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E AND R AMENDMENTS TO LB 894

Introduced by Guereca, 7, Chairman Enrollment and Review

1. Strike the original sections and all amendments thereto and insert the following new sections:

Section 1. Section 75-901, Reissue Revised Statutes of Nebraska, is amended to read:

75-901 Sections 75-901 to 75-910 <u>and section 5 of this act</u> shall be known and may be cited as the Grain Dealer Act.

Sec. 2. Section 75-902, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

(1) Commission means the Public Service Commission;

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

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

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

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

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

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purposes of collective bargaining in the marketing of grain.

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

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

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

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

Sec. 3. Section 75-903, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

(a)(i) Prior to July 1, 2027, pay ~~(1) Pay~~ an annual fee of one hundred dollars which shall be due on or before the date established by the commission for each license. Such fees shall be paid to the State Treasurer and credited to the General Fund; and

(ii) Beginning on July 1, 2027, pay a fee that is established by the commission. Such fee shall not exceed one thousand five hundred dollars for each license. Such fee shall be remitted to the State Treasurer for credit to the Grain Dealer and Grain Warehouse Cash Fund. On or before December 1, 2026, the commission shall establish such fees and electronically submit a schedule of such fees to the Clerk of the Legislature;

(b) ~~(2)~~ File a security pursuant to subsection (2) of this section;

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and

(c) File a reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm as required in subsection (3) of this section.

(2)(a) The security required under subdivision (1)(b) of this section ~~which~~ may be a bond issued by a corporate surety company and payable to the commission, an irrevocable letter of credit, or a certificate of deposit, subject to the approval of the commission, for the benefit of any producer who files a valid claim arising from a sale to a grain dealer.

(b) The security shall be in an amount set by the commission of not less than thirty-five thousand dollars and not more than one million dollars. Amounts used in the calculation of the security:

(i) Shall ~~shall~~ include all direct delivery grain purchases and exchanges valued on the date delivery is made; and ~~.~~

(ii) Shall ~~Amounts used in the calculation of the security shall~~ not include any transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is created by an in-store transfer on the same date as the delivery of the direct delivery grain.

(c) Such security shall be furnished on the following conditions, unless otherwise provided in a written contract between the parties:

(i) If a written demand for payment is made and such demand is accompanied by documented proof of delivery of grain, such payment shall occur not later than ten business days after the date of such demand; and ~~condition that the licensee will pay for any grain purchased upon demand, not later than fifteen days after the date of the last shipment of any contract.~~

(ii) If a licensee fails to pay for any grain that such licensee has purchased within thirty days after such payment is due under subdivision (c)(i) of this subsection, such licensee shall be liable to the seller

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for interest on the unpaid amount pursuant to section 45-103.

(d) The liability of the surety shall cover purchases made by the grain dealer during the time the bond is in force. A grain dealer's bond filed with the commission shall be in continuous force and effect until canceled by the surety. The liability of the surety on any bond required by this section shall not accumulate for each successive license period during which the bond is in force. ~~; and~~

(e) No seller shall have recourse to the licensee's security unless, as of the date the commission initiates an administrative action against the licensee, the seller has completed delivery of grain to the licensee for which payment is due and payable. Any seller holding a deferred-pricing, price-later, or similar contract under which title has passed but no payment obligation has yet matured shall not be eligible to claim against the security unless the payment obligation became due prior to the date of such administrative action.

~~(3) File a reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm.~~

(3)(a) If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. If licensing as a partnership, corporation, or limited liability company, the financial statement shall be prepared in accordance with accounting principles generally accepted.

(b) The financial statement shall include:

(i) ~~(a)~~ A statement of income showing profit or loss;

(ii) A ~~(b) a~~ balance sheet;

(iii) A ~~(c) a~~ statement of cash flow;

(iv) A ~~(d) a~~ statement of proprietor's capital or retained earnings;

(v) The ~~(e) the~~ volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year;

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(vi) The ~~(f) the~~ volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain; and

(vii) The ~~(g) the~~ accounting firm's certification, assurances, opinions, and comments and the notes with respect to the financial statement.

(c) If the volume and dollar value of the grain purchases is not reported, the grain dealer shall file the maximum grain dealer security as required by the Grain Dealer Act.

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

Sec. 4. Section 75-904, Reissue Revised Statutes of Nebraska, is amended to read:

75-904 Each grain dealer or his or her agent upon taking possession of grain from a seller shall issue a receipt, contract, bill of lading, or other written communication to the seller or his or her agent. The grain dealer receipt, contract, bill of lading, or other written communication issued by the grain dealer shall ~~include the provisions of section 75-905 and~~ be in such form as the Public Service Commission may by rule and regulation require.

Sec. 5. The Grain Dealer and Grain Warehouse Cash Fund is created. The fund shall be administered by the commission. The fund shall consist of money credited to the fund pursuant to sections 75-903 and 88-529 and, unless otherwise provided, all fees received by the commission pursuant to the Grain Dealer Act or the Grain Warehouse Act. It is the intent of the Legislature to appropriate all money in the fund to the commission

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for the purpose of defraying the expenses of administering the Grain Dealer Act and the Grain Warehouse Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

88-527 (1) No person shall act as a warehouse operator without a license issued pursuant to the Grain Warehouse Act ~~. Warehouses~~, including ~~except~~ warehouses that ~~which~~ are licensed under the federal United States Warehouse Act ~~, shall be licensed and regulated by the commission~~.

(2)(a) The commission shall issue a license under the Grain Warehouse Act to each warehouse that is licensed under the federal United States Warehouse Act.

(b) A warehouse that is licensed under the Grain Warehouse Act and the federal United States Warehouse Act:

(i) Shall submit to the commission copies of all regulatory filings that such warehouse has submitted to or received from the United States Department of Agriculture, including regulatory filings relating to securities, insurance, yearly audits, and licenses; and

(ii) Shall not be required by the commission to submit any regulatory filing that is not described in subdivision (b)(i) of this subsection.

(c) Except to enforce this section, the commission shall not take any administrative action against a warehouse that is licensed under the federal United States Warehouse Act without the written consent of the United States Department of Agriculture.

(3)(a) A warehouse that is not licensed under the federal United States Warehouse Act shall be licensed and regulated by the commission as provided in this subsection.

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(b) If the applicant is an individual, the application shall include the applicant's social security number. Such warehouses shall be inspected by the commission at least once every twelve months.

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

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

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

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

(g) ~~(6)~~ The commission may enter into agreements and contracts with regulators in states which border Nebraska for the purpose of licensing or examining any public grain warehouse operator which operates facilities in such states. The commission shall assume all jurisdiction over any warehouse operator headquartered in Nebraska regarding his or

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her warehouse activity. A warehouse operator headquartered and licensed in another state which acquires facilities in Nebraska is under the jurisdiction of the headquarter state under the terms of such agreement or contract.

Sec. 7. Section 88-529, Reissue Revised Statutes of Nebraska, is amended to read:

88-529 (1)(a) The commission shall charge an annual license fee for each warehouse that is not licensed under the federal United States Warehouse Act ~~to be operated~~, except as provided in section 88-531. Such fee is due on or before the date established by the commission for each license. The fee for any license issued for less than twelve months shall be prorated based on its duration.

(b) The commission shall not charge an annual license fee for a warehouse that is licensed under the federal United States Warehouse Act.

(2) Prior to July 1, 2027, the ~~The~~ annual license fee shall be as provided in this subsection ~~section~~.

Capacity in Bushels			Fee
0	—	10,000	$ 45
10,001	—	25,000	57
25,001	—	50,000	68
50,001	—	75,000	78
75,001	—	100,000	90
100,001	—	150,000	102
150,001	—	200,000	113
200,001	—	250,000	125
250,001	—	300,000	135
300,001	—	350,000	147
350,001	—	400,000	156
400,001	—	450,000	170
450,001	—	500,000	180

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500,001	—	600,000	192
600,001	—	700,000	203
700,001	—	800,000	215
800,001	—	900,000	225
900,001	—	1,000,000	237
1,000,001	—	2,000,000	338
2,000,001	—	3,000,000	395
3,000,001	—	4,000,000	450
4,000,001	—	5,000,000	507
5,000,001	—	6,000,000	563
6,000,001	—	7,000,000	620
7,000,001	—	8,000,000	675
8,000,001	—	9,000,000	732
9,000,001	—	10,000,000	788
10,000,001	—	11,000,000	845
11,000,001	—	15,000,000	1,070
15,000,001	—	20,000,000	1,350
20,000,001	—	25,000,000	1,632
25,000,001	—	30,000,000	1,913
30,000,001	—	40,000,000	2,475
40,000,001		or more	3,375

(3)(a) On or before December 1, 2026, the commission shall establish the annual license fees that apply beginning July 1, 2027, to warehouses that are not licensed under the federal United States Warehouse Act and electronically submit a schedule of such fees to the Clerk of the Legislature.

(b) Beginning in 2027, on or after July 1 of each year, the commission may modify the annual license fees established under subdivision (a) of this subsection.

(c) An annual license fee that is established or modified under this

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subsection shall not exceed the fee established for the applicable commodity in the 2025/2026 Rates Charged for AMS Services notice for entities with a Commodity Credit Corporation agreement, as such notice existed on January 1, 2026, that was published by the Agricultural Marketing Service of the United States Department of Agriculture.

(4) Fees collected under this section shall be remitted to the State Treasurer. The State Treasurer shall credit such fees that are paid:

(a) Prior to July 1, 2027, to the General Fund; and

(b) On or after July 1, 2027, to the Grain Dealer and Grain Warehouse Cash Fund.

Sec. 8. Section 88-548, Reissue Revised Statutes of Nebraska, is amended to read:

88-548 (1) Any grain dealer, person, firm, corporation, or association in this state licensed under the federal United States Warehouse Act ~~shall be exempt from the Grain Warehouse Act, except that each licensee under the United States Warehouse Act~~ shall (a) annually notify the commission in writing of such license and shall notify the commission at once in writing if the license is terminated, canceled, or suspended and (b) post notification of such licensee's bond under the United States Warehouse Act in a conspicuous place of business listing the total amount of bond on the stored grain.

(2) No warehouse licensee, licensee under the federal United States Warehouse Act, or grain dealer licensed pursuant to section 75-903 shall use end-intake air probes that are not approved by the commission ~~which use a vacuum~~ to collect a sample from a load of grain to determine foreign material content. The commission shall adopt and promulgate rules and regulations regarding approval of grain probes. Any person who violates this subsection shall be guilty of a Class I misdemeanor.

Sec. 9. Section 88-551, Reissue Revised Statutes of Nebraska, is amended to read:

88-551 Except as provided in sections 88-527, 88-529, 88-545.01, and

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88-552, all fees collected pursuant to the Grain Warehouse Act shall be paid to the State Treasurer and credited to the Grain Dealer and Grain Warehouse Cash Fund ~~General Fund~~.

Sec. 10. Original sections 75-901, 75-904, 88-527, 88-529, 88-548, and 88-551, Reissue Revised Statutes of Nebraska, and sections 75-902 and 75-903, Revised Statutes Cumulative Supplement, 2024, are repealed.

Sec. 11. The following section is outright repealed: Section 75-905, Reissue Revised Statutes of Nebraska.

2. On page 1, strike beginning with "grain" in line 1 through line 9 and insert "grain; to amend sections 75-901, 75-904, 88-527, 88-529, 88-548, and 88-551, Reissue Revised Statutes of Nebraska, and sections 75-902 and 75-903, Revised Statutes Cumulative Supplement, 2024; to redefine a term; to change provisions relating to fees and licensure requirements, create a fund, and change and eliminate provisions relating to a grain dealer's security under the Grain Dealer Act; to change provisions relating to fees, licensure requirements, certain federal licensees, and the use of certain grain probes under the Grain Warehouse Act; to harmonize provisions; to repeal the original sections; and to outright repeal section 75-905, Reissue Revised Statutes of Nebraska.".