

SENATE FILE NO. SF0018

Grain laws.

Sponsored by: Joint Agriculture, Public Lands and Water  
Resources Interim Committee

A BILL

for

1 AN ACT relating to agriculture; clarifying the grain laws  
2 relating to buying, selling and storing grain; providing  
3 for cease and desist orders; providing for enforcement  
4 actions; amending license fees; amending bonding  
5 requirements; amending audit requirements; amending  
6 insurance requirements; making conforming amendments;  
7 amending penalties; providing an appropriation; authorizing  
8 an additional position; and providing for an effective  
9 date.

10

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

12

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

15

16 **11-11-118. Perjury.**

1

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

4

5 **11-11-119. Cease and desist orders; warehousemen;**  
6 **notice; opportunity for hearing.**

7

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

13

14 (b) Before issuing a final cease and desist order,  
15 the department shall serve notice of intent to issue the  
16 order upon the warehouseman. The notice shall be in  
17 writing and shall contain the information required by W.S.  
18 11-11-121(a). The proposed order shall direct the  
19 warehouseman to discontinue the violations of law, rule or  
20 regulation.

21

22 (c) The warehouseman may request a hearing on the  
23 proposed order before the director in accordance with W.S.  
24 11-11-121(b). If the warehouseman does not request a

1 hearing in writing within the prescribed time period, the  
2 proposed order shall become a final cease and desist order  
3 and the department shall serve the final order upon the  
4 warehouseman.

5

6 **11-11-120. Temporary cease and desist order;**  
7 **warehousemen; service.**

8

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

18

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

1

2 (c) On or after the effective date of the temporary  
3 order, the attorney general, upon request from the  
4 department, may apply to the district court for the county  
5 in which the warehouse is located for enforcement of the  
6 temporary order. If the warehouseman operates warehouses  
7 in two (2) or more counties, the request may be made in any  
8 county where the warehouseman operates a warehouse. The  
9 application for enforcement shall be given precedence over  
10 other cases pending in court and shall in every way be  
11 expedited.

12

13 **11-11-121. Procedures for enforcement actions;**  
14 **service of notice; content of orders; contested case**  
15 **proceedings; appeal.**

16

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

24

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

4  
5           (ii) A statement of the facts in support of the  
6 allegations;

7  
8           (iii) A statement informing the warehouseman  
9 subject to the proposed order of the right to a hearing on  
10 the order before the director, right of appeal of any  
11 subsequent order in accordance with the Wyoming  
12 Administrative Procedure Act and that failure to timely  
13 request a hearing will result in the order becoming final;  
14 and

15  
16           (iv) A copy of the proposed order.

17  
18           (b) A request for hearing on a proposed order issued  
19 by the department under this article shall be in writing  
20 and shall be submitted to the director no later than seven  
21 (7) days after receipt of the notice of intent from the  
22 department. The director shall hold the hearing no later  
23 than fifteen (15) days after receipt of the request for

1 hearing, unless the warehouseman subject to the proposed  
2 order requests an extension of time for good cause shown.

3

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

15

16 (d) The department shall serve a final order under  
17 this article upon the warehouseman who is the subject of  
18 the order. The final order shall take effect upon service  
19 and shall remain in effect until the department or the  
20 court terminates the final order. The warehouseman who is  
21 the subject of the order may appeal the issuance of a final  
22 order in accordance with the Wyoming Administrative  
23 Procedure Act.

24

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

8

9           **Section 2.** W.S. 11-11-101(a)(ii), (vii) and by  
10 creating new paragraphs (viii) through (xiv), 11-11-103  
11 through 11-11-105, 11-11-107 through 11-11-110,  
12 11-11-111(a)(i), by creating a new paragraph (viii) and  
13 (b), 11-11-112, 11-11-113, 11-11-114(a) and by creating a  
14 new subsection (c) and 11-11-115 through 11-11-117 are  
15 amended to read:

16

17           **11-11-101. Definitions.**

18

19           (a) As used in this chapter:

20

21           (ii) "Warehouseman" means any person except the  
22 grower who ~~buys or sells~~ handles grain ~~at wholesale, or~~  
23 ~~receives or solicits grain for purchase, sale, shipment or~~  
24 ~~storage either in or outside the state of Wyoming~~ for

1 commercial storage or solicits grain for the purpose of  
2 intrastate, interstate or foreign commerce;

3  
4 (vii) "Warehouse" means an elevator, mill,  
5 ~~warehouse~~ storage bin or building, subterminal grain  
6 ~~warehouse~~ storage facility, public ~~warehouse~~ storage  
7 facility or other structure or facility in which ~~for legal~~  
8 ~~consideration~~ grain is received for commercial storage,  
9 ~~handling, processing or shipment either in or out of the~~  
10 ~~state of Wyoming.~~ or for the purpose of intrastate,  
11 interstate or foreign commerce;

12  
13 (viii) "Audit" means an examination of records  
14 or financial accounts to determine their accuracy;

15  
16 (ix) "Depositor" means any person who is in  
17 possession of a commodity and entrusts or delivers the  
18 commodity to a warehouse for storage;

19  
20 (x) "Inspection" means the physical review or  
21 examination of the grain warehouse or storage facility and  
22 may include an official audit;

23



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

3

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

6

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

9

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

12

13           **11-11-103. Warehousemen to procure licenses; fee;**  
14 **annual renewal.**

15

16 Before engaging in business in Wyoming, a warehouseman ~~and~~  
17 ~~a~~ or any person operating a warehouse shall procure a  
18 license from the ~~director and pay to the~~ department of  
19 agriculture. The fee ~~determined by the board of agriculture~~  
20 under this section for the initial license and for each  
21 annual renewal thereof. ~~The fee set by the board of~~  
22 ~~agriculture shall represent an amount sufficient to cover~~  
23 ~~up to fifty percent (50%) of anticipated costs of the~~  
24 ~~inspection program, but shall not exceed~~ shall be one

1 hundred twenty-five dollars (\$125.00). All licenses shall  
2 be issued for the fiscal year, or fraction thereof, ending  
3 June 30. No license shall be renewed unless the ~~director~~  
4 department finds from ~~his annual inspection~~ the audit  
5 required under W.S. 11-11-109 of the warehouse ~~and audit of~~  
6 ~~the warehouse~~ or warehouseman's records that the operations  
7 are conducted properly.

8

9 **11-11-104. Application for license; form; contents;**  
10 **refusal to issue license; appeal; care of agricultural**  
11 **products.**

12

13 (a) The ~~director~~ department shall prescribe forms for  
14 application for a warehouseman's or warehouse license. The  
15 application shall contain information necessary to inform  
16 the ~~director~~ department of the qualifications, facilities,  
17 experience and financial ability of the applicant to carry  
18 on the business of buying, selling, warehousing and storing  
19 grain. The ~~director may~~ department shall require the  
20 submission of ~~a~~ any tax return, bank statement, financial  
21 statement or audit prepared by a public accountant or a  
22 certified public accountant and any additional information  
23 as required by rules and regulations in order to establish  
24 the financial responsibility of the applicant. If a

1 license is refused by the ~~director~~department, appeal may  
2 be made to the ~~state board of agriculture~~director. All  
3 hearings for appeal shall be conducted in accordance with  
4 the Wyoming Administrative Procedure Act.

5  
6 (b) Each warehouseman shall at all times, including  
7 during any period of suspension of his license, exercise  
8 such care in regard to stored and nonstorage agricultural  
9 commodities in his custody as required under the licensing  
10 agreement.

11  
12 **11-11-105. Surety bond required; amount; approval by**  
13 **department; conditions; exception.**

14  
15 (a) Each applicant for a warehouseman's or warehouse  
16 license shall post a cash bond, acceptable irrevocable  
17 letter of credit, other sufficient financial commitment or  
18 execute and file with the ~~director~~department a good and  
19 sufficient surety bond in an amount determined by the ~~board~~  
20 ~~of agriculture~~department based on the maximum number of  
21 hundred weight the warehouseman ~~or warehouse~~ can store in  
22 the warehouses for which the bond is required, but not less  
23 than twenty thousand dollars (\$20,000.00). A surety bond  
24 shall be executed by a responsible surety company licensed

1 to do business in this state, ~~approved by the director,~~ and  
2 conditioned upon the faithful performance of the obligation  
3 of the warehouseman or person operating a warehouse under  
4 the laws of this state and of any additional obligations  
5 assumed by him under contract with those who deposit grain  
6 with him. All bonds shall be payable to the state for the  
7 benefit of any injured party, and shall be in the form and  
8 contain additional conditions as the ~~director~~ department  
9 may prescribe. No person is required to file a bond who  
10 has already posted similar bond with the United States  
11 department of agriculture pursuant to the United States  
12 Warehouse Act of August 11, 1916, as amended.

13

14 (b) Cash bonds, irrevocable letters of credit and  
15 surety bonds shall not be released by the department until  
16 an audit has been completed and satisfied. The department  
17 shall publish a public notice for sixty (60) days prior to  
18 any bond being released.

19

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

1

2           **11-11-107. Investigation by department; complaint;**  
3 **service; hearing.**

4

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

24

1           **11-11-108. Warehouse receipts generally.**

2

3 All warehouse receipts issued for stored grain shall be in  
4 a form prescribed by the ~~director~~ department and shall be  
5 obtainable only by the warehouseman ~~or warehouse~~ from the  
6 ~~director~~ department at cost. Each warehouse receipt issued  
7 must show the amount of any cash or the value of any  
8 merchandise the warehouseman ~~or warehouse~~ has advanced on  
9 the grain represented by the receipt, but such notation  
10 shall not be construed as fixing the date of sale of the  
11 grain.

12

13           **11-11-109. Audit of records; inspection of warehouse.**

14

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

1 inspection and shall be paid by the person requesting the  
2 inspection, if any.

3

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

8

9 **11-11-110. Warehouseman's records; generally.**

10

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

17

18 **11-11-111. Warehouseman's records; contents;**  
19 **inspection and audit by department; issuance of warehouse**  
20 **receipts.**

21

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

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

(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



1 copy of the insurance policy in effect shall be provided to  
2 the department at the time of the license application and  
3 the audit.

4  
5 (b) Each warehouseman shall comply fully with the  
6 terms of insurance policies or contracts covering their  
7 warehouse and all products stored therein, and shall not  
8 commit any acts, nor permit others to commit any acts, that  
9 might impair or invalidate such insurance.

10

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

13

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

19

20 **11-11-114. Stored grain to constitute bailment;**  
21 **amount in storage to equal issued storage certificates;**  
22 **exceptions; conversion; seizure.**

23

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

17

18           (c) All warehousemen shall post current tariffs at  
19 all times.

20

21           **11-11-115. Disposition of collected funds.**

22

23 There is created the grain warehouse inspection account  
24 within the earmarked revenue fund. All funds collected by

1 the ~~director~~department shall be deposited in the account  
2 created by this section. Interest earned by the account  
3 shall be retained in the account. The account is  
4 appropriated for use and expenditure by the ~~board of~~  
5 ~~agriculture~~department for the costs of administering the  
6 programs under this article. Itemized vouchers shall be  
7 submitted to the ~~chief executive officer of the board~~  
8 department for approval. Upon approval, a warrant for the  
9 payment of each voucher shall be issued by the state  
10 auditor for payment from the grain warehouse inspection  
11 account.

12

13 **11-11-116. Revocation and cancellation of license.**

14

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

20

21 **11-11-117. Prohibited acts; penalties for violations.**

22

23 (a) Any person who engages in or carries on any grain  
24 warehousing business without first having obtained a

1 license, or who continues to engage in or carry on such  
2 business after his license has been suspended, revoked or  
3 expires is guilty of a misdemeanor and shall be fined not  
4 less than ~~twenty five dollars (\$25.00)~~ one hundred dollars  
5 (\$100.00) nor more than ~~one hundred dollars (\$100.00)~~ five  
6 hundred dollars (\$500.00) for each offense. Each day that  
7 such unlicensed business is carried on is a separate  
8 offense.

9  
10 (b) Any warehouseman or person operating a warehouse  
11 who converts to his own use or that of another, any grain  
12 stored or accepted for storage of the value of five hundred  
13 dollars (\$500.00) or more, is guilty of a felony and shall  
14 be fined not less than five hundred dollars (\$500.00) for  
15 each day of violation and imprisoned for not to exceed  
16 fourteen (14) years. If the value of the grain converted  
17 is less than five hundred dollars (\$500.00), the  
18 warehouseman or person operating a warehouse is guilty of a  
19 misdemeanor and shall be fined not to exceed ~~one hundred~~  
20 ~~dollars (\$100.00)~~ five hundred dollars (\$500.00) or  
21 imprisoned not to exceed six (6) months, or both.

22

23 **Section 3.**

24

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

9

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

13

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

18

19

(END)