

CS for SB 1816

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THE STATE SENATE
Thursday, February 16, 2006

Committee Substitute for
Senate Bill No. 1816

COMMITTEE SUBSTITUTE FOR 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 H of this section.~~

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

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

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

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

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

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

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

- 1 a. the amount of the incurred by the Department and the
2 Indemnity for the conduct of salvage operations of the
3 warehouseman or public warehouse,
4 b. all amounts paid by the Department and the Indemnity
5 to depositors of the warehouseman or public warehouse
6 from the Oklahoma Commodity Storage Indemnity Fund,
7 including but not limited to the final cost of
8 reimbursing the depositors and the Indemnity for the
9 payment of claims made against the fund,
10 c. associated costs and expenses, if any, and
11 d. accrued interest at the rate of ten percent (10%) per
12 annum.

13 6. The Department, on behalf of the Indemnity, shall file a
14 corrected lien statement to revise the estimated amount of the lien
15 not later than one hundred eighty (180) days following the
16 incurrence date; however, the failure to file a corrected lien
17 statement shall not affect the validity or the amount of the subject
18 lien.

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

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

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

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

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

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

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

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

3 C. The ~~Board~~ Department shall publish notice for two (2)
4 consecutive weeks in a newspaper of general circulation in the area
5 of the public warehouse when the warehouse charter is suspended or
6 revoked.

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

12 ~~D.~~ E. Upon the suspension, revocation, or voluntary surrender
13 of the charter, the ~~Board~~ Department may seize all commodities under
14 the control of the warehouseman or public warehouse, including
15 commodities stored or forwarded to other locations. The ~~Board~~
16 Department, upon suspension, revocation, or surrender of the
17 charter, shall seize all commodity stocks of the warehouseman or
18 public warehouse including any commodities stored or forwarded to
19 other locations and sell the commodities. Funds generated by the
20 sale of seized commodities shall be distributed in the following
21 manner:

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

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

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

9 4. The persons responsible for violations of the Public
10 Warehouse and Commodity Indemnity Act resulting in a charter
11 suspension, revocation, or surrender, or commodity seizure shall not
12 be eligible to claim or recover proceeds from the sale or interest
13 accrued on the proceeds from the sale of seized commodities unless
14 approved by the State Board of Agriculture.

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

19 ~~F.~~ G. 1. Upon suspension, revocation, or surrender of the
20 warehouse charter, the ~~Board~~ Department shall identify any loss to
21 the depositors and obtain proof. The ~~Board~~ Department shall
22 immediately notify any bonding company providing a bond for a loss.
23 As soon as practicable, the ~~Board~~ Department shall communicate the

1 amount of the loss, proof, and the date of loss and seizure to the
2 bonding company. The bonding company shall within thirty (30)
3 calendar days remit to the ~~Board~~ Department the amount of the loss
4 or the face amount of the bond, whichever is less.

5 2. Failure by the bonding company to surrender the funds shall
6 result in a nonrefundable penalty assessment payable to the ~~Board~~
7 Department of one percent (1%) per month plus interest of one
8 percent (1%) per month of the face amount of the bond commencing
9 with the date of loss and continuing until the surety funds are
10 surrendered. The ~~Board~~ Department shall account for all the surety
11 received until all depositor claims against the charter holder are
12 paid as provided in the Public Warehouse and Commodity Indemnity
13 Act. When all claims have been paid, all unexpended bond surety
14 funds including accrued interest, except penalties, shall be
15 returned to the bonding company.

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

18 G. H. The ~~Board~~ Department shall establish a date of loss which
19 shall be the same as the date of seizure for all claims of loss
20 against a warehouseman. The ~~Board~~ Department shall publish the date
21 of loss as set forth in subsection B of this section and shall
22 notify by registered mail all depositors who may have a claim

1 against a warehouseman of the date of loss and deadline for filing
2 claims.

3 ~~H.~~ I. To be eligible to file a claim of loss and receive
4 payment as provided in the Public Warehouse and Commodity Indemnity
5 Act, a person shall establish ownership or title to commodities
6 stored or warehoused with the warehouseman or public warehouse
7 against whom the loss is alleged. Evidence of ownership or title
8 shall include uncanceled warehouse receipts or scale tickets. The
9 ~~Board~~ Department shall determine the sufficiency of evidence of
10 ownership or title.

11 ~~H.~~ J. Depositors shall, within sixty (60) days of the order of
12 the ~~Board~~ Department establishing the date of loss, file a written
13 claim of loss with the ~~Board~~ Department. Depositors may submit a
14 written request to the Board for a sixty-day extension of the filing
15 period, if the depositors can show they were not provided
16 notification and reasonable time to file the claim. If the claim of
17 loss is not filed within the allotted time, the depositor shall
18 forfeit all rights to remuneration or payment.

19 SECTION 2. This act shall become effective July 1, 2006.

20 SECTION 3. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.

1 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,
2 dated 2-14-06 - DO PASS, As Amended and Coauthored.