

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 665
SENATE BILL 436

AN ACT REQUIRING LICENSING AND BONDING OF GRAIN DEALERS.

The General Assembly of North Carolina enacts:

Section 1. Definitions, (a) "Person" means an individual, partnership, corporation, association, syndicate or other legal entity.

(b) "Grain dealer" means any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange, or transfers grain of a North Carolina producer. The term "grain dealer" shall exclude producers or groups of producers buying grain for consumption on their farms.

(c) "Producer" means the owner, tenant or operator of land in this State who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon.

(d) "Grain" as used herein shall be construed to include, but not by way of limitation, corn, wheat, rye, oats, sorghum, barley, mixed grain and soybeans.

(e) "Commissioner" means the North Carolina Commissioner of Agriculture.

(f) "Cash buyer" means any grain dealer who pays the producer, or his representative at the time of obtaining title, possession or control of grain, the full agreed price of such grain in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.

(g) "Department" means the North Carolina Department of Agriculture.

Sec. 2. License required No person shall act or hold himself out as a grain dealer without first having obtained a license as herein provided.

Sec. 3. Application for license or renewal thereof. Every grain dealer before transacting business within the State of North Carolina shall on or before July 1, 1974, and annually on or before June 15 of each year thereafter, file a written application for a license or for the renewal of a license with the Commissioner. The application shall be on a form furnished by the Commissioner and shall contain the following information:

(a) The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within this State.

(b) The kinds of grain the applicant proposes to handle.

(c) The type of grain business proposed to be conducted.

Sec. 4. License fee; bond required; exemption. All applications shall be accompanied by an initial or renewal license fee of twenty-five dollars (\$25.00) plus twenty dollars (\$20.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of ten thousand dollars (\$10,000) to satisfy the initial license application. A fee of one dollar (\$1.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from bonding requirements hereunder. The exemption shall be granted within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied.

Sec. 5. Execution, terms and form of bond; action on bond; investigation of complaints. Such bond shall be made payable to the State of North Carolina with the Commissioner as trustee and shall be conditioned upon the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this act and shall be for the use and benefit of any producer from whom the grain dealer may purchase or store grain and who is not paid by such grain dealer, and shall not be cancelled during the period for which the license is issued except upon 30 days' notice in writing to the Department. The liability of the surety of any bond required by the provisions of this act shall not accumulate for each successive license period and the aggregate liability of the surety shall not exceed the face amount of the bond. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action in the Superior Court of the county of residence of the producer therefor upon the bond within 120 days of the date of delivery of such grain to the dealer. The producer may notify the Commissioner in writing, by certified mail when possible, of such failure or refusal within the 120 day period unless contracted otherwise, or 10 days thereafter. In the event the Commissioner receives written complaint from an alleged injured producer of nonpayment, fraud, deceit or negligence of a dealer, the Commissioner may investigate such complaint and make recommendations to the surety company relative to the culpability or nonculpability of the dealer and the extent thereof.

Sec. 6. Posting of license and registration. The grain dealer license shall be posted in a conspicuous place in the place of business. In the case of a licensee operating a truck or tractor trailer unit, the licensee is required to have a decal that the license is in effect and that a bond has been filed, such decal to be carried in each truck or tractor trailer unit used in connection with the purchase of grain from producers.

Sec. 7. Renewal of license. Licenses shall be renewed upon application and payment of renewal fees on or before the 15th day of June following the date of expiration of any license hereunder issued. Applications received after June 15 of any year shall be subject to a late filing fee of ten dollars (\$10.00) in addition to other applicable fees.

Sec. 8. Disposition of fees. All fees payable under this Article shall be collected by the North Carolina Department of Agriculture for the administration of this law.

Sec. 9. Records to be kept by dealers. It shall be the duty of every person doing business as a grain dealer in this State to keep records of grain transactions for reasonable periods of time and in accordance with good business practices.

Sec. 10. Grounds for refusal, suspension or revocation of license. The Commissioner may refuse to grant or renew license, may suspend or may revoke any license upon a showing by substantial and competent evidence that:

- (a) the dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied; or
- (b) The dealer has failed to promptly and properly account and pay for grain; or
- (c) The dealer has failed to keep and maintain business records of his grain transactions as required herein; or
- (d) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer; or
- (e) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General Statutes; or
- (f) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude.

Sec. 11. Procedure for refusal, suspension or revocation of license. Before the Commissioner or his duly authorized representative shall refuse an initial or renewal license or revoke a license, he shall give at least 10 days' actual notice or notice by registered mail to the

applicant or licensee of the time and place of hearing. At such hearing, the applicant or licensee shall be privileged to appear in person, or with counsel and to produce witnesses.

At the time and place fixed, the Commissioner or his designated representative shall proceed to hear the matter and any charges made and both the applicant or licensee and any complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence and arguments as may be pertinent to the matter or charges or to any defense thereto. The Commissioner or his designated representative may continue such hearings from time to time. The hearing shall be reduced to writing.

The Commissioner is authorized to issue subpoenas and to bring before him or his designated representative any person or persons in this State and to take testimony either orally or by deposition or by exhibit with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings and civil cases in the superior courts of this State.

The Commissioner is authorized to issue subpoenas on any or all records relating to a grain dealer's business. The Commissioner or his designee may administer oaths to witnesses at any hearing that the Department is authorized by law to conduct. If the Commissioner or his designee shall find the applicant or licensee guilty of any act provided in Section 10, the Commissioner may refuse, suspend or revoke such license and shall give immediate notice to the applicant or licensee.

No suspension shall be for a longer period than one year.

No person whose license has been revoked shall be eligible to receive another license until at least two years have elapsed from the date of the order of revocation, or if appealed, two years from the final judgment sustaining such revocation.

Any person aggrieved by an order denying, suspending or revoking a license may appeal to the Superior Court of Wake County and the procedure for such appeal shall be exclusively governed by the provisions of Chapter 150 of the General Statutes.

Sec. 12. Commissioner's authority to investigate. In furtherance of any such investigation, inspection or hearing, the Commissioner or his duly authorized agent shall have full authority to make any and all necessary investigations relative to the complaint or matter being investigated; and they shall have free and unimpeded access during normal business hours to all buildings, yards, warehouses, storage and transportation facilities in which grain is kept, stored, handled, or transported, or where records of grain transactions are kept.

Sec. 13. Rules and regulations. The Board of Agriculture may adopt such rules and regulations as may be necessary to carry out the administration and enforcement of this Article.

Sec. 14. Violation a misdemeanor. Any person who violates any provision of this act or any rule or regulation of the Board of Agriculture promulgated hereunder shall be guilty of a misdemeanor and upon conviction thereof fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than 60 days, or both fined and imprisoned. In case of a continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense.

Sec. 15. License required; injunction for violation. It shall be unlawful for any person to be a grain dealer without securing a license as herein provided. In addition to the criminal penalties provided for herein, the Commissioner of Agriculture may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this act.

Sec. 16. This act shall become effective May 1, 1974.

In the General Assembly read three times and ratified, this the 22nd day of May, 1973.