

251.720 License to engage in business of buying grain from producers for resale, milling, or processing -- Grounds for refusal to issue or to revoke license -- Notice and hearing -- Surety bond required -- Invalid license -- Requirements for bulk purchasers of grain.

- (1) Any person engaged in the business of buying grain from producers for resale, milling, or processing shall first procure a license from the department as required by the board before transacting business. The license shall expire on June 30 and shall be renewed annually by August 1. The annual license fee shall be based on the total annual volume handled as follows:
 - (a) From zero to five thousand nine hundred ninety-nine (5,999) bushels, seventy-five dollars (\$75);
 - (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine (99,999) bushels, one hundred fifty dollars (\$150);
 - (c) One hundred thousand (100,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars (\$300);
 - (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
 - (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
 - (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).
- (2) The fee for each license shall be used for carrying out the provisions of this chapter.
- (3) Every person licensed as a grain dealer shall file with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the Commonwealth of Kentucky. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner, as trustee, or an irrevocable letter of credit on forms provided by the Commissioner. The principal amount of the certificate or letter of credit shall be the same as that required for a surety bond under this section, and the interest, if any, shall be made payable to the purchaser. The bond shall be a principal amount, to the nearest one thousand dollars (\$1,000), equal to ten percent (10%) of the aggregate dollar amount paid by the dealer to producers for grain purchased from them 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 (1) year or who has not previously been engaged as a grain dealer, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. The bond shall not be less than twenty-five thousand dollars (\$25,000) nor more than one million dollars (\$1,000,000), except as otherwise authorized by this section.
- (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers for grain purchased, or when he determines that the grain dealer does not have a sufficient net worth to meet his financial obligations, require a grain dealer to post

an additional bond in a dollar amount equal to the insufficiency or shall require an additional certificate of deposit or an irrevocable letter of credit equal to the insufficiency, as deemed appropriate by the Commissioner. Failure to post the additional bond or certificate of deposit or an irrevocable letter of credit constitutes grounds for suspension or revocation of a license issued under this section.

- (5) The bond or additional bond shall be made payable to the Commonwealth of Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this section. It shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by the grain dealer, and shall not be canceled, except upon at least sixty (60) days' notice in writing to the department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.
- (6) An incidental grain dealer whose total purchases of grain from producers during any fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand dollars (\$250,000) may satisfy the bonding requirements of this section by filing with the department a bond, certificate of deposit, or an irrevocable letter of credit at the rate of one thousand dollars (\$1,000) for each ten thousand dollars (\$10,000) or fraction of ten thousand dollars (\$10,000) with a minimum bond, certificate of deposit, or an irrevocable letter of credit of five thousand dollars (\$5,000), and a current financial statement.
- (7) Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter of credit and to keep the bond, certificate of deposit, or an irrevocable letter of credit in force or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this section.
- (8) When the Commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the Commissioner shall determine, through appropriate legal procedures, the producers and the amount of defaulted payment, and, as trustee of the bond, shall immediately after the determination call for the dealer's surety bond or bonds to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds, then the surety shall be obligated to pay only the amount of the default.
- (9) Any grain dealer who is also in the business of storing grain and is a warehouseman as defined in KRS 251.610 may be exempted from the licensing fee and bonding requirements of KRS 251.451 as long as his storage capacity and storage obligations are considered in formulating his grain dealer bond requirement.
- (10) The department may refuse to issue a license to any applicant or revoke the existing license of one who furnishes false or misleading information or conceals a material fact on the application or other supporting documents, has been convicted of fraud or deceptive practice, is currently adjudicated incompetent by a court of competent jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1) or fails to post additional surety to cover the deficiency, or for other good cause shown. Any

individual denied a license for these reasons shall be given written notice within thirty (30) days of receipt of application. Any applicant who is denied a license or has had his license revoked and feels he has been aggrieved may request a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing shall be conducted in accordance with KRS Chapter 13B.

- (11) All applications for a grain dealer license shall be accompanied by a current financial statement, or an irrevocable letter of credit from a financial institution.
- (12)
 - (a) A grain dealer license shall become invalid upon the cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, sale, or failure to remit license fees or fines. Licensed grain dealers shall immediately notify the department as to any changes and shall surrender the invalid license to the department. In the case of a successor, the successor shall apply for a new license.
 - (b) If there is a cessation of operations or sale, the department, when deemed appropriate, may cause an audit and examination to be made. In this case, all records required in this chapter shall be available to the department until the department is satisfied that all obligations have been met.
- (13) In addition to the other provisions required by this section, any person who is engaged in the business of buying grain from producers and who purchases or takes title to grain valued at more than one million dollars (\$1,000,000) within a calendar month shall:
 - (a) Notify the department, in writing, by submitting a detailed position report outlining the:
 1. Type of grain;
 2. Quantity of each grain, in bushels;
 3. Disposition of the grain, whether paid, forward price contracted, or other; and
 4. Aggregate value of the grain purchased within the calendar month.The report shall be submitted to the department within ten (10) days following the close of the calendar month. Failure to submit the report may result in the revocation of the person's license;
 - (b) Upon request of the department, submit a balance sheet on a form provided by the department, current through the end of the calendar month. Additional surety shall be required, on a dollar-for-dollar basis, if the total value of purchases of grain exceeds the combined value of the licensee's net worth and existing surety. If the licensee has an asset-to-liability ratio falling below one to one (1:1) or has outstanding payables to producers, other than legitimate forward price contracted grain, over thirty (30) days due and exceeding one million dollars (\$1,000,000), the licensee's license shall be suspended until the deficit is corrected; and
 - (c) Be placed on an accelerated audit schedule as determined by the department. If, in the determination of the department, the licensee cannot meet a minimum asset-to-liability ratio of one-half to one (0.5:1), the department

shall revoke the license. The department shall also place liens on licensee assets up to the amount of indebtedness to producers. If the department determines the licensee is insolvent, the Commissioner shall have the power to seize assets up to the value of the indebtedness to producers.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 21, sec. 2, effective June 8, 2011. -- Amended 2009 Ky. Acts ch. 61, sec. 7, effective June 25, 2009; and ch. 68, sec. 3, effective June 25, 2009. -- Amended 2005 Ky. Acts ch. 125, sec. 8, effective June 20, 2005. -- Amended 1996 Ky. Acts ch. 318, sec. 178, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 396, sec. 8, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 321, sec. 2, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 81, sec. 5, effective July 15, 1986. -- Created 1984 Ky. Acts ch. 389, sec. 13, effective July 13, 1984.