

LEGISLATIVE BILL 492

Approved by the Governor April 7, 2005

Introduced by Kremer, 34

AN ACT relating to agriculture; to amend sections 25-1093 and 88-547, Reissue Revised Statutes of Nebraska, and sections 88-525 and 88-527, Revised Statutes Supplement, 2004; to change provisions of the Grain Warehouse Act; to provide for designation of grain in storage and liens as prescribed; to require written notice of certain proceedings; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 25-1093, Reissue Revised Statutes of Nebraska, is amended to read:

25-1093. The plaintiff in an action to recover the possession of specific personal property may, at the commencement of the suit, or any time before answer, request the delivery of such property as provided by sections 25-1093 to 25-1098, 25-10,109, and 25-10,110. In a replevin action under the Grain Warehouse Act, notice shall be given as provided in section 4 of this act.

Sec. 2. Section 88-525, Revised Statutes Supplement, 2004, is amended to read:

88-525. Sections 88-525 to 88-552 and sections 3 and 4 of this act shall be known and may be cited as the Grain Warehouse Act.

Sec. 3. (1) For purposes of the Grain Warehouse Act, whenever any grain is physically deposited into any public warehouse and a scale ticket or warehouse receipt is issued therefor, such deposit shall be grain in storage. Such deposit does not constitute a sale of the grain, except grain deposited by priced scale ticket or signed contract passing title to the warehouse licensee.

(2) Upon the commission's closure of a warehouse and taking title to grain within the warehouse pursuant to section 88-547, grain contained in a warehouse, including grain owned by the warehouse licensee, is subject to a first priority lien in favor of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse licensee regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. All the grain in the warehouse, whether stored or not, first shall be applied at all times to the satisfaction of all valid owners, depositors, or storers of grain who hold evidence of ownership of grain.

(3) In the event no distribution is made pursuant to subdivision (1) of section 88-547 and the commission transfers title to the grain back to the warehouse or to another person, then the first priority lien created under this section shall terminate. Nothing in this section shall affect any other rights, including rights of ownership in grain stored at the warehouse, of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. Nothing in this section shall prevent the commission from subsequently closing the warehouse and taking other action pursuant to section 88-547.

Sec. 4. Prior to or within ten days after any creditor of the warehouse licensee commences a judicial proceeding to reduce to judgment, foreclose, or otherwise enforce any claim on a creditor's lien or security interest attached to grain contained in the warehouse, the creditor shall serve written notice on the executive director of the commission.

Sec. 5. Section 88-527, Revised Statutes Supplement, 2004, is amended to read:

88-527. (1) No person shall operate a warehouse nor act as a warehouseman without a license issued pursuant to the Grain Warehouse Act. Warehouses, except warehouses which are licensed under the United States Warehouse Act, shall be licensed and regulated by the commission. 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.

(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.

(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.

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

(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 deposited in remitted to the State Treasurer for credit to the Nebraska Grain Warehouse Surveillance Cash Fund.

~~(5)~~ (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 warehouseman which operates facilities in such states. The commission shall assume all jurisdiction over any warehouseman headquartered in Nebraska regarding his or her warehouse activity. A warehouseman 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. 6. Section 88-547, Reissue Revised Statutes of Nebraska, is amended to read:

88-547. If the commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse, if a license expires and is not renewed, if a license is surrendered to or canceled or revoked by the commission for violation of any statute or rule or regulation adopted and promulgated by the commission, or if a warehouse is operated without a license, the commission may close the warehouse and do one or more of the following:

(1) Take title to all grain stored in the warehouse at that time in trust for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. No claim of the licensee for grain stored shall be honored until the claims of all other owners, depositors, and storers have been paid in full. Such distribution may be made in grain or in proceeds from the sale of grain. If the commission closes the warehouse and takes title to the grain, such action shall operate as a stay of the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding to take title to the grain that was or could have been commenced before such action by the commission;

(2) After notice and hearing (a) determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain, (b) require all or part of the warehouse security to be forfeited to the commission, and (c) distribute the security proceeds on such pro rata basis; or

(3) Commence a suit in district court for the benefit of owners, depositors, or storers of grain.

The commission may deposit the proceeds from the security forfeiture under subdivision (2) of this section or the sale of grain under subdivision (1) of this section in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain pending final determination of the valid owners, depositors, or storers and distribution of such proceeds.

Sec. 7. Original sections 25-1093 and 88-547, Reissue Revised Statutes of Nebraska, and sections 88-525 and 88-527, Revised Statutes Supplement, 2004, are repealed.