

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0220

SENATE BILL NO. 44

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Public Utilities Commission

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing and
2 regulation of grain dealers and buyers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-45-1 be amended to read as follows:

5 49-45-1. Before transacting the business of a grain ~~dealer~~ buyer in this state, a person shall
6 obtain a grain ~~dealer~~ buyer license from the commission. A violation of this section is a ~~Class~~
7 2 Class 1 misdemeanor. Each purchase of grain without a license is a separate offense.

8 Operation as a grain ~~dealer~~ buyer without a license may be enjoined upon complaint of the
9 commission. In addition, the commission may assess a civil fine against an unlicensed grain
10 ~~dealer~~ buyer in the amount of one ~~hundred thousand~~ dollars for each purchase of grain up to a
11 maximum fine of ~~five~~ twenty thousand dollars.

12 Section 2. That § 49-45-1.1 be amended to read as follows:

13 49-45-1.1. Terms used in this chapter mean:

14 (1) "Commission," the Public Utilities Commission;

15 (2) "Grain," grain, grain sorghums, beans, and oil seeds. However, the term does not



1 include grain that has been cleaned, processed, and specifically identified for an
2 intended use of planting for reproduction and for which a grain warehouse receipt has
3 not been issued;

4 (3) ~~"Grain dealer," any person who buys grain for the purpose of resale. However,~~
5 ~~nothing in this chapter applies to the isolated or occasional resale of grain by a person~~
6 ~~who does not hold himself or herself out as engaging in the business of reselling~~
7 ~~grain or to a person who purchases grain for the person's own use or consumption.~~
8 ~~The word, use, or the word, consumption, as used in this subdivision, does not mean~~
9 ~~the sale of the grain at retail or wholesale~~ buyer," any person who purchases grain for
10 the purpose of reselling the unprocessed grain or who purchases two hundred
11 thousand dollars worth or more of grain directly from producers in a calendar year;

12 (4) "Person," any natural person, firm, corporation, company, limited liability company,
13 partnership, association, joint stock company or the lessee, trustee, or receiver
14 appointed by any court for any one of the foregoing;

15 (5) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to
16 be paid more than thirty days after the delivery or release of the grain for sale,
17 including those contracts commonly referred to as deferred-payment contracts,
18 deferred-pricing contracts and price-later contracts.

19 Section 3. That § 49-45-3 be amended to read as follows:

20 49-45-3. ~~Every~~ Each license issued pursuant to § 49-45-1 expires on the next June thirtieth
21 following the issuance of the license. The ~~Public Utilities Commission~~ commission may at any
22 time for cause shown revoke or suspend any grain ~~dealer~~ buyer license. However, ~~such~~ the grain
23 ~~dealer~~ buyer has the right of appeal from such decisions as provided by chapter 1-26 for the
24 review of final decisions of the commission.

1 Section 4. That § 49-45-6 be amended to read as follows:

2 49-45-6. The ~~Public Utilities Commission~~ commission shall supervise the business of grain
3 ~~dealers~~ buyers in this state and administer the laws relating thereto. The commission may
4 promulgate rules, pursuant to chapter 1-26, concerning:

5 (1) The form of a grain ~~dealer's~~ buyer's bond and application and the information
6 required to be included for licensing;

7 (2) Requirements for posting grain ~~dealer's~~ buyer's licenses;

8 (3) Requirements and procedures for obtaining, placing, and returning grain ~~dealer~~ buyer
9 decals and replacement decals;

10 (4) Notice requirements to sellers who enter into voluntary credit sale agreements; ~~and~~

11 (5) Requirements for filing financial statements with the commission and the financial
12 standards by which the statements are approved when considering whether to license
13 a grain ~~dealer~~ buyer; and

14 (6) Requirements for grain buyers to provide information to sellers regarding the statutes
15 and rules relating to grain buyers.

16 Section 5. That § 49-45-7 be amended to read as follows:

17 49-45-7. An application for a grain ~~dealer~~ buyer license shall be filed with the commission
18 and shall be in a form prescribed by the commission. The application shall set forth the name
19 of each owner or principal in the management of the business. If the applicant is a corporation,
20 the application shall include the name of the president, secretary, and treasurer of the
21 corporation. The application shall also include the location of the principal office or place of
22 business and any additional places of business of the applicant and the number of tractors, truck
23 tractors, or straight trucks that will be used in the transportation of grain purchased under this
24 chapter.

1 Upon receipt of an application and sufficient bond as required by § 49-45-9, the commission
2 may grant the license applied for or may, for good cause shown and after notice and an
3 opportunity for hearing, deny the issuance of the license.

4 Section 6. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 An applicant may apply for a Class A grain buyer's license or a Class B grain buyer's license.
7 No grain buyer with a Class B grain buyer's license may purchase grain in excess of ten million
8 dollars for the annual licensed period or enter into voluntary credit sale contracts. The
9 commission shall require an applicant for a Class A grain buyer's license to submit a more
10 detailed review of its financial condition than an applicant for a Class B grain buyer's license.

11 Section 7. That § 49-45-9 be amended to read as follows:

12 49-45-9. Before any grain ~~dealer~~ buyer license is issued by the commission, the applicant
13 shall file with the commission a bond conditioned to secure the faithful performance of the
14 applicant's obligations as a grain ~~dealer~~ buyer and full and unreserved compliance with the laws
15 of this state and the rules of the commission, relating to the purchase of grain by the grain ~~dealer~~
16 buyer. The bond is for the specific purpose of protecting persons selling grain to the grain ~~dealer~~
17 buyer. However, the bond may not benefit any person entering into a voluntary credit sale with
18 a grain ~~dealer~~ buyer. Any person who does business as a grain ~~dealer~~ buyer without a bond is
19 guilty of a ~~Class 2~~ Class 1 misdemeanor. Each day a person conducts the business of a grain
20 ~~dealer~~ buyer without a bond is a separate offense.

21 ~~The minimum bond required to obtain a grain dealer license is fifty thousand dollars. The~~
22 amount of the bond for a Class A or Class B grain buyer's license shall be based on a rolling
23 average of the dollar amount of grain purchased by the applicant in South Dakota during the last
24 three calendar years. For a new grain buyer, the first year's bond shall be based on projected

1 purchases. For a grain buyer with less than three years experience as a grain buyer, the bond
 2 shall be based on the average actual purchases made by the grain buyer in all of its previous
 3 years as a grain buyer. The bond applies to all grain purchases for all of the grain buyer's
 4 business locations.

5 The amount of the bond for a Class A grain buyer's license is:

6	<u>Dollar Amount of Grain Purchased</u>	<u>Bond Requirement</u>
7	<u><\$2,000,000</u>	<u>\$50,000</u>
8	<u>\$2,000,001 - \$10,000,000</u>	<u>\$75,000</u>
9	<u>\$10,000,001 - \$50,000,000</u>	<u>\$100,000</u>
10	<u>\$50,000,001 - \$100,000,000</u>	<u>\$200,000</u>
11	<u>>\$100,000,000</u>	<u>\$300,000</u>

12 The amount of the bond for a Class B grain buyer's license is:

13	<u>Dollar Amount of Grain Purchased</u>	<u>Bond Requirement</u>
14	<u><\$2,000,000</u>	<u>\$50,000</u>
15	<u>\$2,000,001 - \$10,000,000</u>	<u>\$75,000</u>

16 If the commission finds, after an opportunity for notice and hearing, that the bond filed by
 17 a grain ~~dealer~~ buyer, pursuant to this section, is inadequate because of circumstances peculiar
 18 to that grain ~~dealer~~ buyer, the amount of that bond may be increased to such amount as the
 19 commission determines. In addition, the grain ~~dealer~~ buyer may stipulate to a higher bond
 20 amount requested by the commission.

21 Section 8. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
 22 follows:

23 If the commission determines, because a corporate surety company becomes insolvent or
 24 ceases to write grain buyer bonds in this state, that a bond in the sum required by § 49-45-9
 25 cannot be executed, the commission may, by rule promulgated pursuant to chapter 1-26,

1 authorize the filing of other financial documents in lieu of a corporate surety bond.

2 Section 9. That § 49-45-10 be amended to read as follows:

3 49-45-10. A grain ~~dealer~~ buyer shall pay the purchase price to the owner or ~~his~~ the owner's
4 agent for grain upon delivery or demand of the owner or agent unless payment is to be made in
5 accordance with the terms of a voluntary credit sale which complies with the requirements of
6 this chapter and rules promulgated thereto.

7 Section 10. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Upon receiving grain, a grain buyer shall issue to the seller an original uniform scale ticket
10 or comparable receipt for each load of grain received. Tickets or receipts shall be numbered
11 consecutively and a copy of each ticket or receipt shall be retained for six years.

12 Section 11. That § 49-45-11 be amended to read as follows:

13 49-45-11. All voluntary credit sales of grain entered into by a grain ~~dealer~~ buyer shall be in
14 writing. The ~~Public Utilities Commission~~ commission may, by ~~rule~~ rules promulgated pursuant
15 to chapter 1-26, prescribe the form and content of such writings. If a grain buyer's license is
16 terminated or not renewed, the grain buyer shall pay for grain subject to a voluntary credit sale
17 within ten days after the license expiration date

18 Section 12. That § 49-45-13 be amended to read as follows:

19 49-45-13. The ~~Public Utilities Commission~~ commission shall cause the business facilities
20 of every grain ~~dealer~~ buyer, whether licensed or unlicensed, to be inspected at such times as it
21 the commission considers necessary, ~~by one or more members of the commission or by one of~~
22 ~~its agents or employees, who.~~ The inspector shall report in writing to the commission the result
23 of such the examination. The ~~commission or its agents or employees~~ inspector may at any time
24 during ordinary business hours enter any office structure, vehicle, or enclosure in which the

1 books ~~and~~ or accounts of any grain ~~dealer~~ buyer are kept, and may examine all the books or
 2 accounts relating to the transactions of ~~such~~ the grain ~~dealer~~ buyer either within or without the
 3 state. The commission may, in all matters arising under this chapter, exercise the power of
 4 subpoena and examine witnesses in accordance with chapter 1-26.

5 Section 13. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
 6 follows:

7 Upon completing an inspection, an inspector may issue a memorandum of adjustments. The
 8 commission may assess a civil fine in the amount of two hundred dollars for failure to comply
 9 with the memorandum of adjustments within thirty days. After thirty days, each day that the
 10 memorandum goes uncorrected may be considered a separate offense.

11 Section 14. That § 49-45-14 be amended to read as follows:

12 49-45-14. Every grain ~~dealer~~ buyer licensed ~~as such~~ in this state shall, at such times as the
 13 ~~Public Utilities Commission~~ commission requires, furnish the commission on forms prepared
 14 by the commission, reports showing the facts and information required by the commission. The
 15 reports are not for public inspection, but the commission may, upon request, furnish the total
 16 of the figures shown on such reports ~~when~~ if the figures requested are for not less than four
 17 grain ~~dealers~~ buyers. The commission may also ~~call for, from time to time, and require that a~~
 18 grain ~~dealer~~ buyer shall provide; any other information regarding the business of the grain ~~dealer~~
 19 buyer. A violation of this section is a ~~Class 2~~ Class 1 misdemeanor.

20 Section 15. That § 49-45-16 be amended to read as follows:

21 49-45-16. ~~If any~~ The commission may immediately suspend the license of a grain buyer and
 22 the grain buyer shall surrender the license to the commission if:

- 23 (1) The grain ~~dealer~~ buyer, whether licensed or unlicensed, refuses, neglects, or is
 24 unable, upon proper demand, to redeem any scale ticket issued by ~~him~~ the grain

1 buyer, through redelivery or cash payment, or if any;

2 (2) The grain dealer buyer refuses, neglects, or is unable to provide the requisite a bond
3 to procure a grain dealer's license, the commission shall in an amount required by the
4 commission; or

5 (3) The commission has knowledge of any act of insolvency, including the filing of a
6 petition in bankruptcy naming the grain buyer as debtor.

7 Within fifteen days the grain buyer may request a hearing pursuant to chapter 1-26 to
8 determine if the license should be revoked. If no request is made within fifteen days, the
9 commission shall revoke the license. If the commission determines it is necessary, the
10 commission may apply to the circuit court in the county in which the grain dealer buyer operates
11 for that court to appoint a receiver. The receiver shall have has such powers and duties as the
12 court, from time to time, may direct.

13 Section 16. That § 49-45-17 be amended to read as follows:

14 49-45-17. Any person injured by the breach of any obligation of a grain dealer buyer, for the
15 performance of which a bond has been given under any of the provisions of this chapter, may
16 sue on such bond in his the person's own name in any court of competent jurisdiction to recover
17 any damages he the person may have sustained by reason of such breach.

18 Section 17. That § 49-45-18 be amended to read as follows:

19 49-45-18. If the commission becomes aware of any act by any grain dealer buyer as
20 described in § 49-45-16, ~~or has knowledge of any act of insolvency, including, but not limited~~
21 ~~to, the filing of a petition in bankruptcy naming the grain dealer as debtor,~~ the commission shall
22 may:

23 (1) ~~Take immediate possession of the grain dealer's facility, and undertake~~ Undertake an
24 immediate audit and verify the names and addresses of all outstanding scale ticket

1 holders as revealed by the audit, and audit and certify the quantity and class or classes
2 of grain therein;

3 (2) Immediately notify the surety named in the grain ~~dealer~~ buyer bond, if any, held by
4 such grain ~~dealer~~ buyer.

5 Section 18. That § 49-45-19 be amended to read as follows:

6 49-45-19. Upon revocation, termination, or cancellation of a grain ~~dealer~~ buyer license, any
7 claim against the grain ~~dealer~~ buyer arising under this chapter shall be made in writing with the
8 commission, grain ~~dealer~~ buyer and surety on the grain ~~dealer~~ buyer bond within six months
9 after receiving notice of revocation, termination, or cancellation. Failure to make a timely claim
10 shall relieve the surety of all obligations to the claimant. However, this section may not be
11 construed to reduce the aggregate liability of the surety to other claimants below the face amount
12 of the bond then in effect. Upon revocation of a grain ~~dealer~~ buyer license, the commission shall
13 cause notice of ~~such~~ the revocation to be published once each week for two consecutive weeks
14 in a newspaper of general circulation in each of the counties in which the licensee maintains a
15 business location and in a newspaper of general circulation within the state and shall cause
16 notice of ~~such~~ the revocation to be sent by certified mail to all scale ticket holders named in the
17 audit prepared pursuant to § 49-45-18. The notice shall state the name and address of the grain
18 ~~dealer~~ buyer, the effective date of revocation, and the name and address of the surety on the
19 grain ~~dealer~~ buyer bond. The notice shall also state that any claims against the grain ~~dealer~~ buyer
20 shall be made in writing and sent by ordinary mail to the commission, the grain ~~dealer~~ buyer and
21 the surety on the grain ~~dealer~~ buyer bond within six months after receiving notice of revocation.
22 The provisions of this section do not apply if a receiver is appointed as provided in § 49-45-16
23 before the expiration of six months after receiving notice of revocation, termination, or
24 cancellation of the license.

1 Section 19. That § 49-45-20 be repealed.

2 ~~49-45-20. Every grain dealer shall keep posted at all times in a conspicuous place in his~~
3 ~~facilities a printed copy of the statutes relating to, and the rules of the commission relating to~~
4 ~~the conduct of grain dealers. A violation of this section is a Class 2 misdemeanor.~~

5 Section 20. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 A grain buyer shall keep all company owned grain in the grain buyer's possession insured
8 at current market value of the grain against loss by fire, windstorm, and extended coverage risks.
9 The grain buyer shall furnish the commission with proof of the insurance when the grain buyer
10 applies for a license. A violation of this section is a Class 1 misdemeanor.

11 Section 21. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 A grain buyer shall keep all records of grain purchased and all contracts issued and canceled
14 in a safe place. The records shall be kept current and open for inspection by the commission.
15 Each record shall be retained for a period of six years.

16 Section 22. That chapter 49-45 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 A grain buyer shall notify the commission, within twenty-four hours, if the facility of a
19 facility-based grain buyer is destroyed or substantially damaged.

20 Section 23. That § 49-45-21 be amended to read as follows:

21 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-
22 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and
23 Promotion Council pursuant to § 38-29-14, the South Dakota Corn Utilization Council pursuant
24 to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to § 38-34-21. Under the

1 terms of any such contract, the commission may inspect the records of licensed grain ~~dealers~~
2 buyers to determine compliance with assessment and checkoff requirements imposed by
3 chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of chapter 38-34.