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Requirements for Grain Dealers

State of Missouri

Penalties

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Requirements for Warehouses

STATE OF MISSOURI

Current with legislation from the 2014 Reg.Sess.

V.A.M.S. 276.406

276.406. Director's powers and duties--promulgation of rules and regulations, authority, effective date--subpoenas--administrative hearings on liability of sureties

1. The director shall:

- (1) Be responsible for the efficient administration of the supervisory and regulatory powers authorized by sections 276.401 to 276.581 and the regulations promulgated hereunder;
- (2) Issue a license, in accordance with the provisions of sections 276.401 to 276.581, to any qualified applicant wishing to conduct business as a licensed grain dealer;
- (3) Provide for the filing and approval of the surety bonds required by sections 276.401 to 276.581.

2. The director may:

- (1) Promulgate and adopt such rules, regulations and standards in accordance with the provisions of chapter 536 as may be necessary for the efficient and effective enforcement of sections 276.401 to 276.581;
- (2) Appoint one or more designated representatives to act for the director in any manner required to aid in the efficient administration of sections 276.401 to 276.581 and the regulations promulgated hereunder;
- (3) Require records or reports pertaining to grain purchases or grain sales that the director deems necessary to ensure compliance with the provisions of sections 276.401 to 276.581 and the regulations promulgated hereunder;
- (4) Prescribe procedures for hearings to be held in accordance with the provisions of sections 276.401 to 276.581 and the regulations promulgated hereunder;
- (5) Issue subpoenas and bring before the department any person and take testimony either orally, by deposition, or by exhibit in the same manner as prescribed by law in judicial proceedings and civil cases in the circuit courts of this state;
- (6) Issue subpoenas duces tecum on any records relating to a grain dealer's business;
- (7) Bring actions, in the name of the state of Missouri in the circuit court of any county wherein a grain dealer resides or is found in order to enforce compliance with sections 276.401 to 276.581 and the regulations promulgated hereunder by restraining order or injunction, either temporary or permanent;
- (8) Conduct, or appoint a designated representative to conduct, administrative hearings pursuant to the provisions of sections 276.401 to 276.581, and chapter 536. Hearings may be conducted for the purpose of determining the liability of sureties which have filed bonds with the department on behalf of grain dealers licensed, or required to be licensed, under said sections. Hearings may be conducted for the purpose of determining the validity of grain-related claims filed with the department against such grain dealers and sureties, as well as the

subsequent disbursement of all available funds, pro rata or otherwise, to satisfy claims determined to be valid. An order issued by the director, or his designated representative, as a result of such hearings shall be final and legally binding on all parties unless appealed as provided in chapter 536.

3. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

V.A.M.S. 276.411

276.411. License required--administrative hearing for violation, penalty--license application forms, renewal applications--license fees, late fees

1. No person shall engage in business as a grain dealer in the state of Missouri without having obtained a license therefor issued by the director pursuant to sections 276.401 to 276.582. Following an administrative hearing, the director may require the dealer to pay a penalty of not more than five hundred dollars for each day the dealer is found to be operating without a license or bond. In determining whether to assess the penalty, the director shall ascertain whether the dealer has continued to operate without a license or bond after being informed by the department in writing by certified mail of the need for licensing or bonding. Any penalties collected by the director under this section shall be deposited in the general revenue fund to the credit of the grain regulatory services program. In the event that a person penalized under this section fails to pay the penalty, the director may apply to the circuit court of Cole County for, and the court is authorized to enter, an order enforcing the assessed penalty.

2. Each application for a license to engage in business as a grain dealer shall be filed with the director and shall be in a form prescribed by the director.

3. The application for an initial license may be filed at any time prior to beginning business as a grain dealer; however, such license shall terminate on the last day of the fifth month after the close of the grain dealer's fiscal year, except that the initial licensing period shall be for at least six months but not longer than eighteen months. The grain dealer shall set forth on the original application the closing date for his fiscal year.

4. At least sixty days prior to the expiration of each license issued by the director under this chapter, the director shall notify the dealer of the date of expiration and furnish the dealer with the renewal application. The dealer shall submit the renewal application to the director at least thirty days prior to the date of expiration of the license. The dealer shall be penalized ten dollars per day for each day the renewal application is submitted after the date the application for a renewal license is due. The date of submission of the renewal application shall be the date postmarked. Any person licensed under both the provisions of sections 276.401 to 276.582 and sections 411.010 to 411.800 who submits a combination warehouse-grain dealer renewal application shall not be assessed a penalty for late renewal in excess of ten dollars per day.

5. The original application shall be accompanied by a filing fee pursuant to section 276.506.

V.A.M.S. 276.421

276.421. Financial statement to accompany application, how prepared--false statement, penalty--minimum net worth required--maintaining of current assets

<Text of section eff. until Jan. 1, 2017. See, also, section eff. Jan. 1, 2017.>

1. All applications shall be accompanied by a true and accurate financial statement of the applicant, prepared within six months of the date of application, setting forth all the assets, liabilities and net

worth of the applicant. In the event that the applicant has been engaged in business as a grain dealer for at least one year, the financial statement shall set forth the aggregate dollar amount paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the last completed fiscal period of the applicant. In the event the applicant has been engaged in business for less than one year or has not previously engaged in business as a grain dealer, the financial statement shall set forth the estimated aggregate dollar amount to be paid for grain purchased in 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 period. All applications shall also be accompanied by a true and accurate statement of income and expenses for the applicant's most recently completed fiscal year. The financial statements required by this chapter shall be prepared in conformity with generally accepted accounting principles; except that the director may promulgate rules allowing for the valuation of assets by competent appraisal.

2. The financial statement required by subsection 1 of this section shall be audited or reviewed by a certified public accountant. The financial statement may not be audited or reviewed by the applicant, or an employee of the applicant, if an individual, or, if the applicant is a corporation or partnership, by an officer, shareholder, partner, or a direct employee of the applicant.

3. The director may require any additional information or verification with respect to the financial resources of the applicant as he deems necessary for the effective administration of this chapter. The director may promulgate rules setting forth minimum standards of acceptance for the various types of financial statements filed in accordance with the provisions of this chapter. The director may promulgate rules requiring a statement of retained earnings, a statement of changes in financial position, and notes and disclosures to the financial statements for all licensed grain dealers or all grain dealers required to be licensed. The additional information or verification referred to herein may include, but is not limited to, requiring that the financial statement information be reviewed or audited in accordance with standards established by the American Institute of Certified Public Accountants.

4. All grain dealers shall provide the director with a copy of all financial statements and updates to financial statements utilized to secure the bonds required by sections 276.401 to 276.582.

5. All financial statements submitted to the director for the purposes of this chapter shall be accompanied by a certification by the applicant or the chief executive officer of the applicant, subject to the penalty provision set forth in subsection 4 of section 276.536, that to the best of his knowledge and belief the financial statement accurately reflects the financial condition of the applicant for the fiscal period covered in the statement.

6. Any person who knowingly prepares or assists in the preparation of an inaccurate or false financial statement which is submitted to the director for the purposes of this chapter, or who during the course of providing bookkeeping services or in reviewing or auditing a financial statement which is submitted to the director for the purposes of this chapter, becomes aware of false information in the financial statement and does not disclose in notes accompanying the financial statements that such false information exists, or does not disassociate himself from the financial statements prior to submission, is guilty of a class C felony. Additionally, such persons are liable for any damages incurred by sellers of grain selling to a grain dealer who is licensed or allowed to maintain his license based upon inaccuracies or falsifications contained in the financial statement.

7. Any licensed grain dealer or applicant for a grain dealer's license shall maintain a minimum net worth equal to five percent of annual grain purchases as set forth in the financial statements required by this chapter. If the dealer or applicant is deficient in meeting this net worth requirement, he must post additional bond as required in section 276.436.

8.

(1) Any licensed grain dealer or applicant for a grain dealer's license shall have and maintain

current assets at least equal to one hundred percent of current liabilities. The financial statement required by this chapter shall set forth positive working capital in the form of a current ratio of the total adjusted current assets to the total adjusted current liabilities of at least one to one.

(2) The director may allow applicants to offset negative working capital by increasing the grain dealer surety bond required by section 276.426 up to the total amount of negative working capital at the discretion of the director.

(3) Adjusted current assets shall be calculated by deducting from the stated current assets shown on the financial statement submitted by the applicant any current asset resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, and any other related person receivables.

(4) A disallowed current asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the current assets.

V.A.M.S. 276.436

276.436. Amount of bond--director to establish by rule--formula--minimum and maximum--additional bond because of low net worth or other circumstances--failure to maintain, effect

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 be less than fifty thousand dollars nor more than 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 two 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, two 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.

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

4. The director may, when the question arises as to a grain dealer's ability to pay for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the director. Such additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section. The director must furnish to the dealer, by certified mail, a written statement of the reasons for requesting additional bond and the reasons for questioning the dealer's ability to pay. Failure to post such additional bond is a ground for modification, suspension or

revocation by the director of a license issued under sections 276.401 to 276.582. The determination of insufficiency of a bond and of the amount of the additional bond shall be based upon evidence presented to the director that a dealer:

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

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

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

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

V.A.M.S. 276.486

276.486. Injunctive relief may be sought--who to prosecute--director may conduct investigations and hearings--attendance of witnesses

1. The director may apply for a restraining order or a temporary or permanent injunction against the operation of a dealer which is in violation of sections 276.401 to 276.582 or regulations promulgated hereunder or in order to enforce sections 276.401 to 276.582 or such regulations, notwithstanding the existence of other remedies at law. The restraining order or injunction may be prosecuted by the attorney general or the prosecuting attorney of the proper county upon request of the director.

2. The director may apply for a restraining order or a temporary or permanent injunction enjoining a grain dealer from disposing of any grain owned, in whole or in part, or held or in his possession whether owned in whole or in part, or enjoining anyone from removing any grain in which the grain dealer or claimants from which he has purchased grain have an interest. The restraining order or injunction may be prosecuted by the attorney general or the prosecuting attorney of the proper county upon request of the director.

3. The director shall have power in the conduct of any investigation or hearing authorized or held by him to:

- (1) Examine, or cause to be examined, under oath, any person;

- (2) Examine, or cause to be examined, books and records of any dealer or warehouseman;
 - (3) Hear such testimony and take such evidence as will assist him in the discharge of his duties under this chapter;
 - (4) Administer or cause to be administered oaths;
 - (5) Issue subpoenas to require the attendance of witnesses and the production of books; and
 - (6) Serve, or cause to be served, any subpoena, petition, or order required for the administration of this chapter.
4. Any circuit court may, by order duly entered, require the attendance of witnesses and the production of relevant books and records subpoenaed by the director, and the court may compel obedience to its order by proceedings for contempt.

V.A.M.S. 276.501

276.501. Insolvency, director may request ex parte order to be named trustee and be given immediate possession--procedure--order, contents--dealer may file response, when--hearing, when--notice, duties of director--director not to operate business, liability limited--appointment of receiver--recovery of expenses

1. If at any time the director has evidence that a dealer is insolvent or is unable to satisfy the claims of all sellers, the director may petition the circuit court in the county where the dealer's principal place of business is located, for an ex parte order authorizing the director or his authorized agent to seize, and take title and possession, as trustee, of any grain in the dealer's possession or under the dealer's control, and of all pertinent records and property as provided for in subsection 2 of this section.
2. Upon receipt of the director's verified petition setting forth the circumstances of the dealer's failure to comply with sections 276.401 to 276.582, and further stating reasons why immediate possession by the director or his authorized agent is necessary for the protection of grain sellers or sureties, the court is authorized to issue an ex parte order authorizing the director or his authorized agent to take immediate possession for the purposes stated in this section. A copy of the petition and order shall be sent to the dealer. If appropriate, the court may order the director's taking possession of only grain-related assets and not the entire business of the dealer. Such order may include, but is not limited to, the following:
 - (1) The director locking down and securing, by padlocks or other appropriate means, the grain storage bins, scales, offices, equipment and rolling stock of the dealer;
 - (2) Removing and excluding the dealer, or any and all of the dealer's employees, from the facility;
 - (3) Prohibiting the dealer from engaging in any grain-related business transactions whatever during the director's possession of the grain-related assets of the dealer's business;
 - (4) Authorizing all financial institutions to place all business accounts of the dealer under the director's authority and to freeze all transactions involving such accounts except to honor outstanding checks written previous to the issuance of the court's order. If it appears that the dealer has conducted, in part, his grain dealer business through the use of personal accounts as opposed to business accounts, or intermingled two or more such accounts, the court may authorize the applicable financial institutions to place such personal accounts, as well as the business accounts, under the authority of the director in order to allow the director to accurately determine the extent of all grain-related obligations incurred by the dealer, the correct status of same and the dealer's resources to pay his grain-related obligations;
 - (5) Authorizing the director to redeliver or sell depositor or dealer-owned grain, as appropriate

in the circumstances and setting forth the conditions for doing such;

(6) Authorizing the director to deposit all grain-related assets and proceeds therefrom in an interest-bearing escrow account to be disbursed only upon orders of the court;

(7) Directing the dealer to provide the director with all grain-related business documents which come into his possession subsequent to the director's possession of the grain-related assets, as well as any other grain-related documents which the dealer may have knowledge of and which are not at the dealer's facility.

3. At any time within ten days after the director or his authorized agent takes possession, the dealer may file with the court a response to the petition of the director stating reasons why the director or his authorized agent should not be allowed to retain possession. The court shall set the matter for hearing on a date not more than fifteen days from the date of the filing of the dealer's response. The order placing the director or his authorized agent in possession shall not be stayed nor set aside until such time as the court, after hearing, determines that possession should be restored to the dealer.

4. Upon taking possession, the director shall give written notice of his action to the surety on the bond of the dealer and may notify all known sellers as shown by the dealer's records.

5. The director or his authorized agent shall retain possession obtained under this section until such time as the dealer or the surety on the bond shall have satisfied the claims of all sellers, or until such time as the director or his authorized agent is ordered by the court to surrender possession. At no time while the director or his authorized agent is in possession of a dealer's business, as authorized by this section, shall the director, or his authorized agent be required to operate the dealer's business; nor shall the director or his authorized agent be liable for any claims which have arisen or could arise from the nonoperation of the dealer's business.

6. If at any time, the director, whether or not he or his authorized agent has possession as authorized by this section, has evidence that a dealer is insolvent or is unable to satisfy the claims of all sellers, the director may petition the circuit court for the appointment of a receiver to operate or liquidate the business of the dealer in accordance with law.

7. All necessary expenses incurred by the director, his authorized agents or any receiver appointed under this section, in carrying out the provisions of this section may be recovered from the dealer in a separate civil action brought by the director in the circuit court or as part of the seizure or receivership action filed under this section. If the director or any of his authorized agents seize and take possession of the grain, records or property at the dealer's facility, the dealer may be assessed and shall pay as part of the necessary expenses incurred a fee of one hundred dollars per person for each day or part thereof that each such person performs such activities. The cost of liability insurance necessary to protect the director, the receiver, and others engaged in carrying out the provisions of this section, may be recovered as part of the necessary expenses.

V.A.M.S. 276.582

276.582. Display of signs, licensing--misdemeanors--investigation of violations

1. Each grain dealer, as defined in section 276.401, shall prominently display, at the main entrance to the building of the grain dealer and on or about the scale of the grain dealer, if any, so that such sign

may be easily viewed by a person using the scale, a sign containing letters of not less than one inch and not more than six inches in height, which shall read either:

(1) "NOTICE: THIS GRAIN DEALER IS NOT LICENSED AS REQUIRED BY LAW PURSUANT TO SECTION 276.411, RSMo"; or

(2) "NOTICE: THIS GRAIN DEALER IS LICENSED AS REQUIRED BY LAW PURSUANT TO SECTION 276.411, RSMo".

2. Any grain dealer, as defined in section 276.401, who does not display the sign as required by subsection 1 of this section, is guilty of a misdemeanor, and shall be subject to a fine of up to three hundred dollars for each day of the violation.

3. The director of the department of agriculture may refer violations of this section and section 411.778 to the attorney general if the local circuit or prosecuting attorney has not acted upon violations of this section and section 411.778 within ninety days of notice by the director of the department of agriculture of such violation. The attorney general may investigate, prosecute and appoint a special prosecuting attorney in any case which has been referred under this subsection.