

ENROLLED SENATE
BILL NO. 384

By: Muegge and Milacek of the
Senate

and

Pope (Clay), Covey and
Maddux of the House

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-21, as last amended by Section 84, Chapter 243, O.S.L. 2000, 9-22, as amended by Section 2, Chapter 10, O.S.L. 1997, 9-24, as last amended by Section 86, Chapter 243, O.S.L. 2000, 9-34, as last amended by Section 93, Chapter 243, O.S.L. 2000, and 9-45, as amended by Section 20, Chapter 10, O.S.L. 1997 (2 O.S. Supp. 2000, Sections 9-21, 9-22, 9-24, 9-34, and 9-45), which relate to the Public Warehouse and Commodity Indemnity Act; adding definitions; requiring certain financial statement to be prepared by an independent certified public accountant; modifying requirements for certain financial statements for certain applicant or charter holder; adding irrevocable letter of credit for security; modifying time period to file written claim of loss; authorizing written request for sixty-day extension for certain reasons; providing for electronic receipts and electronic documents; providing for electronic receipt and electronic document systems; stating parameters for persons holding electronic receipts or electronic documents; stating certain exceptions; authorizing the State Board of Agriculture to promulgate rules; expanding type of conduct to which criminal penalties apply; stating parameters for compensation for losses; authorizing the Board to lower the cap on the Indemnity Fund; authorizing the Department of Agriculture to receive certain funds for warehouse examinations; clarifying the price of a commodity on the day of a loss; requiring the Commissioner of the State Department of Agriculture to investigate certain civil action claims against a failed warehouse and certain persons; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-21, as last amended by Section 84, Chapter 243, O.S.L. 2000 (2 O.S. Supp. 2000, Section 9-21), is amended to read as follows:

Section 9-21. As used in the Public Warehouse and Commodity Indemnity Act:

1. "Charter" means a franchise issued to a person for the operation of a public warehouse;

2. "Commodities" means nonperishable grains or seeds;

3. "Depositor" means any person storing commodities with a state-chartered or federally licensed warehouse;

4. "Electronic document" means a document that is generated, sent, received, or stored by electronic data interchange, electronic mail, telegram, telex, or telecopy;

5. "Electronic receipt" means a receipt that is authorized by the State Board of Agriculture to be issued under this act in the form of an electronic document;

6. "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;

~~5.~~ 7. "Indemnity" means the Oklahoma Commodity Storage Indemnity Fund;

~~6.~~ 8. "Loss" means any monetary reduction in value to a producer of an extraordinary nature and which shall include, but not be limited to, bankruptcy, embezzlement, theft or fraud;

~~7.~~ 9. "Producer" means any person planting, raising, growing, or harvesting commodities;

~~8.~~ 10. "Public warehouse" means any place where commodities are received for storage, received for transfer to other public warehouses, or both;

~~9.~~ 11. "Storage" or "warehousing" means any method of holding commodities by a party other than the direct owner except for transportation;

~~10.~~ 12. "Warehouseman" means any person operating a public warehouse; and

~~11.~~ 13. "Warehouse receipt" means every receipt issued by a warehouseman for commodities pursuant to the Public Warehouse and Commodity Indemnity Act.

SECTION 2. AMENDATORY 2 O.S. 1991, Section 9-22, as amended by Section 2, Chapter 10, O.S.L. 1997 (2 O.S. Supp. 2000, 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 such person shall have obtained and holds a 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 charter issued by the Board shall be on a form prescribed by the Board. The Board shall charge and collect a one-time fee of One Hundred Dollars (\$100.00) for each charter. The Board shall deposit the fees in the State Department of Agriculture Revolving Fund.

3. No charter shall be issued by the Board until the applicant therefor has filed with the Board a financial statement prepared by an independent certified public accountant 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. 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. Surety required 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 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 charter in lieu of the reinsurance fee.

C. The applicant, in order to qualify for a charter issued by the Board, as evidence of 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 chartered capacity but not less than Fifty Thousand Dollars (\$50,000.00). All 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. 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-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 or charter holder is less than One Million Dollars (\$1,000,000.00), a financial statement shall be submitted ~~each one hundred eighty (180) days~~ annually. Financial statements shall be prepared

~~according to generally accepted accounting principles, set forth and submitted by an independent certified public accountant, describing the current financial position of the applicant, and be certified by the applicant, 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 obligations as a warehouseman. The Board may require the applicant or charter holder to provide a profit and loss statement and an audited financial statement prepared by a person authorized to practice public accounting in this state~~ an independent certified public accountant.

D. ~~The bond or,~~ certificates of deposit, or irrevocable letter of credit issued by a financial institution that is insured by the Federal Deposit Insurance Corporation (FDIC) or chartered by the farm credit system organized under the "Farm Credit Act of 1971" shall be payable to the Board for the benefit of all persons storing commodities with the applicant as a state-chartered warehouseman. The amount of bond or certificates of deposit to be furnished for each state-chartered warehouse shall be fixed at a rate of twenty-five cents (\$0.25) per bushel of 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 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 charter issued pursuant to the provisions of this section shall be for the life of the person. Such state 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 of the Board adopted pursuant thereto. Upon evidence of just and good cause, such state charter may be temporarily suspended without a hearing, for a period of not to exceed thirty (30) days. Whenever a state charter is suspended or revoked, the Board shall immediately give notice thereof, by registered United States mail, to the holder of such 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 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 9-24, as last amended by Section 86, Chapter 243, O.S.L. 2000 (2 O.S. Supp. 2000, Section 9-24), is amended to read as follows:

Section 9-24. A. Upon the suspension or revocation of the state charter, federal license, or bond of a warehouseman, the State Board of Agriculture may file a lien against all assets of the warehouseman with the county clerk of any county in which the warehouseman has property.

B. The Board shall publish notice for two (2) consecutive weeks in a newspaper of general circulation in the area of the public warehouse when the warehouse charter is suspended or revoked.

C. When the charter of a warehouseman is renewed after suspension or revocation, the Board shall publish notice for two (2) consecutive weeks in a newspaper of general circulation in the area of the public warehouse that the warehouse is in compliance with the Public Warehouse and Commodity Indemnity Act.

D. Upon suspension of the charter, the Board may seize all commodities under the control of the warehouseman, including commodities stored or forwarded to other locations. The Board, upon revocation of the charter, shall seize all commodity stocks of the warehouseman including any commodities stored or forwarded to other locations and sell the commodities. Funds generated by the sale of seized commodities shall be distributed in the following manner:

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

2. All remaining funds shall be proportioned among all producers storing commodities with the warehouseman. No person shall receive payment of funds greater than the fair market value of the commodity lost by the producer on the date of seizure;

3. Funds generated in excess of the payments required by the Public Warehouse and Commodity Indemnity Act shall be deposited in the Indemnity; and

4. The persons responsible for violations of the Public Warehouse and Commodity Indemnity Act resulting in a charter revocation or commodity seizure shall not be eligible to claim or recover proceeds from the sale or interest accrued on the proceeds from the sale of seized commodities unless approved by the Board.

E. A person storing commodities with a warehouseman not holding a valid charter or federal license is not eligible to file a claim or recover damages under the Public Warehouse and Commodity Indemnity Act.

F. 1. Upon revocation of the warehouse charter, the Board shall identify any loss to the depositors and obtain proof. The Board shall immediately notify any bonding company providing a bond for a loss. As soon as practicable, the Board shall communicate the amount of the loss, proof, and the date of loss and seizure to the bonding company. The bonding company shall within thirty (30) calendar days remit to the Board the amount of the loss or the face amount of the bond, whichever is less.

2. Failure by the bonding company to surrender 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 the surety funds are surrendered. The Board shall account for all the surety received until all depositor claims against the charter holder are paid as provided in the Public Warehouse and Commodity Indemnity Act. When all claims have been paid, all unexpended bond surety funds including accrued interest, except penalties, shall be returned to the bonding company.

3. The provisions of this section shall not prohibit the Board from pursuing any other remedy provided by law.

G. The Board shall establish a date of loss which shall be the same as the date of seizure for all claims of loss against a warehouseman. The Board shall publish the date of loss as set forth in subsection B of this 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 shall establish ownership or title to commodities stored or warehoused with the warehouseman against whom the loss is alleged. Evidence of ownership or title shall include 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)~~ sixty (60) days of the order of the Board establishing the date of loss, file a written claim of loss with the Board. Depositors may submit a written request to the Board for a sixty-day extension of the filing period, if the depositors can show they were not provided notification and reasonable time to file the claim. If the claim of loss is not filed within the allotted time, the depositor shall forfeit all rights to remuneration or payment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-28.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of federal or state law:

1. Electronic receipts issued, and electronic documents transferred, under this subsection with respect to an agricultural product may be recorded in, and transferred under, a system maintained in one or more locations and approved by the State Board of Agriculture in accordance with rules issued under this act;

2. Any person designated as the holder of an electronic receipt or other electronic document under this act shall, for the purpose of perfecting the security interest of the person under federal or state law and for all other purposes, be considered to be in possession of the electronic receipt or other electronic document;

3. An electronic receipt issued, or other electronic document transferred, in accordance with this act shall not be denied legal effect, validity, or enforceability on the ground that the information is generated, sent, received, or stored by electronic or similar means;

4. A person shall not be required to issue in electronic form a receipt or document with respect to an agricultural product;

5. The Board shall promulgate rules that authorize the issuance, recording, and transfer of electronic receipts, and the transfer of other electronic documents, in accordance with this subsection; and

6. The Board shall promulgate rules governing one or more electronic systems under which electronic receipts may be issued and transferred and other electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be transferred.

SECTION 5. AMENDATORY 2 O.S. 1991, Section 9-34, as last amended by Section 93, Chapter 243, O.S.L. 2000 (2 O.S. Supp. 2000, Section 9-34), is amended to read as follows:

Section 9-34. A. ~~Any~~ It shall be a felony for any warehouseman, employee, or manager of a public warehouse ~~issuing any~~ to knowingly:

1. Issue or receive a fraudulent warehouse receipt for any regarding, but not limited to, commodities that are not actually stored at the time of issuing the receipt, issuing any warehouse receipt or 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 the commodities, or who shall remove any commodities from store, except to preserve the commodities from fire or other damage without the return and cancellation of all outstanding receipts that may have been issued to represent the commodities shall upon conviction thereof, be guilty of a felony. The fine for a violation; or

2. Issue a delayed pricing contract, deferred payment contract, or any other records for sales of commodities in a fraudulent manner without the full knowledge and consent of the producer.

A violation of this section shall, upon conviction, be punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in the State Penitentiary for not more than ten (10) years or by both such fine and imprisonment.

B. The State Board of Agriculture, upon application from the warehouseman, may approve the prepositioning of commodity stocks in state-chartered or federally licensed terminal warehouses in order to free storage space for new harvest commodities. The period for such action shall not exceed sixty (60) days prior to anticipated beginning of harvest for the commodity nor can they be out of position more than one hundred eighty (180) days. The Board may

extend the time period an additional one hundred eighty (180) days as specified by rules promulgated by the Board.

SECTION 6. AMENDATORY 2 O.S. 1991, Section 9-45, as amended by Section 20, Chapter 10, O.S.L. 1997 (2 O.S. Supp. 2000, Section 9-45), is amended to read as follows:

Section 9-45. A. The State Department of Agriculture shall administer the Oklahoma Commodity Storage Indemnity Fund. The Indemnity shall be established for the benefit of producers who have delivered commodities to a chartered or 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. No producer shall be eligible for compensation or reimbursement as the result of a loss on any commodity when the title to the commodity has been transferred to the warehouseman.

B. When the Indemnity reaches ~~Ten Million Dollars (\$10,000,000.00)~~ Six Million Dollars (\$6,000,000.00), 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 as determined by the Board. If the balance of the Indemnity thereafter becomes less than ~~Ten Million Dollars (\$10,000,000.00)~~ Six Million Dollars (\$6,000,000.00), 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)~~ Six Million Dollars (\$6,000,000.00) 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%) of Fifty Thousand Dollars (\$50,000.00) from~~ the interest income for each year on the total proceeds in the Indemnity shall be paid to the Department annually for the conducting of warehouse examinations necessary for the protection of the Indemnity. The balance of the accrued interest each year may not be utilized for any purposes not listed in this subarticle and shall remain a part of the Indemnity.

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 or her claim to the ~~Department~~ State Board of Agriculture. To verify the claim, the producer shall present a receipt or any additional evidence ~~or both such receipt and evidence of loss that required by the Department might deem necessary~~ Board. All producer claim payments shall be made by the ~~Department~~ Board from the Indemnity as soon as practicable and not later than one (1) year following the date of claim. The price per bushel of a commodity shall be established on the day of the loss or seizure and shall be for the full market value on that day less storage or other applicable charges. 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~~ the excess payment shall ~~immediately~~ be returned to the Indemnity within thirty (30) days. Upon final payment of a claim to a producer from the Indemnity, the producer shall subrogate his or her 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)~~ sixty (60) days of the order of the Board establishing the date of loss, present the claim ~~of the producer~~ to the Board. Producers may submit a written request to the Board for a sixty-day extension of the filing period, if the producers can show they were not provided notification and reasonable time to file their claim. If ~~such~~ the claim of loss is not presented within the time and in the manner required ~~by this section,~~ the claim shall be forever barred and ~~said~~ the producer shall forfeit all rights to remuneration or payment as provided in 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 rules and procedures necessary to ensure that the State General Revenue Fund shall be reimbursed, ~~from the assessments,~~ in an amount equal to the total appropriation made to the Indemnity. 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 in this section~~ shall not be adversely affected.

F. The monies deposited in the Indemnity shall at no time become part of the general budget of any state board, commission, or agency except the Department.

G. The Commissioner of the State Department of Agriculture shall investigate all potential civil action claims against a failed warehouse, the warehouseman, and any officers, directors and managers for recovery of any losses paid by the Indemnity.

SECTION 7. This act shall become effective November 1, 2001.

Passed the Senate the 20th day of February, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2001.

Presiding Officer of the House
of Representatives