

LEGISLATIVE BILL 808

Approved by the Governor February 3, 1988

Introduced by Labedz, 5, Chairperson, Executive Board

AN ACT relating to the Commodity Code; to amend section 8-1736, Revised Statutes Supplement, 1987; to clarify language relating to appeals; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-1736, Revised Statutes Supplement, 1987, be amended to read as follows:

8-1736. (1) Any person aggrieved by a final order of the director may obtain a review of the order in the district court of Lancaster County by filing, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the director.

(2) Upon the filing of a petition for review, except when the taking of additional evidence is ordered by the court pursuant to subsection (5) or (6) of this section, the court shall have exclusive jurisdiction of the matter, and the director may not modify or set aside the order in whole or in part.

(3) The filing of a petition for review under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(4) Upon receipt of the petition for review, the director shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under subsection (4) of section 8-1735, the director shall certify and file in court the summary order, evidence of its ~~source~~ service upon the parties to it, and an affidavit certifying that no hearing has been held and the order became final pursuant to such section.

(5) If either the aggrieved party or the director applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to

adduce the evidence in the hearing before the director or other good cause, the court may order the additional evidence to be taken by the director under such conditions as the court considers proper.

(6) If new evidence is ordered taken by the court, the director may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(7) The court shall review de novo the petition based upon the original record before the director as amended under subsections (5) and (6) of this section. The findings of the director as to the facts, if supported by competent, material, and substantive evidence, shall be conclusive. Based upon such review, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

(8) The judgment of the court shall be subject to review by the Supreme Court.

Sec. 2. That original section 8-1736, Revised Statutes Supplement, 1987, is repealed.