

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 735

Introduced by Kremer, 34; Baker, 44; Burling, 33; 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 custom
25 feeder of livestock or poultry, or a state grain warehouse licensed
26 in 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 (a) buys grain from its owner or
3 producer within this state for purposes of selling such grain, (b)
4 transports grain into this state for purposes of selling such
5 grain, or (c) acts as an employee or agent of a buyer or seller for
6 purposes of collective bargaining in the marketing of grain; and

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

10 Sec. 4. Section 75-903, Revised Statutes Supplement,
11 2002, is amended to read:

12 75-903. All grain dealers doing business in this state
13 shall be licensed by the commission. If the applicant is an
14 individual, the application shall include the applicant's social
15 security number. To procure and maintain a license, each grain
16 dealer shall:

17 (1) Pay an annual fee of thirty dollars which shall be
18 due on or before the date established by the commission for each
19 license and a registration fee not to exceed twenty dollars per
20 year for each vehicle used by such licensee to transport grain.
21 Such fees shall be paid to the State Treasurer and credited to the
22 state General Fund;

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

28 (3) Affix a grain dealer plate issued by the commission

1 to each vehicle used by the licensee;

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

23 (5) File, ~~as the commission may by rule or regulation~~
24 ~~require,~~ a financial statement of the licensee's operations as a
25 ~~grain dealer~~ a reviewed or audited fiscal year-end financial
26 statement prepared by a person or firm which holds a permit granted
27 by the Nebraska State Board of Public Accountancy. If licensing as
28 an individual, the financial statement shall be prepared in

1 accordance with Other Comprehensive Basis of Accountancy, as filed
2 with the board, for a personal financial statement, using
3 historical cost and accrual basis of accounting. If licensing as a
4 partnership, corporation, or limited liability company, the
5 financial statement shall be prepared in conformity with accounting
6 principles generally accepted in the United States. The financial
7 statement shall include: (a) A statement of income showing profit
8 or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a
9 statement of proprietor's capital or retained earnings; (e) the
10 volume and dollar value of the grain purchases the licensee made in
11 Nebraska during the fiscal year; and (f) the accountant's
12 certification, assurances, opinions, and comments and the notes
13 with respect to the financial statement. If the volume and dollar
14 value of the grain purchases is not reported, the grain dealer
15 shall file the maximum grain dealer security as required by the
16 Grain Dealer Act.

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

23 Sec. 5 For each application filed under section 75-903
24 after January 1, 2004, one of the following primary parties shall
25 be subject to fingerprinting and a check of his or her criminal
26 history record information maintained by the Federal Bureau of
27 Investigation through the Nebraska State Patrol: (1) If the
28 applicant is not an individual, the chief executive officer,

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

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

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

26 88-525. Sections 88-525 to 88-552 and sections 11 and 13
27 of this act shall be known and may be cited as the Grain Warehouse
28 Act.

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

3 88-526. As used in the Grain Warehouse Act, unless the
4 context otherwise requires:

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

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

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

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

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

22 (6) Warehouseman shall mean any person, partnership,
23 limited liability company, corporation, or association who (a)
24 receives grain for storage or stores or offers to store grain for
25 legal consideration for another person, partnership, limited
26 liability company, corporation, or association in a warehouse where
27 delivered or (b) receives grain for shipment to other points for
28 storage, consignment, or resale either in or out of this state.

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

3 88-527. (1) No person shall operate a warehouse nor act
4 as a warehouseman without a license issued pursuant to the Grain
5 Warehouse Act. Warehouses, except warehouses which are licensed
6 under the United States Warehouse Act, shall be licensed and
7 regulated by the commission. If the applicant is an individual,
8 the application shall include the applicant's social security
9 number. Such warehouses shall be inspected by the commission at
10 least once every twelve months.

11 (2) If the commission determines that additional
12 examinations are necessary after a regular examination is completed
13 at a warehouse, the commission may charge such warehouse for the
14 cost of the additional examinations according to the commission's
15 fee schedule. Warehouses shall only be charged if such
16 examinations are for reasons of irregularities from the previous
17 examination or if financial conditions warrant additional
18 examinations.

19 (3) The commission may make available to the United
20 States Government or any of its agencies, including the Commodity
21 Credit Corporation, the results of inspections made and inspection
22 reports submitted by employees of the commission upon payment of
23 such fees as may be determined by the commission. The fees shall
24 cover the actual cost of the services rendered in regard to
25 providing the information.

26 ~~(3)~~ (4) The commission may charge for inspections
27 conducted at the request of a warehouse licensee. The commission
28 may assess a surveillance fee against the assets of a warehouse

1 licensee for actual expenses incurred by the commission in
2 suspending a license or terminating the operations of a warehouse
3 licensee. The commission may enter into contracts for such purpose
4 and shall keep a record of all surveillance fees collected. All
5 surveillance fees collected by the commission shall be deposited in
6 the Nebraska Grain Warehouse Surveillance Cash Fund.

7 ~~(4)~~ (5) The commission may enter into agreements and
8 contracts with regulators in states which border Nebraska for the
9 purpose of licensing or examining any public grain warehouseman
10 which operates facilities in such states. The commission shall
11 assume all jurisdiction over any warehouseman headquartered in
12 Nebraska regarding his or her warehouse activity. A warehouseman
13 headquartered and licensed in another state which acquires
14 facilities in Nebraska is under the jurisdiction of the headquarter
15 state under the terms of such agreement or contract.

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

18 88-528. Each applicant for a license and each warehouse
19 licensee shall annually file an application with the commission and
20 shall submit to a criminal background check as set forth in section
21 11 of this act. The application shall be in the form prescribed by
22 the commission to do business under the Grain Warehouse Act and
23 shall include a report of an audit or review an audited fiscal
24 year-end financial statement prepared in accordance with generally
25 accepted accounting practices in the United States and conducted by
26 a person or firm which holds a permit granted by the Nebraska State
27 Board of Public Accountancy. If licensing as an individual, the
28 financial statement shall be prepared in accordance with Other

1 Comprehensive Basis of Accountancy, as filed with the board, for a
2 personal financial statement, using historical cost and accrual
3 basis of accounting. The financial statement ~~Each report~~ shall
4 include: ~~, but not be limited to, the following:~~ (1) A balance
5 sheet; (2) a statement of income showing profit or loss; (3) a
6 statement of retained earnings; (4) a statement of changes in the
7 financial position; and (5) the accountant's certifications,
8 assurances, opinions, comments, and notes with regard to such
9 report. Such application shall set forth the location of the
10 warehouse to be used by the applicant, its relation to railroad
11 trackage, its capacity, its general plan and equipment, and its
12 ownership.

13 If an applicant for a license is a wholly owned
14 subsidiary of a parent company and such a financial statement is
15 not prepared for the subsidiary, the parent company shall submit
16 its audited fiscal year-end financial statement and shall execute
17 an unconditional guarantee agreement as prescribed by the
18 commission.

19 Sec. 11. For each application filed under section 88-528
20 after January 1, 2004, one of the following primary parties shall
21 be subject to fingerprinting and a check of his or her criminal
22 history record information maintained by the Federal Bureau of
23 Investigation through the Nebraska State Patrol: (1) If the
24 applicant is not an individual, the chief executive officer,
25 president, or general manager; or (2) if the applicant is an
26 individual, the individual. If the primary party has been subject
27 to a check of his or her criminal history record information
28 pursuant to this section on a prior application, he or she is not

1 subject to another such check upon a subsequent application. A
2 primary party shall furnish to the Nebraska State Patrol a full set
3 of fingerprints to enable a criminal background investigation to be
4 conducted. The primary party shall request that the Nebraska State
5 Patrol submit the fingerprints to the Federal Bureau of
6 Investigation for a national criminal history record check. The
7 primary party shall pay the actual cost, if any, of the
8 fingerprinting and check of his or her criminal history record
9 information. The primary party shall authorize release of the
10 national criminal history record check to the commission. The
11 criminal history record information check shall be completed within
12 ninety days after the date the application for a license is
13 received in the commission's office, and if not, the application
14 shall be returned to the applicant. The commission shall deny a
15 warehouse license to any applicant whose primary party has been
16 convicted of a felony financial crime.

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

19 88-536. (1) Within fifteen days after demand by the
20 owner or deliverer of any grain to a warehouse for storage, the
21 warehouse licensee shall issue a lawful negotiable or nonnegotiable
22 receipt to such owner or deliverer of such grain. The receipt
23 shall state the date of delivery, the name of the owner, and the
24 grade, gross weight, dockage, and net weight of the grain
25 represented in the receipt.

26 (2) (a) The commission shall prepare forms for such
27 receipts ~~which shall be used by all warehouse licensees and~~
28 ~~registered~~ and may adopt procedures for the electronic issuance of

1 such receipts. All warehouse licensees shall either use forms
2 prepared by the commission for such receipts or follow procedures
3 adopted by the commission for electronic issuing of such receipts.
4 Warehouse licensees that use forms prepared by the commission shall
5 register such receipts with the commission.

6 (b) The commission shall fix charges to be assessed and
7 collected for such warehouse receipt forms not to exceed the cost
8 of printing, delivering, and handling. Payment of such charges
9 shall be made in advance of delivery of such receipt forms and
10 shall entitle each such receipt to registration without any further
11 charge or fee. The commission may make refunds of such charges for
12 such unused receipt forms as may be returned to the commission.

13 (c) All procedures for electronic filing of receipts
14 adopted by the commission shall comply with section 86-611. The
15 commission may adopt authentication procedures to verify receipts
16 issued electronically. Compliance with the authentication
17 procedures adopted by the commission shall have the same validity
18 as a signature on any receipt.

19 (3) Any warehouse licensee may issue a receipt to himself
20 or herself as the owner of grain stored in his or her own
21 warehouse, which receipt shall be registered with the commission.
22 Upon receiving any such grain warehouse receipt for registration
23 and being satisfied that the provisions of the Grain Warehouse Act
24 and any rules and regulations adopted and promulgated pursuant to
25 the act have been complied with, the commission shall cause such
26 receipt to be registered.

27 Sec. 13. The commission may assess a civil penalty,
28 pursuant to section 75-156, against any person who violates the

1 Grain Warehouse Act.

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

4 89-1,104.01. The fees charged pursuant to section
5 89-1,104 shall be remitted by the Public Service Commission to the
6 State Treasurer. The State Treasurer shall credit ~~the first twenty~~
7 ~~thousand dollars~~ of such fees to the Moisture Testing Examination
8 Fund, which fund is hereby created. The fund shall be appropriated
9 to the Public Service Commission to ~~purchase or repair moisture~~
10 ~~field and laboratory equipment~~ be used to cover the costs
11 associated with the grain moisture measuring devices program. The
12 money in such fund may be used at any time by the commission. Any
13 money in the fund available for investment shall be invested by the
14 state investment officer pursuant to the Nebraska Capital Expansion
15 Act and the Nebraska State Funds Investment Act.

16 The State Treasurer shall credit any fees in excess of
17 ~~twenty thousand dollars to the General Fund.~~ If at any time the
18 ~~funds in the Moisture Testing Examination Fund drop below twenty~~
19 ~~thousand dollars,~~ the fees remitted by the Public Service
20 Commission to the State Treasurer shall be credited to the Moisture
21 Testing Examination Fund until such fund has a balance of twenty
22 ~~thousand dollars.~~

23 Sec. 15. Original sections 75-901, 75-902, 88-525 to
24 88-528, 88-536, and 89-1,104.01, Reissue Revised Statutes of
25 Nebraska, and sections 75-156 and 75-903, Revised Statutes
26 Supplement, 2002, are repealed.