

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 516

BY: HARRISON of the SENATE

and

VOSKUHL of the HOUSE

COMMITTEE SUBSTITUTE AN ACT RELATING TO AGRICULTURE; AMENDING 2 O.S.
1991, SECTIONS 9-21, 9-22, 9-23, 9-24, 9-25 AND 9-27, WHICH RELATE
TO THE PUBLIC WAREHOUSE AND COMMODITY INDEMNITY ACT; MODIFYING AND
ADDING TERMS; PROVIDING FOR COLLECTION OF A SURETY FEE; SPECIFYING
AMOUNTS; DELETING CERTAIN RISK MANAGEMENT RESPONSIBILITIES;
SPECIFYING CERTAIN CONDITIONS FOR BONDS; AUTHORIZING IRREVOCABLE
LETTERS OF CREDIT; CREATING THE PUBLIC WAREHOUSE INSURANCE FUND;
SPECIFYING PURPOSE; SPECIFYING CERTAIN FUND SPECIFICATIONS AND
DESIGNATIONS; PROVIDING FOR CERTAIN TRANSFERS; PROVIDING CONDITIONS
FOR DISBURSEMENT; AUTHORIZING CERTAIN COSTS; LIMITING EXPENDITURES
AND USES; PROVIDING FOR DEPOSITS; REQUIRING CERTAIN SURETY;
SPECIFYING CERTAIN CONDITIONS; MODIFYING APPLICATION PROCEDURES;
PROVIDING FOR LIENS; MODIFYING CERTAIN PROCESS; REQUIRING CERTAIN
REPORTS; PROVIDING FOR CERTAIN VERIFICATION; CLARIFYING LANGUAGE;
REQUIRING CERTAIN ANNUAL STATEMENTS; ADDING TO POWERS AND DUTIES OF
ATTORNEY GENERAL; PROVIDING PROCEDURES; PROVIDING FOR CODIFICATION;
PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-21, is amended to read as follows:

Section 9-21. As used in the Public Warehouse and Commodity Indemnity Act, ~~Section 9-21 et seq. of this title:~~

1. "Person" means any individual, corporation, partnership, firm, company, association or other legal entity;

2. "Public warehouse" means any place where commodities are received for storage or for handling for restorage or both such storage and for handling for restorage;

3. "Warehouseman" means any person operating a public warehouse;

4. "Commodities" means nonperishable grains or field seeds, and shall include but not be limited to corn, wheat, rye, oats, barley, sorghum, or soybeans;

5. "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued by a warehouseman;

6. "Department" means the Oklahoma Department of Agriculture;

7. "Full market value" means the value required by law to be used by insurance underwriters in paying for losses of commodities insured for their actual cash value;

8. "Loss" means any monetary loss to a producer which is of an extraordinary nature and which shall include, but not be limited to, bankruptcy, embezzlement, theft or fraud;

9. "Producer" means any producer of commodities;

10. "Storage" or "warehousing" means any method by which commodities owned by another are held for such party by one not the direct owner thereof, except for transportation thereof. Field seeds being cleaned, quality tested, and otherwise conditioned as seed for planting or edible sprout production shall not be considered as commodities in storage;

11. "Board" means the State Board of Agriculture;

12. "Indemnity" means the Oklahoma Commodity Storage Indemnity Fund; ~~and~~

13. "Depositor" means any person storing commodities with a state-licensed warehouse-;

14. "Grain bank grain" means any commodity that has been received into any public warehouse to be held for the account of the depositor and returned to the depositor at a later date either as whole or processed commodity;

15. "Open storage" means any commodities held in storage by a warehouseman for a depositor for which negotiable warehouse receipts have not been issued; and

16. "Surety" means insurance or bonds, letters of credit or certificates of deposit required by the Public Warehouse and Commodity Indemnity Act submitted to the Board, for the purpose of securing a license or to increase a deficient net worth for the purpose of securing a license.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 9-22, is amended to read as follows:

Section 9-22. A. It shall be unlawful and a misdemeanor for any person to operate a public warehouse unless ~~he~~ such person shall have obtained and holds a license therefor issued by the State Board of Agriculture or be licensed and bonded as required by the United States Warehouse Act. Each application for a license issued by the Board shall be on a form prescribed by the Board, which shall charge and collect a fee of One Hundred Dollars (\$100.00) for each such license ~~and the~~. The Board shall deposit such fees in the State Department of Agriculture Revolving Fund. No license shall be issued by the Board until the applicant therefor has filed with the Board a financial statement and such other financial information as shall be required by the Board.

B. 1. ~~The~~ a. Except as otherwise provided by this section the Board shall ~~also~~ charge and collect a surety fee of:

- (1) Ten Dollars (\$10.00) per One Thousand Dollars (\$1,000.00) of surety for each warehouse having a net worth of less than fifty cents (\$0.50) per bushel of capacity,
- (2) Three Dollars (\$3.00) per One Thousand Dollars (\$1,000.00) surety for each warehouse having a net worth between fifty-one cents (\$0.51) and One Dollar (\$1.00) per bushel of capacity,
- (3) Two Dollars (\$2.00) per One Thousand Dollars (\$1,000.00) of surety for each warehouse having a net worth of between One Dollar and one cent (\$1.01) and One Dollar and fifty cents (\$1.50) per bushel of capacity, and
- (4) One Dollar (\$1.00) per One Thousand Dollars (\$1,000.00) of surety for each warehouse having a net worth of more than One Dollar and fifty-one cents (\$1.51) per bushel of capacity.

No warehouse shall be charged less than One Hundred Dollars (\$100.00) for surety under this section.

- b. If upon determination by the Board that the fee of Ten Dollars (\$10.00) specified by this paragraph, is not sufficient to adequately provide protection of the Indemnity depositors, the Board is authorized to assess an additional fee in such an amount so as to provide the necessary protection for the Indemnity depositors provided such additional fee shall not exceed Twenty Dollars (\$20.00) per One Thousand Dollars (\$1,000.00) of surety.

~~2. The protection of the Indemnity shall be under the supervision of the Risk Management Administrator of the Office of Public Affairs. The supervision shall include transferring risks from the Indemnity by acquiring commercial insurance, by contractual~~

~~pass off including coinsurance, reinsurance, or self-insurance, or by any other means to accomplish the stated purpose. Surety required herein shall be in the same amounts as shall be required for bonds or certificates of deposit as specified in subsection D of this section. Claims against such surety shall be paid by the Board from the Indemnity in the same manner as shall be required for bonds or certificates of deposit.~~

c. Such surety fees shall be deposited in the Public Warehouse Insurance Fund.

2. A warehouseman may furnish a corporate surety bond, properly executed letter of credit or certificate of deposit, as specified in subsection D of this section, may be used to secure a license in lieu of the reinsurance fee surety provided by the Insurance Fund. Such surety shall be in the same amounts as specified in subsection D of this section. To be accepted by the Board, all letters of credit or certificates of deposit, as provided for in this section, must be one hundred percent (100%) insured by the Federal Insurance Corporation responsible for the issuing institution.

C. The applicant, in order to qualify for a license issued by the Board, as evidence of his financial status shall have a net worth equal to twenty-five cents (\$0.25) per bushel for the first four million (4,000,000) bushels of licensed capacity but not less than Fifty Thousand Dollars (\$50,000.00). All licensed capacity in excess of four million (4,000,000) bushels shall be computed at the rate of ten cents (\$0.10) per bushel for net worth purposes. In case of a net worth deficiency, the warehouseman shall furnish a surety bond, irrevocable letter of credit or certificate of deposit in an amount equal to such deficiency. Such bond, letter of credit or certificate of deposit shall be filed and made payable to the Board for the benefit of all persons storing commodities with the applicant as a state-licensed warehouseman. Insurable property owned by the warehouseman may only be included in the net worth of

the warehouse, provided it is insured to at least eighty percent (80%) of its appraised value. The Board may require a certified property appraisal provided by an appraiser approved by the Board. If the net worth of the applicant is less than One Million Dollars (\$1,000,000.00), a financial statement shall be submitted each one hundred eighty (180) days. Financial statements shall be prepared according to generally accepted accounting principles, ~~set~~ and be a minimum of review level, setting forth the current financial position of the applicant, and be certified by the applicant, his partner or a corporate officer and include such other information required by the Board. Corporate surety bonds shall be on a form prescribed by the Board, on condition that the applicant will fulfill all his obligations as a warehouseman. The Board may require the applicant to provide a profit and loss statement and an audited unqualified financial statement prepared by a person authorized to practice public accounting in this state.

D. ~~The bond~~ All bonds, irrevocable letters of credit or certificates of deposit shall be payable to the Board for the benefit of all persons storing commodities with the applicant as a state-licensed warehouseman. The amount of ~~bond or certificates of deposit~~ surety to be furnished for each state-licensed warehouse shall be fixed at a rate of twenty-five cents (\$0.25) per bushel of licensed capacity, provided that the amount of the ~~bond or certificates of deposit~~ surety shall be not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00). The licensed capacity shall be the maximum number of bushels of commodities that the warehouse may accommodate. Depositors, including producers, suffering a loss due to a violation of any of the terms of the Public Warehouse and Commodity Indemnity Act may recover such loss up to the amount of the ~~bond or certificates of deposit~~ surety, and claims therefor may be instituted with the Board by such person. Each state license issued

under the provisions of this section shall be issued annually. The Board shall prescribe annual expiration dates for each license to provide effective administration of the Public Warehouse and Commodity Indemnity Act. Such state license may be suspended, revoked or denied by the Board, after notice by registered mail and an opportunity to be heard has been given, for a failure to maintain the financial status required or adequate insurance on all commodities received in store, or received for storage or for handling for restorage, or for a violation of any of the provisions of the Public Warehouse and Commodity Indemnity Act or of any rule or regulation of the Board adopted pursuant thereto. Upon evidence of just and good cause, such state license may be temporarily suspended without a hearing, for a period of not to exceed thirty (30) days. Whenever a state license is suspended or revoked, the Board shall immediately give notice thereof, by registered United States mail, to the holder of such license, who may, within twenty (20) days after receipt of such notice, appeal to the district court of Oklahoma County. The district court, after a full hearing, shall make an order either sustaining the action of the Board or reinstating the license.

E. Upon cancellation of the ~~bond~~ surety, all indemnifications held by the ~~bonding~~ issuing surety company shall be released to the warehouseman following the second consecutive satisfactory inspection or examination by the Board.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-22a of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Oklahoma State Department of Agriculture, the "Public Warehouse Insurance Fund" (Insurance Fund). The Insurance Fund shall be administered by the Board for the benefit of depositors.

B. The Insurance Fund shall be excluded from budget and expenditure limitations of the Oklahoma State Board of Agriculture.

C. The Insurance Fund shall consist of:

1. All monies received by the Board as proceeds from the surety fee imposed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes;

2. Interest attributable to investment of money in the Insurance Fund;

3. Money received by the Board in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by this act; and

4. Monies specified by subsection E of this section.

D. 1. The monies deposited in the Insurance Fund shall at no time become monies of the state and shall not become part of the general budget of the Board or any other state agency. Except as otherwise authorized by this subsection, no monies from the Insurance Fund shall be transferred for any purpose to any other state agency or any account of the Board or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. Monies in the Insurance Fund shall only be expended for:

a. providing protection to all depositors, and

b. costs incurred by the Board for the administration of the Insurance Fund. Two percent (2%) of all annual income to the Public Warehouse Insurance Fund shall be paid to the Department for administration of the fund.

3. Payment of claims from the Insurance Fund shall not become or be construed to be an obligation of this state. No claims submitted for payment from the Insurance Fund shall be paid with state monies.

E. Reinsurance fee funds deposited and remaining in the "Oklahoma Commodity Storage Indemnity Fund" on the effective date of

this act, shall be transferred to, be designated and accounted for as the "Public Warehouse Insurance Fund".

F. If the Insurance Fund has insufficient funds to cover losses, depositors shall receive pro rata shares of available funds and pro rata shares of future insurance assessments until paid to the limit of the surety provided.

G. If the Board determines that risk to the Insurance Fund is excessive, the Board may deny surety from the Insurance Fund and require the warehouseman to furnish alternate surety. The Board shall have the authority to increase the surety rate of a public warehouse, if the Board finds the performance of the warehouseman presents an above normal risk to the Insurance Fund.

SECTION 4. AMENDATORY 2 O.S. 1991, Section 9-23, is amended to read as follows:

Section 9-23. A. Each application for a license issued by the State Board of Agriculture to operate a public warehouse shall state the name by or under which such warehouse is to be operated, and such name shall be shown on the license. No warehouse shall be operated by or under any name other than that shown on the license issued for the operation thereof.

B. No license shall be issued or remain valid, if already issued, if the Board finds that the applicant has:

1. failed to meet or maintain the financial requirements;
2. filed an incomplete or fraudulent application;
3. inadequate facilities to properly store and maintain commodities;
4. failed to properly store commodities or maintain the required quantity or quality of commodities in storage;
5. failed to pay required fees;
6. been convicted of a felony; ~~or~~
7. insufficient experience to operate a warehouse-~~r~~

~~This paragraph shall not be applicable to licenses issued prior to the effective date of this act; or~~

8. lost financial control of the elevator, either through bankruptcy, foreclosure or due to creditors's control of all operating finances.

SECTION 5. AMENDATORY 2 O.S. 1991, Section 9-24, is amended to read as follows:

Section 9-24. A. To afford added protection to the Commodity Storage Indemnity Fund, upon the suspension, revocation or expiration of the state or federal license or ~~bond~~ surety of a warehouseman, the State Board of Agriculture may file a lien in the office of the court clerk of any county in which such warehouseman has property against all assets of the warehouseman in such county, in an amount to be fixed by the Board. Such lien ~~may~~ shall be enforced in a court of competent jurisdiction.

B. At the time the state license of a public warehouseman is suspended, revoked or has expired, the Board shall publish notice for two (2) consecutive weeks in a newspaper of general circulation in the county and in the area of the public warehouse stating that the warehouse is out of business as a public warehouse.

C. When a warehouseman renews his suspended, revoked, or expired state license, the Board shall publish for two (2) consecutive weeks in a newspaper of general circulation in the area of the public warehouse stating that the warehouse is in compliance with the Public Warehouse and Commodity Indemnity Act.

D. Upon suspension or expiration of a state license of any warehouseman, the Board may seize all commodities under the control of the warehouseman, including commodities restored at or forwarded to other locations. The Board, upon revocation of the license, shall seize all commodity stocks of the warehouseman including any commodities restored at or forwarded to other locations and salvage such commodities through sale or at the Board's option, may return

such commodities in kind to the depositor, or a combination thereof.

Funds generated by such sale shall be distributed in the following manner:

1. The Board shall receive an amount equal to the cost of salvage operations; and

2. All remaining funds shall be proportioned among all persons, ~~including producers~~ including producers, with the warehouseman; provided, no person shall receive payment of any percentage of funds or commodities, greater than those received by the producer as provided in subsection C of Section 9-45 of this title; and

3. Except as otherwise provided in this act, funds generated in excess of the payments provided hereinabove shall be deposited in the Indemnity; and provided further

4. Persons, as defined in Section 9-21 of this title, having been found in violation of this act, wherein such violation results in license revocation and commodity seizure, shall not be eligible to claim or recover proceeds from the sale or interest accrued on the proceeds from the sale of salvage commodities.

E. A person storing commodities with a warehouseman who does not hold a license as a warehouseman is not eligible to file a claim nor recover damages under the provisions of the Public Warehouse and Commodity Indemnity Act.

F. 1. Upon revocation of the warehouse license, the Board shall immediately seize all commodities and salvage such commodities ~~through sale~~ as provided in subsection D of Section 9-24 of this title. The Department shall proceed to ascertain if there is any loss to the depositors and obtain proof thereof. Upon ascertainment of any such loss, the Board shall immediately notify any ~~bonding~~ surety company that provided bond for such loss. As soon as practicable, the Board shall communicate the amount of such loss along with proof thereof and the date of loss as determined by the

Board to the ~~bonding~~ company furnishing the surety. Said ~~bonding~~ surety company shall within thirty (30) days remit to the Board the amount of the loss so communicated or the face amount of the ~~bond~~ surety, whichever is less.

2. Failure by the ~~bonding~~ surety company to surrender such funds shall result in a nonrefundable penalty assessment payable to the Board of one percent (1%) per month plus interest of one percent (1%) per month of the face amount of the ~~bond~~ surety commencing with the date of loss and continuing until such surety funds are surrendered. The Board shall account for all such surety received until all depositor claims against the licensee are paid as provided in this act. When all such claims have been paid, all unexpended ~~bond~~ surety funds including accrued interest (except penalties) shall be returned to the ~~bonding~~ surety company.

3. Nothing herein contained shall prohibit the Board from pursuing any other remedy provided by this act or as otherwise provided by law.

G. The Board shall establish a date of loss which shall be the basis for all claims of loss against a warehouseman. The Board shall publish said date of loss in a manner as set forth in subsection B of 9-24 of this title and shall notify by registered mail all depositors who may have a claim against a warehouseman of the date of loss and deadline for filing claims.

H. To be eligible to file a claim of loss and receive payment as provided in the Public Warehouse and Commodity Indemnity Act, a person must establish ownership or title to commodities stored or warehoused with the warehouseman against whom the loss is alleged. Evidence of such ownership or title shall include but shall not be limited to uncanceled warehouse receipts or scale tickets. The Board shall determine the sufficiency of evidence of ownership or title.

I. Depositors shall, within one hundred twenty (120) days of the order of the Board establishing the date of loss, file a written claim of loss with the Board. If such claim of loss is not filed within the aforesaid time, the depositor shall forfeit all rights to remuneration or payment as provided in this act.

SECTION 6. AMENDATORY 2 O.S. 1991, Section 9-25, is amended to read as follows:

Section 9-25. Any warehouseman, who stores or handles for restorage commodities subject to the provisions of the Public Warehouse and Commodity Indemnity Act, when requested by the State Board of Agriculture or any authorized agent thereof, shall make a report to the Board concerning the condition, conduct, operation and business of each public warehouse such warehouseman operates and the commodities stored therein. Any warehouseman who stores or handles for restorage commodities subject to the provisions of the Public Warehouse and Commodity Indemnity Act, shall permit any authorized agent of the Board to enter and inspect each such warehouse and its contents and the storage and financial records thereof, and shall render any assistance necessary in checking any condition or books in connection therewith. The authority granted the Board in this section shall include all commodities and records concerning ~~open~~ storage. The Board shall verify, in the same manner as the United States Department of Agriculture, the accuracy of commodity ~~open~~ storage records ~~when~~ and verify commodities ~~have been~~ being restored at other locations. The Board shall make at least one inspection or examination annually of each warehouse storing or handling for restorage commodities subject to the provisions of ~~the Public Warehouse and Commodity Indemnity Act~~ this act. The Board shall charge for such inspection and examination a fee, that when used in conjunction with available appropriated funds is sufficient to pay the cost of each examination or inspection. A warehouseman may request additional inspection or examination at a fee commensurate

with the actual cost of such inspection or examination. All such fees collected shall be deposited in the State Department of Agriculture Revolving Fund. The Board may enter cooperative agreements with the United States Department of Agriculture for warehouse inspections. Provided, however, no provisions of this section shall apply to warehouses licensed under the U.S. Warehouse Act, Title 7, U.S.C., Section 241 et seq.

SECTION 7. AMENDATORY 2 O.S. 1991, Section 9-27, is amended to read as follows:

Section 9-27. A. Each warehouseman, upon weighing commodities, shall issue a scale ticket to the person from whom the commodities are received in a form or forms approved by the State Board of Agriculture. No scale ticket shall be issued unless the Board has approved the form of the scale ticket. The scale ticket shall contain, but not be limited to, preprinted consecutive numbers and lines for entering the weight, grade, kind, test and moisture of the commodity, when applicable, the name and address of the owner and the signature or initials of the licensed weigher and grader. The grade and the factors used to establish said grade shall be documented on each scale ticket. Each warehouseman is required to have a weigher and grader licensed by the Board to supervise the weighing and grading of commodities received and is further required to have a licensed weigher and grader fill out and sign the scale ticket. Such scale ticket shall be nonnegotiable, but may singly or with others be exchanged for a negotiable warehouse receipt, either state or federal. A scale ticket has protection under the surety provisions of the Public Warehouse and Commodity Indemnity Act equal to a warehouse receipt. No warehouseman shall store or restore a commodity except in a state licensed ~~and bonded~~ or federally licensed and bonded warehouse. All commodities delivered to an unlicensed warehouse that are not settled for on delivery, by cash or properly executed written contract, are considered to be

commodities in store and have been received for storage in violation of this act.

B. The warehouseman, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the commodities stored therein upon a demand made either by the holder of a receipt for such commodities or by the depositor thereof if such demand be accompanied with:

1. an offer to satisfy the warehouseman's lien;

2. an offer to surrender the receipt, if negotiable, with such endorsements as would be necessary for the negotiation of the receipts; and

3. a readiness and willingness to sign, when the commodities are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman.

C. Warehouseman's annual statement of depositor's commodity:

Every public warehouseman shall submit, annually, to each depositor of open storage, warehouse receipts, or grain bank grain, a statement of commodities stored in the public warehouse. The statement shall include, but not be limited to, the following information:

1. Type of commodity deposited;

2. The total bushels or pounds stored;

3. The year storage of commodity began; and

4. The storage rate.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-48 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General of the State of Oklahoma shall be ex officio attorney for the State Board of Agriculture and shall give the Board such counsel and advice as the Board requires. The Attorney General shall institute and prosecute all suits which the Board deems expedient and proper to institute and shall render to

the Board all counsel, advice and assistance necessary to carry out the provisions of this act.

B. The Board shall at its option report in writing to the Attorney General and the district attorney of the county where the warehouse is located:

1. Any finding by an examiner of the Department of Agriculture that there is a substantial shortage in the amount of commodities in a warehouse and that the shortage is not adequately accounted for; and

2. Any complaint which is referred to the Board pursuant to the Public Warehouse and Commodity Indemnity Act and which the Board reasonably believes is a basis for prosecution.

C. In any criminal prosecution against a warehouseman for a violation of any provision of the Public Warehouse and Commodity Indemnity Act, it shall be the duty of the Attorney General to prosecute the suit to a final determination. Upon request by the Attorney General, the district attorney of the county or district where the suit is being prosecuted shall assist the Attorney General in the prosecution.

D. Nothing herein contained shall prohibit the Board from pursuing any other remedy or retaining counsel as may be provided by law.

SECTION 9. This act shall become effective July 1, 1992.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-8711

KSM