

SECOND REGULAR SESSION

HOUSE BILL NO. 2196

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KALBERLOH.

4773H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 276.401, RSMo, and to enact in lieu thereof one new section relating to grain dealers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 276.401, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 276.401, to read as follows:

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

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (1) "Auditor", a person appointed under sections 276.401 to 276.582 by the director
18 to assist in the administration of sections 276.401 to 276.582, and whose duties include
19 making inspections, audits and investigations authorized under sections 276.401 to 276.582;
- 20 (2) "Authorized agent", any person who has the legal authority to act on behalf of, or
21 for the benefit of, another person;
- 22 (3) "Buyer", any person who buys or contracts to buy grain;
- 23 (4) "Certified public accountant", any person licensed as such under chapter 326;
- 24 (5) "Claimant", any person who requests payment for grain sold by him to a dealer,
25 but who does not receive payment because the purchasing dealer fails or refuses to make
26 payment;
- 27 (6) "Credit sales contracts", a conditional grain sales contract wherein payment and/or
28 pricing of the grain is deferred to a later date. Credit sales contracts include, but are not
29 limited to, all contracts meeting the definition of deferred payment contracts, and/or delayed
30 price contracts;
- 31 (7) "Current assets", resources that are reasonably expected to be realized in cash,
32 sold, or consumed (prepaid items) within one year of the balance sheet date;
- 33 (8) "Current liabilities", obligations reasonably expected to be liquidated within one
34 year and the liquidation of which is expected to require the use of existing resources, properly
35 classified as current assets, or the creation of additional liabilities. Current liabilities include
36 obligations that, by their terms, are payable on demand unless the creditor has waived, in
37 writing, the right to demand payment within one year of the balance sheet date;
- 38 (9) "Deferred payment agreement", a conditional grain sales transaction establishing
39 an agreed upon price for the grain and delaying payment to an agreed upon later date or time
40 period. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long
41 as the conditions specified in section 276.461 and section 411.325 are met;
- 42 (10) "Deferred pricing agreement", a conditional grain sales transaction wherein no
43 price has been established on the grain, the seller retains the right to price the grain later at a
44 mutually agreed upon method of price determination. Deferred pricing agreements include,
45 but are not limited to, contracts commonly known as no price established contracts, price later
46 contracts, and basis contracts on which the purchase price is not established at or before
47 delivery of the grain. Ownership of the grain, and the right to sell it, transfers from seller to
48 buyer so long as the conditions specified in section 276.461 and section 411.325 are met;
- 49 (11) "Delivery date" shall mean the date upon which the seller transfers physical
50 possession, or the right of physical possession, of the last unit of grain in any given
51 transaction;
- 52 (12) "Department", the Missouri department of agriculture;

53 (13) "Designated representative", an employee or official of the department
54 designated by the director to assist in the administration of sections 276.401 to 276.582;

55 (14) "Director", the director of the Missouri department of agriculture or his **or her**
56 designated representative;

57 (15) "Generally accepted accounting principles", the conventions, rules and
58 procedures necessary to define accepted accounting practice, which include broad
59 guidelines of general application as well as detailed practices and procedures generally
60 accepted by the accounting profession, and which have substantial authoritative support from
61 the American Institute of Certified Public Accountants;

62 (16) "Grain", all grains for which the United States Department of Agriculture has
63 established standards under the United States Grain Standards Act, Sections 71 to 87, Title 7,
64 United States Code, and any other agricultural commodity or seed prescribed by the director
65 by regulation;

66 (17) "Grain dealer" or "dealer", any person engaged in the business of, or as a part of
67 his **or her** business participates in, buying grain where title to the grain transfers from the
68 seller to the buyer within the state of Missouri. "Grain dealer" or "dealer" shall not be
69 construed to mean or include:

70 (a) Any person or entity who is a member of a recognized board of trade or futures
71 exchange and whose trading in grain is limited solely to trading with other members of a
72 recognized board of trade or futures exchange; provided, that grain purchases from a licensed
73 warehouseman, farmer/producer or any other individual or entity in a manner other than
74 through the purchase of a grain futures contract on a recognized board of trade or futures
75 exchange shall be subject to sections 276.401 to 276.582. Exempted herein are all futures
76 transactions;

77 (b) A producer or feeder of grain for livestock or poultry buying grain for his **or her**
78 own farming or feeding purposes [~~who purchases grain exclusively from licensed grain~~
79 ~~dealers or whose total grain purchases from producers during his or her fiscal year do not~~
80 ~~exceed fifty thousand bushels];~~

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

83 (d) A manufacturer or processor of registered or unregistered feed whose total grain
84 purchases from producers during his or her fiscal year [~~do not exceed fifty thousand bushels]~~
85 and who pays for all grain purchases from producers at the time of physical transfer of the
86 grain from the seller or his or her agent to the buyer or his or her agent and whose resale of
87 such grain is solely in the form of manufactured or processed feed or feed by-products or
88 whole feed grains to be used by the purchaser thereof as feed;

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

94 (19) "Insolvent" or "insolvency", (a) an excess of liabilities over assets or (b) the
95 inability of a person to meet his **or her** financial obligations as they come due, or both (a) and
96 (b);

97 (20) "Interested person", any person having a contractual or other financial interest in
98 grain sold to a dealer, licensed, or required to be licensed;

99 (21) "Location", any site other than the principal office where the grain dealer
100 engages in the business of purchasing grain;

101 (22) "Minimum price contract", a conditional grain sales transaction establishing an
102 agreed upon minimum price where the seller may participate in subsequent price gain, if any.
103 Ownership of the grain, and the right to sell it, transfers from the seller to the buyer so long as
104 the conditions specified in section 276.461 and section 411.325 are met;

105 (23) "Person", any individual, partnership, corporation, cooperative, society,
106 association, trustee, receiver, public body, political subdivision or any other legal or
107 commercial entity of any kind whatsoever, and any member, officer or employee thereof;

108 (24) "Producer", any owner, tenant or operator of land who has an interest in and
109 receives all or any part of the proceeds from the sale of grain or livestock produced thereon;

110 (25) "Purchase", to buy or contract to buy grain;

111 (26) "Sale", the passing of title from the seller to the buyer in consideration of the
112 payment or promise of payment of a certain price in money, or its equivalent;

113 (27) "Value", any consideration sufficient to support a simple contract.

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