

Approved February 15, 1989
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:06 a.m./~~p.m.~~ on February 14, 1989 in room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: Tom Wilson, Director, State Grain Inspection
Department
Dale Lambley, Director, Plant Health Division,
State Board of Agriculture

Senator Allen called the committee to order and called on Tom Wilson to request bills to be introduced by the Agriculture Committee.

Tom Wilson gave copies (attachment 1) of the proposed changes requested by the State Grain Inspection Department; he explained the changes would bring some of the wording up-to-date, delete out-of-date terms and make provisions for the department to investigate and charge in some circumstances that present law does not allow for.

Senator Frahm made a motion the committee accept the request for the legislation requested by Mr. Wilson. Senator Daniels seconded the motion. Motion carried.

The Chairman turned the committee attention to SB 2 for committee action and called on Dale Lambley.

Dale Lambley gave copies of amendments suggested for SB 2 (attachment 2).

Committee discussion included that using the word registered and certified were confusing in regards to applicators. Mr. Lambley answered that budget had been requested for two additional staff to provide for better enforcement of the chemigation laws.

Senator Daniels made a motion the committee request that SB 2 read certified chemigation equipment operator instead of registered chemigation equipment operator in sections (b), (d) and (e) of the amendments proposed by the State Board of Agriculture. Senator McClure seconded the motion. Motion carried.

Senator Daniels made a motion that after the word examination in the last line of (b) in the suggested amendments that these words be inserted, "except as provided in subsection (c) which allows you to get your certification from the pesticide law, and if you don't fit under that exception then you must take the chemigation equipment operator examination". Motion was seconded by Senator Montgomery. Motion carried.

During further committee discussion, Senator Montgomery made a motion that the term 'animal waste' be removed from the definition of 'Chemigation' in Section 1 (a) of the bill so that it would not be considered as a chemical. Senator Sallee seconded the motion.

During discussion staff pointed out that for enforcement of the chemigation law that animal waste had to be listed in the definition of chemigation.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:06 a.m.~~p.m.~~ on February 14, 19 89

Senator Sallee withdrew his second of the motion; Senator Montgomery withdrew his motion.

Senator Karr made a motion the committee request that the words 'animal waste or other' be eliminated from its present place in line 23 of SB 2 and that 'or animal waste' be added after the word 'chemicals' in line 23. Senator Daniels seconded the motion. Motion carried.

Senator Sallee moved the committee accept the proposed amendments for SB 2; seconded by Senator Lee; motion carried.

Senator Daniels moved the committee recommend SB 2 for passage as amended; seconded by Senator Lee; motion carried.

The Chairman called for action on committee minutes.

Senator Frahm moved the committee minutes of February 10 be approved; seconded by Senator Sallee; motion carried.

The Chairman adjourned the committee at 10:57 a.m.

34-103a. Fees for departmental services; access for inspection and sampling; rules and regulations. (a) The Kansas state grain inspection department shall collect from an applicant requesting services a fee for such services rendered by the department. Such fees shall be determined and fixed by the director by rules and regulations. Prior to determining and fixing such fees, the director shall consider recommendations thereon by the state grain advisory commission. Such fees shall not be more than the amounts shown in the following fee schedule:

	Not more than
<u>Carlot Hopper-car</u> , per inspection or reinspection.	\$20.00
Extra sample secured at time of original, per request	6.00
New sample secured after original, per request.	7.00
Boxcar-direct-transfer,-per-inspection-or-reinspection	10.00
Extra-sample-secured-at-time-of-original,-per-request	5.00
New-sample-secured-after-original,-per-request	6.00
Truck or trailer, per inspection or reinspection	10.00
Extra sample secured at time of original, per request	5.00
Bin inspection, plus applicable sampler hourly rate.	7.00
Submitted sample inspection, per sample.	7.00
Warehouse sample-lot inspection, per sample.	10.00
Diverter-type sample at points outside inspection point switching limits, plus applicable sampler hourly rate and mileage	10.00
Barge inspection or reinspection, per 1,000 bu. or fraction.	5.00
All reinspections of above carriers based on file sample	7.00
Initial checktest and approve country point diverter-type samplers and train elevator sampler, plus hourly and travel time rate and mileage	60.00
Diverter-type review checktest visits at country points, hourly rate plus mileage.	16.00
Checktesting diverter-type samplers at terminal points, hourly rate (with one hour minimum fee).	16.00

Senate agriculture
2-14-89
attachment 1

<u>Chemical test (bleaching) per sample</u>	10.00
<u>Protein, grains other than wheat</u>	15.00
<u>Oil, grains other than wheat</u>	15.00
Protein initial or reinspection.	5.00
Factor only determination, one factor.	5.00
Factor only determination, 2 or more factors, per factor (not to exceed full grade fee)	5.00
Each approved statement requested in addition to grade requirement	5.00
Duplicate certificate.	3.00
Stowage examination, <u>carlot</u> hepper-or-boxcar , per request. . .	10.00
Stowage examination, barge, per request.	15.00
DHV count.	7.00
Charge for services performed on overtime (after eight hours per day) by state grain personnel upon request by grain industry, including Saturdays, Sundays and holidays, per overtime hour	16.00
Charge per hour for sampler or weigher by special arrangement, per man	16.00
Edible bean inspection (official warehouse lot), per certificate Business Cards.	25.00
Edible bean inspection (official car sample), per certificate.	25.00
Edible bean inspection (official truck sample), per certificate	20.00
Edible bean inspection (submitted sample), per certificate . .	15.00
Edible bean inspection sampling fee, check weighing or checkloading, per hour.	16.00
<u>Carlot</u> Hepper-ear,-boxcar-or-direct-transfer , per class I weight, 100% supervision (Minimum of 2 cars weighed per hour or hourly charges apply on top of weighing charge).	8.00
<u>Carlot</u> Hepper-ear,-boxcar-or-direct-transfer per class II weight, 25% supervision	5.00
Barge weight, per 1,000 bu. or fraction.	5.00

Truck or trailer, per weight	8.00
House transfer weight, per 1,000 bu. or fraction	5.00
Weigh-up, annual, per 1,000 bu. or fraction	3.00
In weighing, sacked cars, per manhour.	16.00
Out weighing, sacked cars, with count, per manhour	16.00
Out weighing, sacked cars, with count and weight each sack, per manhour	16.00
Hopper scale per test.150.00
Hopper scale per F.G.I.S. test, plus hourly charge on site150.00
Hopper scale at points where certified weights are not issued, plus mileage and subsistence.150.00
Mileage charge for special trips by the hopper testing scale truck, per mile	1.25
Labor of scale inspector for repair work outside inspector's regular inspecting or adjusting of scale, per hour.	16.00
Charge for services performed on call in or call back after designated working hours by state grain personnel upon request by grain industry, including Saturdays, Sundays and holidays, per hour (with two hours minimum fee)	16.00

Changes to the Statutes Regarding the Warehouse Division

34-298--Violate any provision
Class "A" misdemeanor
1 year - not to exceed \$2,500

Delete the penalties in the following statutes:

34-229 (Class C), 34-231 (C), 34-234 (C)--If possible to implement the above Class "A" misdemeanor in lieu of Class "C".

34-228 Sec. (2) Warehouseman's License--(90) days extensions to receive a financial statement in our opinion is entirely too much time. We now allow (90) from their year end and if extensions were allowed would ultimately be 6 months from their year end! We feel a maximum of (30) days extension may be given at the discretion of the Director.

34-236 Insurance--We feel the \$250 deductible for insurance is not high enough. As a general rule a \$10,000 deductible per functional unit would be advisable. The Director may require a less deductible amount if the director considers it necessary to provide adequate security and protection for the depositors.

34-102. Duties of director; certificates of weight; scale tickets; grain cleaners; penalty for violations. (a) The director shall:

(1)

(2)

(3)

(4)

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

(6) investigate and at his or her discretion monitor a grain handling facility when the director believes it is operating without a valid federal or state warehouse license.

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

History: L. 1955, ch. 233, § 2; L. 1973, ch. 2, § 11; July 1.

Cross References to Related Sections:
Grain inspection fee fund, see 34-102b.

34-101d. Agreements for furnishing grain inspection services to railroad yards located in Missouri but serving Atchison, Kan., when; filing. The director of the Kansas state grain inspection department, with the approval of the state grain advisory commission and the governor, is authorized and empowered to enter into a contract or contracts with the state of Missouri or any agency of said state which may correspond to the state grain inspection and weighing department to provide for the taking of samples and weighing of grain by employees of the Kansas department from railroad cars which may be held by the railroad in the area immediately east of the city of Atchison in the state of Missouri, which railroad cars contain grain in which Kansas grain dealers or warehousemen or other Kansas citizens or merchants may have an interest. A copy of any agreement which may be entered into pursuant to this section shall be filed with the revisor of statutes as a regulation of the department.

History: L. 1959, ch. 194, § 2; June 30.

34-102. Duties of director; certificates of weight; scale tickets; grain cleaners; penalty for violations. (a) The director shall:

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

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

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

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

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

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

(1) Private industries for the purpose of making settlement with their own customers; and

(2) officials or employees of the Kansas state grain inspection department, on the regular form of weight certificates adopted and approved by the director.

(c) All scales over which official state weights of carlots of grain are taken shall be equipped with type-registering beams or electronic print-out tape, in order that an original punched scale ticket may be taken of each draft weighed. The original punched scale ticket shall become the property of the Kansas state grain inspection department, and shall be filed as a record of the weight.

(d) No person or entity shall 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 similar substances from grain unloaded into the elevator, mill or warehouse before the grain has been officially weighed.

(e) No person shall in any manner change or alter an official state inspection or weight certificate after it has been issued.

(f) If an official state weight certificate has been issued on any lot of grain, the purchaser must make settlement on the basis of the amount of grain shown on that weight certificate.

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

History: L. 1907, ch. 222, § 3; L. 1915, ch. 229, § 2; L. 1921, ch. 199, § 1; R.S. 1923, 34-102; L. 1933, ch. 189, § 5; L. 1983, ch. 135, § 4; July 1.

Source or prior law:

L. 1891, ch. 248, § 37; L. 1897, ch. 138, § 3; L. 1903, ch. 325, § 1.

Research and Practice Aids:

Weights and Measures 8.
C.J.S. Weights and Measures § 6.

34-102a. Director of department. As used in this act the word "director" means the director of the Kansas state grain inspection department.

History: L. 1955, ch. 232, § 1, March 31.

Revisor's Note
For section
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34-228. Warehouseman's license; application; financial statement; qualifications; fees; examination of warehouse. (a) Any person desiring to engage in business as a public warehouseman in this state shall, before the transaction of any such business, make written application to the director of the Kansas state grain inspection department for a license for each separate warehouse (or, if the applicant owns more than one warehouse at one point, all of such warehouses may be incorporated in one application) at which the person desires to engage in such business. The application for a license shall be on a form designated by the director and shall contain the individual name and address of each person interested as principal in the business (and, if the business is operated or to be operated by a corporation, setting forth the names of the president and secretary) and such further information as the director may require.

(4)

(g)

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

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

Edible bean inspection (submitted sample), per certificate	15.00
Edible bean inspection sampling fee, check weighing or checkloading, per hour	16.00
Hopper car, boxcar or direct transfer, per class I weight, 100% supervision (Minimum of 2 cars weighed per hour; or hourly charges apply on top of weighing charge)	8.00
Hopper car, boxcar or direct transfer per class II weight, 25% supervision	5.00
Barge weight, per 1,000 bu. or fraction	5.00
Truck or trailer, per weight	8.00
House transfer weight, per 1,000 bu. or fraction	5.00
Weight-up, annual, per 1,000 bu. or fraction ..	3.00
In weighing, sacked cars, per manhour	16.00
Out weighing, sacked cars, with count, per manhour	16.00
Out weighing, sacked cars, with count and weight each sack, per manhour	16.00
Hopper scale per test	150.00
Hopper scale per F.G.I.S. test, plus hourly charge on site	150.00
Hopper scale at points where certified weights are not issued, plus mileage and subsistence	150.00
Mileage charge for special trips by the hopper testing scale truck, per mile	1.25
Labor of scale inspector for repair work outside inspector's regular inspecting or adjusting of scale, per hour	16.00
Charge for services performed on call in or call back after designated working hours by state grain personnel upon request by grain industry, including Saturdays, Sundays and holidays, per hour (with two hours minimum fee)	16.00

b. Where any service is performed in a business community where the department does not regularly maintain an inspection station, the department may charge for subsistence and transportation of personnel and equipment from the headquarters of such personnel to such point and return. Such charges shall be set by adoption of rules and regulations as provided by law. The director may fix the manner in which the charges are collected.

(c) If any person, warehouse or railroad corporation or any of their agents or employees refuses or prevents the officers of the department from having access to their scales, elevators, warehouses and other places in the regular performance of their duties in inspecting, sampling, sampling for inspection and weighing grain or other property in accordance with the tenor and meaning of this act or any law now in force or that may be enacted in relation to the same, such persons or corporations shall be guilty of a misdemeanor.

History: L. 1959, ch. 195, § 2; L. 1967, ch. 226, § 1; L. 1982, ch. 178, § 1; L. 1984, ch. 150, § 1; L. 1986, ch. 152, § 1; L. 1988, ch. 132, § 1; April 7.

34-125.

Attorney General's Opinions:

Public grain warehouse has no authority to charge finance fee for overdue storage charges. 55-120.

34-126. Policy of Kansas concerning high-quality grain. It is declared to be the policy of the state of Kansas to: (1) Promote the production of high-quality grain; (2) promote storage and handling practices which will assist in the maintenance of grain quality; and (3) promote the marketing of grain of high quality to both domestic and foreign buyers. The objective of this policy is to provide greater economic incentives for production and sale of high-quality grain.

History: L. 1987, ch. 146, § 1; July 1.

Cross References to Related Sections:

Criminal penalty, see 21-3756.

34-127. Civil action against person who adulterated grain. In addition to other penalties under this act, the director of the Kansas state grain inspection department is hereby authorized to bring a civil action in the district court against any person who has adulterated the grain. Upon a showing that the grain has been adulterated, the court shall assess damages in an amount not to exceed \$10,000. In addition, upon such showing, the court may award reasonable attorney fees to the Kansas state grain inspection department. All moneys collected under this section shall be deposited in the state treasury and credited to the grain inspection fee fund. As used in this section, "adulterated" shall have the meaning ascribed thereto under K.S.A. 65-664 and amendments thereto.

History: L. 1987, ch. 146, § 3; July 1.

Cross References to Related Sections:

Criminal penalty, see 21-3756.

Article 2.—INSPECTING, SAMPLING, STORING, WEIGHING AND GRADING GRAIN; TERMINAL AND LOCAL WAREHOUSES

34-228. Warehouseman's license; application; financial statement; qualifications; fees; examination of warehouse. (a) Any person de-

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Authority to charge fi-
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 to: 1) Promote
 grain; (2) pro-
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 maintain quality; and
 obtain high qual-
 ity buyers. The
 provisions provide greater
 protection and sale of

§ 1. July 1.

Any person who
 is not the owner
 or operator of the Kansas
 grain elevator is hereby au-
 thorized to enter the district
 where the grain has adulterated
 and to assess dam-
 age to the grain. In
 the event the court may
 order the Kansas
 elevator to be closed,
 all moneys shall be deposited
 into the grain
 fund in this section,
 meaning ascribed
 and amendments

§ 3. July 1.

SAMPLING, TESTING AND ANALYTICAL AND FEES

License; appli-
 cations; fees;
 Any person de-

siring to engage in business as a public ware-
 houseman in this state shall, before the
 transaction of any such business, make written
 application to the director of the Kansas state
 grain inspection department for a license for
 each separate warehouse (or, if the applicant
 owns more than one warehouse at one point,
 all of such warehouses may be incorporated in
 one application) at which the person desires to
 engage in such business. The application for a
 license shall be on a form designated by the
 director and shall contain the individual name
 and address of each person interested as prin-
 cipal in the business (and, if the business is
 operated or to be operated by a corporation,
 setting forth the names of the president and
 secretary) and such further information as the
 director may require.

(b) (1) Every application for a public ware-
 house license shall be accompanied by a cur-
 rent financial statement. The statement shall
 include such information as required by the
 director to administer and enforce the public
 warehouse laws of this state, including but not
 limited to a current balance sheet, statement
 of income (profit and loss), statement of re-
 tained earnings and statement of changes in
 financial position. The applicant shall certify
 under oath that the statement as prepared ac-
 curately reflects the financial condition of the
 applicant as of the date specified and presents
 fairly the results of operations of the applicant's
 public warehouse business for the period spec-
 ified. The financial statement shall be prepared
 in accordance with generally accepted account-
 ing principles and shall be accompanied by: (A)
 A report of audit or review conducted by an
 independent certified public accountant or an
 independent public accountant in accordance
 with standards established by the American in-
 stitute of certified public accountants and the
 accountant's certifications, assurances, opin-
 ions, comments and notes with respect to the
 statement; or (B) a compilation report of the
 financial statement, prepared by a grain com-
 mission firm or management firm which is au-
 thorized pursuant to rules and regulations of
 the federal commodity credit corporation to
 provide compilation reports of financial state-
 ments of warehousemen.

(2) The director, upon request of an ap-
 plicant, may grant a waiver of the requirements
 of this subsection for a period of not more than
 90 days if the applicant furnishes evidence of
 good and substantial reasons for the waiver.

(c) (1) Every applicant for a license to op-

erate one or more public warehouses and every
 person licensed to operate one or more war-
 ehouses shall at all times maintain total net
 worth liable for the payment of any indebt-
 edness arising from the conduct of the ware-
 house or warehouses equal to at least \$.25 per
 bushel of the storage capacity of the warehouse
 or warehouses except: (A) No person shall be
 granted a license or shall continue to be li-
 censed unless the person has a net worth of
 at least \$25,000 and (B) any deficiency in net
 worth required above the \$25,000 minimum
 may be supplied by an increase in the amount
 of the applicant's or licensee's bond as provided
 by K.S.A. 34-229 and amendments thereto.

(2) In determining total net worth: (A)
 Credit may be given for insurable property
 such as buildings, machinery, equipment and
 merchandise inventory only to the extent that
 the property is protected by insurance against
 loss or damage by fire and (B) capital stock,
 as such, shall not be considered a liability.

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

(1) Embezzlement;

(2) any felony defined in any statute con-
 tained in article 37 of chapter 21 of the Kansas
 Statutes Annotated and amendments thereto;

(3) unauthorized delivery of stored goods;

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

(5) a violation of the United States ware-
 house act (7 U.S.C. 241 *et seq.*).

(e) The director may investigate any appli-
 cant making application for an original license
 for the purpose of determining if such person
 would be qualified to receive such license un-
 der the provisions of this section.

(f) (1) Every application for a public ware-
 house license shall be accompanied by a license
 fee which shall be determined and fixed by the
 director by rules and regulations. Prior to de-
 termining and fixing the license fees, the di-
 rector shall consider recommendations thereon
 by the state grain advisory commission. The
 license fee shall not be more than the appli-
 cable amount shown in the following fee sched-
 ule plus \$100 for each functional unit:

Capacity in Bushels	ANNUAL FEE Not more than
1 to 100,000	\$350
100,001 to 150,000	375
150,001 to 250,000	400
250,001 to 300,000	425
300,001 to 350,000	450
350,001 to 400,000	475
400,001 to 450,000	500
450,001 to 500,000	525
500,001 to 600,000	550
600,001 to 700,000	575
700,001 to 800,000	600
800,001 to 900,000	625
900,001 to 1,000,000	650
1,000,001 to 1,750,000	875
1,750,001 to 2,500,000	1,000
2,500,001 to 5,000,000	1,250
5,000,001 to 7,500,000	1,500
7,500,001 to 10,000,000	1,700
10,000,001 to 12,500,000	1,850
12,500,001 to 15,000,000	2,000
15,000,001 to 17,500,000	2,150
17,500,001 to 20,000,000	2,300
For each 2,500,000 bushels or fraction over 20,000,000 bushels	250

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

(3) In addition to any other applicable fee, the director shall charge and collect a fee each time a public warehouse license is amended in an amount of not more than \$75 which shall be determined and fixed by the director by rules and regulations.

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

(g) The director shall examine each warehouse operated by a licensed public warehouseman at least once in each 12-month period. The licensed public warehouseman may request additional examinations of any warehouse operated by the warehouseman. The cost of additional examinations when requested by the warehouseman shall be charged to the warehouseman requesting the exami-

nation. The cost of each additional examination requested by a warehouseman shall be an amount determined therefor in accordance with an hourly rate fixed by the director of not more than \$20 per hour, subject to a minimum charge of four hours for the examination, plus amounts for subsistence expense at the rate fixed under K.S.A. 75-3207a and amendments thereto and for mileage expense in accordance with the schedule of charges established under K.S.A. 75-4607 and amendments thereto. The director, at the director's discretion, may make additional examinations of a warehouse and if a discrepancy is found on that examination, or if one was found on the last previous examination, the cost of the examination shall be paid by the warehouseman.

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

History: L. 1931, ch. 194, § 6; L. 1955, ch. 232, § 5; L. 1957, ch. 253, § 1; L. 1962, ch. 34, § 2; L. 1967, ch. 229, § 1; L. 1973, ch. 2, § 13; L. 1975, ch. 440, § 6; L. 1982, ch. 178, § 2; L. 1983, ch. 137, § 1; L. 1984, ch. 151, § 1; L. 1984, ch. 150, § 8; L. 1985, ch. 137, § 3; L. 1987, ch. 147, § 1; July 1.

Attorney General's Opinions:

Power of director to require additional security of an operator petitioning a chapter 11 bankruptcy. 86-71.

34-228a.

History: L. 1986, ch. 152, § 3; Repealed, L. 1987, ch. 147, § 4; July 1.

34-229. Bond; amount; conditions; multiple warehouses; additional bond requirements; actions on bond; certificate of information; penalty for failure to post. (a) Every applicant for a public warehouse license shall promptly, upon notification by the director of the amount of bond required, file with the director a bond with good corporate surety qualified under the laws of the state of Kansas in a sum computed by adding together: (1) The amount, up to \$200,000, obtained by multiplying the closing cash grain price per bushel, less \$.25, of No. 2 hard ordinary wheat in Kansas City on the first Monday in April of each year times 15% of the warehouse capacity; and (2) the amount obtained by multiplying that cash grain price per bushel less \$.25 times

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34-2,104. Deficit in grain stored in warehouse; action by director for possession; audit and investigation; temporary receiver; receivership. (a) Whenever it appears to the satisfaction of the director of the state grain inspection department that a licensed warehouseman does not have possession of sufficient commodities to cover the outstanding receipts and scale tickets issued or assumed by the warehouseman or when a licensed warehouseman refuses to submit records or property to a lawful examination, the director may give notice to the warehouseman to comply with all or any of the following requirements:

(1)

(2)

(3)

(b)

(c)

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

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

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

(g)

cense expiration; sale of unclaimed grain; disposition of proceeds. It shall be the duty of any person operating a public warehouse in Kansas under this act, who desires to discontinue the operation of a public warehouse at the expiration of his license, to notify all holders of warehouse receipts and all parties storing grain in said warehouse, if known; if not known, by public notice, by advertising in a newspaper of general circulation in the city in which such warehouse is situated, also the director of the state grain inspection department, at least thirty (30) days prior to the date of the expiration of his license, his intention to discontinue the public warehouse business. And it shall be the duty of the owners of such grain to remove, or cause to be removed, their grain from said warehouse, before the expiration of the license. If for any cause said grain is not removed from the warehouse, it shall be the duty of the warehouseman to sell for the account of the depositor said grain at the best market price obtainable and remit said funds to the director of the state grain inspection department. The director shall deposit said funds with the state treasurer to be held for the account of the depositor. If and when said depositor, or holder of claim, shall appear and present a valid claim to the director for the funds so deposited, the director shall issue a voucher to the state treasurer withdrawing said funds to the order of the claimant.

History: L. 1931, ch. 194, § 77; L. 1967, ch. 236, § 1; April 26.

Research and Practice Aids:

Warehousemen—5.
C.J.S. Agriculture § 66; Warehousemen and Safe Depositaries §§ 5-10.

CASE ANNOTATIONS

1. Applied: late applications for license renewals; license year; liability of surety. Hartford Accident and Indem. Co. v. State of Kansas, 247 F.2d 315.

34-2.100. Rules and regulations. The director of the Kansas state grain inspection department may adopt and enforce reasonable rules and regulations, in conformity with the provisions of this act, governing the duties of public warehousemen and registrars of receipts, the manner of conducting public grain warehouses and of keeping and preserving the papers and records of such warehousemen and registrars,

including the regulating of all transactions in which grain is sold to the elevators and warehouses and payment therefor is deferred.

History: L. 1931, ch. 194, § 78; L. 1941, ch. 246, § 1; L. 1984, ch. 150, § 14; July 1.

Cross References to Related Sections:

Filing rules and regulations with the revisor of statutes, see ch. 77, art. 4.

Research and Practice Aids:

Warehousemen—7.
C.J.S. Agriculture §§ 67, 69; Warehousemen and Safe Depositaries § 7.

34-2.101. Relation of this act to the federal warehouse act. The provisions of this act relating to licensing, bonding and supervision of warehouses shall not be construed to apply to any public warehouseman who is, or shall hereafter be, duly licensed under the federal warehouse act.

History: L. 1931, ch. 194, § 79; July 1.

34-2.102. Invalidation of any part of this act. That if any clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall be returned.

History: L. 1931, ch. 194, § 80; July 1.

34-2.103. Interpretation of act. This act shall be liberally interpreted and construed to effectuate its general purpose.

History: L. 1931, ch. 194, § 81; July 1.

CASE ANNOTATIONS

1. Discussed: rights of grain owners under insurance policy required by 34-326 determined. Millers Nat'l Ins. Co. v. Bunds, 158 K. 662, 663, 666, 669, 670, 149 P.2d 350.

34-2.104. Deficit in grain stored in warehouse; action by director for possession; audit and investigation; temporary receiver; receivership. (a) Whenever it appears to the satisfaction of the director of the state grain inspection department that a licensed warehouseman does not have possession of sufficient commodities to cover the outstanding receipts and scale tickets issued or assumed by the warehouseman or when a licensed warehouseman refuses to submit records or property to a lawful ex-

amination, the director may give notice to the warehouseman to comply with all or any of the following requirements:

- (1) Cover any existing shortage;
- (2) give additional bond as requested by the director;
- (3) submit to any examination that the director considers necessary.

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

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

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

(c) Upon taking possession, the director shall give written notice of its 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 scale tickets issued for

commodities, to present their receipts or scale tickets for inspection or to account for them. The director then may cause an audit and other investigation to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown in the warehouseman's records, if practicable. The director shall notify the warehouseman and the surety on the warehouseman's bond of the approximate amount of the shortage and notify each depositor affected by the shortage by sending notice to the depositor's last known address as shown by the records of the warehouse.

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

(d) If during or after the audit or other investigation provided for in this section, or at any other time, the director has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all depositors, the director shall forthwith petition the district court for an order appointing a receiver, under article 13 of chapter 60 of the Kansas Statutes Annotated, to operate or liquidate the business of the warehouseman in accordance with the law. The petition may be accompanied by a verified application requesting that the court appoint the director to act as temporary receiver until a receiver is appointed. The court may appoint the director as temporary receiver in an *ex parte* proceeding.

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

(f) All necessary expenses incurred by

the grain inspection department 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 district court or may be recovered at the same time and as a part of the seizure or receivership action filed under this section. As a part of the expenses so incurred, there is authorized to be included the cost of adequate liability insurance necessary to protect the grain inspection department, the receiver, and others engaged in carrying out the provisions of this section.

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

History: L. 1967, ch. 238, § 1; L. 1983, ch. 138, § 1; July 1.

CASE ANNOTATIONS

1. Private lease agreements between licensed warehousemen and depositors are contrary to public policy. *State ex rel Crawford v. Centerville Grain Co.*, 5 K.A.2d 451, 452, 618 P.2d 1206.

2. Creditor of insolvent corporation cannot maintain personal action on own behalf against directors or officers who breach duty by negligent mismanagement; overruling *Mead v. Meecker*, 3 K.A.2d 15, 587 P.2d 1276. *Speer v. Dighton Grain, Inc.*, 229 K. 272, 275, 250, 624 P.2d 952.

34-2,105. Same; no defense in criminal action. Nothing in this act nor any action under this act shall be a defense or partial defense in any prosecution under any criminal statute.

History: L. 1967, ch. 238, § 2; April 26.

34-2,106. Same; severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1967, ch. 238, § 3; April 26.

34-2,107. Priority of owner's interest in stored grain defined. The owner of grain held in storage by a public warehouseman, as defined in K.S.A. 34-223, in this state, whether such grain is held under open storage or pursuant to the issuance of a warehouse receipt, shall have a prior right to such grain against any other person. sub-

ject only to the payment of accrued warehouse charges and the satisfaction of any lien or liens upon such grain and valid against the owner thereof, until the grain is either removed from storage by the owner or sold by the owner.

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

History: L. 1981, ch. 180, § 1; July 1.

34-2,108. Contracts with federal agencies; collection of fees. (a) The director of the Kansas state grain inspection department is authorized and empowered to enter into contracts and agreements necessary to cooperate with the United States department of agriculture, the federal grain inspection service and with other appropriate federal agencies, to make uniform the procedures followed in the official sampling, inspecting, grading, weighing and analyzing of protein content and the certification of grades, weights and protein content of all grains or commodities and to make available to the United States department of agriculture, the federal grain inspection service, or other federal agencies, the information acquired under the procedures followed by state grain inspection employees.

(b) In addition to the fees collected under K.S.A. 34-103a and amendments thereto, the director shall undertake, by contract, to act as agent for the United States department of agriculture or other federal agencies and to collect the supervision fee established under the provisions of subsection (j) of 7 U.S.C.A. 79, from persons requesting services of the Kansas state grain inspection department, except that fees charged for edible bean inspections under K.S.A. 34-103a and amendments thereto include the required supervision fee. The supervision fee shall be remitted under the terms of the contract with the United States department of agriculture or its appropriate designee.

History: L. 1982, ch. 178, § 3; L. 1984, ch. 150, § 15; July 1.

34-2,109. Warehouseman's annual

2-3306. Responsibility of chemigation

equipment operators; safety information provided by secretary. (a) Any individual operating chemigation equipment under a chemigation user permit shall be responsible for the safe operation of such chemigation equipment and any such equipment shall be considered to be under the direct supervision of the chemigation user permit holder.

(b) [The secretary shall provide information on a periodic basis to each person holding a chemigation user permit to point out safety matters concerning chemigation safety which shall include, but not be limited to, the following:

- (1) The proper use of anti-pollution devices;
- (2) preparing the chemical solution and filling the chemical supply container;
- (3) calibrating of injection equipment;
- (4) supervision of chemigation equipment to assure its safe operation;
- (5) environmental and human hazards that may be involved in chemigation;
- (6) protective clothing and respiratory equipment;
- (7) general precautions to be followed in disposal of containers and decontamination of the equipment;
- (8) handling of tail water and other accumulations of water containing chemicals;
- (9) information of procedures to be followed should chemicals inadvertently enter the water supply source as a result of the chemigation process;
- (10) label information, especially chemigation instructions;
- (11) applicable state and federal laws and regulations; and
- (12) any other subject which the secretary deems necessary.

History: L. 1985, ch. 5, § 6; July 1.

K.S.A. 1987 Supp. 2-3306 is hereby amended to read as follows: 2-3306

Delete []

Insert

(b) The secretary shall not issue a chemigation user permit to any person unless such person is a registered chemigation equipment operator or has in his or her employ at least one registered chemigation equipment operator. A chemigation equipment operator is an individual who has successfully completed an examination given by the secretary or the secretary's designee. If the chemigation user permit is issued to an individual, that individual must have successfully completed the chemigation equipment operator examination. Such examination

Insert

(c) The examination provided for in subsection (b) of this section may be waived for any individual who has been certified as a pesticide applicator in the category of chemigation pursuant to the Kansas pesticide law.

(d) The chemigation equipment operator registration shall expire on December 31st of the fourth calendar year after the year of issue. A chemigation equipment operator registration shall be renewed for a succeeding five year period upon payment of the registration fee and passing the examination specified in either subsection (b) or subsection (c) of this section.

(e) The fee for registration as a chemigation equipment operator or for renewal of such a registration shall be \$10.00.

Senate Agriculture
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attachment 2