

## LEGISLATIVE BILL 183

Approved by the Governor May 27, 2015

Introduced by Johnson, 23.

A BILL FOR AN ACT relating to the Grain Dealer Act; to amend sections 75-902, 75-903, 75-904, 75-905, and 75-908, Reissue Revised Statutes of Nebraska; to redefine a term, change licensure and receipt requirements, and change enforcement provisions; and to repeal the original sections.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 75-902, Reissue Revised Statutes of Nebraska, 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) Grain includes, 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;
- (5)(a) Grain dealer means any person, partnership, limited liability company, corporation, or association that (i) buys grain from the ~~owner or~~ producer of the grain within this state for purposes of selling such grain, ~~(ii) transports grain into this state for purposes of selling such grain, or~~ (ii) acts as an employee or agent of a buyer or seller for 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. 2. 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 one hundred 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;~~
- (2 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 or exchanges by the grain dealer in the grain dealer's preceding fiscal year, whichever is greater, not to exceed three hundred thousand dollars. Amounts used in the calculation of the security shall include all direct delivery grain purchases and exchanges valued on the date delivery is made. 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. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than fifteen ~~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

~~(3) File a reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm (5) File a reviewed or audited fiscal year-end financial statement prepared either by 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 accordance with accounting principles generally accepted. 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; (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 (g) the accounting firm's 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. 3. 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. ~~Such receipt shall show: (1) The date and time of day the grain dealer or his or her agent took possession of the seller's grain; (2) the name and address of the buyer; (3) the name of the seller; (4) the name of the agent; (5) the motor vehicle license plate number of any vehicle used by the grain dealer or his or her agent in taking possession of the seller's grain; (6) the kind of grain delivered to the buyer; (7) the approximate quantity of grain delivered to the buyer; and (8) the provisions of section 75-905.~~ 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. 4. Section 75-905, Reissue Revised Statutes of Nebraska, is amended to read:

75-905 (1) No seller shall have recourse to the grain dealer's security unless the seller:

- (a) Demands payment from the grain dealer within fifteen ~~thirty~~ days after the date of the last shipment of any contract;
- (b) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within fifteen ~~thirty~~ days after its issuance; and
- (c) Notifies the commission within fifteen ~~thirty~~ days after any apparent loss to be covered under the terms of the grain dealer's security.

(2) The grain dealer's security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed fifteen ~~thirty~~ days after the date of the last shipment of the contract.

Sec. 5. Section 75-908, Reissue Revised Statutes of Nebraska, is amended to read:

75-908 The commission, ~~the carrier enforcement division of the Nebraska State Patrol, the Department of Motor Vehicles,~~ county and municipal law enforcement agencies, and the Attorney General shall enforce the Grain Dealer Act.

Sec. 6. Original sections 75-902, 75-903, 75-904, 75-905, and 75-908, Reissue Revised Statutes of Nebraska, are repealed.