

CHAPTER 68

(HB 173)

AN ACT relating to grain.

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

➔Section 1. KRS 251.620 is amended to read as follows:

- (1) There is hereby created the Kentucky Grain Insurance Corporation, a political subdivision, body politic and municipal corporation. The governing powers of the corporation shall be vested in a board of directors, composed of ten (10) members, including the Commissioner of the Department of Agriculture, who shall serve as president; the Attorney General, who shall serve as secretary; the State Treasurer, who shall serve as treasurer; the State Auditor; two (2) representatives from the Kentucky Feed and Grain Association selected by the Commissioner; two (2) representatives from the Kentucky Farm Bureau Federation selected by the Commissioner; and two (2) representatives from the Kentucky National Farmers Organization selected by the Commissioner. The Commissioner of Agriculture, Attorney General, State Treasurer, and State Auditor may each designate a person to represent him. The Kentucky Feed and Grain Association, the Kentucky Farm Bureau Federation, and the Kentucky National Farmers Organization shall each submit a list of four (4) names to the Commissioner from which the Commissioner shall make his appointments. The appointed members of the board shall serve~~[until June 30, 1992. Thereafter, the appointed members of the board shall serve]~~ for a term of four (4) years or until their successor is appointed and qualified. Seven (7) members of the board shall constitute a quorum at any meeting of the board and the affirmative vote of seven (7) members shall be necessary for any action taken by the board at a meeting, except that a lesser number may adjourn a meeting~~[from time to time]~~. Each member of the board shall be given at least five (5) days' written notice of the meetings. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board and corporation.
- (2) The corporation shall have the following powers, together with all powers incidental or necessary to the discharge *of its powers*~~[thereof]~~ in corporate form:
 - (a) Perpetual succession by its corporate name as a corporate body;
 - (b) Alter and repeal bylaws, not inconsistent with the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, for the regulation and conduct of its affairs and business;
 - (c) Adopt and make use of a corporate seal and to alter the *seal*~~[same]~~ at pleasure;
 - (d) Avail itself of the services of the Department of Agriculture, the Attorney General, and the State Auditor when deemed necessary in the execution of the duties of the board;
 - (e) Receive funds assessed by the department under KRS 251.640;
 - (f) Administer the Kentucky Grain Insurance Fund by investing any funds of the corporation that the board may determine are not presently needed for any of its corporate purposes;
 - (g) Receive funds from the grain indemnity trust fund for deposit into the Kentucky grain insurance fund;
 - (h) Upon the request of the Commissioner, to make payment from the Kentucky grain insurance fund to the grain indemnity trust fund, when *a*~~[such]~~ payment is necessary for the purpose of compensating claimants in accordance with the provisions of KRS 251.670; and
 - (i) *Any other powers necessary to carry out the provisions of this section*~~[Have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the corporation]~~ and all *other*~~[such]~~ incidental powers as are customary in corporations.
- (3) No director or other person acting on behalf of the corporation shall be personally liable for damage or injury resulting from the performance of his duties *for the corporation*~~[hereunder]~~.

➔Section 2. KRS 251.650 is amended to read as follows:

- (1) All assessments by the department *in accordance with*~~[pursuant to]~~ KRS 251.640 shall be held by the corporation in trust in the Kentucky grain insurance fund for carrying out the purposes of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740. These funds shall be invested and reinvested in

United States Treasury obligations at the discretion of the corporation, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the fund. The money in the fund shall not be available for any purpose other than the payment of claims *in accordance with* ~~pursuant to~~ KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, and shall not be transferred to any fund other than the grain indemnity trust fund, which is hereby created. This limiting and nontransferability provision shall not be severable from the whole of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740; and if ~~the~~ ~~such~~ provision is held invalid, repealed, or substantially amended, KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall immediately become invalid, and to this end, ~~the~~ ~~such~~ provision is declared to be nonseverable.

- (2) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the investment of funds for the Kentucky grain insurance fund through the Kentucky Commission for Investments in any guaranteed security or other guaranteed investment recommended by the commission if the board determines ~~the~~ ~~such~~ recommendation would maximize the interest or income to the fund.
- (3) ***Notwithstanding the provisions of subsection (1) of this section,*** the board is authorized to pay from the interest or income produced by the investing of the Kentucky grain insurance fund:
 - (a) The ordinary management and investment fees assessed *in accordance with* ~~pursuant to~~ statute or administrative regulation: ***and***
 - (b) ***A per diem of fifty dollars (\$50) to board members for each board meeting they attend, and reimbursement for other reasonable and necessary expenses incurred while engaged in carrying out the official duties of the board.***
- (4) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the payment of legal fees, in actions brought against the Kentucky grain insurance fund, exclusively from the interest or income earned from the investment of the Kentucky grain insurance fund. All legal expenses incurred must be approved for payment by the board.

➔Section 3. 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 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, 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 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 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 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.
- (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.
- (14) *In addition to the other provisions required by this section, any person who is engaged in the business of buying grain from producers and who purchases or takes title to grain valued at more than one million dollars (\$1,000,000) within a calendar month shall:*
- (a) *Notify the department, in writing, by submitting a detailed position report outlining the:*
1. *Type of grain;*
 2. *Quantity of each grain, in bushels;*
 3. *Disposition of the grain, whether paid, forward price contracted, or other; and*
 4. *Aggregate value of the grain purchased within the calendar month.*
- The report shall be submitted to the department within ten (10) days following the close of the calendar month. Failure to submit the report may result in the revocation of the person's license;*
- (b) *Upon request of the department, submit a balance sheet on a form provided by the department, current through the end of the calendar month. Additional surety shall be required, on a dollar-for-dollar basis, if the total value of purchases of grain exceeds the combined value of the licensee's net worth and existing surety. If the licensee has an asset-to-liability ratio falling below one to one (1:1) or has outstanding payables to producers, other than legitimate forward price contracted grain, over thirty (30) days due and exceeding one million dollars (\$1,000,000), the licensee's license shall be suspended until the deficit is corrected; and*
- (c) *Be placed on an accelerated audit schedule as determined by the department. If, in the determination of the department, the licensee cannot meet a minimum asset-to-liability ratio of one-half to one (0.5:1), the department shall revoke the license. The department shall also place liens on licensee assets up to the amount of indebtedness to producers. If the department determines the licensee is insolvent, the Commissioner shall have the power to seize assets up to the value of the indebtedness to producers.*

Signed by the Governor March 24, 2009.