

By: Estes

S.B. No. 248

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. BUSINESS INFORMATION. (a) Except as provided by Subsection (b), financial information of a warehouse operator provided to the department [~~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) inspection or investigation reports containing information regarding grain inventory, and~~

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

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

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

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

1 (2) to a local or state law enforcement officer,
2 ~~[(B) a civil or criminal proceeding commenced by]~~ a county
3 attorney, a district attorney, or the attorney general, acting
4 either independently or on behalf of the department, investigating
5 the ~~[against a]~~ warehouse operator; ~~[or]~~

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

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

10 (5) ~~[(2) provided]~~ to the issuer of the [a] warehouse
11 operator's bond or letter of credit ~~[for the purpose of~~
12 ~~establishing a claim on the warehouse operator's bond or letter of~~
13 ~~credit];~~

14 (6) ~~[(3) disclosed]~~ to the public after:

15 (A) revocation of the [a] warehouse operator's
16 license;

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

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

20 (D) a receiver ~~[is appointed]~~ for the warehouse
21 operator's assets has been appointed; or

22 (7) ~~[(4) disclosed]~~ to any federal agency or any
23 agency of another state conducting a compliance inspection or
24 criminal or civil investigation involving the handling, storing,
25 shipping, selling, purchasing, or receipt of grain.

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

27 (1) a financial statement or other document provided

1 by the warehouse operator to the department to evaluate net worth
2 requirements under Section 14.031(e);

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

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

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

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

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

15 (d) Notwithstanding any other provisions of this section:

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

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

23 SECTION 2. Subsections (d) and (e), Section 14.031,
24 Agriculture Code, are amended to read as follows:

25 (d) The bond must be in an amount of not less than \$35,000
26 [\$20,000] and be based on 10 [~~six~~] cents per bushel of storage
27 capacity, not to exceed a maximum of \$500,000.

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

9 SECTION 3. Subsection (a), Section 14.066, Agriculture
10 Code, is amended to read as follows:

11 (a) A department action or order affecting a warehouse
12 operator under this chapter ~~[, other than by rulemaking, assessment~~
13 ~~of an administrative penalty, or imposition of a license sanction,~~
14 ~~including a suspension under Section 14.083(c),]~~ is appealable in
15 accordance with this section unless the action involves agency
16 rulemaking, the assessment of an administrative penalty,
17 imposition of a license sanction, or any other action for which a
18 specific administrative or judicial remedy is available under this
19 chapter, Chapter 12 of this code, or Chapter 2001, Government Code.

20 SECTION 4. Subsections (a) and (f), Section 14.082,
21 Agriculture Code, are amended to read as follows:

22 (a) If the department determines that a warehouse operator
23 does not possess sufficient grain to cover outstanding receipts and
24 outstanding scale weight tickets issued or assumed by the warehouse
25 operator, or if a warehouse operator refuses or is unable to submit
26 records or property for lawful inspection or the department is
27 unable to conduct an inspection of the warehouse due to the

1 condition of the warehouse or grain stored in the warehouse, the
2 department may seal the warehouse to prevent delivery or receipt of
3 grain except as authorized by the department, suspend the license
4 of the warehouse operator, and give notice to the warehouse
5 operator requiring the warehouse operator to submit records or
6 property for lawful inspection, to correct any condition
7 interfering with the department's inspection of the warehouse or
8 grain, or to cover a shortage of a particular type of grain by:

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

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

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

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

24 (f) A license suspension issued under this section remains
25 in effect until lifted by the department through written notice to
26 the warehouse operator or as provided by Section 14.066 [~~At any time~~
27 ~~before the 11th day following the day on which the department takes~~

1 ~~possession of grain under this section, the warehouse operator may~~
2 ~~serve notice on the department to appear in the district court of~~
3 ~~the county in which the public grain warehouse is located to show~~
4 ~~cause why possession should not be restored to the warehouse~~
5 ~~operator. The court shall fix the time of the hearing not less than~~
6 ~~5 nor more than 15 days from the date of service of the notice].~~

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

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

19 (f) A license suspension under Subsection (c) remains in
20 effect until lifted by the department through written notice to the
21 warehouse operator or as provided by Section 14.066 or until it
22 expires by operation of law in accordance with the department's
23 notice of suspension or the limitations provided by Subsection (c).

24 SECTION 6. Subsection (a), Section 14.087, Agriculture
25 Code, is amended to read as follows:

26 (a) On prevailing in an action commenced by the department
27 through the attorney general under this chapter ~~[or in a hearing~~

1 ~~commenced by the warehouse operator under Section 14.082(f)]~~, the
2 department and the attorney general are each entitled to recover:

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

9 SECTION 7. This Act takes effect September 1, 2011.