

House Study Bill 690 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON MERTZ)

A BILL FOR

1 An Act relating to grain transactions by regulating grain
2 dealers and warehouse operators, providing for fees, and
3 making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 203.5, Code 2009, is amended to read as
2 follows:

3 **203.5 License.**

4 1. a. Upon the filing of ~~the~~ an application on a form
5 prescribed by the department and compliance with the terms
6 and conditions of this chapter and including rules of the
7 department, the department shall issue the applicant a
8 grain dealer's license to the applicant. The license shall
9 ~~terminate~~ expires at the end of the third calendar month
10 following the close of the grain dealer's fiscal year. A grain
11 dealer's license may be renewed annually by ~~the~~ filing of a
12 ~~renewal fee and a renewal application on a form prescribed~~
13 ~~by the department.~~ An application for renewal ~~shall~~ must be
14 received by the department on or before the end of the third
15 calendar month following the close of the grain dealer's fiscal
16 year.

17 b. The department shall not issue a grain dealer's license
18 unless the applicant pays all of the following fees:

19 (1) For the issuance of a license, all of the following:

20 (a) A license fee imposed under section 203.6.

21 (b) A participation fee imposed under section 203D.3A,
22 and any delinquent participation fee imposed under a previous
23 license as provided in that section.

24 (2) For the renewal of a license, all of the following:

25 (a) A renewal fee imposed under section 203.6.

26 (b) A participation fee imposed under section 203D.3A, and
27 any delinquent participation fee as provided in that section.

28 (c) A per-bushel fee as provided in section 203D.3A, and
29 any delinquent per-bushel fee and penalty as provided in that
30 section.

31 2. The department shall notify a licensed grain dealer
32 of any delinquency in the payment of a participation fee or
33 per-bushel fee as provided in section 203D.3A. The department
34 shall suspend the grain dealer's license thirty days after
35 delivering the notice unless the licensed grain dealer pays the

1 delinquent fee.

2 3. The department may suspend or revoke the license of a
3 grain dealer who discounts the purchase price paid for grain
4 nominally for the participation fee or per-bushel fee as
5 provided in section 203D.3A while that fee is not in effect.

6 4. A grain dealer license which has ~~terminated~~ expired may
7 be reinstated by the department upon receipt of a proper
8 renewal application, the renewal fee, and the a reinstatement
9 fee as provided in section 203.6 ~~if filed~~, and any
10 delinquent participation fee or per-bushel fee and penalty
11 as provided in section 203D.3A. The applicant must file
12 the renewal application and pay the fees and penalty
13 to the department within thirty days from the date of
14 ~~termination~~ expiration of the grain dealer license.

15 5. The department may cancel a license upon request of the
16 licensee unless a complaint or information is filed against the
17 licensee alleging a violation of a provision of this chapter.

18 6. a. ~~Fees for licenses issued~~ The department shall refund
19 a fee paid by an applicant to the department under this section
20 if the department does not issue or renew a grain dealer's
21 license.

22 b. The department shall prorate a fee paid by an applicant
23 to the department under this section for the issuance or
24 renewal of a license for less than a full year ~~shall be~~
25 prorated from the date of the application.

26 ~~2-~~ 7. If an applicant has had a license under this chapter
27 or chapter 203C revoked for cause within the past three years,
28 or has been convicted of a felony involving violations of this
29 chapter or chapter 203C, or is owned or controlled by a person
30 who has had a license so revoked or who has been so convicted,
31 the department may deny a license to the applicant.

32 ~~3-~~ 8. The department may deny a license to an applicant if
33 any of the following apply:

34 a. The applicant has caused liability to the Iowa grain
35 depositors and sellers indemnity fund in regard to a license

1 issued under this chapter or chapter 203C, and the liability
2 has not been discharged, settled, or satisfied.

3 *b.* The applicant is owned or controlled by a person who has
4 caused liability to the fund through operations under a license
5 issued under this chapter or chapter 203C and the liability has
6 not been discharged, settled, or satisfied.

7 Sec. 2. Section 203C.1, subsection 5, Code 2009, is amended
8 by striking the subsection and inserting in lieu thereof the
9 following:

10 5. "*Credit-sale contract*" means the same as defined in
11 section 203.1.

12 Sec. 3. Section 203C.7, Code 2009, is amended to read as
13 follows:

14 **203C.7 Application for the issuance or renewal of a license.**

15 1. Each application for the issuance of a license or
16 licenses shall be in writing on a form prescribed by the
17 department, subscribed and sworn to by the applicant or a duly
18 authorized representative of the applicant. In addition to
19 any other information required by rule of the department the
20 application shall include all of the following:

21 ~~1.~~ a. The name of the ~~individual, partnership, or~~
22 ~~corporation~~ person making the application, the names of all
23 partners if the applicant is a partnership, and the names and
24 titles of the principal officers or managers if the applicant
25 is a legal entity including but not limited to a limited
26 partnership, limited liability partnership, limited liability
27 company, corporation, or cooperative association.

28 ~~2.~~ b. The principal office or place of business of the
29 applicant.

30 ~~3.~~ c. A general description of each warehouse as to storage
31 capacity, type of construction, mechanical equipment, if any,
32 and condition.

33 ~~4.~~ d. The approximate location of each warehouse.

34 ~~5.~~ e. The type and quantity of agricultural product, or
35 products intended to be stored in each warehouse.

1 ~~6.~~ f. A complete financial statement for use of the
2 department in the administration of this chapter, as required
3 by section 203C.6.

4 ~~7.~~ g. A tariff on a form to be prescribed by the department
5 for storage, receiving, and loadout charges.

6 2. Each application for the renewal of a license shall be
7 in writing and include information required by the department,
8 including changes to information required in subsection 1.

9 Sec. 4. Section 203C.37, Code 2009, is amended to read as
10 follows:

11 **203C.37 ~~Failure to pay fee~~ Issuance of a license and payment**
12 **of fees.**

13 1. a. Upon the filing of an application pursuant to section
14 203C.7 and compliance with the terms and conditions of this
15 chapter including rules of the department, the department
16 shall issue the applicant a warehouse operator's license.
17 The license expires at the end of the third calendar month
18 following the close of the warehouse operator's fiscal year.
19 A warehouse operator's license may be renewed annually by the
20 filing of a renewal application on a form prescribed by the
21 department pursuant to section 203C.37. An application for
22 renewal must be received by the department on or before the
23 end of the third calendar month following the close of the
24 warehouse operator's fiscal year.

25 b. The department shall not approve an application for the
26 issuance or renewal of a warehouse operator's license unless
27 the applicant pays all of the following fees:

28 (1) For the issuance of a license, all of the following:

29 (a) A license fee imposed under section 203C.33.

30 (b) A participation fee imposed under section 203D.3A,
31 and any delinquent participation fee imposed under a previous
32 license as provided in that section.

33 (2) For the renewal of a license, all of the following:

34 (a) A renewal fee imposed under section 203C.33.

35 (b) A participation fee imposed under section 203D.3A, and

1 any delinquent participation fee as provided in that section.

2 3. Failure The failure of a warehouse operator to file
3 a renewal application and to pay the license a renewal fee
4 as provided for in section 203C.33 and any delinquent
5 participation fee as provided in section 203D.3A, on or
6 before the end of the third calendar month following the
7 close of the licensee's fiscal year shall cause a license to
8 terminate expire.

9 4. A warehouse license which that has terminated expired may
10 be reinstated by the department upon receipt of a proper
11 renewal application, the renewal fee, and the reinstatement fee
12 as provided for in section 203C.33, if filed and any delinquent
13 participation fee as provided in section 203D.3A. The
14 applicant must file the renewal application and pay the fees to
15 the department within thirty days from the date of termination
16 of that the warehouse license expires.

17 5. The department may cancel the license upon request of the
18 licensee unless a complaint or information is filed against the
19 licensee alleging a violation of a provision of this chapter.

20 6. a. The department shall refund a fee paid by a person to
21 the department under this section if the department does not
22 issue the person a license or renew the person's license.

23 b. The department shall prorate a fee paid by a person to
24 the department under this section for the issuance or renewal
25 of a license for less than a full year.

26 Sec. 5. Section 203D.1, Code Supplement 2009, is amended by
27 adding the following new subsections:

28 NEW SUBSECTION. 1A. "Credit-sale contract" means the same
29 as defined in section 203.1.

30 NEW SUBSECTION. 6A. "Grain dealer" means the same as
31 defined in section 203.1.

32 NEW SUBSECTION. 9A. "Licensee" means a licensed grain
33 dealer or licensed warehouse operator.

34 NEW SUBSECTION. 13. "Warehouse operator" means the same as
35 defined in section 203C.1.

1 Sec. 6. Section 203D.3, subsection 1, Code Supplement 2009,
2 is amended to read as follows:

3 1. The grain depositors and sellers indemnity fund is
4 created in the state treasury as a separate account. The
5 general fund of the state is not liable for claims presented
6 against the ~~grain depositors and sellers indemnity~~ fund under
7 section 203D.6.

8 1A. The fund consists of ~~a per bushel fee on purchased grain~~
9 ~~remitted~~ all of the following:

10 a. Participation fees paid to the department by licensed
11 grain dealers and persons applying to be issued a grain
12 dealer's license as provided in section 203D.3A.

13 b. Participation fees paid to the department by licensed
14 warehouse operators and persons applying to be issued a
15 warehouse operator's license as provided in section 203D.3A.

16 c. Per-bushel fees paid to the department by licensed
17 grain dealers and licensed warehouse operators; an annual fee
18 charged to and remitted by licensed grain dealers and licensed
19 warehouse operators; delinquency as provided in section
20 203D.3A.

21 d. Delinquency penalties; sums.

22 e. Amounts collected by the department by state pursuant
23 to legal action on behalf of the fund; and interest,.

24 f. Interest, earnings on investments, property, or
25 securities acquired through the use of moneys in the fund.

26 1B. The fiscal year of the fund begins July 1 and ends on
27 June 30. Fiscal quarters of the fund begin July 1, October
28 1, January 1, and April 1. The finances of the fund shall be
29 calculated on an accrual basis in accordance with generally
30 accepted accounting principles.

31 1C. The moneys collected under this section and deposited
32 in the fund shall be used exclusively to indemnify depositors
33 and sellers as provided in section 203D.6 and to pay the
34 administrative costs of this chapter.

35 Sec. 7. Section 203D.3, subsections 2, 3, 4, and 7, Code

1 Supplement 2009, are amended by striking the subsections.

2 Sec. 8. NEW SECTION. 203D.3A Fees.

3 The department shall collect fees as provided in this
4 section, if established by the board pursuant to section
5 203D.5, at rates determined by the board as provided in that
6 section. A person required to pay a fee shall use forms
7 and deliver the payment to the department as required by the
8 department.

9 1. *a.* A person who applies for the issuance of a new
10 license as a grain dealer pursuant to section 203.5 or a
11 warehouse operator pursuant to sections 203C.7 and 203C.33
12 shall pay the department an initial participation fee as part
13 of the application.

14 (1) In calculating the amount of the initial participation
15 fee, an applicant for a license shall be deemed a licensee
16 paying the full amount of the participation fee owing on the
17 licensee's first anniversary date as provided in paragraph
18 "b". The department must be satisfied that the applicant is
19 calculating the amount due in good faith and using the best
20 information available.

21 (2) If the department issues the license, the licensee shall
22 recalculate the participation fee when making a payment on the
23 licensee's first installment date as provided in paragraph
24 "b". The licensee may notify the department of any overpayment
25 and shall notify the department of any underpayment by the
26 licensee's first installment date in a manner and according to
27 procedures required by the department. The department shall
28 refund any overpayment to the licensee and the licensee shall
29 pay any additional amount resulting from an underpayment.

30 *b.* A licensee shall pay a participation fee on four
31 successive installment dates, with each installment date
32 occurring on the last date of the fund's fiscal quarter as
33 provided in section 203D.3. The licensee shall pay twenty-five
34 percent of the total participation fee assessed on each
35 installment date. However, nothing in this subsection prevents

1 a licensee from paying the participation fee on an accelerated
2 basis. A licensee shall pay the first installment on the last
3 date of the fund's fiscal quarter immediately following the
4 licensee's anniversary date.

5 (1) For a licensed grain dealer, the anniversary date is
6 the last date to apply for the renewal of the grain dealer's
7 license before the license expires as provided in section
8 203.5.

9 (2) For a licensed warehouse operator, the anniversary date
10 is the last date to apply for the renewal of the warehouse
11 operator's license before the license expires as provided in
12 section 203C.37.

13 *c.* A licensee is delinquent if the licensee fails to submit
14 the payment when due or if, upon examination, an underpayment
15 of the fee is found by the department.

16 *d.* A licensee shall not pass on the cost of a participation
17 fee to sellers. The department may suspend or revoke the
18 license of a grain dealer for passing on the cost, as provided
19 in chapter 203.

20 2. *a.* A per-bushel fee shall be assessed on all purchased
21 grain. However, if the grain dealer provides documentation
22 regarding the transaction satisfactory to the department, the
23 following transactions shall be excluded from the per-bushel
24 fee:

25 (1) Grain purchased from the United States government or any
26 of its subdivisions or agencies.

27 (2) Grain purchased from a person licensed as a grain dealer
28 in any jurisdiction.

29 (3) Grain purchased under a credit-sale contract.

30 *b.* The grain dealer shall forward the per-bushel fee to the
31 department on a quarterly basis in the manner and using the
32 forms prescribed by the department. A licensee is delinquent
33 if the licensee fails to submit the full fee or quarterly
34 forms when due or if, upon examination, an underpayment of the
35 fee is found by the department. The grain dealer is subject

1 to a penalty of ten dollars for each day the grain dealer is
2 delinquent or an amount equal to the amount of the deficiency,
3 whichever is less. However, a licensee who fails to submit the
4 full fee or quarterly forms when due, is subject to a minimum
5 payment of ten dollars. The department may establish and apply
6 a margin of error in determining whether a grain dealer is
7 delinquent. The per-bushel fee shall be collected only once
8 on each bushel of grain.

9 c. A grain dealer may choose to pass on the cost of a
10 per-bushel fee to the sellers by an itemized discount noted
11 on the settlement sheet. However, if the per-bushel fee is
12 not in effect, no grain dealer shall make such a discount on
13 the purchase of grain. A discount made nominally for the
14 per-bushel fee while the fee is not in effect is grounds for
15 license suspension or revocation under chapter 203.

16 Sec. 9. Section 203D.5, Code Supplement 2009, is amended to
17 read as follows:

18 ~~203D.5 Adjustments to fee~~ Fees — imposition, adjustment, or
19 waiver.

20 1. The board shall annually review ~~annually~~ the debits of
21 and credits to the grain depositors and sellers indemnity fund
22 created in section 203D.3 and shall determine whether to impose
23 the participation fee and per-bushel fee as provided in section
24 203D.3A, make any adjustments in the per-bushel fee required
25 under section 203D.3, subsection 2, and the dealer-warehouse
26 fee required under section 203D.3, subsection 3, that are to
27 the fees effective on the previous July 1, or waive the fees
28 as necessary to maintain the fund within the limits established
29 under comply with this section. Not The board shall make the
30 determination not later than the first day of May 1 of each
31 year, the board shall determine the proposed amount of the
32 per-bushel fee based on the expected volume of grain on which
33 the fee is to be collected and that is likely to be handled
34 under this chapter, and shall also determine any adjustment to
35 the dealer-warehouse fee. The board shall make any changes

1 ~~in~~ impose the fees or adjust the previous year's fees effective
2 on the previous July 1 in accordance with chapter 17A. Changes
3 ~~in~~ The imposition or adjustment of the fees shall become
4 effective as follows:

5 a. For the participation fee, on the following July 1.
6 However, the licensee shall continue to pay the participation
7 fee at the rate in effect on the prior July 1, until the
8 licensee has paid the amount owing.

9 b. For a per-bushel fee, on the following first day of July
10 1.

11 2. a. Except as provided in paragraph "b", the rate of a
12 participation fee owed by a licensee shall be calculated as
13 follows:

14 (1) For a licensed grain dealer, not more than fourteen
15 thousandths of a cent per bushel assessed on all purchased
16 grain entered in the company-owned paid position during the
17 grain dealer's last fiscal year at each location at which
18 records are maintained for transactions of the grain dealer,
19 as determined according to information submitted by the grain
20 dealer to the department for the issuance or renewal of a
21 license as provided in section 203.5.

22 (2) For a licensed warehouse operator, not more than
23 fourteen thousandths of a cent per bushel of bulk grain storage
24 capacity for each warehouse licensed pursuant to section 203C.8
25 or five hundred dollars, whichever is less. The participation
26 fee shall be determined using information provided to the
27 department by the warehouse operator applying for the issuance
28 or renewal of a license as provided in sections 203C.7 and
29 203C.37.

30 b. A licensee shall pay a participation fee of at least
31 fifty dollars.

32 3. The rate of the per-bushel fee shall not exceed
33 one-quarter cent per bushel assessed on all purchased grain
34 as defined in section 203D.1. Until the per-bushel fee is
35 adjusted or waived as provided in this section, the per-bushel

1 ~~fee is one-quarter cent on all purchased grain.~~

2 2. 4. If, at the end of any three-month period, the assets
3 of the fund exceed eight million dollars, less any encumbered
4 balances or pending or unsettled claims, all of the per-bushel
5 ~~fee required under section 203D.3, subsection 2, and the~~
6 ~~dealer-warehouse fee required under section 203D.3, subsection~~
7 ~~3,~~ following apply:

8 a. The participation fee shall be waived and shall not
9 be assessable or owing for the following fiscal year of the
10 fund. However, the licensee shall continue to pay any owing
11 participation fee that was in effect on the prior July 1.

12 b. The per-bushel fee shall be waived and the fees
13 are shall not be assessable or owing.

14 5. The board shall reinstate the fees as provided in this
15 section if the assets of the fund, less any unencumbered
16 balances or pending or unsettled claims, are three million
17 dollars or less.

18 EXPLANATION

19 BACKGROUND. This bill amends provisions in three Code
20 chapters relating to grain transactions involving grain dealers
21 and grain warehouse operators licensed by the department of
22 agriculture and land stewardship (DALs) and the administration
23 of the grain depositors and sellers indemnity fund by the
24 department and the Iowa grain indemnity fund board (board).
25 Code chapter 203 regulates grain dealers, Code chapter 203C
26 regulates warehouse operators, and Code chapter 203D provides
27 for the fund.

28 CURRENT LICENSE SCHEDULE. A grain dealer or warehouse
29 operator must renew a license at the end of the third calendar
30 month following the close of the licensee's fiscal year (Code
31 sections 203.5 and 203C.37). The fund's fiscal year is the
32 same as the state's fiscal year (from July 1 to June 30) with
33 fiscal quarters beginning on July 1, October 1, January 1, and
34 April 1.

35 CURRENT FEE STRUCTURE. The fund is principally supported

1 by two fees paid by grain dealers and warehouse operators: an
2 annual fee and a per-bushel fee.

3 The first fee is an annual fee, also referred to as a
4 dealer-warehouse fee, paid by both grain dealers and warehouse
5 operators (Code sections 203D.3 and 203D.5). For grain
6 dealers, the amount of the annual fee is based on the class
7 of license held (Code sections 203.3 and 203D.3) and for
8 warehouse operators, the amount of the annual fee is based on
9 the warehouse's storage capacity (Code section 203D.3). A
10 grain dealer or warehouse operator must pay the full annual
11 fee before a grain dealer's or warehouse operator's license is
12 issued or renewed (Code section 203D.3). There is no penalty
13 for a delinquent fee. The Code chapter is silent about whether
14 a grain dealer or warehouse operator may pass on the annual fee
15 to depositors.

16 The second fee is a per-bushel fee assessed once on grain
17 purchased by a grain dealer (Code section 203D.3). The rate
18 of the per-bushel fee is established and adjusted by the board
19 but cannot exceed one-quarter cent per bushel (Code section
20 203D.5). The fee is collected on the basis of the fund's
21 fiscal quarters (Code section 203D.3). The grain dealer is
22 subject to a penalty of \$10 for each day the grain dealer is
23 delinquent or an amount equal to the amount of the deficiency,
24 whichever is less (Code section 203D.3). A grain dealer may
25 pass on the cost of a per-bushel fee to the sellers (Code
26 section 203D.3).

27 The board may impose, waive, or adjust the fees as necessary
28 to maintain the fund's solvency. The board meets on May 1
29 to impose, adjust, or waive the fees (Code section 203D.5).
30 However, if at the end of any three-month period, the fund
31 exceeds \$8 million the fees are waived and no longer owing
32 (Code section 203D.5). The board may reinstate the fees if its
33 assets are more than \$3 million but less than \$8 million. The
34 board must reinstate the fees if the assets are less than \$3
35 million.

1 BILL CHANGES — REPLACING ANNUAL FEE WITH PARTICIPATION
2 FEE. The bill replaces the annual fee with a participation
3 fee. The licensee must still pay the participation fee based
4 on the licensee's anniversary date. The licensee must pay the
5 participation fee on the last date of the fund's fiscal quarter
6 after the licensee's anniversary date. However, the licensee
7 may elect to pay the participation fee in four successive
8 installments, with each installment date occurring on the
9 last date of the fund's fiscal quarter. A person applying
10 for the issuance of a new license must pay the department
11 an initial participation fee as part of the application, and
12 then recalculate the participation fee when making the first
13 required payment as a licensee. The participation fee, like
14 the per-bushel fee, takes effect on July 1. A licensed grain
15 dealer pays not more than fourteen thousandths of a cent per
16 bushel assessed on all purchased grain and a licensed warehouse
17 operator pays not more than fourteen thousandths of a cent per
18 bushel of bulk grain storage capacity or \$500 whichever is
19 less. However, the minimum payment for a licensee is \$50.

20 BILL CHANGES — PER-BUSHEL FEE. The bill amends a provision
21 that excludes certain credit-sale contracts from transactions
22 used to calculate the per-bushel fee paid by licensed grain
23 dealers. Currently, grain purchased under credit-sale
24 contracts is excluded only if it is entered into on or before
25 the date of delivery (Code section 203D.3). The bill excludes
26 all grain purchased under credit-sale contracts. A credit-sale
27 contract is an agreement for the sale of grain under which the
28 sales price is paid 30 or more days after delivery to the grain
29 dealer (Code section 203.1). Sellers cannot be reimbursed from
30 the fund from losses arising from credit-sale contracts (Code
31 section 203D.6).

32 BILL CHANGES — LICENSEES. Currently, a person applying
33 for a warehouse license must state whether the applicant is an
34 individual, partnership, or corporation (Code section 203C.7).
35 The bill provides for filings by other business entities,

1 such as limited partnerships, limited liability partnerships,
2 limited liability companies, or cooperative associations. The
3 bill provides that a warehouse license expires at the end of
4 the third calendar month following the close of the warehouse
5 operator's fiscal year according to current practice. It also
6 includes conforming amendments to the provisions in the bill
7 providing for the issuance, suspension, or revocation of a
8 license for failing to pay a fee, and for the refund of fees
9 when a license is canceled or otherwise terminated.

10 APPLICABLE PENALTIES. Generally, a grain dealer or
11 warehouse operator who violates a provision of Code chapter
12 203 or 203C commits a simple misdemeanor or alternatively
13 is subject to a civil penalty of not more than \$1,500 (Code
14 sections 203.11 and 203C.36). However, there are special
15 offenses. A person who knowingly submits false information
16 to the department is guilty of a fraudulent practice, and
17 a person who engages in the business of a grain dealer or
18 warehouse operator without a license is guilty of a serious
19 misdemeanor for the first offense and an aggravated misdemeanor
20 for a second or subsequent offense (Code sections 203.11 and
21 203C.36). A grain dealer or warehouse operator who knowingly
22 submits false information to or withholds information from the
23 department is guilty of a fraudulent practice. The penalty
24 for committing a fraudulent practice ranges from a simple
25 misdemeanor to a class "C" felony depending upon the amount of
26 money or value of property involved.

27 A simple misdemeanor is punishable by confinement for no
28 more than 30 days or a fine of at least \$65 but not more than
29 \$625 or by both. A serious misdemeanor is punishable by
30 confinement for no more than one year and a fine of at least
31 \$315 but not more than \$1,875. An aggravated misdemeanor is
32 punishable by confinement for no more than two years and a fine
33 of at least \$625 but not more than \$6,250. A class "D" felony
34 is punishable by confinement for no more than five years and
35 a fine of at least \$750 but not more than \$7,500. A class "C"

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1 felony is punishable by confinement for no more than 10 years
2 and a fine of at least \$1,000 but not more than \$10,000.