

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 153 HCS 1 BR # 850 DOC ID #: SB015330.100- 850- 5745v

BILL SPONSOR(S): Sen. P. Hornback, D. Givens, R. Girdler AMENDMENT SPONSOR(S): Sen. P. Hornback

SUBJECT: AN ACT relating to grain.

SUMMARY OF LEGISLATION: Amend KRS 246.120 to expand the membership of the Board of Agriculture to eighteen members; set board member terms; amend KRS 246.130 to conform; repeal and reenact KRS 251.010 to define terms as used in this chapter; create new sections of KRS Chapter 251 to establish the purpose of the provisions of the chapter; authorize the board, in conjunction with the department, to adopt and oversee policies, procedures, and programs pertaining to this chapter; require a licensee to issue scale tickets; set forth requirements related to issuing scale tickets; set forth licensing requirements for grain dealers and grain warehouse operators; authorize the board, in conjunction with the department, to promulgate administrative regulations setting forth a schedule of fees for licensed grain dealers and licensed grain warehouse operators; allow receipts collected from licensing fees to be used for expenses incurred by the Department of Agriculture; set forth requirements for surety bonds; set forth requirements to retain copies of business records; authorize the board, in conjunction with the department, to promulgate administrative regulations relating to record-keeping requirements for licensees; establish requirements to enter into forward pricing contracts; authorize the board, in conjunction with the department, to promulgate administrative regulations setting forth the information that shall be included in a forward pricing contract; require the department to conduct inspections of licensed grain warehouses and licensed grain dealers; define fund-covered grains; to set forth requirements for approval of fund-covered grains by the board; set forth requirements allowing a person to opt out of paying an assessment on fund-covered grains; establish criteria for a lien on grain; create a new section of KRS Chapter 251 to establish the powers and duties of the board in the event of a failure of a licensed grain dealer or licensed grain warehouse operator; create a new section of KRS Chapter 251 to allow an injured person to bring a civil action against the person or corporation who committed the violation; amend KRS 251.020 to establish the powers and duties of the board; authorize the board, in conjunction with the department, to promulgate administrative regulations necessary for the administration and enforcement of the chapter; allow the board to enter into cooperative agreements; take disciplinary action against any licensee or former licensee; amend KRS 251.440 to make technical corrections and to conform; set forth requirements for the department when approving a grain dealer license or a grain warehouse operator license; amend KRS 251.500 to make technical corrections; amend KRS 251.640 to clarify standards in which assessments shall be collected; amend KRS 251.650 to authorize the board to pay claims, management fees, investment fees, legal fees and administration fees; make technical corrections; amend KRS 251.660 to conform; amend 251.730 to conform; amend KRS 251.990 to establish penalties for offenses; amend KRS 64.012 to remove license fee for a grain warehouseman; repeal KRS 251.015; 251.410; 251.420; 251.430; 251.451; 251.480; 251.485; 251.490; 251.510; 251.520; 251.600; 251.610; 251.620; 251.630; 251.642; 251.670; 251.675; 251.680; 251.690; 251.700; 251.710; 251.720; 359.010; 359.020; 359.030; 359.040; 359.050; 359.060; 359.070; 359.090; 359.100; 359.110; 359.120; 359.130; 359.140; 359.150; 359.160; 359.170; 359.990; EFFECTIVE August 1, 2019.

AMENDMENT: Retain original provisions; make technical and grammatical corrections; clarify claim values; amend KRS 251.640 to clarify terms in which the board shall reinstate the assessment; amend KRS 251.650 to establish reporting requirements of the board.

AMENDMENT: Retain original provisions; clarify license requirements for grain dealers; clarify eligibility for coverage by the fund, make technical correction; remove felony penalties.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

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|--|--|
| <input type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
- Changes elements of offense for existing crime(s)
 Otherwise impacts incarceration (Explain) Clarifies current penalties under law.
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STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$71.10. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$32.78 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

SB 153 sets forth regulations related to agriculture and grain warehouses.

Section 25 (KRS 251.990) holds a penalty for violations under KRS Chapter 251. Added under the 1st Offense violation is a fine in the amount up to \$500. Subsequent offenses are a Class A misdemeanor, with the proposed legislation adding wording of up to a \$1,000 fine or up to six (6) months imprisonment. Each day of operation in violation of statute constitutes a separate offense.

Operating as a grain warehouse operator or a grain dealer without a license holds up to a \$10,000 for each violation, not to exceed \$500,000. The Class D felony language is removed for this offense that was in prior versions of the bill, however current statute wording refers to imprisonment for at least one (1) but not more than five (5) years.

For the intentional refusal or failure to pay moneys collected for assessments of grain under the Kentucky grain insurance fund under KRS 251.640. There is a fine in the amount of up to \$500. Wording as existed in prior versions of the bill is removed for a Class A misdemeanor, however, the current statute wording of up to six (6) months incarceration remains.

Failure to comply with licensing requirements under Section 11 of the proposed legislation relating to 80% of the value of the unpaid obligations for grain purchased under forward pricing is, under current statute, subject to up to \$10,000 for each violation, not to exceed \$500,000. And while current statute does not specify a Class D felony offense, there is a penalty of one (1) to five (5) years in prison.

Knowingly making a false statement, representation, certification, or knowingly failing to make a statement, representation, or certification in a record, report, or document is up to a \$1,000 fine for each violation, not to exceed a total of \$500,000. While the wording related to the Class D felony is removed from this version of the legislation, the current statute wording of one (1) to five (5) years imprisonment remains.

The Class D felony is also removed from the bill language for transferring or disbursing grain, property, or assets in violation of KRS Chapter 251. Up to a \$10,000 fine for each violation, not to exceed a total of \$500,000 remains. Current statute wording remains referencing a penalty of one (1) to five (5) years imprisonment.

The Class C felony penalty wording for willfully and knowingly resisting, preventing, impeding, or interfering with a representative of the board or department in performance of duties under KRS Chapter 251 is removed from this version of the bill, returning to the existing statute wording of imprisonment for not more than one (1) year. Wording specifying the Class D level felony is not articulated in the current statute. The fine amount also returned to the existing statutory language of \$5,000, reduced from the \$10,000 that was included in prior versions of the bill.

The legislation contains wording revisions surrounding a business entity who violates any provision of KRS Chapter 251 or fails to comply with a lawful order issued by the board or the department to be subject to the same penalties imposed upon a person.

There is also a change to the statute reference for a \$150 fine for failing to renew a license within the timeframe provided under Section 7 of the legislation.

The legislation is to take effect August 1, 2019.

Records from AOC indicate there have not been any convictions under KRS Chapter 251 in twelve (12) years.

The legislation makes changes to some of the offenses in this section of KRS. Under current statute, some of these offenses hold either county or state incarceration periods. Under the House Committee Substitute, there is no increase to incarceration under this legislation and the impact is reduced from prior versions of the bill.

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Corrections Impact from Amendments:


There is no impact to Corrections from the Senate Floor Amendment.

The House Committee Substitute removes the Class C felony option. Wording for Class D felonies and Class A misdemeanors is removed from the legislation though several of the offenses do include incarceration as a penalty option. Under the House Committee Substitute, there is no substantive impact to incarceration beyond current statute.

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY:  3/7/2019
Deputy Commissioner, Kentucky Department of Corrections Date