

AGRICULTURE CODE

TITLE 2. DEPARTMENT OF AGRICULTURE

CHAPTER 14. REGULATION OF PUBLIC GRAIN WAREHOUSE OPERATORS

SUBCHAPTER A. DEFINITIONS

Sec. 14.001. DEFINITIONS. (a) In this chapter:

(1) "Depositor" means a person who:

(A) delivers grain to a public grain warehouse for storing of the grain for hire, handling of the grain for hire, or shipping of the grain for hire;

(B) is the owner or legal holder of an outstanding receipt for grain stored in the public grain warehouse issuing the receipt; or

(C) is lawfully entitled to possession of grain stored in a public grain warehouse.

(2) "Grain" means wheat, grain sorghum, corn, oats, barley, rye, soybeans, or any other grain, peas, or beans for which federal grain standards are established.

(3) "Open storage grain" means grain that:

(A) is received for storage by a public grain warehouse located in this state;

(B) is not covered by a negotiable warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which it is stored.

(4) "Public grain warehouse" means a building, bin, or similar structure located in this state and used for:

(A) the storing of grain for hire, shipping of grain for hire, or handling of grain for hire; or

(B) the purchasing and selling of grain, including grain on which payment is deferred.

(5) "Receipt" means a negotiable Texas grain warehouse receipt issued by a warehouse operator licensed under this chapter.

(6) "License" includes a renewal of or an amendment to a license.

(7) "Scale weight ticket" means a load slip other than

a receipt given to a depositor or other person by a warehouse operator licensed under this chapter on:

(A) initial delivery of the grain to the warehouse; or

(B) weighing of the grain on the grain warehouse operator's scale, regardless of the destination of the grain.

(8) "Receipted grain" means grain that is stored in a public grain warehouse and for which a Texas grain warehouse receipt has been issued and has not been canceled.

(9) "Warehouse operator" means a person engaged in the business of operating a public grain warehouse.

(b) For purposes of this chapter, the term "public grain warehouse" as defined by Subsection (a)(4) does not include railcars, trucks, boats, or other vehicles when used to transport grain.

(c) For purposes of this chapter, in those sections that require the warehouse operator to cooperate with or provide information to the department or issue documents or deliver grain to customers of the warehouse operator and in those sections that require notice to be provided to the warehouse operator by the department, the term "warehouse operator" includes all employees, agents, or other persons authorized by the warehouse operator to issue receipts or scale weight tickets or sign contracts or other agreements.

Acts 1981, 67th Leg., p. 1046, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 14.011. LIMITATION OF CHAPTER. This chapter does not apply to:

(1) a public grain warehouse covered by a license for the operation of a public grain warehouse issued by the United States Department of Agriculture or other federal agency;

(2) an individual producer-owner who does not receive from others grain for storage or handling for hire;

(3) a person whose business is manufacturing grain or selling manufactured grain and who receives all grain with the intent to manufacture the grain or sell manufactured grain; or

(4) a person who receives grain with the intent of using the grain for planting seed or for feeding livestock on the premises where the grain is received.

Acts 1981, 67th Leg., p. 1046, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.002 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.012. BUSINESS INFORMATION. (a) Except as provided by Subsection (b), financial information of a warehouse operator provided to the department is confidential and not subject to public disclosure.

(b) Notwithstanding Subsection (a), financial information of a warehouse operator provided to the department may be disclosed:

(1) without sealing in an administrative proceeding commenced by the department against the warehouse operator;

(2) to a local or state law enforcement officer, a county attorney, a district attorney, or the attorney general, acting either independently or on behalf of the department, investigating the warehouse operator;

(3) in a civil proceeding commenced by the warehouse operator against the department;

(4) in response to a subpoena from a party in a civil proceeding commenced against the warehouse operator;

(5) to the issuer of the warehouse operator's bond or letter of credit;

(6) to the public after:

(A) revocation of the warehouse operator's license;

(B) a voluntary closeout of all of the license holder's facilities in this state;

(C) a petition for bankruptcy has been filed; or

(D) a receiver for the warehouse operator's assets has been appointed; or

(7) to any federal agency or any agency of another state conducting a compliance inspection or criminal or civil investigation involving the handling, storing, shipping, selling, purchasing, or receipt of grain.

(c) In this section, "financial information" means:

(1) a financial statement or other document provided by the warehouse operator to the department to evaluate net worth requirements under Section 14.031(e);

(2) a financial audit provided by the warehouse operator to the department; and

(3) if the warehouse operator is subject to an ongoing investigation by the department:

(A) the price of grain paid by the warehouse operator to a depositor or other seller of grain delivered to or stored or handled by the warehouse operator;

(B) the price of grain paid by or to the warehouse operator by a depositor or other purchaser of grain delivered to or stored or handled by the warehouse operator; and

(C) the terms of payment for a price described by Paragraph (A) or (B).

(d) Notwithstanding any other provisions of this section:

(1) a party to a contract or other agreement with a warehouse operator may obtain a nonredacted copy of the contract or agreement; and

(2) a person who authored or contributed to the creation of financial information may be provided access to the financial information for the purpose of confirming the authenticity, truthfulness, or accuracy of the information.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 1, eff. September 1, 2011.

Sec. 14.013. RIGHT TO INTERVENE AND NOTIFICATION OF DEPARTMENT. (a) The department may intervene in a suit for receivership, garnishment, bankruptcy, or any other legal action

affecting the assets of a warehouse operator licensed under this chapter or the grain assets of a depositor in a warehouse operated under a license issued by the department, including, to assert the rights of depositors not joined in the suit, a suit brought against a bond or surety under Section 14.065.

(b) Any person who files a suit for receivership, garnishment, or bankruptcy or who commences any other legal action affecting the assets of a warehouse operator licensed under this chapter or the grain assets of a depositor in a warehouse operated under a license issued by the department, including a suit against a bond or surety under Section 14.065, must give notice to the department of the suit or legal action.

(c) Notice under this section must be in writing and delivered to the department by certified mail, registered mail, or commercial delivery service not later than the 20th day after the date on which the suit or legal action is commenced.

(d) The judgment in an action described by Subsection (a) is voidable if the notice required by this section is not provided.

(e) The court in which a suit or other legal action described by Subsection (a) is commenced may impose appropriate sanctions against a party who fails to provide the notice required by this section.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.014. RECEIVERSHIP AFFECTING WAREHOUSE ASSETS. (a) A person appointed receiver for the assets of a warehouse operator licensed under this chapter is not required to obtain a license from the department if the person:

(1) is bonded and insured as described by Subsection (b); and

(2) after being appointed, does not:

(A) receive additional grain for storing for hire, handling for hire, or shipping for hire; or

(B) purchase grain for resale.

(b) A person appointed receiver shall maintain:

(1) a bond in the same amount required for a licensed

warehouse operator; and

(2) casualty insurance in the same amount and type as required for a licensed warehouse operator.

(c) A person appointed receiver shall file proof of proper bonding and verification of insurance with the department on or before the date the person is appointed to act as receiver.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.015. POWERS AND DUTIES OF DEPARTMENT. The department shall administer this chapter and may:

(1) investigate the storing, shipping, and handling of grain and complaints relating to these activities through the inspection of:

(A) any public grain warehouse;

(B) the grain stored in any warehouse; or

(C) all property and records pertaining to a warehouse;

(2) determine whether a warehouse for which a license has been issued or applied for is suitable for properly storing, shipping, or handling grain that is stored in or expected to be stored in the warehouse;

(3) include field seed within the definition given to "grain" by Section 14.001;

(4) require that a warehouse operator keep records or submit reports the department determines are necessary in the administration of this chapter;

(5) require a warehouse operator or depositor to terminate storing, shipping, and handling agreements within a time specified by the department:

(A) on closeout or revocation of the warehouse operator's license;

(B) if grain has been abandoned by the warehouse operator or a depositor and the warehouse operator or depositor cannot be located after diligent effort; or

(C) on issuance of an injunction ordering an unlicensed warehouse operator to cease operations;

(6) prescribe forms, including the form of receipts, bonds, or applications for licenses;

(7) for purposes of determining compliance with this chapter or amounts due to a depositor in an action taken by the department against a surety or surety instrument under this chapter, determine a warehouse operator's specific obligations to a depositor, including:

(A) the type, quantity, or quality of open storage or receipted grain due a depositor;

(B) the payment owed a depositor if a shortage or variance exists in the type, quantity, or quality of a depositor's open storage or receipted grain;

(C) the time and manner of delivery of grain due a depositor; and

(D) whether a warehouse operator has failed to deliver a depositor's open storage or receipted grain within a reasonable time;

(8) by written order require a warehouse operator to deliver grain of a particular type, quantity, and quality to a depositor at a particular time and in a particular manner based on the department's determination that the required delivery of grain is due the depositor;

(9) classify grain by category, including open storage, receipted, identity-preserved, company-owned, and abandoned grain, and adopt rules regarding the storage, shipping, or handling of classified grain, including recordkeeping and accounting requirements;

(10) seize the records of a warehouse operator, including any electronic records or the equipment or media on which the records are stored, during a period of suspension of a warehouse operator's license;

(11) seal or post as sealed, or both seal and post as sealed, the warehouse of a warehouse operator:

(A) whose license has been suspended or revoked;

(B) whose license has expired; or

(C) who is unlicensed;

(12) seal or post as sealed, or both seal and post as

sealed, a warehouse that is found to be unsafe for inspection or unsuitable for the storage of grain;

(13) during reasonable hours and to determine compliance with this chapter, enter any facility where the department reasonably believes grain is being handled, stored, shipped, purchased, or sold to examine:

(A) the facility's storage, shipping, handling, and financial records;

(B) grain; and

(C) physical structures;

(14) determine the suitability of a warehouse for storing, shipping, or handling grain or for adequate and safe inspection and, if found unsuitable for any of those purposes, order corrective action;

(15) require the warehouse operator to notify the department regarding:

(A) the handling of commodities that may pose a hazard to humans, animals, the grain of other depositors in the warehouse operator's warehouse, or the grain industry;

(B) existing hazards to inspection, including recent or ongoing fumigations of warehouse facilities and unsafe or inoperable warehouse equipment or structures; or

(C) any change in ownership, management, or legal or financial status of a warehouse licensed under this chapter;

(16) require by rule that sales, purchase, or brokerage agreements between a warehouse operator and a producer be in writing and contain written terms or provisions the department considers appropriate to protect producers, depositors, and warehouse operators and to ensure the department's ability to carry out its regulatory functions under this chapter;

(17) regulate a warehouse operator's temporary storage of grain in a non-warehouse location or facility;

(18) require segregation of grain requiring identity preservation;

(19) enter into cooperative agreements with agencies of the federal government or other states to carry out the purposes of this chapter;

(20) recover the unused warehouse receipts of a warehouse operator:

(A) during any period of probation or suspension of the warehouse operator's license;

(B) on revocation or voluntary surrender of the warehouse operator's license; or

(C) during any period in which the warehouse operator is not licensed, including after a failure to timely renew the license;

(21) order corrective action or impose any reasonable condition of probation necessary to accomplish the regulatory goals authorized by this chapter; and

(22) adopt rules necessary to carry out the provisions of this chapter.

Acts 1981, 67th Leg., p. 1047, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 553, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 419, Sec. 3.06, eff. Sept. 1, 1995. Renumbered from Sec. 14.003 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. LICENSING

Sec. 14.021. LICENSE REQUIRED. A person may not operate a public grain warehouse without first obtaining from the department a license in the person's name covering the warehouse.

Acts 1981, 67th Leg., p. 1047, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.004 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.022. LICENSING OF MULTIPLE WAREHOUSES. (a) In this section:

(1) "Combination" means a group of two or more public grain warehouses or facilities operated under a single set of complete records. For purposes of this chapter, a combination is treated as if it were a single public grain warehouse.

(2) "Facility" means two or more public grain warehouses located in close proximity on the same general location.

For purposes of this chapter, and except when part of a combination, a facility is treated as if it were a single public grain warehouse.

(b) A warehouse operator may operate all public grain warehouses or facilities within an area no larger than 60 miles in diameter as a combination if a single license covering the combination is obtained from the department and:

(1) a single recordkeeping system covering only warehouses within the combination is maintained by the warehouse operator;

(2) a single, unique set of sequentially numbered receipts containing all information required by department rule and bearing the name of the license holder and a unique combination name, but not bearing individual warehouse or facility names, is used for the combination;

(3) for each scale operated by the warehouse operator, the warehouse operator issues and maintains a single, unique set of sequentially numbered scale weight tickets containing all information required by department rule and bearing the name of the license holder and a unique name identifying the facility where the scale is located;

(4) a single daily position report covering all storage obligations of the combination and only the combination, including company-owned grain, and containing all information required by department rule is maintained;

(5) all original warehouse operator records, except for scale weight tickets, relating to transactions or storage obligations involving the combination are maintained at a single location and separate from all other businesses and separately licensed warehouse operations of the warehouse operator; and

(6) except as provided by department rule, a single unique bond or bond substitute is used to cover the combination.

(c) Except as permitted while operating a combination, a warehouse operator may not combine or intermingle assets, storage obligations, liabilities of any kind, records or record entries, contractual obligations, other transactions of any kind, or any other business or operating information from different warehouses or businesses owned, managed, or operated by the warehouse

operator. Each licensed combination or individually licensed facility shall be operated as a separate entity under a single, unique name and, except as provided by department rule, shall be covered by a single, separate bond or bond substitute.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.023. LICENSING PROCEDURE. (a) The department may issue, renew, or amend a license following a determination that:

(1) the applicant has filed an acceptable bond, a financial statement in a form prescribed by the department, and proof of casualty insurance required by this chapter;

(2) the warehouse is suitable for storage of grain and inspection by department personnel;

(3) the applicant has complied with this chapter and rules adopted under this chapter; and

(4) the applicant has met the net worth or deficiency bond requirements of Section 14.031(e).

(b) An applicant must file a separate application for each license, renewal, or amendment and shall accompany each application for a license or renewal with an annual license fee, as provided by department rule. The department shall prescribe the information to be contained in the application. A person who fails to submit a renewal fee on or before the expiration date of the license must pay, in addition to the renewal fee, the late fee provided by Section 12.024.

(c) If an applicant for a license previously operated a grain warehouse in this state or another state and that warehouse ceased to operate while the applicant was the operator, the applicant must submit with the application evidence acceptable to the department that all debts from the previous operation evidenced by receipts have been satisfied. The department may not issue a license to an applicant who the department determines has not satisfied all such debts from a previous operation.

Acts 1981, 67th Leg., p. 1047, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4283, ch. 682, Sec. 2, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 50, Sec. 3, eff. April 30,

1987; Acts 1989, 71st Leg., ch. 230, Sec. 32, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.05, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.11, eff. Sept. 1, 1995. Renumbered from Sec. 14.005 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.024. REQUIREMENT FOR INCREASING CAPACITY. A warehouse operator may not use any increased warehouse capacity without first obtaining written approval from the department. Acts 1981, 67th Leg., p. 1048, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.007 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. BONDING

Sec. 14.031. BOND. (a) In accordance with this section, each applicant for a license shall file or have on file a bond with the department.

(b) The bond must:

(1) be payable to the State of Texas;

(2) be executed by the applicant as principal;

(3) be issued by a corporate surety licensed to do business as surety in the State of Texas; and

(4) be in a form and contain terms and conditions prescribed by the department.

(c) The bond must be conditioned on faithful performance of:

(1) each obligation of a warehouse operator as to receipted grain and open storage grain under this chapter and rules adopted under this chapter, from the effective date of the bond until the license is revoked or the bond is canceled, whichever occurs first, whether or not the warehouse remains licensed; and

(2) except for a contract for the purchase of grain or to act as broker for the grain, each obligation of a warehouse operator under any contract with a depositor that exists on the effective date of the bond or is assumed after the effective date of the bond and before the license is revoked or the bond is canceled, whichever occurs first and whether or not the warehouse remains

licensed.

(d) The bond must be in an amount of not less than \$35,000 and be based on 10 cents per bushel of storage capacity, not to exceed a maximum of \$500,000.

(e) If the actual net worth of an applicant equals less than the greater of either 25 cents per bushel of storage capacity or \$200,000, the applicant shall file a deficiency bond in an amount equal to the difference between the actual net worth and the greater of either \$200,000 or the amount determined by multiplying 25 cents times each bushel of storage capacity in the applicant's warehouse. A deficiency bond is in addition to the bond required of an applicant by this section.

(f) Except as provided by department rule, the applicant must give a single bond meeting the requirements of this section to cover warehouses licensed as a single facility or combination. A single bond may not be used to cover more than one individually licensed facility, more than one combination, or one or more individually licensed facilities and one or more combinations.

(g) The liability of the surety of a bond required by this chapter is limited to the face amount of the bond and does not accumulate for each successive license period during which the bond is in force.

(h) Subject to the approval of the department, a warehouse operator may deposit the following with the department, for the term of the license plus two years, in lieu of a bond required by this section:

(1) cash;

(2) an irrevocable letter of credit, payable to the State of Texas; or

(3) a certificate of deposit from a federally insured bank or savings and loan institution authorized to do business in this state, assigned to the State of Texas.

(i) The cash, letter of credit, or certificate of deposit under Subsection (h) must be in the same amount or have a value in the same amount as required for the warehouse bond.

(j) Any interest or income earned on an assigned certificate of deposit accrues to the owner of the certificate during the time

of the assignment.

Acts 1981, 67th Leg., p. 1048, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Amended by Acts 1987, 70th Leg., ch. 50, Sec. 2, eff. April 30,
1987. Renumbered from Sec. 14.009 and amended by Acts 2001, 77th
Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 2, eff.
September 1, 2011.

Sec. 14.032. ADDITIONAL BOND. (a) If the department
determines that an approved bond is insufficient, the department
shall require the warehouse operator to give additional bond.

(b) If a license has been suspended or revoked or has
expired, the department may require a bond from the warehouse
operator to protect depositors of grain for as long as any receipts
or open storage accounts remain outstanding.

Acts 1981, 67th Leg., p. 1049, ch. 388, Sec. 1, eff. Sept. 1, 1981.
Renumbered from Sec. 14.012 and amended by Acts 2001, 77th Leg., ch.
1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.033. BOND CANCELLATION. (a) A warehouse operator
may not cancel a bond approved by the department unless the
department first gives written approval of a substitute bond.

(b) The surety may cancel a bond by sending notice of intent
to cancel by registered or certified mail to the department.
Cancellation of a bond may not be effective before the 91st day
following the day on which the surety mails notice of intent to
cancel. On receipt of notice of cancellation of a bond, the
department shall promptly notify the warehouse operator involved.
Liability under the bond ceases to accrue on the effective date of
cancellation. Notwithstanding cancellation under this section,
the department or a depositor may collect under the bond for any
claim that arose during the period during which the bond was in
effect, provided that the claim is filed within the applicable
limitations period established under Section 14.065.

(c) The surety shall send a copy of the notice required by
this section to any government agency requesting it.

(d) Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond before the cancellation of a bond is effective.

(e) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the bond required by this chapter.

Acts 1981, 67th Leg., p. 1050, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 14.013 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.034. CANCELLATION OF LETTER OF CREDIT. (a) A warehouse operator may not cancel a letter of credit approved by the department in lieu of a bond unless the department gives written approval of a substitute bond or letter of credit.

(b) The issuer of the letter of credit may cancel a letter of credit by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of a letter of credit may not take effect before the 91st day after the date the issuer mails notice of intent to cancel. On receipt of notice of cancellation of a letter of credit, the department shall promptly notify the warehouse operator involved. Liability under the letter of credit ceases to accrue on the effective date of cancellation. Notwithstanding cancellation under this subsection or other law to the contrary, the department or a depositor may collect under the letter of credit for any claim that arose during the period during which the letter of credit was in effect, provided that the claim is filed within the applicable limitations period established under Section 14.065.

(c) The issuer of a letter of credit shall send a copy of the notice required by this section to any government agency requesting the copy. Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond or letter of credit before the cancellation of a letter of credit is effective.

(d) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the bond or

letter of credit required by this chapter.

Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.035. CANCELLATION OF CERTIFICATE OF DEPOSIT OR CASH. (a) A warehouse operator may not repossess a certificate of deposit or cash approved by and deposited with the department in lieu of a bond unless:

(1) the department gives written approval of a substitute bond or letter of credit; and

(2) at least two years have passed after the expiration of the last licensing period during which the certificate of deposit or cash was deposited with the department in lieu of a bond.

(b) Notwithstanding any other provision of this chapter, the department may not release a certificate of deposit or cash deposited with the department while a claim filed within the applicable limitations period established under Section 14.065 is pending before the department or a court.

(c) A warehouse operator may, on written request to the department, recover cash or a certificate of deposit from the department before the expiration of the two-year period specified in Subsection (a)(2) if:

(1) the department performs a closeout inspection;

(2) the department determines on the best available evidence that no outstanding obligations exist at the time of the closeout inspection;

(3) the warehouse operator submits with the written request a bond:

(A) in an amount equal to six cents per bushel for 50 percent of the total storage capacity of the facility or combination covered by the cash or certificate of deposit the warehouse operator is attempting to recover; and

(B) covering any failure of obligation that may have occurred during all licensing periods covered by the cash or certificate of deposit the warehouse operator is attempting to recover; and

(4) at least 30 days have passed since the closeout inspection.

(d) A claim against the bond required by Subsection (c) must be filed with the department or in a court of competent jurisdiction not later than the second anniversary of the date of the closeout inspection.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. INSURANCE

Sec. 14.041. CASUALTY INSURANCE. (a) Except as provided by Subsections (c) and (d), an applicant for a license must file or have on file with the department a certificate of insurance evidencing that:

(1) the applicant has an effective policy of insurance issued by an insurance company authorized to do business in this state or, with the approval of the department, by an eligible surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter; and

(2) the policy insures, in the name of the applicant, all depositor grain that is or may be in the public grain warehouse for its full market value against loss by or due to water or other fluid resulting from an insured peril, excluding flood and other rising waters resulting from natural causes, malicious mischief, vandalism, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado.

(b) If water or other fluid resulting from an insured peril, excluding flood and other rising waters resulting from natural causes, malicious mischief, vandalism, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado destroys or damages grain in a public grain warehouse, the warehouse operator shall, on demand by the depositor and presentation of a receipt or other evidence of ownership, make settlement with the depositor of the grain. The amount of the settlement shall be the average price paid for grain of the same grade and quality on the date of the loss at the location of the

warehouse, minus the warehouse operator's charges and advances. If a settlement is not made before the 31st day following the date of demand, the depositor is entitled to seek recovery from the insurance company.

(c) An applicant is not required to file a certificate of insurance if the applicant certifies in writing, at or before the time the certificate of insurance is due, that all grain within the warehouse at the time the license is to be effective is or will be owned by the applicant free of any lien. The applicant shall file the required certificate of insurance on or before the first day any grain not owned by the applicant free of any lien is stored for hire, handled for hire, or shipped for hire.

(d) An applicant for a license shall insure depositor grain for its full market value against loss by or due to fire or windstorm if the grain is in temporary or emergency storage. The certificate required under Subsection (a) must evidence that the applicant has an effective policy of insurance under this subsection before the applicant may store depositor grain in temporary or emergency storage.

Renumbered from Sec. 14.011 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 196, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.505, eff. Sept. 1, 2003.

Sec. 14.042. INSURANCE CANCELLATION. (a) A warehouse operator may not cancel an insurance policy approved by the department unless the department gives written approval of a substitute policy.

(b) The insurer may cancel an insurance policy by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of an insurance policy is not effective before the 31st day following the date the insurer mails notice of intent to cancel. On receipt of notice of cancellation of an insurance policy, the department shall promptly notify the warehouse operator involved.

(c) The insurer shall send a copy of the notice required by this section to any government agency requesting the copy.

(d) Notwithstanding any other provision of this chapter, a public grain warehouse license is automatically suspended if the warehouse operator fails to file a new certificate of insurance before the cancellation of an insurance policy is effective or fails to provide a certification of ownership under Section 14.041(c).

(e) The suspension of a license under this section continues as long as the warehouse operator fails to maintain the insurance required by this chapter.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.043. ADDITIONAL INSURANCE. (a) If the department determines that an approved insurance policy is insufficient, the department shall require the warehouse operator to obtain additional insurance.

(b) If a license has been suspended or revoked or has expired, the department may require continued insurance coverage by the warehouse operator to protect depositors of grain for as long as any receipts or open storage accounts remain outstanding.

(c) The warehouse operator shall obtain the additional insurance required by this section and provide verification of the additional insurance within a time specified by the department, and the additional insurance shall be maintained or continued as necessary to meet the requirements of this chapter.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. WAREHOUSE OPERATOR OBLIGATIONS

Sec. 14.051. POSTING OF LICENSE. Each warehouse operator shall immediately on receipt of a license post the original in a conspicuous place at the primary recordkeeping location for the individually licensed facility or combination. A copy of the license must be conspicuously posted at each facility where grain is stored for hire, handled for hire, or shipped for hire.

Renumbered from Sec. 14.008 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.052. WAREHOUSE OPERATOR OBLIGATIONS. (a) The obligations of a warehouse operator include the obligation to:

(1) deliver grain to a person holding a receipt for grain stored in the warehouse; and

(2) maintain the quantity and quality of all grain not owned by the warehouse operator, including open storage grain.

(b) Except as otherwise provided by this chapter or by department rule, the obligation of a warehouse operator to deliver grain to a person holding a receipt for grain stored in the public grain warehouse is controlled by Section 7.403, Business & Commerce Code.

(c) If a warehouse operator accepts for storage, shipping, handling, purchase, or sale any grain that is nonfungible or for which identity must be preserved, the warehouse operator shall safeguard the grain from intermingling with grain that would impair or destroy the identity-preserved or nonfungible nature of the grain. Nothing in this section requires the warehouse operator to accept grain that is nonfungible or that requires identity preservation.

(d) The warehouse operator remains liable for the quality and quantity of grain deposited at the warehouse and for any other obligations established under this chapter for any period during which the warehouse has been sealed or during any period of probation, suspension, or revocation imposed under this chapter or for grain abandoned by the warehouse operator unless:

(1) the warehouse operator makes a written request to the department for access to the warehouse;

(2) the request adequately describes why access is necessary to meet the warehouse operator's obligations under this chapter;

(3) the request adequately describes what type of access is necessary to meet the warehouse operator's obligations under this chapter;

(4) the request for access is reasonable;

(5) allowing access would not impair the department's ability to preserve evidence, warehouse operator records, or depositor grain assets; and

(6) the request is denied by the department or the department imposes unreasonable restrictions that prevent the operator from meeting the obligations described in the request.

(e) The department is entitled, on behalf of depositors, to recover from the warehouse operator's bond the cost of damages suffered by depositors as a result of sealing the warehouse or as a result of the warehouse operator abandoning the warehouse and the grain contained in the warehouse.

Acts 1981, 67th Leg., p. 1052, ch. 388, Sec. 1, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 553, Sec. 2, eff. Sept. 1, 1993. Renumbered from Sec. 14.0091, 14.021 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.053. RECEIPT FORMS. (a) A warehouse operator shall use one set of serially numbered and sequentially issued receipts for all warehouses operated under a single license. In addition to a unique serial number, each receipt form must contain all of the information prescribed by department rule. If further provided by department rule, the warehouse operator shall request the receipt forms from the printer on a form approved, prescribed, or furnished by the department.

(b) The warehouse operator shall provide the department with an exemplar of the receipt forms and an affidavit from the printer showing the number of receipts printed and their serial numbers before issuing any receipt from the printed set. The exemplar and affidavit required by this subsection shall be provided each time a new set of receipts is printed.

(c) The warehouse operator may use an electronic receipt system if the provider of the electronic receipt system has been approved by the department or by the United States Department of Agriculture or any other federal agency that issues a license for the operation of a public grain warehouse.

(d) The department may require a warehouse operator to provide a bond to cover any loss resulting from unlawful use of a receipt. The department shall determine the form and the amount of the bond, but the amount may not exceed \$5,000.

Renumbered from Sec. 14.020 and amended by Acts 2001, 77th Leg., ch.

1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.054. ISSUANCE OF SCALE WEIGHT TICKET OR RECEIPT.

(a) On receiving grain, a warehouse operator shall issue to the person delivering the grain a serially numbered scale weight ticket in a form approved by the department.

(b) On application of a depositor, the warehouse operator shall issue to the depositor a Texas grain warehouse receipt, which must be:

(1) in a form prescribed by the department; and

(2) in conformity with Chapter 7, Business & Commerce Code.

(c) A Texas grain warehouse receipt issued under this subchapter is subject to the provisions of Chapter 7, Business & Commerce Code.

(d) A Texas grain warehouse receipt is a negotiable document of title. A scale weight ticket is not a negotiable document of title.

(e) Except as provided by Section 14.055 for duplicate receipts, a warehouse operator may not issue two scale weight tickets or two receipts bearing the same number during any calendar year.

(f) Unless previously canceled in accordance with the provisions of Chapter 7, Business & Commerce Code, a Texas grain warehouse receipt issued under this chapter expires 10 years after the date of issuance.

Renumbered from Sec. 14.017 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.055. DUPLICATE RECEIPTS. (a) Except as otherwise provided by this section, if a receipt issued under this chapter is outstanding, another receipt covering all or part of the grain covered by the initial receipt may not be issued by the warehouse operator or any other person. If a receipt is lost, stolen, or destroyed, the owner is entitled to a new receipt as a duplicate or substitute for the missing receipt. The duplicate or substitute receipt has the same legal effect as the original receipt and must:

(1) state that it is in lieu of the original receipt;
and

(2) bear the number and date of the original receipt.

(b) Before issuing a duplicate receipt, the warehouse operator shall require from the owner an indemnity bond of double the market value of the grain covered by the missing receipt. The bond must be in a form and with a surety prescribed by the department to fully protect all rights under the missing receipt.

(c) A warehouse operator may not obtain, purchase, or become a surety on a bond for a lost, stolen, or destroyed receipt.

(d) A court may not order delivery of grain covered by a lost, stolen, or destroyed receipt without requiring the bond provided by this section.

Renumbered from Sec. 14.019 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.056. RECEIPT FOR GRAIN OWNED BY WAREHOUSE OPERATOR.

A warehouse operator may issue a receipt for grain that is owned by the warehouse operator, in whole or part, and located in the warehouse operator's warehouse. The negotiation, transfer, sale, or pledge of that receipt may not be defeated because of its ownership.

Renumbered from Sec. 14.018 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.057. RECORDS. (a) Every warehouse operator shall keep in a safe place complete and correct records and accounts pertaining to the public grain warehouse, including records and accounts of:

(1) grain received and withdrawn from the warehouse;

(2) unissued receipts in the warehouse operator's possession;

(3) receipts and scale weight tickets issued by the warehouse operator; and

(4) receipts returned to and canceled by the warehouse operator.

(b) The warehouse operator shall retain the records

required by this section for the period of time prescribed by the department. The warehouse operator shall retain copies of receipts or other documents evidencing ownership of grain or liability of a warehouse operator as long as the documents are outstanding. If the documents are canceled, the warehouse operator shall retain the documents or receipts for a period of not less than two years from the date of cancellation.

(c) The warehouse operator shall:

(1) clearly mark all canceled receipts "canceled" and mark on the face of each receipt the date of the cancellation;

(2) keep records and accounts required by this section separate from the records and accounts of other businesses;

(3) issue in numerical order all scale weight tickets and receipts; and

(4) keep in numerical order copies of the scale weight tickets and receipts issued by the warehouse operator.

(d) In records kept under this section, grain may be designated as company-owned grain only if:

(1) the grain has been paid for and is wholly owned by the warehouse operator; or

(2) the ownership of the grain has been transferred to the warehouse operator under a written contract of purchase.

(e) The warehouse operator shall report to the department on forms furnished by the department the following information on scale weight tickets used in the warehouse operator's business:

(1) the number of scale weight tickets printed;

(2) the serial numbers of the scale weight tickets printed; and

(3) the printer of the scale weight tickets.

(f) The warehouse operator shall make any records required by this section or department rule accessible and available for inspection by the department at any reasonable time.

Renumbered from Sec. 14.022 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.058. POSTING OF STORAGE RATES OR TARIFFS. (a) A public grain warehouse licensed under this chapter shall post a

copy of all storage rates and tariffs charged by the warehouse operator at the main warehouse office and at each warehouse facility operating under the license.

(b) The warehouse operator shall post any change to the posted storage rates or tariffs not later than the third day before the day on which the change is to take effect.

(c) Department inspectors shall check compliance with this section during inspections of a public grain warehouse under this chapter.

Renumbered from Sec. 14.036 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.059. INSPECTIONS; FEE. (a) On request by the department, a warehouse operator shall report to the department on the condition, operation, and business of each public grain warehouse that the warehouse operator operates and all grain stored in those warehouses.

(b) The department shall inspect each public grain warehouse at least once annually and may make additional inspections as the department considers necessary. A warehouse operator may request that the department make additional inspections.

(c) The department shall collect from the warehouse operator whose public grain warehouse is inspected an inspection fee for an annual inspection or an inspection requested by the warehouse operator, but may not collect an inspection fee for other inspections unless the inspection is conducted:

(1) under the terms of an agreed or ordered suspension or probation;

(2) in response to a complaint that the warehouse operator has not complied with the duties and obligations provided for by this chapter and the complaint is determined by the department to be valid;

(3) as a follow-up inspection to:

(A) determine whether a shortage of grain discovered by the department has been corrected;

(B) obtain records not immediately available at

the location designated as the recordkeeping location in department records or to which access was refused during a previous inspection;

(C) ensure that recordkeeping discrepancies discovered during a previous inspection have been corrected; or

(D) monitor a suspension or probation under this chapter; or

(4) to monitor termination of arrangements for storing, shipping, or handling of grain under this chapter.

(d) The department by rule shall set the inspection fee. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.12, eff. Sept. 1, 1995. Renumbered from Sec. 14.014 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. REMEDIES AND CLAIMS

Sec. 14.061. WAREHOUSE RECEIPT AS PRIMA FACIE EVIDENCE. In an action involving a warehouse operator that is brought under this chapter, a warehouse receipt constitutes prima facie evidence of the truth of the facts stated in the receipt.

Renumbered from Sec. 14.0261 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.062. INVALID RECEIPTS. Notwithstanding any other provision of this code or the Business & Commerce Code, a receipt for grain is void as to any person who receives the receipt with knowledge that the grain purported to be covered by the receipt was not, at the time the receipt was issued, actually stored in the warehouse of the warehouse operator issuing the receipt.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.063. TERMINATION OF STORAGE. (a) A warehouse operator desiring to terminate the storage of grain in the warehouse operator's warehouse, including grain that is abandoned or is unclaimed prior to the sale of a warehouse, shall do so in accordance with Sections [7.206](#) and [7.210](#), Business & Commerce Code, except that the warehouse operator is not required to hold the

balance of the proceeds of a sale, but may transfer the balance to the comptroller, who shall treat the money in the same manner as an escheated bank account.

(b) A purchaser in good faith of grain sold under Section 7.210, Business & Commerce Code, takes the grain free of any rights of the holder of the receipt, but the receipt is evidence of entitlement to the escheated funds deposited with the comptroller under Subsection (a).

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 2.01, eff. Sept. 1, 1997. Renumbered from Sec. 14.023 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.064. CERTAIN LOADOUT FEES PROHIBITED. (a) A warehouse operator may not charge a fee for loading out grain if the loadout was the result of the misconduct of the warehouse operator.

(b) Misconduct under this section includes:

(1) violation of this chapter as established by final, unappealable order of the commissioner;

(2) conviction of a crime, including a plea of nolo contendere, described as an offense under this chapter; and

(3) conviction of a crime, including a plea of nolo contendere, described as an offense under the Penal Code and involving any type of fraud or theft related to the storing, shipping, handling, sale, or purchase of grain or the sale or purchase of grain handling, shipping, or storage equipment or warehouse structures or other assets.

(c) A loadout fee collected during a period of suspension of a warehouse operator's license by the department, after revocation of a warehouse operator's license, or during a period in which criminal charges are pending against a warehouse operator, shall be placed in an escrow account by the warehouse operator until:

(1) the department's suspension is lifted;

(2) the prosecutor ceases to pursue criminal charges;

(3) the indictment or information is dismissed by a court; or

(4) the warehouse operator is acquitted.

(d) If misconduct is finally determined to have occurred as

provided by Subsection (b), the loadout fees placed in escrow shall be returned to the person originally paying those fees. The loadout fees placed in escrow shall be returned to the warehouse operator if the warehouse operator is found not to have committed misconduct by acquittal, by the dismissal of the criminal charges, or by final order of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.065. RECOVERY ON BOND; LIABILITY OF WAREHOUSE OPERATOR. (a) If no action on the bond or cash, certificate of deposit, or letter of credit deposited in lieu of a bond of a warehouse operator is begun before the 31st day after the date of a written demand to the department, a depositor has a right of action on the bond or cash, certificate of deposit, or letter of credit deposited in lieu of a bond for recovery of damages suffered by the depositor as a result of the failure of the warehouse operator to comply with any condition of the bond, or if cash, a certificate of deposit, or a letter of credit is deposited in lieu of a bond, failure to comply with any obligation of the warehouse operator under this chapter that would have been covered by a bond.

(b) Recovery on a bond shall be prorated if claims exceed liability on a bond, but a depositor suing on a bond is not required to join other depositors in a suit. The burden of establishing proration is on the surety as a matter of defense or is on the department as intervenor on behalf of other depositors.

(c) A warehouse operator is liable for damages for loss of or injury to grain caused by the warehouse operator's failure to exercise the care that a reasonably prudent person would exercise in regard to the grain under similar circumstances, but, unless otherwise agreed, a warehouse operator is not liable for damages to grain that could not have been avoided through the exercise of that care.

(d) A person who files an action on a bond under this section must serve notice of the suit on the department in the same manner and within the same period as for the defendant or surety who issued the bond.

(e) On authentication by the department, the court shall

accept into evidence as a public record any report prepared by the department under this chapter that describes potential bond claims by other depositors, regardless of whether any of those depositors are joined in the suit.

(f) A person is prohibited from filing a claim on an invalid receipt.

(g) An action under this section must be brought not later than the second anniversary of the date of expiration of the public grain warehouse license in effect at the time the claim arose.

(h) The department by rule may set a limitations period for filing claims with the department on a bond filed with the department or cash, a certificate of deposit, or a letter of credit deposited with the department in lieu of a bond.

Renumbered from Sec. 14.010 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.066. APPEAL OF DEPARTMENT ACTION BY WAREHOUSE OPERATOR. (a) A department action or order affecting a warehouse operator under this chapter is appealable in accordance with this section unless the action involves agency rulemaking, the assessment of an administrative penalty, imposition of a license sanction, or any other action for which a specific administrative or judicial remedy is available under this chapter, Chapter 12 of this code, or Chapter 2001, Government Code.

(b) Not later than the 10th day after the date the department takes an action or issues an order described by Subsection (a), the warehouse operator may serve notice on the department to appear in a district court of Travis County or the district court of the county in which the public grain warehouse is located. The court shall fix the time of the hearing not less than 3 days or more than 20 days after the date of service of the notice.

(c) The burden is on the warehouse operator to show by a preponderance of the evidence that the action taken or order issued by the department was not authorized under this chapter or, if authorized, was an abuse of the department's discretion.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 3, eff. September 1, 2011.

SUBCHAPTER H. OFFENSES

Sec. 14.071. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter for which an offense is not expressly provided.

(b) An offense under this section is a Class B misdemeanor. Renumbered from Sec. 14.027 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.072. PENALTY FOR OPERATING WITHOUT A LICENSE. (a) A person commits an offense if the person:

(1) transacts any public grain warehouse business without first obtaining a license required by this chapter; or

(2) continues to transact public grain warehouse business after a license has been revoked or suspended, or the license holder has been placed on probation, except as permitted under Section 14.084.

(b) An offense under this section is a felony of the third degree.

(c) A person commits a separate offense for each day business prohibited by this section is carried on.

Renumbered from Sec. 14.028 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.073. PENALTY FOR FRAUD. (a) A person commits an offense if the person:

(1) issues or aids in issuing a receipt or scale weight ticket knowing that the grain covered by the receipt or scale weight ticket has not been actually received at the grain warehouse;

(2) issues or aids in issuing a duplicate or additional negotiable receipt for grain knowing that a former negotiable receipt for the same grain or any part of the grain is outstanding except as permitted by Section 14.055; or

(3) fraudulently and without proper authority

represents, forges, alters, counterfeits, or simulates any license, scale weight ticket, or receipt provided for by this chapter.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.029 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.074. PENALTY FOR UNLAWFUL DELIVERY. (a) A person commits an offense if the person:

(1) delivers grain out of a public grain warehouse knowing that a negotiable receipt for the grain is outstanding and without possessing that receipt; or

(2) delivers grain out of a public grain warehouse:

(A) knowing that a nonnegotiable receipt or scale weight ticket is outstanding;

(B) without the prior approval of the person lawfully entitled to delivery; and

(C) without the delivery being shown on the appropriate records of the warehouse operator.

(b) It is an affirmative defense to prosecution under this section that the person's action is:

(1) a sale or other disposition of grain in lawful enforcement of a warehouse operator's lien;

(2) a warehouse operator's lawful termination of a storing, shipping, or handling agreement;

(3) a delivery to the person lawfully entitled to delivery;

(4) a delivery authorized by prior approval of the person lawfully entitled to delivery and the delivery is shown on the appropriate records of the warehouse operator;

(5) necessary to prevent destruction of the grain;

(6) taken under the order of a state or federal court;

or

(7) permitted by a rule of the department necessary to carry out this chapter.

(c) An offense under this section is a felony of the second

degree.

Renumbered from Sec. 14.030 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.075. PENALTY FOR FRAUDULENTLY ISSUING A SCALE WEIGHT TICKET OR RECEIPT. (a) A person commits an offense if the person fraudulently issues or aids in fraudulently issuing a receipt or scale weight ticket knowing that it contains a false statement.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.031 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.076. PENALTY FOR CHANGING A RECEIPT OR SCALE WEIGHT TICKET AFTER ISSUANCE. (a) A person commits an offense if the person changes a receipt or scale weight ticket after its issuance.

(b) It is a defense to prosecution under this section that the change on the receipt or scale weight ticket is a notation by the warehouse operator for partial delivery or corrections made by the warehouse operator to reflect accuracy of accounts.

(c) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.032 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.077. PENALTY FOR DEPOSITING GRAIN WITHOUT TITLE.

(a) A person commits an offense if the person:

(1) deposits grain without having title to the grain or deposits grain on which there is a lien or mortgage;

(2) receives for the grain a negotiable receipt; and

(3) negotiates the receipt for value with intent to deceive and without disclosing the person's lack of title or the existence of a lien or mortgage on the grain.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.033 and amended by Acts 2001, 77th Leg., ch.

1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.078. PENALTY FOR STEALING GRAIN OR RECEIVING STOLEN GRAIN. (a) A person commits an offense if the person:

(1) obtains or exercises control over grain stored in a public grain warehouse without the owner's effective consent and with the intent to deprive the owner of the grain;

(2) obtains from another person grain stolen from a public grain warehouse knowing that the grain is stolen; or

(3) exercises control over grain stolen from a public grain warehouse knowing that the grain is stolen.

(b) An offense under this section is a felony of the second degree.

Renumbered from Sec. 14.034 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.079. PENALTY FOR INTERFERING WITH SEALED WAREHOUSE OR DEPARTMENT INSPECTION OR INVESTIGATION. (a) A person commits an offense if the person:

(1) without the department's consent and with the intent to obstruct the department's regulation, management, or control of sealed grain, obtains or exercises control over grain stored in a building, bin, or other similar structure sealed by the department;

(2) breaks, removes, vandalizes, or otherwise interferes with a department seal placed on a building, bin, or other similar structure used for the receiving of grain for hire, shipping of grain for hire, storing of grain for hire, or handling of grain for hire;

(3) without the department's consent and with the intent to obstruct the department's regulation, management, or control of sealed grain, interferes with the department's access to or control of grain stored in a building, bin, or other similar structure sealed by the department; or

(4) interferes with the lawful investigation or inspection of the facilities, records, or grain deposits of a public grain warehouse by a department inspector or other

department official.

(b) It is an affirmative defense to prosecution under this section that the person's action is:

(1) necessary to prevent destruction of stored grain or the sealed structure; or

(2) taken under the order of a state or federal court.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER I. ENFORCEMENT

Sec. 14.081. OFFENSE IS VIOLATION; STANDARD OF PROOF. (a) Commission of an offense under this chapter is also a violation for purposes of administrative enforcement by the department.

(b) Proof of a violation under this chapter for purposes of administrative enforcement, by assessment of an administrative penalty or license sanction, is by a preponderance of the evidence.

(c) In an administrative enforcement action against a person for the commission of an offense under this chapter, the department is required to prove any intent element provided by the description of the offense.

(d) Both an administrative enforcement action and a criminal prosecution may be maintained against a person who violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.082. DISCOVERY OF SHORTAGE; REFUSAL OF INSPECTION.

(a) If the department determines that a warehouse operator does not possess sufficient grain to cover outstanding receipts and outstanding scale weight tickets issued or assumed by the warehouse operator, or if a warehouse operator refuses or is unable to submit records or property for lawful inspection or the department is unable to conduct an inspection of the warehouse due to the condition of the warehouse or grain stored in the warehouse, the department may seal the warehouse to prevent delivery or receipt of grain except as authorized by the department, suspend the license

of the warehouse operator, and give notice to the warehouse operator requiring the warehouse operator to submit records or property for lawful inspection, to correct any condition interfering with the department's inspection of the warehouse or grain, or to cover a shortage of a particular type of grain by:

(1) storing to the credit of or delivering to each depositor affected by the shortage grain of the same type and quality that is stored at any of the warehouse operator's licensed warehouses in this state and that has been designated as company-owned grain by the warehouse operator;

(2) purchasing and storing to the credit of or delivering to each depositor affected by the shortage grain of the same type and quality;

(3) selling company-owned grain of a different type and paying to each depositor affected by the shortage, on a pro rata basis, the market value of the depositor's grain as determined on the day the shortage was discovered by the department; or

(4) using any combination of the remedies described by Subdivisions (1)-(3) or another fair and reasonable method for meeting the shortage approved by the department.

(b) A warehouse operator shall comply with the requirements of a notice issued under Subsection (a) within 24 hours of notification by the department or within a longer time allowed by the department. If the warehouse operator fails to comply, the department may petition the district court for the county where the warehouse operator's principal place of business is located, as shown by the license application, for a court order authorizing the department to take possession of:

(1) all or a portion of the grain located in the public grain warehouse or warehouses; and

(2) all relevant records and property of the warehouse operator.

(c) If the department takes possession of grain under Subsection (b), the department shall give written notice of its action to the surety on the bond of the warehouse operator and may notify the holders of all receipts and scale weight tickets issued for grain, as shown by the warehouse operator's records, to present

their receipts or scale weight tickets for inspection or account for the absence of the receipts or scale weight tickets. The department may then audit and investigate the affairs of the public grain warehouse, especially with respect to the grain of which there is an apparent shortage. The purpose of the audit and investigation is to determine the amount of the shortage and, if practicable, to compute the shortage as to each depositor, as shown by the warehouse operator's records. The department shall notify the warehouse operator and the surety on the warehouse operator's bond of the approximate amount of the shortage. The department shall notify each depositor affected by the shortage by sending notice to the depositor's last known address, as shown by the warehouse operator's records.

(d) The department shall retain possession of grain obtained under this section until:

(1) the warehouse operator or surety on the bond satisfies the claims of all depositors, within the limitations on liability imposed by this chapter; or

(2) the court orders the department to surrender possession.

(e) If, during or after an audit or investigation authorized by this section or at any other time, the department has evidence that the warehouse operator is insolvent or unable to satisfy the claims of all depositors, the department may petition the district court for appointment of a receiver to operate or liquidate the business of the warehouse operator in accordance with law.

(f) A license suspension issued under this section remains in effect until lifted by the department through written notice to the warehouse operator or as provided by Section [14.066](#).

Renumbered from Sec. 14.024 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. [248](#)), Sec. 4, eff. September 1, 2011.

Sec. 14.083. DENIAL, REVOCATION, MODIFICATION, OR SUSPENSION OF LICENSE OR PROBATION. (a) The department may deny an

application for a license or license renewal if the applicant fails to comply with a requirement of this chapter, a rule adopted by the department under this chapter, or a lawful order of the commissioner or the commissioner's designee.

(b) The department may revoke, modify, or suspend a license or assess an administrative penalty against, place on probation, or reprimand a license holder for a violation of this chapter, a rule adopted by the department under this chapter, or a lawful order of the commissioner or the commissioner's designee.

(c) In addition to or in lieu of a license suspension authorized by another provision of this chapter, if the department considers it necessary, the department may suspend a license and prohibit the movement of grain into or out of a warehouse for up to 30 days without a hearing. For good cause, a suspension under this subsection may be extended for additional periods of up to 30 days each, not to exceed a total of 90 days of suspension in a licensing period.

(d) During a period of license suspension or probation, the department may seal and restrict access to the warehouse operator's buildings, bins, or other similar structures used to receive, store, ship, or handle grain, for hire, and require the warehouse operator to:

(1) maintain additional information in the records of the warehouse or report regularly to the department on matters that are the basis of the suspension or probation;

(2) limit practice to the areas prescribed by the department;

(3) operate under conditions or by methods prescribed by the department; or

(4) continue or renew professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the suspension or probation.

(e) Except as provided by Subsection (c), if the department proposes to deny, revoke, modify, or suspend a person's application or license or place a warehouse operator on probation, the person is entitled to a hearing conducted under Section [12.032](#). The decision of the department is appealable in the same manner as provided for

contested cases under Chapter 2001, Government Code.

(f) A license suspension under Subsection (c) remains in effect until lifted by the department through written notice to the warehouse operator or as provided by Section 14.066 or until it expires by operation of law in accordance with the department's notice of suspension or the limitations provided by Subsection (c). Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 419, Sec. 1.10, 3.07, eff. Sept. 1, 1995. Renumbered from Sec. 14.015 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 5, eff. September 1, 2011.

Sec. 14.084. OPERATION AFTER REVOCATION OR SUSPENSION OF A LICENSE OR PROBATION. (a) If a license is revoked, the warehouse operator shall terminate, in a manner prescribed by the department, all arrangements concerning storing, shipping, handling, and purchasing or selling of grain.

(b) During a period of suspension of a license or probation, the warehouse operator:

(1) shall operate the warehouse in a manner prescribed by the department;

(2) may deliver grain previously received, subject to the department's written conditions of suspension, if any; and

(3) may not receive grain for storing, shipping, or handling without the department's written authorization.

Renumbered from Sec. 14.016 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.085. INJUNCTION. (a) If, after notice, a warehouse operator refuses to comply with this chapter, the department may apply for an injunction in a district court in Travis County or in a district or county court in the county where the warehouse is located.

(b) The courts of this state are vested with jurisdiction to issue a temporary or permanent injunction against:

(1) operation of a public grain warehouse or issuance of receipts or scale weight tickets either without a license or during a period of suspension of a warehouse operator's license or during a period when the warehouse operator is under probation;

(2) interference by any person with the carrying out by the department, or by a receiver appointed under this chapter, of duties and powers granted by this chapter; or

(3) any other violation of this chapter for which injunctive relief is an appropriate remedy.

(c) The notice provided for in Subsection (a) shall be delivered to the warehouse operator not less than 10 business days before the date the department applies for an injunction under Subsection (b)(1).

(d) The notice provided for in Subsection (a) shall be delivered to the warehouse operator not less than two business days before the date the department applies for an injunction under Subsection (b)(2) or (3).

Renumbered from Sec. 14.025 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.086. CIVIL PENALTY. (a) A person who violates this chapter is liable for a civil penalty of not less than \$500 or more than \$10,000 for each violation. Each day a violation occurs or continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or the district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty. The attorney general, a county attorney, or a district attorney may file suit under this section without a request from the department.

(c) A county attorney, a district attorney, or the attorney general shall sue in the name of the state for the collection of a penalty provided by this section.

(d) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund. All civil penalties recovered in suits initially instituted

by a local government or governments under this section shall be divided equally between the state and the local government or governments, with 50 percent of the recovery to be paid to the general revenue fund and the other 50 percent to be paid equally to the local government or governments initially instituting the suit.

(e) A civil penalty may not be collected for any violation that constituted the basis for a department proceeding to assess an administrative penalty, regardless of whether the department was successful in obtaining a judgment for the administrative penalty. Added by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Sec. 14.087. RECOVERY OF COURT COSTS. (a) On prevailing in an action commenced by the department through the attorney general under this chapter, the department and the attorney general are each entitled to recover:

- (1) investigation costs and fees;
- (2) reasonable attorney's fees;
- (3) court costs; and
- (4) other costs relating to the action, including the cost of depositions and other forms of discovery and copying charges.

(b) The costs recoverable under this section are in addition to other relief available to the department or attorney general. Renumbered from Sec. 14.0262 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 168 (S.B. 248), Sec. 6, eff. September 1, 2011.

Sec. 14.088. VENUE. (a) Venue for a criminal prosecution under this chapter is in the county in which the alleged offense occurred.

(b) Except for an action for injunctive relief, venue for a civil action under this chapter commenced by the attorney general or a county or district attorney, either independently or on behalf of the department, is in any county in which all or part of the cause of the action accrued.

(c) Venue for an action for injunctive relief under this chapter is in a district court in Travis County or in a district or county court in the county where the warehouse is located.

(d) Venue for an administrative action commenced under this chapter is governed by Chapter [2001](#), Government Code, or, to the extent not inconsistent with Chapter 2001, the rules of the State Office of Administrative Hearings or the department.

Renumbered from Sec. 14.035 and amended by Acts 2001, 77th Leg., ch. 1124, Sec. 1, eff. Sept. 1, 2001.