

As Amended by House Committee

As Amended by Senate Committee

Session of 2021

SENATE BILL No. 143

By Committee on Agriculture and Natural Resources

2-4

1 AN ACT concerning agriculture; relating to grain warehouses; updating
2 definitions; increasing maximum functional unit license and storage
3 fees; amending K.S.A. 34-2,107 and 34-2,111 and K.S.A. 2020 Supp.
4 34-223, 34-228 and 34-2,112 and repealing the existing sections; also
5 repealing K.S.A. 34-136.
6

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

8 Section 1. K.S.A. 2020 Supp. 34-223 is hereby amended to read as
9 follows: 34-223. As used in chapter 34 of Kansas Statutes Annotated, and
10 amendments thereto:

- 11 (a) "Action" includes counterclaim, setoff and suit in equity.
12 (b) "Delivery" means voluntary transfer of possessions from one
13 person to another.
14 (c) "Fungible grain" means grain of which any unit is, from its nature
15 or by mercantile custom, treated as the equivalent of any other unit.
16 (d) "Grain" means wheat, corn, oats, barley, rye, soybeans, grain
17 sorghums and any grains upon which federal grain standards are
18 established, ~~also~~. "Grain" includes seeds generally stored by warehouses,
19 if special permission is granted by the secretary.
20 (e) "Holder of a receipt" means a person who has both actual
21 possession of such receipt and a right of property therein.
22 (f) "Order" means an order by endorsement of the receipt.
23 (g) "Owner" does not include mortgagee or pledgee.
24 (h) "Person" includes individuals, corporations, partnerships and all
25 associations of two or more persons having a joint or common interest.
26 (i) "To purchase" includes to take as mortgagee or pledgee.
27 (j) "Receipt" means a warehouse receipt or receipts.
28 (k) "Value" means any consideration sufficient to support a simple
29 contract and includes an antecedent or preexisting obligation, whether for
30 money or not, where a receipt is taken either in satisfaction thereof or as
31 security therefor.
32 (l) "Public warehouseman" means a person lawfully engaged in the
33 business of storing grain for the public.
34 (m) "Public warehouse" or "public grain warehouse" means every

1 elevator or other building in which grain is received for storage or transfer
2 for the public.

3 (n) "Secretary" means the secretary of *the Kansas department of*
4 *agriculture or the secretary's designee.*

5 (o) "Department" means the Kansas department of agriculture.

6 (p) "Grain bank grain" means any grain that has been received into
7 any public warehouse to be held for the account of the depositor and
8 returned to the depositor at a later date either as whole or processed grain.

9 (q) "Storage grain" or "stored grain" means grain that has been
10 received in any public warehouse located in this state, and such grain is
11 not purchased by the lessee, owner or manager of such warehouse.

12 (r) "*Functional unit*" means a public warehouse that has the capacity
13 to store, weigh in and weigh out grain. The storage capacity of any
14 outlying storage facility of a public warehouse that is not a functional unit
15 itself shall be included as part of the combined capacity of the
16 warehouseman's nearest functional unit.

17 (s) "*Open storage*" means the storage of grain pursuant to the
18 issuance of a scale ticket, regardless of whether the grain is retained in the
19 warehouse that issued the scale ticket or elsewhere.

20 (t) "*Owner*" means the holder of any warehouse receipt or any ticket
21 for grain held in storage by a public warehouseman, regardless of whether
22 the grain for which the warehouse receipt or ticket was issued is stored at
23 the warehouse that issued the receipt or ticket or is stored elsewhere.

24 (u) "*Deferred payment*" means any payment to be made pursuant to
25 the terms of a grain purchase contract after the delivery of grain to a
26 public warehouseman.

27 (v) "*Delayed pricing*" means any method of pricing grain pursuant to
28 the terms of a grain purchase contract after the delivery of grain to a
29 public warehouseman.

30 (w) "*Financial institution*" means any institution whose deposits,
31 shares or accounts are insured by a federal agency or any bank for
32 cooperative created pursuant to title III of the farm credit act of 1971.

33 (x) "*Standby letter of credit*" means "letter of credit" as that term is
34 defined in K.S.A. 84-5-103, and amendments thereto, that by its terms:

35 (1) *Is irrevocable;*

36 (2) *is nontransferable;*

37 (3) *names the seller that produced the grain as beneficiary;*

38 (4) *shall not expire earlier than 60 calendar days after the final*
39 *payment is due pursuant to the terms of the underlying grain purchase*
40 *contract; and*

41 (5) *cannot be drawn upon by the beneficiary in the absence of a*
42 *default as defined by the terms of the underlying grain purchase contract.*

43 (y) "*Unpaid balance*" means that portion of the purchase price under

1 *a grain purchase contract, together with an interest thereon, if any, that*
2 *remains due and owing to the seller pursuant to the terms of the grain*
3 *purchase contract at the time the seller makes a demand for payment as*
4 *provided in the contract. If a grain purchase contract provides for delayed*
5 *pricing and the price has not been established at the time the seller makes*
6 *demand for payment, then for the purposes of this section only, the unpaid*
7 *balance shall be determined as though the price had been established at*
8 *the time of the closing of the relevant futures market on the last trading*
9 *day before the seller made a demand for payment.*

10 Sec. 2. K.S.A. 2020 Supp. 34-228 is hereby amended to read as
11 follows: 34-228. (a) Any person desiring to engage in business as a public
12 warehouseman in this state shall, before the transaction of any such
13 business **and annually thereafter**, make written application to the
14 secretary for a license for each separate warehouse or, if the applicant
15 owns more than one warehouse at one point, all ~~of~~ such warehouses may
16 be incorporated in one application, at which the person desires to engage
17 in such business. The application for a license shall be on a form
18 designated by the secretary and shall contain the individual name and
19 address of each person interested as principal in the business and, if the
20 business is operated or to be operated by a corporation, ~~setting forth~~
21 *providing* the names of the president and secretary, and ~~such further~~ *any*
22 *additional* information as the secretary may require.

23 (b) (1) Every application for a public warehouse license shall be
24 accompanied by a current financial statement. The statement shall include
25 such information as required by the secretary to administer and enforce the
26 public warehouse laws of this state, including, but not limited to, a current
27 balance sheet, statement of income, including profit and loss, statement of
28 retained earnings and statement of changes in financial position. The
29 applicant shall certify under oath that the statement as prepared accurately
30 reflects the financial condition of the applicant as of the date specified and
31 presents fairly the results of operations of the applicant's public warehouse
32 business for the period specified. The financial statement shall be prepared
33 in accordance with generally accepted accounting principles and shall be
34 accompanied by:

35 (A) A report of audit or review conducted by an independent certified
36 public accountant ~~or an independent public accountant~~ in accordance with
37 standards established by the American institute of certified public
38 accountants and the accountant's certifications, assurances, opinions,
39 comments and notes with respect to the statement; or

40 (B) a compilation report of the financial statement, prepared by a
41 grain commission firm or management firm which is authorized pursuant
42 to rules and regulations of the federal commodity credit corporation to
43 provide compilation reports of financial statements of warehousemen.

1 (2) Except as otherwise provided, the secretary, upon request of an
2 applicant, may grant a waiver of the requirements of this subsection for a
3 period of not more than 30 days if the applicant furnishes evidence of good
4 and substantial reasons for the waiver. The secretary may extend such
5 waiver beyond 30 days for grain stored in an alternative location other
6 than a location identified in the public warehouse license, if the secretary
7 determines that the owner of the grain would suffer substantial hardship to
8 require the grain to be stored at a location identified in the license. The
9 secretary may determine what constitutes substantial hardship and what
10 length of time the grain may be stored at such alternative location.

11 (c) (1) Every applicant for a license to operate one or more public
12 warehouses and every person licensed to operate one or more warehouses
13 shall at all times maintain total net worth liable for the payment of any
14 indebtedness arising from the conduct of the warehouse or warehouses
15 equal to at least \$.25 per bushel of the storage capacity of the warehouse or
16 warehouses except:

17 (A) No person shall be granted a license or shall continue to be
18 licensed unless the person has a net worth of at least \$25,000; and

19 (B) any deficiency in net worth required above the \$25,000 minimum
20 may be supplied by an increase in the amount of the applicant's or
21 licensee's bond or letter of credit as provided by K.S.A. 34-229, and
22 amendments thereto.

23 (2) In determining total net worth:

24 (A) Credit may be given for insurable property such as buildings,
25 machinery, equipment and merchandise inventory only to the extent that
26 the property is protected by insurance against loss or damage by fire; and

27 (B) capital stock, as such, shall not be considered a liability.

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

34 (1) Embezzlement;

35 (2) any felony defined in any statute contained in article 37 of chapter
36 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of
37 chapter 21 of the Kansas Statutes Annotated, or subsection (a)(6) of K.S.A.
38 2020 Supp. 21-6412, and amendments thereto;

39 (3) unauthorized delivery of stored goods;

40 (4) any felony defined in any statute contained in chapter 34 of the
41 Kansas Statutes Annotated, and amendments thereto; or

42 (5) a violation of the United States warehouse act (7 U.S.C. § 241 et
43 seq.).

1 (e) The secretary may investigate any applicant making application
 2 for an original license for the purpose of determining if such person would
 3 be qualified to receive such license under the provisions of this section.

4 (f) (1) Every application for a public warehouse license shall be
 5 accompanied by a *functional unit* license fee ~~which shall be determined~~
 6 ~~and fixed by the secretary by rules and regulations.~~ The license fee shall
 7 ~~not be more than the applicable amount shown in the following fee~~
 8 ~~schedule plus not more than \$500 for each functional unit; not to exceed~~
 9 *\$500 for each functional unit, plus a storage fee based on the total storage*
 10 *capacity of each warehouse, which is the total capacity of all functional*
 11 *units operated by a licensee. Both the functional unit license fee and the*
 12 *storage fee shall be determined by the secretary in rules and regulations,*
 13 *except that the storage fee shall not exceed the following amounts:*

14 Total Grain Warehouse Capacity in Bushels	ANNUAL STORAGE FEE
	Not more than
15 1 to 100,000.....	\$500 00 \$740
16 100,001 to 150,000.....	525 800
17 150,001 to 250,000.....	550 850
18 250,001 to 300,000.....	600 910
19 300,001 to 350,000.....	625 960
20 350,001 to 400,000.....	650 1,020
21 400,001 to 450,000.....	700 1,060
22 450,001 to 500,000.....	725 1,120
23 500,001 to 600,000.....	775 1,160
24 600,001 to 700,000.....	800 1,220
25 700,001 to 800,000.....	850 1,570
26 800,001 to 900,000.....	875 1,620
27 900,001 to 1,000,000.....	900 1,660
28 1,000,001 to 1,750,000.....	1225 2,260
29 1,750,001 to 2,500,000.....	1400 2,590
30 2,500,001 to 5,000,000.....	1750 3,230
31 5,000,001 to 7,500,000.....	2100 3,880
32 7,500,001 to 10,000,000.....	2375 4,390
33 10,000,001 to 12,500,000.....	2600 4,810
34 12,500,001 to 15,000,000.....	2800 5,180
35 15,000,001 to 17,500,000.....	3000 5,550
36 17,500,001 to 20,000,000.....	3225 5,960
37 For each 2,500,000 bushels or fraction	
38 over 20,000,000 bushels.....	350 650

39 (2) Whenever a licensed warehouseman purchases or acquires
 40 additional facilities, the warehouseman, if otherwise qualified, may
 41 acquire a license for the remainder of an unexpired license period by
 42 paying to the secretary a license fee computed as follows: If the unexpired
 43

1 license period is nine months or more, the ~~annual~~ fee; if the unexpired
2 license period is more than six months and less than nine months, 75% of
3 the ~~annual~~ fee; if the unexpired license period is more than three months
4 and ~~not more~~ less than six months, 50% of the ~~annual~~ fee; and if the
5 unexpired license period is three months or less than three months, 25% of
6 the ~~annual~~ fee.

7 (3) In addition to any other applicable fee, the secretary shall charge
8 and collect a fee each time a public warehouse license is amended in an
9 amount of not more than \$300 which shall be determined and fixed by the
10 secretary by rules and regulations.

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

13 (g) The secretary shall examine each warehouse operated by a
14 licensed public warehouseman ~~at least once in~~ *not less than once during*
15 ~~each 12-month~~ *18-month period, but examinations may be conducted more*
16 *frequently as the secretary determines is necessary to protect the public.*
17 The licensed public warehouseman may request additional examinations
18 of any warehouse operated by the warehouseman. The cost of additional
19 examinations when requested by the warehouseman shall be charged to the
20 warehouseman requesting the examination. The cost of each additional
21 examination requested by a warehouseman shall be an amount determined
22 therefor in accordance with an hourly rate fixed by the secretary of not
23 more than \$50 per hour, subject to a minimum charge of four hours for the
24 examination, plus amounts for subsistence expense at the rate fixed under
25 K.S.A. 75-3207a, and amendments thereto, and for mileage expense in
26 accordance with the schedule of charges established under K.S.A. 75-
27 4607, and amendments thereto. The secretary, at the secretary's discretion,
28 may make additional examinations of a warehouse and if a discrepancy is
29 found on that examination, or if one was found on the last previous
30 examination, the cost of the examination shall be paid by the
31 warehouseman.

32 (h) When the secretary authorizes a grain handling facility to be
33 physically monitored, pursuant to ~~subsection (a)(3) of~~ K.S.A. 34-102(a)
34 (3), and amendments thereto, the cost and expenses of the monitoring shall
35 be paid by the owner of the facility at the same rates fixed in subsection
36 (g).

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

42 Sec. 3. K.S.A. 34-2,107 is hereby amended to read as follows: 34-
43 2,107. The owner of grain held in storage by a public warehouseman, as

1 defined in K.S.A. 34-223, *and amendments thereto*, in this state, whether
2 such grain is held under open storage or pursuant to the issuance of a
3 warehouse receipt, shall have a prior right to such grain against any other
4 person, subject only to the payment of accrued warehouse charges and the
5 satisfaction of any lien or liens upon such grain and valid against the
6 owner thereof, until the grain is either removed from storage by the owner
7 or sold by the owner.

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

13 Sec. 4. K.S.A. 34-2,111 is hereby amended to read as follows: 34-
14 2,111. (a) Whenever a public warehouseman offers to purchase grain
15 pursuant to a grain purchase contract which includes provision for deferred
16 payment or delayed pricing of the grain, the public warehouseman shall
17 inform the seller that such grain purchase contract is a voluntary extension
18 of credit and is not protected by the surety bond or letter of credit, pursuant
19 to K.S.A. 34-229, and amendments thereto, of the public warehouseman.

20 (b) Each grain purchase contract which contains a provision for
21 deferred payment or delayed pricing, or both such provisions, shall be in
22 writing and shall include the following statement: "THIS CONTRACT
23 CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT BY THE
24 SELLER TO THE PUBLIC WAREHOUSEMAN AND IS NOT
25 PROTECTED BY THE SURETY BOND OR LETTER OF CREDIT OF
26 THE PUBLIC WAREHOUSEMAN." The statement shall be prominently
27 displayed in capital letters ~~which that~~ are at least as large as 10-point type
28 and shall be followed by a signature line ~~which that~~ has the following
29 statement in parentheses under the line: "Must be signed by seller." Such
30 statements and signature line shall be framed in a box and placed on the
31 first page of the grain purchase contract as a part thereof so that it stands
32 out from the other provisions of the grain purchase contract.

33 (c) If a public warehouseman has entered into a written grain
34 purchase contract with a seller that produced the grain and if such grain
35 purchase contract provides for either deferred payment or delayed pricing,
36 or both, then, upon demand of the seller made after delivery of such grain
37 to the public warehouseman, the public warehouseman shall cause a
38 financial institution to issue to the seller a standby letter of credit in the
39 amount of the unpaid balance under the grain purchase contract at the time
40 such demand is made. Each public warehouseman who offers to enter into
41 such a grain purchase contract with any seller that produced the grain shall
42 post a sign providing public notice of the availability of such standby letter
43 of credit.

1 ~~(d) As used in this section:~~

2 ~~(1) "Deferred payment" means any payment to be made under the~~
3 ~~terms of a grain purchase contract after delivery of the grain to the public~~
4 ~~warehouseman;~~

5 ~~(2) "delayed pricing" means any method of pricing grain under the~~
6 ~~terms of a grain purchase contract after such grain has been delivered to~~
7 ~~the public warehouseman;~~

8 ~~(3) "financial institution" means any institution whose deposits,~~
9 ~~shares or accounts are insured by a federal agency or banks for~~
10 ~~cooperatives created under title III of the farm credit act of 1971;~~

11 ~~(4) "standby letter of credit" means a letter of credit within the~~
12 ~~meaning of K.S.A. 84-5-103(1)(a), and amendments thereto, which, by its~~
13 ~~terms:~~

14 ~~(A) Is irrevocable;~~

15 ~~(B) is nontransferable;~~

16 ~~(C) names the seller that produced the grain as beneficiary;~~

17 ~~(D) shall not expire earlier than 60 days after the final payment is due~~
18 ~~under the terms of the underlying grain purchase contract; and~~

19 ~~(E) cannot be drawn upon by the beneficiary in the absence of a~~
20 ~~default in payment under the terms of the underlying grain purchase~~
21 ~~contract;~~

22 ~~(5) "unpaid balance" means that portion of the purchase price,~~
23 ~~together with interest thereon, if any, remaining unpaid to the seller under~~
24 ~~the terms of a grain purchase contract at the time the seller makes demand~~
25 ~~as provided in this section. Where the grain purchase contract provides for~~
26 ~~delayed pricing and the price has not been established at the time demand~~
27 ~~is made by the seller, then, for the purposes of this section only, the unpaid~~
28 ~~balance shall be determined as though the price had been established at the~~
29 ~~time of the closing of the relevant futures market on the last trading day~~
30 ~~before demand is made by the seller under this section.~~

31 ~~(e) As used in this section, the words and phrases defined in K.S.A.~~
32 ~~34-223, and amendments thereto, shall have the meanings ascribed to them~~
33 ~~in that statute.~~

34 ~~(f)(d) This section shall be construed as a part of and supplemental to~~
35 ~~the statutes contained in article 2 of chapter 34 of the Kansas Statutes~~
36 ~~Annotated, and amendments thereto.~~

37 Sec. 5. K.S.A. 2020 Supp. 34-2,112 is hereby amended to read as
38 follows: 34-2,112. (a) Whenever any amount of grain is received in any
39 public warehouse from a producer and is sold by the producer, or if a grain
40 producer delivers grain for sale pursuant to an agreement with the public
41 warehouseman for deferred payment or deferred pricing, and if upon
42 demand for payment by the producer, the warehouseman fails to make full
43 payment as due or makes payment by check that fails because of

1 insufficient funds to clear the bank or other financial institution on which it
2 is drawn within 15 days after the date the check is issued or the demand is
3 made, excluding Saturdays, Sundays and holidays, the sale of such amount
4 of grain may be voided by the producer by notifying the public
5 warehouseman in writing that the sale is void. In any such case, the public
6 warehouseman shall include such amount of grain in the public
7 warehouseman's daily position record and other records as an open storage
8 obligation upon receiving such written notice voiding the sale.

9 ~~(b) As used in this section, the words and phrases defined in K.S.A.~~
10 ~~34-223, and amendments thereto, shall have the meanings ascribed to them~~
11 ~~in that statute.~~

12 ~~(e)(b)~~ This section shall be ~~construed as a part of and~~ supplemental to
13 the statutes contained in article 2 of chapter 34 of the Kansas Statutes
14 Annotated, and amendments thereto.

15 Sec. 6. K.S.A. 34-136, 34-2,107 and 34-2,111 and K.S.A. 2020 Supp.
16 34-223, 34-228 and 34-2,112 are hereby repealed.

17 Sec. 7. This act shall take effect and be in force from and after its
18 publication in the ~~statute book~~ **Kansas register**.