

CHAPTER 61

(HB 462)

AN ACT relating to grain.

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

➔Section 1. KRS 251.430 is amended to read as follows:

Any person, firm, or corporation who accepts grain for storage in this state shall first procure a license from the department as required by the board before transacting any 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 stored grain is covered by a federal bond and law; otherwise, the 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 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 shall be ~~deposited in the Kentucky grain insurance fund as a regular contribution to be~~ used for carrying out the provisions of *this chapter* ~~[KRS 251.410 to 251.510]:~~

Total annual volume handled:

- (1) Under two million (2,000,000) bushels, three hundred dollars (\$300);
- (2) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
- (3) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
- (4) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).

➔Section 2. KRS 251.451 is amended to read as follows:

- (1) Each warehouseman shall file with the department a surety bond issued by a surety company authorized to transact business within the Commonwealth of Kentucky, payable to the Commonwealth with the Commissioner as trustee. A warehouseman 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 *provided* ~~prescribed~~ by the Commissioner, *or, upon approval by the Commissioner, a warehouse receipt for temporary surety until permanent surety is issued by a surety company.* The principal amount of the certificate, ~~or~~ letter of credit, *or temporary surety* 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 amount of the bond for a warehouseman shall be established by *administrative regulation* ~~rule of the department~~, but in no event shall the sum be less than twenty-five cents (\$0.25) per bushel of the total maximum bushel capacity of the warehouse or ten thousand dollars (\$10,000), whichever is greater.
- (2) The bond shall be conditioned on the faithful performance of duties as an operator and the full and unreserved compliance with the laws of this state and *any administrative regulations promulgated by* ~~the rules of~~ the department ~~in relation thereto~~, so that the depositors holding warehouse receipts, contracts, or other documented evidence of stored grain may receive the benefit of the bond. The aggregate liability of the surety to all depositors shall in no event exceed the sum of the bond. Neither the issuance of warehouse receipts by a warehouseman to himself for grain owned in whole or in part by him, the commingling of grain owned by the warehouseman with grain stored for others, or any violation by a warehouseman of KRS 251.420 to 251.510 or of the *administrative regulations promulgated* ~~rules and regulations issued~~ by the department shall constitute a defense in any action brought upon any bond, and all such bonds shall so provide. Maximum capacity of a warehouse shall be determined by dividing the cubic volume of all bins by two thousand one hundred fifty and forty-two one hundredths (2,150.42) cubic inches. The bond shall be kept in force at all times while the operator is conducting a warehouse. Failure to keep the bond in force shall be cause for revocation of the license and subjects the warehouseman to the criminal penalty provided in KRS 251.990. Each bond shall contain a provision that it may not be canceled by either the surety or the principal except upon sixty (60) days' notice in writing to the department at its offices in Frankfort. The notice shall not affect the liability accrued or that which may accrue under the bond before the expiration of the sixty (60) days. The department may require additional bond where the assets of any warehouseman appear insufficient, when compared to his storage

obligations, or to meet the bond requirements of the United States or any agency or corporation controlled by the United States when they have a contract for storage with the warehouseman. The additional bond shall be a dollar amount equal to the insufficiency. Failure to post ~~an~~[such] additional bond shall constitute grounds for suspension or revocation of a license issued under KRS 251.430.

➔Section 3. 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 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.
- (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) (a) *Beginning with the first assessment levied on or after the effective date of this Act, no assessments shall be collected by the department under paragraph (b) of this subsection unless the board has certified that the fund is less than three million dollars (\$3,000,000). For subsequent assessments, the provisions and amounts specified in paragraph (b) of this subsection apply.*
 - (b) If and when the fund is more than *ten million dollars (\$10,000,000)*~~four million dollars (\$4,000,000)~~, no fees shall be assessed by the department unless the amount in the fund drops below *ten million dollars (\$10,000,000)*~~four million dollars (\$4,000,000)~~. If the fund is more than *ten million dollars (\$10,000,000)*~~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 *ten million dollars (\$10,000,000)*~~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 *ten million dollars (\$10,000,000)*~~four million dollar (\$4,000,000)~~ amount, the board receives notification of the fund being less than *eight million dollars (\$8,000,000)*~~three million dollars (\$3,000,000)~~, the board shall within thirty (30) days certify that the fund has less than *eight million dollars (\$8,000,000)*~~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, ~~or~~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.

➔Section 4. KRS 251.642 is amended to read as follows:

- (1) Producers who have requested and received a refund of an assessment in accordance with 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 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 previous assessments and the terms and conditions of the escrow account to be determined by the Kentucky Department of Agriculture.
- (2) 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 this section will be protected by the program from the time all previous assessment refunds were placed in escrow.
 - (3) Once the fund reaches *ten million dollars (\$10,000,000)*~~[four million dollars (\$4,000,000)]~~ and all assessments to the Kentucky grain insurance fund have ceased in accordance with KRS 251.640, all producers who have not requested and received a refund shall be participants in the program.
 - (4) 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 5. KRS 251.660 is amended to read as follows:

In the event that amounts in the Kentucky grain insurance fund are insufficient to pay the approved claims, funds to satisfy the unpaid claims shall be made available to the corporation *as provided by this section*~~[in amounts not to exceed at any one (1) time a maximum of one and one half million dollars (\$1,500,000)]~~. KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall constitute an irrevocable and continuing appropriation for, and direction to, the secretary of the Finance and Administration Cabinet and the State Treasurer to make the necessary transfers and disbursements from the revenues and funds of the state for that purpose. The state shall be reimbursed, with interest at the rate paid on ninety (90) day United States Treasury bills, for any amounts paid under this section upon replenishment of the fund from assessments made *in accordance with*~~[pursuant to]~~ KRS 251.640.

➔Section 6. KRS 251.670 is amended to read as follows:

- (1) Within ninety (90) days of the board's approval of a valid claim, the board shall, in accordance with the provisions of this section, compensate from the grain indemnity trust fund any claimant who has incurred a financial loss due to a failure of a grain dealer or warehouseman.
- (2) Any claimant who has incurred a financial loss due to a failure of a licensed grain dealer shall be entitled to be compensated for eighty percent (80%) of a valid claim, to a maximum of *two hundred thousand dollars (\$200,000)*~~[one hundred thousand dollars (\$100,000)]~~, with moneys from the Kentucky grain insurance fund, provided that the claim is brought within one (1) year from the time the claimant receives actual notice of the grain dealer's failure. To the maximum extent that funds are or may be made available for the purpose *of paying a claim*, the remaining balance of the claim shall be paid by the board from the assets and other security of the failed grain dealer, provided that any claimant who has incurred a financial loss due to the failure of a grain dealer and who has surrendered a warehouse receipt for payment shall be compensated for one hundred percent (100%) of a valid claim.
- (3) Any claimant who has incurred a financial loss due to a failure of a licensed grain warehouseman shall be entitled to be compensated for eighty-five percent (85%) of a valid claim with moneys from the Kentucky grain insurance fund, provided that the claim is brought within one (1) year from the time the claimant receives actual notice of the warehouseman's failure. To the maximum extent that funds are or may be made available for ~~the~~~~[such]~~ purpose *of paying a claim*, the remaining balance of ~~the~~~~[such]~~ claim shall be paid by the board from the assets and other security of the failed grain warehouse, provided that any claimant who has incurred a financial loss due to the failure of a grain warehouse and who has surrendered a warehouse receipt for payment shall be compensated for one hundred percent (100%) of a valid claim.

➔Section 7. 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 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) bushels, seventy-five dollars (\$75);

- (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine (99,999) bushels, one hundred fifty dollars (\$150);
 - (c) One hundred thousand (100,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars (\$300);
 - (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
 - (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
 - (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).
- (2) The fee for each license shall be ~~deposited in the Kentucky grain insurance fund as a regular contribution to be~~ used for carrying out the provisions of *this chapter* ~~[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 *provided* ~~[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, 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 engaged as a grain dealer, 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 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.
- (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 *canceled* ~~[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 request shall be accompanied by a financial statement of the applicant made within five (5) months of the date of the request, certified by a licensed public accountant, and any additional information concerning the applicant and his finances as the department may require. If the 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.~~

- (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) with a minimum bond, certificate of deposit, or an irrevocable letter of credit of **five thousand dollars (\$5,000)** ~~one thousand dollars (\$1,000)~~, and a current financial statement.
- (7) ~~(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.
- (8) ~~(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.
- (9) ~~(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.
- (10) ~~(11)~~ The department may refuse to issue a license to any applicant or revoke the existing license of one 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 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.
- (11) ~~(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.
- (12) ~~(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 8. 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, 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 this section.
- (9) Any person who fails to renew a license within the time frame required by KRS 251.430 or 251.720 shall be fined one hundred fifty dollars (\$150).
- (10) All fines or penalties collected from violators of the provisions of this chapter shall be *used to carry out the provisions of this chapter* ~~deposited into the Kentucky grain insurance fund created by KRS 251.640~~.

Signed by the Governor March 20, 2009.