

FIRST REGULAR SESSION

# SENATE BILL NO. 143

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Pre-filed December 29, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0375S.011

## AN ACT

To repeal sections 276.401 and 276.471, RSMo, and to enact in lieu thereof three 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Section A. Sections 276.401 and 276.471, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 276.401, 276.465,  
3 and 276.471, to read as follows:

276.401. 1. Sections 276.401 to 276.582 shall be known as the "Missouri  
2 Grain Dealer Law".

3 2. The provisions of the Missouri grain dealer law shall apply to grain  
4 purchases where title to the grain transfers from the seller to the buyer within  
5 the state of Missouri.

6 3. Unless otherwise specified by contractual agreement, title shall be  
7 deemed to pass to the buyer as follows:

8 (1) On freight on board (FOB) origin or freight on board (FOB) basing  
9 point contracts, title transfers at time and place of shipment;

10 (2) On delivered contracts, when and where constructively placed, or  
11 otherwise made available at buyer's original destination;

12 (3) On contracts involving in-store commodities, at the storing warehouse  
13 and at the time of contracting or transfer, and/or mailing of documents, if  
14 required, by certified mail, unless and to the extent warehouse tariff, warehouse  
15 receipt and/or storage contract assumes the risk of loss and/or damage.

16 4. As used in sections 276.401 to 276.582, unless the context otherwise  
17 requires, the following terms mean:

18 (1) "Auditor", a person appointed under sections 276.401 to 276.582 by the

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 director to assist in the administration of sections 276.401 to 276.582, and whose  
20 duties include making inspections, audits and investigations authorized under  
21 sections 276.401 to 276.582;

22 (2) "Authorized agent", any person who has the legal authority to act on  
23 behalf of, or for the benefit of, another person;

24 (3) **"Basis", the difference between the cash price and the futures**  
25 **price for grain;**

26 (4) "Buyer", any person who buys or contracts to buy grain;

27 [(4)] (5) "Certified public accountant", any person licensed as such under  
28 chapter 326, RSMo;

29 [(5)] (6) "Claimant", any person who requests payment for grain sold by  
30 him to a dealer, but who does not receive payment because the purchasing dealer  
31 fails or refuses to make payment;

32 [(6)] (7) "Credit sales contracts", a conditional grain sales contract  
33 wherein payment and/or pricing of the grain is deferred to a later date. Credit  
34 sales contracts include, but are not limited to, all contracts meeting the definition  
35 of deferred payment contracts, and/or delayed price contracts;

36 [(7)] (8) "Current assets", resources that are reasonably expected to be  
37 realized in cash, sold, or consumed (prepaid items) within one year of the balance  
38 sheet date;

39 [(8)] (9) "Current liabilities", obligations reasonably expected to be  
40 liquidated within one year and the liquidation of which is expected to require the  
41 use of existing resources, properly classified as current assets, or the creation of  
42 additional liabilities. Current liabilities include obligations that, by their terms,  
43 are payable on demand unless the creditor has waived, in writing, the right to  
44 demand payment within one year of the balance sheet date;

45 [(9)] (10) "Deferred payment agreement", a conditional grain sales  
46 transaction establishing an agreed upon price for the grain and delaying payment  
47 to an agreed upon later date or time period. Ownership of the grain, and the  
48 right to sell it, transfers from seller to buyer so long as the conditions specified  
49 in section 276.461 and section 411.325, RSMo, are met;

50 [(10)] (11) "Deferred pricing agreement", a conditional grain sales  
51 transaction wherein no price has been established on the grain, the seller retains  
52 the right to price the grain later at a mutually agreed upon method of price  
53 determination. Deferred pricing agreements include, but are not limited to,  
54 contracts commonly known as no price established contracts, price later contracts,

55 and basis contracts on which the purchase price is not established at or before  
56 delivery of the grain. Ownership of the grain, and the right to sell it, transfers  
57 from seller to buyer so long as the conditions specified in section 276.461 and  
58 section 411.325, RSMo, are met;

59 [(11)] (12) "Delivery date" shall mean the date upon which the seller  
60 transfers physical possession, or the right of physical possession, of the last unit  
61 of grain in any given transaction;

62 [(12)] (13) "Department", the Missouri department of agriculture;

63 [(13)] (14) "Designated representative", an employee or official of the  
64 department designated by the director to assist in the administration of sections  
65 276.401 to 276.582;

66 [(14)] (15) "Director", the director of the Missouri department of  
67 agriculture or his designated representative;

68 [(15)] (16) "Generally accepted accounting principles", the conventions,  
69 rules and procedures necessary to define accepted accounting practice, which  
70 include broad guidelines of general application as well as detailed practices and  
71 procedures generally accepted by the accounting profession, and which have  
72 substantial authoritative support from the American Institute of Certified Public  
73 Accountants;

74 [(16)] (17) "Grain", all grains for which the United States Department  
75 of Agriculture has established standards under the United States Grain  
76 Standards Act, Sections 71 to 87, Title 7, United States Code, and any other  
77 agricultural commodity or seed prescribed by the director by regulation;

78 [(17)] (18) "Grain dealer" or "dealer", any person engaged in the business  
79 of, or as a part of his business participates in, buying grain where title to the  
80 grain transfers from the seller to the buyer within the state of Missouri. "Grain  
81 dealer" or "dealer" shall not be construed to mean or include:

82 (a) Any person or entity who is a member of a recognized board of trade  
83 or futures exchange and whose trading in grain is limited solely to trading with  
84 other members of a recognized board of trade or futures exchange; provided, that  
85 grain purchases from a licensed warehouseman, farmer/producer or any other  
86 individual or entity in a manner other than through the purchase of a grain  
87 futures contract on a recognized board of trade or futures exchange shall be  
88 subject to sections 276.401 to 276.582. Exempted herein are all futures  
89 transactions;

90 (b) A producer or feeder of grain for livestock or poultry buying grain for

91 his own farming or feeding purposes who purchases grain exclusively from  
92 licensed grain dealers or whose total grain purchases from producers during his  
93 or her fiscal year do not exceed one hundred thousand dollars;

94 (c) Any person or entity whose grain purchases in the state of Missouri  
95 are made exclusively from licensed grain dealers;

96 (d) A manufacturer or processor of registered or unregistered feed whose  
97 total grain purchases from producers during his or her fiscal year does not exceed  
98 one hundred thousand dollars and who pays for all grain purchases from  
99 producers at the time of physical transfer of the grain from the seller or his or her  
100 agent to the buyer or his or her agent and whose resale of such grain is solely in  
101 the form of manufactured or processed feed or feed by-products or whole feed  
102 grains to be used by the purchaser thereof as feed;

103 [(18)] (19) "Grain transport vehicle", a truck, tractor-trailer unit, wagon,  
104 pup, or any other vehicle or trailer used by a dealer, whether owned or leased by  
105 him, to transport grain which he has purchased; except that, bulk or bagged feed  
106 delivery trucks which are used principally for the purpose of hauling feed and any  
107 trucks for which the licensed gross weight does not exceed twenty-four thousand  
108 pounds shall not be construed to be a grain transport vehicle;

109 [(19)] (20) "Insolvent" or "insolvency", (a) an excess of liabilities over  
110 assets or (b) the inability of a person to meet his financial obligations as they  
111 come due, or both (a) and (b);

112 [(20)] (21) "Interested person", any person having a contractual or other  
113 financial interest in grain sold to a dealer, licensed, or required to be licensed;

114 [(21)] (22) "Location", any site other than the principal office where the  
115 grain dealer engages in the business of purchasing grain;

116 [(22)] (23) "Minimum price contract", a conditional grain sales  
117 transaction establishing an agreed upon minimum price where the seller may  
118 participate in subsequent price gain, if any. Ownership of the grain, and the  
119 right to sell it, transfers from the seller to the buyer so long as the conditions  
120 specified in section 276.461 and section 411.325, RSMo, are met;

121 [(23)] (24) "Person", any individual, partnership, corporation,  
122 cooperative, society, association, trustee, receiver, public body, political  
123 subdivision or any other legal or commercial entity of any kind whatsoever, and  
124 any member, officer or employee thereof;

125 [(24)] (25) "Producer", any owner, tenant or operator of land who has an  
126 interest in and receives all or any part of the proceeds from the sale of grain or

127 livestock produced thereon;

128 [(25)] (26) "Purchase", to buy or contract to buy grain;

129 [(26)] (27) "Sale", the passing of title from the seller to the buyer in  
130 consideration of the payment or promise of payment of a certain price in money,  
131 or its equivalent;

132 [(27)] (28) "Value", any consideration sufficient to support a simple  
133 contract.

276.465. 1. Not later than July 1, 2010, the department shall  
2 promulgate rules to require licensed grain dealers to document the  
3 basis involved in any sale of grain. The documentation shall include  
4 information explaining how the dealer determined each basis. The  
5 department shall require dealers to submit a report of such grain basis  
6 information at regular intervals, which in no case shall be less than  
7 once per month.

8 2. Dealers who violate this section shall be subject to a penalty  
9 by the department, which shall be in addition to any other penalty  
10 allowable by law, and which shall not be less than two hundred dollars  
11 nor more than one thousand dollars per violation.

276.471. 1. The grain dealer shall maintain at his principal place of  
2 business current and complete records with respect to all grain received and  
3 withdrawn from, purchased, sold, and held by him for that business.

4 2. Each licensed grain dealer shall keep in a place of safety, complete and  
5 correct records and accounts of:

6 (1) The quantity of each kind and class of grain received in his facility and  
7 withdrawn therefrom;

8 (2) Duplicate copy of receipts, tickets and bills of lading issued by him;

9 (3) Original receipts and tickets returned to and canceled by him;

10 (4) A register which records all grain transactions not evidenced by the  
11 dealer's own scale ticket, i.e., direct farm-to-market shipments. This register  
12 shall be updated daily showing, at a minimum, the name of the seller, quantity  
13 of grain, date of shipment, name of terminal or other business accepting the  
14 physical commodity, destination scale ticket number and whether the grain was  
15 delivered for sale, or other specified purpose;

16 (5) **Records required by section 276.465.**

17 3. In addition to the records required by subsections 1 and 2 of this  
18 section, the grain dealer shall maintain such adequate financial records as will

19 clearly reflect his current financial position and will clearly support any financial  
20 information required to be submitted to the director for licensing, auditing,  
21 inspection and/or investigation purposes.

22           4. A grain dealer licensed or required to be licensed under this chapter  
23 shall keep available for examination all books, records and accounts required by  
24 this chapter and any other books, records and accounts relevant to his operating  
25 a grain dealer business for a period of not less than three years after the close of  
26 the period for which such books or records were required. An examination may  
27 be performed by the director or his representative, and may take place at any  
28 time during the normal business hours of the dealer or, if prior notice of the  
29 examination is given to the grain dealer, at such time as is prescribed in that  
30 notice.

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