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Requirements for Grain Warehouses:

Kansas



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Requirements for Grain Warehouses: Kansas

Fast find:

- 1) Licensing: [§§ 34-228; 230; 298 to 299](#)
- 2) Bonding: [§§ 34-229; 2,104; 2,111](#)
- 3) Auditing: [§§ 34-230A; 249A; 251; 295A to 295B; 2,104; 2,110](#)
- 4) Indemnity Fund:
- 5) Failure/Liquidation: [§ 34-2,104](#)
- 6) Prompt Payment: [§ 34-2,112](#)
- 7) Penalties: [§§ 34-102; 111](#)
- 8) Lien: [§§ 34-266 to 276](#)

KA St. Ch. 34, Art. 1 to 2

Current through acts received as of April 24th from the 2020 Legislative Session.

34-101. Warehouses; supervision of; warehouse fee fund created.

- (a) The Kansas department of agriculture shall have supervision and regulation of all warehouses operated under the Kansas public warehouse laws relating to storage of grain.
- (b) The Kansas department of agriculture shall have the authority to cooperate with any private entity or organization or local, state or national organization or agency, whether voluntary or created by the law of any state, or by national law, engaged in work or activities similar to the work and activities of the department, and to enter into contracts and agreements with such entities, organizations or agencies for carrying on a joint campaign of development, education and publicity.
- (c) No provision of this section shall be construed to prohibit or prevent the secretary of agriculture or any authorized representatives from inspecting any weighing or measuring device or otherwise performing any of the secretary's duties pursuant to any provision of chapter 83 of Kansas Statutes Annotated, and amendments thereto.
- (d)
- (1) There is hereby created the warehouse fee fund in the state treasury. The secretary shall remit all moneys received by or for the secretary from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the warehouse fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports

issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

(2) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the warehouse fee fund interest earnings based on:

(A) The average daily balance of moneys in the warehouse fee fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

34-101b. Warehouse examining procedures; federal cooperation; contracts.

(a) The secretary of agriculture is authorized and empowered to enter into contracts and agreements necessary to cooperate with the commodity credit corporation, a public corporation organized under the laws of the United States or other federal agencies to make uniform the procedures followed in examining state licensed public grain warehouses and to make available to the commodity credit corporation or other federal agencies the information acquired under such examining procedures by state warehouse examiners.

(b) The secretary of agriculture is authorized and empowered to enter into contracts and agreements necessary to cooperate with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out the purpose and provisions of this chapter and the United States warehouse act, 7 U.S.C.A., section 241, et seq. Notwithstanding any other provisions of this chapter, such agreements may relate to a joint program for licensing and bonding. Such a program may be designed to avoid duplication of effort on the part of the licensing authority and requirements for operation, and promote more efficient enforcement of the provisions of this chapter and comparable provisions of the laws of the states of Nebraska, Colorado, Missouri and Oklahoma.

34-101c. Warehouse examining procedures; contracts with federal corporations and agencies; disposition of moneys received; warehouse fee fund.

Any contracts entered into pursuant to K.S.A. 34-101b, and amendments thereto, may provide for reimbursement to the Kansas department of agriculture by the commodity credit corporation for such services so performed and furnished, and any money received pursuant to the terms of such contracts shall be deposited in the warehouse fee fund.

34-102. Duties of secretary; penalties.

(a) The secretary shall:

(1) Adopt any rules and regulations necessary to enforce the laws of this state relating to storage of grain and management of public warehouses;

(2) investigate all complaints of, and to the extent possible correct occurrences of, fraud or oppression in the grain trade; and

(3) investigate and, at the secretary's discretion, monitor a grain handling facility when the secretary believes it is operating as a public grain warehouse without a valid federal or state warehouse license.

(b) Violation of any provision of this section is a class B misdemeanor.

(c) No provision of this section shall be construed to prohibit or prevent either the secretary of agriculture or the secretary's authorized representatives from inspecting any weighing or measuring device or otherwise performing any of the secretary's duties pursuant to any provision of chapter 83 of Kansas Statutes Annotated, and amendments thereto.

34-111. Duties of attorney general and county or district attorney.

(a) The secretary shall have the duty to report in writing to the attorney general and to the county or district attorney of the county where the grain warehouse is located:

(1) Any finding by an examiner of the department that there is a substantial shortage in the amount of grain in a grain warehouse and that the shortage is not adequately accounted for; and

(2) any complaint which is referred to the secretary pursuant to K.S.A. 34-121, and amendments thereto, and which the secretary reasonably believes is a basis for prosecution.

(b) In any criminal prosecution against a warehouseman for a violation of any provision of this act, it shall be the duty of the attorney general to prosecute the suit to a final determination. Upon request by the attorney general, the county or district attorney of the county or district where the suit is being prosecuted shall assist the attorney general in the prosecution.

34-125. Charges by grain warehouses; minimum-maximum schedule; determined by the secretary.

(a) The secretary, prior to June 1 each year, shall determine a schedule of maximum and minimum charges to be made by public grain warehouses, licensed under the laws of the state of Kansas, for the storage of grain and for such other and extraordinary services performed or to be performed by such licensed public grain warehousemen during the ensuing license year. Such charges made by such warehouse shall be filed with the Kansas department of agriculture and such warehouse shall not be required to refile such charges unless such warehouse is changing such charges that are posted or until such time that the charges are changed by the secretary.

(b) If any of such charges be changed from those previously in effect the secretary shall notify all currently licensed public warehousemen of such schedule of maximum and minimum charges.

34-126. Policy of Kansas concerning high-quality grain.

It is declared to be the policy of the state of Kansas to: (1) Promote the production of high-quality grain; (2) promote storage and handling practices which will assist in the maintenance of grain quality; and (3) promote the marketing of grain of high quality to both domestic and foreign buyers. The objective of this policy is to provide greater economic incentives for production and sale of high-quality grain.

34-128. Abolishment of state grain inspection department; transfer of limited powers and duties.

On and after September 1, 1997:

(a) The Kansas state grain inspection department established by K.S.A. 34-101 is hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the Kansas state grain inspection department and the director of the Kansas state grain inspection department concerning public warehouses are hereby transferred to and conferred and imposed upon the department of agriculture and the secretary of agriculture.

(c) Except as otherwise provided by this act, all of the powers, duties and functions of the Kansas state grain inspection department and the director of the Kansas state grain inspection department concerning grain inspection are hereby governed by the grain inspection, packers, stockyards administration of the United States department of agriculture.

34-129. Same; transfer of limited powers, duties and functions from grain inspection to department of agriculture; successor thereto; rules and regulations; title to property.

On and after September 1, 1997:

(a) Except as otherwise provided by this act, the department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties and functions of the Kansas state grain inspection department and the director of the Kansas state grain inspection department concerning public warehouses in which the same were vested prior to the effective date of this section. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of agriculture and the secretary of agriculture shall be deemed to have the same force and effect as if performed by the Kansas state grain inspection department and the director of the Kansas state grain inspection department, respectively, in which such powers, duties and functions were vested prior to the effective date of this section.

(b) Except as otherwise provided by this act, whenever the Kansas state grain inspection department, or words of like effect concerning public warehouses, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the department of agriculture.

(c) Except as otherwise provided by this act, whenever the director of the Kansas state grain inspection department, or words of like effect concerning public warehouses, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture.

(d) All rules and regulations of the Kansas state grain inspection department and the director of the Kansas state grain inspection department concerning public warehouses in existence on the effective date of this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture until revised, amended, revoked or nullified pursuant to law.

(e) All orders and directives of the Kansas state grain inspection department and the director of the Kansas state grain inspection department concerning public warehouses in existence on the effective date of this section shall continue to be effective and shall be deemed to be orders and directives of the department of agriculture until revised, amended or nullified pursuant to law.

(f) On the effective date of this act, the department of agriculture shall succeed to whatever right, title or interest the Kansas state grain inspection department has acquired in any real property in this state concerning public warehouses, and the department shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the Kansas state

grain inspection department and the director of the Kansas state grain inspection department concerning public warehouses to acquire, hold or dispose of real property or any interest therein, the department of agriculture shall succeed to such power or authority.

(g) The department of agriculture and the secretary of agriculture shall be continuations of the Kansas state grain inspection department and the director of the Kansas state grain inspection department concerning public warehouses.

34-130. Same; officers and employees transferred; benefits and rights.

Except as otherwise provided in this act, on September 1, 1997, officers and employees who, immediately prior to such date, were in positions engaged in the performance of powers, duties or functions of the Kansas state grain inspection department concerning public warehouses which are transferred by this act, or who become a part of the department of agriculture, or the powers, duties and functions of which are transferred to the department of agriculture, and if, in the opinion of the secretary of agriculture, those positions are necessary to perform the powers, duties and functions of the department of agriculture concerning public warehouses, shall be transferred to, and shall become officers and employees of the department of agriculture. Any such officer or employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such officer or employee prior to the effective date of this section. The service of each such officer and employee so transferred shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder.

34-131. Same; abolishment of positions determined to be unnecessary.

(a) Those positions in the grain inspection department which, in the opinion of the secretary of agriculture, are not necessary to perform the powers, duties and functions of the department of agriculture concerning public warehouses shall be abolished upon September 1, 1997. Thirty-day notice prior to September 1, 1997, shall be given by the secretary to employees in those positions determined to be unnecessary by the secretary. No bumping rights shall attach to the positions deemed unnecessary by the secretary of agriculture. No further action shall be required in order to abolish these positions.

(b) The provisions of this section shall take effect on and after August 1, 1997.

34-132. Same; conflicts as to power, function or duty to be resolved by governor.

On and after September 1, 1997:

(a) When any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The Kansas department of agriculture shall succeed to all property and records concerning public warehouses which were used for or pertain to the performance of the powers, duties and functions transferred to the Kansas department of agriculture. Any conflict as to the proper disposition of property or records arising under this section, and resulting from the transfer or attachment of any state agency, or all or part of the powers, duties and functions thereof, shall be determined by the governor, whose decision shall be final.

34-133. Same; legal custody of records transferred; no abatement of suits, actions or proceedings.

On and after September 1, 1997:

(a) The Kansas department of agriculture shall have the legal custody of all records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the Kansas state grain inspection department concerning public warehouses and any agency or office transferred thereto under this act.

(b) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(c) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

34-134. Same; balance of funds and liabilities transferred.

On and after September 1, 1997:

(a) The balance of all funds appropriated and reappropriated to the Kansas state grain inspection department concerning public warehouses is hereby transferred to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) The liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the Kansas state grain inspection department concerning public warehouses, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, shall be assumed and paid by the Kansas department of agriculture.

34-135. Same; transfer of property; valuing and selling property; fee fund transferred.

(a) On and after September 1, 1997, the department of agriculture shall succeed to whatever right, title or interest the Kansas state grain inspection department has acquired in any property in this state concerning grain inspection, including equipment and supplies from the protein laboratories and inspection laboratories. The director of Kansas correctional industries, or the director's designee, pursuant to the director's duties as operator of the state surplus property program, shall place a fair market value on such property. Upon receipt of such fair market value, the secretary shall offer for sale, at the fair market value, all property acquired in such transfer in a single lot to the entity that has been designated by the grain inspection, packers and stockyards administration as the official agency pursuant to the United States grain standards act. If such designated agency declines to purchase such property, the secretary shall offer for sale such property to the general public. All revenue received pursuant to such sale shall be deposited in the state treasury and credited to the grain inspection fee fund.

(b) On September 1, 1997, the grain inspection fee fund and all records of the grain inspection fee fund are hereby transferred to the secretary of agriculture for the purposes of this section.

(c) On and after September 1, 1997, all expenditures from the grain inspection fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or the secretary's designee. On and after September 1, 1997, the secretary of agriculture shall pay all outstanding liabilities of the grain inspection fee fund as evidenced by encumbrances of moneys credited to the grain inspection fee fund. After such payment of all outstanding liabilities of the grain inspection fee fund, the secretary of agriculture shall transfer the amount of money equal to the amount of money credited to the grain inspection fee fund on December 1, 1993, from the grain inspection fee fund to the warehouse fee fund, created in K.S.A. 34-101, and amendments thereto. The remaining moneys credited to the grain inspection fee fund shall be maintained in such fund. Such moneys shall be expended only if necessary to reestablish or designate a state agency pursuant to statute to perform the duties and functions of grain inspection. On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the warehouse fee fund interest earnings based on:

(1) The average daily balance of moneys in the grain inspection fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) The secretary may maintain the leases of the grain inspection department until October 1, 1997.

34-136. Rules and regulations.

On and after September 1, 1997, the secretary of agriculture may adopt rules and regulations necessary for the administration and enforcement of the provisions of chapter 160 of the 1997 Session Laws of Kansas, and amendments thereto.

34-223. Definitions.

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 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 agriculture.

(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.

34-227b. Rules for operation of grain bank grain.

Grain bank grain shall be considered as storage grain and shall be subject to the laws and rules and regulations pertaining thereto until such time as such grain is either processed or removed from the warehouse. The secretary is authorized to adopt and enforce reasonable rules and regulations necessary in the conduct of grain bank operations in public warehouses.

34-228. Warehouseman's license; application; financial statement; waiver; qualifications; license fee; examination of warehouse.

(a) Any person desiring to engage in business as a public warehouseman in this state shall, before the transaction of any such business, 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 the names of the president and secretary, and such further 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. 2013 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 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:

Capacity in Bushels

ANNUAL FEE

Not more than

1 to 100,000

\$ 500.00

100,001 to 150,000

525

150,001 to 250,000

550

250,001 to 300,000

600

300,001 to 350,000

625

350,001 to 400,000

650

400,001 to 450,000

700

450,001 to 500,000

725

500,001 to 600,000

775

600,001 to 700,000

800

700,001 to 800,000

850

800,001 to 900,000

875

900,001 to 1,000,000

900

1,000,001 to 1,750,000

1225

1,750,001 to 2,500,000

1400

2,500,001 to 5,000,000

1750

5,000,001 to 7,500,000

2100

7,500,001 to 10,000,000

2375

10,000,001 to 12,500,000

2600

12,500,001 to 15,000,000

2800

15,000,001 to 17,500,000

3000

17,500,001 to 20,000,000

3225

For each 2,500,000 bushels or

350

fraction over 20,000,000 bushels

(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 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 each 12-month period. 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, 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.

34-229. Bond or letter of credit; amount; conditions; multiple warehouses; actions thereon; certificate of information, penalty for failure to post.

(a) Every applicant for a public warehouse license upon notification by the secretary of the amount of bond or letter of credit required, shall promptly file with the secretary a bond with good corporate surety qualified under the laws of the state of Kansas or letter of credit pursuant to subsection (d). The amount of the bond or letter of credit to be furnished for each warehouse shall be \$.20 per bushel for the first 1,000,000 bushels of licensed capacity; \$.15 per bushel for the next 1,000,000 of licensed capacity; and \$.10 per bushel for all licensed capacity over 2,000,000 bushels. Except as provided further, in no event shall the bond or letter of credit be for an amount less than \$ 10,000 nor more than \$ 500,000.

(b) If an applicant for a license or a licensee at any time does not have the total net worth required by K.S.A. 34-228, and amendments thereto, an amount equal to the deficiency shall be added to the amount of the bond required by subsection (a) or letter of credit required by subsection (d).

(c) The bond shall be in favor of the state of Kansas for the benefit of all persons interested, their legal representatives, attorneys or assigns and shall be conditioned on the faithful performance of all the licensee's duties as a public warehouseman and such additional obligations as assumed by the warehouseman under contracts with a federal agency relating to storage of grain in each warehouse. Any person injured by the breach of any obligation of the warehouseman may commence suit on the bond or letter of credit in any court of competent jurisdiction to recover damages that the person has sustained, but any suit commenced shall either be a class action or shall join as parties plaintiff or parties defendant or other persons who may be affected by such suit on the bond or letter of credit. No bond shall be canceled by the surety on less than 60 days' notice by mail to the secretary and the principal except that no such notice shall be required for cancellation of any bond by reason of nonpayment of the premium thereon. The liability of the surety on the bond may continue for each successive license period the bond covers. The total liability of the surety shall be limited to the amount stated on the current bond or on an appropriate rider or endorsement to the current bond. It is the intent of this statute that the bonds be nonaccumulative, that stacking of bonds not occur in excess of the face value of the current bond.

(d) In lieu of a bond, a warehouseman may file with the secretary an irrevocable letter of credit in the amount equal to or greater than the amount of bond required in subsection (a). Such irrevocable letter of credit shall: (1) Be issued by a financial institution which is insured by the federal deposit insurance corporation or issued by farm credit institutions chartered by the farm credit administration; (2) be issued for a period at least six months longer than the expiration date of the underlying license; (3) provide for payment to the state of Kansas for the security liability of the warehouseman; and (4) be on a form approved by the secretary.

(e) If a person applies for licenses for two or more separate public warehouses in this state, the person may give a single bond or letter of credit covering all the applications, and the amount of the bond or letter of credit shall be the total amounts which would be required for the applications if separate bonds or letters of credit were given. In computing the amount of the single bond or letter of credit the warehouseman may add together the capacity of all warehouses to be covered by the bond or letter of credit and use the aggregate capacity for the purpose of computing the bond or letter of credit. If a warehouseman elects to provide a single bond or letter of credit for a number of warehouses, the total assets of all the warehouses shall be subject to liabilities of each individual warehouse.

(f) Whenever the director determines that any bond or letter of credit given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of the bond or letter of credit, the secretary shall require any additional bond or letter of credit that the secretary considers necessary to provide adequate security. If the secretary considers the financial condition of the surety upon any warehouseman and the warehouseman's bond or letter of credit to be impaired, the secretary shall require any substituted or additional bond or letter of credit that the secretary considers necessary.

(g) In all actions hereafter commenced in which judgment is rendered against any surety company on any surety bond furnished or any financial institution on any letter of credit issued under the provisions of this section, if it appears from the evidence that the surety company or financial institution has refused without just cause to pay the loss upon demand, the court shall allow the plaintiff a reasonable sum as attorney fees to be recovered and collected as a part of the costs. When a tender is made by the surety company or financial institution before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of the tender, no such costs shall be allowed

(h) Each licensed public warehouseman shall obtain a certificate setting forth the amount and terms of the bond or letter of credit filed with the secretary pursuant to this section, the name of the corporate surety or financial institution therefor and such other information as the secretary may prescribe by rules and regulations. The certificate of bond or letter of credit information shall be posted in a conspicuous place in the office room of the licensed warehouse, adjacent to the license posted as required by K.S.A. 34-230, and amendments thereto, at all times during the operation of the warehouse.

(i) Transaction of any public warehouse business at any public warehouse without having the certificate of bond or letter of credit information displayed in the office room of the public warehouse as required by this section is a class C nonperson misdemeanor.

34-230. License; issuance, when; renewal; posting; suspension or revocation; appeal.

(a) Upon receiving the application and financial statement required by this act, the secretary shall make an investigation and inspection of the warehouse or warehouses covered by the application. The secretary may issue a license to the applicant if:

(1) The applicant furnishes the bond or letter of credit required by K.S.A. 34-229, and amendments thereto;

(2) the warehouse or warehouses are found suitable for the proper storage of grain for which a license is applied for; and

(3) the applicant complies with all requirements for licensure prescribed by this act and rules and regulations adopted under this act.

(b) Every license shall be dated and shall designate the name of the licensee and the location of the licensed warehouse or warehouses.

(c) Each license shall expire one year from the date of its issuance except that, for the purpose of equitably distributing application dates of warehouse licenses throughout each calendar year, the secretary may issue licenses for periods longer than one year but not longer than two years. Licenses for periods longer than one year shall be charged the annual license fee, plus a monthly fee in proportion to the annual license fee for the number of months the license is issued beyond one year.

(d) Any licensee making application for renewal of a license shall submit the application, together with the licensee's financial statement and any additional information required, at least 30 days prior to the date of expiration of the licensee's current license. For each day that the licensee is late in submitting the application and required information, the licensee shall be penalized an additional fee of \$ 5.

(e) The license shall be posted in a conspicuous place in the office room of the licensed warehouse at all times during the operation of the warehouse.

(f) If a licensee is convicted of any violation of the provisions of this act or if the secretary determines that a licensee does not comply with any requirement for licensure or has violated any provision of this act or of the rules and regulations adopted under this act, the secretary may at the secretary's discretion suspend or revoke the license of the licensee. All proceedings for the suspension or revocation of licenses shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(g) The licensee, if dissatisfied with the order of the secretary, may appeal in the manner provided by law.

34-230a. Hearings; powers of secretary.

The secretary shall have power in the conduct of any hearing authorized to be held by the secretary to examine, or cause to be examined, under oath, any person, and to examine or cause to be examined, books and records of any licensee; to hear testimony and take proof material for the secretary's information in the discharge of such duties under this act; to administer or cause to be administered oaths; and for any such purposes to issue subpoenas, to require the attendance of witnesses and the production of books which shall be effective in any part of this state. Any district court, or any judge thereof, either in term time or in vacation, may by order duly entered, require the attendance of witnesses and the production of relevant books and records subpoenaed by the secretary. The court or judge may compel obedience to the court's or judge's order by proceedings for contempt.

34-230b. Injunction proceedings; how prosecuted.

The secretary may enjoin a warehouseman from violating or continuing to violate the provisions of chapter 34 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted by the secretary pursuant to such laws by filing injunction proceedings in the district court. In any such proceedings the district court, if it deems it proper, may order such warehouseman to not receive any more grain into such warehouse or to deliver any grain therefrom except as the court by its order shall direct. Such injunction proceeding shall be prosecuted by the attorney general or the county attorney of the proper county upon request of the secretary.

34-231. Penalty for failure to obtain license; refusal to reissue revoked license, when.

(a) Transaction of any public warehouse business at any public warehouse without a currently valid public warehouse license for that warehouse or without having the license displayed in the office room of the warehouse is a class C misdemeanor.

(b) The secretary may refuse to renew any license or grant a new one to any person whose license has been revoked within one year from the time of the revocation.

34-233. Storage in public warehouses; grain samples; weight certificates.

(a) Every public warehouseman shall receive for storage or shipment, so far as the available capacity of the warehouse shall permit, all grain in a suitable condition for storage tendered to the warehouseman in the usual course of business, without discrimination of any kind. A representative sample of grain offered for storage shall be taken and agreed upon both by the

owner and the warehouseman as being a true and representative sample of the lot of grain offered for storage.

(b) If the owner of the grain and the warehouseman agree as to the grade, the grain may be stored and warehouse receipt issued on the agreed grade, but either party shall have an official inspection if such party so elects at the time of storing the grain by submitting an agreed sample to an inspector designated by the secretary. The fees for the inspection of such sample shall be paid by the warehouseman and added to the storage charges of the grain.

(c) All grain taken into a public warehouse shall be carefully weighed by the warehouseman or one of the warehouseman's employees and a certificate of weight in the form approved by the secretary shall be issued and the weight so shown by the certificate shall be stated on the warehouse receipt. When grain is delivered out of storage at a public warehouse and if either of the parties to the transaction requests or if any dispute or disagreement arises between the party receiving and the party delivering the grain, the same method of determining the grade shall be used as prescribed for taking grain into storage. Any warehouseman desiring to issue warehouse receipts against the warehouseman's own grain in store may do so by complying with the regulations governing the methods of taking samples of grain tendered for storage and the secretary may designate the manner in which a sample shall be taken if grain is delivered on warehouse receipts at the public warehouses.

34-234. Withholding grain from storage; notice; penalty for refusal to comply.

(a) If an owner or consignee of grain is dissatisfied with the inspection or grade of any lot of grain or for any reason wants to receive the owner's or consignee's grain without its passing into store, the owner or consignee may have the grain withheld from going into the public warehouse (whether or not the grain has previously been consigned to the public warehouse) by giving notice to the person or entity possessing the grain at the time of giving the notice. The grain shall be withheld from going into store and be delivered to the owner or consignee subject only to those proper charges that are a lien upon the grain before the notice is given. If the grain is in railroad cars, it shall be removed by the owner or consignor within 24 hours after the notice is given to the railroad company having the grain in its possession, and the railroad company shall place the grain in a proper and convenient place for unloading.

(b) Notice that grain is not to be delivered into storage may also be given to the proprietor of any public warehouse to which it would otherwise have been delivered, and after notice is given, the warehouse shall not take the grain into storage.

(c) If, after notice is given as provided in this section, the person or entity in possession of grain refuses to allow the owner or consignee to have the grain or the warehouse takes the grain into storage, the person, entity or proprietor of the warehouse is guilty of a class C misdemeanor and shall be liable to the owner or consignee of the grain for damages for conversion.

34-235. Schedule of charges; approval by secretary; changes in schedule.

The owner, operator or manager of any public warehouse before being licensed under the laws of this state to conduct a grain warehouse shall file with the secretary a schedule of charges to be made by such owner, operator or manager for storage of grain if licensed. The secretary shall have authority to determine whether such schedule of charges is reasonable and proper, but in no case shall such schedule of charges filed by a local public warehouse be less than the

schedule of minimum charges or exceed the schedule of maximum charges as established by the secretary pursuant to the provisions of K.S.A. 34-125, and amendments thereto.

The amount to be charged for storage of grain as listed on the warehouseman's schedule of charges filed with the secretary as hereinabove provided shall include the cost of receiving, unloading, loading, insuring, handling (except extraordinary handling), storage and delivery of grain and no additional or special charge shall be made for any such services. Any licensee may change such licensee's schedule of charges by sending the proposed new schedule to the secretary in writing and shall state the reasons therefor. It shall be unlawful for any public warehouseman to assess any charge other than those charges listed in such warehouseman's schedule of charges as filed with the secretary. Every public warehouseman shall keep posted and exposed at a conspicuous place on the premises of such public warehouse, which place shall be accessible to the public, a copy of such warehouseman's current approved schedule of charges.

34-236. Insurance.

(a) Every public warehouseman shall at all times keep the grain stored in such warehouseman's warehouse insured in some reliable insurance company authorized to do business in the state of Kansas. Such grain is to be insured for its full market value, less the deductible amount provided herein, against loss by fire, internal explosion, lightning, and tornado and failure to do so shall make the public warehouseman liable for the same on such warehouseman's bond or letter of credit for the benefit of the owner or owners and the owners of warehouse receipts and storage receipts issued by any public warehouse shall have a first lien, to the extent of the value of the grain at the time of destruction at the place where stored, on all such insurance for any loss or injury sustained by them on account of the destruction or injury of such grain by fire, internal explosion, lightning or tornado or any other cause covered by such insurance policy.

(b) Fraud or criminal act of the warehouseman to which the holder of a warehouse receipt or other interested person is not a party shall not deprive the holder of a warehouse receipt or storage receipt or other interested person of such person's right of recovery under such policy of insurance. Nothing in this act shall be construed to require the insurer to pay any loss or damage in excess of the amount of insurance effective under its policy or to pay for any loss or damage not insured against by its policy. In case of a fire, lightning or tornado, which shall destroy all or part of the grain stored in any public warehouse, the public warehouseman shall, upon demand by the owner of the grain, or holder of any warehouse receipt, or receipts, for such grain, and upon being presented with the warehouse receipt, or receipts, make settlement for the value of the grain covered by the warehouse receipt, or receipts, after deducting the warehouse charges, at the market value of same, basing said value at the average price paid for grain of the same grade at the station where the public warehouse is located on the date of the destruction. Without in any way limiting the warehouseman's liability under this section, the warehouseman may carry a standard form of insurance policy approved for grain warehousemen with a total deductible provision on the contents not to exceed \$ 10,000, except that the secretary upon a finding that it is necessary to protect the public may order that a warehouseman's total deductible provision be an amount less than \$ 10,000 as specified by the secretary.

34-237. Drying, cleaning and safekeeping of grain; removal and sale of out of condition grain, notice.

(a) Any public warehouseman on the written request of the owner of any grain stored in a private bin, upon the surrender of the receipt, or receipts, therefor, may be permitted to dry, clean or otherwise change the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, without reference to the grade it may be made by such process of drying or cleaning.

(b) Nothing in this section shall prevent any warehouseman from removing grain within such warehouseman's warehouse for its preservation or safekeeping, but no warehouseman shall be held liable for damage to grain stored in special bins by heating, unless such damage be caused by the act of the warehouseman. In case any public warehouseman shall discover that any portion of the grain stored in a special bin in such warehouseman's warehouse is out of condition or becoming so, and it is not in such warehouseman's power to preserve the same, the warehouseman shall immediately give notice to the owner, if known, and, if not known, by public notice by advertising in a newspaper of general circulation in the city in which such warehouse is situated, and by posting a notice on the warehouse bulletin board or other public place of its actual condition, as near as the warehouseman can ascertain. The warehouseman shall state in such notice the kind and grade of grain and the bin in which it is stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amount and date of each, and shall give the name of the party for whom such grain was stored, the date it was received and the amount of it, and the enumeration of receipts and identification of grain so described shall embrace as near as possible the quantity of grain contained in such bins, and such grain shall be delivered upon return and cancellation of such receipts, and the unreceipted grain upon the request of the owner or holder of the receipt or receipts.

(c) Nothing herein contained shall be held to relieve the public warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any public warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the public warehouse under the warehouseman's control, shall be liable on the warehouseman's bond or letter of credit therefor to the person damaged thereby.

(d) Nothing in this section shall be construed so as to permit any public warehouseman to deliver any grain stored in a special bin or by itself, as provided in this act, to any but the owners of the lot, or holder of the warehouse receipt, or receipts. In case the grain declared out of condition as herein provided for shall not be removed from store by the owner or holder of the warehouse receipt, or receipts, thereof within 20 days from the date of the notice of its being out of condition, it shall be lawful for the public warehouseman where the grain is stored to sell the same at public auction for account of said owner, or holder, of the warehouse receipt, or receipts, by giving 10 days' notice by advertising in a newspaper (daily, if there is such) published in the city or town where such public warehouse is located.

34-238. Warehouse receipts; issuance; furnishing by secretary.

(a) Warehouse receipts may be issued by any licensed public warehouseman and must be issued in the manner and form prescribed by this act.

(b) The form of all receipts shall be approved by the secretary. All of the expense incurred shall be paid by the department. The secretary shall distribute the warehouse receipts to licensed public warehouses at cost.

(c) All warehouse receipts shall be written upon warehouse receipt forms furnished by the department.

34-239. Form of receipt for storage grain.

Every receipt issued for grain stored in a warehouse licensed under this act shall embody within its written or printed terms: (a) The location of the warehouse where the grain is stored; (b) the statement whether the grain received will be delivered to bearer, to a specified person, or to a specified person or his order; (c) the date of the issuance of the receipt; (d) the rate of the storage charges or the basis for such charges; (e) the net weight and percentage of dockage, together with the grade; (f) the words, nonnegotiable, not negotiable, or negotiable, according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; (g) the signature of the warehouseman which may be made by his authorized agent; (h) if the receipt for grain of which the warehouseman is owner either wholly or jointly, or in common with others, the facts about such ownership; (i) a statement of the amount of the advances made or the liability incurred, for which the warehouseman claims a lien, but if the precise amount of such advances made, or of such liabilities incurred, be at the time of the issuance of the receipts unknown to the warehouseman, or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof, is sufficient.

A warehouseman shall be liable to any person injured thereby for all damages caused by the omission from a negotiable receipt of any of the terms herein required.

34-240. Warehouseman's receipt on own grain valid.

Any public warehouseman operating a warehouse in this state may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of such ownership in the receipts shall constitute notice to all the world of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by such receipts.

34-241. Transfer of grain between warehouses; form of receipt; procedure.

If grain is delivered for storage in any licensed public warehouse and the warehouseman's storage is limited, the public warehouseman may transfer grain for storage to another licensed public warehouse where storage is available. The owner of the grain may designate the receiving licensed public warehouse if a written contract to that effect has been entered into and agreed upon between the owner of the grain and the warehouseman prior to the deposit of the grain. Upon receipt of the grain by the receiving warehouseman, from the originating warehouseman, a negotiable warehouse receipt must be issued upon the demand of the owner of the grain. The warehouse receipt must be returned to the originating warehouseman, and the originating warehouseman shall deliver it to the owner upon payment of freight and all legal charges and upon the owner's surrender of any trust receipts which may have been issued by the originating warehouseman for such grain. If the grain is transferred to a receiving licensed warehouse designated by the owner of the grain, the warehouseman, in addition to his current posted public warehouse charges, may make an additional charge of one and one-half cents (1

1/2) per bushel for risk and shrinkage in transit and shall also assess the transportation and all legal charges against the owner of the grain.

34-241a. Identity preserved grain; definition; form of receipt; options for shipment to other warehouse; charges.

(a) "Identity preserved grain" means grain which is segregated from all other grain by mutual consent of the warehouseman and the depositor. The form of receipt to cover identity preserved grain taken for storage by public warehouses and to be transported to, and stored in, another licensed public warehouse shall be on a form approved by the secretary and shall embody within its written or printed terms: (1) The date of the issuance of the receipts; (2) the name of the elevator issuing the same and its location; (3) the rate of storage or the basis for such charges; (4) the net weight and percentage of dockage, together with the grade; (5) the words "trust receipt" and "not negotiable" clearly and conspicuously printed or stamped thereon; (6) the signature of the warehouseman which may be made by his authorized agent; (7) a statement of the amount of the advances made, or the liabilities incurred, for which the warehouse claims a lien. If the precise amount of advances made or liabilities incurred is, at the time of the issuance of the receipt, unknown to the warehouseman or to the warehouseman's agent who issues it, a statement of the fact that the advances have been made, or liabilities incurred, and the purpose thereof, is sufficient.

(b) The warehouseman, at the warehouseman's option, may ship carlots or trucklots of identity preserved grain to another licensed public warehouse. The owner of the grain may designate the receiving licensed public warehouse if a written contract to that effect has been entered into and agreed upon between the owner of the grain and the warehouseman prior to the deposit of the grain. The charges for handling and storage shall not exceed the current posted public warehouse charges. In addition to the public warehouse charges, the warehouseman may make an additional charge of one and one-half cents (1 1/2) per bushel for risk and shrinkage in transit and shall also assess the transportation and all legal charges against the owner of the grain.

34-242. Same; numbering; required information.

All warehouse receipts issued by any public warehouse shall be numbered consecutively and no two receipts bearing the same number shall be issued from the same warehouse during any one year. If the grain was received from a railroad car, wagon, truck or other means, the manner of its receipt shall be stated on its face

34-243. Definition of nonnegotiable receipt.

A receipt in which it is stated that the grain received will be delivered to the depositors or to any other specified person is a nonnegotiable receipt.

34-244. Definition of negotiable receipt.

A receipt in which it is stated that the grain received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provision shall be inserted in a negotiable receipt that will make it nonnegotiable. Such provisions, if inserted, shall be void.

34-245. Failure to mark nonnegotiable or not negotiable.

A nonnegotiable receipt shall be plainly printed or stamped on its face by the warehouseman issuing it "nonnegotiable" or "not negotiable." In case of the warehouseman's failure to do so, a holder of the receipt, or receipts, who purchased it for value, supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liability he would have incurred, had the receipt been negotiable. This section shall not apply, however, to letters of memorandum, or written acknowledgment of an informal character.

34-246. Warehouse receipts; issuance and cancellation; division; consolidation.

(a) No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued. No receipt or receipts may be issued for a greater quantity of grain than was contained in the lot or parcel so received for storage and not more than one receipt may be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired and then the aggregate receipts for a particular lot shall cover that lot and no more.

(b) In cases where a part of the grain represented by a receipt or receipts is delivered out of store and a remainder is left, a new receipt or receipts shall be issued in the form and manner as prescribed by the secretary. It shall be stated on the face of the new receipt or receipts that such new receipt or receipts represent the balance of the original receipt or receipts. The new receipt or receipts shall bear thereon the number or numbers of the original receipt or receipts and the original receipt or receipts, upon which a part of the grain has been delivered, shall be canceled in the manner as if all of the grain has been delivered. In case it is desirable to divide one receipt into two or more, or in case it is desirable to consolidate two or more receipts into one and the warehouseman consents thereto, the original receipt or receipts shall be canceled in the same manner as if the grain had been delivered from store. The new receipt or receipts shall express on the face thereof that such new receipt or receipts represent a part of another receipt or the consolidation of other receipts, as the case may be, and the number and date of the original receipt or receipts shall also appear on the new receipt or receipts issued in lieu thereof. No consolidation of receipts differing more than 30 days in date shall be permitted.

(c) All new receipts issued for old ones canceled as provided in this section shall bear the notation of the date of the receipt or receipts as originally issued. All receipts issued on grain in special bins shall bear the number of the bin and the notation "special bin." All divisions or consolidations shall bear the bin number of the original receipt and the notation "special bin." Upon delivery of grain from store upon any receipt issued by a public warehouse, such receipt shall be plainly marked across its face "canceled" with the date and the name of the person canceling the same and thereafter shall be void and shall not again be put in circulation. No grain shall be delivered twice upon the same receipt.

34-249a. Warehousemen to furnish on demand of secretary information regarding certain receipts and amounts of grain; monthly statement, contents, signature.

(a) Every public warehouseman conducting a public warehouse, upon demand of the secretary, shall furnish such secretary, in such form as may be required, information regarding receipts issued or canceled, amounts of grain liabilities, amounts of unencumbered grain and total amounts of grain in the public warehouse.

(b) The secretary shall require from each public warehouseman a monthly statement of stocks of grain as of the last day of the preceding month for each licensed warehouse location. The

statement shall contain such information and be in such form as may be prescribed by the secretary. Each such statement shall be signed by the licensed public warehouseman.

34-250. Obligation of warehouseman to deliver.

A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the grain upon a demand made either by the holder of a receipt for the grain, or by the depositor, if such demand is accompanied with: (a) An offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the grain is delivered, an acknowledgement that it has been delivered, if such acknowledgement is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the grain in compliance with the demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

34-251. Inspection of warehouses; procedures; access; scale tests; confidentiality of certain information, exception; penalty for disclosure.

(a) All persons owning property, or who may be interested in the same, in any public warehouse and all duly authorized examiners of such property shall be at full liberty to inspect and to examine any and all property stored in any public warehouse in the state at all times during regular business hours. All proper facilities shall be extended to such persons by the public warehouseman and the warehouseman's agents and employees for such examinations and inspection. The secretary shall inspect, or cause to be inspected by a duly authorized examiner, every warehouse, the business thereof and the mode of conducting the same at such times as the secretary deems necessary. The property, books, records, accounts, papers and proceedings kept at such warehouses, so far as they relate to the operation or management of public storage, which have reference only to the quantity, quality and insurance on grain in storage, shall be subject to examination and inspection of the secretary or the secretary's duly authorized examiner at all times during regular business hours. All scales or weighing or measuring devices used for weighing or measuring of property in public warehouses shall be subject to tests by any duly authorized inspector or weighmaster or by the secretary or the secretary's authorized representative at any time when required by any such officer, or by any person or agent whose property has been or is to be weighed on such scales.

(b) Any public warehouseman who uses scales for grain weighing that have been found on inspection to be inaccurate and that have not been pronounced correct and properly sealed shall be liable to be proceeded against as hereinafter provided.

(c) No inspector or employee of the department shall disclose any information obtained by such inspector or employee in the course of employment which is relative to the affairs or transactions of any warehouseman, other than as permitted by this act, without first having obtained the express permission in writing of such warehouseman or of the secretary, except when ordered to do so by a court of competent jurisdiction. Upon application of any person, the secretary may disclose or direct any inspector or employee of the department to disclose any information which, in the opinion of the secretary, the person making the application is entitled to receive. If any inspector or employee discloses any such information except as permitted by this act, the inspector or employee shall be guilty of a misdemeanor.

34-252. Justification of warehouseman in delivering.

A warehouseman is justified in delivering the grain, subject to the provisions of the three following sections, to one who is: (a) The person lawfully entitled to the possession of the grain, or his agent; (b) a person who is either himself entitled to the delivery by the terms of a nonnegotiable receipt issued for the grain, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper; or (c) a person in possession of a negotiable receipt by the terms of which the grains are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipts or by his mediate or immediate endorsee.

34-253. Warehouseman's liability for misdelivery.

Where a warehouseman delivers the grain to one who is not in fact lawfully entitled to the possession of same, the warehouseman shall be liable as for conversion to all having a right of property or possession in the grain if he delivered the grain otherwise than as authorized by subdivisions (b) and (c) of the preceding section, and though he delivered the grain as authorized by said subdivisions he shall be so liable if prior to such delivery he had either been requested by or on behalf of the person lawfully entitled to a right of property or possession in the grain not to make such delivery, or had information that the delivery about to be made was one not lawfully entitled to possession of the grain.

34-254. Negotiable receipts must be canceled when grain delivered.

Except as provided in K.S.A. 34-276, where a warehouseman delivers grain for which he has issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the grain, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt for failure to deliver the grain to him, whether such purchaser acquired title to the receipt before or after the delivery of the grain by the warehouseman.

34-255. Cancellation of receipts upon partial delivery of grain liability.

Except as provided in K.S.A. 34-276, when a warehouseman delivers part of the grain for which he had issued a negotiable receipt and fails to take up and cancel such receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver all the grain specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the grain by the warehouseman.

34-256. Altered receipts.

The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was (a) immaterial, (b) authorized, or (c) made without fraudulent intent. If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the grain for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

34-257a. Lost or destroyed receipts; duplicate receipt, when; form of duplicate.

Where a negotiable warehouse receipt has been lost or destroyed, the warehouseman shall issue a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued, and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, upon compliance by the claimant with the following conditions: Before issuing a duplicate receipt, the warehouseman shall require the claimant therefor to make and file with the warehouseman (1) an affidavit stating that the applicant is lawfully entitled to the possession of the original receipt; that the applicant has not negotiated or assigned it; how the original receipt was lost or destroyed; and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in the amount double the value, at the time the bond is given, of the grain represented by the lost or destroyed receipt. Such bond shall be in the form approved by the secretary and shall be conditioned to indemnify the warehouseman or any holder or other person entitled to the grain against all loss, liability or expense which he may sustain by reason of the issuance of such duplicate receipt. Such bond shall have as surety thereon a corporate surety company which is authorized to do business under the laws of the state of Kansas and is subject to service of process in this state in a suit on the bond.

34-258. Effect of duplicate receipt.

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such a receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of issue of the duplicate but shall impose upon him no other liability.

34-259. Warehouseman cannot set up title in himself.

No title or right to the possession of the grain, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor or his transferee at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the grain according to the terms of the receipt.

34-260. Interpleader of adverse claimants.

If more than one person claim the title or possession of the grain, the warehouseman may, either as a defense to an action brought against him for nondelivery of the grain, or by an original suit, whichever is appropriate, require all known claimants to interplead.

34-261. Warehouseman has reasonable time to determine validity of claims or compel interpleader.

If some one other than the depositor or person claiming under him asserts a claim to the title or possession of the grain and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the grain either to the depositor or person claiming under him, or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

34-262. Adverse title no defense.

Except as provided in the two preceding sections and in K.S.A. 34-276, no right of title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the grain according to the terms of the receipt.

34-263. Liability for care of grain.

Except as herein provided, a warehouseman shall be liable for any loss or injury to the grain caused by his failure to exercise such care in regard to it as a reasonably careful owner of similar grain would exercise.

34-264. Attachment or levy upon grain for which a negotiable receipt has been given.

If grain is delivered to a warehouseman by the owner, or by a person whose act in conveying the title to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for it, such grain cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied under an execution unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up actual possession of the grain until the receipt is surrendered to him or impounded by the courts.

34-265. Creditor's remedies to reach negotiable receipts.

A creditor whose debtor is the owner, or holder, of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in attaching such receipts or in satisfying the claim by means thereof, as is allowed by law or in equity in regard to property which cannot readily be attached or levied by ordinary legal process.

34-266. Claims included in warehouseman's lien.

Subject to the provisions of K.S.A. 34-270, a warehouseman shall have a lien on grain deposited or on the proceeds thereof in his hands for all lawful charges for storage and preservation of the grain; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperage and other charges and expenses in relation to such grain; also for reasonable charges and expenses for notice and advertisements of sale, and for sale of grain where default has been made in satisfying the warehouseman's lien.

34-267. Against what property the lien may be enforced.

Subject to the provisions of K.S.A. 34-270, a warehouseman's lien may be enforced: (a) Against all grain, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and (b) against all grain belonging to others which has been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the grain that a pledge of the same by him at the time of the deposit to one who took the grain in good faith for value would have been valid.

34-268. How lien may be lost.

A warehouseman loses his lien upon grain: (a) By surrendering possession thereof; or (b) by refusing to deliver the grain when a demand is made with which he is bound to comply with the provisions of this act.

34-269. Negotiable receipt must state charges for which lien is claimed.

If a negotiable receipt is issued for grain, the warehouseman shall have no lien thereon, except for charges for storage on such grain subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such cases there shall be a lien for the charges enumerated so far as they are within the terms of K.S.A. 34-267, although the amount of the charges so enumerated is not stated in the receipt.

34-270. Warehouseman need not deliver until lien is satisfied.

A warehouseman having a lien valid as against the person demanding the grain may refuse to deliver the grain to him until the lien is satisfied.

34-271. Warehouseman's lien does not preclude other remedies.

Whether a warehouseman has or has not a lien upon the grain, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

34-272. Satisfaction of lien by sale; notice required.

A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the grain is held, and to any other person known by the warehouseman to claim an interest in the grain. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified.

The notice shall contain: (a) An itemized statement of the warehouseman's claim showing the sum due at the time of the notice and the date or dates when it became due; (b) a brief description of the grain against which the lien exists; (c) a demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice, if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; (d) a statement that unless the claim is paid within the time specified the grain will be advertised for sale and sold at auction at a specified time and place. In accordance with the terms of a notice so given, a sale of the grain at auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the grain. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place.

After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the grain to be sold, and stating the name of the owner or person on whose account the grain is held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper of general circulation published in the place where such sale is to be held, if there be any such newspaper; but if there be no newspapers published at such place, then such advertisement of the same shall, at the option of the warehouseman, be published once a week for two consecutive weeks in some newspaper of general circulation or by posting the same in at least four conspicuous places in such place for not less than fifteen days before the date of sale. And no sale shall be held in less than fifteen days from the time of the first publication or the first posting of such advertisement.

34-273. Sale of perishable grain or grain that will injure other property; warehouseman's duty of care; liability for neglect.

(a) In case any public warehouseman discovers that any grain stored in such warehouseman's warehouse, other than in special bins, is out of condition or is becoming so and that it is not in such warehouseman's power to preserve the grain, such warehouseman shall immediately give such notice of that fact as is reasonable and possible under the circumstances to the owner of such grain or to the person in whose name the grain is stored and shall also give notice of that fact to the secretary.

(b) The secretary, unless otherwise requested by the owner of such grain or the person in whose name the grain is stored, shall cause an inspection to be made of the grain. If it is found on such inspection that the grain is out of condition, or is becoming so, and the owner of the grain fails to promptly remove it, the warehouseman may sell the grain upon giving the same public notice of sale as is required by this act for the sale of grain to satisfy the lien of a warehouseman, except that the grain may be sold at either public or private sale without advertising if, in the opinion of the secretary, such grain should be sold without delay and written authority to make sale without advertisement is given by the secretary to the warehouseman. For the purpose of this section, the owner of such grain shall be deemed to be the holder of warehouse receipts of the oldest dates then in circulation or uncanceled and the grain represented by which has not previously been declared out of condition.

(c) Nothing herein contained shall be held to relieve any warehouseman from exercising due care and vigilance in preserving any such grain after discovery that the same is out of condition, or is becoming so, but such grain shall be kept separate and apart from all direct contact with other grain and shall not be mixed with other grain while in store in such warehouse. Any public warehouseman guilty of any act of neglect which has the effect of depreciating property stored in a public warehouse under the warehouseman's control, shall be liable on the warehouseman's bond or letter of credit therefor to the person damaged thereby. After grain has been sold as authorized by this section, the warehouseman shall not be liable thereafter for the delivery of such grain even though the receipt therefor is negotiable, but shall be liable as a trustee for the amount of the proceeds of such sale in excess of the amount of any lawful charges for which the warehouseman had a lien at the time of such sale.

34-274. Disposition of proceeds of sale.

All grains sold for the satisfaction of warehouseman's lien shall be sold at public sale to the highest and best bidder for cash in hand. From proceeds of such sale, the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the grain. At any time before the grain is sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notice and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the grain to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the grain on payment of charges thereon. Otherwise the warehouseman shall retain possession of the grain according to the terms of the original contract of deposit.

34-275. Other methods of enforcing liens not precluded.

The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

34-276. Effect of sale.

After the grain has been lawfully sold to satisfy warehouseman's lien, or has been lawfully sold or disposed of for any other cause, the warehouseman shall not thereafter be liable for failure to deliver the grain to the depositor or owner of the grain, or to a holder of a receipt given for the grain when it was deposited, even if such receipt be negotiable. After such lawful sale, the proceeds of such sale, after deducting any lawful liens, shall be held for the benefit of the owner, or the holder of the receipt or receipts.

34-277. Negotiations of negotiable receipts by delivery.

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or (b) where, by the terms of the receipt, the warehouseman undertakes to deliver the grain to the order of a specified person, and such person or a subsequent endorsee of the receipt has endorsed it in blank or to bearer. Where, by the terms of a negotiable receipt, the grain is deliverable to bearer or where a negotiable receipt has been endorsed in blank or to bearer, any holder may endorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the endorsement of such endorsee.

34-278. Negotiations of negotiable receipts by endorsement.

A negotiable receipt may be negotiated by the endorsement of the person to whose order the grain is by the terms of the receipt deliverable. Such endorsement may be in blank, to the bearer, or to a specified person. If endorsed to a specified person it may be again negotiated by the endorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

34-279. Transfer of receipt.

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable receipt cannot be negotiated, and the endorsement of such a receipt gives the transferee no additional right.

34-280. Who may negotiate a receipt.

A negotiable receipt may be negotiated: (a) By the owner, thereof; or (b) by any person to whom the possession or custody of the receipt has been entrusted by the owner, or holder, if, by the terms of the receipt, the warehouseman undertakes to deliver the grain to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

34-281. Rights of person to whom a receipt has been negotiated.

A person to whom a negotiable receipt has been duly negotiated acquires thereby: (a) Such title to the grain as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value and also such title to the grain as the depositor to whose order the grain was to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and (b) the direct obligation of the warehouseman to hold

possession of the grain for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

34-282. Rights of person to whom a receipt has been transferred, but not negotiated.

A person to whom a receipt has been transferred, but not negotiated, acquires thereby, as against the transferer, the title to the grain, subject to the terms of any agreement with the transferer. If the receipt is nonnegotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the grain for him, according to the terms of the receipt. Prior to the notification of the warehouseman by the transferer of a nonnegotiable receipt, the title of the transferee to the grain and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the grain by a creditor of the transferer, or by a notification to the warehouseman by the transferer or a subsequent purchaser from the transferer of a subsequent sale of the grain by the transferer.

34-283. Transfer of negotiable receipt without endorsement.

Where a negotiable receipt is transferred for value by delivery, and the endorsement of the transferer is essential for negotiation, the transferee acquires a right against the transferer to compel him to endorse the receipt unless a contrary intention appears. The negotiation shall take effect as of the time when the endorsement is actually made.

34-284. Warranties on sale of receipt.

A person who for value negotiates or transfers a receipt by endorsement or delivery including one who assigns for value a claim secured by a receipt unless a contrary intention appears, warrant: (a) That the receipt is genuine; (b) that he has a legal right to negotiate or transfer it; (c) that he has knowledge of no fact which would impair the validity or worth of the receipt, and (d) that he has a right to transfer the title to the grain, and that the grain is merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer the grain without receipts represented thereby.

34-285. Endorser not a guarantor.

The endorsement of a receipt shall not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfill their respective obligations.

34-286. No warranty implied from accepting payment of a debt.

A mortgagee, or pledgee, or holder for security, of a receipt who in good faith demands or receives payment of the debt for which such receipt is security whether from a party to a draft drawn for such debts, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the grain therein described.

34-287. When negotiations not impaired by fraud, mistake or duress.

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was subsequently negotiated paid value therefor without notice of the breach of duty or fraud, mistake or duress.

34-288. Effect of negotiation of receipt on previous sale, mortgage or pledge.

When a person having sold, mortgaged or pledged grain which is in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such grain, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof, to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the grain or receipt had expressly authorized the subsequent negotiations.

34-289. Rights of purchaser for value in good faith of negotiable receipt.

Where a negotiable receipt has been issued for grain, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or be justified in delivering the grain to an unpaid seller unless the receipt is first surrendered for cancellation.

34-293. Issuance of receipt for warehouseman's grain; statement of ownership; penalty for violation.

If a warehouseman owns, solely, jointly or in common with others, any grain which is deposited or held by the warehouseman, the warehouseman or any officer, agent or servant of the warehouseman who knows of this ownership and who issues or aids in issuing for that grain a negotiable receipt which does not state the warehouseman's ownership is guilty of a severity level 10, nonperson felony.

34-295. Negotiation of receipt for grain not owned or encumbered grain with intent to defraud; penalty.

Any person who takes a negotiable receipt for grain for which the person does not have title or upon which there is a lien or mortgage and who negotiates the receipt for value with intent to defraud or without disclosing the person's lack of title or the existence of the lien or mortgage is guilty of a severity level 10, nonperson felony.

34-295a. Warehouse records and accounts; required information; authorized methods of maintaining; examination by secretary; period to be retained.

(a) Every public warehouseman conducting a warehouse under the statutes contained in article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto, shall keep in a place of safety complete and correct records and accounts pertaining to the licensed warehouse including, but not limited to:

- (1) Records and accounts of all commodities received therein and withdrawn therefrom;
- (2) all unissued receipts and tickets in the public warehouseman's possession;
- (3) all receipts and tickets issued by the public warehouseman; and
- (4) the receipts and tickets returned and cancelled by the public warehouseman.

(b) Such accounts and records shall be sufficient to provide all information required to prepare a current financial statement and other reports required under subsection (b) of K.S.A. 34-228, and amendments thereto, and to determine the total net worth of the public warehouseman

under subsection (c) of K.S.A. 34-228, and amendments thereto. Such accounts and records may be kept and maintained on paper or on computer disks, tapes or other electronically accessed media, or any combination thereof, and shall be available for inspection and review by the secretary or an authorized representative of the secretary at all times during business hours. The capability to provide a computer printout or other printed version of any such accounts and records that are kept and maintained on computer disks, tapes or other electronically accessed media shall be maintained to make copies of such accounts and records for examination by the secretary or an authorized representative of the secretary.

(c) Such records and accounts shall be retained by the public warehouseman for such period as may be prescribed by the secretary. Copies of receipts or other documents evidencing ownership of any commodity or liability as a warehouseman shall be retained so long as such documents are outstanding and any such document which has been cancelled shall be retained for a period of not less than six years from the date of cancellation.

34-295b. Same; separation from other records; inspection.

All such records and accounts shall be kept separate and distinct from the records and accounts of any other business, and shall be subject to the inspection by the secretary or an authorized representative of the secretary at all reasonable times.

34-296. Laws applicable to receipts.

In any case not provided for in this act, the rules of law and equity including the law merchant and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern.

34-297. Effect on prior receipts.

The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

34-298. Penalty for violation of act; revocation of license; notice and opportunity for hearing.

(a) Unless otherwise provided in this act, any person or entity that violates any provision of this act is guilty of a class A nonperson misdemeanor.

(b) If, after notice and opportunity for a hearing are given in accordance with the Kansas administrative procedure act, the secretary finds that the provisions of this act have been violated by any person holding a license to conduct a public warehouse in this state, the secretary shall revoke the person's license. No new license shall be granted to the person whose license is revoked or to anyone engaged, either directly or indirectly, in the public warehouse business with that person for a period of one year.

34-299. Disposition of grain upon license expiration; sale of unclaimed grain; disposition of proceeds.

(a) It shall be the duty of any person operating a public warehouse in Kansas under this act, who desires to discontinue the operation of a public warehouse at least 30 days prior to the expiration of such warehouse license, to notify: (1) all holders of warehouse receipts and all parties storing grain in such warehouse, if known; (2) if not known, by public notice, by

advertising in a newspaper of general circulation in the city in which such warehouse is situated; and (3) the secretary, of such person's intention to discontinue the public warehouse business.

(b) It shall be the duty of the owners of such grain to remove, or cause to be removed, their grain from the warehouse, before the expiration of the license. If for any cause the grain is not removed from the warehouse, it shall be the duty of the warehouseman to sell for the account of the depositor the grain at the best market price obtainable and remit the funds to the secretary. The secretary shall deposit the funds with the state treasurer to be held for the account of the depositor. If and when the depositor, or holder of claim, shall appear and present a valid claim to the secretary for the funds so deposited, the secretary shall issue a voucher to the state treasurer withdrawing said funds to the order of the claimant.

34-2,101. Relation of this act to the federal warehouse act.

The provisions of this act relating to licensing, bonding and supervision of warehouses shall not be construed to apply to any public warehouseman who is, or shall hereafter be, duly licensed under the federal warehouse act, except that the provisions of K.S.A. 34-2,112, and amendments thereto, shall apply to all state and federally licensed warehouses.

34-2,102. Invalidation of any part of this act.

That if any clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall be returned.

34-2,103. Interpretation of act.

This act shall be liberally interpreted and construed to effectuate its general purpose.

34-2,104. Deficit in grain stored in warehouse or grain handling facility; action by secretary for possession; audit and investigation; temporary receiver; receivership.

(a) Whenever it appears to the satisfaction of the secretary that a licensed warehouseman does not have possession of sufficient commodities to cover the outstanding receipts and scale tickets issued or assumed by the warehouseman or when a licensed warehouseman refuses to submit records or property to a lawful examination, the secretary may give notice to the warehouseman to comply with all or any of the following requirements:

- (1) Cover any existing shortage;
- (2) give additional bond or letter of credit as requested by the secretary;
- (3)

submit to any examination that the secretary considers necessary.

If the warehouseman fails to comply with the terms of the notice within 24 hours from the date of its issuance or within such further time as the secretary allows, the secretary may petition the district court of any county in which is located one of the principal places of business of the licensed warehouseman for an order authorizing the department to take possession of and maintain all or a portion of any and all commodities located in the licensed warehouse or warehouses of the warehouseman and all pertinent records and property.

Upon receipt of the secretary's verified petition setting forth the circumstances of the warehouseman's failure to comply and further stating reasons why immediate possession and maintenance by the department is necessary for the protection of depositors, warehouse receipt holders or sureties, the court shall forthwith issue an order authorizing the department to take immediate possession of and maintain the commodities, records and property for the purposes stated in this section. A copy of the petition and order shall be sent to the warehouseman.

(b) At any time within 10 days after the department takes possession, the warehouseman may file with the court a response to the petition of the secretary stating reasons why the department should not be allowed to retain possession. The court shall set the matter for hearing on a date not less than five nor more than 15 days from the date of the filing of the warehouseman's response. The order placing the department in possession shall not be stayed nor set aside until the court after hearing determines that possession should be restored to the warehouseman.

(c)

Upon taking possession, the secretary shall give written notice of its action to the surety on the bond or the financial institution which issued the letter of credit of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all receipts and scale tickets issued for commodities, to present their receipts or scale tickets for inspection or to account for them. The secretary then may cause an audit and other investigation to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown in the warehouseman's records, if practicable. The secretary shall notify the warehouseman and the surety on the warehouseman's bond or the financial institution which issued the letter of credit of the approximate amount of the shortage and notify each depositor affected by the shortage by sending notice to the depositor's last known address as shown by the records of the warehouse.

The department shall retain possession and continue maintenance of commodities, records and property under this section until the warehouseman or the surety on the warehouseman's bond or the financial institution which issued the letter of credit has satisfied the claims of all depositors or until the department is ordered by the court to surrender possession.

(d) If during or after the audit or other investigation provided for in this section, or at any other time, the secretary has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all depositors, or the grain handling facility is operating without a valid federal or state license, the secretary shall forthwith petition the district court for an order appointing a receiver, under article 13 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, to operate or liquidate the business of the warehouseman or unlicensed facility in accordance with the law. The petition may be accompanied by a verified application requesting that the court appoint the secretary to act as temporary receiver until a receiver is appointed. The court may appoint the secretary as temporary receiver in an ex parte proceeding.

(e) While acting as temporary receiver, the secretary shall have all the powers of a receiver and may appoint a special deputy director to take charge of the affairs of the warehouse until a receiver is appointed. The special deputy shall qualify, give bond and receive reasonable compensation as determined by the secretary, subject to the approval of the district court. The compensation shall be paid by the insolvent warehouse or unlicensed facility or, upon appointment of a receiver, may be allowed by the court as costs in the case.

(f) All necessary expenses incurred by the department or any receiver appointed under this section in carrying out the provisions of this section may be recovered from the warehouseman, owner or operator of the unlicensed grain handling facility in a separate civil action brought by the secretary in the district court or may be recovered at the same time and as a part of the seizure or receivership action filed under this section. As a part of the expenses so incurred, there is authorized to be included the cost of adequate liability insurance necessary to protect the department, the receiver, and others engaged in carrying out the provisions of this section.

(g) A receiver shall have five months from the date of the receiver's appointment for the settlement and completion of the receivership. For cause shown, this period may be extended by the court, not exceeding three months at a time.

34-2,105. Same; no defense in criminal action.

Nothing in this act nor any action under this act shall be a defense or partial defense in any prosecution under any criminal statute

34-2,106. Same; severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

34-2,107. Priority of owner's interest in stored grain defined.

The owner of grain held in storage by a public warehouseman, as defined in K.S.A. 34-223, 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.

34-2,109. Warehouseman's annual statement of depositor's grain.

(a) Every public warehouseman shall submit, annually, to each depositor of open storage or grain bank grain, a statement of grain stored in the public warehouse. The statement shall include, but not be limited to, the following information:

- (1) Type of grain deposited;
- (2) the total bushels or pounds stored;
- (3) the year storage of grain began; and
- (4) the storage rate.

(b) The provisions of this section are supplemental to the provisions of chapter 34 of Kansas Statutes Annotated.

34-2,110. Warehouseman's annual statement of depositors to secretary.

Every public warehouseman shall make available to the secretary a verified composite statement of depositors of open storage grain or grain bank grain. The composite statement shall contain the same information as in K.S.A. 34-2,109, and amendments thereto.

34-2,111. Grain purchase contracts with delayed payment or delayed pricing; required provisions; standby letter of credit, posted notice.

(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 are at least as large as 10-point type and shall be followed by a signature line which 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) This section shall be construed as supplemental to the statutes contained in article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto.

34-2,112. Voidable sale of grain to warehouseman; insufficient funds check.

(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.

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

34-2,113. Sample of commodity; procedure; powers of secretary.

(a) The secretary of agriculture or the authorized representative of the secretary may sample any commodity contained in a licensed warehouse whenever indications of quality problems with the potential of causing a loss of value are observed. Observations indicating the following may serve as the basis for the sample provided for by this section: (1) Odor consistent with spoiled or rotten grain; (2) insect damage; (3) distinct discoloration of the kernels; (4) insect webbing; (5) sprouting from the kernels; (6) crust on the top layer of the grain; or (7) any other evidence consistent with grain quality.

(b) If obtaining the sample requires the assistance of the warehouseman, that assistance shall be provided within a reasonable time of the request of the secretary or the secretary's authorized representative.

(c) Upon obtaining a sample, the secretary or the authorized representative of the secretary shall make the sample available to the warehouseman for review.

(d) If after examination of the sample or samples a quality problem is still suspected the secretary may:

(1) Order the warehouseman to have all commodities suspected of quality problems sampled and officially graded in a manner sufficient to accurately determine the nature and extent of the problem;

(2) arrange for the sampling and grading of the suspected commodities, if the warehouseman fails to do so within the time ordered by the secretary and assess the costs to the warehouseman; and

(3) order the warehouseman to take immediate management and handling steps in response to the quality problem.

(e) Any failure by a warehouseman to maintain grain quality, comply with any order of the secretary related to quality or to remit funds to cover sampling and grading costs shall be deemed a violation of the provisions of article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto.

(f) The provisions of this section shall be part of and supplemental to article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto.