

By: Landtroop

H.B. No. 1324

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of public grain warehouse operators.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 14.012, Agriculture Code, is amended to read as follows:

Sec. 14.012. FINANCIAL ~~[BUSINESS]~~ INFORMATION. (a) In this section, "financial information" means:

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

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

(3) a statement of the price paid by or to a warehouse operator for grain delivered to, stored by, or handled by the warehouse operator; or

(4) a statement of the terms of a payment described by Subdivision (3).

(b) Except as provided by Subsections (c) and (d), financial information provided to the department by a warehouse operator under this chapter ~~[The following information, prepared by the~~

~~department in the course of its regulatory authority under this chapter or required to be submitted to the department in accordance with the department's administration of this chapter,~~ is

confidential and not subject to public disclosure[+]

1           ~~[(1) inspection or investigation reports containing~~  
2 ~~information regarding grain inventory; and~~

3           ~~[(2) financial information provided to the department~~  
4 ~~to establish net worth for purposes of licensing].~~

5           (c) ~~[(b)]~~ Notwithstanding Subsection (b), ~~[(a), inspection~~  
6 ~~reports containing information regarding grain inventory of a~~  
7 ~~warehouse operator or]~~ financial information of a warehouse  
8 operator provided to the department ~~[to establish net worth]~~ may be  
9 disclosed:

10           (1) ~~[entered into evidence]~~ without sealing ~~[and made~~  
11 ~~public]~~ in~~+~~

12                     ~~[(A)]~~ an administrative proceeding commenced by  
13 the department against the ~~[a]~~ warehouse operator;

14           (2) to the attorney general or to a local or state law  
15 enforcement officer, ~~[(B) a civil or criminal proceeding~~  
16 ~~commenced by]~~ a county attorney, or a district attorney who, ~~[or the~~  
17 ~~attorney general,~~] either independently or on behalf of the  
18 department, is investigating the ~~[, against a]~~ warehouse operator;  
19 ~~[or]~~

20           (3) in ~~[(C)]~~ a civil proceeding commenced by the  
21 warehouse operator against the department;

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

24           (5) [(2) provided] to the issuer of the ~~[a]~~ warehouse  
25 operator's bond or letter of credit ~~[for the purpose of~~  
26 ~~establishing a claim on the warehouse operator's bond or letter of~~  
27 ~~credit];~~

(6) [~~(3)~~—disclosed] to the public after:

(A) revocation of the [~~a~~] 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 by or against the warehouse operator; or

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

(7) [~~(4)~~—disclosed] 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.

(d) Notwithstanding Subsection (b), a warehouse operator:

(1) shall provide to a person at the person's request a copy of an agreement or contract between the person and the warehouse operator; and

(2) shall provide financial information to a person who authored or contributed to the creation of the financial information, for the purpose of confirming the authenticity, truthfulness, or accuracy of the financial information.

(e) A warehouse operator may not redact a contract, agreement, or financial information provided to a person under Subsection (d).

SECTION 2. Sections 14.031(d) and (e), Agriculture Code, are amended to read as follows:

(d) The bond must be in an amount of not less than \$35,000

1 but not more than \$500,000 [~~\$20,000~~] and be based on 10 [~~six~~] cents  
2 per bushel of storage capacity.

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

11 SECTION 3. Section 14.066(a), Agriculture Code, is amended  
12 to read as follows:

13 (a) A department action or order affecting a warehouse  
14 operator under this chapter [~~, other than by rulemaking, assessment~~  
15 ~~of an administrative penalty, or imposition of a license sanction,~~  
16 ~~including a suspension under Section 14.083(c),~~] is appealable in  
17 accordance with this section unless the action involves:

18 (1) rulemaking;  
19 (2) the assessment of an administrative penalty;  
20 (3) the imposition of a license sanction; or  
21 (4) any other action for which a specific  
22 administrative or judicial remedy is available under:

23 (A) this chapter;  
24 (B) Chapter 12; or  
25 (C) Chapter 2001, Government Code.

26 SECTION 4. Section 14.082, Agriculture Code, is amended by  
27 amending Subsection (a) and adding Subsection (g) to read as

1 follows:

2 (a) If the department determines that a warehouse operator  
3 does not possess sufficient grain to cover outstanding receipts and  
4 outstanding scale weight tickets issued or assumed by the warehouse  
5 operator, or if a warehouse operator refuses or is unable to submit  
6 records or property for lawful inspection or the department is  
7 unable to conduct an inspection of the warehouse due to the  
8 condition of the warehouse or grain stored in the warehouse, the  
9 department may seal the warehouse to prevent delivery or receipt of  
10 grain except as authorized by the department, suspend the warehouse  
11 operator's license, and give notice to the warehouse operator  
12 requiring the warehouse operator to:

13 (1) submit records or property for inspection;

14 (2) correct any condition interfering with the  
15 department's inspection of a warehouse or grain; or

16 (3) cover a shortage of a particular type of grain by:

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

22 (B) [~~(2)~~] purchasing and storing to the credit of  
23 or delivering to each depositor affected by the shortage grain of  
24 the same type and quality;

25 (C) [~~(3)~~] selling company-owned grain of a  
26 different type and paying to each depositor affected by the  
27 shortage, on a pro rata basis, the market value of the depositor's

1 grain as determined on the day the shortage was discovered by the  
2 department; or

3 (D) [(4)] using any combination of the remedies  
4 described by Paragraphs (A)-(C) [Subdivisions (1)-(3)] or another  
5 fair and reasonable method for meeting the shortage approved by the  
6 department.

7 (g) A suspension issued under this section remains in effect  
8 until lifted by the department through written notice to the  
9 warehouse operator or following an appeal under Section 14.066.

10 SECTION 5. Section 14.083, Agriculture Code, is amended by  
11 amending Subsection (c) and adding Subsection (f) to read as  
12 follows:

13 (c) In addition to or in lieu of a suspension authorized by  
14 this chapter, if [If] the department considers it necessary, the  
15 department may without a hearing suspend a license and prohibit the  
16 movement of grain into or out of a warehouse [without a hearing] for  
17 not more than 30 days. For good cause shown, the department may  
18 extend a suspension issued under this subsection for one or more  
19 additional periods of up to 30 days each but not to cumulatively  
20 exceed 90 [30] days in one licensing period.

21 (f) A suspension issued under Subsection (c) remains in  
22 effect until the suspension:

23 (1) is lifted by the department through written notice  
24 to the warehouse operator;

25 (2) is lifted by the department following an appeal  
26 under Section 14.066; or

27 (3) expires by operation of law in accordance with:

1                    (A) the department's notice of suspension; or

2                    (B) the ending of the period specified by

3 Subsection (c).

4            SECTION 6. Section 14.082(f), Agriculture Code, is  
5 repealed.

6            SECTION 7. The changes in law made by Sections 14.031(d) and  
7 (e), Agriculture Code, as amended by this Act, apply only to a  
8 license issued, renewed, or amended on or after the effective date  
9 of this Act. A license issued, renewed, or amended before the  
10 effective date of this Act is governed by the law in effect when the  
11 license was issued, renewed, or amended, and the former law is  
12 continued in effect for that purpose.

13            SECTION 8. This Act takes effect September 1, 2011.