GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

SENATE BILL NO. 182

THURSDAY, FEBRUARY 25, 2016

The following bill was reported to the House from the Senate and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to the storage and handling of grain.

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

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

4 Any person, firm, or corporation who accepts grain for storage in this state shall first
5 procure a license from the department as required by the board before transacting any
6 business. ~~[This shall not apply to the storage of grain by an establishment bonded and~~
7 ~~licensed under the provisions of a federal law to the extent that the stored grain is covered~~
8 ~~by a federal bond and law; otherwise, the establishments shall comply with the provisions~~
9 ~~of this chapter.]~~Any establishment that has unpaid-for grain thirty (30) days after delivery
10 of the last load by a producer shall be considered in the grain storage business. The
11 license shall expire on June 30, and shall be renewed annually by ***July***~~[August]~~ 1. The fee
12 for each license shall be according to the following schedule, and shall be used for
13 carrying out the provisions of this chapter:

14 Total annual volume handled:

15 (1) Under two million (2,000,000) bushels, three hundred dollars ($300);

16 (2) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine
17 hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars ($450);

18 (3) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine
19 hundred ninety-nine (9,999,999) bushels, six hundred dollars ($600); or

20 (4) Ten million (10,000,000) bushels and up, seven hundred fifty dollars ($750).

21 ➔Section 2. KRS 251.440 is amended to read as follows:

22 (1) Application for license shall set forth the name of the applicant, its principal officer,
23 if a corporation, or the active members of a partnership if a partnership, and the
24 location or locations of the principal office or place of business and the locations in
25 this state at which applicant proposes to engage in this business. Application shall
26 be accompanied by a bond as set forth in KRS 251.451. The bond shall run to the
27 State of Kentucky and be for the benefit of all persons storing grain in the

1 warehouse. It shall be conditioned upon the warehouseman carrying combustion,
2 fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in
3 the warehouse, and the delivery of all stored grain or payment of the value of the
4 grain upon the surrender of the warehouse receipt or scale ticket, and upon the
5 faithful performance by the warehouseman of all provisions of law relating to the
6 storage and handling of grain by the warehouseman and the administrative
7 regulations promulgated by the Kentucky Department of Agriculture relative to the
8 storage and handling of grain.
9 (2) The department may refuse to issue a license to any applicant or revoke the existing
10 license of one who furnishes false or misleading information or conceals a material
11 fact on the application or other supporting documents, has been convicted of fraud
12 or deceptive practice, is currently adjudicated incompetent by a court of competent
13 jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1) or fails to
14 post additional surety to cover the deficiency, or for other good cause shown. Any
15 individual denied a license for these reasons shall be given written notice within
16 thirty (30) working days of receipt of application. Any applicant who is denied a
17 license or has had his license revoked and feels aggrieved, may request a hearing by
18 writing to the Commissioner of Agriculture. Upon request, a hearing shall be
19 conducted in accordance with KRS Chapter 13B.
20 (3) All applications for warehouseman license shall be accompanied by a current
21 financial statement[~~ or an irrevocable letter of credit from a financial institution~~].
22 ➔Section 3. KRS 251.720 is amended to read as follows:
23 (1) Any person engaged in the business of buying grain from producers for resale,
24 milling, or processing shall first procure a license from the department as required
25 by the board before transacting business. The license shall expire on June 30 and
26 shall be renewed annually by ***July***[~~August~~] 1. The annual license fee shall be based
27 on the total annual volume handled as follows:

1 (a) From zero to five thousand nine hundred ninety-nine (5,999) bushels, seventy-
2 five dollars ($75);
3 (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine
4 (99,999) bushels, one hundred fifty dollars ($150);
5 (c) One hundred thousand (100,000) to one million nine hundred ninety-nine
6 thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars
7 ($300);
8 (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand
9 nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars
10 ($450);
11 (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand
12 nine hundred ninety-nine (9,999,999) bushels, six hundred dollars ($600); or
13 (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars ($750).
14 (2) The fee for each license shall be used for carrying out the provisions of this chapter.
15 (3) Every person licensed as a grain dealer shall file with the department a surety bond
16 signed by the dealer as principal and by a responsible company authorized to
17 execute surety bonds within the Commonwealth of Kentucky. A grain dealer may
18 file with the department, in lieu of a surety bond, a certificate of deposit payable to
19 the Commissioner, as trustee, or an irrevocable letter of credit on forms provided by
20 the Commissioner. The principal amount of the certificate or letter of credit shall be
21 the same as that required for a surety bond under this section, and the interest, if
22 any, shall be made payable to the purchaser. The bond shall be a principal amount,
23 to the nearest one thousand dollars ($1,000), equal to ten percent (10%) of the
24 aggregate dollar amount paid by the dealer to producers for grain purchased from
25 them during the dealer's last completed fiscal year, or in the case of a dealer who
26 has been engaged in business as a grain dealer for less than one (1) year or who has
27 not previously been engaged as a grain dealer, ten percent (10%) of the estimated

1 aggregate dollar amount to be paid by the dealer to producers for grain purchased
2 from them during the next fiscal year. The bond shall not be less than twenty-five
3 thousand dollars ($25,000) nor more than one million dollars ($1,000,000), except
4 as otherwise authorized by this section.
5 (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers
6 for grain purchased, or when he determines that the grain dealer does not have a
7 sufficient net worth to meet his financial obligations, require a grain dealer to post
8 an additional bond in a dollar amount equal to the insufficiency or shall require an
9 additional certificate of deposit or an irrevocable letter of credit equal to the
10 insufficiency, as deemed appropriate by the Commissioner. Failure to post the
11 additional bond or certificate of deposit or an irrevocable letter of credit constitutes
12 grounds for suspension or revocation of a license issued under this section.
13 (5) The bond or additional bond shall be made payable to the Commonwealth of
14 Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain
15 dealer's faithful performance of his duties as a grain dealer and his compliance with
16 this section. It shall be for the use and benefit of any producer from whom the grain
17 dealer may purchase grain and who is not paid by the grain dealer, and shall not be
18 canceled, except upon at least sixty (60) days' notice in writing to the department. In
19 no event shall the total aggregate liability of a surety exceed the face amount of its
20 bond.
21 (6) An incidental grain dealer whose total purchases of grain from producers during any
22 fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand
23 dollars ($250,000) may satisfy the bonding requirements of this section by filing
24 with the department a bond, certificate of deposit, or an irrevocable letter of credit
25 at the rate of one thousand dollars ($1,000) for each ten thousand dollars ($10,000)
26 or fraction of ten thousand dollars ($10,000) with a minimum bond, certificate of
27 deposit, or an irrevocable letter of credit of five thousand dollars ($5,000), and a

1 current financial statement.

2 (7) Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter
3 of credit and to keep the bond, certificate of deposit, or an irrevocable letter of
4 credit in force or to maintain assets adequate to assure payment to producers for
5 grain purchased from them shall be grounds for the suspension or revocation of a
6 license issued under this section.

7 (8) When the Commissioner has determined that a grain dealer has defaulted payment
8 to producers for grain which he has purchased from them, the Commissioner shall
9 determine, through appropriate legal procedures, the producers and the amount of
10 defaulted payment, and, as trustee of the bond, shall immediately after the
11 determination call for the dealer's surety bond or bonds to be paid to him for
12 distribution to those producers who should receive the benefits. Should the
13 defaulted amount owed producers be less than the principal amount of the bond or
14 bonds, then the surety shall be obligated to pay only the amount of the default.

15 ~~[(9) Any grain dealer who is also in the business of storing grain and is a warehouseman~~
16 ~~as defined in KRS 251.610 may be exempted from the licensing fee and bonding~~
17 ~~requirements of KRS 251.451 as long as his storage capacity and storage~~
18 ~~obligations are considered in formulating his grain dealer bond requirement.]~~

19 *(9)*~~[(10)]~~ The department may refuse to issue a license to any applicant or revoke the
20 existing license of one who furnishes false or misleading information or conceals a
21 material fact on the application or other supporting documents, has been convicted
22 of fraud or deceptive practice, is currently adjudicated incompetent by a court of
23 competent jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1)
24 or fails to post additional surety to cover the deficiency, or for other good cause
25 shown. Any individual denied a license for these reasons shall be given written
26 notice within thirty (30) days of receipt of application. Any applicant who is denied
27 a license or has had his license revoked and feels he has been aggrieved may request

1 a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing
2 shall be conducted in accordance with KRS Chapter 13B.
3 *(10)*[~~(11)~~] All applications for a grain dealer license shall be accompanied by a current
4 financial statement[~~, or an irrevocable letter of credit from a financial institution~~].
5 *(11)*[~~(12)~~] (a) A grain dealer license shall become invalid upon the cessation of
6 operations, change of partners in a partnership, change of corporate structure
7 of a corporation, sale, or failure to remit license fees or fines. Licensed grain
8 dealers shall immediately notify the department as to any changes and shall
9 surrender the invalid license to the department. In the case of a successor, the
10 successor shall apply for a new license.
11 (b) If there is a cessation of operations or sale, the department, when deemed
12 appropriate, may cause an audit and examination to be made. In this case, all
13 records required in this chapter shall be available to the department until the
14 department is satisfied that all obligations have been met.
15 *(12)*[~~(13)~~] In addition to the other provisions required by this section, any person who is
16 engaged in the business of buying grain from producers and who purchases or takes
17 title to grain valued at more than one million dollars ($1,000,000) within a calendar
18 month shall:
19 (a) Notify the department, in writing, by submitting a detailed position report
20 outlining the:
21 1. Type of grain;
22 2. Quantity of each grain, in bushels;
23 3. Disposition of the grain, whether paid, forward price contracted, or
24 other; and
25 4. Aggregate value of the grain purchased within the calendar month.
26 The report shall be submitted to the department within ten (10) days following
27 the close of the calendar month. Failure to submit the report may result in the

1 revocation of the person's license;
2 (b) Upon request of the department, submit a balance sheet on a form provided by
3 the department, current through the end of the calendar month. Additional
4 surety shall be required, on a dollar-for-dollar basis, if the total value of
5 purchases of grain exceeds the combined value of the licensee's net worth and
6 existing surety. If the licensee has an asset-to-liability ratio falling below one
7 to one (1:1) or has outstanding payables to producers, other than legitimate
8 forward price contracted grain, over thirty (30) days due and exceeding one
9 million dollars ($1,000,000), the licensee's license shall be suspended until the
10 deficit is corrected; and
11 (c) Be placed on an accelerated audit schedule as determined by the department.
12 If, in the determination of the department, the licensee cannot meet a
13 minimum asset-to-liability ratio of one-half to one (0.5:1), the department
14 shall revoke the license. The department shall also place liens on licensee
15 assets up to the amount of indebtedness to producers. If the department
16 determines the licensee is insolvent, the Commissioner shall have the power
17 to seize assets up to the value of the indebtedness to producers.
18 ➔Section 4. KRS 251.990 is amended to read as follows:
19 (1) Any person who violates the provisions of KRS 251.430 to 251.720 shall be guilty
20 of a violation. He shall be guilty of a Class A misdemeanor for each subsequent
21 offense. Each day of operation in violation of the provisions of KRS 251.430 to
22 251.720 shall constitute a separate offense.
23 (2) Any person who operates without a license as required by KRS 251.430 or 251.720
24 shall be fined not ~~[less than five thousand dollars ($5,000) nor]~~more than ten
25 thousand dollars ($10,000) for each violation, ***not to exceed a total of five hundred***
26 ***thousand dollars ($500,000),*** or imprisoned for at least one (1) but not more than
27 five (5) years, or both.

1 (3) Any person who intentionally refuses or fails to pay moneys collected for
2 assessment of grain under the Kentucky Grain Insurance Fund Program as set forth
3 in KRS 251.640 shall be subject to a fine of not ~~[less than one hundred dollars~~
4 ~~($100) nor]~~more than five hundred dollars ($500), or imprisoned for not more than
5 six (6) months, or both.
6 (4) Any person who fails or refuses to maintain at all times grain in storage, rights in
7 grain, proceeds from the sale of grain, or a combination of the grain, rights, and
8 proceeds equal to eighty percent (80%) of the value of a licensed grain storage
9 establishment's unpaid obligations to producers for grain delivered under a forward
10 pricing (delayed pricing) contract as required by KRS 251.485 or 251.675 shall be
11 fined not ~~[less than five thousand dollars ($5,000) nor]~~more than ten thousand
12 dollars ($10,000) for each violation, ***not to exceed a total of five hundred thousand***
13 ***dollars ($500,000),*** or imprisoned for at least one (1) year but not more than five (5)
14 years, or both.
15 (5) Any person who knowingly makes any false statement, representation, or
16 certification, or who knowingly fails to make any statement, representation, or
17 certification in any record, report, or other document filed or required to be
18 maintained by the Commissioner in violation of KRS 251.485(2) shall upon
19 conviction be fined not ~~[less than one thousand dollars ($1,000) nor]~~more than
20 ***one***~~[five]~~ thousand dollars ***($1,000)***~~[($5,000)]~~ for each violation, ***not to exceed a***
21 ***total of five hundred thousand dollars ($500,000),*** or imprisoned for at least one
22 (1) year but not more than five (5) years, or both.
23 (6) Any person who transfers or disburses grain, property, or assets from the licensed
24 grain establishment's handler account in violation of KRS 251.485(2) shall upon
25 conviction be fined not ~~[less than five thousand dollars ($5,000) nor]~~more than ten
26 thousand dollars ($10,000) for each violation, ***not to exceed a total of five hundred***
27 ***thousand dollars ($500,000),*** or be imprisoned for at least one (1) year but not more

1 than five (5) years, or both.

2 (7) Except as permitted by law, any person who willfully and knowingly resists,
3 prevents, impedes, or interferes with the Commissioner or other agents or
4 employees of the department in performance of the duties assigned by KRS 251.485
5 or 251.675, shall upon conviction be fined not [~~less than one thousand dollars~~
6 ~~($1,000) nor~~]more than five thousand dollars ($5,000) for each violation, or
7 imprisoned for not more than one (1) year, or both.

8 (8) If a corporate grain establishment license holder violates any provision of KRS
9 251.485 or 251.675 or any administrative regulations that pertain to KRS 251.485
10 or 251.675, or if it fails or refuses to comply with any lawful order issued by the
11 Commissioner, any director, officer, or agent of the corporation who willfully and
12 knowingly authorized, ordered, or carried out the violation, failed, or refused to
13 comply with any lawful order issued by the Commissioner shall be subject to the
14 same penalties, fines, and imprisonment as may be imposed upon a person in
15 accordance with this section.

16 (9) Any person who fails to renew a license within the time frame required by KRS
17 251.430 or 251.720 shall be fined one hundred fifty dollars ($150).

18 (10) All fines or penalties collected from violators of the provisions of this chapter shall
19 be used to carry out the provisions of this chapter.

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 5 APRIL 2016