

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 915 & 923

95TH GENERAL ASSEMBLY

2284L.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 276.436, 276.441, 276.446, and 276.536, RSMo, and to enact in lieu thereof two new sections relating to grain dealers with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 276.436, 276.441, 276.446, and 276.536, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 276.436 and 276.536, to read as follows:

276.436. 1. The total amount of the surety bond required of a dealer licensed pursuant to sections 276.401 to 276.582 shall [be established by the director by rule, but in no event shall such bond] **not** be less than [twenty] **fifty** thousand dollars nor more than [three hundred thousand] **six hundred thousand** dollars, except as authorized by other provisions of sections 276.401 to 276.582.

2. The formula for determining the amount of bond shall be [established by the director by rule and shall be] computed at a rate of no less than the principal amount to the nearest one thousand dollars, equal to not less than one **and one-half** percent [and not more than five percent] of the aggregate dollar amount paid by the dealer for grain purchased in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the dealer's last completed fiscal year, or, in the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not previously engaged in such business, not less than one **and one-half** percent [and not more than five percent] of the estimated aggregate dollar amount to be paid by the dealer for grain purchased in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal year.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 3. Any licensed grain dealer or applicant who has, at any time, a net worth less than the
18 amount required by subsection 7 of section 276.421, shall be required to obtain a surety bond in
19 the amount of one thousand dollars for each one thousand dollars or fraction thereof of the net
20 worth deficiency. Failure to post such additional bond is grounds for refusal to license or the
21 suspension or revocation of a license issued under sections 276.401 to 276.582. This additional
22 bond can be in addition to or greater than or both in addition to and greater than the maximum
23 bond as set by this section.

24 4. The director may, when the question arises as to a grain dealer's ability to pay for grain
25 purchased, require a grain dealer to post an additional bond in a dollar amount deemed
26 appropriate by the director. Such additional bond can be in addition to or greater than or both
27 in addition to and greater than the maximum bond as set by this section. The director must
28 furnish to the dealer, by certified mail, a written statement of the reasons for requesting
29 additional bond and the reasons for questioning the dealer's ability to pay. Failure to post such
30 additional bond is a ground for modification, suspension or revocation by the director of a license
31 issued under sections 276.401 to 276.582. The determination of insufficiency of a bond and of
32 the amount of the additional bond shall be based upon evidence presented to the director that a
33 dealer:

34 (1) Is or may be unable to meet his dollar or grain obligations as they become due;
35 (2) Has acted or is acting in a way which might lead to the impairment of his capital;
36 (3) As a result of his activity, inactivity, or purchasing and pricing practices and
37 procedures, including, but not limited to, the dealer's deferred pricing or deferred payment
38 practices and procedures, is or may be unable to honor his grain purchase obligations arising out
39 of his dealer business. The amount of the additional bond required under this subsection shall
40 not exceed the amount of the dealer's current loss position. Current loss position shall be the
41 sum of the dealer's current liabilities less current assets or the amount by which he is currently
42 unable to meet the grain purchase obligations arising out of his dealer business.

43 5. One bond, cumulative as to minimum requirements, may be given where a dealer has
44 multiple licenses; except however, that in computing the amount of the single bond the grain
45 dealer may add together the total purchases of grain of all locations to be covered thereby and
46 use the aggregate total purchases for the fiscal year for the purpose of computing bond.
47 However, this single cumulative bond must be at least equal to [twenty] **fifty** thousand dollars
48 per dealer license issued up to the [three hundred thousand] **six hundred thousand** dollar
49 maximum bond amount specified in subsection 1 of this section. When a grain dealer elects to
50 provide a single bond for a number of licensed locations, the total assets of all the licensed
51 locations shall be subject to liabilities of each individual licensed location.

52 6. Failure of a grain dealer to provide and file a bond and financial statement and to keep
53 such bond in force shall be grounds for the suspension or revocation, by the director, of a license
54 issued under sections 276.401 to 276.582.

55 7. A dealer shall be required to post additional surety bond when he surpasses the
56 estimated aggregate dollar amount to be paid for grain purchased as set forth in subsection 2 of
57 this section. Such additional bond shall be determined by the director so as to effectively protect
58 sellers of grain dealing with such dealer.

 276.536. 1. Upon conviction, any person who does any of the following is guilty of a
2 class B misdemeanor:

3 (1) Engaging in the business of being a grain dealer without securing a license prior to
4 engaging in [said] **such** business. If a grain dealer has been charged, and has paid, a penalty fee
5 for operating without a license as set forth in section 276.411, the grain dealer [may] **shall** not
6 be charged with a class B misdemeanor for operating without a license for the time period
7 covered by the penalty fee;

8 (2) Violating any of the provisions of sections 276.401 to 276.581;

9 (3) Impeding, hindering, obstructing, or otherwise preventing or attempting to prevent
10 the director, the director's designated representative, employees, or any auditor in the
11 performance of his **or her** duty in connection with sections 276.401 to 276.581 or the regulations
12 promulgated pursuant thereto;

13 (4) On the part of any person, refusing to permit inspection of his **or her** premises,
14 books, accounts or records as provided in sections 276.401 to 276.581.

15 2. In case of a continuing violation, each day a violation occurs constitutes a separate and
16 distinct offense.

17 3. It shall be the duty of the attorney general or each prosecuting attorney to whom any
18 violation of sections 276.401 to 276.581 is reported to cause appropriate proceedings under this
19 section to be instituted and prosecuted in a court of competent jurisdiction without delay. Before
20 a violation is reported for prosecution, the director may give the grain dealer an opportunity to
21 present his **or her** views at an informal hearing. In the event the director determines that a
22 prosecutor to whom a violation has been reported has failed to institute appropriate proceedings,
23 the director may make a written report of the failure to institute proceedings to the attorney
24 general. The attorney general may investigate the circumstances which resulted in the report.
25 If the attorney general determines additional proceedings are appropriate, [he] **the attorney**
26 **general** shall cause such proceedings to be instituted. When the attorney general causes such
27 a proceeding to be instituted, he **or she** shall have all the powers and rights of the office of the
28 prosecuting attorney to whom the violation was originally reported. Such powers and rights are
29 restricted to the prosecution of the specific case reported.

30 4. A grain dealer licensed or required to be licensed under sections 276.401 to 276.581,
31 or any officer, agent, or servant of such grain dealer who files false records, scale tickets,
32 financial papers or accounts with the director, or who withholds records, scale tickets, financial
33 papers or accounts from the director, or who alters records, scale tickets, financial papers or
34 accounts in order to conceal amounts owed to sellers of grain or actual amounts of grain received
35 and paid or not paid for or for the purpose of in any way misleading department auditors and
36 officials is, upon conviction, guilty of a class C felony.

37 5. Any duly authorized officer or employee appointed under the provisions of sections
38 276.401 to 276.581 who neglects his **or her** duty, or who knowingly or carelessly inspects,
39 grades, tests, or weighs any grain improperly, conducts an inspection improperly, intentionally
40 falsifies any inspection report, or intentionally gives false information, or who accepts any money
41 or other valuable consideration, directly or indirectly, for any neglect of duty as such duly
42 authorized officer or employee in the performance of his **or her** duties as such officer or
43 employee is deemed guilty of a class B misdemeanor.

44 **6. Any grain dealer licensed under sections 276.401 to 276.581 who acts outside the**
45 **scope of his or her license or classification of licensure as set forth in sections 276.401 to**
46 **276.581 and any regulations promulgated thereunder is guilty of a class A misdemeanor.**

2 [276.441 1. Any grain dealer who is of the opinion that his net worth
3 is sufficient to guarantee payment for grain purchased by him may make a formal,
4 written request to the director that he be relieved of the obligation of filing a bond
5 in excess of the minimum bond of twenty thousand dollars. Such request shall
6 be accompanied by a financial statement of the applicant, prepared within four
7 months of the date of such request and accompanied by such additional
8 information concerning the applicant and his finances as the director may require
9 which may include the request for submission of a financial statement audited by
a public accountant.

10 2. If such financial statement discloses a net worth equal to at least five
11 times the amount of the bond otherwise required by sections 276.401 to 276.582,
12 and the director is otherwise satisfied as to the financial ability and resources of
13 the applicant, the director may waive that portion of the required bond in excess
14 of twenty thousand dollars for each license issued]

15 [276.446. Any grain dealer whose total purchases of grain within
2 Missouri and those states with whom Missouri has entered into contracts or
3 agreements as authorized by section 276.566 during any fiscal year, do not
4 exceed an aggregate dollar amount of four hundred thousand dollars may satisfy
5 the bonding requirements of sections 276.401 to 276.581 by filing with the
6 director a bond at the rate of one thousand dollars for each twenty thousand
7 dollars or fraction thereof of the dollar amount to be purchased, with a minimum
8 bond of ten thousand dollars required.]

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