ Acts as an employee or agent of a buyer or
 14 seller for purposes of collective bargaining in the marketing of
 15 grain; and

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

19 Sec. 4. Section 75-903, Revised Statutes Supplement,
 20 2002, is amended to read:

21 75-903. All grain dealers doing business in this state
 22 shall be licensed by the commission. If the applicant is an
 23 individual, the application shall include the applicant's social
 24 security number. To procure and maintain a license, each grain
 25 dealer shall:

26 (1) Pay an annual fee of thirty dollars which shall be
 27 due on or before the date established by the commission for each
 28 license and a registration fee not to exceed twenty dollars per

1 year for each vehicle used by such licensee to transport grain.
2 Such fees shall be paid to the State Treasurer and credited to the
3 state General Fund;

4 (2) Equip each vehicle used by the licensee for grain
5 transportation with a commercial license plate registered with the
6 Department of Motor Vehicles, except that a licensee who resides in
7 another state shall license such vehicles according to the laws of
8 his or her state of residence;

9 (3) Affix a grain dealer plate issued by the commission
10 to each vehicle used by the licensee;

11 (4) File security which may be a bond issued by a
12 corporate surety company and payable to the commission, an
13 irrevocable letter of credit, or a certificate of deposit, subject
14 to the approval of the commission, for the benefit of any producer
15 or owner within this state who files a valid claim arising from a
16 sale to or purchase from a grain dealer. The security shall be in
17 the amount of thirty-five thousand dollars or seven percent of
18 grain purchases by the grain dealer in the preceding license year,
19 ~~as reported on a form prescribed by the commission,~~ whichever is
20 greater, not to exceed ~~one hundred fifty~~ three hundred thousand
21 dollars. Such security shall be furnished on the condition that
22 the licensee will pay for any grain purchased upon demand, not
23 later than thirty days after ~~taking possession of the grain~~
24 ~~purchased~~ the date of the last shipment of any contract. The
25 liability of the surety shall cover purchases and sales made or
26 arranged by the grain dealer during the time the bond is in force.
27 A grain dealer's bond filed with the commission shall be in
28 continuous force and effect until canceled by the surety. The

1 liability of the surety on any bond required by this section shall
2 not accumulate for each successive license period during which the
3 bond is in force; and

4 (5) ~~File, as the commission may by rule or regulation~~
5 ~~require, a financial statement of the licensee's operations as a~~
6 ~~grain dealer~~ a reviewed or audit level fiscal year-end financial
7 statement prepared by a person or firm which holds a permit granted
8 by the Nebraska State Board of Public Accountancy. If licensing as
9 an individual, the financial statement shall be prepared in
10 accordance with Other Comprehensive Basis of Accountancy, as filed
11 with the board, for a personal financial statement, using
12 historical cost and accrual basis of accounting. If licensing as a
13 partnership, corporation, or limited liability company, the
14 financial statement shall be prepared in conformity with accounting
15 principles generally accepted in the United States. The financial
16 statement shall include: (a) A statement of income showing profit
17 or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a
18 statement of proprietor's capital or retained earnings; (e) the
19 volume and dollar value of the grain purchases the licensee made in
20 Nebraska during the fiscal year; and (f) the accountant's
21 certification, assurances, opinions, and comments and the notes
22 with respect to the financial statement. If the volume and dollar
23 value of the grain purchases is not reported, the grain dealer
24 shall file the maximum grain dealer security as required by the
25 Grain Dealer Act.

26 If an applicant for a grain dealer license is a wholly
27 owned subsidiary of a parent company and such a financial statement
28 is not prepared for the subsidiary, the parent company shall submit

1 its reviewed or audit level fiscal year-end financial statement and
2 shall execute an unconditional guarantee agreement as prescribed by
3 the commission.

4 Sec. 5. For each application filed under section 75-903
5 after January 1, 2004, one of the following primary parties shall
6 be subject to fingerprinting and a check of his or her criminal
7 history record information maintained by the Federal Bureau of
8 Investigation through the Nebraska State Patrol: (1) If the
9 applicant is not an individual, the chief executive officer,
10 president, or general manager; or (2) if the applicant is an
11 individual, the individual. If the primary party has been subject
12 to a check of his or her criminal history record information
13 pursuant to this section on a prior application, he or she is not
14 subject to another such check upon a subsequent application. A
15 primary party shall furnish to the Nebraska State Patrol a full set
16 of fingerprints to enable a criminal background investigation to be
17 conducted. The primary party shall request that the Nebraska State
18 Patrol submit the fingerprints to the Federal Bureau of
19 Investigation for a national criminal history record check. The
20 primary party shall pay the actual cost, if any, of the
21 fingerprinting and check of his or her criminal history record
22 information. The primary party shall authorize release of the
23 national criminal history record check to the commission. The
24 criminal history record information check shall be completed within
25 ninety days after the date the application for a license is
26 received in the commission's office, and if not, the application
27 shall be returned to the applicant. The commission shall deny a
28 warehouse license to any applicant whose primary party has been

1 convicted of a felony financial crime.

2 Sec. 6. The commission may assess a civil penalty,
3 pursuant to section 75-156, against any person who violates the
4 Grain Dealer Act.

5 Sec. 7. Section 88-525, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 88-525. Sections 88-525 to 88-552 and sections 11 and 13
8 of this act shall be known and may be cited as the Grain Warehouse
9 Act.

10 Sec. 8. Section 88-526, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 88-526. As used in the Grain Warehouse Act, unless the
13 context otherwise requires:

14 (1) Commission shall mean the Public Service Commission;

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

21 (3) Grain in storage shall mean any grain which has been
22 received at any warehouse ~~for which the actual sale price is not~~
23 ~~fixed and payment is not made within thirty days after the receipt~~
24 ~~of the grain~~ and to which title has not been transferred to the
25 warehouseman by signed contract or priced scale ticket;

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

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

3 (6) Warehouseman shall mean any person, partnership,
4 limited liability company, corporation, or association who (a)
5 receives grain for storage or stores or offers to store grain for
6 legal consideration for another person, partnership, limited
7 liability company, corporation, or association in a warehouse where
8 delivered or (b) receives grain for shipment to other points for
9 storage, consignment, or resale either in or out of this state.

10 Sec. 9. Section 88-527, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 88-527. (1) No person shall operate a warehouse nor act
13 as a warehouseman without a license issued pursuant to the Grain
14 Warehouse Act. Warehouses, except warehouses which are licensed
15 under the United States Warehouse Act, shall be licensed and
16 regulated by the commission. If the applicant is an individual,
17 the application shall include the applicant's social security
18 number. Such warehouses shall be inspected by the commission at
19 least once every twelve months.

20 (2) If the commission determines that additional
21 examinations are necessary after a regular examination is completed
22 at a warehouse, the commission may charge such warehouse for the
23 cost of the additional examinations according to the commission's
24 fee schedule. Warehouses shall only be charged if such
25 examinations are for reasons of irregularities from the previous
26 examination or if financial conditions warrant additional
27 examinations.

28 (3) The commission may make available to the United

1 States Government or any of its agencies, including the Commodity
2 Credit Corporation, the results of inspections made and inspection
3 reports submitted by employees of the commission upon payment of
4 such fees as may be determined by the commission. The fees shall
5 cover the actual cost of the services rendered in regard to
6 providing the information.

7 ~~(3)~~ (4) The commission may charge for inspections
8 conducted at the request of a warehouse licensee. The commission
9 may assess a surveillance fee against the assets of a warehouse
10 licensee for actual expenses incurred by the commission in
11 suspending a license or terminating the operations of a warehouse
12 licensee. The commission may enter into contracts for such purpose
13 and shall keep a record of all surveillance fees collected. All
14 surveillance fees collected by the commission shall be deposited in
15 the Nebraska Grain Warehouse Surveillance Cash Fund.

16 ~~(4)~~ (5) The commission may enter into agreements and
17 contracts with regulators in states which border Nebraska for the
18 purpose of licensing or examining any public grain warehouseman
19 which operates facilities in such states. The commission shall
20 assume all jurisdiction over any warehouseman headquartered in
21 Nebraska regarding his or her warehouse activity. A warehouseman
22 headquartered and licensed in another state which acquires
23 facilities in Nebraska is under the jurisdiction of the headquarter
24 state under the terms of such agreement or contract.

25 Sec. 10. Section 88-528, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 88-528. Each applicant for a license and each warehouse
28 licensee shall annually file an application with the commission and

1 shall submit to a criminal background check as set forth in section
2 11 of this act. The application shall be in the form prescribed by
3 the commission to do business under the Grain Warehouse Act and
4 shall include a ~~report of an audit or review~~ a reviewed or audit
5 level fiscal year-end financial statement prepared in accordance
6 with generally accepted accounting practices in the United States
7 and ~~conducted~~ by a person or firm which holds a permit granted by
8 the Nebraska State Board of Public Accountancy. If licensing as an
9 individual, the financial statement shall be prepared in accordance
10 with Other Comprehensive Basis of Accountancy, as filed with the
11 board, for a personal financial statement, using historical cost
12 and accrual basis of accounting. The financial statement ~~Each~~
13 report shall include: ~~7 but not be limited to, the following:~~ (1)
14 A balance sheet; (2) a statement of income showing profit or loss;
15 (3) a statement of retained earnings; (4) a statement of changes in
16 the financial position; and (5) the accountant's certifications,
17 assurances, opinions, comments, and notes with regard to such
18 report. Such application shall set forth the location of the
19 warehouse to be used by the applicant, its relation to railroad
20 trackage, its capacity, its general plan and equipment, and its
21 ownership.

22 If an applicant for a license is a wholly owned
23 subsidiary of a parent company and such a financial statement is
24 not prepared for the subsidiary, the parent company shall submit
25 its reviewed or audit level fiscal year-end financial statement and
26 shall execute an unconditional guarantee agreement as prescribed by
27 the commission.

28 Sec. 11. For each application filed under section 88-528

1 after January 1, 2004, one of the following primary parties shall
2 be subject to fingerprinting and a check of his or her criminal
3 history record information maintained by the Federal Bureau of
4 Investigation through the Nebraska State Patrol: (1) If the
5 applicant is not an individual, the chief executive officer,
6 president, or general manager; or (2) if the applicant is an
7 individual, the individual. If the primary party has been subject
8 to a check of his or her criminal history record information
9 pursuant to this section on a prior application, he or she is not
10 subject to another such check upon a subsequent application. A
11 primary party shall furnish to the Nebraska State Patrol a full set
12 of fingerprints to enable a criminal background investigation to be
13 conducted. The primary party shall request that the Nebraska State
14 Patrol submit the fingerprints to the Federal Bureau of
15 Investigation for a national criminal history record check. The
16 primary party shall pay the actual cost, if any, of the
17 fingerprinting and check of his or her criminal history record
18 information. The primary party shall authorize release of the
19 national criminal history record check to the commission. The
20 criminal history record information check shall be completed within
21 ninety days after the date the application for a license is
22 received in the commission's office, and if not, the application
23 shall be returned to the applicant. The commission shall deny a
24 warehouse license to any applicant whose primary party has been
25 convicted of a felony financial crime.

26 Sec. 12. Section 88-536, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 88-536. (1) Within fifteen days after demand by the

1 owner or deliverer of any grain to a warehouse for storage, the
2 warehouse licensee shall issue a lawful negotiable or nonnegotiable
3 receipt to such owner or deliverer of such grain. The receipt
4 shall state the date of delivery, the name of the owner, and the
5 grade, gross weight, dockage, and net weight of the grain
6 represented in the receipt.

7 (2) (a) The commission shall prepare forms for such
8 receipts which shall be used by all warehouse licensees and
9 registered and may adopt procedures for the electronic issuance of
10 such receipts. All warehouse licensees shall either use forms
11 prepared by the commission for such receipts or follow procedures
12 adopted by the commission for electronic issuing of such receipts.
13 Warehouse licensees that use forms prepared by the commission shall
14 register such receipts with the commission.

15 (b) The commission shall fix charges to be assessed and
16 collected for such warehouse receipt forms not to exceed the cost
17 of printing, delivering, and handling. Payment of such charges
18 shall be made in advance of delivery of such receipt forms and
19 shall entitle each such receipt to registration without any further
20 charge or fee. The commission may make refunds of such charges for
21 such unused receipt forms as may be returned to the commission.

22 (c) All procedures for electronic filing of receipts
23 adopted by the commission shall comply with section 86-611. The
24 commission may adopt authentication procedures to verify receipts
25 issued electronically. Compliance with the authentication
26 procedures adopted by the commission shall have the same validity
27 as a signature on any receipt.

28 (3) Any warehouse licensee may issue a receipt to himself

1 or herself as the owner of grain stored in his or her own
2 warehouse, which receipt shall be registered with the commission.
3 Upon receiving any such grain warehouse receipt for registration
4 and being satisfied that the provisions of the Grain Warehouse Act
5 and any rules and regulations adopted and promulgated pursuant to
6 the act have been complied with, the commission shall cause such
7 receipt to be registered.

8 Sec. 13. The commission may assess a civil penalty,
9 pursuant to section 75-156, against any person who violates the
10 Grain Warehouse Act.

11 Sec. 14. Section 89-1,104.01, Reissue Revised Statutes
12 of Nebraska, is amended to read:

13 89-1,104.01. The fees charged pursuant to section
14 89-1,104 shall be remitted by the Public Service Commission to the
15 State Treasurer. The State Treasurer shall credit ~~the first twenty~~
16 ~~thousand dollars~~ of such fees to the Moisture Testing Examination
17 Fund, which fund is hereby created. The fund shall be appropriated
18 to the Public Service Commission to ~~purchase or repair moisture~~
19 ~~field and laboratory equipment~~ be used to cover the costs
20 associated with the grain moisture measuring devices program. The
21 money in such fund may be used at any time by the commission. Any
22 money in the fund available for investment shall be invested by the
23 state investment officer pursuant to the Nebraska Capital Expansion
24 Act and the Nebraska State Funds Investment Act.

25 ~~The State Treasurer shall credit any fees in excess of~~
26 ~~twenty thousand dollars to the General Fund. If at any time the~~
27 ~~funds in the Moisture Testing Examination Fund drop below twenty~~
28 ~~thousand dollars,~~ the fees remitted by the Public Service

1 Commission to the State Treasurer shall be credited to the Moisture
2 Testing Examination Fund until such fund has a balance of twenty
3 thousand dollars.

4 Sec. 15. Original sections 75-901, 75-902, 88-525 to
5 88-528, 88-536, and 89-1,104.01, Reissue Revised Statutes of
6 Nebraska, and sections 75-156 and 75-903, Revised Statutes
7 Supplement, 2002, are repealed.