

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

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HOUSE ENGROSSED NO. **SB 44** - 2/20/2008

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 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~~ or grain purchased to feed livestock;

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 three hundred
 11 thousand dollars worth or more of grain directly from producers in a calendar year.
 12 However, nothing in this chapter applies to the isolated or occasional resale of grain
 13 by a person who does not hold himself or herself out as engaging in the business of
 14 reselling grain;

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

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

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

23 49-45-3. ~~Every~~ Each license issued pursuant to § 49-45-1 expires on the next June thirtieth
 24 following the issuance of the license. The ~~Public Utilities Commission~~ commission may at any

1 time for cause shown revoke or suspend any grain ~~dealer~~ buyer license. However, ~~such the~~ grain
2 ~~dealer~~ buyer has the right of appeal from such decisions as provided by chapter 1-26 for the
3 review of final decisions of the commission.

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

5 49-45-6. The ~~Public Utilities Commission~~ commission shall supervise the business of grain
6 ~~dealers~~ buyers in this state and administer the laws relating thereto. The commission may
7 promulgate rules, pursuant to chapter 1-26, concerning:

- 8 (1) The form of a grain ~~dealer's~~ buyer's bond and application and the information
9 required to be included for licensing;
- 10 (2) Requirements for posting grain ~~dealer's~~ buyer's licenses;
- 11 (3) Requirements and procedures for obtaining, placing, and returning grain ~~dealer~~ buyer
12 decals and replacement decals;
- 13 (4) Notice requirements to sellers who enter into voluntary credit sale agreements; ~~and~~
- 14 (5) Requirements for filing financial statements with the commission and the financial
15 standards by which the statements are approved when considering whether to license
16 a grain ~~dealer~~ buyer; and
- 17 (6) Requirements for grain buyers to provide information to sellers regarding the statutes
18 and rules relating to grain buyers.

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

20 49-45-7. An application for a grain ~~dealer~~ buyer license shall be filed with the commission
21 and shall be in a form prescribed by the commission. The application shall set forth the name
22 of each owner or principal in the management of the business. If the applicant is a corporation,
23 the application shall include the name of the president, secretary, and treasurer of the
24 corporation. The application shall also include the location of the principal office or place of

1 business and any additional places of business of the applicant and the number of tractors, truck
2 tractors, or straight trucks that will be used in the transportation of grain purchased under this
3 chapter.

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

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

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

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

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

24 ~~The minimum bond required to obtain a grain dealer license is fifty thousand dollars. The~~

1 amount of the bond for a Class A or Class B grain buyer's license shall be based on a rolling
 2 average of the dollar amount of grain purchased by the applicant in South Dakota during the last
 3 three calendar years. For a new grain buyer, the first year's bond shall be based on projected
 4 purchases. For a grain buyer with less than three years experience as a grain buyer, the bond
 5 shall be based on the average actual purchases made by the grain buyer in all of its previous
 6 years as a grain buyer. The bond applies to all grain purchases for all of the grain buyer's
 7 business locations.

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

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

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

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

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

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

1 If the commission determines, because a corporate surety company becomes insolvent or
2 ceases to write grain buyer bonds in this state, that a bond in the sum required by § 49-45-9
3 cannot be executed, the commission may, by rule promulgated pursuant to chapter 1-26,
4 authorize the filing of other financial documents in lieu of a corporate surety bond.

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

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

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

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

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

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

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

22 49-45-13. The ~~Public Utilities Commission~~ commission shall cause the business facilities
23 of every grain ~~dealer~~ buyer, whether licensed or unlicensed, to be inspected at such times as it
24 the commission considers necessary, ~~by one or more members of the commission or by one of~~

1 ~~its agents or employees, who.~~ The inspector shall report in writing to the commission the result
2 of ~~such the~~ examination. The ~~commission or its agents or employees~~ inspector may at any time
3 during ~~ordinary~~ business hours enter any ~~office~~ structure, vehicle, or enclosure in which the
4 books ~~and~~ or accounts of any grain ~~dealer~~ buyer are kept, and may examine all the books or
5 accounts relating to the transactions of ~~such the~~ grain ~~dealer~~ buyer either within or without the
6 state. The commission may, in all matters arising under this chapter, exercise the power of
7 subpoena and examine witnesses in accordance with chapter 1-26.

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

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

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

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

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

24 49-45-16. ~~If any~~ The commission may immediately suspend the license of a grain buyer and

1 the grain buyer shall surrender the license to the commission if:

2 (1) The grain dealer buyer, whether licensed or unlicensed, refuses, neglects, or is
3 unable, upon proper demand, to redeem any scale ticket issued by ~~him~~ the grain
4 buyer, through redelivery or cash payment, ~~or if any;~~

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

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

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

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

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

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

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

1 may:

2 (1) ~~Take immediate possession of the grain dealer's facility, and undertake~~ Undertake an
3 immediate audit and verify the names and addresses of all outstanding scale ticket
4 holders as revealed by the audit, and audit and certify the quantity and class or classes
5 of grain therein;

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

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

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

1 The provisions of this section do not apply if a receiver is appointed as provided in § 49-45-16
2 before the expiration of six months after receiving notice of revocation, termination, or
3 cancellation of the license.

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

5 ~~49-45-20. Every grain dealer shall keep posted at all times in a conspicuous place in his~~
6 ~~facilities a printed copy of the statutes relating to, and the rules of the commission relating to~~
7 ~~the conduct of grain dealers. A violation of this section is a Class 2 misdemeanor.~~

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

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

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

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

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

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

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

1 49-45-21. The commission may contract with the Wheat Commission pursuant to § 38-10-
2 41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and
3 Promotion Council pursuant to § 38-29-14, the South Dakota Corn Utilization Council pursuant
4 to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to § 38-34-21. Under the
5 terms of any such contract, the commission may inspect the records of licensed grain ~~dealers~~
6 buyers to determine compliance with assessment and checkoff requirements imposed by
7 chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of chapter 38-34.

8 Section 24. That § 49-43-34 be repealed.

9 ~~49-43-34. Authorized inspectors employed by the Public Utilities Commission may place~~
10 ~~a person under arrest without warrant for a violation of any provision of this chapter which is~~
11 ~~committed in the presence of such inspector. Commission inspectors having been given such~~
12 ~~limited arrest powers are not "law enforcement officers" for the purposes of § 23-3-27.~~