

SENATE BILL No. 143

AN ACT concerning agriculture; relating to grain warehouses; updating definitions; increasing maximum functional unit license and storage fees; amending K.S.A. 34-2,107 and 34-2,111 and K.S.A. 2020 Supp. 34-223, 34-228 and 34-2,112 and repealing the existing sections; also repealing K.S.A. 34-136.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2020 Supp. 34-223 is hereby amended to read as follows: 34-223. As used in chapter 34 of Kansas Statutes Annotated, and amendments thereto:

- (a) "Action" includes counterclaim, setoff and suit in equity.
- (b) "Delivery" means voluntary transfer of possessions from one person to another.
- (c) "Fungible grain" means grain of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.
- (d) "Grain" means wheat, corn, oats, barley, rye, soybeans, grain sorghums and any grains upon which federal grain standards are established, ~~also~~. "Grain" includes seeds generally stored by warehouses, if special permission is granted by the secretary.
- (e) "Holder of a receipt" means a person who has both actual possession of such receipt and a right of property therein.
- (f) "Order" means an order by endorsement of the receipt.
- (g) "Owner" does not include mortgagee or pledgee.
- (h) "Person" includes individuals, corporations, partnerships and all associations of two or more persons having a joint or common interest.
- (i) "To purchase" includes to take as mortgagee or pledgee.
- (j) "Receipt" means a warehouse receipt or receipts.
- (k) "Value" means any consideration sufficient to support a simple contract and includes an antecedent or preexisting obligation, whether for money or not, where a receipt is taken either in satisfaction thereof or as security therefor.
- (l) "Public warehouseman" means a person lawfully engaged in the business of storing grain for the public.
- (m) "Public warehouse" or "public grain warehouse" means every elevator or other building in which grain is received for storage or transfer for the public.
- (n) "Secretary" means the secretary of *the Kansas department of agriculture or the secretary's designee*.
- (o) "Department" means the Kansas department of agriculture.
- (p) "Grain bank grain" means any grain 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 grain.
- (q) "Storage grain" or "stored grain" means grain that has been received in any public warehouse located in this state, and such grain is not purchased by the lessee, owner or manager of such warehouse.
- (r) *"Functional unit" means a public warehouse that has the capacity to store, weigh in and weigh out grain. The storage capacity of any outlying storage facility of a public warehouse that is not a functional unit itself shall be included as part of the combined capacity of the warehouseman's nearest functional unit.*
- (s) *"Open storage" means the storage of grain pursuant to the issuance of a scale ticket, regardless of whether the grain is retained in the warehouse that issued the scale ticket or elsewhere.*
- (t) *"Owner" means the holder of any warehouse receipt or any ticket for grain held in storage by a public warehouseman, regardless of whether the grain for which the warehouse receipt or ticket was issued is stored at the warehouse that issued the receipt or ticket or is stored elsewhere.*
- (u) *"Deferred payment" means any payment to be made pursuant to the terms of a grain purchase contract after the delivery of grain to a*

public warehouseman.

(v) *"Delayed pricing" means any method of pricing grain pursuant to the terms of a grain purchase contract after the delivery of grain to a public warehouseman.*

(w) *"Financial institution" means any institution whose deposits, shares or accounts are insured by a federal agency or any bank for cooperative created pursuant to title III of the farm credit act of 1971.*

(x) *"Standby letter of credit" means "letter of credit" as that term is defined in K.S.A. 84-5-103, and amendments thereto, that by its terms:*

(1) *Is irrevocable;*
(2) *is nontransferrable;*
(3) *names the seller that produced the grain as beneficiary;*
(4) *shall not expire earlier than 60 calendar days after the final payment is due pursuant to the terms of the underlying grain purchase contract; and*

(5) *cannot be drawn upon by the beneficiary in the absence of a default as defined by the terms of the underlying grain purchase contract.*

(y) *"Unpaid balance" means that portion of the purchase price under a grain purchase contract, together with an interest thereon, if any, that remains due and owing to the seller pursuant to the terms of the grain purchase contract at the time the seller makes a demand for payment as provided in the contract. If a grain purchase contract provides for delayed pricing and the price has not been established at the time the seller makes demand for payment, then for the purposes of this section only, the unpaid balance shall be determined as though the price had been established at the time of the closing of the relevant futures market on the last trading day before the seller made a demand for payment.*

Sec. 2. K.S.A. 2020 Supp. 34-228 is hereby amended to read as follows: 34-228. (a) Any person desiring to engage in business as a public warehouseman in this state shall, before the transaction of any such business *and annually thereafter*, make written application to the secretary for a license for each separate warehouse or, if the applicant owns more than one warehouse at one point, all ~~of~~ such warehouses may be incorporated in one application, at which the person desires to engage in such business. The application for a license shall be on a form designated by the secretary and shall contain the individual name and address of each person interested as principal in the business and, if the business is operated or to be operated by a corporation, ~~setting forth~~ *providing* the names of the president and secretary, and ~~such further~~ *any additional* information as the secretary may require.

(b) (1) Every application for a public warehouse license shall be accompanied by a current financial statement. The statement shall include such information as required by the secretary to administer and enforce the public warehouse laws of this state, including, but not limited to, a current balance sheet, statement of income, including profit and loss, statement of retained earnings and statement of changes in financial position. The applicant shall certify under oath that the statement as prepared accurately reflects the financial condition of the applicant as of the date specified and presents fairly the results of operations of the applicant's public warehouse business for the period specified. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by:

(A) A report of audit or review conducted by an independent certified public accountant ~~or an independent public accountant~~ in accordance with standards established by the American institute of certified public accountants and the accountant's certifications,

assurances, opinions, comments and notes with respect to the statement; or

(B) a compilation report of the financial statement, prepared by a grain commission firm or management firm which is authorized pursuant to rules and regulations of the federal commodity credit corporation to provide compilation reports of financial statements of warehousemen.

(2) Except as otherwise provided, the secretary, upon request of an applicant, may grant a waiver of the requirements of this subsection for a period of not more than 30 days if the applicant furnishes evidence of good and substantial reasons for the waiver. The secretary may extend such waiver beyond 30 days for grain stored in an alternative location other than a location identified in the public warehouse license, if the secretary determines that the owner of the grain would suffer substantial hardship to require the grain to be stored at a location identified in the license. The secretary may determine what constitutes substantial hardship and what length of time the grain may be stored at such alternative location.

(c) (1) Every applicant for a license to operate one or more public warehouses and every person licensed to operate one or more warehouses shall at all times maintain total net worth liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses equal to at least \$.25 per bushel of the storage capacity of the warehouse or warehouses except:

(A) No person shall be granted a license or shall continue to be licensed unless the person has a net worth of at least \$25,000; and

(B) any deficiency in net worth required above the \$25,000 minimum may be supplied by an increase in the amount of the applicant's or licensee's bond or letter of credit as provided by K.S.A. 34-229, and amendments thereto.

(2) In determining total net worth:

(A) Credit may be given for insurable property such as buildings, machinery, equipment and merchandise inventory only to the extent that the property is protected by insurance against loss or damage by fire; and

(B) capital stock, as such, shall not be considered a liability.

(d) No license shall be issued to a person or entity not previously licensed in this state and making application for an original license who, in this state or any other jurisdiction, within the 10 years immediately prior to the date of the application of the person or entity for a license, has been convicted of or has pleaded guilty or nolo contendere to any crime which would constitute:

(1) Embezzlement;

(2) any felony defined in any statute contained in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated, or subsection (a)(6) of K.S.A. 2020 Supp. 21-6412, and amendments thereto;

(3) unauthorized delivery of stored goods;

(4) any felony defined in any statute contained in chapter 34 of the Kansas Statutes Annotated, and amendments thereto; or

(5) a violation of the United States warehouse act (7 U.S.C. § 241 et seq.).

(e) The secretary may investigate any applicant making application for an original license for the purpose of determining if such person would be qualified to receive such license under the provisions of this section.

(f) (1) Every application for a public warehouse license shall be accompanied by a *functional unit* license fee ~~which shall be determined and fixed by the secretary by rules and regulations. The license fee~~

~~shall not be more than the applicable amount shown in the following fee schedule plus not more than \$500 for each functional unit: not to exceed \$500 for each functional unit, plus a storage fee based on the total storage capacity of each warehouse, which is the total capacity of all functional units operated by a licensee. Both the functional unit license fee and the storage fee shall be determined by the secretary in rules and regulations, except that the storage fee shall not exceed the following amounts:~~

Total Grain Warehouse Capacity in Bushels	ANNUAL STORAGE FEE
	Not more than
1 to 100,000.....	\$500.00 \$740
100,001 to 150,000.....	525 800
150,001 to 250,000.....	550 850
250,001 to 300,000.....	600 910
300,001 to 350,000.....	625 960
350,001 to 400,000.....	650 1,020
400,001 to 450,000.....	700 1,060
450,001 to 500,000.....	725 1,120
500,001 to 600,000.....	775 1,160
600,001 to 700,000.....	800 1,220
700,001 to 800,000.....	850 1,570
800,001 to 900,000.....	875 1,620
900,001 to 1,000,000.....	900 1,660
1,000,001 to 1,750,000.....	1225 2,260
1,750,001 to 2,500,000.....	1400 2,590
2,500,001 to 5,000,000.....	1750 3,230
5,000,001 to 7,500,000.....	2100 3,880
7,500,001 to 10,000,000.....	2375 4,390
10,000,001 to 12,500,000.....	2600 4,810
12,500,001 to 15,000,000.....	2800 5,180
15,000,001 to 17,500,000.....	3000 5,550
17,500,001 to 20,000,000.....	3225 5,960
For each 2,500,000 bushels or fraction over 20,000,000 bushels	350 650

(2) Whenever a licensed warehouseman purchases or acquires additional facilities, the warehouseman, if otherwise qualified, may acquire a license for the remainder of an unexpired license period by paying to the secretary a license fee computed as follows: If the unexpired license period is nine months or more, the ~~annual~~ fee; if the unexpired license period is more than six months and less than nine months, 75% of the ~~annual~~ fee; if the unexpired license period is more than three months and ~~not more~~ less than six months, 50% of the ~~annual~~ fee; and if the unexpired license period is three months or less than three months, 25% of the ~~annual~~ fee.

(3) In addition to any other applicable fee, the secretary shall charge and collect a fee each time a public warehouse license is amended in an amount of not more than \$300 which shall be determined and fixed by the secretary by rules and regulations.

(4) Nothing in this subsection shall be construed to authorize a refund for any unused portion of an issued license.

(g) The secretary shall examine each warehouse operated by a licensed public warehouseman ~~at least once in~~ *not less than once during each ~~12-month~~ 18-month period, but examinations may be conducted more frequently as the secretary determines is necessary to protect the public.* The licensed public warehouseman may request additional examinations of any warehouse operated by the warehouseman. The cost of additional examinations when requested by the warehouseman shall be charged to the warehouseman requesting the examination. The cost of each additional examination requested by a warehouseman shall be an amount determined therefor in accordance

with an hourly rate fixed by the secretary of not more than \$50 per hour, subject to a minimum charge of four hours for the examination, plus amounts for subsistence expense at the rate fixed under K.S.A. 75-3207a, and amendments thereto, and for mileage expense in accordance with the schedule of charges established under K.S.A. 75-4607, and amendments thereto. The secretary, at the secretary's discretion, may make additional examinations of a warehouse and if a discrepancy is found on that examination, or if one was found on the last previous examination, the cost of the examination shall be paid by the warehouseman.

(h) When the secretary authorizes a grain handling facility to be physically monitored, pursuant to ~~subsection (a)(3) of~~ K.S.A. 34-102(a)(3), and amendments thereto, the cost and expenses of the monitoring shall be paid by the owner of the facility at the same rates fixed in subsection (g).

~~(i) As used in this section, "functional unit" means a public warehouse which has the capacity to store, weigh in and weigh out grain. Any outlying storage facility which is not a functional unit shall have its storage capacity included as part of the combined capacity of the warehouseman's nearest functional unit.~~

Sec. 3. K.S.A. 34-2,107 is hereby amended to read as follows: 34-2,107. The owner of grain held in storage by a public warehouseman, as defined in K.S.A. 34-223, *and amendments thereto*, in this state, whether such grain is held under open storage or pursuant to the issuance of a warehouse receipt, shall have a prior right to such grain against any other person, subject only to the payment of accrued warehouse charges and the satisfaction of any lien or liens upon such grain and valid against the owner thereof, until the grain is either removed from storage by the owner or sold by the owner.

~~As used in this section, the term "open storage" means the storage of grain pursuant to the issuance of a scale ticket regardless of whether the grain is retained in the warehouse or elsewhere; and the term "owner" means the holder of any warehouse receipt or receipts or of any scale ticket or tickets for grain held in storage by a public warehouseman.~~

Sec. 4. K.S.A. 34-2,111 is hereby amended to read as follows: 34-2,111. (a) Whenever a public warehouseman offers to purchase grain pursuant to a grain purchase contract which includes provision for deferred payment or delayed pricing of the grain, the public warehouseman shall inform the seller that such grain purchase contract is a voluntary extension of credit and is not protected by the surety bond or letter of credit, pursuant to K.S.A. 34-229, and amendments thereto, of the public warehouseman.

(b) Each grain purchase contract which contains a provision for deferred payment or delayed pricing, or both such provisions, shall be in writing and shall include the following statement: "THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT BY THE SELLER TO THE PUBLIC WAREHOUSEMAN AND IS NOT PROTECTED BY THE SURETY BOND OR LETTER OF CREDIT OF THE PUBLIC WAREHOUSEMAN." The statement shall be prominently displayed in capital letters ~~which that~~ are at least as large as 10-point type and shall be followed by a signature line ~~which that~~ has the following statement in parentheses under the line: "Must be signed by seller." Such statements and signature line shall be framed in a box and placed on the first page of the grain purchase contract as a part thereof so that it stands out from the other provisions of the grain purchase contract.

(c) If a public warehouseman has entered into a written grain purchase contract with a seller that produced the grain and if such grain purchase contract provides for either deferred payment or delayed

pricing, or both, then, upon demand of the seller made after delivery of such grain to the public warehouseman, the public warehouseman shall cause a financial institution to issue to the seller a standby letter of credit in the amount of the unpaid balance under the grain purchase contract at the time such demand is made. Each public warehouseman who offers to enter into such a grain purchase contract with any seller that produced the grain shall post a sign providing public notice of the availability of such standby letter of credit.

~~(d) As used in this section:~~

~~(1) "Deferred payment" means any payment to be made under the terms of a grain purchase contract after delivery of the grain to the public warehouseman;~~

~~(2) "delayed pricing" means any method of pricing grain under the terms of a grain purchase contract after such grain has been delivered to the public warehouseman;~~

~~(3) "financial institution" means any institution whose deposits, shares or accounts are insured by a federal agency or banks for cooperatives created under title III of the farm credit act of 1971;~~

~~(4) "standby letter of credit" means a letter of credit within the meaning of K.S.A. 84-5-103(1)(a), and amendments thereto, which, by its terms:~~

~~(A) Is irrevocable;~~

~~(B) is nontransferable;~~

~~(C) names the seller that produced the grain as beneficiary;~~

~~(D) shall not expire earlier than 60 days after the final payment is due under the terms of the underlying grain purchase contract; and~~

~~(E) cannot be drawn upon by the beneficiary in the absence of a default in payment under the terms of the underlying grain purchase contract;~~

~~(5) "unpaid balance" means that portion of the purchase price, together with interest thereon, if any, remaining unpaid to the seller under the terms of a grain purchase contract at the time the seller makes demand as provided in this section. Where the grain purchase contract provides for delayed pricing and the price has not been established at the time demand is made by the seller, then, for the purposes of this section only, the unpaid balance shall be determined as though the price had been established at the time of the closing of the relevant futures market on the last trading day before demand is made by the seller under this section.~~

~~(e) As used in this section, the words and phrases defined in K.S.A. 34-223, and amendments thereto, shall have the meanings ascribed to them in that statute.~~

~~(f)(d) This section shall be construed as a part of and supplemental to the statutes contained in article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto.~~

Sec. 5. K.S.A. 2020 Supp. 34-2,112 is hereby amended to read as follows: 34-2,112. (a) Whenever any amount of grain is received in any public warehouse from a producer and is sold by the producer, or if a grain producer delivers grain for sale pursuant to an agreement with the public warehouseman for deferred payment or deferred pricing, and if upon demand for payment by the producer, the warehouseman fails to make full payment as due or makes payment by check that fails because of insufficient funds to clear the bank or other financial institution on which it is drawn within 15 days after the date the check is issued or the demand is made, excluding Saturdays, Sundays and holidays, the sale of such amount of grain may be voided by the producer by notifying the public warehouseman in writing that the sale is void. In any such case, the public warehouseman shall include such amount of grain in the public warehouseman's daily position record and

other records as an open storage obligation upon receiving such written notice voiding the sale.

~~(b) As used in this section, the words and phrases defined in K.S.A. 34-223, and amendments thereto, shall have the meanings ascribed to them in that statute.~~

~~(e)(b)~~ This section shall be ~~construed~~ as a part of and supplemental to the statutes contained in article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 6. K.S.A. 34-136, 34-2,107 and 34-2,111 and K.S.A. 2020 Supp. 34-223, 34-228 and 34-2,112 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.