

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

AN ACT relating to agriculture; clarifying the grain laws relating to buying, selling and storing grain; providing for cease and desist orders; providing for enforcement actions; amending license fees; amending bonding requirements; amending audit requirements; amending insurance requirements; making conforming amendments; amending penalties; amending elements of criminal offenses regarding conversion of stored grain; providing an appropriation; authorizing an additional position; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 11-11-118 through 11-11-121 are created to read:

**11-11-118. Perjury.**

Any affirmation under this chapter shall be given under penalty of perjury.

**11-11-119. Cease and desist orders; warehousemen; notice; opportunity for hearing.**

(a) After notice and opportunity for hearing, the department shall issue a final cease and desist order to a warehouseman if the warehouseman or any officer, director, employee or agent of the warehouse is violating any state statute or rule relating to warehouses or warehousemen.

(b) Before issuing a final cease and desist order, the department shall serve notice of intent to issue the order upon the warehouseman. The notice shall be in writing and shall contain the information required by W.S. 11-11-121(a). The proposed order shall direct the

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

warehouseman to discontinue the violations of law, rule or regulation.

(c) The warehouseman may request a hearing on the proposed order before the director in accordance with W.S. 11-11-121(b). If the warehouseman does not request a hearing in writing within the prescribed time period, the proposed order shall become a final cease and desist order and the department shall serve the final order upon the warehouseman.

**11-11-120. Temporary cease and desist order; warehousemen; service.**

(a) If the department believes the actions of a warehouseman or of any officer, director, employee or agent of the warehouse pose an immediate threat to the safety and soundness of the warehouse or to the interests of the depositors or creditors of the warehouse, the department shall issue a temporary cease and desist order to the warehouseman or officer, director, employee or agent of the warehouse pending final action on the proposed cease and desist order issued pursuant to W.S. 11-11-119(a).

(b) The temporary order shall be in writing and shall be served upon the warehouseman. The temporary order shall take effect upon service and shall remain in effect until the director issues the final cease and desist order, the department dismisses the proposed cease and desist order or a court of competent jurisdiction dismisses the proposed cease and desist order after hearing.

(c) On or after the effective date of the temporary order, the attorney general, upon request from the department, may apply to the district court for the county in which the warehouse is located for enforcement of the

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

temporary order. If the warehouseman operates warehouses in two (2) or more counties, the request may be made in any county where the warehouseman operates a warehouse. The application for enforcement shall be given precedence over other cases pending in court and shall in every way be expedited.

(d) The warehouseman, officer, director, employee or agent to whom a temporary cease and desist order is issued may apply to the district court for the county in which the warehouse is located for a stay of the temporary cease and desist order. The application for stay shall be given precedence over other civil cases pending in court and shall be expedited. The court shall grant the stay only if the warehouseman, officer, director, employee or agent shows he will be irreparably harmed unless the stay issues and there is substantial likelihood he will prevail on the merits.

**11-11-121. Procedures for enforcement actions; service of notice; content of orders; contested case proceedings; appeal.**

(a) All notices and orders required to be served by the department under this article shall be served by certified mail return receipt requested to the last known address of the warehouseman or may be served as provided by the Wyoming Rules of Civil Procedure. Notice of a proposed order issued by the department under this article shall include:

(i) A statement of the grounds for issuing the proposed order, including a citation to the statute or rule involved;

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(ii) A statement of the facts in support of the allegations;

(iii) A statement informing the warehouseman subject to the proposed order of the right to a hearing on the order before the director, right of appeal of any subsequent order in accordance with the Wyoming Administrative Procedure Act and that failure to timely request a hearing will result in the order becoming final; and

(iv) A copy of the proposed order.

(b) A request for hearing on a proposed order issued by the department under this article shall be in writing and shall be submitted to the director no later than seven (7) days after receipt of the notice of intent from the department. The director shall hold the hearing no later than fifteen (15) days after receipt of the request for hearing, unless the warehouseman subject to the proposed order requests an extension of time for good cause shown.

(c) A hearing on a proposed order issued under this article shall be a contested case hearing conducted in accordance with the Wyoming Administrative Procedure Act. After the hearing, the director shall issue findings of fact and conclusions of law and a final decision either confirming or dismissing a proposed order. The director shall confirm a proposed order only if the director finds by a preponderance of the evidence that grounds exist under this article for issuing the order. Otherwise, the director shall dismiss the proposed order. If the director confirms a proposed order it shall become a final order.

(d) The department shall serve a final order under this article upon the warehouseman who is the subject of

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

the order. The final order shall take effect upon service and shall remain in effect until the department or the court terminates the final order. The warehouseman who is the subject of the order may appeal the issuance of a final order in accordance with the Wyoming Administrative Procedure Act.

(e) On or after the effective date of a final order under this article, the attorney general, upon request from the department, may apply to the district court of the county in which the warehouse is located for enforcement of the final order. The application for enforcement shall be given precedence over other cases pending in court and shall in every way be expedited.

**Section 2.** W.S. 11-11-101(a)(ii), (vii) and by creating new paragraphs (viii) through (xiv), 11-11-103 through 11-11-105, 11-11-107 through 11-11-110, 11-11-111(a)(i), by creating a new paragraph (viii) and (b), 11-11-112, 11-11-113, 11-11-114(a) and by creating a new subsection (c) and 11-11-115 through 11-11-117 are amended to read:

**11-11-101. Definitions.**

(a) As used in this chapter:

(ii) "Warehouseman" means any person except the grower who ~~buys or sells~~ handles grain ~~at wholesale, or receives or solicits grain for purchase, sale, shipment or storage either in or outside the state of Wyoming for commercial storage or solicits grain for the purpose of intrastate, interstate or foreign commerce;~~

(vii) "Warehouse" means an elevator, mill, ~~warehouse~~ storage bin or building, subterminal grain

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

~~warehouse~~ storage facility, public ~~warehouse~~ storage facility or other structure or facility in which ~~for legal consideration~~ grain is received for commercial storage, ~~handling, processing or shipment either in or out of the state of Wyoming.~~ or for the purpose of intrastate, interstate or foreign commerce;

(viii) "Audit" means an examination of records or financial accounts to determine their accuracy;

(ix) "Depositor" means any person who is in possession of a commodity and entrusts or delivers the commodity to a warehouse for storage;

(x) "Inspection" means the physical review or examination of the grain warehouse or storage facility and may include an official audit;

(xi) "Loss" means the destruction of the commodity due to fire, theft or weather;

(xii) "Receipt" means a warehouse receipt issued under this act, including an electronic receipt;

(xiii) "Transportation" means the movement of grain from one (1) point to another;

(xiv) "Verified" means signed and sworn to be accurate before a person authorized to administer oaths.

**11-11-103. Warehousemen to procure licenses; fee; annual renewal.**

Before engaging in business in Wyoming, a warehouseman ~~and a~~ or any person operating a warehouse shall procure a license from the ~~director and pay to the~~ department of

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

agriculture. ~~The fee determined by the board of agriculture~~ under this section for the initial license and for each annual renewal thereof. ~~The fee set by the board of agriculture shall represent an amount sufficient to cover up to fifty percent (50%) of anticipated costs of the inspection program, but shall not exceed~~ shall be one hundred twenty-five dollars (\$125.00). All licenses shall be issued for the fiscal year, or fraction thereof, ending June 30. No license shall be renewed unless the director department finds from ~~his annual inspection the audit required under W.S. 11-11-109~~ of the warehouse ~~and audit of the warehouse~~ or warehouseman's records that the operations are conducted properly.

**11-11-104. Application for license; form; contents; refusal to issue license; appeal; care of agricultural products.**

(a) The ~~director department~~ shall prescribe forms for application for a warehouseman's or warehouse license. The application shall contain information necessary to inform the ~~director department~~ of the qualifications, facilities, experience and financial ability of the applicant to carry on the business of buying, selling, warehousing and storing grain. The ~~director may department shall~~ require the submission of ~~a any tax return, bank statement,~~ financial statement or audit prepared by a public accountant or a certified public accountant and any additional information as required by rules and regulations in order to establish the financial responsibility of the applicant. If a license is refused by the ~~director department~~, appeal may be made to the ~~state board of agriculture director~~. All hearings for appeal shall be conducted in accordance with the Wyoming Administrative Procedure Act.

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(b) Each warehouseman shall at all times, including during any period of suspension of his license, exercise such care in regard to stored and nonstorage agricultural commodities in his custody as required under the licensing agreement.

**11-11-105. Surety bond required; amount; approval by department; conditions; exception.**

(a) Each applicant for a warehouseman's or warehouse license shall post a cash bond, acceptable irrevocable letter of credit or execute and file with the director department a good and sufficient surety bond in an amount determined by the ~~board of agriculture~~ department based on the maximum number of hundred weight the warehouseman ~~or warehouse~~ can store in the warehouses for which the bond is required, but not less than twenty thousand dollars (\$20,000.00). A surety bond shall be executed by a responsible surety company licensed to do business in this state, ~~approved by the director,~~ and conditioned upon the faithful performance of the obligation of the warehouseman or person operating a warehouse under the laws of this state and of any additional obligations assumed by him under contract with those who deposit grain with him. All bonds shall be payable to the state for the benefit of any injured party, and shall be in the form and contain additional conditions as the ~~director~~ department may prescribe. No person is required to file a bond who has already posted similar bond with the United States department of agriculture pursuant to the United States Warehouse Act of August 11, 1916, as amended.

(b) Cash bonds, irrevocable letters of credit and surety bonds shall not be released by the department until an audit has been completed and satisfied. The department



ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

shall publish a public notice for sixty (60) days prior to any bond being released.

(c) In the event a warehouseman does not renew his license in accordance with W.S. 11-11-103 or suspends normal business operations, the department shall post a public notice in a paper of local distribution for sixty (60) days prior to the closure of the warehouse.

**11-11-107. Investigation by department; complaint; service; hearing.**

The ~~director~~department upon ~~his~~its own motion or upon verified complaint against any warehouseman ~~or~~warehouse shall investigate as ~~he~~the department deems necessary, and shall at all times have free and unimpeded access to all facilities or places in which grain is kept, stored, handled or transported. If the ~~director~~department, upon investigation, has reason to believe that any ~~dealer~~warehouseman is not acting as required by law, or upon the filing of a verified complaint against the warehouseman, ~~or~~warehouse, hethe department shall have a complaint or copy of the verified complaint served upon the warehouseman ~~or~~warehouse by personal service, service upon a registered agent or by registered mail. If the warehouseman ~~or~~warehouse fails to make prompt adjustment or settlement of the charges set forth, to the satisfaction of the ~~director~~department, the ~~director~~department shall give notice of the time and place of a hearing thereon. The hearing shall be held in accordance with the Wyoming Administrative Procedure Act.

**11-11-108. Warehouse receipts generally.**

All warehouse receipts issued for stored grain shall be in a form prescribed by the ~~director~~department and shall be

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

obtainable only by the warehouseman ~~or warehouse~~ from the ~~director~~ department at cost. Each warehouse receipt issued must show the amount of any cash or the value of any merchandise the warehouseman ~~or warehouse~~ has advanced on the grain represented by the receipt, but such notation shall not be construed as fixing the date of sale of the grain.

**11-11-109. Audit of records; inspection of warehouse.**

(a) At least once each year and more often if necessary or if requested by an interested person the ~~director~~ department shall inspect each licensed warehouse and shall audit the warehouse records. ~~However, no audit shall be performed if the person operating the warehouse certifies that the warehouse does not have any grain stored for others.~~ The director after conferring with interested industry groups shall fix, assess and collect fees for the inspection of facilities storing farm products. The fees shall not exceed fifty percent (50%) of the cost of the inspection and shall be paid by the person requesting the inspection, if any.

(b) If a warehouseman is delinquent in renewing his license in accordance with W.S. 11-11-103, the department shall initiate an inspection and audit of the warehouse immediately.

**11-11-110. Warehouseman's records; generally.**

Every licensed ~~warehouse~~ warehouseman shall maintain complete records of all grain stored, all grain withdrawn from storage, all warehouse receipts issued and all receipts returned to and cancelled by him. The records shall be available for examination and audit by the ~~director~~ department at any reasonable time.

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

**11-11-111. Warehouseman's records; contents; inspection and audit by department; issuance of warehouse receipts.**

(a) Every warehouseman ~~and warehouse~~ shall keep a complete record of all grain handled by him including the following:

(i) Name, ~~and~~ address and phone number of the grower and of the owner;

(viii) Documentation stating the location of the stored commodity. If the commodity is stored in another warehouse, then proof of bonding by that facility shall be included in the records.

(b) The above records shall be open to the confidential inspection of the ~~director~~ department or ~~his~~ its authorized agents at all times. Upon request of the depositor, every warehouseman ~~and warehouse~~ shall issue a receipt for all grain received for storage on a form furnished by the ~~director~~ department.

**11-11-112. Stored grain to be insured; insurance requirements; disaster loss to be reported.**

~~(a) The director shall prescribe rules and regulations necessary for the safe conduct of the grain storage business and shall require that~~ All grain stored shall be insured against loss for full value by an insurance company licensed to do business in this state. A copy of the insurance policy in effect shall be provided to the department at the time of the license application and the audit.

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering their warehouse and all products stored therein, and shall not commit any acts, nor permit others to commit any acts, that might impair or invalidate such insurance.

**11-11-113. Grading of grain; notation on warehouse receipt.**

All grain accepted for storage shall be graded by the warehouseman or designee according to standards of the United States department of agriculture, and the grade established shall be specified upon the warehouse receipt issued for the grain.

**11-11-114. Stored grain to constitute bailment; amount in storage to equal issued storage certificates; exceptions; conversion; seizure.**

(a) The storage of grain with a warehouse and the movement of grain by a warehouseman constitutes a bailment and not a sale. Upon return of the scale ticket bearing the name of the bailee or warehouse receipt properly endorsed and payment or tender of all advances and charges, the owner of the scale ticket or warehouse receipt is entitled to, and the warehouseman or person operating a warehouse shall deliver the identical grade and amount of grain placed in storage or transported. Every person operating a warehouse shall maintain at all times in storage, in the state of Wyoming, grain equal in amount and grade to all scale tickets and warehouse receipts issued, unless authorized in writing by holders of scale tickets or warehouse receipts or by the ~~director~~department to move to other storage, and failure to do so is a conversion thereof.

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(c) The department shall, by rule and regulation, require posting of current tariffs.

**11-11-115. Disposition of collected funds.**

There is created the grain warehouse inspection account within the earmarked revenue fund. All funds collected by the ~~director~~department shall be deposited in the account created by this section. Interest earned by the account shall be retained in the account. The account is appropriated for use and expenditure by the ~~board of agriculture~~department for the costs of administering the programs under this article. Itemized vouchers shall be submitted to the ~~chief executive officer of the board~~department for approval. Upon approval, a warrant for the payment of each voucher shall be issued by the state auditor for payment from the grain warehouse inspection account.

**11-11-116. Revocation and cancellation of license.**

Failure of any warehouseman or person operating a warehouse to comply with the provisions of this chapter will render the license of the warehouseman or person operating a warehouse subject to revocation and cancellation by the ~~director~~department.

**11-11-117. Prohibited acts; penalties for violations.**

(a) Any person who engages in or carries on any grain warehousing business without first having obtained a license, or who continues to engage in or carry on such business after his license has been suspended, revoked or expires is guilty of a misdemeanor and shall be fined not less than ~~twenty-five dollars (\$25.00)~~one hundred dollars (\$100.00) nor more than ~~one hundred dollars (\$100.00)~~five

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

hundred dollars (\$500.00) for each offense. Each day that such unlicensed business is carried on is a separate offense.

(b) Any warehouseman or person operating a warehouse who converts to his own use or that of another, any grain stored or accepted for storage of the value of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000.00) or more, is guilty of a felony and shall be fined not less than five hundred dollars (\$500.00) for each day of violation and imprisoned for not to exceed fourteen (14) years. If the value of the grain converted is less than ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000.00), the warehouseman or person operating a warehouse is guilty of a misdemeanor and shall be fined not to exceed ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) or imprisoned not to exceed six (6) months, or both.

### **Section 3.**

(a) There is appropriated one hundred twenty-three thousand seven hundred seventy-three dollars (\$123,773.00), or as much thereof as is necessary, from the budget reserve account to the department of agriculture to implement the purposes of this act. This appropriation shall be considered a one (1) time appropriation and shall not be considered a part of the standard budget for the department of agriculture's 2007-2008 biennium budget.

(b) The department of agriculture is authorized one (1) additional at-will employee contract position to perform the audits of grain warehouses.

ORIGINAL SENATE  
FILE NO. 0018

ENROLLED ACT NO. 107, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

**Section 4.** This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the Senate.

\_\_\_\_\_  
Chief Clerk