

## CHAPTER 75, ARTICLE 9

### GRAIN DEALER ACT, AS AMENDED

#### **75-902. Terms, defined.**

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 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 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.

**Source:**Laws 1985, LB 389, § 4; Laws 1987, LB 507, § 2; Laws 1996, LB 1123, § 1; Laws 2003, LB 735, § 3; Laws 2005, LB 439, § 1; Laws 2015, LB183, § 1.

#### **Cross References**

**Grain Warehouse Act**, see section 88-525.

#### **75-903. Grain dealer; licensure; requirements; fee.**

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 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;

(2) 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 who files a valid claim arising from a sale to 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 days after the date of the last shipment of any contract. 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

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

**Source:**Laws 1985, LB 389, § 5; Laws 1987, LB 507, § 3; Laws 1996, LB 1123, § 2; Laws 1997, LB 752, § 201; Laws 2003, LB 187, § 24; Laws 2003, LB 735, § 4; Laws 2005, LB 52, § 1; Laws 2005, LB 439, § 2; Laws 2015, LB183, § 2.

#### **75-903.01. License; suspension or revocation; procedure.**

The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any grain dealer for failure to comply with the requirements of the Grain Dealer Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the grain dealer with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a grain dealer's license pending the determination of the complaint.

**Source:**Laws 1987, LB 507, § 4.

#### **75-903.02. Criminal history record information check; fingerprinting; when.**

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.

**Source:**Laws 2003, LB 735, § 5; Laws 2005, LB 52, § 2.

#### **75-904. Grain dealer; receipt, contract, bill of lading, other written communication requirements.**

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.

**Source:**Laws 1985, LB 389, § 6; Laws 2015, LB183, § 3.

#### **Annotations**

A buyer's failure to give the seller a proper receipt as required by this section does not render null and void the time requirements of section 75-905 to preserve a claim against the buyer's security pursuant to section 75-906. *Fecht v. The Bunnell Co.*, 243 Neb. 1, 497 N.W.2d 50 (1993).

#### **75-905. Recourse to grain dealer's security; when.**

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

(a) Demands payment from the grain dealer within fifteen 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 days after its issuance; and

(c) Notifies the commission within fifteen 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 days after the date of the last shipment of the contract.

**Source:**Laws 1985, LB 389, § 7; Laws 1986, LB 1007, § 4; Laws 1996, LB 1123, § 3; Laws 2005, LB 52, § 3; Laws 2005, LB 439, § 3; Laws 2015, LB183, § 4.

#### **Annotations**

Grain sellers claims on grain dealer's bond denied because claims were not filed with the Public Service Commission within 10 days of apparent loss. *Fecht v. Quality Processing*, 244 Neb. 522, 508 N.W.2d 236 (1993).

A buyer's failure to give the seller a proper receipt as required by section 75-904 does not render null and void the time requirements of this section to preserve a claim against the buyer's security pursuant to section 75-906. *Fecht v. The Bunnell Co.*, 243 Neb. 1, 497 N.W.2d 50 (1993).

#### **75-906. Violation of security; commission; powers.**

In the event the commission determines that the conditions of a grain dealer's security have been violated, the commission may demand that such dealer's security be forfeited and may place

the proceeds of the security in an interest-bearing trust until it fully determines each claim on the security. The commission shall disburse the security according to each claim determined. If the amount of the security is less than the claims against it, the security shall be distributed pro rata among the claimants. If the security is a bond or letter of credit, the surety or the issuer of such letter shall pay over the security on demand by the commission. If such issuer of a letter of credit or surety for a grain dealer fails or refuses to pay the security to the commission within ten days, the commission may file a lawsuit in an appropriate court and recover the amount of the security plus interest at the highest legal rate from the date of its demand on the issuer of a letter of credit or surety if the court finds that any claim determined by the commission against the grain dealer's security was valid.

**Source:**Laws 1985, LB 389, § 8.

#### **Annotations**

A buyer's failure to give the seller a proper receipt as required by section 75-904 does not render null and void the time requirements of section 75-905 to preserve a claim against the buyer's security pursuant to this section. *Fecht v. The Bunnell Co.*, 243 Neb. 1, 497 N.W.2d 50 (1993).

#### **75-907. Commission; adopt rules and regulations.**

The commission may adopt and promulgate all rules and regulations necessary to carry out the Grain Dealer Act.

**Source:**Laws 1985, LB 389, § 9; Laws 1987, LB 507, § 5.

#### **75-907.01. Commission; inspection; powers.**

The property, books, records, accounts, papers, and proceedings of every grain dealer shall, at all times during business hours, be subject to inspection by the commission.

**Source:**Laws 1987, LB 507, § 6.

#### **75-908. Enforcement of act.**

The commission, county and municipal law enforcement agencies, and the Attorney General shall enforce the Grain Dealer Act.

**Source:**Laws 1985, LB 389, § 10; Laws 1987, LB 507, § 7; Laws 2015, LB183, § 5.

**75-909. Violation; penalty.**

Any person or partner, limited liability company member, officer, or agent of any person who knowingly and intentionally violates any of the provisions of the Grain Dealer Act shall be guilty of a Class IV felony and, in addition, shall be liable for any damages suffered as a result of such violation.

**Source:**Laws 1985, LB 389, § 11; Laws 1987, LB 507, § 8; Laws 1989, LB 35, § 1; Laws 1993, LB 121, § 475; Laws 1994, LB 884, § 88.

**75-910. Civil penalty.**

The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Dealer Act.

**Source:**Laws 2003, LB 735, § 6.