



## The National Agricultural Law Center

*The nation's leading source for agricultural & food law research & information*

NationalAgLawCenter.org | nataglaw@uark.edu

---

---

## Requirements for Grain Warehouses:

*Missouri*



This material is based upon work supported by the National Agricultural Library,  
Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

## Requirements for Grain Warehouses: Missouri

**Fast find:**

- 1) Licensing: §§ 411.255 to .268; .283; .311; .371; .671; .691; .755
- 2) Bonding: §§ 411.050; .275 to .281; .325
- 3) Auditing: §§ 411.070; .180 to .200; .271; .517
- 4) Indemnity Fund:
- 5) Failure/Liquidation: §§ 411.285 to .287; .519
- 6) Prompt Payment: § 411.325
- 7) Penalties: §§ 411.283; .295 to .301; .371; .517; .523; .611 to .661; .760; .770-.778
- 8) Lien: § 411.800

### MO ST Ch. 411

*Current through 100<sup>th</sup> General Assembly.*

**§ 411.010. Short title**

This chapter shall be known by the short title of “Missouri Grain Warehouse Law”.

**§ 411.015. Scope of law**

The provisions of the “Missouri Grain Warehouse Law” shall apply to all warehouses located within the state of Missouri.

**§ 411.020. Application of law—construction of laws governing warehouse receipts**

1. The provisions of this chapter shall apply to the grain stored in or handled through a warehouse, or designated part thereof, as well to the operations of such warehouse whether or not any part of such grain is owned by the warehouseman.

2. The provisions of the uniform commercial code relating to warehouse receipts and other documents of title shall govern warehouse receipts issued by public warehousemen licensed under the provisions of this chapter, except to the extent inconsistent with the express provisions of this chapter.

**§ 411.026. Definitions**

The following words, terms and phrases, when used in this chapter, except where the context clearly indicates a different meaning, shall mean:

- (1) “Authorized agent”, any person who has the legal authority to act on behalf of, or for the benefit of, another person;
- (2) “Certified public accountant”, any person licensed as such under chapter 326;

- (3) "Claimant", any person or depositor who requests, but does not receive, payment for, or redelivery of, grain stored at a warehouse because the warehouseman fails or refuses to make such payment or redelivery;
- (4) "Compensation", anything of value or benefit, whether in cash, kind or otherwise;
- (5) "Credit sales contracts", a conditional grain sales contract wherein payment and/or pricing of the grain is deferred to a later date. Credit sales contracts include, but are not limited to, all contracts meeting the definition of deferred payment contracts, and/or delayed price contracts;
- (6) "Current assets", resources that are reasonably expected to be realized in cash, sold, or consumed (prepaid items) within one year of the balance sheet date;
- (7) "Current liabilities", obligations reasonably expected to be liquidated within one year and the liquidation of which is expected to require the use of existing resources, properly classified as current assets, or the creation of additional liabilities. Current liabilities include obligations that, by their terms, are payable on demand unless the creditor has waived, in writing, the right to demand payment within one year of the balance sheet date;
- (8) "Deferred payment agreement", a conditional grain sales transaction establishing an agreed-upon price for the grain and delaying payment to an agreed-upon later date or time period. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long as the conditions specified in section 276.461 and section 411.325 are met;
- (9) "Deferred pricing agreement", a conditional grain sales transaction wherein no price has been established on the grain, the seller retains the right to price the grain later at a mutually agreed-upon method of price determination. Deferred pricing agreements include, but are not limited to, contracts commonly known as no price established contracts, price later contracts, and basis contracts on which the purchase price is not established at or before delivery of the grain. Ownership of the grain, and the right to sell it, transfers from seller to buyer so long as the conditions specified in section 276.461 and section 411.325 are met;
- (10) "Delivery", the voluntary physical transfer of grain from one person to another;
- (11) "Department", the Missouri department of agriculture;
- (12) "Depositor", any person who deposits grain in a warehouse for storage, handling, shipment, processing, or who is the owner or holder of a warehouse receipt, or who is otherwise lawfully entitled to possession of the grain;
- (13) "Designated representative", an employee or official of the department designated by the director to assist in the administration and enforcement of the Missouri grain warehouse law;
- (14) "Director", the director of the Missouri department of agriculture or his designated representative;
- (15) "Documents of title" include negotiable and nonnegotiable warehouse receipts, scale tickets, and other documents which are issued in the regular course of a warehouseman's business, and which adequately evidence that the possessor is entitled to receive, hold, and dispose of the goods it covers;

- (16) "Generally accepted accounting principles", the conventions, rules and procedures necessary to define accepted accounting practice, which include broad guidelines of general application as well as detailed practices and procedures generally accepted by the accounting profession, and which have substantial authoritative support from the American Institute of Certified Public Accountants;
- (17) "Grain", all grains for which standards have been established under the United States Grain Standards Act (Sections 71 to 87 of Title 7, United States Code), and any other agricultural commodities, seeds and vegetable oils prescribed by the director by regulation, except the term "grain" shall not include those commodities deemed not to be grain pursuant to section 411.028;
- (18) "Grain inspector", a warehouseman or a person employed by the warehouseman to inspect, grade or sign warehouse receipts for grain stored or to be stored in a warehouse licensed under this chapter;
- (19) "Grain weigher", a warehouseman or a person employed by the warehouseman to weigh grain stored or to be stored in a warehouse licensed under this chapter;
- (20) "Holder of receipt", a person who has possession of a warehouse receipt, or a right of property therein;
- (21) "Insolvent" or "insolvency", either, or both of the following:
- (a) An excess of liabilities over assets; or
  - (b) The inability of a warehouseman to meet his financial obligations as they come due;
- (22) "Interested person", any person having a contractual or other financial interest in grain stored in a warehouse licensed or required to be licensed under this chapter;
- (23) "Licensed warehouse", a warehouse for which the department has issued a license to operate as a public warehouse in accordance with the provisions of this chapter;
- (24) "Licensed warehouseman", a warehouseman who owns or operates a warehouse licensed under the provisions of this chapter;
- (25) "Minimum price contract", a conditional grain sales transaction establishing an agreed-upon minimum purchase price for the grain and where the seller may participate in subsequent price gain, if any. Ownership of the grain, and the right to sell it, transfers from the seller to the buyer so long as the conditions specified in section 276.461 and section 411.325 are met;
- (26) "Official grain standards", the standards of quality or condition for grain, fixed and established by the Secretary of Agriculture of the United States of America under the regulations of the United States Grain Standards Act;
- (27) "Operator" or "warehouseman", any person who owns, controls, operates or manages any warehouse whether such owner resides within the state or not;
- (28) "Person" means and includes any individual, firm, partnership, exchange, association, trustee, receiver, corporation, cooperative, society, public body, political subdivision, or any other business or commercial entity or organization of any kind whatsoever, and any member, officer or employee thereof;

(29) "Private warehouse", any warehouse within this state used for the purpose of storing grain exclusively for the owners or operators of that warehouse and/or individual producers affiliated with the owner or operator in a landlord/tenant relationship on farmland and, except as otherwise herein specifically provided, which is not subject to the provisions of this chapter;

(30) "Producer", any owner, tenant or operator of land who has an interest in and receives all or any part of the proceeds from the sale of grain or livestock produced thereon;

(31) "Public warehouse", a warehouse used for the purpose of storing grain of owners other than the warehouseman, whether grain of the owners be commingled or whether identity of different lots be preserved, or a warehouse used for any purpose for which a license is required under section 411.255;

(32) "Public warehouseman", any person owning or operating a public warehouse whether that owner or operator resides within the state or not;

(33) "Receipt", a grain warehouse receipt, whether negotiable or nonnegotiable, issued under this chapter;

(34) "Regulations" or "rules", rules, regulations and standards promulgated pursuant to this chapter by the director;

(35) "Storage grain" or "stored grain", any grain received in a warehouse, including grain bank grain, unless sold in accordance with the provisions of section 411.325 or sold in accordance with the provisions of sections 276.401 to 276.582;

(36) "Successor's agreement", a written agreement between any public warehouseman ceasing operations as a public warehouseman and the person succeeding him which states how the obligations to depositors will be handled;

(37) "Terminal warehouse", any warehouse where the department makes available official grain inspectors and official weighmasters on a full-time basis;

(38) "Terminal warehouseman", the person owning or operating a terminal warehouse whether such owner or operator resides within the state or not;

(39) "Violation", any act contrary to the provisions of this chapter or any failure by a person to act as required by the provisions of this chapter or regulations promulgated hereunder;

(40) "Warehouse", any building, structure or other enclosure in which grain is or may be stored and through which grain is or may be handled or shipped. All facilities used in connection with the operation of the warehouse shall be deemed to be part of the warehouse;

(41) "Warehouse auditor", or "warehouse examiner", or "inspector", any individual appointed under this chapter by the director to assist in the administration of the chapter. These terms shall include persons employed as warehouse examiners under the United States Warehouse Act.

**§ 411.028. Grain delivered to warehouse for cleaning, processing and returned for seed, not grain as defined for grain warehouse law**

Agricultural commodities delivered to a warehouse or seed processor for the express purpose of processing or cleaning and holding such commodity and returning the cleaned or processed

commodity to the original owner thereof or the owner's designee to be used as seed shall not be deemed to be grain for the purposes of this chapter. Commodities deemed not to be grain pursuant to this section shall be maintained on an identity-preserved basis at all times when in the possession of or under the control of the warehouseman or seed processor.

**§ 411.030. Department of agriculture to grade and weigh grains—operate laboratories and stations—supervise warehouses—federally owned grain, duties**

1. The department shall have the exclusive right to officially inspect and grade all grains for which standards have been established under the United States Grain Standards Act and certify the grades thereof at all places where inspection points of the department are established, except that the owner may direct that his grain may not be inspected by writing or stamping upon the bill of lading therefor the words "no inspection desired" or other words of similar meaning or by other timely notice given the department in writing that no inspection is desired and may officially inspect grain in public or private warehouses or industries upon application of the owner or operator thereof and their agreement to guarantee operating costs.

2. The department shall have the exclusive right to officially weigh or supervise the actual weighing of grain in licensed terminal warehouses subject to the provisions of this chapter, unless the owner or his agent indicates that no official weights are desired and may officially weigh or supervise the actual weighing of grain in public or private warehouses or industries upon application of the owners or operators thereof and their agreement to guarantee the operating costs.

3. Nothing in this chapter shall limit or abrogate the right of grain exchanges or boards of trade to weigh or supervise the weighing of grain in private warehouses and public warehouses.

4. The department is authorized in the discretion of the director to establish, maintain and operate chemical laboratories and inspection and weighing stations covering all or any part of its services at important railway terminals and points where organized grain markets are regularly maintained, and at other points where operating costs are guaranteed by special arrangements with the industries served or the managing officers in charge thereof.

5. The department shall also inspect and weigh and otherwise service grain stored, owned or controlled by the United States of America or any of its agencies, upon request therefor by the United States of America or its agencies, located in temporary warehouses within this state, upon request and approval of the owners or operators of such unlicensed warehouses, and further upon receiving agreement to guarantee to the department the operating costs of such additional services. The department shall not infringe where services are performed by grain exchanges or boards of trade.

**§ 411.050. Bond of director**

The director shall also execute a bond to the people of the state of Missouri in the penal sum of twenty thousand dollars, with corporate surety to be approved in the same manner as bonds of other appointed officers, conditioned that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the provisions of this chapter.

**§ 411.061. Director not to deal in grain, exception**

The director shall not, directly or indirectly, be interested in buying or selling grain, either on his own account or for others or in handling or storing grain as a public warehouseman or on private account, during his term of office; except that, he may sell, handle or store any grain produced in his own farming operation.

**§ 411.070. Director—powers and duties—rules, procedure**

1. The director shall:

- (1) Supervise the handling, sampling, inspection, weighing and storage of grain in warehouses as required by this chapter;
- (2) Supervise protein or other chemical analysis of grain where laboratories are now or may hereafter be established;
- (3) Keep proper records of all sampling, inspection, weighing, protein or other chemical analysis performed under the provisions of this chapter;
- (4) Employ, fix the salaries and pay all necessary personnel required to administer, execute and perform the duties required by the provisions of this chapter, including warehouse auditors whose duties may include making examinations, audits, inspections and investigations authorized under this chapter;
- (5) Cause the operations of warehousemen licensed under this chapter to be examined. The examinations may include an audit of all grain and all books, documents and records pertaining to the warehousemen's business operations, to determine whether the interests of producers, shippers and receivers of grain and the holders of warehouse receipts are adequately protected and safeguarded;
- (6) Take such action or issue such orders as necessary to prevent any fraud upon or discrimination against depositors of grain in warehouses. If upon examination, a deficiency is found to exist between physical inventory and the warehouseman's obligations, the director may require an examiner to remain at the warehouse and monitor all operations conducted thereat, involving grain stored under the provisions of this chapter, until such deficiency is corrected.

2. The director may:

- (1) Promulgate and adopt such regulations in accordance with the provisions of chapter 536 as may be necessary for the efficient and effective enforcement of this chapter;
- (2) Designate an employee of the department to act as his designated representative;
- (3) Publish such data in connection with the administration of this chapter as may be of public interest;
- (4) Require any forms, records or reports to be filed with the department, by any warehouseman, that he deems necessary to ensure compliance with the provisions of this chapter;
- (5) Examine, or cause to be examined, at reasonable times, any warehouse, including an examination of grain stored therein and all books, documents and records pertaining thereto, in order to determine whether or not such facility should be licensed pursuant to this chapter;

- (6) Prescribe minimum contents for any forms, records, contracts or reports that grain warehousemen use or by the provisions of this chapter and its pursuant regulations, are required to issue, file, maintain or keep;
- (7) Issue subpoenas duces tecum for any records relating to a grain warehouseman's business;
- (8) Prescribe procedures for hearings to be held in accordance with the provisions of this chapter and regulations promulgated hereunder; provided, however, an appeal from such hearings may be taken in accordance with the provisions of chapter 536;
- (9) Conduct, or appoint a designated representative to conduct, administrative hearings pursuant to the provisions of this chapter and chapter 536. Hearings may be conducted for the purpose of determining the liability of sureties which have filed bonds with the department on behalf of warehousemen licensed, or required to be licensed, under this chapter. Hearings may be conducted for the purpose of determining the validity of grain-related claims filed with the department against such warehousemen and sureties, as well as the subsequent disbursement of all available funds, pro rata or otherwise, to satisfy claims determined to be valid. An order issued by the director, or his designated representative, as a result of such hearings shall be final and legally binding on all parties unless appealed in accordance with the provisions of chapter 536;
- (10) Serve, or cause to be served, any subpoena, petition, or order required for the administration of this chapter.

3. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

#### **§ 411.100. Inspectors—qualifications**

No person shall be eligible to hold the office of chief inspector or inspector unless he has passed the examinations of the United States Secretary of Agriculture required for the issuing of a license to inspect and grade those grains designated by the director for which standards are provided under the provisions of an act of Congress known as "The United States Grain Standards Act".

#### **§ 411.110. Weighmasters—powers and duties**

When requested, it shall be the duty of grain weighmasters appointed by the director, under the provisions of this chapter, to weigh or to supervise the actual weighing and certification of weights of all grain as provided for in this chapter, and the certificate of weight issued or caused to be issued by such weighmasters in the discharge of their duties shall be the basis of settlement between the buyer and seller. Such weighmasters shall have the entire control, subject to the supervision of the director, of the scales under their supervision.

#### **§ 411.135. Warehouseman to act as registrar of receipts—records to be kept**

Every licensed warehouseman desiring to issue unregistered negotiable or nonnegotiable warehouse receipts shall act as registrar, or designate an employee to act as registrar, to be responsible for issuing warehouse receipts and keeping all records in a manner as provided by the director. The warehouseman's signature or that of his employee shall be affixed and kept on file with the director. The warehouse record shall clearly identify scale tickets, weight and grade certificates, used as a basis for issuance of each warehouse receipt. A copy of the scale tickets



and the weight and grade certificates shall be kept on file as a record in the warehouseman's office for a period of at least three years after the date of cancellation of the warehouse receipt.

**§ 411.140. Personnel of branch offices—appointment—qualifications—duties**

1. The director may appoint a suitable person to be assigned to each office where official inspection points are established. The person shall not be a member of a board of trade or grain exchange, and shall not be interested directly or indirectly in any warehouse, elevator or in grain merchandising. Each of the persons so appointed shall be a licensed grain inspector, or a qualified grain expert, or knowledgeable of the grain trade and, in all cases, shall have administrative and supervisory skills.

2. Each of said appointees shall be known as chief inspector or inspector-in-charge, or office manager in the office to which he is assigned, and shall have general supervision of inspection of grain, and such other duties as may be prescribed by the director, and shall serve under the immediate direction and at the will of the director.

**§ 411.145. Department may conduct grain inspection business outside state, when**

The Missouri department of agriculture is hereby authorized to conduct official grain inspection business outside the boundaries of the state of Missouri; provided that, such business:

(1) Is conducted in a manner that is consistent with the provisions of this chapter concerning the providing of official grain inspection and weighing services;

(2) Is in compliance with the rules and regulations promulgated by the Federal Grain Inspection Service in regard to providing official inspection and weighing services; and

(3) Any expenditures involved are in compliance with the state of Missouri's budget process and the office of administration's rules, regulations and guidelines.

**§ 411.150. Fees, how fixed**

The director shall have full power to fix the fees for sampling, inspection, weighing, protein or other chemical analysis, and moisture testing or for additional services of whatever nature consistent with the provisions of this chapter, which fees shall be regulated in such manner as will, in the judgment of the director, produce sufficient revenue to meet the necessary expenses of the services of sampling, inspection, weighing, chemical analysis or moisture testing, and for administration and clerical work in connection therewith.

**§ 411.151. Grain inspection fee fund established—deposits and disbursements—not to lapse—transfers from general revenue—investment of fund**

1. There is hereby created in the state treasury the "Grain Inspection Fee Fund". All fees charged and collected for sampling, inspection, weighing, protein or other chemical analysis, and moisture testing or for additional services of whatever nature consistent with the grain inspection and weighing services of the grain inspection, weighing, and warehousing division provided for in this chapter, shall be paid to the director of revenue and deposited in the state treasury to the credit of the grain inspection fee fund. The money in the grain inspection fee fund, after appropriation, shall be expended upon proper warrants issued by the commissioner of administration for the payment of salaries and expenses, including any fee or payment required for compliance with federal law or regulation, necessary for carrying out the provisions consistent with the grain inspection and weighing services of this chapter. The unexpended

balance in the grain inspection fee fund at the end of each fiscal year shall not be transferred to the general revenue fund of the state, and the provisions of section 33.080 relating to the transfer of funds to the general revenue fund of the state by the state treasurer shall not apply to the grain inspection fee fund.

2. The general assembly may, from time to time and as needed, transfer from general revenue to the grain inspection fee fund a sum not to exceed five hundred thousand dollars, each fiscal year, to enable the director to continue operations; provided that, approval for such a transfer is given by the Federal Grain Inspection Service of the United States Department of Agriculture. Nothing contained herein shall be construed as to limit the number of times the general assembly may make such transfers.

3. The state treasurer shall invest all sums in the grain inspection fee fund not needed for current operating expenses in interest-bearing banking accounts or United States government obligations in the manner provided by law. All yield, increment, gain, interest or income derived from the investment of these sums shall accrue to the benefit of, and be deposited within, the state treasury to the credit of the grain inspection fee fund.

**§ 411.160. Grain inspected and weighed by authorized inspectors—penalty**

1. When official inspection, weighing, or supervising of actual weighing of grain is requested in this state whether into or out of state licensed warehouses or portions of warehouses so licensed for public storage operations, subject to the provisions of this chapter, or in cars, barges, wagons, trucks, or sacks at warehouses where official state grain inspection or weighing is maintained shall be performed by such persons as have been duly appointed by the director and qualified according to law.

2. Any person who shall inspect grain where state grain inspection is established, or any person who shall officially weigh or supervise the weighing of grain in public warehouses where official state grain weighing is established and who has not been duly appointed by the director or directed by a state weighmaster so to do, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by confinement in the county jail, or if in the city of St. Louis in the city jail of the city, for not less than three months nor more than six months, or both such fine and confinement, at the discretion of the court, for every such offense so committed.

**§ 411.170. Certificates shall be evidence—right of revocation**

The certificates issued by the department shall be conclusive evidence to all parties interested of the facts stated therein and shall form the basis of settlement between buyers and sellers unless otherwise specified by contract; provided, the department shall have the right upon reinspection or otherwise to cancel and revoke any certificate and issue a new one in its stead, and every certificate of grade shall be subject to appeal as provided by law; and in either case such new certificate or the appeal certificate shall in such event be final and binding between the parties.

**§ 411.180. Right of examination, audit and inspection—confidential information, penalty for disclosure—subpoena powers of director—director to investigate complaints, when**

1. The director or his authorized representative may examine, audit and inspect every licensed grain warehouse, or persons whom the director has reasonable cause to believe should be licensed under this chapter, the business thereof, and the mode of conducting the same at such

times as he may deem necessary; and the property, books, records, accounts, papers, and the proceedings pertaining to the operations of these warehouses, so far as they may relate to the operation or management of public storage, and to the ability of the warehouseman to meet his grain and dollar obligations shall be subject to examination and inspection by the director, or his authorized agent. Such books, accounts, records and papers of every grain warehouseman shall at all times during normal business hours be subject to inspection as prescribed by the director.

2. The director may perform such inspections as are deemed necessary for the orderly administration of this chapter based upon reports and other information available to him.
3. Every grain warehouseman and his employees, agents, officers, partners, directors and shareholders shall cooperate and hold themselves available to assist in the examination, including allowing full and reasonable use of sampling and grading equipment. Failure or refusal to cooperate or assist is a violation of this chapter and a basis for the suspension of a public grain warehouseman's license.
4. No inspector or employee of the department shall disclose any information obtained by him in the course of his employment relative to the affairs or transactions of any warehouseman, other than as permitted by this chapter, without first having obtained the express permission in writing of such warehouseman, or of the director; provided, that the director may, upon written application of any person, disclose or direct any inspector or employee of the department to disclose any information which, in the opinion of the director, the person applying for the same is entitled to receive. If any such inspector or employee shall disclose any such information except as permitted by this chapter, he is guilty of a misdemeanor. This section shall not prevent the taking of sworn testimony at a public hearing with respect to violations of this chapter or regulations promulgated hereunder.
5. The director is hereby authorized to issue subpoena duces tecum to any financial institution, or to any other type of business entity, to deliver any and all records of the licensee, or any and all records kept pertaining to the licensee, or of any person who in the opinion of the director may need to be licensed. Such financial institutions, or other business entities, are hereby authorized and required to deliver any and all such records to the director notwithstanding any law to the contrary. This section applies to persons or individual accounts or transactions as well as to corporate records where the licensee, or person who in the opinion of the director needs to be licensed, is conducting business in corporate form.
6. The director shall, upon the verified complaint in writing of any person setting forth facts which, if proved, would be in violation of the provisions of chapter 411, or regulations promulgated hereunder or would constitute grounds for refusal, suspension or revocation of a license under this chapter, investigate the actions of any person applying for, holding or claiming to hold a license; provided that the director is not required to investigate any complaint which does not appear to have a reasonable basis.

#### **§ 411.200. Reinspection**

Operators of public terminal elevators, may, with the consent of the director, call a reinspection and weighing of grain in the elevator, and upon the surrender of outstanding warehouse receipts in the discretion of the director, before or at the completion of said reinspection and weighing,

same may be cancelled and new warehouse receipts issued therefor, such reinspection and weighing to be made under regulations prescribed by the director.

**§ 411.255. Operations for which a license is required—administrative penalty for operating without license**

1. No person shall:

(1) Operate a warehouse for storage of grain;

(2) Hold himself out as being in the grain storage business, or as offering storage facilities for grain;

(3) Advertise for, solicit or accept grain for storage;

(4) Carry on a grain bank operation, or receive and store grain for which a like quantity of grains is to be returned or delivered in any form to the depositor thereof without first obtaining and keeping in force an annual license issued by the department authorizing the operation of a public grain warehouse; provided, that all licenses issued prior to April 22, 1986, by the department shall remain valid for all purposes unless terminated, surrendered or revoked as provided in this chapter.

2. Two or more warehouses which constitute a single operating unit may be licensed under a single license if:

(1) The same warehouseman operates each warehouse in conjunction with the other;

(2) All the warehouses are functioning under the same name and with the same personnel, office, books and records; and

(3) The warehouses are within a fifty mile radius of the warehouseman's principal office. All warehouses licensed under a single license shall be treated as a single warehouse for all the purposes of this chapter, excepting issuance of warehouse receipts and receipt and delivery of grain.

3. A licensed warehouseman shall not store grain in any unlicensed facility.

4. Following an administrative hearing, the director may require the warehouseman to pay a penalty of not more than five hundred dollars per day for each day the warehouseman is found to be operating without a license or bond. In determining whether to assess the penalty, the director shall ascertain whether the warehouseman has continued to operate without a license or bond after being informed by the department in writing by certified mail of the need for licensing. Any penalties collected by the director under this section shall be deposited in the general revenue fund. In the event that a person penalized under this section fails to pay the penalty, the director may apply to the circuit court of Cole County for, and the court may enter, an order enforcing the penalty.

**§ 411.260. Application for public warehouse license, contents — rules — financial statements — false financial statement, penalty**

1. Each person owning, operating, or desiring to own or operate a grain warehouse who is required to be licensed, shall apply for a license for each such warehouse he owns or operates. The application for a license shall be subscribed and sworn to under oath by the applicant or a

duly authorized representative of the applicant. The application shall be in a form prescribed by the director. All items on the application must be completed or marked "not applicable" as appropriate.

2. All applications shall be accompanied by a true and accurate financial statement of the applicant, prepared within six months of the date of the application, setting forth the assets, liabilities and the net worth of the applicant. All applications shall also be accompanied by a true and accurate statement of income and expenses for the applicant's most recently completed fiscal year. The financial statements required by this chapter shall be prepared in conformity with generally accepted accounting principles; except that, the director may promulgate rules allowing for the valuation of assets by competent appraisal.

3. The financial statements required by subsection 2 of this section shall be audited or reviewed by a certified public accountant. The financial statement may not be audited, reviewed or prepared by the applicant, if an individual, or, if the applicant is a corporation or partnership, by any officer, shareholder, partner, or employee of the applicant.

4. The director may require any additional information or verification with respect to the financial resources of the applicant as he deems necessary for the effective administration of this chapter. The director may promulgate rules setting forth minimum standards of acceptance for the various types of financial statements filed in accordance with the provisions of this chapter. The director may promulgate rules requiring a statement of retained earnings, a statement of changes in financial position, and notes and disclosures to the financial statements for all licensed warehousemen or all warehousemen required to be licensed. The additional information or verification referred to herein may include, but is not limited to, requiring that the financial statement information be reviewed or audited in accordance with standards established by the American Institute of Certified Public Accountants.

5. All warehousemen shall provide the director with a copy of all financial statements and updates to financial statements utilized to secure the bonds required by this chapter. Also, all warehousemen maintaining a uniform grain storage agreement with the Commodity Credit Corporation or a United States Warehouse Act license shall provide the director with a copy of all financial statements and updates to financial statements utilized to secure and maintain such agreement or license.

6. All financial statements submitted to the director for the purposes of this chapter shall be accompanied by a certification by the applicant or the chief executive officer of the applicant, subject to the penalty provision set forth in section 411.517 that to the best of his knowledge and belief the financial statement accurately reflects the financial condition of the applicant for the fiscal period covered in the statement.

7. Any person who knowingly prepares or assists in the preparation of an inaccurate or false financial statement which is submitted to the director for the purposes of this chapter, or who during the course of providing bookkeeping services or in reviewing or auditing a financial statement which is submitted to the director for the purposes of this chapter, becomes aware of false information in the financial statement and does not disclose in notes accompanying the financial statements that such false information exists, or does not disassociate himself from the financial statements prior to submission, is guilty of a class D felony. Additionally, such persons are liable for any damages incurred by depositors of grain with a warehouseman who is

licensed or allowed to maintain his license based upon inaccuracies or falsifications contained in the financial statement.

**§ 411.263. Fee for license**

Every warehouseman's original application for a public warehouse license must be accompanied by a fifty dollar application fee. Every applicant after approval shall pay an annual license fee based upon the capacity of the warehouse, or portion of the warehouse, the fee to be set by the director at a rate not to exceed the schedule of license fees set forth in section 411.691. If two or more warehouses are to be operated as a single operating unit as authorized in section 411.255, separate filing fees and licensing fees are required for each warehouse.

**§ 411.266. Renewal of license—application, contents of—penalty for late renewal**

If a public warehouseman licensed under this chapter desires to renew the license for an additional year, application for the renewal shall be made on a form prescribed by the director and shall be accompanied by a financial statement, as required by section 411.260, with such additional information or verification with respect to the financial resources of the applicant as the director may require. The application fee of fifty dollars shall not be required. At least sixty days prior to the expiration of each license issued by the director under this chapter, the director shall notify the warehouseman of the date of expiration and furnish the warehouseman with the renewal form. The warehouseman shall submit the application at least thirty days prior to the date of expiration of the license and for each day less than thirty days, the warehouseman shall be penalized an additional fee of ten dollars per day for every day beyond the due date for the application. The date of submission of the application shall be determined as the date postmarked.

**§ 411.268. Schedule of charges to be filed, posted by warehouseman**

Before a license to conduct a warehouse is granted under this chapter, the warehouseman shall file with the director a copy of his schedule of charges for storage and other services. If the warehouseman desires to make any change in the schedule of charges during the license period, he shall file, with the director, a statement in writing showing the proposed charge. Each warehouseman shall keep conspicuously posted the filed schedule of charges for storage and other services rendered in each operational office and these charges must be strictly adhered to.

**§ 411.271. Examination of warehouse—paid for by whom—discrepancy, effect of**

1. The department shall make at least one complete examination of each state licensed public warehouse each year. The examination shall be at the expense of the warehouseman who shall be charged thereby a fee based on rates established by the director. The minimum examination fee shall be fifty dollars. The examination shall include a weigh-up of all grain or a measure-up of all grain, as may be elected by the warehouseman.

2. Any additional examinations deemed necessary by the department to be made during any year shall be at the expense of the department; except that, if upon any examination a discrepancy is found to exist, the director may collect a fee for that examination and for any subsequent examinations deemed necessary to insure that the discrepancy is corrected. The fee for each such examination shall be computed in accordance with the provisions of subsection 3 of this section.

3. Any warehouseman may request additional examinations at the expense of the warehouseman. The director may collect a fee for each special or requested examination of a public grain warehouse or for extra work beyond regular examination procedures in connection with regularly scheduled examinations, computed as follows:

(1) Necessary personal expenses in conformance with the rules and regulations promulgated by the commissioner of administration pursuant to section 33.090;

(2) A mileage allowance equal to the allowance established by the commissioner of administration pursuant to section 33.095;

(3) Twenty dollars for each man-hour required to complete the inspection.

4. Upon completion of any examination which reveals a failure to comply with this chapter or regulations promulgated hereunder, the director or any warehouse auditor, within a reasonable time, shall present a written discrepancy report to the warehouseman, his employee or agent. The report shall specify the areas of noncompliance and shall give a specific period of time within which corrective action is to be taken. Such period of time shall be both reasonable and practicable under the circumstance. A report of that corrective action shall be sent to the director by the warehouseman. If, after further examination, the discrepancy still exists, the director may modify, suspend, or revoke the warehouseman's license, or the director may take whatever other action he deems necessary, consistent with the provisions of this chapter, until the warehouseman has corrected the discrepancy.

**§ 411.275. Warehouseman's bond, requirements — defenses denied surety — cancellation, notice, effect — demand for payment by director, duties of director — refusal of surety to pay, penalty — distribution of bond proceeds — duties of depositors or receipt holders — injunction, hearing, notice — final inspection of warehouse — verbal or written bond binders effective, contents**

1. Before any person is granted a license pursuant to the provisions of this chapter, the person shall file a bond other than personal security with the director executed by the warehouseman as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the state of Missouri for the benefit of all persons storing grain, their legal representatives, attorneys, or assigns, conditioned upon the faithful performance of his duties as a public warehouseman relating to the storage of grain. Notwithstanding any other provisions of this chapter, the bond provided shall only cover storage grain deposited with a warehouseman. Storage grain that has been priced, as provided in section 411.325, shall not be covered by the warehouse bond. Grain deemed storage grain pursuant to section 411.325 shall be covered.

2. Neither the issuance of warehouse receipts by a warehouseman to himself for grain owned in whole or in part by him; the commingling of grain owned by the warehouseman with grain stored for others or any violation by a warehouseman of this chapter or of the regulations promulgated hereunder by the director is a defense in any action brought upon any bond, and all bonds shall so provide.

3. The surety bond required by this section shall be effective on the date of issue, shall not be affected by the expiration of the license period, and shall continue in full force and effect until cancelled.

4. The required bond shall be kept in force at all times while the operator is conducting a public grain warehouse. Failure to keep such bond in force is cause for revocation of the license, and the warehouseman is subject to the penalties provided in this chapter. No warehouseman may cancel an approved bond without the prior written approval of the director and his approval of a substitute bond.

5. A warehouseman filing bonds required under this chapter, or regulations promulgated hereunder, shall utilize the same corporate surety for all bonds required for the operation of any one warehouse.

6. In case any person shall make application for licenses for two or more separate public warehouses in this state, he may give a single bond covering all such applications, and the amount of the bond shall be the total of the amounts which would be required for the several applications if separate bonds were given; except, however, that in computing the amount of the single bond the warehouseman may add together the capacity of all warehouses to be covered thereby and use the aggregate capacity for the purpose of computing bond. When a warehouseman elects to provide a single bond for a number of warehouses, the total assets of all the warehouses shall be subject to liabilities of each individual warehouse.

7. Upon written demand of the director for payment, the surety shall either pay over to the director the sum demanded up to the full face amount of the bond, or shall deposit the sum demanded in an interest-bearing escrow account at the highest rate of interest available. When a surety pays the director upon demand, the director shall either interplead the sum in court or hold an administrative hearing for the determination of the liability of the surety, and the validity of claims against the bond, and upon the conclusion thereof, the director shall distribute the bond proceeds accordingly. The determination of the director shall be final, subject to the surety's or a claimant's right to appeal to the circuit court pursuant to the provisions of chapter 536. Refusal or failure of the surety to pay the sum demanded to the director within ten days of receipt of the director's demand letter or the refusal or failure to deposit the sum demanded in an interest-bearing escrow account at the highest rate of interest available, shall be grounds for withdrawal of the surety's license and authorization to conduct business in this state and grounds for the court to penalize the surety for refusal to pay or to deposit, within the ten days of demand, in the amount of twenty-five percent of the full face amount of the bond, plus interest at the rate of nine percent, or at the rate that the director can establish he would have received had the money been paid or deposited by the surety, whichever rate of interest is higher. In the event that the surety pays as demanded and the director or court determines the surety is not liable, the director shall return to the surety the sum paid to the director plus all accumulated interest, or any pro rata part of the sum, plus interest, as applicable in the event of liability less than the sum demanded. In the event that the surety elects to deposit the demanded sum in an interest-bearing escrow account and the director holds an administrative hearing determining the liability of the surety and the validity of claims, and upon the exhaustion of appeals, if any, the surety immediately shall pay to the director for distribution to claimants the amount for which the surety has been determined to be liable plus accumulated interest on that amount.

8. Every bond filed shall contain a provision that it may not be cancelled by the principal or surety company except upon ninety days prior notice in writing, by certified mail, to the director at his Jefferson City office. In the case of a surety giving notice of cancellation, a copy of such notice shall be mailed on the same day by certified mail to the principal. The cancellation does not affect the liability accrued or which may accrue under such bond before the expiration of the



ninety days. The notice shall contain the termination date. In the event such procedures are not followed, the bond shall remain in full force and effect until properly cancelled.

9. Whenever the director receives notice from a surety that it intends to cancel the bond of a warehouseman, the director shall automatically suspend the warehouseman's license if a new bond is not received by the director within thirty days of receipt of the notice of intent to cancel. The director shall cause an inspection of the licensed warehouse immediately at the end of such thirty-day period. If a new bond is not received within sixty days of receipt of the notice of intent to cancel, the director shall revoke the warehouse license. The director shall cause a further inspection of the warehouse at the end of this sixty-day period. Such inspection may include an attempt to notify all possible grain and grain-related claimants of the warehouseman by advertising in local media. When a license is so revoked, the director shall give notice of such revocation to each depositor or holder of an outstanding negotiable or nonnegotiable warehouse receipt of which the director has knowledge. The director shall further notify each depositor or receipt holder that grain must be sold or removed from the warehouse. Upon receipt of the notice, it shall be the legal duty of each depositor or receipt holder to sell, remove, or cause his grain to be removed. Such notice to each receipt holder or depositor shall be sent by ordinary mail to the last known address of each receipt holder or depositor.

10. The director may petition the circuit court for a mandatory injunction ordering the receipt holder or depositor to so sell, remove or cause to be removed, his grain and the circuit courts are hereby empowered to enter such an order. A hearing shall be held within ten days of the filing of any such petition. Notice of hearing to depositors, receipt holders, warehouseman, surety, all interested persons, and the director shall be by any practicable means effecting actual notice. Further, the circuit courts are empowered to enter any order, pertaining to the warehouseman, director, surety, or other interested persons, that is appropriate in the circumstances to effectuate such removal or sale consistent with the purpose of this chapter. The court may enforce any order entered pursuant to this section by its contempt powers or as otherwise provided by law.

11. The director shall cause a final inspection of the licensed warehouse immediately after the end of the ninety-day period. The warehouseman shall pay a fee for each examination provided for in this section. The fee shall be computed in accordance with subsection 3 of section 411.271.

12. Verbal or written surety bond binders issued by a surety on behalf of a grain warehouseman for original or replacement bonds are hereby recognized as legally effective in the state of Missouri as if the bond were fully executed when such binders meet the following conditions:

- (1) The warehouseman, or principal, has paid or has promised to pay the surety an agreed upon or tentatively agreed upon premium or other consideration;
- (2) The surety provides the department, either in writing, or verbally:
  - (a) A bond number;
  - (b) The amount of the bond;
  - (c) The effective date of the bond;

(d) Either verbal or written assurance that the person providing the preceding information has authority to commit the surety. Such binders may be cancelled only in the manner provided in subsection 8 of this section. The director may or may not accept such a binder depending on the particular circumstances involved and consistent with the orderly administration of this chapter.

**§ 411.276. Liability of surety not cumulative**

In no event shall the liability of the surety on any bond required by section 411.275 accumulate for each successive license period during which the bond is in force. The liability of the surety shall be limited in the aggregate to the face amount of the bond.

**§ 411.277. Certificates of deposit and letters of credit, provisions applicable to—letters of credit, submitted in lieu of bond, when, refusal of director to accept, grounds, demand by director, procedure, failure by bank to pay, when, penalty, funds returned to bank, when—rules and regulations**

1. The provisions of this chapter and all regulations promulgated under this chapter that apply to surety companies and surety bonds shall also apply to certificates of deposit and irrevocable letters of credit. Any certificate of deposit submitted in lieu of a surety bond required under this chapter shall be filed with the director as trustee for the benefit of all persons storing grain with the grain warehouseman. The certificate of deposit will be kept in the custody of the director.

2. A grain warehouseman may, in lieu of the bond required under this chapter, submit an irrevocable letter of credit, payable to the director for the benefit of claimants, and issued by a federally or state chartered bank. The director may refuse to accept a letter of credit in lieu of the bond required by this chapter if the director finds that the issuing bank is or may become insolvent, or for any other reason may be unable to honor the terms of the letter of credit. The director may require an issuing bank to submit evidence of its financial condition, and the director may seek the cooperation of the division of finance in evaluating the financial condition of an issuing bank. The director shall promulgate all necessary regulations pertaining to certificates of deposit, bonds, and irrevocable letters of credit.

3. Upon written demand of the director for payment, the bank shall either pay over to the director the sum demanded, up to the full face amount of the irrevocable letter of credit, or shall deposit the sum demanded in an escrow account at the highest rate of interest available. When a bank pays the director upon demand, the director shall either interplead the sum in court or hold an administrative hearing for the determination of the liability of the bank and the validity of the claims against the irrevocable letter of credit, and upon the conclusion thereof, the director shall distribute the irrevocable letter of credit proceeds accordingly. The determination of the director shall be final, subject to the licensee's or claimant's right to appeal to the circuit court pursuant to the provisions of chapter 536. Refusal or failure of the issuing bank to pay the sum demanded to the director within three days of the bank's receipt of such written demand shall result in a penalty assessment of ten percent of the amount demanded, up to the full face amount of the irrevocable letter of credit, per week until the amount demanded and the penalty are paid. When funds have been received, and the director or court determines that the bank is not liable for claims against the irrevocable letter of credit, the director shall return to the bank the sum paid to the director and all accumulated interest earned, minus any penalties due or paid. In the event that the liability is less than the sum demanded, the director shall return the appropriate pro rata portion of the funds received, and interest earned as applicable.

**§ 411.278. Amount of bond, how computed**

1. The amount of the bond required by section 411.275 shall be based upon the licensed capacity of the warehouse, but in no event shall such bond be less than twenty thousand dollars, and shall be based upon the following table of rates:

If the licensed capacity of the warehouse is:

The required bond is the greater of \$20,000 or:

Not over 200,000 bushels

\$10,000 plus \$0.25 per bushel of licensed capacity

Over 200,000 but not over 1,000,000

\$60,000 plus \$0.20 per bushel of excess over 200,000 bushels of licensed capacity

Over 1,000,000 but not over 2,000,000

\$220,000 plus \$0.15 per bushel of excess over 1,000,000 bushels of licensed capacity

Over 2,000,000 but not over 3,000,000

\$370,000 plus \$0.10 per bushel of excess over 2,000,000 bushels of licensed capacity

Over 3,000,000

\$470,000 plus \$0.05 per bushel of excess over 3,000,000 bushels of licensed capacity

2. Notwithstanding subsection 1 of this section, no bond required under section 411.275 shall exceed one million dollars; except, in the case of a deficiency in the net worth as set forth in section 411.280, the director may require additional bond as he shall deem necessary to provide security.

**§ 411.280. Warehouseman's net worth, requirements — deficiency, how corrected**

Every warehouseman licensed under the provisions of this chapter shall have and maintain a net worth equal to the greater of ten thousand dollars or the amount which results from multiplying the storage capacity of the warehouse by twenty-five cents per bushel. Capital stock, for the purpose of determining the net worth, shall not be considered a liability. Any deficiency in required net worth above the ten thousand dollar minimum requirement may be met by supplying additional bond in an amount equal to one thousand dollars for each one thousand dollars or fraction thereof of deficiency.

**§ 411.281. Additional bond required, when—amount, how determined**

1. The director, after a hearing held in accordance with this chapter and regulations promulgated hereunder, may make a determination that the warehouseman has failed, or is unable, to meet storage or dollar obligations, and thus an additional bond is essential to adequately protect the warehouseman's depositors. Upon such a determination, the director shall require to be filed, within a reasonable period, as determined by the director, an additional bond in such amount as the director deems to be necessary to assure protection to the warehouseman's depositors.

2. The amount of the additional bond required under this section shall not exceed the amount necessary to fulfill the storage and dollar obligation which the warehouseman has failed or is unable to meet.

**§ 411.283. Requirements for license — minimum storage capacity — scales required — denial of license, notice, hearing — contents of license — posting of license, duplicate license issued when — notice of suspension, cancellation, revocation or refusal to issue — removal of license, effect of**

1. Upon receiving an original application, the director may make an examination of the warehouse covered by the application. The director shall issue a license to operate a public grain warehouse if he determines that:

(1) The application is sufficient;

(2) The warehouse facility is suitable for the proper storage of grain. The director shall determine the suitability of the warehouse for the storage of grain based upon the type, location, construction, layout and facilities of each warehouse. The warehouse facility shall have at least ten thousand bushel storage capacity. An adequate scale for weighing grain must be available for the warehouseman's use on site or within a reasonable distance of the warehouse facility, not to exceed five miles. The director's findings shall include, but not be limited to, the following:

(a) The storage facilities are weathertight so as to protect the grain from the elements at all times;

(b) The facilities and the practices with respect to those facilities are such as to maintain and preserve the quantity and quality of the grain;

(c) Safe and adequate means of ingress and egress to the various storage units of the warehouse are provided and maintained by the warehouseman;

(3) The applicant is capable of performing the service proposed;

(4) The applicant is willing and able to comply with the provisions of this chapter and regulations promulgated hereunder;

(5) The applicant, or, if the applicant is a corporation or partnership, any officer, majority shareholder, board member or partner has not been involved in illegal or improper manipulation of grain inventories which involved or resulted in losses to grain depositors within the seven-year period of time immediately preceding the date the director received the application;

(6) The applicant has sufficient financial resources to adequately protect depositors; except that, if the director finds that the applicant, management personnel, a principal officer or partner has a bad business reputation, the director may deny the application. If the director is not satisfied with the applicant's qualifications as stated in this section, the application may be denied. If the application is denied, notice shall be mailed to the applicant setting forth the reasons for the denial of the license. Within fifteen days of receipt of a notice of denial for license, the applicant may file a written application with the director for a hearing on the denial. The hearing shall be carried out in accordance with the provisions of this chapter and regulations promulgated hereunder.

2. Every license shall be dated and shall expire on the last day of the fifth month after the close of the warehouse's fiscal year, except that the initial licensing period after April 22, 1986, shall be for at least six months but not longer than eighteen, and shall designate the name of the licensee and the location of the warehouse. No fees shall be prorated.

3. Every license shall be, at all times during the operation of the licensed warehouse, posted in a conspicuous place in the office room of the warehouse. Upon proof, satisfactory to the director, that a public grain warehouse license issued under this chapter has been destroyed or lost, the director may issue to the warehouse a duplicate license, with "DUPLICATE" clearly printed on its face. The fee for such duplicate license is ten dollars.

4. If the holder of any public warehouseman's license is convicted of any violation of this chapter, or if the director determines that any holder has violated any of the provisions of this chapter, or any of the rules and regulations adopted by the director under the provisions of this chapter, the director may at his discretion modify, suspend, cancel, revoke or refuse to renew the license of the holder.

5. Whenever the director shall modify, suspend, cancel, revoke or refuse to issue any license he shall prepare an order so providing which shall be signed by the director or some person designated by him, and the order shall state the reason or reasons for the modification, suspension, cancellation, revocation or refusal to issue the license. The order shall be sent by certified mail to the licensee or applicant at the address of the warehouse licensed or applying for a license. Within thirty days after the mailing of the order, the licensee, if aggrieved by the order of the director, may appeal as provided in chapter 536. At the time of the filing of the appeal, the party appealing shall give a bond for costs conditioned on his prosecuting the appeal without delay and paying all costs assessed against him. In addition, the licensee shall post a bond which shall remain in effect pending final disposition of all appeals, including review by the Missouri court of appeals or Missouri supreme court, or federal review, in an amount sufficient to cover all grain storage and grain-related obligations of the licensee as identified by the director. The posting of such bond is jurisdictional to the circuit court's authority to entertain the appeal.

6. Notwithstanding any other provision of this chapter, if, upon examination, it is determined that a licensed warehouseman has violated or is violating any of the provisions of this chapter, and the director has reasonable cause to believe that the nature of the violation is such that there exists an immediate danger of substantial loss, the director may authorize and cause any employee charged with the enforcement of this chapter to remove the warehouseman's license to operate a public grain warehouse from the premises of the warehouse. Any license so removed shall be returned to the director. The removal of the license from the premises shall constitute a temporary suspension of the license. The director shall grant a hearing, to be held in accordance with the provisions of this chapter and regulations promulgated hereunder, as soon thereafter as is possible, but not later than ten days after the temporary suspension imposed by removal of the warehouseman's license.

**§ 411.285. Procedure after license is revoked—injunction to sell or remove grain, hearing, notice**

1. When a license is revoked, the warehouseman shall terminate, in a manner prescribed by the director, all arrangements covering the storing of grain in the warehouse covered by the license,

but shall be permitted, under the supervision of the director, to deliver or purchase grain previously received.

2. In terminating arrangements regarding the storing of grain, the warehouseman shall prepare and send a notice, in a form approved by the director, to all depositors. The notice shall set forth the fact of termination and provide for a schedule of deliveries.

3. When a license is revoked, the director shall notify each depositor or holder of an outstanding warehouse receipt of the revocation. The director shall further notify each depositor or receipt holder that his grain must be sold or removed from the warehouse. The notice shall be by ordinary mail sent to the last known address of each receipt holder. Upon receipt of the notice, it shall be the legal duty imposed hereby of each depositor or receipt holder to so sell, or remove or cause to be removed his grain from the warehouse forthwith.

4. When a warehouseman's license is revoked pursuant to this section, the director may apply to the circuit court for a mandatory injunction ordering depositors to sell, remove or cause to be removed their grain from the warehouse and the circuit courts are hereby empowered to enter such an order. A hearing shall be held within ten days of the filing of any such petition. Notice of hearing to depositors, receipt holders, warehouseman, surety, all interested persons and the director shall be by any practicable means effecting actual notice. Further, the circuit courts are empowered to enter any order pertaining to the warehouseman, director, depositors, receipt holders, surety, or other interested persons that is appropriate in the circumstances to effectuate such removal or sale consistent with the purpose of this chapter. The court may enforce any order entered pursuant to this section by its contempt powers or as otherwise provided by law.

**§ 411.287. Director may monitor operations, when — fee for monitoring — director may order shipments of grain stopped, failure to obey order, penalty**

1. If a license is suspended, revoked or a shortage is known to exist and the director determines that there is danger of loss to depositors, the director or his authorized agents may enter the premises of the warehouseman, monitor the activities of the warehouseman and take any actions authorized by this chapter which are necessary to protect the interests of depositors of grain. Additionally, when a shortage exists, the director or his designated representative may order, verbally or in writing, the warehouseman to cease shipping any grain until such shortage is corrected. Should the warehouseman continue to ship grain after being advised of such order to cease shipping, such action of the warehouseman shall constitute a class D felony. The director and his designated representative shall notify local law enforcement officials and request the immediate arrest of the warehouseman.

2. Whenever the director or his authorized agents monitor the operation of any warehouse, the warehouseman, upon a finding by a court of competent jurisdiction that the director had reasonable grounds to believe that this action was necessary to protect the depositors, may be assessed and shall pay a fee of one hundred dollars per person for each day or part thereof that the director or his authorized agents monitored the operations.

**§ 411.290. Insurance required, exceptions—rules and regulations**

1. Every state licensed public warehouseman shall in his own name at all times keep all the grain contained in his warehouse insured by some reliable insurance company authorized to do business in the state of Missouri. The grain is to be insured for its full market value against loss by fire, inherent explosion, lightning, and windstorm. Failure to do so is a violation of this chapter

and shall make the public warehouseman liable for the same on his bond. Except that a warehouseman shall not be required to carry insurance on commodity credit corporation owned grain if the commodity credit corporation elects to be self insured for loss of the grain. The director may promulgate rules governing the submission and acceptance of insurance policies that contain deductible clauses.

2. In case of a fire, inherent explosion, lightning, or windstorm, which shall destroy or damage all or part of the grain stored in any public warehouse, the public warehouseman shall, upon demand by the owner of the grain, or the holder of any warehouse receipt or receipts for such grain, and upon being presented with the warehouse receipt or receipts, or other evidence of ownership, 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 the value at the average price paid for grain of the same grade and quality at the station where the public warehouse is located on the date of the destruction. In the event settlement is not made within sixty days from the date of the demand, the depositor shall have the right to seek recovery from the insurance company.

3. Fraud or other 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, storage receipt or scale ticket, or other interested person, of his right of recovery under such policy of insurance.

4. No insurance policy covering grain shall be cancelled or be allowed to expire by the insurance company on less than ninety days' notice by certified mail to the director and the principal, except if such policy is being replaced with another policy and evidence of the new policy is filed with the director at the time of cancellation or expiration of the policy on file. The notice shall contain the termination or expiration date. Any replacement insurance shall be provided by, and carried in the name of, the warehouseman. The license of a warehouseman shall automatically be suspended for failure to file new evidence of insurance within thirty days of the director's receipt of the notice of cancellation or expiration. If replacement insurance is not filed within sixty days of the director's receipt of notice of cancellation or expiration, the warehouse license shall be automatically revoked. The provisions of subsections 9 and 10 of section 411.275, pertaining to the director, circuit courts, warehousemen, depositors, and other interested persons relating to bond cancellations shall apply similarly to insurance cancellations or expirations.

**§ 411.295. Director may hold hearings, administer oaths, subpoena witnesses and evidence, and punish for contempt**

The director shall have power in the conduct of any investigation or hearing authorized or held by him to examine, or cause to be examined, under oath, any person, and to examine, or cause to be examined, books and records of any warehouseman; to hear testimony and take proof material for his information in the discharge of his duties under this chapter; 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; and any circuit court may, by order duly entered, require the attendance of witnesses and the production of relevant books and records subpoenaed by the director, and the court may compel obedience to its order by proceedings for contempt.

### **§ 411.301. Director may enjoin violations**

The director may enjoin a warehouseman from violating or continuing to violate the provisions of this chapter and the rules and regulations adopted by the director pursuant to this chapter by filing injunction proceedings in the circuit court and in any such proceedings the circuit court, if it deems it proper, may order the 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. The injunction shall be prosecuted by the attorney general or the prosecuting attorney of the proper county upon request of the director.

### **§ 411.311. Operation without license prohibited, penalty**

1. Any person who:

(1) Operates a warehouse for storage of grain

(2) Holds himself out as being in the grain storage business, or as offering storage facilities for grain;

(3) Advertises for, solicits or accepts grain for storage;

(4) Carries on a grain bank operation, or receives and stores grain for which a like quantity of grain is to be returned or delivered in any form to the depositor thereof without first obtaining and keeping in force an annual license issued by the department authorizing the operation of a public grain warehouse, or without having the license displayed in a conspicuous place, or who shall continue to transact any such business as a public warehouse after the license has been revoked or suspended, except that he may purchase from or deliver to depositors property previously stored in the warehouse; is guilty of a misdemeanor.

2. The director may refuse to renew any license or grant a new one to any person whose license has been revoked for a period of one year from the date of the revocation.

### **§ 411.321. Terminal warehouseman to receive, inspect, weigh and grade grain**

1. It shall be the duty of every terminal warehouseman to receive for storage any grain, dry and suitable for warehousing, that may be tendered to him in the usual manner in which terminal warehouses are accustomed to receive the same, in the ordinary and usual course of business, to the capacity of his warehouse available for public storage. The grain shall be officially inspected, officially weighed, and officially graded, upon receiving grain into the warehouse, except that the owner or warehouseman may direct that the grain not be officially inspected, officially weighed, or officially graded as provided in section 411.030, but shall be inspected, weighed, and graded by an individual, designated by the warehouseman, competent and qualified in performing these services.

2. All grain delivered from the warehouse shall be officially inspected, officially weighed, and officially graded on its delivery by a duly authorized inspector and weighmaster of the department, except that the owner or warehouseman may direct that the grain not be officially inspected, officially weighed, or officially graded as provided in section 411.030, but shall be inspected and weighed by an individual, designated by the warehouseman, competent and qualified in performing these services.



**§ 411.323. Nonterminal warehouseman to receive, inspect, weigh and grade grain — exceptions — may issue receipts for own grain, how**

1. Every public warehouseman, other than a terminal warehouseman, shall receive for storage or shipment, so far as the available capacity for public storage of the warehouse shall permit, all grain in a dry and suitable condition for storage tendered him in the usual course of business, the grain to be inspected, weighed, and graded by an individual, designated by the warehouseman, competent and qualified in performing these services except that:

(1) The owner and the warehouseman may agree upon a sample taken from the lot of grain to be offered for storage as being a true and representative sample. This sample shall be sent to an official licensed inspector of the Missouri state grain warehouse division and the official licensed inspector who receives the sample shall grade it according to the official U.S.D.A. grain standards and issue a certificate of grade which shall state the name of the owner, the warehouse at which it is stored and the official grade of the grain and the official grade shall be stated on the warehouse receipt. The sample submitted to the licensed inspector shall be held by him for a period of at least ten days from its receipt and in case that either party of the transaction is dissatisfied with the grade assigned, he may have the right to reinspection and appeal upon request. The fees for the inspection of the sample shall be paid by the warehouseman and added to the storage charges of the grain;

(2) The owner and the warehouseman may agree to the grade of the grain to be offered for storage and a warehouse receipt issued on the agreed grade;

(3) The owner or warehouseman may have an official weight, official inspection, and an official grade on the grain to be offered for storage if requested of the department, the expense thereof paid by the person requesting the service.

2. Any warehouseman desiring to issue warehouse receipts for his own grain in store may do so by complying with the regulations governing the methods as prescribed by the director.

**§ 411.325. Delivery of grain to warehouse—procedure—contract—grain deemed for storage, when—deferred pricing and deferred payment and minimum price agreements—transactions not covered by bond—all grain deemed storage covered by bond**

1. At the time of delivery of grain to any public warehouse the scale ticket shall be marked to indicate whether the grain is delivered for storage, for sale or for some other purpose.

2. All grain received at a licensed public warehouse shall be deemed to be storage grain within the meaning of this chapter, unless:

(1) Payment for the grain is made upon delivery to the warehouseman; or

(2) At the time of delivery of the grain to the warehouseman, the purchase price is established, documented as prescribed by the director, and payment made within thirty days or the account is entered, as prescribed by the director, onto a formal settlement sheet within the same thirty-day period. Further, when an account is so entered onto a formal settlement sheet payment shall be made within one hundred eighty days of delivery. If payment is not so made within one hundred eighty days of delivery, a formal written contract as provided for in subsection 4 of this section shall be executed.

3. All grain received at any warehouse not licensed under this chapter shall be deemed to be grain held for storage within the meaning of this chapter, unless:

(1) The sale price for the grain has been established; and

(2) Payment made by the warehouseman and received by the owner of the grain within thirty days from the delivery of the grain to the warehouse; or

(3) A formal written contract as provided for in subsection 4 of this section is executed.

4. A warehouseman and a seller of grain may agree that payment or pricing of the seller's grain be deferred to a future date. The agreement shall be in writing, dated and shall contain a statement informing the seller that the seller is relinquishing title and all rights of ownership in the grain. The director may require any additional information from a warehouseman that he deems necessary to protect the interests of the seller of grain in these transactions. Failure to provide such additional information, upon request, shall be deemed a violation of this chapter. Grain received under a deferred payment or deferred pricing agreement under the provisions of this section shall not be deemed to be stored grain. For the purposes of this section, minimum price, deferred price and deferred payment contracts are not deemed valid unless they contain all the statements required by section 276.461 and are signed by both the buyer and seller or their authorized representatives. Grain represented by an invalid deferred pricing contract shall be deemed storage grain for the purposes of this chapter. Grain represented by an invalid deferred payment contract shall be deemed storage grain for the purposes of this chapter if payment has not been made within one hundred eighty days of delivery as required in subsection 2 of this section. Only class I grain dealers may enter into deferred price, minimum price or deferred payment agreements.

5. The following transactions shall not be covered by the warehouseman's bond:

(1) Any sale of grain evidenced by a check written by the warehouseman, received and accepted by the seller. Any check returned for any reason shall be evidence of a sales transaction; or

(2) Any sale of grain evidenced by a promissory note accepted by the seller. To be considered a promissory note, the note must contain the signature of both seller and buyer, date the note was executed, dollar amount of the note, payment terms, and interest rate; or

(3) Any sale of grain delivered to the warehouse pursuant to and evidenced by a grain purchase contract and treated as sold grain pursuant to the provisions of subsection 2 or 4 of this section.

6. The warehouseman's bond shall cover all grain deemed storage pursuant to the provisions of this section.

7. Grain originally received at a warehouse as storage grain and subsequently sold by the depositor to the warehouseman shall be considered received at the warehouse at the time of sale and shall be treated as grain sold or stored, as applicable, pursuant to the provisions of subsection 2 of this section as if at the time of physical delivery, the grain had been priced. The thirty-day, one hundred eighty-day and written contract provisions of subsection 2 of this section apply to these transactions commencing at the time of sale.

#### **§ 411.327. Grain bank grain, how treated**

Grain which is deposited in a warehouse for processing and which is commonly referred to as grain bank grain shall be considered to be storage grain. Grain bank grain shall be entered into the records of the warehouseman as a storage obligation in the same manner as other storage grain. The grain deposited for grain bank purposes may be accounted for on a separate record. Grain bank grain shall be accounted for on an individual depositor basis and shall not be shown as a total grain bank grain obligation. The records for grain bank grain shall be kept on a pounds or bushels basis for the various kinds of grain deposited. Records for grain bank grain may be kept on a monetary basis only if a check is issued or actual payment made at the time of delivery of the grain to the warehouse. If records are kept on a monetary basis, the warehouseman shall furnish written proof of payment to the director or his authorized agent upon request. The director is authorized to adopt and enforce any procedures and regulations necessary to assure the protection of grain bank obligations in the conduct of grain bank operations in warehouses.

#### **§ 411.331. Grain may be withheld from going into terminal warehouse — when — how — penalties**

In case any owner or consignee of grain to a terminal warehouse shall be dissatisfied with the inspection or grade of any lot of grain received by rail or shall from any cause desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into the terminal warehouse, whether the property may have previously been consigned to such terminal public warehouse or not, by giving proper notice prior to unloading to the person or corporation in whose possession it may be at the time of giving such notice; and the grain shall be withheld from going into storage and be delivered to the owner subject only to such proper charges including any advanced draft as may be a lien upon it prior to the notice, the grain in railroad cars to be removed therefrom by the owner or consignor within twenty-four hours after the notice has been given to the railroad company having it in its possession; provided, the railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow the owner or consignor to receive his grain shall be deemed guilty of misdemeanor, and shall be liable to pay the owner or consignor damages for any conversion. Notice that grain is not to be delivered into store may also be given to the proprietor of any terminal warehouse into which it would otherwise have been delivered, and if after the notice it be taken into store in the terminal warehouse, the proprietor of the terminal warehouse shall be liable to the owner of the grain for conversion.

#### **§ 411.341. Grain may be stored in special bin—receipt to indicate**

1. Any public warehouseman may, upon request of the owner of any grain, and with the consent of the warehouseman, store grain of the same grade in a bin to be kept apart from that of other owners, which bin shall thereupon be marked as a special bin.
2. If a warehouse receipt be issued for grain so kept separate, it shall state on the face of the receipt that it is a special bin, and shall state the number of each bin.

#### **§ 411.360. Cleaning, preservation by warehouseman of grain specially stored — requirements — change of condition of grain, notice — delivery to other than owner or receipt holder unauthorized**

1. Any public warehouseman may, on the written request of the owner of any grain stored in a special bin, upon the surrender of the receipt, or receipts therefor, 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. Nothing in this section, however, shall prevent any public warehouseman from removing grain within his 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 negligence of the warehouseman.

2. In case any public warehouseman shall discover that any portion of the grain stored in a special bin in his warehouse is out of condition or becoming so, and it is not in his power to preserve the same, he 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 vicinity 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 he can ascertain. He shall state in such notice:

(1) The kind and grade of grain;

(2) The bin in which it is stored;

(3) The description of the warehouse receipts outstanding upon which such grain will be delivered, giving the numbers, amount, and date of each;

(4) The name of the party for whom such grain was stored;

(5) The date it was received and the amount of it.

3. The enumeration of receipts and identification of grain so described shall embrace as nearly as possible the quantity of grain contained in such bins; and such grain shall be delivered upon the return and cancellation of such receipts, and the unreceipted grain upon the request of the owner or holder of the receipt or receipts.

4. 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 storage\* in such warehouse.

5. 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 chapter, to any but the owners of the lot or the holder of the warehouse receipt or receipts.

**§ 411.371. Warehouse receipts, approval by director required — counterfeiting, penalty for — unused receipts returned to director, when — unlawful issuance of receipts, penalty**

1. Warehouse receipts shall be issued by any licensed public warehouseman as herein defined upon the request of any depositor, and must be issued in manner and form as provided by this chapter or prescribed by rule, and the form of all receipts shall be approved by the director. The director shall be authorized to have printed all warehouse receipts, grade certificates, and weight certificates issued by public warehousemen licensed under this chapter.

2. It shall be unlawful for any public warehouseman to issue any warehouse receipts for any grain received except upon warehouse receipts approved by the director. Any person who shall

issue or cause to be issued any counterfeit warehouse receipt, or any warehouse receipt for grain, other than as authorized and prescribed by the director, shall be guilty of a class D felony.

3. Whenever the license of a public warehouseman expires or is revoked or suspended, he shall return all unused warehouse receipts to the director; the director shall immediately notify the holders of all outstanding receipts of the expiration or revocation of the license.

4. It shall be unlawful for any person, other than a licensed public grain warehouseman, to issue any negotiable warehouse receipt for grain, or any warehouse receipt for grain for collateral purposes. Any person who violates this subsection is, upon conviction, guilty of a class D felony.

**§ 411.381. Receipts, contents—prima facie evidence of holder's claim to grain**

1. Every receipt issued for grain stored in a warehouse licensed under this chapter shall embody within its written or printed terms:

- (1) The location of the warehouse where the grain is stored;
- (2) The date of the issuance of the receipt;
- (3) The consecutive number of the receipt;
- (4) How received, whether by railroad, car, truck, or other means;
- (5) A statement whether the grain received will be delivered to the bearer, to a specified person, or to a specific person or his order;
- (6) The rate of storage and handling charges;
- (7) The net weight in bushels and pounds and the percentage of dockage together with the grading factors and the grade;
- (8) The words "nonnegotiable" or "negotiable" according to the nature of the receipt clearly and conspicuously printed or stamped thereon;
- (9) The signature of the warehouseman which may be made by an authorized agent; and
- (10) If the receipt is issued for grain of which the warehouseman is owner, either solely or jointly, or in common with others, the fact of such ownership.

2. A receipt, whether negotiable or nonnegotiable, is a document of title. The warehouseman's failure to complete all entries on a receipt as required by this chapter and the rules promulgated pursuant to this chapter shall constitute a violation on the part of the warehouseman, but shall not preclude or restrict a depositor's right to recover stored grain under the provisions of this chapter. The receipt shall constitute prima facie evidence of the holder's claim to the grain regardless of the degree of compliance with this chapter with respect to completion of the entries required by this chapter.

**§ 411.383. Warehouse receipt register, how maintained**

Every licensed warehouseman who issues warehouse receipts shall maintain at his place of business a warehouse receipt register containing the duplicate copy of all issued receipts, each by consecutive number. Upon cancellation of a receipt, the original shall be retained in the warehouseman's files attached to its duplicate. After cancellation neither the original nor the duplicate shall be removed from the files.

**§ 411.391. Warehouseman may sell or pledge receipts issued for grain owned by him**

Any public warehouseman operating a warehouse in the state may make a valid sale or a 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 ownership in the receipt shall constitute notice 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 the receipts.

**§ 411.401. Grain accepted for storage in other public warehouse—form of trust receipts**

If the grain is offered for storage in any licensed public warehouse and the warehouseman does not have storage space to handle the same, the public warehouseman, with the consent of the owner and at his option, may accept grain shipment to a public warehouse where storage is available. The form of trust receipt to cover grain for storage by public warehouses, and to be transported to and stored in a public warehouse, shall be on a form approved by the director of agriculture and shall embody within its written or printed terms:

- (1) The date of the issuance of the receipts;
- (2) The name of the warehouse issuing the same and its location;
- (3) The rate of storage or the basis for the charges;
- (4) The net weight in bushels and pounds and percentage of dockage together with the grade;
- (5) The words "trust receipt" and "nonnegotiable" clearly and conspicuously printed or stamped thereon;
- (6) The signature of the warehouseman, which may be made by his authorized agent and filed with the director;
- (7) A statement of the amount of the advances made, or the liabilities incurred, for which the warehouse claims a lien, but if the precise amount of advances made, or the liabilities incurred, be at the time of the issuance of the receipt unknown to the warehouseman, or to his agent who issues it, a statement of the fact that the advances have been made, or liabilities incurred, and the purpose thereof, is sufficient.

**§ 411.405. Grain shipped to terminal warehouse at request of owner—how—grain shipped to other licensed warehouses for storage to cover nonreceipted storage obligations, how**

1. At his option a public warehouseman may ship carlots of grain, when requested by the owner to do so, to a specified terminal warehouse within the state without official inspection or the issuing of trust receipts, providing that the identical lot of grain is tendered for shipment. The transportation of the grain shall be at the owner's risk. When a warehouse receipt has been issued by the terminal warehouseman receiving the grain, and returned to the public warehouseman, he shall deliver the warehouse receipt to the owner upon payment of freight and all legal charges and upon surrender by the owner of the trust receipt or receipts, if any, issued by the public warehouseman for the grain.

2. A licensed warehouseman may ship grain to another state or federally licensed warehouse for storage to cover nonreceipted storage obligations at his licensed facility. The original warehouseman must have the written approval of the owner of the grain or notify the owner in writing prior to transferring the commodity or the obligation. Prior written notification may include

printed statements on scale tickets or statements made on the schedule of charges required under section 411.268. The receiving warehouse must be a state licensed facility within the state of Missouri, a warehouse licensed under the United States Warehouse Act, or a facility located outside the state of Missouri licensed by the state where the facility is located if, based upon a determination by the director, that state's requirements are sufficient to protect the integrity of the stored grain. The transportation of the grain shall be at the original warehouseman's risk.

**§ 411.410. Receipts to be numbered—duplicates**

All warehouse receipts issued by terminal public warehouses or public warehouses shall be numbered consecutively, and no two receipts bearing the same number shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case any duplicate receipt shall bear the same date and number as the original and shall be plainly marked on its face "duplicate". If the grain was received from railroad cars, the initials and number of each car shall be stated on the receipt with the amount it contained; if from wagon, truck or other means, the manner of its receipt shall be stated on its face.

**§ 411.420. Lost receipts—procedure**

1. Where a negotiable receipt has been lost or destroyed by the holder of the receipt, the director may order the delivery of the grain upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the director, conditioned to indemnify the warehouseman or any holder or other person entitled to the grain against all loss, liability, or expense which he or they may sustain by reason of such delivery. The director shall also at his discretion order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the grain under an order of the director, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or the delivery of the grain

2. Where a negotiable receipt has been lost or destroyed by the warehouseman, the director may, upon proof of such loss or destruction, require the warehouseman to sign an affidavit stating that the receipt has been lost or destroyed and cannot be produced for cancellation and that delivery or payment in full for the grain represented by the receipt has been made to the holder and that the warehouseman has not negotiated the receipt for value. The director may request the person to whom the receipt was issued or the person to whom the original holder negotiated the receipt to sign an affidavit stating that he has received delivery or payment in full for the grain represented by the receipt and that the receipt was willingly and truthfully presented to the warehouseman for cancellation.

**§ 411.451. Fraudulent receipts prohibited—division or consolidation of receipts—delivery of grain**

1. No warehouse receipt shall be issued except upon actual delivery of grain into store in the warehouse from which it purports to be issued. Nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel so received for storage, nor shall more than one receipt 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. In cases where a part of the grain represented by the receipt, or receipts, is delivered out

of store and a remainder is left, the director shall prescribe the form of the document for the remainder of the grain and the manner in which it is to be issued.

2. In case it is desirable to divide one receipt into two or more, or in the case it is desirable to consolidate two or more receipts into one and the warehouseman consents, the original receipt, or receipts, shall be cancelled in the same manner as if the grain had been delivered from store and the new receipt, or receipts, shall express on the face thereof that the 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 the date of the original receipt shall also appear on the new receipt issued in lieu thereof. No consolidation of receipts differing more than thirty days in date shall be permitted. All new receipts issued for old ones cancelled, as herein provided, shall bear the notation of the date of the receipt as originally issued.

3. A warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and cancelled, and shall not deliver grain for which he has issued a nonnegotiable receipt until the receipt has been returned to him or he has obtained from the person lawfully entitled to the delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

#### **§ 411.491. Warehouseman must deliver grain, when**

A warehouseman, in the absence of some lawful excuse provided by this chapter, is bound to deliver the grain upon demand made either by the holder of a receipt for the grain, or by the depositor, if the demand is accompanied with:

- (1) An offer to satisfy the warehouseman's lien;
- (2) An offer to surrender the receipt, if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and
- (3) A readiness and willingness to sign, when the grain is delivered, an acknowledgment that it has been delivered, if an acknowledgment 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 his refusal.

#### **§ 411.511. Warehouseman should deliver grain, to whom**

A warehouseman is justified in delivering the grain, subject to the provisions of the three following sections, to one who is:

- (1) The person lawfully entitled to the possession of the grain, or his agent;
- (2) 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 persons so entitled either endorsed upon the receipt or written upon another paper; or
- (3) A person in possession of a negotiable receipt by the terms of which the grain is 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 endorser.



**§ 411.515. Inventory required to be maintained — documents required to establish inventory**

1. Every warehouseman shall maintain stored grain inventories of sufficient quantities, qualities and grade to meet at all times his storage obligations. Failure to maintain required inventories is a violation of this chapter.

2. Grain evidenced by outstanding and uncanceled negotiable warehouse receipts shall be maintained in the specific warehouse facility shown on the warehouse receipt issued when the grain was deposited originally. For the purposes of this chapter each separate warehouse facility must maintain such an inventory for negotiable warehouse receipts issued by it at that location.

3. Inventories representing stored grain obligations other than those described in subsection 2 of this section shall be represented by:

(1) Grain actually held in the warehouseman's licensed warehouse facility;

(2) Receipts or tickets for grain stored in a licensed warehouse in Missouri;

(3) Receipts or tickets for grain stored in a warehouse facility licensed under the United States Warehouse Act;

(4) Receipts or tickets issued by a warehouse facility located outside of the state of Missouri upon a determination by the director that such receipts or tickets are issued by a person who, due to his net worth, his having posted a cash or surety bond, which may include an irrevocable letter of credit in a form acceptable to the director, or his having otherwise satisfied the director that the integrity of the grain will be maintained, is able to protect the stored grain.

4. All stored grain shall be maintained in licensed facilities.

5. Title to any grain which is forwarded to any other warehouse for storage shall be evidenced as prescribed by the director by rule.

**§ 411.517. Records required to be kept**

1. The warehouseman shall maintain in a place of safety at each licensed warehouse facility current and complete records with respect to all grain delivered to, withdrawn from and received, stored or processed at that warehouse. The director may allow the warehouseman to maintain said records at the warehouseman's headquarters office on a case-by-case basis taking into consideration the location from which grain payments are made. Such records shall include but not be limited to the following:

(1) A perpetual inventory showing the total quantity of each kind and class of grain received and loaded out, the quantity of each kind and class of grain remaining in the warehouse and the total storage obligations for each kind and class of grain. This record shall be kept current as of the close of each business day; except that, if no transaction takes place during a business day, a record showing the actual status as to quantity and storage obligations at the close of the next preceding business day during which recordable transactions occurred shall be deemed to be current;

(2) A register which records all grain transactions not evidenced by the warehouseman's own scale ticket, i.e., direct farm to market shipments. This register shall be updated daily showing,

at a minimum, customer name, type of grain, quantity of grain, date of shipment, name of terminal or other business accepting the physical commodity, destination scale ticket number and whether the grain was delivered for storage, sale or other specified purpose;

(3) A current copy of the periodic insurance report submitted to the insurer.

2. In addition to the records required by section 411.383 and subsection 1 of this section, the warehouseman shall maintain such adequate financial records as will clearly reflect his current financial position and will clearly support any financial information required to be submitted to the director from time to time.

3. Each grain warehouseman may also be required to keep such records or make such reports as deemed necessary by the director to protect the depositor or seller of grain as set forth in this chapter and the regulations promulgated hereunder.

4. All books, records and accounts of warehousemen shall be kept and held available for examination for a period of not less than three years after the close of the period for which such book or record was required; except that, canceled or voided warehouse receipts and the warehouse receipt register required by section 411.383 shall be kept and held available for examination for a period of not less than six years from the date of cancellation or voiding of receipts or, in the case of the register, from the last date upon which a receipt referred to therein shall have been canceled or voided.

5. A warehouseman licensed or required to be licensed under this chapter shall keep available for examination all books, records and accounts required by this chapter and any other books, records and accounts relevant to his operating a public grain warehouse. An examination may be performed by the director or a warehouse auditor, and may take place at any time during the normal business hours of the warehouseman or, if prior notice of the examination is given to the warehouseman, at such time as is prescribed in that notice.

6. Any warehouseman licensed or required to be licensed under this chapter, or any officer, agent, employee, servant or associate of such warehouseman, who files with the director false records, scale tickets, financial statements, accounts, or withholds records, scale tickets, financial statements or accounts from the director, or who alters records, scale tickets, financial statements or accounts in order to conceal outstanding storage obligations or to conceal actual amounts of grain received for storage or for purchase, whether or not paid for, or to conceal warehouse obligations or for the purpose of misleading in any way department warehouse auditors or officials, is guilty of a class D felony.

**§ 411.518. Scale tickets—required, contents, constitute nonnegotiable receipts, evidence of holder's claim to grain—custom weighing defined**

1. A scale ticket, or other document approved by the director, shall be made out and filed for each movement of grain in or out of any grain warehouse licensed or required to be licensed under the provisions of this chapter. All scale tickets shall be printed with the business name and location and consecutively numbered. They must be issued in consecutive order. A copy of all scale tickets shall be kept on file in numerical order in the warehouseman's office. All other source documents for movement of grain in or out of the facility shall be in a form approved by the director and kept and maintained in a manner approved by the director. Any scale ticket used in pricing grain for the purpose of sale to the warehouseman shall have the price shown on all copies of the ticket.

2. A scale ticket issued in accordance with the provisions of this chapter or regulations promulgated hereunder shall be considered a form of nonnegotiable receipt. This form of nonnegotiable receipt shall be deemed a document of title. The warehouseman's failure to complete all entries on a scale ticket as required by this chapter and the rules promulgated pursuant to this chapter shall constitute a violation on the part of the warehouseman, but shall not preclude or restrict a depositor's right to recover stored grain under the provisions of this chapter. The scale ticket shall constitute prima facie evidence of the holder's claim to the grain regardless of the degree of compliance with this chapter with respect to completion of the entries required by this chapter.

3. All scale tickets, or other approved documents, issued shall contain the following information:

(1) Customer name;

(2) Date issued;

(3) Type of grain;

(4) Quantity of grain;

(5) Notation to show whether the grain movement was IN or OUT;

(6) If movement was IN, whether the grain received was for storage, purchased by the warehouseman, or other specified purpose; and

(7) If received for purchase by the warehouseman, the price shall be stated on all copies.

4. As used in this section, "custom weighing" shall mean the weighing of products or articles for the sole purpose of ascertaining weight and the weighing of these products and articles is not for the purpose of a sale or purchase by the warehouseman in the usual course of his business transactions. Any scale ticket used for the purpose of custom weighing must be clearly and conspicuously designated as a custom weight ticket. The director may promulgate regulations pertaining to the form and usage of custom weighing tickets.

**§ 411.519. Insufficient inventory, procedure to correct—insolvency, director may modify, suspend or revoke license or request order to be named trustee, procedure, order—warehouseman may appeal, how**

1. Whenever it appears to the satisfaction of the director that a warehouseman does not have in his inventory sufficient grain to cover the outstanding receipts and scale tickets issued or assumed by him, or when the warehouseman refuses to submit his records or property to lawful examination, the director may give notice to the warehouseman to comply with any of the following requirements:

(1) Immediately cease all grain-related operations and transactions such as, but not limited to, shipping, receiving, handling, processing or selling of grain on his own account or the account of others;

(2) Cover the shortage by supplying the grain or evidence of ownership of the grain;

(3) Submit to such examination as the director may deem necessary;

(4) Immediately purchase and make actual payment for a sufficient quantity and quality of grain to fully cover the shortage. If the warehouseman fails to comply with the requirements contained

in the notice within the time period which the director may allow, the director may petition the circuit court of the county where the warehouse is located for an ex parte order authorizing the director or his authorized agent to seize and take possession, as trustee, of any grain located in the warehouse of such warehouseman, and of all pertinent records and property, as provided in subsection 4 of this section.

2. If at any time the director has evidence that a grain warehouseman is insolvent or is unable to satisfy the claims of all depositors as they become due, or the warehouseman does not have in his inventory sufficient grain to cover the outstanding receipts and scale tickets issued or assumed by him, the director may modify, suspend or revoke the warehouseman's license or petition the circuit court in the county where the warehouse is located for an ex parte order authorizing the director or his authorized agent to seize and take title possession, as trustee, of any grain and grain-related assets in the warehouse or under the warehouseman's control, and of all pertinent records and property as provided for in subsection 4 of this section.

3. Whenever the director shall modify, suspend or revoke any license, he shall prepare an order so providing which shall be signed by the director or some person designated by him, and the order shall state the reason or reasons for the modification, suspension or revocation of the license. The order shall be sent by certified mail to the licensee or applicant at the address of the grain warehouseman licensed or applying for a license. Within thirty days after the mailing of the order, the licensee, if aggrieved by the order of the director, may appeal as provided in chapter 536. At the time of the filing of the appeal, the party appealing shall give a bond for costs conditioned on his prosecuting the appeal without delay and paying all costs assessed against him. In addition, the licensee shall post a bond which shall remain in effect pending final disposition of all appeals, including review by the Missouri court of appeals or Missouri supreme court, or federal review, in an amount sufficient to cover all grain storage, and other grain-related obligations of the licensee as identified by the director. The posting of such bond is jurisdictional to the circuit court's authority to entertain the appeal.

4. Upon receipt of the director's verified petition setting forth the circumstances of the warehouseman's failure to comply with this chapter and further stating reasons why immediate possession by the director or his authorized agent is necessary for the protection of depositors, warehouse receipt holders or sureties, the court is authorized to issue an ex parte order and shall issue such an order authorizing the director or his authorized agent to take immediate possession for the purposes stated in this section. A copy of the petition and order shall be sent to the warehouseman. If appropriate, the court may order the director's taking possession of only grain-related assets and not the entire business of the warehouseman. Such order may include, but is not limited to, the following:

(1) The director locking down and securing, by padlocks or other appropriate means, the grain storage bins, scales, offices, equipment and rolling stock of the warehouseman;

(2) Removing and excluding the warehouseman, or any and all of the warehouseman's employees, from the facility;

(3) Prohibiting the warehouseman from engaging in any grain-related business transactions whatever during the director's possession of the grain-related assets of the warehouseman's business;

(4) Authorizing all financial institutions to place all business accounts of the warehouseman under the director's authority and to freeze all transactions involving such accounts except to honor outstanding checks written previous to the issuance of the court's order. If it appears that the warehouseman has conducted, in part, his grain storage business through the use of personal accounts as opposed to business accounts, or intermingled two or more such accounts, the court may authorize the applicable financial institutions to place such personal accounts, as well as the business accounts, under the authority of the director in order to allow the director to accurately determine the extent of all grain-related obligations incurred by the warehouseman, the correct status of same and the warehouseman's resources to pay his grain-related obligations;

(5) Authorizing the director to redeliver or sell depositor or company-owned grain, as appropriate in the circumstances and setting forth the conditions for doing such;

(6) Authorizing the director to deposit all grain-related assets and proceeds therefrom in an interest-bearing escrow account to be disbursed only upon orders of the court;

(7) Directing the warehouseman to furnish the director with all grain-related business documents which come into his possession subsequent to the director's possession of the grain-related assets, as well as any other grain-related documents which the warehouseman may have knowledge of and which are not at the warehouse facility.

5. At any time within ten days after the director or his authorized agent takes possession, the warehouseman may file with the court a response to the petition of the director stating reasons why the director or his authorized agent should not be allowed to retain possession. The court shall set the matter for hearing on a date not more than fifteen days from the date of the filing of the warehouseman's response. The order placing the director or his authorized agent in possession shall not be stayed nor set aside until such time as the court, after hearing, determines that possession should be restored to the warehouseman.

6. Upon taking possession, the director shall give written notice of his action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all receipts and tickets issued for grain to present their receipts or tickets for examination or to account for the same. The director may thereupon cause an audit and other investigation to be made of the affairs of the warehouse to determine the amount of the shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if practicable. The director shall notify the warehouseman and the surety on his bond of the approximate amount of the shortage and may notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouseman.

7. The director or his authorized agent shall retain possession obtained under this section until such time as the warehouseman or the surety on the bond shall have satisfied the claims of all depositors, or until such time as the director or his authorized agent is ordered by the court to surrender possession. At no time while the director or his authorized agent is in possession of a warehouse, as authorized by this section, shall the director or his authorized agent be required to operate the warehouse; nor will the director or his authorized agent be liable for any claims which have arisen or could arise from the nonoperation of the warehouse.

8. If at any time, the director, whether or not he or his authorized agent has possession as authorized by this section, has evidence that a warehouseman is insolvent or is unable to satisfy the claims of all depositors, the director may petition the circuit court for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with law.

9. All necessary expenses incurred by the director, his authorized agents or any receiver appointed under this section, in carrying out the provisions of this section may be recovered from the warehouseman in a separate civil action brought by the director in the circuit court or as part of the seizure or receivership action filed under this section. If the director or any of his authorized agents seize and take possession of the grain, records or property at the warehouse facility, the warehouseman shall be assessed and shall pay as part of the necessary expenses incurred a fee of fifty dollars per person for each day or part thereof that each such person performs such activities. The cost of liability insurance necessary to protect the director, the receiver and others engaged in carrying out the provisions of this section may be recovered as part of the necessary expenses.

**§ 411.520. Misfeasance or malfeasance — accepting money — improper influence — penalty**

Any duly authorized officer or employee appointed under the provisions of this chapter who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect, grade, test, or weigh any grain improperly, or who shall accept any money or other valuable consideration, directly or indirectly, for any neglect of duty as such duly authorized officer or employee, or any person who shall improperly influence any duly authorized officer or employee in the performance of his duties as such officer or employee shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail, or if in the city of St. Louis the jail of said city, not less than six nor more than twelve months, or both such fine and imprisonment in the discretion of the court.

**§ 411.523. Warehouseman liable for conversion, when**

Where a warehouseman delivers the grain to one who is not in fact lawfully entitled to the possession of it, 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 (2) and (3) of section 411.511, and though he delivered grain as authorized by that section he shall be liable if prior to the 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 the delivery, or had information that the delivery about to be made was to one not lawfully entitled to possession of the grain.

**§ 411.531. Failure to take up and cancel receipt—warehouseman liable—when**

Except as provided, where a warehouseman delivers grain for which he had 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 the receipt, for failure to deliver the grain to him whether the purchaser acquired title to the receipt before or after the delivery of the grain by the warehouseman.

**§ 411.541. Failure to mark receipt upon delivery of part of grain—warehouseman liable—when**

Except as provided, when a warehouseman delivers in whole or in part the grain for which he had issued a negotiable receipt and fails either to take up and cancel the receipt, or to place plainly upon it a statement of what grain had been delivered, he is liable to anyone who purchases for value in good faith the receipt, for failure to deliver all the grain specified in the receipt, whether the purchaser acquired title to the receipt before or after the delivery of any portion of the grain by the warehouseman.

**§ 411.551. Alteration of receipt—effect of**

The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if the alteration was:

(1) Immaterial;

(2) Authorized; or

(3) 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 the purchaser would have acquired if the receipt had not been altered at the time of the purchase.

**§ 411.561. Receipt marked “duplicate” — meaning of**

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

**§ 411.571. Transferor of receipt to endorse**

Where a negotiable receipt is transferred for value by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor 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.

**§ 411.581. Warranties on negotiation or transfer 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, warrants:

(1) That the receipt is genuine;

(2) That he has a legal right to negotiate or transfer it;

(3) That he has knowledge of no fact which would impair the validity or worth of the receipt; and

(4) 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.

**§ 411.591. Endorser not a guarantor for other parties**

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.

**§ 411.601. Certain devices prohibited where official state weights are given**

It shall be unlawful for any person, company, or corporation to install or continue to maintain at any elevator, mill, or warehouse where official state weights are given, any blower, suction fan, cleaner, or other device for the purpose of removing dirt, seeds, sticks, chaff, or any like substance from grain unloaded into the elevator, mill, or warehouse before the grain has been officially weighed.

**§ 411.611. Issuance of receipt without receiving grain—penalty**

A warehouseman who issues or aids in issuing a receipt knowing that the grain for which the receipt is issued has not been actually received by the warehouseman, or is not under his actual control at the time of issuing the receipt, is guilty of a felony and upon conviction shall be punished for each offense by imprisonment by the department of corrections and human resources for not to exceed five years.

**§ 411.621. False statement—penalty**

A warehouseman who fraudulently issues or aids in fraudulently issuing a receipt for grain, knowing that it contains any false statement, is guilty of a felony, and upon conviction shall be punished for each offense by imprisonment by the department of corrections and human resources for not less than two years nor more than five years.

**§ 411.631. Issuance of receipt without indicating warehouseman's ownership — penalty**

Where there is deposited with or held by a warehouseman grain of which he is the owner, either solely or jointly, or in common with others, the warehouseman who knowing this ownership issues or aids in issuing a negotiable receipt for that grain which does not state such ownership is guilty of a crime, and upon conviction shall be punished for each offense by imprisonment by the department of corrections and human resources for not less than two nor more than five years.

**§ 411.641. Improper delivery — penalty**

A warehouseman who delivers grain out of his possession, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of that grain, is outstanding and uncanceled, without obtaining possession of the receipt at or before the time of the delivery, is guilty of a felony, and upon conviction shall be punished for each offense by imprisonment by the department of corrections and human resources for not less than two nor more than five years.

**§ 411.651. Fraudulent deposit of grain and negotiation of receipt—penalty**

Any person who deposits grain to which he has not title, or upon which there is a lien or mortgage, and who takes for the grain a negotiable receipt which he afterward negotiated for value with intent to defraud, or without disclosing his want of title, or the existence of the lien or



mortgage, is guilty of a crime, and upon conviction shall be punished for each offense by imprisonment by the department of corrections and human resources not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

**§ 411.661. Penalty for violation of law—operating without a license, effect of payment of penalty fee**

Unless otherwise provided in this chapter, any person, firm or corporation, or any officer or agent of any person, firm or corporation, who violates any of the provisions of this chapter is, upon conviction, guilty of a class B misdemeanor. However, if a warehouseman has been charged, and has paid, a penalty fee for operating without a license as set forth in section 411.255, the warehouseman may not be charged with a misdemeanor for operating without a license for the time period covered by the penalty fee.

**§ 411.671. Discontinuing business as public warehouse—procedure—license invalid on cessation or on change in ownership—notice—audit and examination**

1. Any person operating a public warehouse in Missouri under this chapter, who desires to discontinue the operation of a public warehouse, shall notify by first class mail all holders of warehouse receipts, all parties storing grain in the warehouse, and all parties with whom the warehouseman has executed deferred payment or deferred pricing agreements in accordance with the provisions of this chapter, and by advertising in a newspaper of general circulation in the county in which the warehouse is situated, and the director of the state department of agriculture, at least thirty days prior to the date of his intention to discontinue the public grain warehouse business. The owners of the grain shall sell to the warehouseman or remove, or cause to be removed, their grain from the warehouse or the obligations may be assumed by a successor warehouseman before the termination of the license. In the case of a successor, producers or others may allow the original warehouseman to transfer the storage obligation to the successor. No assumption by a successor of any obligations of the predecessor warehouseman shall be valid unless the successor is duly licensed as required by this chapter prior to the assumption, and the depositor agrees to such assumption by the successor. Such assumption by a successor shall not relieve the predecessor warehouseman of the storage obligations in the event of default therein by the successor unless both the successor and terminating warehouseman have complied with all provisions of this section. If for any cause the grain is not sold to the warehouseman or removed from the warehouse or the obligation assumed by a successor, the warehouseman discontinuing business shall sell the grain at the best market price obtainable and deposit the funds with a bank authorized to do business in Missouri to be held for the account of the depositor and shall make a full detailed report of the same to the director. If and when the depositor, or holder of claim, appears and presents a valid claim to the bank for the funds so deposited, the bank shall deliver the funds to the claimant.

2. At the director's discretion, a warehouse license may be deemed to be invalid upon the change of ownership, cessation of operations, change of partners in a partnership, change of corporate structure of a corporation or sale. Every licensed warehouseman shall immediately notify the department as to any such change and, when requested to do so by the director, shall, deliver his license and all unused warehouse receipts to the office of the department, together with a notarized statement accounting for all receipts and setting forth the arrangements made with depositors for final disposition of the grain in storage and for fulfilling the obligations of the retiring warehouseman. In the case of a successor, the successor shall apply for a new license and execute a successor's agreement. When there is a change of

ownership or cessation of operations, the director may cause an audit and examination to be made.

**§ 411.681. Law not applicable to weighing or weighing supervision, in federally licensed warehouse, by exchange or board of trade**

This chapter shall not prohibit, infringe, or apply to any weighing or weighing supervision in or in connection with a federally licensed warehouse performed by any grain exchange or board of trade.

**§ 411.691. Fee for public warehouse license, how computed**

The maximum fee for a public warehouse license shall be computed as follows, based upon the capacity of the warehouse:

Capacity in Bushels

Annual Fee

(1) Less than 100,000

\$ 100.00

(2) At least 100,000 but less than 200,000

200.00

(3) At least 200,000 but less than 300,000

300.00

(4) At least 300,000 but less than 400,000

400.00

(5) At least 400,000 but less than 500,000

500.00

(6) At least 500,000 but less than 600,000

600.00

(7) At least 600,000 but less than 700,000

700.00

(8) At least 700,000 but less than 800,000

800.00

(9) At least 800,000 but less than 900,000

900.00

(10) At least 900,000 but less than 1,000,000

1,000.00

(11) At least 1,000,000 but less than 2,000,000

1,250.00

(12) At least 2,000,000 but less than 3,000,000

1,500.00

(13) At least 3,000,000 but less than 5,000,000

1,700.00

(14) At least 5,000,000 but less than 7,000,000

1,900.00

(15) At least 7,000,000 but less than 10,000,000

2,100.00

(16) At least 10,000,000 but less than 12,000,000

2,300.00

(17) At least 12,000,000 bushels

2,300.00 plus \$150 for each additional 2,000,000 bushels of capacity or fraction thereof.

**§ 411.701. Director may contract with federal agencies**

1. The director of the Missouri department 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 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.

2. The contracts may provide for reimbursement of the Missouri grain warehouse division by the Commodity Credit Corporation for the services so performed and furnished, and any money received pursuant to the terms of the contracts shall be paid to the director of revenue and thereupon deposited into the state treasury to the credit of the agricultural fees fund.

**§ 411.750. Safe working conditions to be maintained**

It is the responsibility of any person licensed under this chapter, and any person requesting services of any employee of the department, to provide at all times safe working conditions while the employee is performing requested or required duties as an employee of the department.

**§ 411.755. Failure to pay fees, effect of**

Failure to pay any fees authorized by this chapter within forty-five days of assessment shall be grounds for the suspension, revocation or refusal to renew any license issued under this chapter.

**§ 411.760. Remedies provided are in addition to and not exclusive**

1. Any remedy provided by this chapter shall not be deemed to preclude any other remedy provided for by common law or under any other statutes. Recovery by a depositor on the warehouseman's bond shall not be his sole or exclusive remedy, and shall not bar a civil action against the warehouseman or surety based upon rights or obligations under a storage agreement.

2. The grain warehouseman's bond shall be paid only to those depositors who are deemed to have a right of recovery against such bond as set forth under the provisions of this chapter.

**§ 411.765. Repealed L. 1995 S.B. 3 § A**

**§ 411.770. Stealing grain, penalty**

A warehouseman commits the offense of stealing grain if he or she sells grain owned by another person which has been delivered to him or her for the purpose of storage without the owner's consent, or by means of deceit or coercion, with the intent to deprive the owner of the grain either permanently or temporarily. Stealing grain by a warehouseman is a class D felony.

**§ 411.775. Attorney general and prosecutors may prosecute upon complaint**

It shall be the duty of the attorney general or each prosecuting attorney to whom any violation of chapter 411 is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before a violation is reported for prosecution, the director may give the warehouseman an opportunity to present his views at an informal hearing. In the event the director determines that a prosecutor to whom a violation has been reported has failed to institute appropriate proceedings, he may make a written report of the failure to institute proceedings to the attorney general. The attorney general shall investigate the circumstances which resulted in the report. If the attorney general determines that additional proceedings are appropriate, he may cause such proceedings to be instituted. When the attorney general causes such a proceeding to be instituted, he shall have all the powers and rights of the office of the prosecuting attorney to whom the violation was originally reported. Such powers and rights are restricted to the prosecution of the specific case reported.

**§ 411.778. Sign to be posted on warehouse or scale designating licensed or not licensed as warehouse — requirements — violation, penalties**

1. Each licensed warehouse, as defined in section 411.026, shall prominently display, at the main entrance to the building of the warehouse and on or about the scale of the warehouse so that such sign may be easily viewed by a person using the scale, a sign containing letters of not less than one inch and not more than six inches in height, which shall read:

NOTICE: THIS WAREHOUSE IS LICENSED PURSUANT TO THE MISSOURI GRAIN WAREHOUSE LAW, CHAPTER 411, RSMo.

2. Each public warehouse, as defined in section 411.026, which should, pursuant to the provisions of chapter 411, be a licensed warehouse, as defined in section 411.026, but which is not licensed as required by the provisions of chapter 411, shall prominently display, at the main entrance to the building of the warehouse and on or about the scale of the warehouse so that such sign may be easily viewed by a person using the scale, a sign containing letters of not less than one inch and not more than six inches in height, which shall read:

NOTICE: THIS WAREHOUSE IS NOT LICENSED AS REQUIRED BY THE MISSOURI GRAIN WAREHOUSE LAW, CHAPTER 411, RSMo.

3. Any warehouse, as defined in section 411.026, which is licensed pursuant to the United States Warehouse Act, 7 U.S.C. 241, shall prominently display, at the main entrance to the building of the warehouse and on or about the scale of the warehouse so that such sign may be easily viewed by a person using the scale, a sign containing letters of not less than one inch and not more than six inches in height, which shall read:

NOTICE: THIS WAREHOUSE IS LICENSED PURSUANT TO THE UNITED STATES WAREHOUSE ACT, 7 U.S.C. 241-273.

4. Any warehouse, as defined in section 411.026, which does not display the sign as required by subsection 1, 2, or 3 of this section is guilty of a misdemeanor, and shall be subject to a fine of up to three hundred dollars for each day of the violation.

**§ 411.800. Definitions — statutory lien on grain and grain-related assets for benefit of depositors**

1. As used in this section, “failure” means any of the following involving a licensed or unlicensed grain warehouseman:

- (1) An inability to financially satisfy claimants;
- (2) A public declaration of insolvency;
- (3) A revocation of license with outstanding grain storage obligations;
- (4) Refusal to redeliver stored grain where a good faith dispute does not exist;
- (5) Neglect to apply for license renewal without first settling all outstanding grain storage obligations;
- (6) Denial of license renewal application; or
- (7) Voluntarily surrendering a warehouse license without first settling all outstanding grain storage obligations.

2. As used in this section, “grain or grain-related assets” involving a failed warehouseman means any of the following:

- (1) All grain owned or stored, including grain in transit shipped by the failed warehouseman, but not yet paid for;
- (2) Grain held on storage in the name of or for the account of the warehouseman at any other warehouse;
- (3) Proceeds from the sale of grain due or to become due;
- (4) The equity less any secured financing directly associated therewith in assets in hedging or speculative margin accounts held by commodity exchanges or agents representing the exchanges, and any moneys due or to become due less any secured financing directly associated therewith from any transactions on the exchanges;

(5) Any other unencumbered funds, property, or equity in funds or property, wherever located, that can be directly traced to the sale of grain by the failed warehouseman, provided both that the funds, property, or equity in funds or property shall not be considered to be encumbered unless the encumbrance results from good and valuable considerations advanced by any secured party on a good faith basis and that the encumbrance is not the result of the taking of funds, property, or equity in funds or property as additional collateral for an antecedent debt.

3. A lien shall exist on all grain and grain-related assets of a failed warehouseman in favor of any of the following:

(1) Depositors, including lenders, who possess negotiable warehouse receipts covering grain owned by the warehouseman; and

(2) Depositors who possess written evidence of ownership disclosing a storage obligation of the warehouseman.

4. The lien which shall secure all claims described in subsection 3 of this section shall arise at the time of commencement of the storage obligation, or when funds are advanced by the lender, and shall terminate when the liability of the warehouseman to the claimant is discharged, provided that the priority of each lien among the respective claimants shall not relate to the date the claim arises. The lien claims of all claimants shall be considered to be assigned by operation of this section to the department of agriculture, and in the event of a failure and subsequent liquidation, the lien shall transfer over to assets or proceeds of assets either received or liquidated by the department of agriculture.

5. In the event of a failure, the director shall enforce the lien claims and allocate the proceeds as follows against all grain and grain-related assets for the benefit of the following:

(1) Depositors, including lenders, who possess negotiable warehouse receipts covering grain owned by the warehouseman;

(2) Depositors who possess written evidence of ownership disclosing a storage obligation of the warehouseman.

6. In the event that any adversary proceeding is commenced to recover grain or grain-related assets upon which the lien imposed in this section is imposed and the department declines to enter the proceeding, the director, upon application to him by any claimant, shall assign to the claimant the applicable lien to permit the claimant to pursue his lien in the adversary proceeding to the extent the action will not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets to all claimants.