

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 439**

Introduced by Kremer, 34

Read first time January 13, 2005

Committee: Agriculture

A BILL

1 FOR AN ACT relating to grain; to amend sections 75-902, 75-903,  
2 75-905, 88-535, and 88-543, Reissue Revised Statutes of  
3 Nebraska, and sections 88-525, 88-526, and 88-528,  
4 Revised Statutes Supplement, 2004; to provide for direct  
5 ship storage programs as prescribed; to provide an  
6 operative date; and to repeal the original sections.  
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) Direct delivery grain means all grain that is bought,  
7 sold, or transported in the name of a warehouse licensee, or is  
8 otherwise received by a warehouse licensee, other than grain that  
9 is physically deposited at the licensed warehouse facilities;

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

16                  ~~(3)~~ (4) Grain dealer means any person, partnership,  
17 limited liability company, corporation, or association, ~~other than~~  
18 ~~a custom feeder of livestock or poultry or a grain warehouse~~  
19 ~~licensed under the Grain Warehouse Act or located in Nebraska and~~  
20 ~~licensed under the United States Warehouse Act that does not buy,~~  
21 ~~sell, or transport grain other than grain that is received at its~~  
22 ~~licensed warehouse facilities, who that~~ (a) buys grain from ~~its~~ the  
23 owner or producer of the grain within this state for purposes of  
24 selling such grain, (b) transports grain into this state for  
25 purposes of selling such grain, or (c) acts as an employee or agent  
26 of a buyer or seller for purposes of collective bargaining in the  
27 marketing of grain. Grain dealer does not include (a) a custom  
28 feeder of livestock or poultry or (b) a warehouse licensee under

1 the Grain Warehouse Act or a warehouse licensee under the United  
 2 States Warehouse Act of a warehouse located in Nebraska, if the  
 3 warehouse licensee does not buy, sell, or transport grain other  
 4 than grain that is physically deposited at its licensed warehouse  
 5 facilities;

6 (5) Grain payable obligation means an obligation of a  
 7 warehouse receiver of direct delivery grain tendered for storage  
 8 that is satisfiable by delivery on demand of a like quantity and  
 9 quality of the grain tendered that is physically present and stored  
 10 commingled in the warehouse and upon which the tenderer of the  
 11 grain has title, control, and risk of loss; and

12 ~~(4)~~ (6) Producer means the owner, tenant, or operator of  
 13 land in this state who has an interest in and receives all or part  
 14 of the proceeds from the sale of grain produced on that land.

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

17 75-903. All grain dealers doing business in this state  
 18 shall be licensed by the commission. If the applicant is an  
 19 individual, the application shall include the applicant's social  
 20 security number. To procure and maintain a license, each grain  
 21 dealer shall:

22 (1) Pay an annual fee of sixty dollars which shall be due  
 23 on or before the date established by the commission for each  
 24 license and a registration fee not to exceed forty dollars per year  
 25 for each vehicle used by such licensee to transport grain. Such  
 26 fees shall be paid to the State Treasurer and credited to the  
 27 General Fund;

28 (2) Equip each vehicle used by the licensee for grain

1 transportation with a commercial license plate registered with the  
2 Department of Motor Vehicles, except that a licensee who resides in  
3 another state shall license such vehicles according to the laws of  
4 his or her state of residence;

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

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

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

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

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

6 75-905. (1) Except as provided in subsection (2) of this  
7 section, no seller shall have recourse to the grain dealer's  
8 security unless the seller:

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

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

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

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

24 (3) A tenderer of direct delivery grain for storage to a  
25 warehouse receiver shall have recourse to the warehouse licensee's  
26 grain dealer's security for an amount equal to the value of grain  
27 represented by the grain payable obligation of the warehouse to the  
28 tenderer if the tenderer:

1           (a) Demands, within thirty days after delivery, the  
 2 warehouse licensee's satisfaction of the grain payable obligation  
 3 by (i) actual delivery of a like quantity and quality of grain  
 4 tendered or (ii) issuance of a warehouse receipt or other  
 5 documentation of the tenderer's right of delivery upon demand of a  
 6 like quantity and quality of grain tendered;

7           (b) Negotiates any negotiable instrument accepted by the  
 8 tenderer in lieu of satisfaction of the grain payable obligation  
 9 within thirty days after its issuance; and

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

13           Sec. 4.     Section 88-525, Revised Statutes Supplement,  
 14 2004, is amended to read:

15           88-525.   Sections 88-525 to 88-552 and section 7 of this  
 16 act shall be known and may be cited as the Grain Warehouse Act.

17           Sec. 5.     Section 88-526, Revised Statutes Supplement,  
 18 2004, is amended to read:

19           88-526.   As used in the Grain Warehouse Act, unless the  
 20 context otherwise requires:

21           (1) Commission shall mean means the Public Service  
 22 Commission;

23           (2) Direct delivery grain means all grain that is bought,  
 24 sold, or transported in the name of a warehouse licensee, or  
 25 otherwise received by a warehouse licensee, other than grain that  
 26 is physically deposited at the licensed warehouse facilities;

27           (3) Grain shall mean means wheat, corn, oats, soybeans,  
 28 barley, rye, flax, or sorghum which has not been processed or

1 packaged for the purpose of distribution as seed, including, but  
 2 not limited to, edible beans, whole corn plant pellets, alfalfa  
 3 pellets, millet, sunflower seed, safflower seed, and any other bulk  
 4 pelleted agricultural storable commodity;

5 ~~(3)~~ (4) Grain in storage ~~shall mean~~ means any grain which  
 6 has been received at any warehouse and to which title has not been  
 7 transferred to the warehouseman by signed contract or priced scale  
 8 ticket;

9 (5) Received grain means:

10 (a) Any grain that is physically deposited into a  
 11 licensed public warehouse; and

12 (b) Any direct delivery grain tendered for storage to a  
 13 licensed public warehouse certified to receive direct delivery  
 14 grain tendered for storage at the time that the warehouse licensee  
 15 accounts for and documents the receipt of the grain by the creation  
 16 of a storage position in the name of the tenderer in a like amount  
 17 and quality of the grain tendered that is physically present and  
 18 stored commingled in the warehouse licensee's warehouse facilities  
 19 and upon which the tenderer of the grain has title, control, and  
 20 risk of loss;

21 ~~(4)~~ (6) Warehouse ~~shall mean~~ means any grain elevator,  
 22 mill, grist mill, building, or receptacle in which grain is held in  
 23 storage for more than ten consecutive days;

24 ~~(5)~~ (7) Warehouse licensee ~~shall mean~~ means any  
 25 warehouseman who is licensed pursuant to the Grain Warehouse Act;  
 26 and

27 ~~(6)~~ (8) Warehouseman ~~shall mean~~ means any person,  
 28 partnership, limited liability company, corporation, or association

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

7           Sec. 6.     Section 88-528, Revised Statutes Supplement,  
8 2004, is amended to read:

9           88-528. Each applicant for a license and each warehouse  
10 licensee shall annually file an application with the commission and  
11 shall submit to a criminal background check as set forth in section  
12 88-528.01. The application shall be in the form prescribed by the  
13 commission to do business under the Grain Warehouse Act and shall  
14 include an audited or reviewed fiscal year-end financial statement  
15 prepared in accordance with generally accepted accounting practices  
16 in the United States by a person or firm which holds a permit  
17 granted by the Nebraska State Board of Public Accountancy. If the  
18 applicant files a reviewed fiscal year-end financial statement, the  
19 applicant shall also provide additional security pursuant to  
20 section 88-530 in such amount as the commission requires. If  
21 licensing as an individual, the financial statement shall be  
22 prepared in accordance with Other Comprehensive Basis of  
23 Accountancy, as filed with the board, for a personal financial  
24 statement, using historical cost and accrual basis of accounting.  
25 The financial statement shall include: (1) A balance sheet; (2) a  
26 statement of income showing profit or loss; (3) a statement of  
27 retained earnings; (4) a statement of changes in the financial  
28 position; and (5) the accountant's certifications, assurances,

1 opinions, comments, and notes with regard to such financial  
2 statement. An applicant may also submit a valuation of assets by  
3 competent appraisal acceptable to the commission for inclusion in  
4 computing net worth for the purpose of meeting any net worth  
5 requirements imposed by the act or rules and regulations of the  
6 commission. If a valuation of assets is submitted, no more than  
7 seventy percent of appraised value shall be used in determining  
8 compliance with net worth requirements. Such application shall set  
9 forth the location of the warehouse to be used by the applicant,  
10 its relation to railroad trackage, its capacity, its general plan  
11 and equipment, and its ownership.

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

20 Sec. 7. (1) No warehouse licensee shall receive direct  
21 delivered grain tendered for storage unless annually certified by  
22 the commission as meeting the following standards:

23 (a) Is a warehouse licensee pursuant to the Grain  
24 Warehouse Act;

25 (b) Annually files an unqualified or acceptably qualified  
26 financial audit conducted by an independent certified public  
27 accountant according to generally accepted accounting principles;

28 (c) Has and maintains net worth or stockholders' equity

1 of not less than three hundred thousand dollars; and

2 (d) Is licensed as a grain dealer pursuant to the Grain  
3 Dealer Act and maintains security as required for grain payable  
4 obligations under such act.

5 (2) No warehouse shall record grain in the warehouse  
6 daily position record as received or loaded out that has not been  
7 physically deposited in or removed from the warehouse. Grain  
8 tendered for storage received by direct delivery shall create a  
9 grain payable obligation of the receiving warehouse to the tenderer  
10 which shall be promptly and separately recorded in the warehouse  
11 daily position record, along with the transfer of grain among  
12 accounts in satisfaction of grain payable obligations, according to  
13 procedures prescribed by the commission.

14 (3) The commission shall prescribe forms to be issued by  
15 a warehouse licensee to a tenderer for storage prior to the receipt  
16 of grain by direct delivery. Such form shall disclose to the  
17 tenderer the following information:

18 (a) That the delivery of the grain creates a grain  
19 payable obligation that is protected by the receiving warehouse  
20 licensee's grain dealer security until such time as the warehouse  
21 licensee consummates a storage position to the benefit of the  
22 tenderer in the licensed warehouse facility, and that the warehouse  
23 shall consummate the storage position within fifteen days after the  
24 delivery;

25 (b) That the direct delivery grain may affect eligibility  
26 of the grain for participation in federal price support programs;  
27 and

28 (c) That the tenderer may submit one copy of the form

1 signed by both the warehouse licensee and the tenderer to the  
 2 commission within seven days of delivery in order to notify the  
 3 commission of his or her intended status as a valid owner, storer,  
 4 or depositor in the receiving warehouse eligible to claim against  
 5 the warehouse licensee's bond and grain inventory pursuant to  
 6 section 88-547.

7           Sec. 8.     Section 88-535, Reissue Revised Statutes of  
 8 Nebraska, is amended to read:

9           88-535.   (1) Each warehouse licensee shall, at the time  
 10 of the delivery of grain to or the shipment of grain from a  
 11 warehouse, issue a lawful scale ticket to the owner or consignee of  
 12 such grain, except when the delivery or shipment is by rail or  
 13 water. The scale tickets shall contain all information prescribed  
 14 by the commission. A scale ticket issued by a warehouse licensee  
 15 shall be prima facie evidence of the holder's claim of title to the  
 16 goods described in such ticket.

17           (2) The commission may, by rule and regulation, prescribe  
 18 procedures for the issuance of custom scale tickets for the receipt  
 19 of direct delivery grain tendered for storage. A custom scale  
 20 ticket shall be prima facie evidence of the delivery of grain and  
 21 the holder's claim of a grain payable obligation of the receiving  
 22 warehouse licensee.

23           Sec. 9.     Section 88-543, Reissue Revised Statutes of  
 24 Nebraska, is amended to read:

25           88-543.   (1) No warehouse licensee ~~or partner, limited~~  
 26 ~~liability company member, officer,~~ or agent thereof shall: issue

27           (a) Issue a receipt for grain not actually received. If  
 28 at any time there is less grain in a warehouse than outstanding

1 receipts issued for grain, there shall be a presumption that the  
2 warehouse licensee or partner, limited liability company member,  
3 officer, or agent thereof has wrongfully removed grain, has  
4 wrongfully caused grain to be removed, or has issued receipts for  
5 grain not actually received, and has violated this section; -

6 (b) Receive grain tendered for storage by direct delivery  
7 without documenting the receipt by creation of a storage position  
8 for the tenderer with warehouse-owned grain and consummating the  
9 receipt by issuing a warehouse receipt, scale tickets, or other  
10 evidence of the storage position for the benefit of the tenderer  
11 within fifteen days after delivery; or

12 (c) Receive grain tendered for storage by direct delivery  
13 at any time the warehouse licensee does not have sufficient  
14 warehouse-owned grain or grain in open storage to cover the storage  
15 position created for the benefit of the tenderer.

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

20 Sec. 10. This act becomes operative on January 1, 2006.

21 Sec. 11. Original sections 75-902, 75-903, 75-905,  
22 88-535, and 88-543, Reissue Revised Statutes of Nebraska, and  
23 sections 88-525, 88-526, and 88-528, Revised Statutes Supplement,  
24 2004, are repealed.