

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 264**

Introduced by Agriculture Committee: Halloran, 33, Chairperson; Brewer, 43; Holdcroft, 36; Hughes, 24; Ibach, 44; Riepe, 12.

Read first time January 10, 2023

Committee: Agriculture

1 A BILL FOR AN ACT relating to agriculture; to amend sections 75-902,  
2 75-903, 75-903.02, 88-526, 88-527, and 88-528.01, Reissue Revised  
3 Statutes of Nebraska, and sections 75-156 and 88-530, Revised  
4 Statutes Cumulative Supplement, 2022; to change provisions under the  
5 Grain Dealer Act and the Grain Warehouse Act; to redefine terms; to  
6 change a fee; to change filed security provisions; to change  
7 criminal history record check requirements; to change references to  
8 warehouseman; to eliminate obsolete provisions; and to repeal the  
9 original sections.

10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-156, Revised Statutes Cumulative Supplement,  
2 2022, is amended to read:

3 75-156 (1) In addition to other penalties and relief provided by  
4 law, the Public Service Commission may, upon a finding that the violation  
5 is proven by clear and convincing evidence, assess a civil penalty of up  
6 to ten thousand dollars per day against any person, motor carrier,  
7 regulated motor carrier, common carrier, contract carrier, licensee,  
8 grain dealer, or grain warehouse operator ~~warehouseman~~ for each violation  
9 of (a) any provision of the laws of this state within the jurisdiction of  
10 the commission as enumerated in section 75-109.01, (b) any term,  
11 condition, or limitation of any certificate, permit, license, or  
12 authority issued by the commission pursuant to the laws of this state  
13 within the jurisdiction of the commission as enumerated in section  
14 75-109.01, or (c) any rule, regulation, or order of the commission issued  
15 under authority delegated to the commission pursuant to the laws of this  
16 state within the jurisdiction of the commission as enumerated in section  
17 75-109.01.

18 (2) In addition to other penalties and relief provided by law, the  
19 Public Service Commission may, upon a finding that the violation is  
20 proven by clear and convincing evidence, assess a civil penalty not less  
21 than one hundred dollars and not more than one thousand dollars against  
22 any jurisdictional utility for each violation of (a) any provision of the  
23 State Natural Gas Regulation Act, (b) any rule, regulation, order, or  
24 lawful requirement issued by the commission pursuant to the act, (c) any  
25 final judgment or decree made by any court upon appeal from any order of  
26 the commission, or (d) any term, condition, or limitation of any  
27 certificate issued by the commission issued under authority delegated to  
28 the commission pursuant to the act. The amount of the civil penalty  
29 assessed in each case shall be based on the severity of the violation  
30 charged. The commission may compromise or mitigate any penalty prior to  
31 hearing if all parties agree. In determining the amount of the penalty,

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

5 (3) In addition to other penalties and relief provided by law, the  
6 Public Service Commission may, upon a finding that the violation is  
7 proven by clear and convincing evidence, assess a civil penalty of up to  
8 ten thousand dollars per day against any wireless carrier for each  
9 violation of the Enhanced Wireless 911 Services Act or any rule,  
10 regulation, or order of the commission issued under authority delegated  
11 to the commission pursuant to the act.

12 (4) In addition to other penalties and relief provided by law, the  
13 Public Service Commission may, upon a finding that the violation is  
14 proven by clear and convincing evidence, assess a civil penalty of up to  
15 one thousand dollars against any person for each violation of the  
16 Nebraska Uniform Standards for Modular Housing Units Act or the Uniform  
17 Standard Code for Manufactured Homes and Recreational Vehicles or any  
18 rule, regulation, or order of the commission issued under the authority  
19 delegated to the commission pursuant to either act. Each such violation  
20 shall constitute a separate violation with respect to each modular  
21 housing unit, manufactured home, or recreational vehicle, except that the  
22 maximum penalty shall not exceed one million dollars for any related  
23 series of violations occurring within one year from the date of the first  
24 violation.

25 (5) The civil penalty assessed under this section shall not exceed  
26 two million dollars per year for each violation except as provided in  
27 subsection (4) of this section. The amount of the civil penalty assessed  
28 in each case shall be based on the severity of the violation charged. The  
29 commission may compromise or mitigate any penalty prior to hearing if all  
30 parties agree. In determining the amount of the penalty, the commission  
31 shall consider the appropriateness of the penalty in light of the gravity

1 of the violation and the good faith of the violator in attempting to  
2 achieve compliance after notification of the violation is given.

3 (6) Upon notice and hearing in accordance with this section and  
4 section 75-157, the commission may enter an order assessing a civil  
5 penalty of up to one hundred dollars against any person, firm,  
6 partnership, limited liability company, corporation, cooperative, or  
7 association for failure to file an annual report or pay the fee as  
8 required by section 75-116 and as prescribed by commission rules and  
9 regulations or for failure to register as required by section 86-125 and  
10 as prescribed by commission rules and regulations. Each day during which  
11 the violation continues after the commission has issued an order finding  
12 that a violation has occurred constitutes a separate offense. Any party  
13 aggrieved by an order of the commission under this section may appeal.  
14 The appeal shall be in accordance with section 75-136.

15 (7) When any person or party is accused of any violation listed in  
16 this section, the commission shall notify such person or party in writing  
17 (a) setting forth the date, facts, and nature of each act or omission  
18 upon which each charge of a violation is based, (b) specifically  
19 identifying the particular statute, certificate, permit, rule,  
20 regulation, or order purportedly violated, (c) that a hearing will be  
21 held and the time, date, and place of the hearing, (d) that in addition  
22 to the civil penalty, the commission may enforce additional penalties and  
23 relief as provided by law, and (e) that upon failure to pay any civil  
24 penalty determined by the commission, the penalty may be collected by  
25 civil action in the district court of Lancaster County.

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

28 75-902 For purposes of the Grain Dealer Act, unless the context  
29 otherwise requires:

30 (1) Commission means the Public Service Commission;

31 (2) Direct delivery grain has the same meaning as in section 88-526;

1 (3) Direct delivery obligation has the same meaning as in section  
2 88-526;

3 (4)(a) (4) Grain means includes, but is not limited to, all  
4 unprocessed beans, whole corn, milo and other sorghum, wheat, rye,  
5 barley, oats, millet, safflower seed and processed plant pellets, alfalfa  
6 pellets, and any other bulk pelleted agricultural storable commodity,  
7 except grain which has been processed or packaged for distribution as  
8 seed. ÷

9 (b) Grain includes all commodities described in subdivision (4)(a)  
10 of this section whether grown and marketed as fungible commodities or  
11 within segregated marketing channels, including, but not limited to,  
12 certified organic commodities;

13 (5)(a) Grain dealer means any person, partnership, limited liability  
14 company, corporation, or association that (i) buys grain from the  
15 producer of the grain within this state for purposes of selling such  
16 grain or (ii) acts as an employee or agent of a buyer or seller for  
17 purposes of collective bargaining in the marketing of grain.

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

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

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

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

30 Sec. 3. Section 75-903, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           75-903 All grain dealers doing business in this state shall be  
2 licensed by the commission. If the applicant is an individual, the  
3 application shall include the applicant's social security number. To  
4 procure and maintain a license, each grain dealer shall:

5           (1) Pay an annual fee of one hundred dollars which shall be due on  
6 or before the date established by the commission for each license. Such  
7 fees shall be paid to the State Treasurer and credited to the General  
8 Fund;

9           (2) File security which may be a bond issued by a corporate surety  
10 company and payable to the commission, an irrevocable letter of credit,  
11 or a certificate of deposit, subject to the approval of the commission,  
12 for the benefit of any producer who files a valid claim arising from a  
13 sale to a grain dealer. The security shall be in an amount set by the  
14 commission of not less than thirty-five thousand dollars and not more  
15 than one million dollars ~~the amount of thirty-five thousand dollars or~~  
16 ~~seven percent of grain purchases or exchanges by the grain dealer in the~~  
17 ~~grain dealer's preceding fiscal year, whichever is greater, not to exceed~~  
18 ~~three hundred thousand dollars.~~ Amounts used in the calculation of the  
19 security shall include all direct delivery grain purchases and exchanges  
20 valued on the date delivery is made. Amounts used in the calculation of  
21 the security shall not include any transactions in which direct delivery  
22 grain is exchanged for a post-direct delivery storage position and the  
23 post-direct delivery storage position is created by an in-store transfer  
24 on the same date as the delivery of the direct delivery grain. Such  
25 security shall be furnished on the condition that the licensee will pay  
26 for any grain purchased upon demand, not later than fifteen days after  
27 the date of the last shipment of any contract. The liability of the  
28 surety shall cover purchases made by the grain dealer during the time the  
29 bond is in force. A grain dealer's bond filed with the commission shall  
30 be in continuous force and effect until canceled by the surety. The  
31 liability of the surety on any bond required by this section shall not

1 accumulate for each successive license period during which the bond is in  
2 force; and

3 (3) File a reviewed or audited fiscal year-end financial statement  
4 prepared by an independent certified public accounting firm. If licensing  
5 as an individual, the financial statement shall be prepared in accordance  
6 with Other Comprehensive Basis of Accountancy, as filed with the board,  
7 for a personal financial statement, using historical cost and accrual  
8 basis of accounting. If licensing as a partnership, corporation, or  
9 limited liability company, the financial statement shall be prepared in  
10 accordance with accounting principles generally accepted. The financial  
11 statement shall include: (a) A statement of income showing profit or  
12 loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement  
13 of proprietor's capital or retained earnings; (e) the volume and dollar  
14 value of the grain purchases the licensee made in Nebraska during the  
15 fiscal year; (f) the volume and dollar value of transactions in which  
16 direct delivery grain is exchanged for a post-direct delivery storage  
17 position and the post-direct delivery storage position is not created by  
18 an in-store transfer on the same date as the delivery of the direct  
19 delivery grain; and (g) the accounting firm's certification, assurances,  
20 opinions, and comments and the notes with respect to the financial  
21 statement. If the volume and dollar value of the grain purchases is not  
22 reported, the grain dealer shall file the maximum grain dealer security  
23 as required by the Grain Dealer Act.

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

29 Sec. 4. Section 75-903.02, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 75-903.02 For each application filed under section 75-903 after

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

26 Sec. 5. Section 88-526, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 88-526 As used in the Grain Warehouse Act, unless the context  
29 otherwise requires:

30 (1) Commission means the Public Service Commission;

31 (2) Direct delivery grain means all grain that is bought, sold, or

1 transported in the name of a warehouse licensee, other than grain that is  
2 received at the licensed warehouse facilities;

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

8 ~~(4)(a) (4)~~ Grain means wheat, corn, oats, soybeans, barley, rye,  
9 flax, or sorghum which has not been processed or packaged for the purpose  
10 of distribution as seed, including, but not limited to, edible beans,  
11 whole corn plant pellets, alfalfa pellets, millet, sunflower seed,  
12 safflower seed, and any other bulk pelleted agricultural storable  
13 commodity. ÷

14 (b) Grain includes all commodities described in subdivision (4)(a)  
15 of this section whether grown and marketed as fungible commodities or  
16 grown and marketed within segregated marketing channels, including, but  
17 not limited to, certified organic commodities;

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

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

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

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

29 (9) Warehouse means any grain elevator, mill, grist mill, building,  
30 or receptacle in which grain is held in storage for more than ten  
31 consecutive days;

1           (10) Warehouse licensee means any warehouse operator ~~warehouseman~~  
2 who is licensed pursuant to the Grain Warehouse Act; and

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

10           Sec. 6. Section 88-527, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

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

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

26           (3) The commission may make available to the United States  
27 Government or any of its agencies, including the Commodity Credit  
28 Corporation, the results of inspections made and inspection reports  
29 submitted by employees of the commission upon payment of such fees as may  
30 be determined by the commission. The fees shall cover the actual cost of  
31 the services rendered in regard to providing the information.

1 (4) The commission may charge for inspections conducted at the  
2 request of a warehouse licensee.

3 (5) The commission may assess a surveillance fee against the assets  
4 of a warehouse licensee for actual expenses incurred by the commission in  
5 suspending a license or terminating the operations of a warehouse  
6 licensee. The commission may enter into contracts for such purpose and  
7 shall keep a record of all surveillance fees collected. All surveillance  
8 fees collected by the commission shall be remitted to the State Treasurer  
9 for credit to the Nebraska Grain Warehouse Surveillance Cash Fund.

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

19 Sec. 7. Section 88-528.01, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 88-528.01 For each application filed under section 88-528 ~~after~~  
22 ~~January 1, 2004~~, one of the following primary parties shall be subject to  
23 fingerprinting and a check of his or her criminal history record  
24 information maintained by the Federal Bureau of Investigation through the  
25 Nebraska State Patrol: (1) If the applicant is not an individual, the  
26 chief executive officer, president, or general manager; or (2) if the  
27 applicant is an individual, the individual. ~~If the primary party has been~~  
28 ~~subject to a check of his or her criminal history record information~~  
29 ~~pursuant to this section on a prior application, he or she is not subject~~  
30 ~~to another such check upon a subsequent application.~~ If a primary party  
31 has been subject to a check of his or her criminal history record

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

16 Sec. 8. Section 88-530, Revised Statutes Cumulative Supplement,  
17 2022, is amended to read:

18 88-530 Each applicant shall show sufficient net worth or  
19 stockholders' equity to conform with the financial requirements which the  
20 commission shall establish by the adoption and promulgation of rules and  
21 regulations. Applicants shall file with the commission security in the  
22 form of a bond, a certificate of deposit, an irrevocable letter of  
23 credit, United States bonds or treasury notes, or other public debt  
24 obligations of the United States which are unconditionally guaranteed as  
25 to both principal and interest by the United States in such sum as the  
26 commission may require and in the form and of the kind prescribed by the  
27 commission. The security shall be in an amount set by the commission  
28 pursuant to rules and regulations, but shall not be less than twenty-five  
29 thousand dollars. The security shall run to the State of Nebraska for the  
30 benefit of each person who stores grain in such warehouse and of each  
31 person who, not more than five business days prior to the cutoff date of

1 operation of the warehouse, owned and sold grain stored in the warehouse  
2 and had not received payment from the warehouse licensee for such grain,  
3 but shall not include grain sold by signed contract or priced scale  
4 ticket. The cutoff date of operation of the warehouse shall be the date  
5 the commission officially closes the warehouse. The security shall be  
6 conditioned upon (1) the warehouse licensee carrying combustion, fire,  
7 lightning, and tornado insurance sufficient to cover loss upon all stored  
8 grain in such warehouse, (2) the delivery of the grain upon surrender of  
9 the warehouse receipt, and (3) the faithful performance by the warehouse  
10 licensee of all provisions of law relating to the storage of grain by  
11 such warehouse licensee and rules and regulations adopted and promulgated  
12 by the commission. The commission may require increases in the amount of  
13 the security from time to time as it may deem necessary for the  
14 protection of the storers. For an applicant who has filed a reviewed  
15 fiscal year-end financial statement pursuant to section 88-528, the  
16 commission shall require additional security in an amount set by the  
17 commission pursuant to rules and regulations, which shall not be less  
18 than twenty-five thousand dollars and not more than one million five  
19 ~~hundred thousand~~ dollars. The surety on a bond shall be a surety company  
20 licensed by the Department of Insurance. An irrevocable letter of credit  
21 or certificate of deposit shall be issued by a federally insured  
22 depository institution.

23 The security shall particularly describe the warehouse intended to  
24 be covered by the security. The liability of the surety on a bond shall  
25 not accumulate for each successive license period which the bond covers.  
26 The liability of the surety shall be limited to the amount stated on the  
27 bond or on an appropriate rider or endorsement to the bond.

28 Sec. 9. Original sections 75-902, 75-903, 75-903.02, 88-526,  
29 88-527, 88-528.01, and 88-529, Reissue Revised Statutes of Nebraska, and  
30 sections 75-156 and 88-530, Revised Statutes Cumulative Supplement, 2022,  
31 are repealed.