

NEW PARAGRAPH. d. The person is a bail enforcement agent exempt from licensing requirements pursuant to section 80A.2, subsection 3.

Approved May 10, 1999

CHAPTER 106

GRAIN INDUSTRY REGULATION

H.F. 312

AN ACT relating to regulation of the grain industry and providing for civil penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 203.1, subsection 8, unnumbered paragraph 1, Code 1999, is amended to read as follows:

“Grain dealer” means a person who buys during any calendar month ~~five hundred~~ one thousand bushels of grain or more directly from the producers of the grain for purposes of resale, milling, or processing. However, “grain dealer” does not include any of the following:

Sec. 2. Section 203.1, subsection 8, paragraph c, Code 1999, is amended to read as follows:

c. A person who purchases grain only for sale in a ~~registered feed~~ regulated under chapter 198.

Sec. 3. Section 203.1, subsection 8, paragraph d, Code 1999, is amended by striking the paragraph and inserting in lieu thereof the following:

d. A person who purchases grain only from grain dealers licensed under this chapter.

Sec. 4. NEW SECTION. 203.2A NOTICE REQUIREMENT FOR GRAIN PURCHASERS WHO ARE NOT GRAIN DEALERS.

A person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing, unless one of the following applies:

1. The person is a grain dealer licensed pursuant to section 203.3.
2. The person has purchased less than fifty thousand bushels of grain from all producers in the twelve months prior to purchasing grain from the producer.
3. a. The person provides notice to the producer. The notice shall be in the following form:

ATTENTION TO PRODUCERS:

THE PERSON PURCHASING THIS GRAIN IS NOT A LICENSED GRAIN DEALER AND THIS IS NOT A COVERED TRANSACTION ELIGIBLE FOR INDEMNIFICATION FROM THE GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND AS PROVIDED IN IOWA CODE SECTION 203D.3.

b. The notice shall be provided prior to or at the time of the purchase. The notice may appear on a separate statement or as part of a document received by the producer, including a contract or receipt, as required by the department.

c. The form of the notice shall be prescribed by the department. The notice shall appear in a printed boldface font in at least ten point type.

Sec. 5. NEW SECTION. 203.11A CIVIL PENALTIES.

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a grain dealer for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in a case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

Sec. 6. NEW SECTION. 203.11B GRAIN INDUSTRY PEER REVIEW PANEL.

1. The department shall establish a grain industry peer review panel to assist the department in assessing civil penalties pursuant to this section and section 203C.36A. The secretary of agriculture shall appoint to the panel the following members:

a. Two natural persons who are grain dealers licensed under this chapter and actively engaged in the grain dealer business.

b. Two natural persons who are warehouse operators licensed pursuant to chapter 203C and actively engaged in the grain warehouse business.

c. One natural person who is a producer actively engaged in grain farming.

2. a. The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary of agriculture shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of three or more members. Three members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by employees of the department.

3. The panel may propose a schedule of civil penalties for minor and serious violations of this chapter and chapter 203C. The department may adopt rules based on the recommendations of the panel as approved by the secretary of agriculture.

4. a. The panel shall review cases of grain dealers regulated under this chapter and warehouse operators regulated under chapter 203C who are subject to civil penalties as provided in section 203.11A or 203C.36A. A review shall be performed upon the request of the department or the person subject to the civil penalty.

b. The department shall present reports to the panel in regard to investigations of cases under review which may result in the assessment of a civil penalty against a person. The reports may be reviewed by the panel in closed session pursuant to section 21.5, and are confidential records. In presenting the reports, the department shall make available to the panel records of persons which are otherwise confidential under section 22.7, 203.16, or 203C.24. The panel members shall maintain the confidentiality of records made available to the panel. However, a determination to assess a civil penalty against a person shall be made exclusively by the department.

c. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A or the Iowa rules of civil procedure. The rules adopted by the department may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty.

d. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the civil penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a grain dealer or warehouse operator.

5. This section does not apply to an action by the department for a license suspension or revocation. This section also does not require a review or response if the case is subject to criminal prosecution or involves a petition seeking injunctive relief.

6. A response by the panel may be used as evidence in an administrative hearing or in a civil or criminal case except to the extent that information contained in the response is considered confidential pursuant to section 22.7, 203.16, or 203C.24.

Sec. 7. Section 203.15, subsection 7, paragraph c, subparagraph (2), unnumbered paragraph 2, Code 1999, is amended to read as follows:

A bond filed with the department under this paragraph shall not be canceled by the issuer on less than ninety days notice by certified mail to the department and the principal. ~~When the department receives notice from an issuer that it has canceled the bond, However, if an adequate replacement bond is filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period. If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation,~~ the department shall automatically suspend the grain dealer's license ~~if a replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation.~~ The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the grain dealer license shall be automatically revoked. When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

Sec. 8. Section 203.16, Code 1999, is amended by adding the following new subsection: NEW SUBSECTION. 8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

Sec. 9. Section 203C.1, subsection 11, Code 1999, is amended to read as follows:

11. "Incidental warehouse operator" means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a ~~customer formula feed, as defined in section 198.1.~~

Sec. 10. Section 203C.1, Code 1999, is amended by adding the following new subsection:
NEW SUBSECTION. 11A. "Incidental warehouse operator obligation" means a sufficient quantity and quality of grain to cover company owned grain and deposits of grain for which actual payment has not been made.

Sec. 11. Section 203C.1, subsection 24, Code 1999, is amended to read as follows:

24. "Warehouse operator's obligation" means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator's records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality of grain to cover company owned grain and all deposits of grain for which actual payment has not been made. ~~At no time may a warehouse operator have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by investigation of the warehouse operator's records.~~

Sec. 12. Section 203C.17, subsection 1, Code 1999, is amended to read as follows:

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. ~~Warehouse receipts~~ A warehouse receipt shall be issued for all grain held in open storage, within ~~six months~~ one year from the date of delivery to the warehouse, unless the depositor has signed a statement that the depositor does not desire a warehouse receipt. The warehouse operator's tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

Sec. 13. Section 203C.23, Code 1999, is amended to read as follows:

203C.23 WAREHOUSE OPERATOR'S OBLIGATION.

1. A warehouse operator shall maintain at all times sufficient quantity and quality of grain or other agricultural products to cover the warehouse operator's obligation. A warehouse operator shall not at any time have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by an investigation of the warehouse operator's records.

2. An incidental warehouse operator shall maintain at all times sufficient quantity and quality of grain to cover the incidental warehouse operator's obligation. An incidental warehouse operator shall not at any time have less grain in a warehouse than the obligations to depositors, as determined by an investigation of the incidental warehouse operator's records.

Sec. 14. Section 203C.24, Code 1999, is amended by adding the following new subsection:
NEW SUBSECTION. 8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

Sec. 15. NEW SECTION. 203C.36A CIVIL PENALTIES.

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a warehouse operator for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in an administrative case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final.

When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

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CHAPTER 107

FRAUDULENT RETAIL SALES RECEIPTS AND UNIVERSAL PRICE CODE LABELS

H.F. 498

AN ACT defining as a fraudulent practice certain creation or use of retail sales receipts or universal price code labels, and applying penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 714.8, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 17. Manufactures, creates, reproduces, alters, possesses, uses, transfers, or otherwise knowingly contributes to the production or use of a fraudulent retail sales receipt or universal price code label with intent to defraud another person engaged in the business of retailing.

For purposes of this subsection:

a. "Retail sales receipt" means a document intended to evidence payment for goods or services.

b. "Universal price code label" means the unique ten-digit bar code placed on the packaging of an item that may be used for purposes including but not limited to tracking inventory, maintaining price information in a computerized database, and serving as proof of purchase of a particular item.

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