

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1156

By: Maddux

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-21, 9-22, 9-23, 9-24, 9-25, 9-26, 9-27, 9-28, 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-37, 9-38, 9-39, 9-42, 9-44, 9-45, 9-46, 9-47 and 9-47.1, which relate to the Public Warehouse and Commodity Indemnity Act; modifying and adding to terms; limiting which persons pay for certain assessment; removing jurisdiction over indemnity from risk management; changing state license to state charters; deleting certain experience requirement; clarifying language; making certain charter for life; removing expiration time; requiring State Board of Agriculture approval for certain shared salvage commodities; reducing amount of bond required by a producer for certain reasons; lowering indemnity cap; making additional days of penalties not mandatory; requiring Office of Personnel Management to conduct a study of the salary structure for the senior warehouse and commodity auditors of the State Department of Agriculture; directing costs; requiring completion date; providing for submission of report; providing for noncodification; 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;

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~~ state-chartered warehouse; and

14. "Charter" means a franchise given to a person for the operation of a public warehouse.

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

Section 9-22. A. 1. 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~~ charter therefor issued by the State Board of Agriculture or be licensed and bonded as required by the United States Warehouse Act.

2. Each application for a ~~license~~ charter issued by the Board shall be on a form prescribed by the Board, ~~which.~~ The Board shall charge and collect a one-time fee of One Hundred Dollars (\$100.00) for each ~~such license and the~~ charter. The Board shall deposit such the fees in the State Department of Agriculture Revolving Fund.

3. No ~~license~~ charter 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 Board shall also charge and collect a fee of Ten Dollars (\$10.00) per One Thousand Dollars (\$1,000.00) of surety. ~~Such~~ The fee shall be deposited in the Commodity Storage Indemnity Fund and shall be specially designated and accounted for as a reinsurance fee. The Board shall use the reinsurance fee to provide protection to the Indemnity. If upon determination by the Board that the fee of Ten Dollars (\$10.00) is not sufficient to adequately provide protection of the Indemnity, the Board is authorized to assess an additional fee in such an amount so as to provide the necessary protection for the Indemnity provided such additional fee

shall not exceed Twenty Dollars (\$20.00) per One Thousand Dollars (\$1,000.00) of surety. The additional assessment shall only be collected from those persons securing surety through this section.

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~~ by this section 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~~ the surety shall be paid by the Board from the Indemnity in the same manner as shall be required for bonds or certificates of deposit. A corporate surety bond or certificate of deposit, as specified in subsection D of this section, may be used to secure a license charter in lieu of the reinsurance fee.

C. The applicant, in order to qualify for a license charter issued by the Board, as evidence of ~~his~~ the applicant's 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 chartered capacity but not less than Fifty Thousand Dollars (\$50,000.00). All ~~licensed~~ chartered 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 or certificate of deposit in an amount equal to such deficiency. ~~Such~~ The bond 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~~ state-chartered 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 forth the current financial position of the applicant, and be certified by the applicant, ~~his~~ the partner or a corporate officer of the applicant 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 financial statement prepared by a person authorized to practice public accounting in this state.

D. The bond 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~~ state-chartered warehouseman. The amount of bond or certificates of deposit to be furnished for each ~~state-licensed~~ state-chartered warehouse shall be fixed at a rate of twenty-five cents (\$0.25) per bushel of ~~licensed~~ chartered capacity, provided that the amount of the bond or certificates of deposit shall be not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00). The ~~licensed~~ chartered 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, and claims therefor may be instituted with the Board by such person. Each state ~~license~~ charter issued ~~under~~ pursuant to the provisions of this section shall be ~~issued annually~~ for the life

of the person. ~~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 charter 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 charter may be temporarily suspended without a hearing, for a period of not to exceed thirty (30) days. Whenever a state license charter is suspended or revoked, the Board shall immediately give notice thereof, by registered United States mail, to the holder of such license charter, 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 charter.

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

SECTION 3. AMENDATORY 2 O.S. 1991, Section 9-23, is amended to read as follows:

Section 9-23. A. Each application for a license charter 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~~ the name shall be shown on the license charter. No warehouse shall be operated by or under any name other than that shown on the license charter issued for the operation thereof.

B. No ~~license~~ charter 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 quality of commodities in storage;
5. Failed to pay required fees; or
6. Been convicted of a felony; ~~or~~
7. ~~insufficient experience to operate a warehouse.~~

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

SECTION 4. 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, or revocation ~~or expiration~~ of the state charter or federal license or bond of a warehouseman, the State Board of Agriculture may file a lien in the office of the ~~court~~ county 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 be enforced in a court of competent jurisdiction.

B. At the time the state ~~license~~ charter of a public warehouseman is suspended, or 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 the charter of a warehouseman ~~renews his suspended, revoked, or expired~~ is renewed after suspension or revocation of the state license charter, 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~~ charter of any warehouseman, the Board may seize all commodities under the control of the warehouseman, including, but not limited to, commodities restored at or forwarded to other locations. The Board, upon revocation of the ~~license~~ charter, shall seize all commodity stocks of the warehouseman including any commodities restored at or forwarded to other locations and salvage such commodities through sale. 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 storing commodities with the warehouseman; provided, no person shall receive payment of any percentage of funds 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~~ the Public Warehouse and Commodity Indemnity Act, funds generated in excess of the payments provided ~~hereinabove~~ by the Public Warehouse and Commodity Indemnity Act 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~~ the Public Warehouse and Commodity Indemnity Act, wherein such violation results in ~~license a charter~~ 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 unless approved by the Board.

E. A person storing commodities with a warehouseman who does not hold a ~~license~~ charter 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~~ charter, 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 section. 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 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. Said bonding company shall within thirty (30) days remit to the Board the amount of the loss so communicated or the face amount of the bond, whichever is less.

2. Failure by the bonding company to surrender ~~such~~ the 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 commencing with the date of loss and continuing until such surety funds are surrendered. The Board shall account for all ~~such~~ the surety received until all depositor claims against the ~~licensee~~ charteree are paid as provided in ~~this act~~ the Public Warehouse and Commodity Indemnity Act. When all such claims have been paid, all unexpended bond surety funds including accrued interest ~~(,except penalties,)~~, shall be returned to the bonding company.

3. ~~Nothing herein contained~~ The provisions of this section shall prohibit the Board from pursuing any other remedy provided by ~~this act~~ the Public Warehouse and Commodity Indemnity 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~~ the date of loss in a manner as set forth in subsection B of ~~9-24~~ of this ~~title~~ section 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~~ the Public Warehouse and Commodity Indemnity Act.

SECTION 5. AMENDATORY 2 O.S. 1991, Section 9-25, is amended to read as follows:

Section 9-25. A. 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~~ the warehouseman operates and the commodities stored therein.

B. 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~~ audit each ~~such~~ warehouse and its contents and the storage and financial records thereof, ~~and~~. The public warehouseman shall render any assistance necessary in checking any condition or books in connection therewith.

C. The authority granted the Board in this section shall include 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 commodities have been restored at other locations.

D. 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. 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 6. AMENDATORY 2 O.S. 1991, Section 9-26, is amended to read as follows:

Section 9-26. A. Each person ~~licensed~~ chartered pursuant to the provisions of the Public Warehouse and Commodity Indemnity Act shall insure, and shall at all times keep insured, in ~~his~~ the person's own name, all of the commodities in store, or received for storage or for handling for restorage or both ~~such~~ the storage or handling for restorage, for the full market value thereof, against

loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, or tornado.

B. In the event of any loss or damage to such commodities, or to the warehouse or warehouses, whether or not such loss was insured against, such person shall immediately notify the Board, and at ~~his own~~ the expense of such person shall promptly take the steps necessary to collect any monies which may be due as indemnity for such loss or damage.

C. In the event the warehouseman insures against hazards not specified herein, such insurance shall inure to the benefit of the holders of the warehouse receipts.

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

Section 9-27. A. 1. 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.

2. 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.

3. 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~~ state-chartered or federally licensed and bonded warehouse.

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.

SECTION 8. AMENDATORY 2 O.S. 1991, Section 9-28, is amended to read as follows:

Section 9-28. Negotiable public warehouse receipts shall be in a form prescribed and designed by the State Board of Agriculture, ~~which~~. The Board shall furnish warehouse receipts to warehousemen at a price commensurate with the cost of preparation, printing and delivery.

SECTION 9. AMENDATORY 2 O.S. 1991, Section 9-31, is amended to read as follows:

Section 9-31. ~~(a)~~ A. In case a warehouse receipt is lost or destroyed and a duplicate receipt is desired, a duplicate shall be issued therefor in the same manner as the original receipt upon affidavit of the owner of the original receipt that such receipt has been lost or destroyed, ~~and when he~~. When the owner has furnished an acceptable bond in an amount equal to ~~double~~ the value, ~~at the time the bond is given,~~ of the commodities represented by ~~such~~ the lost or destroyed receipt, ~~which~~ at the time the bond is given, the

bond shall indemnify the warehouseman against loss or damage by reason of the issuance of such duplicate receipt.

~~(b)~~ B. In case a warehouse receipt is lost or destroyed and a settlement for the stored commodities is desired, ~~such~~ the settlement shall be made upon affidavit of the owner of the original receipt that such receipt has been lost or destroyed, ~~and when he.~~ When the owner has furnished the warehouseman an acceptable bond in an amount equal to ~~double~~ the value at the time the bond is given, of the commodities represented by such lost or destroyed receipt, which bond shall indemnify the warehouseman against loss or damage sustained by reason of making such settlement of delivering such described commodities.

~~(c)~~ C. Bonds executed in pursuance of ~~the preceding paragraphs~~ subsections A and B of this section shall be treated as cancelled original warehouse receipts.

SECTION 10. AMENDATORY 2 O.S. 1991, Section 9-32, is amended to read as follows:

Section 9-32. Each warehouseman shall maintain sufficient scales and equipment for weighing and keeping records of all commodities ~~stored~~ received.

SECTION 11. AMENDATORY 2 O.S. 1991, Section 9-33, is amended to read as follows:

Section 9-33. All commodities received by a warehouseman shall be inspected ~~and,~~ graded and ~~shall be~~ stored with commodities of a similar grade received ~~as~~ at or near the same time as ~~may be; but if~~ any other similar commodities. ~~If~~ the owner or consignee ~~so~~ requests and the warehouseman consents thereto, ~~his~~ the owner's or consignee's commodities may be kept in a separate bin, apart from that of the general stock of the warehouse, ~~which.~~ The bin shall be marked "Special" with the name of the owner and with the quantity and grade of the commodities.

SECTION 12. AMENDATORY 2 O.S. 1991, Section 9-34, is amended to read as follows:

Section 9-34. A. Any warehouseman, ~~or~~ employee or manager of a public warehouse, who shall be guilty of issuing any warehouse receipt for any commodities that are not actually in a store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt, including scale ticket, that is in any respect fraudulent in its character, either as to its date or to the quantity, quality or inspected grade of such commodities, or who shall remove any commodities from store, except to preserve the same from fire or other damage or as otherwise provided in this section, without the return and cancellation of any and all outstanding receipts that may have been issued to represent such commodities, shall, when convicted thereof, be guilty of a felony, and shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary for not more than ten (10) years, or by both such fine and imprisonment.

B. The Board, upon application from the warehouseman, may approve the repositioning of commodity stocks in state-chartered or federally licensed terminal warehouses or other warehouses chartered or licensed in this state in order to free storage space for new harvest commodities. The period for such action shall not exceed sixty (60) days prior to anticipated harvest for the commodity nor can they be out of position more than one hundred eighty (180) days total, ~~provided for.~~ For good cause shown, the Board may extend such time period an additional one hundred eighty (180) days as specified by rules ~~and regulations~~ established by the Board.

SECTION 13. AMENDATORY 2 O.S. 1991, Section 9-35, is amended to read as follows:

Section 9-35. Any warehouseman, ~~or~~ the manager or other employee of a public warehouse, who issues or aids in issuing a warehouse receipt for any commodities, without knowing that the ~~same~~

commodities have actually been placed in a public warehouse, ~~or~~ who ~~shall deliver~~ delivers any commodities from a public warehouse without the surrender and cancellation of the receipt therefor, or who fails to mark ~~his~~ the receipt of the warehouseman, the manager or other employee "Canceled" on the delivery of such commodities, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years, or by both such fine and imprisonment.

SECTION 14. AMENDATORY 2 O.S. 1991, Section 9-36, is amended to read as follows:

Section 9-36. No public warehouse shall be designated as being ~~licensed~~ chartered or operated under the provisions of ~~this subarticle~~ the Public Warehouse and Commodity Indemnity Act, and no name or description conveying the impression that it is so licensed or operated, shall be used unless such public warehouse is ~~se licensed~~ chartered and operated. Any person who ~~shall se misrepresent~~ misrepresents, or who ~~shall forge, alter, counterfeit, simulate~~ forges, alters, counterfeits, simulates, or falsely ~~represent~~ represents the ~~license charter~~ license charter required by ~~this subarticle~~ the Public Warehouse and Commodity Indemnity Act, or who ~~shall issue or utter or aid or assist in uttering, issuing or uttering or attempt to issue or utter~~, issued or utters or assists or attempts to issue or utter a false or fraudulent receipt for any commodities, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years, or by both such fine and imprisonment.

SECTION 15. AMENDATORY 2 O.S. 1991, Section 9-37, is amended to read as follows:

Section 9-37. Any person who ~~shall deposit~~ deposits, or ~~attempt~~ attempts to deposit, in a public warehouse any commodities upon which a lien or mortgage exists, without notifying the manager of the public warehouse, and any person who ~~shall~~, in order to procure any warehouse receipt, ~~make~~ makes any statement of material fact, knowing ~~such~~ the statement ~~to be~~ is false, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for a period of not more than two (2) years, or by both such fine and imprisonment.

SECTION 16. AMENDATORY 2 O.S. 1991, Section 9-38, is amended to read as follows:

Section 9-38. A. The State Board of Agriculture shall ~~make~~ promulgate rules ~~and regulations as it deems~~ necessary to carry out the provisions of the Public Warehouse and Commodity Indemnity Act.

B. ~~Such~~ The rules ~~and regulations~~ shall conform as nearly as practicable to the requirements of the United States Warehouse Act, as amended, its successor and any regulations developed thereunder.

SECTION 17. AMENDATORY 2 O.S. 1991, Section 9-39, is amended to read as follows:

Section 9-39. The provisions of the Public Warehouse and Commodity Indemnity Act shall not apply to an individual producer-owner who does not receive from other producers commodities for storage or for handling for restorage or both such storage and handling for restorage, but any such producer-owner, if qualified, may be issued a ~~license~~ charter upon request.

SECTION 18. AMENDATORY 2 O.S. 1991, Section 9-42, is amended to read as follows:

Section 9-42. There is hereby created within the ~~Oklahoma~~ State Department of Agriculture, the "Oklahoma Commodity Storage Indemnity Fund".

SECTION 19. AMENDATORY 2 O.S. 1991, Section 9-44, is amended to read as follows:

Section 9-44. There ~~shall be an assessment of~~ is hereby assessed two (2) mills per bushel upon all commodities delivered by producers to any public warehouse. The assessment shall be imposed on the warehouse at the time of receipt and shall be collected and remitted to the State Department of Agriculture by the warehouseman. Under the provisions of the Public Warehouse and Commodity Indemnity Act, no commodity shall be subject to a fee more than once. The Department ~~of Agriculture~~ shall have authority to examine warehouse records to determine if said assessment has been properly remitted.

SECTION 20. AMENDATORY 2 O.S. 1991, Section 9-45, is amended to read as follows:

Section 9-45. A. The State Department of Agriculture shall administer the Commodity Storage Indemnity Fund. The Indemnity shall be established for the benefit of producers who have delivered commodities to a licensed public warehouse for storage as provided in the Public Warehouse and Commodity Indemnity Act. The Indemnity shall compensate producers for losses to their commodity while it is in the control of a chartered or licensed public warehouse, except losses covered by insurance as provided in Section 9-26 of this title.

B. When the Indemnity reaches Ten Million Dollars (\$10,000,000.00), the two-mill assessment as provided in the Public Warehouse and Commodity Indemnity Act shall cease, unless the Ten Million Dollars (\$10,000,000.00) is attained prior to the end of a harvest season, at which time the assessment shall continue until the end of that harvest season. If the balance of the Indemnity thereafter becomes less than Ten Million Dollars (\$10,000,000.00), the two-mill assessment shall be reinstated on an annual basis as necessary to attain a balance of Ten Million Dollars (\$10,000,000.00) in the Indemnity. The Department shall have

authority to invest the assessments. All proceeds of the investment shall be placed in the Indemnity. ~~Two percent (2%)~~ Ten percent (10%) of the income for each year, ~~from assessments,~~ shall be paid to the Department for the ~~conduct~~ conducting of ~~audits,~~ ~~identification of potential claimants and verification of claims~~ ~~when a loss occurs;~~ ~~recovery of funds paid to producers for~~ ~~subrogated claims and other administration costs~~ warehouse examinations necessary for the protection of the Indemnity. The Department's warehouse and commodity auditors shall be responsible to ensure the protection and will be compensated commensurate with regional states meeting USDA's cooperative agreement standards.

C. When a loss is incurred upon the commodity of a producer, which has been delivered to a warehouseman, or after receipt of the notice pursuant to Section 9-24 of this title, the producer shall present his claim to the Department. To verify the claim, the producer shall present a receipt or any additional evidence or both such receipt and evidence of loss that the Department might deem necessary. All producer claim payments shall be made by the Department from the Indemnity as soon as practicable and not later than one (1) year following the date of claim. The price per bushel of commodity shall be established on the day of the loss and shall be for the full market value on that day. If there is an insufficient amount of cash in the Indemnity to cover all claims for a certain year, payments shall be made on a pro rata basis up to one hundred percent (100%) of the total loss of each producer. If payment is not received in the amount of one hundred percent (100%) of total loss for a certain year, then such additional amounts shall be paid as funds become available in succeeding years until repayment of one hundred percent (100%) of total loss is attained. If, at any time, a producer receives payment totaling more than one hundred percent (100%) of total loss, such excess payment shall immediately be returned to the Indemnity. Upon final payment of a

claim to a producer from the Indemnity, the producer shall subrogate his interest, if any, to the Department in a cause of action against any and all parties, to the amount of the loss that the producer was reimbursed by the Indemnity.

D. The producer shall, within one hundred twenty (120) days of the order of the Board establishing the date of loss, present ~~his~~ the claim of the producer to the Board. If such claim of loss is not presented within the time and in the manner ~~described herein~~ required by this section, the claim shall be forever barred and said producer shall forfeit all rights to remuneration or payment as provided in ~~this act~~ the Public Warehouse and Commodity Indemnity Act.

E. If at any time state funds are appropriated to the Indemnity for the purposes specified by this section, the Board shall establish the ~~necessary~~ rules and procedures necessary to ensure that the State General Revenue Fund shall be reimbursed, from the assessments ~~provided for herein~~, in an amount equal to the total appropriation made to ~~said~~ the Indemnity. ~~Said~~ The reimbursement shall be made in a timely manner, provided the intents and purposes of this section to compensate producers for their losses as specified ~~herein~~ in this section shall not be adversely affected.

SECTION 21. AMENDATORY 2 O.S. 1991, Section 9-46, is amended to read as follows:

Section 9-46. A. The warehouseman shall render and have on file a report with the State Department of Agriculture by the last day of the month following any calendar quarter in which the warehouseman has accepted ten thousand (10,000) or more bushels of commodity. If less than ten thousand (10,000) bushels have been accepted in any calendar quarter, the assessment may be reported and remitted with the following quarter's return, except that all assessments collected must be remitted at least once every six (6) months.

B. In case any person, business or entity, public or private, subject to the assessment ~~hereunder~~ pursuant to the Public Warehouse and Commodity Indemnity Act, fails to make a report and remittance when and as ~~herein~~ required pursuant to the Public Warehouse and Commodity Indemnity Act, the Department shall determine the amount of such assessment according to its best judgment and information, which amount so fixed shall be prima facie correct, and the person so having failed to make the report, within ten (10) days after notice of the amount of the assessment which is fixed and computed by the Department is mailed to such person, shall pay the assessment, together with a penalty of five percent (5%) on the amount of the assessment, ~~or he~~. The person so failing may dispute the assessment as fixed by the Department and request a hearing to determine the amount of the assessment and penalty to be imposed. No payment shall be made until the Department enters its order determining the amount of the payment, but such shall be paid within ten (10) days' notice of such decision.

SECTION 22. AMENDATORY 2 O.S. 1991, Section 9-47, is amended to read as follows:

Section 9-47. Any person who has been determined by the State Board of Agriculture to have violated any provision of the Public Warehouse and Commodity Indemnity Act, or any rule, ~~regulation~~ or order issued pursuant thereto may be liable for an administrative penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each violation. Each day that said violation continues ~~shall~~ may constitute a separate offense.

SECTION 23. AMENDATORY 2 O.S. 1991, Section 9-47.1, is amended to read as follows:

Section 9-47.1 Except as otherwise provided by law, any person convicted in a court of proper jurisdiction of violating any of the provisions of the Public Warehouse and Commodity Indemnity Act shall be deemed guilty of a misdemeanor and shall upon conviction thereof

be punished by a fine of not less than Five Hundred Dollars (\$500.00) for the first offense and not less than One Thousand Dollars (\$1,000.00) for each subsequent offense.

SECTION 24. The Office of Personnel Management shall conduct a study of the salary structure for senior warehouse and commodity auditors within the State Department of Agriculture, including prevailing rates of pay in the marketplace. The Office of Personnel Management shall submit a report of its findings and recommendations to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Commissioner of Agriculture by January 1, 1997. The Department of Agriculture shall bear the costs of the study.

SECTION 25. NONCODIFICATION Section 24 of this act shall not be codified in the Oklahoma Statutes.

SECTION 26. This act shall become effective July 1, 1997.

SECTION 27. 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.

46-1-5713

KSM