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Requirements for Grain Warehouses:

South Dakota



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Requirements for Grain Warehouses: South Dakota

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S.D. Codified Laws Ch. 49-43

Current through Acts received as of April 17th of the 2020 General Session.

49-43-1.1. Definitions.

Terms used in this chapter mean:

- (1) "Commission," the Public Utilities Commission of this state;
- (2) "Grain bank," grain which is received by a public grain warehouse from depositors for storage and is to be withdrawn and processed into feed as needed;
- (3) "Independent provider," a third party entity that maintains an electronic central filing system of electronic warehouse receipts;
- (4) "Open storage grain," grain received by a public grain warehouse from a depositor for which a warehouse receipt has not been issued or a purchase made and is not grain bank;
- (5) "Public grain warehouse," any public warehouse where grain, as defined in subdivision 49-45-1.1(2), is received for storage for hire. A public grain warehouse may also purchase, receive or handle grain in accordance with the provisions of chapter 49-45 relating to grain buyers;
- (6) "Receipt," a warehouse receipt which complies with the requirements of this chapter and the rules of the commission promulgated pursuant thereto. A warehouse receipt may be in an electronic form;
- (7) "Scale ticket," a memorandum issued by a public grain warehouse or grain buyer to a depositor at the time grain is initially delivered, showing the weight of the load, kind of grain, date of delivery, and indicates whether the grain is to be sold or stored under a warehouse receipt, in open storage, or in a grain bank account.

49-43-2. Delivery constitutes bailment rather than sale.

If any grain is delivered to any person doing a public grain warehouse business in this state and is held in open storage, in a grain bank account, or placed on a warehouse receipt, the delivery is a bailment and not a sale of the grain.

49-43-2.1. Receipt for stored grain required--Exceptions--Form--Violation as misdemeanor.

The operator of a public grain warehouse shall give a receipt for the grain received by it for storage, except for grain held in open storage or a grain bank account. No receipt form may be used except any form requested and ordered in accordance with the commission's rules promulgated pursuant to chapter 1-26.

The commission shall determine by rule or order the form and contents of any receipt form, which shall be uniform.

Any receipt form may be recovered by the commission if the public grain warehouse license is revoked, suspended, or otherwise terminated.

A violation of this section is a Class 1 misdemeanor.

49-43-3. Grain stored under receipt not liable to seizure--Insolvency of bailee.

In no case is the grain stored under a receipt as required by § 49-43-2.1, open storage grain, or grain bank liable to seizure upon process of any court in any action against the bailee, except an action by the owner of open storage grain, owner of grain bank, or owner or holder of a warehouse receipt to enforce the terms of the same. In the event of the failure or insolvency of the bailee, grain on hand in the public grain warehouse shall first be applied to the redemption and satisfaction of outstanding receipts issued by the warehouse and to owners of open storage grain and grain bank.

49-43-4.1. Promulgation of rules.

The commission may promulgate rules pursuant to chapter 1-26 concerning:

- (1) The procedure for filing grain reports;
- (2) The form of a public grain warehouse's bond and application, and the information required to be included for licensing;
- (3) Requirements and procedures for releasing bonds;
- (4) Requirements for posting public grain warehouse's licenses;
- (5) Procedures and requirements for license suspension, revocation, transfer of ownership, or insolvency by a public grain warehouse;
- (6) Requirements for the form of, procedures for, and the issuance and control of grain warehouse receipts and scale tickets;
- (7) Specifications for the safe storage of grain;
- (8) Requirements for filing financial statements with the commission and the financial standards by which the statements are approved when considering whether to license a public grain warehouse; and

- (9) The rates for receiving, handling, redelivering, and storing grain.

49-43-4.2. License to transact business as public grain warehouse required--Violation as misdemeanor--Injunction--Civil fine.

No owner, lessee, or manager of any public grain warehouse may transact any business as a public grain warehouse until a license has been issued by the commission. Any person who does business as a public grain warehouse without a license is guilty of a Class 1 misdemeanor. Each day a person conducts the business of a public grain warehouse without a license is a separate offense. The operation of a public grain warehouse without a license may be enjoined by the commission. In addition, the commission may assess a civil fine against an unlicensed warehouse operator in the amount of one thousand dollars a day up to a maximum of twenty thousand dollars.

49-43-4.3. Bond requirement--Violation as misdemeanor.

Before any license is granted to a public grain warehouse, the warehouse operator shall file with the commission a bond conditioned to secure the faithful performance of the warehouse operator's obligations as a public warehouse and full and unreserved compliance with the laws of this state and the rules of the commission, relating to the storage of property for hire by the public warehouse. The bond shall be in the amount specified by § 49-43-5.3. Operation as a public grain warehouse without a bond is a Class 1 misdemeanor. Each day a person conducts the business of a public grain warehouse without a bond is a separate offense.

49-43-4.4. Issuance or denial of license.

Upon receipt of an application and sufficient bond, the commission may grant the license applied for or may, for good cause shown, deny the issuance of the license.

49-43-4.5. Expiration of license--Revocation or suspension.

Each license issued pursuant § 49-43-4.4 expires on the next June thirtieth following the issuance of the license. The commission may at any time for good cause shown revoke or suspend any grain warehouse license. However, the grain warehouse operator has the right of appeal from the decision provided by chapter 1-26 for the review of final decisions of the commission.

49-43-5.1. Application for license--Contents--Multiple warehouses of licensee.

The application for a license to operate as a public grain warehouse made pursuant to § 49-43-4.2 shall be in writing, in a form prescribed by the commission, and shall set forth the name, principal office or place of business, location of each warehouse if more than one warehouse is operated in separate municipalities or locations, and the individual name of each owner or principal in the management of the warehouse. If the warehouse is owned or managed by a corporation, the name of the president, secretary, and treasurer of the corporation shall be stated. The application shall also state that the applicant is seeking a public grain warehouse license and shall contain financial information depicting the financial condition of the business at the time of the application. The application shall contain the affirmation statement set forth in § 22-29-9.1. The application shall be signed by the owner, managing partner, or chief executive officer of the applicant and shall be notarized.

If a warehouseman has more than one public grain warehouse in the same municipality, only one license is required for all the public grain warehouses.

49-43-5.2. Application fee.

The application for a license to operate as a public grain warehouse shall be accompanied by a fee of two hundred seventy-five dollars for each municipality or location at which the warehouse operator receives or stores grain for hire.

49-43-5.3. Purpose of bond--Amount--Multiple warehouses.

The bond required by § 49-43-4.3 for public grain warehouses is for the specific purpose of protecting persons storing grain with the warehouse.

The warehouse operator shall furnish a single bond in an amount equal to one-half of the local market value of the grain stored in the warehouse, or if multiple warehouses are operated by the warehouse operator, the bond shall equal one-half of the local market value of the grain stored at all warehouse locations. However, a warehouse operator shall provide a minimum bond of twenty-five thousand dollars at any one municipality or location. The minimum bond amounts per municipality or location does not limit the bond coverage available to depositors at any one warehouse location. The entire bond, up to the amount on its face, shall provide coverage to a depositor conducting business at any of the warehouse operator's locations.

The bond shall describe with particularity the exact locations of the warehouses to be covered.

49-43-5.5. Filing of other financial documents in lieu of bond.

If the Public Utilities Commission determines, because a corporate surety company becomes insolvent or ceases to write grain warehouse bonds in this state, that a bond in the sum required by § 49-43-5.3 cannot be executed, the commission may, by rule, authorize the filing of other financial documents in lieu of a corporate surety bond.

49-43-5.6. Grounds for suspension of license.

The commission may immediately suspend the license of a warehouse operator and the warehouse operator shall surrender the license to the commission if:

- (1) The warehouse operator, whether licensed or unlicensed, refuses, neglects, or is unable, upon proper demand, to redeem any warehouse receipt or scale ticket for grain in open storage or in grain bank issued by the warehouse operator, through redelivery or cash payment;
- (2) The warehouse operator refuses, neglects, or is unable to provide a bond in an amount required by the commission;
- (3) The commission has knowledge of any act of insolvency, including the filing of a petition in bankruptcy naming the warehouse as debtor; or
- (4) The warehouse operator refuses to submit to an inspection or cooperate with the lawful requests of a commission inspector, including requests for access to and copies of the books and records of the warehouse.

Within fifteen days the warehouse operator may request a hearing pursuant to chapter 1-26 to determine if the license should be revoked. If no request is made within fifteen days, the

commission shall revoke the license. If the commission determines it is necessary, the commission may apply to the circuit court in the county in which the warehouse operator operates for that court to appoint a receiver. The receiver has such powers and duties as the court may direct.

49-43-5.7. Recovery of damages for breach of obligation under bond--Notice to commission--Time for commission response.

Any person injured by the breach of any obligation of a warehouseman, for the performance of which a bond has been given under any of the provisions of this chapter, may sue on the bond in the person's own name in any court of competent jurisdiction to recover any damages the person may have sustained by reason of the breach. However, a person may sue on the bond only if the person has notified the commission of the person's intent to sue on the bond and if the commission has stated in writing that it does not intend to institute any proceedings regarding the bond. The commission shall respond in writing within sixty days of notification stating whether the commission intends to institute any proceedings regarding the bond. If the commission fails to respond in writing within the sixty days, the person may proceed to sue on the bond in the person's own name.

49-43-5.8. Possession of warehouse by commission--Notification of surety.

If the commission becomes aware of any act by any warehouse operator as described in § 49-43-5.6, the commission may:

- (1) Take immediate possession of the warehouse facility, and undertake an immediate audit and verify the names and addresses of all outstanding warehouse receipt holders and scale ticket holders as revealed by the audit, and audit and certify the quantity and class or classes of grain therein;
- (2) Immediately notify the surety named in both the warehouse's and grain buyer's bonds, if any, held by the warehouse.

49-43-5.9. Claim against warehouseman--Time limitation--Notice of revocation of license.

Upon revocation, termination, or cancellation of a warehouse license, any claim against the warehouseman arising under this chapter shall be made in writing with the commission within six months after receiving notice of revocation, termination, or cancellation. Upon revocation of a warehouse license, the commission shall publish notice of the revocation once each week for two consecutive weeks in a newspaper of general circulation in each county in which the licensee maintains a business location and in a newspaper of general circulation within the state. The commission shall also send notice of the revocation by certified mail to each grain storage receipt and scale ticket holder named in the audit prepared pursuant to § 49-43-5.8. The notice shall state the name and address of the warehouseman, the effective date of revocation, and the name and address of the surety on the warehouse bond. The notice shall also state that any claims against the warehouseman shall be made in writing and sent by ordinary mail to the commission within six months after receiving notice of revocation.

49-43-7. Filing of rates charged by grain warehouse--Adjustment--Nondiscrimination.

At the time of licensing, a grain warehouse operator shall file with the commission the rates charged by the grain warehouse for storing, receiving, and redelivering grain. A grain warehouse operator may file different rates for different commodities and the rates shall be effective for the licensing period beginning on July first. A grain warehouse operator may adjust rates during the licensing period no more than four times and adjusted rates shall be effective on the date of filing. A grain warehouse shall charge each customer the rates on file with the commission without discrimination. However, a warehouse operator may waive the fees for receiving and handling if the operator takes title to the grain. A list of the rates shall be made available to a customer upon request.

49-43-9. Monthly reports to commission--Form and contents--Public inspection--Violation as misdemeanor.

The operator of each public grain warehouse shall, on or before the tenth day of each month and at such additional times as the commission requires, furnish the commission on forms prepared by the commission, reports showing the facts and information required by the commission. The reports are not for public inspection, but the commission may, upon request, furnish the total of the figures shown on the reports if the figures requested are for not less than four public grain warehouses. The commission may also require that a warehouse operator provide any other documents and information regarding the business of the warehouse. None of the documents and information obtained through the licensing and inspection processes are subject to public inspection. A violation of this section by an operator is a Class 1 misdemeanor.

49-43-10. Yearly grain measurement--Additional reports--Violation as misdemeanor.

Each public grain warehouse shall obtain a yearly measurement of all the grain in its facility and shall provide the results of the measurement to the commission along with a daily position report as of the time of the measurement. The measurement shall be performed by a qualified person independent of the warehouse. If the commission finds the person performing the measurement is not qualified or independent, the commission may require a different person to perform the measurement.

The commission may also require the operator of a public grain warehouse to furnish under oath, a written report showing the condition and management of the business, the total number of bushels of each kind and grade of grain purchased and in store, the number delivered out, the number remaining in store at the date of the report, and any other information regarding the business of the public grain warehouse which the commission requires. A violation of this section is a Class 1 misdemeanor.

No warehouse need weigh the grain on hand more than once in each year, unless the commission requires an additional measurement as part of an investigation of the warehouse. If required by the commission, a warehouse shall measure its grain inventory at its expense. The commission shall designate a person who is qualified to perform the measurement, which may be an agent or employee of the warehouse or a third party as appropriate under the circumstances of the investigation.

49-43-11. Duty to receive grain--Exceptions--Violation as misdemeanor.

The lessee, owner, or manager of a public grain warehouse which has furnished a bond and received a public grain warehouse license, shall receive for storage all grain offered for storage

at the warehouse, which at the time of the offer are in suitable condition for storage, and which are tendered in the usual course of business. However, a warehouse operator may refuse to store grain if the capacity of the warehouse is exhausted or for other good cause. If requested, a warehouse operator that refuses to store grain shall provide the person requesting storage with the reason for the refusal in writing. The written notice of refusal shall state that the person being refused storage may file a complaint with the commission contesting the refusal. A violation of this section is a Class 1 misdemeanor.

49-43-13. Notice of market value of grain and accrued storage charges.

By June thirtieth of each year, each warehouse operator shall provide written notice to each current depositor of all outstanding warehouse receipts, grain in open storage, and grain in a grain bank account. The notice shall state the market value of the grain and any accrued storage charges. Copies of the notices shall be kept and made available for inspection by the commission.

49-43-14. Issuance of new receipts--Cancellation of old receipts.

Upon the payment of all the accrued charges and the return of the storage receipt, a public warehouseman shall, if requested by the holder of an outstanding storage receipt, issue a new storage receipt to such holder and cancel the former receipt by endorsing thereon the words, "Canceled by the issuance of storage receipt No. _____," and inserting the number of the new storage receipt. The canceled storage receipt shall be signed by the warehouseman and the holder.

49-43-15. Conditions to issuance of receipt--Violation as misdemeanor.

No warehouse receipt may be issued by a public grain warehouse except upon actual delivery of grain into the warehouse; nor may a receipt be issued for a greater quantity of grain than was actually received; nor may more than one receipt be issued for the same lot of grain, unless receipt for part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. A violation of this section is a Class 1 misdemeanor.

49-43-17. Modification of warehouseman's liability prohibited.

No public grain warehouseman may insert into any warehouse receipt issued by him any language modifying his liability as imposed by the laws of this state.

49-43-18. Cancellation of receipt upon delivery of grain--Double delivery prohibited.

Upon the delivery of grain from storage upon any receipt issued by a public grain warehouse, such receipt shall be plainly marked across its face "canceled," and is thereafter void and may not again be put in circulation, nor may grain be delivered twice upon the same receipt.

49-43-19. Partial delivery of grain--Issuance of new receipt--Terms of new receipt.

If a part of the grain represented by the receipt is delivered out of storage and the remainder is left, a new receipt may be issued for the remainder. The new receipt shall bear the same date as the original and shall state on its face that it is the balance of receipt of the original number, and the receipt upon which a part of the grain has been delivered shall be canceled in the same manner as if it had all been delivered.

49-43-20. Division or consolidation of receipts--Cancellation of original receipt--Terms of new receipt.

If it is desirable to divide one receipt issued by a public grain warehouse into two or more, or if it is desirable to consolidate two or more receipts into one, and the warehouseman consents thereto, the original receipt shall be canceled the same as if the grain had been delivered from storage and the new receipts shall express on their face that they are a part of another receipt or a consolidation of other receipts, as the case may be. The numbers of the original receipt shall also appear upon the new ones issued as explanatory of the change. However, no consolidation of receipts of dates differing more than ten days may be permitted, and all new receipts issued for old ones canceled, as provided in this section, shall bear the same date as those originally issued.

49-43-21. Warehouseman prohibited from denying title of receipt holder.

No person doing a grain warehouse business having issued a receipt for the storage of grain as in this chapter provided, may thereafter be permitted to deny that the grain represented by the receipt is the property of the person to whom such receipt was issued or his assigns. Such receipts shall be considered so far as the duties, liabilities, and obligations of such warehouseman are concerned, conclusive evidence of the fact that the person to whom the receipt was issued, or his assigns, is the owner of such grain and is the person entitled to make surrender of such receipt and receive the grain thereby promised to be delivered.

49-43-22. Duty to redeliver grain.

Upon the return of any storage receipt by a receipt holder, a scale ticket for open storage grain, or a scale ticket for grain in a grain bank account, to the public grain warehouse issuing the receipt or scale ticket, and the tender of all proper charges on the grain represented by the receipt or scale ticket, the grain or an equal quantity of the same grade, kind and quality shall immediately be delivered to the holder of the receipt or scale ticket as rapidly as due diligence, care, and prudence justify.

49-43-23. Redelivery of identical grain not required--Deduction for dockage and foreign material--Guaranty respecting weight, grade, and quality.

Nothing in § 49-43-22 means the delivery of the identical grain specified in the receipt or scale ticket. A warehouse may instead deliver an equal amount of the same grade, kind and quality. If the grain delivered has not been cleaned by the warehouse, there shall be added to the amount delivered the amount originally deducted from the grain stored for dockage and foreign material. If the grain is to be delivered from some terminal market point, the public grain warehouse issuing the storage receipts or scale tickets shall guarantee weight, grade, and quality.

49-43-25. Refusal to deliver grain as theft.

Any public grain warehouseman who, after demand, tender and offer as provided in § 49-43-22, willfully fails to deliver, as provided by § 49-43-22, to the person making such demand, the full amount of grain of the kind and grade or market value thereof which such person may demand of such warehouseman, is guilty of theft.

49-43-26. Certificates of weight and grade to be forwarded to warehouse and available for inspection--Violation as grounds for license revocation.

Any person transacting the business of a public grain warehouseman, from whose public grain warehouse grain is shipped to any terminal point at which such grain is weighed, inspected, and

graded by the officer of the state wherein such terminal point is situated, and certificates of such weighing, inspection, and grading are issued by such officer, shall immediately secure from such officer, either through the consignee of such grain or otherwise, such certificates or true and correct copies thereof. Such certificates or copies shall, within ten days after issuance be transmitted and delivered to the person having immediate charge of the public grain warehouse from which such grain was shipped, and shall be open to the inspection and examination of any person who has an ownership interest in such shipment. The commission may revoke the license of any public warehouseman found, upon hearing before it, to have violated such provisions.

49-43-32. Warehouseman agreeing to delivery contrary to owner's directions as misdemeanor.

It is a Class 2 misdemeanor for any proprietor, lessee, or manager of a public grain warehouse to enter into a contract, agreement, understanding, or combination with a railroad company, corporation, or individual by which the property of any person is to be delivered to a public grain warehouse for storage or any other purpose contrary to the direction of the owner or his agent or consignee.

49-43-33. Pooling agreements between competing warehousemen as misdemeanor.

It is a Class 2 misdemeanor for a warehouseman, company, or corporation engaged in the purchase and storage of grain subject to this chapter, to enter into a contract, agreement, or combination with any other warehousemen, company, or corporation for pooling in the purchase and storage of grain by different and competing warehousemen, companies, or corporations and to divide between them the aggregate or net proceeds of margins or profits resulting from their business as warehousemen, or any portion thereof. Each day of the contractual continuance is a separate offense.

49-43-35. Grain bank accounts--Establishment and maintenance.

Any grain delivered by a depositor to a public grain warehouse for a grain bank account shall be considered stored grain and is covered by the warehouse bond required pursuant to § 49-43-5.3. Notwithstanding § 49-43-2.1, a negotiable warehouse receipt need not be given to a depositor for any grain delivered for a grain bank account. However, the public grain warehouseman shall establish and maintain all grain bank accounts in a separate ledger which shall show the dates any grain was received from or redelivered to the depositor and the amount and quality of the grain which was received or redelivered. Any grain delivered into a grain bank account shall be a bailment and title to the grain shall remain with the depositor. The warehouseman shall keep sufficient grain inventory to cover all grain bank obligations. The grain bank ledger shall be kept current and show the latest activity date. Any storage, receiving, handling or redelivery charges adopted by the commission pursuant to § 49-43-7 do not apply to grain banks. However, the public grain warehouseman and depositor may agree on a service fee by contract for the storage of grain in a grain bank account. If the last grain in a grain bank account is redelivered to the depositor, or as agreed by contract between the parties, the public grain warehousemen shall give the depositor a settlement sheet showing the dates, amount and quality of grain received, redelivered, and the amount of any service fees.

49-43-36. Open storage grain considered stored grain.

Open storage grain is considered stored grain and is covered by the warehouse bond required pursuant to § 49-43-5.3.

49-43-37. Insurance of grain against loss--Violation as misdemeanor.

A public grain warehouse shall keep all grain in the warehouse insured at current market value against loss by fire, windstorm, and extended coverage risks. The warehouse operator shall furnish the commission with proof of the insurance when the operator applies for a license. A violation of this section is a Class 1 misdemeanor.

49-43-38. Records to be kept in safe place--Inspection.

A public grain warehouse shall keep all records of grain purchased and stored and all receipts, scale tickets, and contracts issued and canceled in a safe place. The records shall be kept current and open for inspection by the commission. Each record shall be retained for a period of six years.

49-43-39. Notice of damage to or destruction of warehouse.

The operator of a public grain warehouse shall notify the commission, within twenty-four hours, if the public grain warehouse is destroyed or substantially damaged.

49-43-40. Inspection of grain warehouses--Subpoena power and examination of witnesses.

The commission shall cause every public grain warehouse, whether licensed or unlicensed, to be inspected at such times as the commission considers necessary. The inspector shall report in writing to the commission the result of the inspection. The inspector may, at any time during business hours, enter any public grain warehouse or any structure, vehicle, or enclosure in which the books and accounts of any public grain warehouse are kept, and may examine all the books, accounts, and electronic records relating to the transaction of business in such public grain warehouse either within or without the state. The commission may in all matters arising under this chapter exercise the power of subpoena and examine witnesses in accordance with chapter 1-26.

49-43-41. Civil fine for failure to give commission access to records.

Any public grain warehouse operator in the state who refuses access to the warehouse's books and accounts or hinders and delays the commission or any of its employees or agents in examining the books and accounts, may be punished by a civil fine not exceeding two thousand dollars.

49-43-42. Memorandum of adjustments.

Upon completing an inspection an inspector may issue a memorandum of adjustments. The commission may assess a civil fine in the amount of two hundred dollars for failure to comply with the memorandum of adjustments within thirty days. After thirty days, each day that the memorandum goes uncorrected may be considered a separate offense.

49-43-43. Provisions regarding uniform warehouse receipts applicable.

Unless otherwise specifically provided by this chapter, the provisions regarding uniform warehouse receipts in chapter 57A-7 apply to the receipts and contracts of public grain warehouses operating within this state.

49-43-44. Issuance of receipt for goods not actually received or under the warehouse's control as felony.

Any public grain warehouse operator, or any officer, agent, or employee, who issues a receipt knowing that the goods for which the receipt is issued have not been actually received by the warehouse, or are not under the warehouse's actual control at the time of issuing the receipt, is guilty of a Class 5 felony.

49-43-45. Issuance of receipt with false statement as misdemeanor.

Any grain warehouse operator, or any officer, agent, or employee who fraudulently issues a receipt for goods knowing that it contains any false statement, is guilty of a Class 1 misdemeanor.

49-43-46. Issuance of duplicate receipt not marked as duplicate prohibited--Exceptions--Violation as felony.

Any grain warehouse operator, or any officer, agent or employee, who issues a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word, duplicate, except in the case of a lost or destroyed receipt after proceedings as provided for in subdivision 57A-7-601(1), is guilty of a Class 5 felony.

49-43-47. Receipt for goods owned by warehouse solely or with another to state ownership--Violation as misdemeanor.

If there are deposited with or held by a warehouse goods of which the warehouse is owner, either solely or jointly or in common with others, the warehouse operator, or any officer, agent, or employee, who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state the ownership, is guilty of a Class 1 misdemeanor.

49-43-48. Receipt to be obtained at or before delivery of goods from warehouse--Violation as misdemeanor.

Any grain warehouse operator, or any officer, agent, or employee, who delivers goods out of the possession of the grain warehouse, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of the receipt at or before the time of the delivery, except in the cases provided for in subdivisions 57A-7-206(1) to (3), inclusive, subdivisions 57A-7-210(1) and (2), and subdivision 57A-7-601(1), is guilty of a Class 1 misdemeanor.

49-43-49. Negotiation of receipt without disclosing lack of title or existence of lien as misdemeanor.

Any person who deposits goods to which the person does not have title, or upon which there is a lien or mortgage, and who takes for the goods a negotiable receipt which the person afterwards negotiates for value with intent to deceive and without disclosing the person's lack of title or the existence of the lien or mortgage is guilty of a Class 1 misdemeanor.

49-43-50. Appeal of commission decision.

An aggrieved party may appeal any decision of the commission made in the course of administration of this chapter in accordance with chapter 1-26.

49-43-51. Falsely weighing agricultural product as misdemeanor.

It is a Class 1 misdemeanor for any person to falsely weigh any grain or any other agricultural product.

49-43-52. Grain and warehouse fund established.

Any money collected by the commission pursuant to chapters 49-43 and 49-45 shall be paid into the state treasury and credited to the grain and warehouse fund which is hereby established in the state treasury. Any money credited in the fund and any interest earned on the fund are continuously appropriated to the commission for the implementation of the provisions of chapters 49-43 and 49-45.

49-43-53. Transfer of funds to grain and warehouse fund.

The balance of funds in the grain and warehouse fund as established by § 49-42-8 shall be transferred to the grain and warehouse fund established by § 49-43-52.

49-43-54. Contract with independent provider to maintain electronic warehouse receipts.

A warehouse operator may contract with an independent provider to maintain electronic warehouse receipts for grain. A warehouse operator shall issue electronic warehouse receipts through only one independent provider. Prior to engaging in the issuance of electronic warehouse receipts, a warehouse operator shall enter into a user agreement with an independent provider approved by the commission. All electronic warehouse receipts issued by the warehouse operator shall be filed in the independent provider's electronic central filing system.

49-43-55. Commission approval of independent provider--Revocation of approval.

The independent provider shall be approved by the commission prior to operating in the state. The commission may approve an independent provider if the commission finds the independent provider is able to maintain a secure electronic central filing system of electronic records including warehouse receipts, is independent of outside influence or bias in action or appearance, and has entered into a provider agreement with the commission. Approval may be revoked by the commission if the independent provider fails to comply with the provisions of this chapter or the provider agreement.

49-43-56. Maintenance of secure electronic central filing system--Promulgation of rules.

An independent provider shall file and maintain electronic warehouse receipts only on behalf of licensed warehouse operators who contract with the independent provider for those services. An independent provider shall maintain a secure electronic central filing system of electronic records including warehouse receipts and shall be independent of outside influence or bias in action or appearance. The provisions for issuance and cancellation of warehouse receipts found in this chapter apply to electronic warehouse receipts except to the extent the provisions are only applicable to paper receipts. The commission may promulgate rules in accordance with chapter 1-26 regarding the provisioning of a secure electronic central filing system of electronic documents by an independent provider, the approval or disapproval of the ability of an independent operator to operate in the state, and the issuance and cancellation of electronic warehouse receipts by an independent provider that operates in this state.

49-43-57. Depositor right to paper warehouse receipt.

No warehouse operator may require a depositor to accept an electronic warehouse receipt in lieu of a paper warehouse receipt.

49-43-58. Commission access to central filing system--Memorandum of adjustments--Civil penalties.

An independent provider shall allow the commission unrestricted access to the central filing system for electronic warehouse receipts maintained on behalf of warehouse operators licensed by the commission. The electronic warehouse receipt data shall be maintained for six years after cancellation of the receipts. Access shall be made available in a manner that allows interaction with commission warehouse examinations. Access shall be free of any charge or costs to the commission. The commission may exercise the power of subpoena and examine witnesses in accordance with chapter 1-26. An independent provider that refuses access to the independent provider's central filing system or hinders and delays the commission or any of its employees or agents in examining the books and accounts may be punished by a civil fine not to exceed two thousand dollars. In addition, the commission may revoke the ability of the independent provider to issue electronic warehouse receipts.

Upon completing an inspection, an inspector may issue a memorandum of adjustments. The commission may assess a civil fine in the amount of two hundred dollars a day for failure to comply with the memorandum of adjustments within thirty days. After thirty days, each day that the memorandum goes uncorrected may be considered a separate offense.

49-43-59. Surrender of electronic warehouse receipt to commission--Grain receivership--Surety bond claim.

An independent provider shall allow for the commission to be a sole or joint holder of an electronic warehouse receipt if the issuing warehouse operator's license has been revoked and at least one of the following applies:

- (1) The electronic warehouse receipt has been surrendered to the commission by a claimant for the proceeds of a grain receivership pursuant to this chapter; or
- (2) The electronic warehouse receipt has been surrendered to the commission by a claimant for payment of a surety bond claim pursuant to this chapter.

If an electronic receipt holder files a claim against a grain receivership or against the surety bond, the commission shall obtain the consent and instruction of the holder to change the holder information on the independent provider's central filing system. The independent provider shall take any action ordered by the commission in regard to an electronic warehouse receipt involved with a grain receivership or a surety bond claim. The commission shall provide documentary evidence of the claim and any resulting required action to the independent provider.

49-43-60. Independent provider to be authorized to transact business in South Dakota--Jurisdiction--Venue--Liability for costs.

Prior to being approved as an independent provider by the commission, an independent provider shall be authorized to transact business in the State of South Dakota and shall consent to jurisdiction in the State of South Dakota and venue in Hughes County, South Dakota. An independent provider is liable to the commission for costs incurred by the commission as a

result of action taken in the event of a failure of the central filing system or any inability to provide the access required in § 49-43-58.

49-43-61. Parent company furnishing financial statements responsible for financial obligations of licensed entity.

If an applicant for a warehouse license that is a subsidiary of a parent company submits the financial statements of the parent company, the parent company furnishing the financial statements is responsible for all the financial obligations incurred by the licensed entity related to the purchase and storage of grain, including any voluntary credit sale contract.

49-43-62. Notice to commission of grain warehouse's noncompliant financial condition--Violation as felony or misdemeanor--Civil fine.

If at any time during the licensing period a grain warehouse operator becomes aware that the grain warehouse is not in compliance with each financial standard, as set forth in the commission's rules, the grain warehouse operator shall immediately notify the commission of the grain warehouse's financial condition. When notification occurs, the commission shall immediately conduct an examination to determine if any grounds for suspension pursuant to § 49-43-5.6 have occurred. A willful violation of this section that results in a financial loss to a grain depositor is a Class 6 felony. A willful violation that does not result in a financial loss to a grain depositor is a Class 1 misdemeanor.

In addition, the commission may assess a civil fine against an out of compliance grain warehouse in an amount not to exceed one thousand dollars for each day the grain warehouse has been out of compliance up to a maximum of twenty thousand dollars.

49-43-63. Owner, manager, or chief executive officer responsible for violation is subject to criminal penalty.

The owner, manager, or chief executive officer of a grain warehouse, or any other person in a managerial position, who is responsible for any violation of this chapter by a grain warehouse is subject to any criminal penalty that applies to a grain warehouse under the provisions of this chapter.