

## CHAPTER 125

## (SB 68)

AN ACT relating to grain.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 251 IS CREATED TO READ AS FOLLOWS:

*In the case of licensees located in other states or countries, the department may enter into cooperative or reciprocal agreements with state, federal, or foreign governments in order to satisfy the inspection requirements of this chapter or any administrative regulations promulgated under this chapter.*

Section 2. KRS 251.430 is amended to read as follows:

Any person, firm, or corporation who **accepts**~~shall accept~~ grain for storage in this state shall first procure a license~~therefor~~ from the department as required by the board before transacting **any**~~such~~ business. This shall not apply to the storage of grain by an establishment bonded and licensed under the provisions of a federal law to the extent that **the**~~such~~ stored grain is covered by a federal bond and law; otherwise, **the**~~such~~ establishments shall comply with the provisions of this chapter. Any establishment that has unpaid-for grain **thirty** (30) days after delivery of the last load by a producer shall be considered in the grain storage business. **The**~~Such~~ license shall expire on June 30, and shall be renewed annually **by August 1**. The fee for each license shall be according to the following schedule, **and**~~which~~ shall be deposited in **the Kentucky grain insurance fund as a regular contribution**~~a trust and agency fund account in the State Treasury~~ to be used for carrying out the provisions of KRS 251.410 to 251.510:

Total annual volume handled:

- (a) Under two million (2,000,000) bushels, **three**~~two~~ hundred dollars (**\$300**)~~(\$200)~~;
- (b) Two million (2,000,000) to **five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999)**~~six million (6,000,000)~~ bushels, **four hundred fifty dollars (\$450)**~~three hundred dollars (\$300)~~;
- (c) Six million (6,000,000) to **nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999)**~~ten million (10,000,000)~~ bushels, **six**~~four~~ hundred dollars (**\$600**)~~(\$400)~~; or
- (d) ~~Over~~ Ten million (10,000,000) bushels **and up, seven hundred fifty dollars (\$750)**~~five hundred dollars (\$500)~~.

Section 3. KRS 251.440 is amended to read as follows:

- (1) Application for license shall set forth the name of the applicant, its principal officer, if a corporation, or the active members of a partnership if a partnership, and the location or locations of the principal office or place of business and the locations in this state at which applicant proposes to engage in this business. Application shall be accompanied by a bond as set forth in KRS 251.451. The bond shall run to the State of Kentucky and be for the benefit of all persons storing grain in the warehouse. It shall be conditioned upon the warehouseman carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in the warehouse, and the delivery of all stored grain or payment of the value **of the grain**~~thereof~~ upon the surrender of the warehouse receipt or

scale ticket, and upon the faithful performance by the warehouseman of all provisions of law relating to the storage and handling of grain by the warehouseman and the *administrative regulations promulgated by* ~~of~~ the Kentucky Department of Agriculture relative *to the storage and handling of grain* ~~thereto~~.

- (2) The department may refuse to issue a license to any applicant or revoke the existing license of one ~~(1)~~ who furnishes false or misleading information or conceals a material fact on the application or other supporting documents, ~~or~~ has been convicted of fraud or deceptive practice, ~~or~~ is currently adjudicated incompetent by a court of competent jurisdiction, *fails to maintain an asset to liability ratio of one to one (1:1) or fails to post additional surety to cover the deficiency*, ~~or~~ for other good cause shown. Any individual ~~so~~ denied a license for *these* ~~the above given~~ reasons shall be given written notice within thirty (30) working days of receipt of application. Any applicant who is denied a license or has had his license revoked and feels aggrieved, may request a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing shall be conducted in accordance with KRS Chapter 13B.
- (3) All applications for warehouseman license shall be accompanied by a current financial statement or an irrevocable letter of credit from a financial institution.

Section 4. KRS 251.500 is amended to read as follows:

A warehouse license shall become invalid upon the change of management, cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, *failure to remit license fees or fines*, or sale. ~~It becomes the duty of~~ Every licensed warehouseman *shall* ~~to~~ immediately notify the department as to *any* ~~such~~ change *and shall* ~~to~~ deliver his license to the office of the department together with a notarized statement setting forth the arrangements made with depositors for final disposition of the grain in storage and for fulfilling the obligations of the retiring warehouseman. In the case of a successor, *the successor* ~~he~~ shall apply for a new license. ~~If~~ ~~When~~ there is a change of management or cessation of operations, the department, when deemed appropriate, may cause an audit and examination to be made. In *these cases*, ~~this case~~ all records required in KRS 251.480 shall be available to the department until the department is satisfied that all obligations have been met.

Section 5. KRS 251.610 is amended to read as follows:

For the purposes of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, unless the context requires otherwise:

- (1) "Board" means the governing body of the Kentucky Grain Insurance Corporation;
- (2) "Claimant" means any producer who is a participant in the grain insurance program, and:
  - (a) Possesses warehouse receipts covering grain owned or stored by the licensed grain dealer or licensed warehouseman which was produced in Kentucky, except that a producer who establishes by clear and convincing evidence that he has paid an assessment authorized by KRS 251.640 shall not be required to establish that the grain was produced in Kentucky;
  - (b) Has written evidence of ownership of grain produced in Kentucky, other than warehouse receipts, disclosing a storage obligation of a licensed grain dealer or licensed warehouseman, including scale tickets, settlement sheets, and ledger cards except that a producer who establishes by clear and convincing evidence that he has

paid an assessment authorized by KRS 251.640 shall not be required to establish that the grain was produced in Kentucky;

- (c) Has lent money to a licensed grain dealer or licensed warehouseman and was to receive a warehouse receipt as security for that loan but the grain dealer or warehouseman failed within twenty-one (21) days after receiving the loan moneys and no warehouse receipt was issued;
  - (d) Has surrendered warehouse receipts as a part of a sale of grain produced in Kentucky with a licensed grain dealer or licensed warehouseman who failed within twenty-one (21) days *after surrendering the receipt*~~[thereafter]~~ and the person surrendering the warehouse receipt was not fully paid *for the grain*~~[therefor]~~; or
  - (e) Possesses written evidence of the sale of grain produced in Kentucky to a failed licensed grain dealer or failed licensed grain warehouseman, not limited to scale tickets, settlement sheets, price later contracts, basis contracts, or similar grain delivery contracts, but did not get fully paid *for the grain*~~[therefor]~~ and who is unable to secure satisfaction of financial obligations due from a person licensed by the Department of Agriculture in accordance with the Grain Storage Establishment License Act and KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, except that a producer who establishes by clear and convincing evidence that he has paid an assessment authorized by KRS 251.640 shall not be required to establish that the grain was produced in Kentucky;
- (3) "Warehouseman" means an operator or the warehouse of an operator who stores grain for the public and is authorized to issue negotiable or both negotiable and nonnegotiable warehouse receipts;
  - (4) "Cooperative agreement" means any agreement made by the board with a person, local unit of government, state or federal agency, or other states as may be reasonable and proper to carry out the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740;
  - (5) "Commissioner" means the Commissioner of the Department of Agriculture;
  - (6) "Corporation" means the Kentucky Grain Insurance Corporation;
  - (7) "Department" means the Department of Agriculture of the Commonwealth of Kentucky;
  - (8) "Failure" means:
    - (a) An inability to financially satisfy a claimant in accordance with applicable statute or *administrative* regulation and the time limits provided *by the statute or administrative regulation*~~[therein]~~, if any;
    - (b) A declaration of insolvency;
    - (c) A revocation of license and leaving of outstanding indebtedness to claimants;
    - (d) A failure to pay claimants in the ordinary course of business where a bona fide dispute does not exist between a grain dealer or grain warehouseman and a customer;
    - (e) A failure to apply for license renewal;
    - (f) A denial of license renewal; or
    - (g) A voluntary surrendering of a license;

- (9) "Fund" means the Kentucky grain insurance fund established by the corporation *in accordance with* ~~pursuant to~~ KRS 251.640;
- (10) "Grain" means corn, wheat, oats, rye, soybeans, barley and grain sorghums, popcorn, and other agricultural commodities as approved by the department;
- (11) "Grain assets" means:
- (a) All grain owned or stored by ~~a~~ failed grain dealer or failed warehouseman, including grain in transit which was shipped by the failed grain dealer or failed warehouseman and for which payment has not been received;
  - (b) Redeposited grain;
  - (c) Proceeds from sale of grain due or to become due;
  - (d) Equity, less any secured financing directly associated *with the equity* ~~therewith~~, in assets in commodity exchange grain margin accounts;
  - (e) Moneys due or to become due, less any secured financing directly associated *with the moneys* ~~therewith~~, from any future contracts on any recognized commodity exchange;
  - (f) Other unencumbered funds, property, or equity of the failed grain dealer or warehouseman in funds or property, wherever located, which can be directly traced as being from the sale of grain by the failed grain dealer or failed warehouseman. No funds, property, or equity in funds or property shall be deemed to be encumbered unless the encumbrance results from good and valuable consideration advanced by any secured party on a bona fide basis, and is not the result of the taking of the funds, property, or equity in the funds or property as additional collateral for an antecedent debt; or
  - (g) Other unencumbered funds, property, or equity in assets;
- (12) "Grain dealer" means any person engaged in the business of buying grain from producers ~~thereof~~ for resale, milling, or processing. A producer of grain buying grain for his own use as seed or feed shall not be considered as being engaged in the business of buying grain for resale, milling, or processing;
- (13) "Grain indemnity trust fund" or "trust fund" means a trust fund established by the commissioner;
- (14) "Grain warehouseman" or "warehouseman" means any person who owns, controls, operates, or manages any public grain warehouse in which grain is stored for a compensation and includes any grain warehouse licensed under the United States Warehouse Act that has entered into a cooperative agreement with the department;
- (15) "Incidental grain dealer" means any grain dealer who purchases grain from producers only in connection with, or as an incident to, a grain milling operation and whose total purchases of grain during any fiscal year do not exceed two hundred fifty thousand dollars (\$250,000);
- (16) "Participant in the grain insurance program" means any producer who has contributed to the grain fund *in accordance with* ~~pursuant to~~ KRS 251.640 and has never requested a refund, or has entered the program *in accordance with* ~~pursuant to~~ KRS 251.642;
- (17) "Person" means any person, grain dealer, warehouseman, partnership, firm, association, corporation, or other business organization;

- (18) "Producer" or "grain producer" means the owner, tenant, or operator of land in Kentucky who has an interest in and receives all or any part of the proceeds from the sale of the grain produced on land in Kentucky, except that a producer who establishes by clear and convincing evidence that he has paid an assessment authorized by KRS 251.640 shall not be required to establish that the grain was produced in Kentucky;
- (19) "Program" means the Kentucky Grain Insurance Program;
- (20) "United States Warehouse Act" means the United States Warehouse Act, enacted August 11, 1916, as amended;
- (21) "Valid claim" means a claim arising from a failure of a grain dealer or warehouseman which occurs after July 13, 1984, and adjudicated valid by the department, less all credits and offsets;~~and~~
- (22) "Warehouse receipt" means:
- (a) A warehouse receipt issued under the Public Grain Warehouse and Warehouse Receipts Act in accordance with the Uniform Commercial Code; or
  - (b) A warehouse receipt issued under the United States Warehouse Act, provided a cooperative agreement has been signed by the federal licensee and the department to authorize participation in the fund;
- (23) *"Seed" means grain set apart to be used for the purpose of producing new plants; and*
- (24) *"Gross value" means the value of grain to be assessed, after any quality discounts have been deducted such as excessive moisture or foreign matter, but before any storage or marketing charges have been deducted.*

Section 6. KRS 251.640 is amended to read as follows:

- (1) It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that producers of grain shall be assessed **at a rate of .0025 times the gross value of**~~one half cent (\$0.005) per bushel on~~ all marketed grain which is produced in Kentucky and provide for the collection of the **assessment**~~same~~ for the purpose of financing or contributing to the financing of the Kentucky grain insurance fund, which is hereby created. Producers of grain produced outside of Kentucky shall not be subject to the assessment if they certify to the grain dealer or warehouseman that the grain was not produced in Kentucky. The department shall establish the form to be completed, signed, and given to the grain dealer or warehouseman in order to obtain the exemption. The information required by the department shall include at a minimum, the date, the producer's name, business address, phone number, quantity **of grain**, and **type of**~~identify the~~ grain. A copy of the form shall be kept as a part of the books and records by the grain dealer or warehouseman and in addition a copy of **the**~~such~~ form shall be supplied to the department.
- (2) Upon the establishment of the Kentucky Grain Insurance Corporation, the Commissioner shall notify~~forthwith~~ by certified mail, all persons in this state engaged in the business of purchasing grain from producers, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the purchase price of the grain. The **deducted** assessment~~so deducted~~ shall, on or before the fifteenth day of the month following the end of the month in which **the**~~such~~ grains are sold to the purchaser, be remitted by the purchaser to the grain insurance fund. The books and records of all purchasers of grain, which shall clearly

indicate the producer assessment, shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours. The Commissioner or his agents may take~~[such]~~ steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.

- (3) ~~[The assessment shall continue until the fund is more than three million dollars (\$3,000,000).]~~ If and when the fund is more than **four**~~[three]~~ million dollars (**\$4,000,000**)~~[((\$3,000,000))]~~, no fees shall be assessed by the department **unless**~~[until such time as]~~ the amount in the fund drops below **four**~~[three]~~ million dollars (**\$4,000,000**)~~[((\$3,000,000))]~~. If the fund is more than **four**~~[three]~~ million dollars (**\$4,000,000**)~~[((\$3,000,000))]~~, no later than April 30 of each year, the board shall meet and certify the fund is in excess of **four**~~[three]~~ million dollars (**\$4,000,000**)~~[((\$3,000,000))]~~. Upon this certification, no assessment shall be assessed or collected for that licensed year. If at any time after the board has certified the **four**~~[three]~~ million dollar (**\$4,000,000**)~~[((\$3,000,000))]~~ amount, the board receives notification of the fund being less than **three**~~[two]~~ million dollars (**\$3,000,000**)~~[((\$2,000,000))]~~, the board shall within thirty (30) days certify that the fund has less than **three**~~[two]~~ million dollars (**\$3,000,000**)~~[((\$2,000,000))]~~, and the assessment shall be reinstated. Upon notification from the board, the department shall within thirty (30) days reinstate the~~[one-half-cent (\$0.005)]~~ assessment fee **of .0025 times the gross value of the grain purchased.**
- (4) Any producer upon and against whom the assessment is levied and collected under the provisions of this section, if dissatisfied with the assessment~~[and the result thereof]~~, may demand of and receive from the treasurer of the grain insurance corporation a refund of assessment collected from the producer, if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer. By voluntarily submitting to a refund, the producer forgoes any protection or compensation provided for by the grain insurance corporation.
- (5) When in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, the Grain Insurance Corporation may make application to the Franklin Circuit Court for an order enjoining **the**~~[such]~~ acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.
- (6) The assessments by the department **in accordance with**~~[pursuant to]~~ this section are in addition to any other fees or assessments required by law.

Section 7. KRS 251.642 is amended to read as follows:

- (1) Producers who have requested and received a refund of an assessment **in accordance with**~~[pursuant to]~~ KRS 251.640(4) may reenter the grain insurance program by:
- (a) Petitioning the Kentucky Grain Insurance Board for approval of reentry into the program; **and**
  - (b) Immediately upon mailing **the**~~[said]~~ petition for reentry to the offices of the Kentucky Department of Agriculture, placing an amount equal to all previous assessment refunds to that producer in an escrow account in a local bank, **the**~~[such]~~ previous assessments and the terms and conditions of the escrow account to be determined by the Kentucky Department of Agriculture.~~[; and]~~

- (2)~~(e)~~ The board shall review the producer's petition for reentry and if approved the producer shall repay into the grain insurance fund all previous assessment refunds as determined by the Kentucky Department of Agriculture. Producers reentering the grain insurance program *in accordance with*~~pursuant to~~ this section will be protected by the program from the time all previous assessment refunds were placed in escrow.
- (3)~~(2)~~ Once the fund reaches *four*~~three~~ million dollars (*\$4,000,000*)~~(\$3,000,000)~~ and all assessments to the Kentucky grain insurance fund have ceased *in accordance with*~~pursuant to~~ KRS 251.640, all producers who have not requested and received a refund shall be participants in the program.
- (4)~~(3)~~ No producer will be granted protection of the grain insurance program who has not been a participant in the program prior to meeting the criteria of a claimant.

Section 8. KRS 251.720 is amended to read as follows:

- (1) Any person engaged in the business of buying grain from producers for resale, milling, or processing shall first procure a license from the department as required by the board before transacting business. ~~The~~~~Such~~ license shall expire on June 30 and shall be renewed annually *by August 1*. The annual license fee shall be based on the total annual volume handled as follows:
- (a) From zero to *five thousand nine hundred ninety-nine (5,999)*~~six thousand (6,000)~~ bushels, *seventy-five*~~fifty~~ dollars (*\$75*)~~(\$50)~~;
  - (b) Six thousand (6,000) to *ninety-nine thousand nine hundred ninety-nine (99,999)*~~one hundred thousand (100,000)~~ bushels, one hundred *fifty* dollars (*\$150*)~~(\$100)~~;
  - (c) One hundred thousand (100,000) to *one million nine hundred ninety-nine thousand nine hundred ninety-nine (1,999,999)*~~two million (2,000,000)~~ bushels, *three*~~two~~ hundred dollars (*\$300*)~~(\$200)~~;
  - (d) Two million (2,000,000) to *five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999)*~~six million (6,000,000)~~ bushels, *four hundred fifty*~~three hundred~~ dollars (*\$450*)~~(\$300)~~;
  - (e) Six million (6,000,000) to *nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999)*~~ten million (10,000,000)~~ bushels, *six*~~four~~ hundred dollars (*\$600*)~~(\$400)~~; or
  - (f) ~~Over~~ Ten million (10,000,000) bushels *and up*, *seven*~~five~~ hundred *fifty* dollars (*\$750*)~~(\$500)~~.
- (2) The fee for each license shall be deposited in *the Kentucky grain insurance fund as a regular contribution*~~a trust and agency fund account in the State Treasury~~ to be used for carrying out the provisions of KRS 251.410 to 251.510.
- (3) Every person licensed as a grain dealer shall file with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the Commonwealth of Kentucky. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner as trustee or an irrevocable letter of credit on forms prescribed by the Commissioner. The principal amount of the certificate or letter of credit shall be the same as that required for a surety bond under this section, and the interest,~~thereon~~ if any, shall be made payable to the purchaser. The bond shall be a principal amount, to the nearest one thousand dollars (\$1,000), equal to ten

percent (10%) of the aggregate dollar amount paid by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year, or in the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not *previously been*~~[theretofore]~~ engaged *as a grain dealer*~~[in such business]~~, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. *The*~~[Such]~~ bond shall not be less than twenty-five thousand dollars (\$25,000), nor more than one hundred thousand dollars (\$100,000), except as otherwise authorized by this section.~~[Any grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner as trustee or an irrevocable letter of credit on forms prescribed by the Commissioner. The principal amount of the certificate shall be the same as that required for a surety bond under this section and the interest thereon shall be made payable to the purchaser thereof.]~~

- (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers for grain purchased, or when he determines that the grain dealer does not have a sufficient net worth to meet his financial obligations, require a grain dealer to post an additional bond in a dollar amount equal to the insufficiency or shall require an additional certificate of deposit or an irrevocable letter of credit equal to the insufficiency, as deemed appropriate by the Commissioner. Failure to post the additional bond or certificate of deposit or an irrevocable letter of credit constitutes grounds for suspension or revocation of a license issued under this section.
- (5) The bond or additional bond shall be made payable to the Commonwealth of Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this section. It shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by the grain dealer, and shall not be cancelled, except upon at least sixty (60) days' notice in writing to the department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.
- (6) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the Commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of twenty-five thousand dollars (\$25,000). *The*~~[Such]~~ request shall be accompanied by a financial statement of the applicant made within five (5) months of the date of *the*~~[such]~~ request, certified by a licensed public accountant, and *any*~~[such]~~ additional information concerning the applicant and his finances as the department may require. If *the*~~[such]~~ financial statement discloses a net worth of an amount equal to at least three (3) times the amount of the bond required by this section and the Commissioner is otherwise satisfied as to the financial ability and resources of the applicant, the Commissioner may waive that portion of the required bond in excess of twenty-five thousand dollars (\$25,000). However, in the case of a grain dealer whose net worth is not equal to three (3) times the amount of bond required, the Commissioner may allow the grain dealer to waive, in one thousand dollar (\$1,000) increments, a portion of the bond required in excess of twenty-five thousand dollars (\$25,000). The percentage factor to be applied to the bond required in excess of twenty-five thousand dollars (\$25,000) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of twenty-five thousand dollars (\$25,000). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of twenty-five thousand dollars (\$25,000) may be waived. The grain dealer shall then provide to the department a surety



bond in the amount of twenty-five thousand dollars (\$25,000), plus any additional bond required *by the Commissioner* ~~[in excess thereof]~~.

- (7) An incidental grain dealer whose total purchases of grain from producers during any fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand dollars (\$250,000) may satisfy the bonding requirements of this section by filing with the department a bond, certificate of deposit, or an irrevocable letter of credit at the rate of one thousand dollars (\$1,000) for each ten thousand dollars (\$10,000) or fraction *of ten thousand dollars (\$10,000)* ~~[thereof of the dollar amount to be purchased]~~ with a minimum bond, certificate of deposit, or an irrevocable letter of credit of one thousand dollars (\$1,000), and a current financial statement.
- (8) Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter of credit and to keep the bond, certificate of deposit, or an irrevocable letter of credit in force or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this section.
- (9) When the Commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the Commissioner shall determine, through appropriate legal procedures, the producers and the amount of defaulted payment, and, as trustee of the bond, shall immediately after the determination call for the dealer's surety bond or bonds to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds, then the surety shall be obligated to pay only the amount of the default.
- (10) Any grain dealer who is also in the business of storing grain and is a warehouseman as defined in KRS 251.610 may be exempted from the licensing fee and bonding requirements of KRS 251.451 as long as his storage capacity and storage obligations are considered in formulating his grain dealer bond requirement.
- (11) The department may refuse to issue a license to any applicant or revoke the existing license of one ~~[-(1)]~~ who furnishes false or misleading information or conceals a material fact on the application or other supporting documents, ~~[-, -]~~ has been convicted of fraud or deceptive practice, ~~[-, -]~~ is currently adjudicated incompetent by a court of competent jurisdiction, *fails to maintain an asset to liability ratio of one to one (1:1) or fails to post additional surety to cover the deficiency*, ~~[-, -]~~ or for other good cause shown. Any individual ~~[-sø]~~ denied a license for these reasons shall be given written notice within thirty (30) days of receipt of application. Any applicant who is denied a license or has had his license revoked and feels he has been aggrieved may request a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing shall be conducted in accordance with KRS Chapter 13B.
- (12) All applications for a grain dealer license shall be accompanied by a current financial statement, or an irrevocable letter of credit from a financial institution.
- (13) (a) *A grain dealer license shall become invalid upon the cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, sale, or failure to remit license fees or fines. Licensed grain dealers shall immediately notify the department as to any changes and shall surrender the invalid license to the department. In the case of a successor, the successor shall apply for a new license.*

***(b) If there is a cessation of operations or sale, the department, when deemed appropriate, may cause an audit and examination to be made. In this case, all records required in this chapter shall be available to the department until the department is satisfied that all obligations have been met.***

Section 9. KRS 251.990 is amended to read as follows:

- (1) Any person who violates the provisions of KRS 251.430 to 251.720 shall be guilty of a violation. He shall be guilty of a Class A misdemeanor for each subsequent offense. Each day of operation in violation of the provisions of KRS 251.430 to 251.720 shall constitute a separate offense.
- (2) Any person who operates without a license as required by KRS 251.430 or 251.720 shall be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for each violation, or imprisoned for at least one (1) but not more than five (5) years, or both.
- (3) Any person who intentionally refuses or fails to pay moneys collected for assessment of grain under the Kentucky Grain Insurance Fund Program as set forth in KRS 251.640 shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than six (6) months, or both.
- (4) Any person who fails or refuses to maintain at all times grain in storage, rights in grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of a licensed grain storage establishment's unpaid obligations to producers for grain delivered under a forward pricing (delayed pricing) contract as required by KRS 251.485 or 251.675 shall be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for each violation, or imprisoned for at least one (1) year but not more than five (5) years, or both.
- (5) Any person who knowingly makes any false statement, representation, or certification, or who knowingly fails to make any statement, representation, or certification in any record, report, or other document filed or required to be maintained by the Commissioner in violation of KRS 251.485(2) shall upon conviction be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation, or imprisoned for at least one (1) year but not more than five (5) years, or both.
- (6) Any person who transfers or disburses grain, property, or assets from the licensed grain establishment's handler account in violation of KRS 251.485(2) shall upon conviction be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for each violation, or be imprisoned for at least one (1) year but not more than five (5) years, or both.
- (7) Except as permitted by law, any person who willfully and knowingly resists, prevents, impedes, or interferes with the Commissioner or other agents or employees of the department in performance of the duties assigned by KRS 251.485 or 251.675, shall upon conviction be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation, or imprisoned for not more than one (1) year, or both.
- (8) If a corporate grain establishment license holder violates any provision of KRS 251.485 or 251.675 or ***any*** administrative regulations ***that pertain to KRS 251.485 or 251.675***~~issued pursuant thereto~~, or if it fails or refuses to comply with any lawful order issued by the Commissioner, any director, officer, or agent of the corporation who willfully and

knowingly authorized, ordered, or carried out the violation, failed, or refused to comply with any lawful order issued by the Commissioner shall be subject to the same penalties, fines, and imprisonment as may be imposed upon a person *in accordance with* ~~[pursuant to]~~ this section.

- (9) *Any person who fails to renew a license within the time frame required by Section 2 or 8 of this Act shall be fined one hundred fifty dollars (\$150).*
- (10) *All fines or penalties collected from violators of the provisions of this chapter shall be deposited into the Kentucky grain insurance fund created by Section 6 of this Act.*

**Approved March 18, 2005.**