

Approved Mar. 28, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:05 a.m./p.m. on March 23, 1989 in room 423-S of the Capitol.

All members were present except: Representative Solbach who was excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee:

Chairman Roenbaugh called for action on Senate Bill 277, a bill concerning changes in the grain warehouse law.

Representative Bryant passed out copies of an amendment which had been prepared by Norman Furse, Staff, Revisor of Statutes Office. (Attachment 1) The suggested amendments covered the questions raised in hearings on March 22, 1989, with regard to this bill; namely, classification of the act in violation of the statute and determination of who establishes the amount of deductible insurance a warehouseman is required to carry.

Mr. Furse called attention to page 1 of the attachment, line 39, where after "operating" is inserted "as a public warehouse." Also, in response to the questions raised, Sec 4, Sec. 5, and Sec. 6 have been deleted leaving the original statute in its present form before amendment and repeal. The Sections have accordingly been renumbered.

On page 8, line 8 after the word "facility" add "to."

At the end of Sec. 7, \$250 has been changed to \$10,000 and after that inserted "except that the director upon a finding that it is necessary to protect the public may order that a warehouseman's total deductible provision be an amount less than \$10,000 as specified by the director."

Representative Bryant moved that the bill be amended as suggested. Representative Ensminger seconded the motion, The motion passed.

Representative Jenkins moved that Senate Bill 277 be passed as amended. Representative Amos seconded the motion. The motion passed.

The Chair called for final action on Substitute Senate Bill 3, a bill which makes changes in the pesticide law.

Representative Larkin made a motion to delete on page 4, new Section 2, sub-paragraphs (2), (3), and (4); and further, in accordance with the recommendation of the Board of Agriculture's request, that lines 384-387 be reinstated and on line 384, following (b), be included "Except as provided

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:05 a.m./p.m. on March 23, 1989.

for in Section 2." Representative Freeman seconded the motion. The motion passed.

Representative Hamm made a conceptual motion that in new Section 4, line 181, after "with a" be inserted "pesticide management area"; and, in sub-sections (1), (2), (3), (4), (5), and (6), it be shown that "the head of each department will appoint the person to serve on the technical committee"; and on line 188, (7) after "of such areas" add "be appointed by the secretary." Representative Lacey seconded the motion, The motion passed.

Representative Amos moved to pass Substitute Senate Bill 3 as amended. The motion was seconded by Representative Jenkins. The motion passed.

Final action on House Bill 2510, concerning the repurchase of repair parts from farm equipment dealers was called for by Chairman Roenbaugh. Representative Gross move that House Bill 2510 be passed out of Committee favorably. Representative Jenkins seconded the motion. The motion passed.

The Chair asked for final action on House Bill 2541, a bill concerning contracts to maintain stock of farm equipment.

Representative Heineman moved that on line 83, the date "January 1, 1988" be changed to "the effective date of this action." Representative Eckert seconded the motion. The motion carried.

Representative Mollenkamp moved that House Bill 2541 be passed as amended. Representative Flower seconded the motion. The motion passed.

On call of the Chairman the meeting was adjourned at 9:25 a.m.

The next meeting of the House Agriculture and Small Business Committee will be on March 28, 1989, at 9:00 a.m. in Room 423-S.

SENATE BILL No. 277

By Committee on Agriculture

2-16

15 AN ACT concerning grain storage; relating to warehouses; amending
16 K.S.A. 34-102, 34-231, 34-234 34-236 and 34-2,104 and K.S.A.
17 1988 Supp. 34-103a, 34-228 and 34-229 and repealing the existing and 34-228
18 sections.
19

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

21 Section 1. K.S.A. 34-102 is hereby amended to read as follows:
22 34-102. (a) The director shall:

23 (1) Generally supervise the inspection, sampling, sampling for
24 inspection and weighing of grain, as required by law;

25 (2) supervise the handling, inspection, sampling, sampling for
26 inspection, weighing, protein analysis and storage of grain;

27 (3) adopt any rules and regulations necessary to enforce the laws
28 of this state relating to inspection, sampling, sampling for inspection,
29 weighing, protein analysis and storage of grain and management of
30 public warehouses;

31 (4) keep proper records of all the inspection, sampling, sampling
32 for inspection, protein analysis and weighing done in and out of
33 warehouses licensed by law to do business in this state, for which
34 purpose the director shall provide books, blanks and other material
35 needed in order to keep perfect and proper records; ~~and~~

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

38 (6) *investigate and, at the director's discretion, monitor a grain*
39 *handling facility when the director believes it is operating* without as a public grain warehouse
40 *a valid federal or state warehouse license.*

41 (b) No person or entity shall have charge of weighing or issue
42 official certificates of weight on grain at any point within the state
43 except:

44 (1) Private industries for the purpose of making settlement with

ATTACHED HEREIN

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296 amounts for subsistence expense at the rate fixed under K.S.A. 75-
297 3207a and amendments thereto and for mileage expense in accord-
298 ance with the schedule of charges established under K.S.A. 75-4607
299 and amendments thereto. The director, at the director's discretion,
300 may make additional examinations of a warehouse and if a discrepancy
301 is found on that examination, or if one was found on the last previous
302 examination, the cost of the examination shall be paid by the
303 warehouseman.

304 *(h) When the director authorizes a grain handling facility be*
305 *physically monitored, pursuant to paragraph (6) of subsection (a)*
306 *of K.S.A. 34-102, and amendments thereto, the cost and expenses*
307 *of the monitoring shall be paid by the owner of the facility at the*
308 *same rates fixed in subsection (g).*

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

314 Sec. 4. K.S.A. 1988 Supp. 34-229 is hereby amended to read as
315 follows: 34-229. (a) Every applicant for a public warehouse license
316 shall promptly, upon notification by the director of the amount of
317 bond required, file with the director a bond with good corporate
318 surety qualified under the laws of the state of Kansas in a sum
319 computed by adding together: (1) The amount, up to \$200,000,
320 obtained by multiplying the closing cash grain price per bushel, less
321 \$.25, of No. 2 hard ordinary wheat in Kansas City on the first Monday
322 in April of each year times 15% of the warehouse capacity; and (2)
323 the amount obtained by multiplying that cash grain price per bushel
324 less \$.25 times 1% of the warehouse capacity in excess of that capacity
325 used to compute the first \$200,000 of the amount of the bond. In
326 no event shall the bond be for an amount less than \$10,000.

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

331 (c) The bond shall be in favor of the state of Kansas for the
332 benefit of all persons interested, their legal representatives, attorneys

333 or assigns and shall be conditioned on the faithful performance of
334 all the licensee's duties as a public warehouseman and such additional
335 obligations as assumed by the warehouseman under contracts with
336 a federal agency relating to storage of grain in each warehouse. Any
337 person injured by the breach of any obligation of the warehouseman
338 may commence suit on the bond in any court of competent juris-
339 diction to recover damages that the person has sustained, but any
340 suit commenced shall either be a class action or shall join as parties
341 plaintiff or parties defendant or other persons who may be affected
342 by such suit on the bond. No bond shall be cancelled by the surety
343 on less than 60 days' notice by mail to the director and the principal
344 except that no such notice shall be required for cancellation of any
345 bond by reason of nonpayment of the premium thereon. The liability
346 of the surety on the bond may continue for each successive license
347 period the bond covers. The total liability of the surety shall be
348 limited to the amount stated on the current bond or on an appro-
349 priate rider or endorsement to the current bond. It is the intent of
350 this statute that the bonds be nonaccumulative, that stacking of bonds
351 not occur in excess of the face value of the current bond.

352 (d) If a person applies for licenses for two or more separate public
353 warehouses in this state, the person may give a single bond covering
354 all the applications, and the amount of the bond shall be the total
355 amounts which would be required for the applications if separate
356 bonds were given. In computing the amount of the single bond the
357 warehouseman may add together the capacity of all warehouses to
358 be covered by the bond and use the aggregate capacity for the
359 purpose of computing the bond. If a warehouseman elects to provide
360 a single bond for a number of warehouses, the total assets of all the
361 warehouses shall be subject to liabilities of each individual
362 warehouse.

363 (e) Whenever the director determines that any bond given by
364 any warehouseman is inadequate and insufficient security against any
365 loss that might arise under the terms of the bond, the director shall
366 require any additional bond that the director considers necessary to
367 provide adequate security. If the director considers the financial
368 condition of the surety upon any warehouseman and the warehouse-
369 man's bond to be impaired, the director shall require any substituted

370 or additional bond that the director considers necessary.

371 (f) In all actions hereafter commenced in which judgment is ren-
372 dered against any surety company on any surety bond furnished
373 under the provisions of this section, if it appears from the evidence
374 that the surety company has refused without just cause to pay the
375 loss upon demand, the court shall allow the plaintiff a reasonable
376 sum as attorney fees to be recovered and collected as a part of the
377 costs. When a tender is made by the surety company before the
378 commencement of the action in which judgment is rendered and
379 the amount recovered is not in excess of the tender, no such costs
380 shall be allowed.

381 (g) Each licensed public warehouseman shall obtain a certificate
382 setting forth the amount and terms of the bond filed with the director
383 pursuant to this section, the name of the corporate surety therefor
384 and such other information as the director may prescribe by rules
385 and regulations. The certificate of bond information shall be posted
386 in a conspicuous place in the office room of the licensed warehouse,
387 adjacent to the license posted as required by K.S.A. 34-230 and
388 amendments thereto, at all times during the operation of the
389 warehouse.

390 (h) Transaction of any public warehouse business at any public
391 warehouse without having the certificate of bond information dis-
392 played in the office room of the public warehouse as required by
393 this section is a class C A misdemeanor.

394 Sec. 5. K.S.A. 34-231 is hereby amended to read as follows: 34-
395 231. (a) Transaction of any public warehouse business at any public
396 warehouse without a currently valid public warehouse license for
397 that warehouse or without having the license displayed in the office
398 room of the warehouse is a class C A misdemeanor.

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

402 Sec. 6. K.S.A. 34-234 is hereby amended to read as follows: 34-
403 234. (a) If an owner or consignee of grain is dissatisfied with the
404 inspection or grade of any lot of grain or for any reason wants to
405 receive the owner's or consignee's grain without its passing into store,
406 the owner or consignee may have the grain withheld from going

407 into the public warehouse (whether or not the grain has previously
408 been consigned to the public warehouse) by giving notice to the
409 person or entity possessing the grain at the time of giving the notice.
410 The grain shall be withheld from going into store and be delivered
411 to the owner or consignee subject only to those proper charges that
412 are a lien upon the grain before the notice is given. If the grain is
413 in railroad cars, it shall be removed by the owner or consignor within
414 24 hours after the notice is given to the railroad company having
415 the grain in its possession, and the railroad company shall place the
416 grain in a proper and convenient place for unloading.

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

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

427 Sec. [7] K.S.A. 34-236 is hereby amended to read as follows: 34- [4]
428 236. Every public warehouseman shall at all times keep the grain
429 stored in his such warehouseman's warehouse insured in some re-
430 liable insurance company authorized to do business in the state of
431 Kansas. Said Such grain is to be insured for its full market value,
432 less the deductible amount provided herein, against loss by fire,
433 internal explosion, lightning, and tornado and failure to do so shall
434 make the public warehouseman liable for the same on his such
435 warehouseman's bond for the benefit of the owner or owners and
436 the owners of warehouse receipts and storage receipts issued by any
437 public warehouse shall have a first lien, to the extent of the value
438 of the grain at the time of destruction at the place where stored,
439 on all such insurance for any loss or injury sustained by them on
440 account of the destruction or injury of such grain by fire, internal
441 explosion, lightning or tornado or any other cause covered by such
442 insurance policy.

443 Fraud or criminal act of the warehouseman to which the holder

144 of a warehouse receipt or other interested person is not a party shall
 445 not deprive the holder of a warehouse receipt or storage receipt or
 446 other interested person of ~~his~~ *such person's* right of recovery under
 447 such policy of insurance: ~~Provided, however, That.~~ Nothing in this
 448 act shall be construed to require the insurer to pay any loss or
 449 damage in excess of the amount of insurance effective under its
 450 policy or to pay for any loss or damage not insured against by its
 451 policy. In case of a fire, lightning or tornado, which shall destroy
 452 all or part of the grain stored in any public warehouse, the public
 453 warehouseman shall, upon demand by the owner of the grain, or
 454 holder of any warehouse receipt, or receipts, for such grain, and
 455 upon being presented with the warehouse receipt, or receipts, make
 456 settlement for the value of the grain covered by the warehouse
 457 receipt, or receipts, after deducting the warehouse charges, at the
 458 market value of same, basing said value at the average price paid
 459 for grain of the same grade at the station where the public warehouse
 460 is located on the date of the destruction. Without in any way limiting
 461 the warehouseman's liability under this section, the warehouseman
 462 may carry a standard form of insurance policy approved for grain
 463 warehousemen with a total deductible provision on the contents not
 464 to exceed ~~two hundred fifty dollars (\$250)~~ *\$10,000*.

except that the director upon a finding that it is necessary to protect the public may order that a warehouseman's total deductible provision be an amount less than \$10,000 as specified by the director

465 Sec. ~~8~~ K.S.A. 34-2,104 is hereby amended to read as follows:
 466 34-2,104. (a) Whenever it appears to the satisfaction of the director
 467 of the state grain inspection department that a licensed warehouse-
 468 man does not have possession of sufficient commodities to cover the
 469 outstanding receipts and scale tickets issued or assumed by the ware-
 470 houseman or when a licensed warehouseman refuses to submit rec-
 471 ords or property to a lawful examination, the director may give notice
 472 to the warehouseman to comply with all or any of the following
 473 requirements:
 474 (1) Cover any existing shortage;
 475 (2) give additional bond as requested by the director;
 476 (3) submit to any examination that the director considers
 477 necessary.
 478 If the warehouseman fails to comply with the terms of the notice
 479 within 24 hours from the date of its issuance or within such further
 480 time as the director allows, the director may petition the district

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555 the expenses so incurred, there is authorized to be included the
 556 cost of adequate liability insurance necessary to protect the grain
 557 inspection department, the receiver, and others engaged in carrying
 558 out the provisions of this section.

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

563 Sec. ~~9~~. K.S.A. 34-102, ~~34-231, 34-234~~ 34-236 and 34-2,104 and 6
 564 K.S.A. 1988 Supp. 34-103a, ~~34-228 and 34-229~~ are hereby repealed. and 34-228

565 Sec. ~~10~~. This act shall take effect and be in force from and after 7
 566 its publication in the statute book.

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