

LEGISLATIVE BILL 52

Approved by the Governor March 9, 2005

Introduced by Kremer, 34

AN ACT relating to agriculture; to amend sections 75-903, 75-903.02, 75-905, and 89-1,105, Reissue Revised Statutes of Nebraska, and sections 88-528, 88-528.01, and 88-530.01, Revised Statutes Supplement, 2004; to change provisions relating to grain dealers, grain warehouses, and measuring devices; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 75-903, Reissue Revised Statutes of Nebraska, is amended to read:

75-903. 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:

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

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

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

(4) File security 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 or owner within this state who files a valid claim arising from a sale to or purchase from a grain dealer. The security shall be in the amount of thirty-five thousand dollars or seven percent of grain purchases by the grain dealer in the grain dealer's preceding license fiscal year, whichever is greater, not to exceed three hundred thousand dollars. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than thirty days after the date of the last shipment of any contract. The liability of the surety shall cover purchases and sales made or arranged 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

(5) File a reviewed or audited fiscal year-end financial statement prepared either by a person or firm which holds an independent certified public accountant or by an independent public accountant who holds a permit granted by the Nebraska State Board of Public Accountancy. 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 conformity accordance with accounting principles generally accepted in the United States. The financial statement shall include: (a) A statement of income showing profit or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement of proprietor's capital or retained earnings; (e) the volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year; and (f) the accountant's certification, assurances, opinions, and comments and the notes with respect to the financial statement. 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.

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. 2. Section 75-903.02, Reissue Revised Statutes of Nebraska, is

amended to read:

75-903.02. For each application filed under section 75-903 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission's office, and if not, the application shall be returned to the applicant. The commission shall deny a grain dealer license to any applicant whose primary party has been convicted of a felony financial crime.

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

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

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

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

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

~~(2) When grain is delivered to a grain dealer in multiple shipments comprising one contract, the seller shall not have recourse to the grain dealer's security unless the seller notifies the commission within thirty days after the date of the last shipment of any apparent loss to be covered under the terms of the grain dealer's security. No seller shall have recourse to the grain dealer's security unless the seller:~~

~~(1) Demands payment from the grain dealer within thirty days after the date of the last shipment of any contract;~~

~~(2) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within thirty days after its issuance; and~~

~~(3) Notifies the commission within thirty days after any apparent loss to be covered under the terms of the grain dealer's security.~~

Sec. 4. Section 88-528, Revised Statutes Supplement, 2004, is amended to read:

88-528. Each applicant for a license and each warehouse licensee shall annually file an application with the commission and shall submit to a criminal background check as set forth in section 88-528.01. The application shall be in the form prescribed by the commission to do business under the Grain Warehouse Act and shall include an audited or reviewed fiscal year-end financial statement prepared in accordance with accounting principles generally accepted accounting practices in the United States by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. If the applicant files a reviewed fiscal year-end financial statement, the applicant shall also provide additional security pursuant to section 88-530 in such amount as the commission requires. 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. The financial statement shall include: (1) A balance sheet; (2) a statement of income showing profit or loss; (3) a statement of retained earnings; (4) a statement of changes in the financial position; and (5) the accountant's certifications, assurances, opinions, comments, and notes with regard to such financial statement. Such application shall set forth the location of the warehouse to be used by the applicant, its relation to railroad trackage, its capacity, its general plan and equipment, and its ownership.

If an applicant for a 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 audited or reviewed fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission.

Sec. 5. Section 88-528.01, Revised Statutes Supplement, 2004, is amended to read:

88-528.01. For each application filed under section 88-528 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission's office, and if not, the application shall be returned to the applicant. The commission shall deny a warehouse license to any applicant whose primary party has been convicted of a felony financial crime.

Sec. 6. Section 88-530.01, Revised Statutes Supplement, 2004, is amended to read:

88-530.01. In addition to the ~~audited or~~ reviewed fiscal year-end financial statement required by section 88-528 and to detect noncompliance with financial requirements established by the commission pursuant to section 88-530, the commission shall, for good cause shown as determined by criteria set forth in commission rules and regulations, require (1) a verified report of the total grain inventory or (2) an audited financial statement. A verified report of grain inventory or audited financial statement shall be prepared in accordance with accounting principles generally accepted ~~accounting practices in the United States~~ by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy.

Sec. 7. Section 89-1,105, Reissue Revised Statutes of Nebraska, is amended to read:

89-1,105. The supervisor of the grain warehouse department of the Public Service Commission, or his or her inspectors, shall inspect, make comparative tests of, and ascertain if correct, every grain moisture measuring device used or employed in this state by any proprietor, ~~or agent, or~~ lessee, or employee thereof in proving or ascertaining the moisture and test weight of grain offered for storage or sale, sold, or purchased or in the process of being purchased. Such inspector shall use as a standard for making such comparative tests a grain moisture measuring device meeting the tolerances and specifications established pursuant to section 89-1,104.

Sec. 8. Sections 7 and 10 of this act become operative on January 1, 2006. The other sections of this act become operative on their effective date.

Sec. 9. Original sections 75-903, 75-903.02, and 75-905, Reissue Revised Statutes of Nebraska, and sections 88-528, 88-528.01, and 88-530.01, Revised Statutes Supplement, 2004, are repealed.

Sec. 10. Original section 89-1,105, Reissue Revised Statutes of Nebraska, is repealed.