

CHAPTER 214**(HB 640)**

AN ACT relating to grain assessments.

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

Section 1. 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 and the person surrendering the warehouse receipt was not fully paid for the grain; 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 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, 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 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, in assets in commodity exchange grain margin accounts;
 - (e) Moneys due or to become due, less any secured financing directly associated with the moneys, 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 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 KRS 251.640 and has never requested a refund, or has entered the program in accordance with 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;
- (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 2. 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 *all* producers of grain shall be assessed at a rate of .0025 times the gross value of all marketed grain~~{ which is produced in Kentucky}~~ and provide for the collection of the assessment 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 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 form shall be supplied to the department.}~~
- (2) Upon the establishment of the Kentucky Grain Insurance Corporation, the Commissioner shall notify 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 shall, on or before the fifteenth day of the month following the end of the month in which the 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 steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.
- (3) If and when the fund is more than four million dollars (\$4,000,000), no fees shall be assessed by the department unless the amount in the fund drops below four million dollars (\$4,000,000). If the fund is more than four million dollars (\$4,000,000), no later than April 30 of each year, the board shall meet and certify the fund is in excess of four million dollars (\$4,000,000). 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 million dollar (\$4,000,000) amount, the board receives notification of the fund being less than three million dollars (\$3,000,000), the board shall within thirty (30) days certify that the fund has less than three million dollars (\$3,000,000), and the assessment shall be reinstated. Upon notification from the board, the department shall within thirty (30) days reinstate the 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, 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 acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

- (6) The assessments by the department in accordance with this section are in addition to any other fees or assessments required by law.

Approved April 21, 2006.