

MISSISSIPPI GRAIN WAREHOUSE LAW

§75-44-1. Short title.

This chapter shall be known as the "Mississippi Grain Warehouse Law."

§75-44-3. Application of chapter; governing law as to warehouse receipts.

(1) The provisions of this chapter shall apply to all grain warehouses and to the operations of such grain warehouses whether or not any of the grain therein is owned by the warehouseman, unless such grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

(2) The provisions and definitions of the Uniform Commercial Code relating to warehouse receipts to the extent not inconsistent with this chapter shall govern warehouse receipts issued by grain warehousemen.

§75-44-5. Definitions.

When used in this chapter:

(a) "Person" includes individuals, corporations, partnerships and all associations of two (2) or more persons having a joint or common interest.

(b) The term "commissioner" shall mean the Commissioner of the Mississippi Department of Agriculture and Commerce, or his designated representative.

(c) "Grain" shall mean all grains for which standards have been established pursuant to the United States Grain Standards Act, as amended, and rice as defined by the Agriculture Marketing Act of 1946, as amended.

(d) "Stored grain" shall mean any grain received in any grain warehouse, located in this state, if same is not purchased and beneficially owned by the grain warehouseman.

(e) "Grain warehouse" shall mean any structure or combination of structures operated together, including the machinery and equipment used in connection therewith, in or by means of which grain is unloaded, elevated, stored, loaded for shipment, dried, cleaned, weighed, treated, conditioned or otherwise handled from producers of grain.

(f) "Grain warehouseman" shall mean any person who operates a grain warehouse as herein defined.

(g) "Inspector" shall mean a person authorized by the warehouseman to weigh, inspect, grade and/or certificate the weight and grade of grain stored or to be stored in a grain warehouse.

(h) "Warehouse receipt" shall mean a negotiable grain storage receipt and/or a nonnegotiable scale ticket given by a grain warehouse.

§75-44-7. Powers and duties of commissioner of agriculture and commerce.

The commissioner shall carry out and enforce the provisions of this chapter and is hereby empowered to promulgate rules and regulations to carry out necessary inspections and to appoint and fix the duties of his personnel and provide such equipment as may be necessary to assist him

in enforcing the provisions thereof.

§75-44-9. Necessity of obtaining license.

No person shall operate a grain warehouse or issue a warehouse receipt without first having obtained a license pursuant to this chapter unless such grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

§75-44-11. Application for license; application fee.

Applications for licenses under this chapter are to be made on forms prescribed by the commissioner for each separate warehouse or, if an applicant owns more than one (1) warehouse at any one (1) location, which does not exceed eight (8) miles in distance, then all the warehouses at that location may be included in one (1) application. Every application is to be accompanied by an application fee of one hundred fifty dollars (\$150.00) and a certified financial statement in a form prescribed by the commissioner and such further information as the commissioner may by regulation require.

§75-44-13. Annual license fee.

Prior to the issuance of a license, every applicant shall pay an annual license fee based upon the capacity of the warehouse, such fee to be determined by the commissioner, but not to exceed one hundred dollars (\$100.00).

§75-44-15. Renewal of license.

If a grain warehouseman desires to renew his license for an additional year, application for such renewal shall be made on a form prescribed by the commissioner. At least sixty (60) days prior to the expiration of each license, the commissioner shall notify each grain warehouseman of the date of such expiration and furnish such grain warehouseman with the renewal form.

§75-44-17. Copy of schedule of charges for storage and other services to be filed before license granted; changes in schedules.

Before a license to conduct a grain warehouse is granted under section 75-44-23, the grain warehouseman shall file with the commissioner a copy of his schedule of charges for storage and other services. If the grain warehouseman desires to make any change in the schedule of charges during the license period, he shall file with the commissioner a statement in writing showing the change at least thirty (30) days prior to its effective date. Each grain warehouseman shall keep conspicuously posted the schedule of charges for storage and other services as so filed, and shall strictly adhere to these charges.

§75-44-19. Posting of license.

Immediately upon receipt of his license or of any modification or extension thereof, the grain warehouseman shall post same and thereafter keep it posted until suspended or terminated in a conspicuous place in the office of the grain warehouse to which such license applies where receipts issued by such grain warehouseman are delivered to depositors.

§75-44-21. Maintenance of net assets for payment of indebtedness arising from conduct of warehouse.

(1) Each grain warehouseman shall have and maintain above all exemptions and liabilities, total net assets available for the payment of any indebtedness arising from the conduct of the grain warehouse in an amount equal to at least twenty cents (20cents) multiplied by the maximum number of bushels of grain for which the grain warehouse is licensed, provided that no person may be licensed as a grain warehouseman under the regulations in this part unless he has available net assets of at least twenty thousand dollars (\$20,000.00); and provided further, that any deficiency in net assets required above the minimum of twenty thousand dollars (\$20,000.00) may, at the discretion of the commissioner, be supplied by a commensurate increase in the amount of the grain warehouseman's bond furnished pursuant to sections 75-44-29, 75-44-31, 75-44-33 and 75-44-35. In determining total available net assets, credit may be given for insurable assets such as buildings, machinery, equipment and merchandise inventory only to the extent of the current market value of such assets and only to the extent that such assets are protected by insurance against loss or damage. Such insurance shall be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state, and which provide that no cancellation shall be effective unless thirty (30) days' advance notice of such cancellation is given to the commissioner.

(2) If a grain warehouseman is licensed or is applying for license to operate two (2) or more grain warehouses, the maximum total number of bushels which all such facilities will accommodate when stored in the manner customary to the warehouses, as determined by the commissioner, shall be considered in determining whether the grain warehouseman meets the available net assets requirement of subsection (1) of this section.

(3) For the purposes of subsections (1) and (2) of this section only, capital stock as such shall not be considered a liability.

§75-44-23. Issuance of license; hearing on denial of license.

(1) Upon satisfaction of sections 75-44-9 through 75-44-21, and 75-44-29 through 75-44-33, and any applicable regulations by an applicant, the commissioner shall issue a license to operate a grain warehouse.

(2) If after proper application, the commissioner denies any person, partnership, association or corporation a license to operate a grain warehouse, the commissioner shall transmit immediately to said applicant by certified mail an order so providing which shall state the reasons for said denial. In the event the applicant is dissatisfied at the decision of the commissioner, the applicant may request a hearing within ninety (90) days with the commissioner to appear and defend its compliance with all appropriate regulations and/or give evidence that all deficiencies have been corrected. If after said hearing, the commissioner denies applicant a license, the commissioner shall transmit immediately to applicant by certified mail an order so providing which shall state the reasons for said denial. In the event the applicant is dissatisfied at the decision of the commissioner after the hearing, the applicant may appeal to the chancery court of the county where the grain warehouse is located within thirty (30) days of the date of said order in accordance with the provisions of subsection (2) of section 75-44-25.

§75-44-25. Suspension, cancellation or revocation of license; return of license.

(1) If a grain warehouseman is convicted of any crime involving fraud or deceit or if the commissioner determines that any grain warehouseman has violated any of the provisions of this chapter, or any of the rules and regulations adopted by the commissioner pursuant to this chapter,

the commissioner may, at his discretion, suspend, cancel or revoke the license of such grain warehouseman.

(2) All proceedings for the suspension, cancellation or revocation of licenses shall be before the commissioner, and the proceedings shall be in accordance with rules and regulations which shall be adopted by the commissioner. No license shall be cancelled or revoked except after a hearing before the commissioner upon reasonable notice to the licensee and an opportunity to appear and defend. The commissioner may temporarily suspend the license of a licensee for good and reasonable cause before notice or hearing and the licensee shall be entitled to a hearing on such temporary suspension without undue delay. Whenever the commissioner shall suspend, cancel or revoke any license he shall prepare an order so providing which shall state the reason or reasons for such suspension, cancellation or revocation. Said order shall be sent, by certified mail, by the commissioner to the licensee at the address of the grain warehouse licensed. Within thirty (30) days after the mailing of said order, the licensee, if dissatisfied with the order of the commissioner, may appeal to the chancery court of the county where the grain warehouse is located by filing a written notice of appeal alleging the pertinent facts upon which such appeal is grounded. At the time of the filing of the appeal, the appellant shall give a bond for costs conditioned upon his prosecution of the appeal without delay and payment of all costs assessed against him. Appeal may be with supersedeas and shall be subject to the provisions of section 11-51-31.

(3) In case a license issued to a grain warehouseman expires or is suspended, revoked or cancelled by the commissioner or his designated representative, such license shall be immediately returned to the commissioner and the grain warehouseman shall forthwith comply with the provisions of section 75-44-67.

§75-44-27. Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a grain warehouseman, a duplicate thereof, or a new license, may be issued under the same number.

§75-44-29. Warehouseman's bond; cancellation of bond by surety; self-insurance.

(1) Before any person is granted a license pursuant to Section 75-44-23 such person shall give a bond to the commissioner executed by the grain warehouseman as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the commissioner for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain warehouseman with the provisions of this chapter and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the Commissioner of Agriculture and Commerce of its intention to cancel the bond and all liability thereunder shall terminate thirty-five (35) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(2) In lieu of the bond required in subsection (1) of this section an applicant for a license may be a self-insurer by posting with the commissioner any of the following:

- (a) Cash;
- (b) Certificates of deposit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation;

- (c) Irrevocable letters of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation;
- (d) Federal treasury bills; or
- (e) Notes, securities or bonds secured by the federal government or the State of Mississippi.

Self insurers shall post an amount equivalent to the amount of the bond required in Section 75-44-31.

§75-44-31. Amount of warehouseman's bond; blanket bonds; increasing amount of bond.

(1) The amount of bond to be furnished for each grain warehouse shall be fixed at a rate of twenty-five cents (25cents) per bushel for the first one million (1,000,000) bushels of licensed capacity; twenty cents (20cents) per bushel for the next one million (1,000,000) bushels of licensed capacity; and fifteen cents (15cents) per bushel for all licensed capacity over two million (2,000,000) bushels; provided that in no case shall the amount of the bond be less than fifteen thousand dollars (\$15,000.00) or more than one million dollars (\$1,000,000.00), except as prescribed in paragraph (3) of this section. The licensed capacity shall be equal to the maximum number of bushels of grain that the grain warehouse can accommodate for storage. In no event shall the liability of the surety accumulate for each successive license period during which this bond is in force, but shall be limited in the aggregate to the bond amount or changed by appropriate rider or endorsement.

(2) A grain warehouseman who is licensed or is applying for licenses to operate two (2) or more grain warehouses may give a single bond meeting the requirements of this chapter to cover all such grain warehouses within the state. In such cases all grain warehouses to be covered by the bond shall be deemed to be one (1) warehouse for purposes of determining the amount of bond required under subsection (1) of this section.

(3) In case of a deficiency in the net assets required by section 75-44-21, there shall be added to the amount of the bond determined in accordance with subsection (1) of this section an amount equal to such deficiency. In any other case in which the commissioner finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond such further amount as is determined to be reasonable by the commissioner.

§75-44-33. Additional bond to cover obligations when application made for amendment to license.

If an application is made for an amendment to a license and no bond previously filed by the grain warehouseman under sections 75-44-29 and 75-44-31 covers obligations arising during the period covered by such amendment, the grain warehouseman shall file with the commissioner an additional bond in such amount as may be determined by the commissioner.

§75-44-35. Actions on bonds or against self-insurers for failure to deliver grain to holder of warehouse receipt; costs.

(1) It shall be the duty of the grain warehouseman to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand for the redemption of such receipt. In the event the grain warehouseman fails to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand the holder of the warehouse receipt may make demand of the surety for payment under the bond. The surety has the responsibility to pay within fifteen (15) days following receipt by the surety

of the notice of the demand for redemption. Any holder of a warehouse receipt issued by a grain warehouseman who has made demand for redemption of such receipt, which demand was, without lawful excuse, not satisfied within ten (10) days, shall notify the commissioner in writing and shall have the right to bring action against the grain warehouseman and the surety on the grain warehouseman's bond for payment of the market value of the grain represented by such warehouse receipt, such market value to be determined as of the date of the demand, plus legal interest accrued from the date of the demand. In the event the grain warehouseman is a self-insurer as provided in section 75-44-29 the holder of a warehouse receipt shall have the right to bring action against the grain warehouseman to the extent of the amount posted in lieu of the bond. The commissioner shall pay to the holder of the warehouse receipt, to the extent of the bond posted, any judgment obtained by the holder of a warehouse receipt against a self-insurer. The commissioner may also pay to the holder of a warehouse receipt the amount of the market value of the grain provided that the grain warehouseman agrees to such payment; provided, however, the license of the grain warehouseman shall be suspended upon such payment until such time as the warehouseman posts a bond as provided in this chapter or posts with the commissioner a sum equivalent to that paid by the commissioner on behalf of such warehouseman.

(2) In all actions in which judgment is rendered against any surety company under the provisions of this section, if it appears from evidence that the surety company has wilfully and without just cause refused to pay the loss upon demand, the court in rendering judgment shall allow the plaintiff the amount of the plaintiff's expenses including court costs and attorney's fees, to be recovered and collected as part of the costs. The amount of any payment of costs and attorney's fees under this subsection will not reduce the surety's remaining liability on its bond.

§75-44-37. Warehouseman to keep stored grain adequately insured.

(1) Every grain warehouseman shall at all times keep the grain stored in the grain warehouse insured by an insurance company authorized to do business in this state. The grain is to be insured for its full market value against loss by fire, inherent explosion, lightning and windstorm, and failure to do so shall make the grain warehouseman liable for the same. All such policies shall provide that no cancellations shall be effective unless thirty (30) days' prior notice is given the commissioner.

(2) If fire, inherent explosion, lightning or windstorm shall destroy or damage all or part of the grain stored in any grain warehouse, the grain warehouseman shall, upon demand by the holder of any warehouse receipt for such grain, and upon being presented with the warehouse receipt, make settlement for the fair market value after deducting the warehouse charges.

§75-44-39. Warehouseman to accept all grain tendered to him in usual course of business; inspection, weighing and grading of grain.

Every grain warehouseman shall receive for storage or shipment, so far as the available capacity for storage of the grain warehouse shall permit, all grain tendered to him in the usual course of business; provided, however, a grain warehouse owned and operated as a cooperative may decline to accept grain tendered by a nonmember if such cooperative reasonably believes that its available capacity will be required to serve the members of the cooperative. All such grain is to be inspected, weighed and graded by an inspector except that:

(a) The depositor and the grain warehouseman may agree upon a sample taken from the lot of grain to be offered for storage as being a true and representative sample.

(b) The depositor and the grain warehouseman may agree upon the grade of the grain offered for storage and a warehouse receipt may be issued on the agreed grade.

§75-44-41. Records and accounts to be kept by warehouseman.

Every grain warehouseman shall keep in a place of safety complete, separate and correct records and accounts pertaining to the grain warehouse including, but not limited to, records and accounts of all grain received therein and withdrawn therefrom, all unissued receipts and tickets in its possession, copies of all receipts and tickets issued by it, and the receipts and tickets returned to and cancelled by it. Such records shall be retained by the grain warehouseman for a period of five (5) years.

§75-44-43. Annual examination of warehouse; financial statement to be furnished annually; audit; inspections; testing of scales.

(1) Every grain warehouse shall be examined by the commissioner each year. The cost of such examination shall be included in the annual license fee. The commissioner, at his discretion, may make additional examinations of any grain warehouse at any time. If any discrepancy is found as a result of additional examination, the cost of such examination is to be paid by the grain warehouseman.

(2) Every grain warehouse shall at least annually send to the commissioner a copy of its financial statement prepared by an accountant licensed by the State of Mississippi and sworn to by the accountant and grain warehouseman.

(3) The commissioner may, in his discretion, require an unqualified audit by an accountant licensed by the State of Mississippi as a requirement for licensing, and inspect the grain warehouse's business, mode of conducting the same, facilities, equipment, inventories, property, books, records, accounts, papers and minutes of proceedings held at such grain warehouse, and any other records deemed relevant to the operation of the grain warehouse by the commissioner.

(4) All scales used for the weighing of property in grain warehouses shall be subject to tests by any scale inspector duly appointed or authorized by the commissioner during regular business hours.

§75-44-45. Employment of grain inspector.

Each grain warehouse shall employ, during all regular business hours, a grain inspector (who may be the grain warehouseman himself if such grain warehouseman is a natural person) who shall be responsible for the accuracy of weights and grades noted on all warehouse receipts.

§75-44-47. Receipt of grain affecting condition of other stored grain.

(1) If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the grain warehouse, the grain warehouseman shall not receive such grain for storage or store such grain, provided, however, that if the grain warehouse has separate bins or is equipped with proper conditioning apparatus, the grain warehouse may receive such grain for storage in such separate bins or may condition it and then store it in such a manner as will not lower the grade of other grain.

(2) It shall be the grain warehouseman's duty and obligation to condition and maintain the quantity and quality of all grain as receipted.

§75-44-49. Terms of warehouse receipts; receipt as evidence of ownership.

(1) Every receipt issued for grain stored in a grain warehouse shall conform to the requirements of section 75-7-202 and in addition shall embody within its written or printed terms:

- (a) A statement that the holder of the receipt or the depositor of the grain shall demand the delivery of the grain on or before a date not later than one (1) year from the date specified thereon by the grain warehouseman;
- (b) The net weight, number of bushels, percentage of dockage and the grading factors and the grade.

(2) A grain warehouseman shall not insert any language in any warehouse receipt or make any contract with respect to any warehouse receipt which purports to limit the liabilities or responsibilities imposed on him by law.

(3) The possession of an indorsed warehouse receipt shall be prima facie evidence of grain in storage and the rightful ownership of such document and grain.

§75-44-51. Copies of warehouse receipts.

At least one (1) actual or skeleton copy of all receipts shall be made and all copies shall have clearly and conspicuously printed or stamped thereon the words "Copy-Not Negotiable."

§75-44-53. Commissioner to approve form of warehouse receipts; printing of warehouse receipts by state printer.

The form of all receipts shall be approved by the commissioner. The commissioner shall be authorized to have printed by the state printer all warehouse receipts issued by grain warehousemen.

§75-44-55. Issuance of new warehouse receipt for undelivered portion of grain.

If a grain warehouseman delivers only a part of a lot of grain for which he has issued a negotiable receipt under this chapter, he shall take up and cancel such receipt and issue a new receipt in accordance with the provisions of sections 75-44-49 through 75-44-65 for the undelivered portion of grain.

§75-44-57. Delivery of grain pursuant to negotiable and nonnegotiable warehouse receipts.

A grain warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and cancelled, and shall not deliver grain for which he has issued a nonnegotiable receipt until he has received authority from the person lawfully entitled to such delivery, or his authorized agent.

§75-44-59. Numbering of warehouse receipts.

All warehouse receipts issued by a grain warehouse shall be numbered consecutively, and no two (2) receipts bearing the same number shall be issued from the same warehouse during any one (1) year, except in the case of a lost or destroyed receipt.

§75-44-61. Warehouse receipts not to be issued except for actual deliveries nor for quantities greater than actually delivered.

No warehouse receipt shall be issued except upon actual delivery of grain into storage in the warehouse from which it purports to be issued, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel received for storage, nor shall more than one (1) receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

§75-44-63. Sale or pledge of warehouse receipts.

A grain warehouseman may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly or in common with others, and the recital of ownership in the receipt shall constitute notice of the right to sell or pledge the same and of the title or specific lien of the transferee or pledgee upon the warehouseman's grain represented by the receipts.

§75-44-65. Acceptance by warehouseman of grain for storage at another grain warehouse.

(1) If grain is offered for storage in any licensed grain warehouse and the grain warehouseman does not have storage space to handle the same, the grain warehouseman with the written consent of the owner may accept grain for shipment to another grain warehouse where storage is available.

(2) The receipt to cover grain to be transported to and stored in another grain warehouse shall embody within its written or printed terms, in addition to the requirements of section 75-44-49, the name and location of the grain warehouse to which the grain will be shipped for storage.

§75-44-67. Notice by warehouseman to grain owners of discontinuance of operations or of suspension, revocation or cancellation of license.

Any person operating a grain warehouse who desires to discontinue such operation at the expiration of his license or whose license is suspended, revoked or cancelled by the commissioner or his designated representative shall notify the commissioner and all holders of warehouse receipts and all parties storing grain in the grain warehouse, if known, or if not known, by advertising in the newspaper or newspapers of largest general circulation in the community in which the grain warehouse is located once per week for three (3) consecutive weeks, at least thirty (30) days prior to the date of expiration of his license, of his intention to discontinue the grain warehouse business, and the owners of the grain shall remove, or cause to be removed, their grain from such grain warehouse before the expiration of the license.

§75-44-69. Information relating to affairs or transactions of warehouse not to be disclosed by commission inspectors or employees.

No inspector or employee of the commissioner's office shall disclose any information obtained by him in the course of his employment related to the affairs or transactions of any grain warehouse without first having obtained the express permission in writing of such grain warehouseman.

§75-44-71. Penalties.

(1) Any person who issues a warehouse receipt for grain without holding a valid grain warehouse license or who commits any willful violation of any provision of this chapter, shall be guilty of a felony, and upon conviction thereof, punishable by a fine of not more than twenty thousand dollars (\$20,000.00) and/or imprisonment for not more than five (5) years.

(2) Any unintentional or negligent violation of this chapter shall be a misdemeanor, and upon conviction thereof, punishable by a fine of not more than five thousand dollars (\$5,000.00) and/or imprisonment for not more than one (1) year.