ENGROSSED SENATE
BILL NO. 1816

By: Lerblance of the Senate

and

Johnson of the House

[agriculture - lien procedures – mandating information on lien statement – authorizing termination of lien – effective date - emergency]

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-24, is amended to read as follows:

Section 9-24. A. 1. Upon the suspension ~~or~~, revocation, or voluntary surrender 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~~ or public warehouse, a statutory lien shall be and hereby is imposed on all assets of the warehouseman or public warehouse in favor of the Oklahoma Commodity Storage Indemnity Fund on behalf of all depositors who are eligible to file a claim pursuant to subsection I of this section.

2. The lien and payment rights of all depositors are hereby assigned to the Indemnity for purposes of implementing this section.

3. To perfect the lien, the Oklahoma Department of Agriculture, Food, and Forestry, on behalf of the Indemnity, shall file a lien statement with the Oklahoma County Clerk.

4. The lien shall become effective and deemed fully perfected immediately upon filing of the lien statement.

a. The initial lien amount shall be based on a reasonable estimate of the amounts paid by the Department and the Indemnity and other costs and expenses described in this section.

b. The lien statement shall be filed only on or after the date of the suspension, revocation, or voluntary surrender of the state charter, federal license, or bond of the subject warehouseman or public warehouse but not later than sixty (60) days after the incurrence of the triggering event.

c. The lien statement shall disclose the name of the warehouseman or public warehouse, the address of the party's principal place of business, a description of any known and identifiable warehouseman or warehouse assets or a statement that none are known at such time, and the amount of the lien.

5. The amount of the lien shall be the aggregate of:

a. the amount of the incurred by the Department and the Indemnity for the conduct of salvage operations of the warehouseman or public warehouse,

b. all amounts paid by the Department and the Indemnity to depositors of the warehouseman or public warehouse from the Oklahoma Commodity Storage Indemnity Fund, including but not limited to the final cost of reimbursing the depositors and the Indemnity for the payment of claims made against the fund,

c. associated costs and expenses, if any, and

d. accrued interest at the rate of ten percent (10%) per annum.

6. The Department, on behalf of the Indemnity, shall file a corrected lien statement to revise the estimated amount of the lien not later than one hundred eighty (180) days following the

incurrence date; however, the failure to file a corrected lien statement shall not affect the validity or the amount of the subject lien.

7. The District Court of Oklahoma County, upon petition by one or more producers, may undertake an action to correct the lien amount. The Department, on behalf of the Indemnity, shall have the burden of proving by a preponderance of the evidence that any estimated lien amount is an accurate estimate.

8. A lien statement filed under this section shall be a security interest perfected under the uniform commercial code in effect in Oklahoma and subject to the same priority as provided in Section 1-9-322 of Title 12A of the Oklahoma Statutes except that the subject lien statement shall have priority over any levies or liens for taxes regardless of the time when the subject lien statement or any such tax levies or lien arises.

9. The lien statement may be collected in any manner allowed by law including levy upon all property of the warehouseman or public warehouse in the same manner as the levy of an execution.

10. The Department, on behalf of the Indemnity, shall upon written demand of the warehouseman or public warehouse file a termination statement with the Oklahoma County Clerk, if the license of the warehouseman is not revoked, suspended, surrendered, terminated, or canceled after one hundred eighty (180) days from the date the lien statement is perfected.

a. upon filing of the termination statement, the lien becomes unperfected.

b. the Department, on behalf of the Indemnity, shall deliver a copy of the termination statement to the warehouseman or public warehouse.

B. The District Court of Oklahoma County shall be the sole venue for questions of jurisdiction or venue in all civil actions

challenging the acts of the Department in the administration of the Public Warehouse and Commodity Indemnity Act.

C. The ~~Board~~ Department 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.~~ D. When the charter of a warehouseman is renewed after suspension or revocation, the ~~Board~~ Department 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.~~ E. Upon the suspension, revocation, or voluntary surrender of the charter, the ~~Board~~ Department may seize all commodities under the control of the warehouseman or public warehouse, including commodities stored or forwarded to other locations. The ~~Board~~ Department, upon suspension, revocation, or surrender of the charter, shall seize all commodity stocks of the warehouseman or public warehouse 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~~ Department shall receive an amount equal to the cost of salvage operations;

2. All remaining funds shall be proportioned among all ~~producers~~ depositors 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~~ depositors 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 suspension, revocation, or surrender, 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 State Board of Agriculture.

~~E.~~ F. 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.~~ G. 1. Upon suspension, revocation, or surrender of the warehouse charter, the ~~Board~~ Department shall identify any loss to the depositors and obtain proof. The ~~Board~~ Department shall immediately notify any bonding company providing a bond for a loss. As soon as practicable, the ~~Board~~ Department 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~~ Department 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~~ Department 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~~ Department 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~~ Department from pursuing any other remedy provided by law.

~~G.~~ H. The ~~Board~~ Department 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~~ Department shall publish the date of loss as set forth in subsection C 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.~~ I. 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 or public warehouse against whom the loss is alleged. Evidence of ownership or title shall include uncanceled warehouse receipts or scale tickets. The ~~Board~~ Department shall determine the sufficiency of evidence of ownership or title.

~~I.~~ J. Depositors shall, within sixty (60) days of the order of the ~~Board~~ Department establishing the date of loss, file a written claim of loss with the ~~Board~~ Department. 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 2. This act shall become effective July 1, 2006.

SECTION 3. 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.

Passed the Senate the 15th day of March, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

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Presiding Officer of the House
of Representatives