



Farmers' Guide to Grain Buyers Laws: A Survey of Two States

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Grain Buyers Laws: A Survey of Two States

Grain buyers laws are intended to protect farmers in their transactions with certain individuals or companies who purchase grains for resale, to make products, or for storage. Most states in the Midwest have grain buyers laws and often refer to grain buyers as either “buyers” or “dealers.” Under these laws, the farmer who is growing and selling the grain is often referred to as the “producer” or “seller.” For purposes of this Guide, however, the term “farmer” will be used to mean the person who is growing and selling the grain to a grain buyer or dealer.

This Guide examines Minnesota’s Grain Buyers Act, which was recently amended to include a multi-million-dollar permanent fund to compensate farmers who experience losses caused by grain buyers or storers. And, it looks at Nebraska’s Grain Dealers Act as a comparison of a similar law in the region.

While this Guide focuses exclusively on Minnesota and Nebraska, most other nearby Great Plains states have grain buyers laws intended to protect farmers.¹

The Minnesota Grain Buyers Act

I. Introduction

The Minnesota Grain Buyers Act seeks to protect farmers who sell grain in three main ways. First, every grain buyer must be licensed, inspected, and bonded (with a few relatively minor exceptions that will be explained below).² The requirements described herein apply to a person (which includes individuals, companies, and other legal or business entities) who purchases grain to resell or to sell products made from the grain.³

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Colorado’s “Commodity Handler and Farm Products Act” can be found at Colorado Revised Statutes, Title 35, Article 36 (2022), available at <https://leg.colorado.gov/sites/default/files/images/olls/crs2022-title-35.pdf>; Kansas’s “Grain Warehouse Law” can be found at Kansas Statutes Annotated, Chapter 34-101 (2023), available at https://ksrevisor.org/statutes/ksa_ch34.html; North Dakota’s “Grain Buyers Act” can be found at North Dakota Century Code, Chapter 4.1-59 (2023), available at <https://www.ndlegis.gov/cencode/to4-1c59.pdf>; South Dakota’s “Grain Buyers Act” can be found at South Dakota Codified Laws, Chapter 49-45 (2023), available at <https://sdlegislature.gov/Statutes/49-45>. Oklahoma does not appear to have a state grain buyers law.

² Minn. Stat. §§ 223.16-223.17 (2023).

³ Minn. Stat. § 223.16 subd. 5 (2023).

Second, the state administers a process by which farmers may make claims against grain buyers' bonds for breaches of contract.⁴

And, third, the Minnesota state Grain Indemnity Account, created in 2023, is a multi-million-dollar fund that compensates farmers for losses when grain buyers fail to pay for, or return, grain delivered by sellers.⁵

II. Who and What the Minnesota Grain Buyers Act Covers

The Minnesota Grain Buyers Act includes several definitions of key terms, such as “producer,” “grain,” and “grain buyer.”

“Producer” means a person who grows grain on land owned or leased by the person.⁶ In other words, a farmer.

“Grain” means all products commonly referred to as grain, including barley, canola, crambe, corn, dry edible beans, emmer, flaxseed, millet, mustard seed, oats, pulses, rapeseed, rice, rye, safflower, sesame seed, sorghum, soybeans, sunflower seed, triticale, wheat, and other products ordinarily stored in grain warehouses.⁷ The Act makes no distinction between organic and conventional crops.

“Grain buyer” means a person who purchases grain for the purpose of reselling the grain or products made from the grain.⁸ However, under the Minnesota Act a grain buyer does not include a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock. As such, these persons are not considered licensed grain buyers and the protections of the Minnesota Act will not apply.

“Person” means a corporation, company, joint stock company or association, partnership, firm, or individual, and includes their agents, trustees, assignees, or duly appointed receivers.⁹

III. Grain Buyers' Licenses

A grain buyer's license must be issued to a grain buyer before that buyer can purchase any grain.¹⁰ Grain buyers' licenses must be renewed annually.¹¹ To be eligible to receive a grain buyer's license, an applicant must identify all grain buying locations owned or controlled by the grain buyer and all vehicles owned or controlled by the grain buyer used to transport purchased grain.¹² Every applicant for a grain buyer's license must have a permanent established place of business at each licensed location.¹³ And, in addition to other financial requirements, grain

⁴ Minn. Stat. § 223.17 subd. 7 (2023).

⁵ Minn. Stat. § 223.24 (2023).

⁶ Minn. Stat. § 223.16, subd. 11 (2023).

⁷ Minn. Stat. § 223.16, subd. 4 (2023).

⁸ Minn. Stat. § 223.16, subd. 5 (2023).

⁹ Minn. Stat. § 223.16, subd. 9 (2023).

¹⁰ Minn. Stat. § 223.17, subd. 1 (2023).

¹¹ Minn. Stat. § 223.17, subd. 2 (2023).

¹² Minn. Stat. § 223.17, subd. 1 (2023).

¹³ Minn. Stat. § 223.17, subd. 1 (2023).

buyers must annually submit to the Minnesota Commissioner of Agriculture (“Commissioner”) a financial statement prepared in accordance with generally accepted accounting principles.¹⁴

IV. Grain Buyers’ Inspections

Inspections of grain buyer purchase locations are conducted annually by either the Minnesota Department of Agriculture or the U.S. Department of Agriculture Agricultural Marketing Service.¹⁵ Grain buyers pay fees for their inspections based on each buyer’s number of locations and the monetary value of the buyer’s annual gross grain purchases.¹⁶

V. Grain Buyers’ Bonds

A grain bond must be filed with the Commissioner and must equal at least \$100,000.¹⁷ The Commissioner can require a supplemental bond based on a grain buyer’s financial statements.¹⁸ A grain bond must provide for the payment of any loss caused by the grain buyer’s failure to pay upon the farmer’s demand, including loss caused by the grain buyer’s failure to pay within the time required.¹⁹ The grain bond must remain in effect for at least the first three years of a grain buyer’s license.²⁰

A licensed grain buyer is exempt from the bonding requirements if: (1) the buyer purchases grain immediately upon delivery solely with cash, a certified check, a cashier’s check, or a postal bank, or express money order; and (2) the buyer’s gross annual grain purchases are \$1,000,000 or less.²¹

VI. Cash grain sales: manner and timing of payment

For a cash sale of a shipment of grain, the grain buyer shall pay the farmer in cash, by check, or by wiring or mailing payment to the seller’s account.²² The grain buyer must make the payment by the close of business on the next day after the sale of the shipment, or within 48 hours after the sale of the shipment, whichever is later.²³

VII. Contract or Non-Cash Grain Sales, also known as “Voluntary Extension of Credit Contracts”

Grain buyers and the seller farmers can agree to non-cash sales transactions of grain. Such transactions include deferred or delayed payment contracts, unpriced sales, no-price-established contracts, average-pricing contracts, and all other contractual sales arrangements, except cash sales.²⁴ Under Minnesota law, these transactions are called

¹⁴ Minn. Stat. § 223.17, subd. 6 (2023).

¹⁵ Minn. Stat. § 223.23 (2023); *see also* Minn. Stat. § 223.16, subd. 3 (2023).

¹⁶ Minn. Stat. § 223.17, subd. 3 (2023).

¹⁷ Minn. Stat. § 223.28(a) (2023).

¹⁸ Minn. Stat. § 223.28(c) (2023); *see also* Minn. Stat. § 223.17 subd. 6 (2023).

¹⁹ Minn. Stat. § 223.28(e) (2023).

²⁰ Minn. Stat. § 223.28(a) (2023).

²¹ Minn. Stat. § 223.28(b) (2023).

²² Minn. Stat. § 223.17, subd. 5 (2023).

²³ Minn. Stat. § 223.17, subd. 5 (2023).

²⁴ Minn. Stat. § 223.16, subd. 16 (2023).

“voluntary extension of credit contracts,” in which the farmer is essentially extending credit to the grain buyer.²⁵ Such a contract governs the purchase of a specific amount of grain from a farmer in which the title to the grain passes to the grain buyer upon delivery, but the price is to be determined, or payment for the grain is to be made, at a date later than the date the grain is delivered to the grain buyer.²⁶ Such contracts must be made in writing by the grain buyer, mailed or given to the farmer, and signed by both buyer and farmer within 30 days of the date of delivery of the grain.²⁷ This applies even if the buyer and farmer reach an agreement orally or over the phone.²⁸ The contract can be electronic, and the farmer can sign it electronically, but there can never be both an electronic and paper version of a contract representing the same lot of grain.²⁹

Voluntary extension of credit contracts carry risk. Every voluntary extension of credit contract must include the following statement in not less than ten point, all capital type, framed in a box with space provided for the farmer’s signature: “THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT. THIS CONTRACT MAY NOT BE COVERED COMPLETELY BY THE GRAIN INDEMNITY ACCOUNT.”³⁰ If a written contract is provided at the time the grain is delivered to the grain buyer, the farmer must sign the contract in the space provided beneath the statement.³¹

Any grain sale transaction that does not meet the statutory and regulatory requirements for a voluntary extension of credit contract is legally considered a cash sale and the grain buyer must then comply with the requirements for cash sales.³²

VIII. Farmer Claims Against Grain Buyers

Under the Minnesota Grain Buyers Act, a farmer has two options if grain buyer violates any terms of the Act or the agreement with the farmer. First, the farmer may file a claim against the bond. Alternatively, the farmer may seek payment from what’s called the Minnesota State Grain Indemnity Account. Each of these options is described in detail below. Importantly, however, to receive any grain indemnity account payment, a farmer must give up their right to an equal claim amount against the grain buyer’s bond.³³ In other words, a farmer can make a claim against a grain buyer’s bond, or for payment from the grain indemnity account, but they cannot do both for the same grain.

A. Claims Against a Grain Buyer’s Bond

A farmer claiming to be damaged by a breach of a contract for the purchase of grain by a grain buyer may file a written claim with the Commissioner.³⁴ The farmer’s written claim

²⁵ Minn. Stat. § 223.16, subd. 16 (2023).

²⁶ Minn. Stat. § 223.16, subd. 16 (2023).

²⁷ Minn. Stat. § 223.177, subd. 3 (2023).

²⁸ Minn. Stat. § 223.177, subd. 2 (2023).

²⁹ Minn. Stat. § 223.177, subd. 3 (2023).

³⁰ Minn. Stat. § 223.175 (2023).

³¹ Minn. Stat. § 223.175 (2023). Prior to legislation passed in 2023, voluntary extension of credit contracts were never covered by a grain buyer’s bond. For the full legislative changes, see 2023 Minn. Chapter Law 43, 2023 Minn. S.F. No. 1955, Sec. 129 (May 18, 2023).

³² Minn. Stat. § 223.175 (2023).

³³ Minn. Stat. § 223.24, subd. 7 (2023).

³⁴ Minn. Stat. § 223.17, subd. 7 (2023).

must be signed, state the facts supporting it, and include any supporting evidence.³⁵ Supporting evidence may consist of, but is not limited to, a purchase agreement, a scale ticket, a grain purchase receipt, a check indicating insufficient funds, a warehouse receipt, or an assembly sheet.³⁶ If a claim is valid, the Commissioner may immediately suspend the license, in which case the grain buyer must surrender the license,³⁷ and must therefore stop buying grain. The grain buyer has 15 days to request an administrative hearing to determine whether the license should be revoked.³⁸ If no request is made within 15 days, the Commissioner must revoke the grain buyer's license.³⁹

If the Commissioner determines that a bond claim is valid, the Commissioner must publish notice of the claim in the official county newspaper of the county in which the grain buyer's place of business is located.⁴⁰ The notice must state that a claim against the bond of a licensee has been filed, the name and address of the licensee, that any additional claims should be filed with the Commissioner, the bond disbursement date, and where the claims should be filed.⁴¹ This public notice must appear for three consecutive days if the official county newspaper is published daily, or for two consecutive publications in newspapers published less than daily.⁴²

B. Claims Through the Minnesota State Grain Indemnity Account

The Minnesota state Grain Indemnity Account, created in 2023, is a multi-million-dollar fund that compensates farmers for losses when grain buyers fail to pay for, or return, grain delivered by sellers.⁴³ The account also covers damages or losses to grain stored with public grain warehouse operators,⁴⁴ which are commonly known as "elevators."

Under Minnesota law, a grain buying or storing "failure" occurs when the Commissioner determines that a grain buyer or grain elevator or warehouse has failed to pay for delivered grain, breached one or more contracts, or failed to redeliver stored grain to a farmer.⁴⁵

i. Eligibility

Farmers are eligible to receive a grain indemnity payment if the farmer sold grain to a grain buyer or stored grain with a public grain warehouse operator, consistent with the provisions of the grain indemnity account statute, and the farmer is damaged by the grain buyer's or public grain warehouse operator's failure to pay for, or redeliver, the grain.⁴⁶

³⁵ Minn. Stat. § 223.17, subd. 7 (2023); Minn. R. 1562.1700, subp. 2 (2019).

³⁶ Minn. R. 1562.1700, subp. 2 (2019).

³⁷ Minn. Stat. § 223.17, subd. 7 (2023).

³⁸ Minn. Stat. § 223.17, subd. 7 (2023).

³⁹ Minn. Stat. § 223.17, subd. 7 (2023).

⁴⁰ Minn. R. 1562.1700, subp. 5 (2019).

⁴¹ Minn. R. 1562.1700, subp. 5 (2019).

⁴² Minn. R. 1562.1700, subp. 5 (2019).

⁴³ Minn. Stat. § 223.24, subd. 3 (2023).

⁴⁴ Minn. Stat. § 223.24, subd. 3 (2023). The definition of a public grain warehouse operator can be found at Minn. Stat. § 232.21, subd. 12 (2023).

⁴⁵ Minn. Stat. § 223.16, subd. 3c (2023).

⁴⁶ Minn. Stat. § 223.24 subd. 3 (2023).

Farmers both inside and outside of Minnesota can be eligible for grain indemnity payments. According to the Minnesota Department of Agriculture, the Minnesota Grain Indemnity Account “covers all transactions where title passed within the Minnesota border. So if you live out of state but delivered to a Minnesota based location, your delivery may be covered.”⁴⁷

ii. **Claims Process**

To receive a grain indemnity payment, a farmer must file a claim with the Commissioner.⁴⁸ All claims must be filed within three years of the failure; claims filed more than 36 months from the failure are not eligible for payment.⁴⁹ The farmer must state the facts constituting the claim and any other information the Commissioner may require. Upon receiving a claim, the Commissioner must promptly determine whether the claim is valid, and notify the farmer of the Commissioner’s determination.

A party—for example a grain buyer or farmer who disagrees with the Commissioner’s determination that a grain buying or storing failure has or has not occurred—may appeal the Commissioner’s determination by requesting, within 15 days, that the Commissioner initiate a contested case proceeding under Minnesota’s Administrative Procedure Act.⁵⁰

iii. **Payment Amounts**

Grain indemnity payments are subject to payment maximums that differ depending on the type of sale or contract, and the time that has elapsed since the grain buyer’s or storer’s failure.⁵¹

For cash sales, the indemnity payment is the full amount of the value of the grain.⁵² For stored grain assigned to warehouse receipt, or grain assigned to open storage less than 180 days from the deposit, the indemnity payment is also the full amount of the value of the grain.⁵³

For a deferred or delayed payment contract, the indemnity payment can be the full amount of the value of grain if three requirements are met. First, the contract must have originated within 120 days of the breach of contract. Second, the contract must have had an established price. And three, the total value of grain sold must have been \$300,000 or less. If the value of grain sold exceeds \$300,000, then the

⁴⁷ See “Can I file a claim if I live outside Minnesota?” at Frequently Asked Questions for Grain Claims, Minn. Dept. of Ag., <https://www.mda.state.mn.us/plants-insects/frequently-asked-questions-grain-claims> (last visited Dec. 18, 2023).

⁴⁸ Minn. Stat. § 223.24, subd. 4 (2023).

⁴⁹ Minn. Stat. § 223.24, subd. 5(b) (2023).

⁵⁰ Minn. Stat. § 223.24, subd. 4(c) (2023); Minnesota’s Administrative Procedure Act can be found at Minn. Stat. § 14.57-14.62 (2023).

⁵¹ Minn. Stat. § 223.24, subd. 5 (2023).

⁵² Minn. Stat. § 223.24, subd. 5(a)(1) (2023).

⁵³ Minn. Stat. § 223.24, subd. 5(a)(1) (2023).

indemnity payment for such a deferred or delayed payment contract is the lesser of either \$750,000, or 75 percent of the amount owed to the farmer.⁵⁴

For a voluntary extension of credit contract for which no price has been established, if the contract originated within 180 days of the breach of contract, the indemnity payment is the lesser of \$750,000 or 75 percent of the amount owed to the farmer.⁵⁵

For an open storage assignment or a voluntary extension of credit contract when the open storage assignment or contract originated between 181 days and 18 months from the failure, the indemnity payment is the lesser of \$500,000 or 50 percent of the amount owed to the seller.⁵⁶ For such assignments or contracts that originated between 19 months and 36 months from the failure, the indemnity payment is the lesser of \$250,000 or 25 percent of the amount owed to the farmer.⁵⁷

The Nebraska Grain Dealer Act

I. Introduction

The Nebraska Grain Dealer Act (“the Nebraska Act” or “the Act”) regulates those who purchase grain from farmers in order to sell the grain to third parties. Under the Act, every grain dealer must be licensed by the Nebraska Public Service Commission (“the Commission”) and must be subject to inspection, and file security, such as a bond, in order to ensure the farmer who grew the grain gets paid.⁵⁸ If a farmer is not paid by the grain dealer, the Nebraska Public Service Commission administers a process by which farmers—as producers of grain—may file claims against the grain buyer’s security.⁵⁹

II. Who and What the Nebraska Grain Dealer Act Covers

The Nebraska Act serves to regulate grain dealers in order to protect producers of grain. The Act provides specific definitions of several key terms, such as “producer,” “grain,” and “grain dealer.”

“Producer” means someone who is the owner, tenant, or operator of land in Nebraska and who has both an interest in, and receives all or part of the proceeds from, the sale of grain that was produced on the land.⁶⁰ In other words, a farmer with land in Nebraska.

“Grains” are defined broadly under the Nebraska Act. They include, but are not limited to, all unprocessed beans, whole corn, milo and other sorghum, wheat, rye, barley, oats, millet, and safflower seed.⁶¹ Grains also include processed plant pellets, alfalfa pellets, and any other bulk pelleted agricultural storable commodity, except grain which has been processed or packaged for

⁵⁴ Minn. Stat. § 223.24, subd. 5(a)(2) (2023).

⁵⁵ Minn. Stat. § 223.24, subd. 5(a)(3) (2023).

⁵⁶ Minn. Stat. § 223.24, subd. 5(a)(4) (2023).

⁵⁷ Minn. Stat. § 223.24, subd. 5(a)(5) (2023).

⁵⁸ Neb. Rev. Stat. §§ 75-903, 75-907.01 (2023).

⁵⁹ Neb. Rev. Stat. § 75-905 (2023).

⁶⁰ Neb. Rev. Stat. § 75-902(8) (2023).

⁶¹ Neb. Rev. Stat. § 75-902(4) (2023).

distribution as seed. The Nebraska Act makes no distinction between organic and conventional crops.

A “grain dealer” can be a person, partnership, limited liability company, corporation, or association who does one of two things.⁶² First, a grain dealer can be someone that buys grain from a farmer of grain within the state of Nebraska for the purpose of selling the grain.⁶³ A grain dealer can also be someone who acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.⁶⁴ Under the Nebraska Act, there is no requirement that a grain dealer be specifically located in Nebraska, but the grain dealer must be licensed within the state in order to fall under the requirements and protections of the Act. A grain dealer does not include a feeder or custom feeder of livestock or poultry.⁶⁵ A grain dealer also does not include a state or federal warehouse licensee that has a warehouse within the state of Nebraska that buys, sells or transports only grain that is received at the warehouse.⁶⁶

III. Grain Dealer License Requirements

All grain dealers within the state of Nebraska must be licensed by the Nebraska Public Service Commission.⁶⁷ In order to become and remain licensed within the state, the grain dealer must pay an annual fee to the State Treasurer of one hundred dollars.⁶⁸

All grain dealers must also be fingerprinted and undergo a criminal history check in order to become licensed.⁶⁹ The Commission will deny a grain dealer license if the criminal history check shows that the individual has been convicted of a felony financial crime.⁷⁰

Grain dealers must also annually file a reviewed or audited fiscal year-end financial statement that was prepared by an independent, certified public accounting firm.⁷¹ The financial statement must include the following: (1) a statement of income showing profit or loss; (2) a balance sheet; (3) a statement of cash flow; (4) a statement of proprietor’s capital or retained earnings; (5) the volume and dollar value of the grain purchases that the grain dealer made within Nebraska during the fiscal year; (6) the volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct

⁶² Neb. Rev. Stat. § 75-902(5)(a) (2023).

⁶³ Neb. Rev. Stat. § 75-902(5)(a) (2023).

⁶⁴ Neb. Rev. Stat. § 75-902(5)(b) (2023). The Grain Warehouse Act for the state of Nebraska is found at Ne. Rev. Stat. §§ 88-525 through 88-552. The United States Warehouse Act is found at U.S.C. § 869.1 through 869.404.

⁶⁵ Report of the Agriculture Committee Pursuant to the Occupational Board Reform Act (§§ 84-93 to 84-948), Occupational Regulation Review: Grain Dealer (December 15, 2022), available at: https://nebraskalegislature.gov/FloorDocs/107/PDF/Agencies/Legislative_Council/707_20221214-150838.pdf.

⁶⁶ Neb. Rev. Stat. § 75-902(5)(a) (2023).

⁶⁷ Neb. Rev. Stat. § 75-903 (2023).

⁶⁸ Neb. Rev. Stat. § 75-903(1) (2023).

⁶⁹ Neb. Rev. Stat. § 75-903.02 (2023). If the grain dealer is licensed as an entity, this rule is satisfied if the chief executive officer, president, or general manager provides fingerprints and undergoes the background check.

⁷⁰ Neb. Rev. Stat. § 75-903.02 (2023). If the grain dealer is licensed as an entity, this rule is satisfied if the chief executive officer, president, or general manager provides fingerprints and undergoes the background check.

⁷¹ Neb. Rev. Stat. § 75-903(3) (2023). The Act has different rules depending on whether the grain dealer is being licensed as an individual or a qualifying entity.

delivery grain; and (7) the accounting firm's certification, assurances, opinions, comments, and notes relating to the financial statement.

If a grain dealer does not report the volume and dollar value of the grain purchases, the Act requires that the grain dealer file the maximum grain dealer security under the Act.⁷²

IV. Grain Dealer Inspections

Rules require that all licensed grain dealers keep accounts of every transaction made pursuant to the grain dealer's license.⁷³ The Nebraska Public Service Commission, in turn, has the authority to inspect the property, books, records, accounts, papers, and proceedings of any licensed grain dealer—at all times during business hours.⁷⁴

V. Grain Dealer Security Requirements

In order to be a licensed grain dealer in Nebraska, the grain dealer must file sufficient security that is approved by the Commission.⁷⁵ This security exists for the benefit of any grain farmer who files a valid claim against the grain dealer. More specifically, the security ensures that grain dealers pay for all grain purchases upon demand, but no later than fifteen days after taking possession of the purchased grain.⁷⁶

The security can take one of three forms.⁷⁷ First, the security can be a surety bond issued by a corporate surety company and payable to the Commission. Second, the security can be an irrevocable letter of credit, delivered to the Commission in an amount equal to, or greater than, the required security value. Or third, the security can take the form of a certificate of deposit, delivered to the Commission in an amount equal to the required security value .

The security must be the greater of either thirty-five thousand dollars, or seven percent of the grain dealer's grain purchases or exchanges from the preceding fiscal year.⁷⁸ In no circumstances, however, can the security be greater than \$300,000.

When determining the value of the required security, all direct delivery grain purchases and exchanges must be included and must be valued on the date of delivery.⁷⁹ In-store purchases by a warehouse, or grain that passes title at the time of delivery are not included when calculating the required security amount.⁸⁰

VI. Grain Dealer Requirements When Taking Possession of Grain

Whenever a grain dealer, or his or her agent, takes possession of grain from a seller, the grain dealer must issue a receipt, contract, bill of lading, or other written communication to the farmer.⁸¹ At minimum, the written receipt must include the date the grain dealer took

⁷² Neb. Rev. Stat. § 75-903(3) (2023).

⁷³ 291 Neb. Admin. Code § 08-003.05 (2023).

⁷⁴ Neb. Rev. Stat. § 75-907.01 (2023); see also 291 Neb. Admin. Code § 08-003.05 (2023).

⁷⁵ Neb. Rev. Stat. § 75-903(2) (2023); see also 291 Neb. Admin. Code § 08-003.04 (2023).

⁷⁶ Neb. Rev. Stat. § 75-903(2) (2023); see also 291 Neb. Admin. Code § 08-003.04 (2023).

⁷⁷ Neb. Rev. Stat. § 75-903(2) (2023); see also 291 Neb. Admin. Code § 08-003.04B (2023).

⁷⁸ Neb. Rev. Stat. § 75-903(2) (2023); see also 291 Neb. Admin. Code § 08-003.04A (2023).

⁷⁹ Neb. Rev. Stat. § 75-903(2) (2023); see also 291 Neb. Admin. Code § 08-003.04A (2023).

⁸⁰ 291 Neb. Admin. Code § 08-003.04A (2023).

⁸¹ Neb. Rev. Stat. § 75-904 (2023); 291 Neb. Admin. Code § 08-003.05A (2023).

possession of the grain, the type of grain delivered, the name and address of the buyer, the name of the farmer, as the seller, and the name of the agent of the buyer.

The written receipt must also include the following warning, which has to be in a font no smaller than eight point:

WARNING TO SELLER: You will have no recourse to the grain dealer's security posted with the Nebraska Public Service Commission (NPSC) unless you are a Nebraska producer and you: (1) demand payment from the grain dealer within fifteen (15) days after the date of the last shipment of any contract;(2) negotiate any negotiable instrument issued as payment for your grain by the grain dealer within fifteen (15) days after its issuance; and,(3) notify the NPSC, PO Box 94927, Lincoln, NE 68509-4927, within fifteen (15) days after an apparent loss. The grain dealer's security shall provide security for direct delivery grain until a post-direct delivery storage position is created for a period not to exceed fifteen (15) days after date of the last shipment of grain. Direct delivery of grain may affect the eligibility of the grain for participation in federal price support programs.

Nebraska Law defines a producer as the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land.⁸²

The grain dealer must keep copies of all written receipts, and must maintain those records for no less than five years, unless the Commission authorizes otherwise.⁸³

VII. Violations of the Grain Dealer Act

A farmer can recover for losses caused by a grain dealer by making a claim against the grain dealer's security. The Commission can also penalize grain dealers for violating the Grain Dealer Act, and in some cases civil or criminal penalties can be imposed. Each of these circumstances is described in detail below.

A. Farmer Claims Against a Grain Dealer

A farmer may be able to recover for losses caused by a grain dealer by making a claim against the grain dealer's security. Unlike Minnesota, however, Nebraska does not have an indemnity account that can also be used to protect farmers who suffer losses. This means that a farmer's recourse for losses caused by a grain dealer's failure to pay is limited to seeking compensation from the grain dealer's security.

1. Eligibility for Claims Against Grain Dealers

Before a farmer selling grain can make a claim against a grain dealer, the farmer must meet several requirements.⁸⁴ First, the farmer must demand payment from the grain dealer within fifteen days following the last shipment of a contract. If a farmer does not demand payment from the grain dealer within fifteen days of the

⁸² Neb. Rev. Stat. § 75-905 (2023); 291 Neb. Admin. Code § 08-003.05A7 (2023).

⁸³ 291 Neb. Admin. Code §§ 08-003.05A8, 08-003.05D (2023).

⁸⁴ Neb. Rev. Stat. § 75-905(1) (2023); 291 Neb. Admin. Code § 08-003.04F (2023).

completion of their contract, the farmer will forfeit the opportunity to get protection from the grain dealer's security. Second, if a negotiable instrument was issued as payment for the grain, the farmer must negotiate the instrument within fifteen days after its issuance. And third, the farmer must notify the Commission within fifteen days after the farmer notices a loss that should be covered under the terms of the grain dealer's security. If a farmer fails to meet any of these requirements the farmer will not be able to recover for any losses from the grain dealer's security.

A grain dealer's security—whether a bond, irrevocable letter of credit, or certificate of deposit—can also cover a farmer's losses related to direct delivery grain if the farmer delivered grain directly to a warehouse's purchaser instead of the grain dealer directly.⁸⁵ In such situations, the security can cover losses up until any post-direct delivery storage position is created, but for a period no longer than fifteen days after the date of the last shipment under the contract.⁸⁶

2. Claims Process

If a farmer notifies the Commission that it has experienced a loss that should be covered by the grain dealer's security, a Commission personnel will file a complaint with the Commission against the grain dealer.⁸⁷ The complaint must include the allegations of the violation. The Commission personnel will then get a hearing date on the complaint, and notify the grain dealer and its security provider of both the complaint and the hearing date.⁸⁸

After the hearing, if the Commission determines that the complaint is valid, the Commission may require that the grain dealer's security be forfeited.⁸⁹ The Commission may place the proceeds of the security in an interest-bearing trust while the Commission is deciding the merits of any claims against the grain dealer's security.

3. Payments for Valid Claims

In general, the Commission will make payments from the grain dealer's security according to the resolution of each claim.⁹⁰ However, if the amount of the grain dealer's security is less than the value of the farmer claims against it, the Commission shall distribute pro rata payments to all valid claimants based on each claimant's proportion of the outstanding claims.

⁸⁵ Neb. Rev. Stat. § 75-905(1) (2023); 291 Neb. Admin. Code § 08-003.04F (2023).

⁸⁶ Neb. Rev. Stat. § 75-905(1) (2023); 291 Neb. Admin. Code § 08-003.04F (2023). For more details on recovering for losses of direct delivery grain, see Neb. Rev. Stat. §§ 75-905(2), 88-526(2) (2023); see also Report of the Agriculture Committee Pursuant to the Occupational Board Reform Act (§§ 84-93 to 84-948), Occupational Regulation Review: Grain Dealer, Appendix A (December 15, 2022).

⁸⁷ 291 Neb. Admin. Code § 08-003.07 (2023).

⁸⁸ The hearing date likely cannot occur sooner than twenty days after the date the grain dealer is provided with a copy of the complaint. See Neb. Rev. Stat. § 75-903.01 (2023).

⁸⁹ Neb. Rev. Stat. § 75-906 (2023); see also 291 Neb. Admin. Code § 08-003.08 (2023).

⁹⁰ Neb. Rev. Stat. § 75-906 (2023); see also 291 Neb. Admin. Code § 08-003.08 (2023).

If the grain dealer's security is a bond or letter of credit, the surety or issuer of the letter must pay the Commission the value of the security upon demand.⁹¹ If the payment is not made within ten days, the Commission has the authority to file a lawsuit against the surety or issuer of the letter.⁹²

B. Suspension or Revocation of Grain Dealer Licenses

The Nebraska Public Service Commission (the "Commission") may suspend or revoke a grain dealer's license if the grain dealer is found to have failed to comply with the requirements of the Act or any related rule or regulation.⁹³

Before a grain dealer's license may be suspended or revoked, a complaint must be filed against the grain dealer outlining the reasons why it is believed the grain dealer violated the Act. The complaint must be filed with the Commission. The Commission will then serve a copy of the complaint on the grain dealer and schedule a hearing no sooner than twenty days after the date the grain dealer is provided with a copy of the complaint.⁹⁴ If the Commission finds that the allegations in the complaint are true, it may then revoke the grain dealer's license.⁹⁵

If the Commission determines that the public good requires it, the Commission may temporarily suspend a grain dealer's license before the hearing is held, and until the resolution of the complaint process.⁹⁶

C. Potential Criminal and Civil Penalties

Any person who knowingly and intentionally violations part of the Act can be found guilty of a Class IV felony, and required to pay any damages suffered because of the violation.⁹⁷ This rule applies to any person, partner, limited liability company member, officer, or agent of anyone knowingly and intentionally violates the Act.

In addition, the Commission may impose a civil penalty against any person who violates the Act.⁹⁸ Civil penalties can be imposed against grain dealers for violations such as failing to complete the application process, failing to timely file a renewal application, failing to timely file the required financial statement, failing to make payment on demand, and failing to maintain the required records.⁹⁹

⁹¹ Neb. Rev. Stat. § 75-906 (2023).

⁹² Neb. Rev. Stat. § 75-906 (2023). If a lawsuit is initiated, the Commission may be eligible to recover the value of the security plus interest at the highest legal rate from the date of the Commission's demand.

⁹³ Neb. Rev. Stat. § 75-903.01 (2023); see also 291 Neb. Admin. Code § 08-003.07 (2023).

⁹⁴ Neb. Rev. Stat. § 75-903.01 (2023).

⁹⁵ 291 Neb. Admin. Code § 08-003.08B (2023).

⁹⁶ Neb. Rev. Stat. § 75-903.01 (2023); see also 291 Neb. Admin. Code § 08-003.08 (2023).

⁹⁷ Neb. Rev. Stat. § 75-909 (2023).

⁹⁸ Neb. Rev. Stat. § 75-910 (2023); 291 Neb. Admin. Code § 08-003.09 (2023).

⁹⁹ 291 Neb. Admin. Code § 08-003.09 (2023).