

Article 53.

Grain Dealers.

§ 106-601. Definitions.

(a) "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.

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

(c) "Department" means the North Carolina Department of Agriculture and Consumer Services.

(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) "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.

(f) "Person" means an individual, partnership, corporation, association, syndicate or other legal entity.

(g) "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. (1973, c. 665, s. 1; 1997-261, s. 109.)

§ 106-602. License required.

No person shall act or hold himself out as a grain dealer without first having obtained a license as herein provided. (1973, c. 665, s. 2.)

§ 106-603. 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:

- (1) 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.
- (2) The kinds of grain the applicant proposes to handle.
- (3) The type of grain business proposed to be conducted. (1973, c. 665, s. 3.)

§ 106-604. License fee; bond required; exemption.

All applications shall be accompanied by an initial or renewal license fee of fifty dollars (\$50.00) plus thirty dollars (\$30.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of one hundred thousand dollars (\$100,000) to satisfy the initial license application. A fee of five dollars (\$5.00) 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 the bonding requirements of this section. 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. (1973, c. 665, s. 4; 1989, c. 544, s. 1; 2013-102, s. 1.)

§ 106-605. Execution, terms and form of bond; action on bond.

(a) Such bond shall be signed by the grain dealer and by a company authorized to execute surety bonds in North Carolina and shall be made payable to the State of North Carolina. The bond shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this Article, and shall be for the use and benefit of any person from whom the grain dealer has purchased grain and who has not been paid by the grain dealer. The bond shall be given for the period for which the grain dealer's license is issued.

(b) Any person claiming to be injured by nonpayment, fraud, deceit, negligence or other misconduct of a grain dealer may institute a suit or suits against said grain dealer and his sureties upon the bond in the name of the State, without any assignment thereof. (1973, c. 665, s. 5; 1979, c. 589, s. 1.)

§ 106-606. Posting of license; decal on truck, etc.

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. (1973, c. 665, s. 6.)

§ 106-607. Renewal of license.

Licenses shall be renewed upon application and payment of renewal fees on or before the fifteenth 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 twenty dollars (\$20.00) in addition to other applicable fees. (1973, c. 665, s. 7; 1989, c. 544, s. 3.)

§ 106-608. Disposition of fees.

All fees payable under this Article shall be collected by the North Carolina Department of Agriculture and Consumer Services for the administration of this Article. (1973, c. 665, s. 8; 1997-261, s. 109.)

§ 106-609. Records to be kept by dealers; uniform scale ticket.

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.

The Board of Agriculture may, by regulation, require the use of, and prescribe the form of a uniform scale ticket by all grain dealers. (1973, c. 665, s. 9; 1983, c. 482.)

§ 106-610. Grounds for refusal, suspension or revocation of license.

The Commissioner may refuse to grant or renew any license, may suspend or may revoke any license upon a showing by substantial and competent evidence of any of the following:

- (1) The dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied.
- (2) The dealer has failed to promptly and properly account and pay for grain.

- (3) The dealer has failed to keep and maintain business records of his grain transactions as required by this Article.
- (4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer.
- (5) 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.
- (6) 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.
- (7) The dealer has failed either to file the required bond or to keep such bond in force.
- (8) The applicant has acted or held himself or herself out as a grain dealer without first having obtained a license under the provisions of this Article.
- (9) The dealer has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying or selling of grain, or the handling of payments for grain.
- (10) The dealer or applicant has violated any provision of this Article or rules adopted pursuant to this Article. (1973, c. 665, s. 10; 1979, c. 589, s. 2; 2013-102, s. 2.)

§ 106-611. Procedure for denial, suspension, or revocation of license; effect of revocation.

(a) A denial, suspension, or revocation of a license under this Article shall be made in accordance with Chapter 150B of the General Statutes.

(b) A license may not be suspended for more than one year. A person whose license is revoked may not obtain another license under this Article until at least two years have elapsed from the date of the final decision revoking the license or, if the decision is appealed, from the date of the final judgment sustaining the revocation. (1973, c. 611, s. 11; c. 1331, s. 3; 1987, c. 827, s. 38.)

§ 106-612. 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. (1973, c. 665, s. 12.)

§ 106-613. 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. (1973, c. 665, s. 13.)

§ 106-614. Violation a misdemeanor.

Any person who violates any provision of this Article or any rule or regulation of the Board of Agriculture promulgated hereunder shall be guilty of a Class 2 misdemeanor. In case of a

continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense. (1973, c. 665, s. 14; 1993, c. 539, s. 808; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 106-615. Operation without license unlawful; 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 Article. (1973, c. 665, s. 15.)

§§ 106-616 through 106-620. Reserved for future codification purposes.