

LEGISLATIVE BILL 389

Approved by the Governor June 4, 1985

Introduced by Haberman, 44

AN ACT relating to grain; to amend sections 88-513 and 88-515, Reissue Revised Statutes of Nebraska, 1943; to change a penalty; to provide powers; to adopt the Grain Buyer Act; to provide a penalty; to eliminate provisions and a penalty relating to licensing of grain purchasers; to repeal the original sections, and also section 88-518, Revised Statutes Supplement, 1984, as amended by section 15, Legislative Bill 395, Eighty-ninth Legislature, First Session, 1985; and to declare an emergency.

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

Section 1. That section 88-513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-513. No officer or agent of any state-licensed grain warehouse shall issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts issued for such grain, there shall be a presumption that the officers of such warehouse have wrongfully removed or caused to be removed grain or issued receipts for grain not actually received and in violation of this section. Any officer or agent who ~~shall violate~~ violates the provisions of this section shall be guilty of a Class ~~I~~ misdemeanor IV felony.

Sec. 2. That section 88-515, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

88-515. (1) It shall be the duty of the Public Service Commission to enforce the provisions of sections 88-501 to 88-519 and to make and promulgate rules and regulations to aid in the administration of such sections. The owner or operator of any grain elevator or warehouse in the state, ~~violating who~~ violates any of the provisions of such sections, shall be deemed guilty of a Class IV felony, and in addition thereto shall be liable for any damages suffered by any person from such violation. It is made the duty of the Attorney General, or of any county attorney, upon request of the commission, to assist in the prosecution of any such violations.

(2) The Public Service Commission is empowered after hearing before it and upon complaint filed by such commission or any person to suspend or revoke the license of anyone licensed under sections 88-501 to ~~88-522~~ 88-524 for the violation of or failure to comply with the provisions of sections 88-501 to ~~88-522~~ 88-524 or any rule

or regulation made in pursuance of the authority therefor granted under sections 88-501 to ~~88-522~~ 88-524. A verified complaint stating the grounds for suspension or revocation shall be filed with the commission in triplicate, and thereupon the commission shall serve the licensee complained against with a copy of the complaint and a copy of the order of the commission, fixing the time for hearing thereon, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, ~~it~~ the commission may, upon the filing of complaint and without hearing, temporarily suspend a license pending the determination by it of the complaint.

(3) In the event that the commission determines that a shortage of grain exists at a duly licensed warehouse, necessitating the closing of the warehouse, the commission may do one or more of the following:

(a) Take title to all grain stored in the public grain warehouse at that time in trust, for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who shall be holders of evidence of ownership of grain. Such distribution can be made in grain or in proceeds from the sale of grain; ~~or~~

(b) After notice and hearing: (i) Determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain; (ii) require all or part of the warehouse bond to be forfeited to the commission; and (iii) distribute the bond proceeds on such pro rata basis; ~~or~~

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

The commission may deposit the proceeds from the sale of grain under subdivision (a) of this subsection in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain.

Sec. 3. Sections 3 to 11 of this act shall be known and may be cited as the Grain Buyer Act.

Sec. 4. For purposes of the Grain Buyer Act, unless the context otherwise requires:

(1) Commission shall mean the Public Service Commission;

(2) Grain shall include, but not be 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; and

(3) Grain dealer shall mean any person, partnership, corporation, or association, other than a custom feeder of livestock or poultry or a public grain warehouse licensee under sections 88-501 to 88-517, who (a) buys grain from its owner for purposes of selling such

grain to another, (b) buys and transports grain for purposes of selling such grain, (c) transports grain in or out of this state for purposes of selling such grain, or (d) acts as employee or agent of a buyer for purposes of collective bargaining in the marketing of grain.

Sec. 5. All grain dealers doing business in this state shall be licensed by the commission. To procure and maintain a license, each grain dealer shall:

(1) Pay an annual fee of thirty dollars which shall be due on or before June 30 of each year for each license and a registration fee not to exceed twenty 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 state 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 approval of the commission, for the benefit of persons doing business with grain dealers. The security shall be in the amount of twenty-five thousand dollars or four per cent of grain purchases by the grain dealer in the preceding license year as reported on a form prescribed by the commission, whichever is greater, not to exceed one hundred thousand dollars. Such security shall be furnished on the conditions that (a) the licensee will pay for any grain purchased upon demand, not later than ten days after taking possession of the grain purchased, and (b) the licensee owns, free of liens, any grain which the licensee offers for sale; and

(5) File each year a financial statement of the licensee's operations as a grain dealer which is compiled by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

Sec. 6. Each grain dealer or his or her agent upon taking possession of grain from a seller shall issue a receipt 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 7 of this act. The receipt shall be in such form as the Public Service Commission may by rule and regulation require.

Sec. 7. (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 payment from the grain dealer within ten days of 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 ten days of its issuance; and

(c) Notifies the commission within ten days of 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 forty-five days of the date of the first shipment of any apparent loss to be covered under the terms of the grain dealer's security.

Sec. 8. 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.

Sec. 9. The commission may adopt and promulgate all rules and regulations necessary to carry out the provisions of the Grain Buyer Act.

Sec. 10. 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 provisions of the Grain Buyer Act.

Sec. 11. Any person who does business as a grain dealer in this state without a license shall be guilty of a

Class IV felony and, in addition, shall be liable for any damages suffered by any person as a result of such violation.

Sec. 12. That original sections 88-513 and 88-515, Reissue Revised Statutes of Nebraska, 1943, and also section 88-518, Revised Statutes Supplement, 1984, as amended by section 15, Legislative Bill 395, Eighty-ninth Legislature, First Session, 1985, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.