

GRAIN WAREHOUSE MODEL LAW

SECTION 1. Title. This Act shall be cited as the _____ Warehouse Act.

(The title should conform to the regulatory body requirements.)

SECTION 2. Definitions: For the purposes of this Act:

- (a) "Regulatory Body" means the _____.
- (b) "Person" means any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity.
- (c) "Agricultural Commodity" hereinafter referred to as "commodity" or "commodities", means, but is not limited to corn, sorghums, all other grains hay, peas, hops, grain and hay products, alfalfa pellets, beans, lentils, malt, peanuts, flax, cotton, cottonseed, rice, pecans, tobacco, agricultural seeds, and other similar agricultural products.
- (d) "Warehouse" means any building, structure or other protected enclosure approved by the regulatory body used or useable, for the storage or conditioning of commodities. Buildings used in connection or operation of the warehouse shall be deemed as part of the warehouse.
- (e) "Licensed Warehouse" means any warehouse for which a license has been issued by the regulatory body subject to other terms and requirements of the act.
- (f) "Station" means a warehouse located more than three miles from the central office of the warehouse. A warehouse license may be issued listing two or more on the same license; however, a fee shall be charged and collected for each station.
- (g) "Warehouse Operator" means any person engaged in the business of operating a warehouse for receiving, storing, shipping or handling of commodities for compensation.
- (h) "Depositor" means any person who deposits a commodity in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the commodity.
- (i) "Receipt" means a warehouse receipt issued by a warehouseman licensed under this act. Whether a receipt is negotiable or non-negotiable shall be governed by the (Receipt Act, as enacted or amended) .
- (j) "Scale Weight Ticket", hereinafter referred to as "ticket", means a load slip or other evidence, other than a receipt, given a depositor by a warehouse operator licensed under this act, upon initial delivery of the commodity to the warehouse. A ticket shall not be negotiable.
- (k) "License", includes any and all renewals and amendments thereof unless the context clearly indicates the contrary.
- (l) "Conditioning" means, but is not limited to, the drying or cleaning of commodities.
- (m) "Shortage" means that a warehouse operator does not have a sufficient amount of commodities by, kind, class, and quality, to cover his outstanding obligation for that commodity.
- (n) "Failure" means:
 - (1) An inability of the warehouse operator to cover the storage obligations;
 - (2) A public declaration of insolvency;
 - (3) A revocation of license and the leaving of an outstanding obligation to a depositor;
 - (4) A failure to redeliver any commodity to a depositor in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;
 - (5) A failure to make application for license renewal within sixty days after the annual license renewal date; or
 - (6) A denial of the application for a license renewal.
- (o) "Commingle" means the binning and/or storage of commodities by class, under

circumstances other than identity preserved.

(p) "Suspension" means the temporary removal of a warehouse operator's license pending a hearing for violations of this act. Corrections of the violations prior to a hearing may result in the reinstatement of a license without the hearing.

(q) "Revocation" means the permanent removal of a warehouse operator's license following a hearing on violations of the act. "Identity Preserved" means the handling of a commodity in such a manner that guarantees the return of the actual quantity and quality of the commodity to the deposited.

SECTION 3. Powers and Duties of Regulatory Body. The regulatory body shall administer this Act and in its administration is authorized, in addition to any other powers conferred by this Act, to investigate the receiving, storing, conditioning, shipping and handling of commodities and complaints with respect thereto, including the inspection of any warehouse, the commodities stored therein and all property and records pertaining thereto; to determine whether the warehouse for which licenses are applied for or have been issued, are suitable for the receiving, storage, conditioning, shipping, and handling of the commodity or commodities which are, or are expected to be received, stored, conditioned, shipped, or handled; to require such reports as it may determine are necessary in the administration of this Act; to require a licensed warehouse operator to terminate receiving, storage, conditioning, shipping, and handling agreements upon revocation of their license; to administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and/or the production of records in the connection with any investigation or hearing under this Act; to prescribe all forms, within the limitations set forth in this Act, including the forms of receipts, tickets, and applications for licenses; and to promulgate all necessary rules and regulations for carrying out the provisions of the Act.

SECTION 4: Licenses Required.

(a) No person shall operate a warehouse without first having obtained a license from the regulatory body or continue to operate such warehouse after any such license has been suspended or revoked, except as provided in Section 14 hereof.

(b) Two or more warehouses which constitute a station may be licensed under a single license. All warehouses licensed under a single license shall be treated as a single warehouse for all the purposes of this Act, including issuance of receipts, and receipt and delivery of commodities.

SECTION 5: Application for License and Renewal: Fees.

(a) An application for license, renewal or amendment thereof shall be filed with the regulatory body at such times, on such forms, and containing such information as shall be prescribed.

(b) Any application for a license, or renewal thereof, shall be accompanied by a fee, as follows: for a warehouse \$_____, provided, that if the application is for a single license to operate more than one warehouse as a station, the license fee shall be computed by multiplying the number of physically separate warehouses by the applicable warehouse license fee.

(c) An application shall include a complete financial statement prepared by a licensed or certified public accountant in accordance with general accepted accounting principals. A current financial statement shall be submitted to the regulatory body annually.

(d) In issuing licenses to become effective between _____ and _____, the regulatory body may, in its discretion, make such licenses effective for periods varying from 12 months to 21 months. Thereafter, all licenses shall expire 12 calendar months after the effective date thereof. In case of licenses issued for more than 12 months, the amount of the license fees shall be increased in proportion to the amount of time in excess of 12 months for which such license is effective.

(Optional-to permit the staggering of license renewals.)

(e) No licensed Warehouse operator shall make use of any increased warehouse capacity without first obtaining approval of the regulatory body evidenced by endorsement upon his license.

SECTION 6. Issuance of Licenses. The regulatory body is authorized to issue and amend a license, or renewal thereof, upon its approval of the bond, insurance, and schedule of charges filed by the applicant, upon its determination that the warehouse(s) covered by such application is (are) suitable for the proper storage of the commodity or commodities intended to be stored therein, and its determination that the applicant has complied with the provisions of this Act and regulations promulgated thereunder. A warehouse license is non transferable. A new warehouse license shall be required any time there is a change of ownership or change in name of the warehouse.

SECTION 7. Temporary Permit. Upon receipt of an application for a license, the regulatory body may issue such temporary permit to the applicant for such reasonable time, (not to exceed thirty days), as in the judgement of the regulatory body may be necessary or advisable to enable the applicant to comply with the further requirements of this Act for obtaining a license. Such a permit shall have the same effect as a license and shall entitle and subject the permittee to the same rights as if a warehouse license had been obtained.

SECTION 8. Casualty Insurance; Recovery for loss.

(a) Each applicant for a license to operate a warehouse under this Act shall, as a condition to the granting thereof, file or have on file with the regulatory body a certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in this state insuring in the name of the applicant all commodities which are of may be in such warehouse for their full market value against loss by fire, internal explosion, lightning and windstorm.

(b) In case fire, internal explosion, lightning or windstorm destroys or damages any commodities in any licensed warehouse, the warehouse operator shall, upon demand by the depositor, and upon being presented with the receipt or other evidence of ownership, make settlement, after deducting the warehouse operators charges and advances, at the market value of the commodity based on the value at the average price paid for the commodity of the same grade and quality on the date of the loss at the location of the warehouse. The warehouse operator must make complete settlement to all depositors having commodities stored in any warehouse, damaged or destroyed, within ten days' after settlement with the insurance company. Failure of the warehouse operator to make such settlement shall be grounds for the revocation or suspension of the warehouse license.

SECTION 9. Additional Insurance. Whenever the regulatory body shall determine that a previously approved insurance is insufficient, it shall require additional insurance to be given by the warehouse operator, conforming with the requirements of this Act.

SECTION 10. Cancellation of Insurance; Suspension of License.

(a) No licensed warehouse operator may cancel approve insurance without the prior written approval of the regulatory body and its approval of a substitute insurance. An insurance company may cancel insurance required by this Act only after the expiration of a thirty day period from the mailing, by registered or certified mail, of notice of intent to cancel, to the regulatory body. The insurance company shall, at the time of giving notice to the regulatory body, send a copy of such notice provided for in this section, notify the warehouse operator involved.

(b) Notwithstanding any other provision of this Act, failure of the warehouse operator to provide new evidence of insurance within 15 days after the regulatory body receives notice of

cancellation shall cause the warehouse license to be suspended. If new evidence has not been filed by the thirtieth day following receipt of notice the license shall be revoked.

SECTION 11. Schedule of Charges.

(a) Each applicant for a license to operate a warehouse under this Act shall as a condition to the granting thereof, file or have on file with the regulatory body a copy of his scheduled of charges as a warehouse operator.

(b) No licensed warehouse operator may make a change in his charges unless a notice of such change in his schedule, and the reasons therefore, are filed with and the change is approved by the regulatory body.

(c) The regulatory body shall refuse to approve any charge, which it finds in unjust, unreasonable, or discriminatory after opportunity for hearing has been afforded to the warehouse operator.

SECTION 12. Assets required. Every licensed warehouse operator shall have and maintain a minimum net worth (to be determined by regulatory body) . In addition, the warehouse operator shall have and maintain net worth in an amount equal to at least _____ cents (amount to be determined by the regulatory body) per bushel times the determined storage capacity of the warehouse. The requirement for such additional assets may be met by adding to the amount of the bond required by this Act, and amount equal to the additional assets required. Capital equity of the warehouse operator, including capital stock, shall not be considered a liability for the purpose of determining total assets. Except as otherwise provided by law, all assets of a licensed warehouse operator shall for the purposes of this Act are subject to the liabilities in connection with any or all licensed warehouses operated by that operator.

SECTION 13. Revocation, Suspension, and Denial of Licenses. The regulatory body is authorized to revoke, suspend, or deny a license in any case in which it determines, after opportunity for a hearing, that there has been violation of or failure to comply with the requirements of this Act or the regulations promulgated thereunder. The regulatory body, whenever it deems necessary, may suspend a license temporarily without a hearing.

SECTION 14. Operation after Revocation, Suspension, or Expiration of Licenses.

(a) When a license is revoked or expired, the warehouse operator shall terminate, in the manner prescribed by the regulatory body, all arrangements covering the receiving, storing, shipping, conditioning, or handling of commodities in the warehouse, or warehouses where the license covers a station, covered by such license, but shall be permitted, under direction and/or supervision of the regulatory body, to deliver commodities previously received.

(b) During any suspension of a license, the warehouse operator may, under direction and/or supervision of the regulatory body, operate the warehouse, or warehouses if the license covers a station, but shall not receive any commodities for storage, conditioning, shipping, or handling during the term of such suspension.

SECTION 15. Duty of Warehouse Operator to Receive; Issuance of Receipts. Every licensed warehouse operator shall receive for storage, shipment, conditioning, or handling, without discrimination, so far as the capacity and facilities of the warehouse will permit, all commodities in suitable condition for storage, shipment, conditioning, or handling tendered to the operator in the usual course of business and shall upon receiving any such commodity issue therefore a receipt or ticket. Where a ticket is issued on receipt of the commodity, a receipt shall be issued upon demand.

SECTION 16. Receipt for Commodities Owned by the Warehouse Operator.

(a) A licensed warehouse operator may issue a receipt for commodities owned by him, in whole or in part, located in his licensed warehouse. The negotiation, transfer, sale, or pledge of any such receipt shall not be defeated by reason of such ownership.

(b) All warehouse receipts issued by a licensed warehouse operator covering commodities owned, in whole or in part, by such warehouse operator, may be required to be registered with the regulatory body.

SECTION 17. Commingling of Fungibles. Unless the receipt or ticket otherwise provides, a licensed warehouse operator must keep separate the commodity covered by each receipt or ticket so as to permit at all times identification and delivery of that commodity except that different lots of fungible commodities may be commingled.

SECTION 18. Delivery :Damages for Late Delivery:

(a) Delivery shall be made at the warehouse or station where the commodity was received unless agreed otherwise in writing.

(b) Delivery shall be made within the time provided in any contract with the depositor or, if no such contract provision exists, then to the several depositors in order of demand as rapidly as it can be done by ordinary diligence. Delivery made within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, after constitutes compliance with this subsection.

(c) The person entitled to delivery of a commodity may maintain an action against the warehouse operator for damages resulting from the warehouse operator's failure to deliver within the time provided in this section. In any such action the person entitled to delivery of the commodity may seek recovery of his actual damages or liquidated damages of one half of one percent of the value for each day's delay after the time provided in this section.

SECTION 19. Receipts; Terms.

(a) Every warehouse receipt issued shall embody within its terms:

(1) The grade of the commodity received as established by the official standards adopted by the regulatory body, unless the identity of the commodity is preserved in a special pile or special bin or otherwise and an identifying mark of such identity preserved commodity shall appear on the face of the receipt.

(2) A statement that the receipt is issued subject to this Warehouse Act and regulations prescribed thereunder.

(3) A clause reserving for the warehouseman the right to terminate storage, and collecting outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(4) A clause reserving for the warehouse operator the right to terminate storage, shipping, conditioning, and handling arrangements and collect outstanding charges upon the revocation of the warehouse operator's license.

(5) Such other terms and conditions as may be required by the regulatory body or as provided in the Receipt Act. Provided, that nothing contained therein shall require a receipt issued for any commodity to specifically state the variety of the commodity by name.

SECTION 20. Duplicate Receipts. While a receipt or ticket issued under this act is outstanding and uncanceled by the licensed warehouse operator issuing the same, no other further receipt or ticket shall be issued for the commodity covered thereby or any part thereof, except that in case of a lost, stolen, or destroyed receipt or ticket, the owner thereof shall be entitled to a new receipt shown to be a duplicate of the missing receipt or to be a substitute receipt for the missing ticket. Such duplicate or substitute receipt shall be endowed with all rights appertaining to the document for which it was issued, and shall state that it is in lieu of the former receipt or ticket giving the number and date thereof. The warehouse operator shall require an lost instrument bond of double the current

market value of the commodity covered by such missing receipt, in such form and with such surety as may be prescribed by the regulatory body, as will fully protect all rights under the missing receipt.

SECTION 21. Tickets: Terms.

(a) Every ticket issued by a licensed warehouse operator shall embody within its terms:

(1) A clause reserving for the warehouse operator the right to terminate storage and collect outstanding charges against any lot of commodities after June 30th following the date of the ticket.

(2) A clause reserving for the warehouse operator the right to terminate storage, conditioning, shipping, and handling arrangements and collect outstanding charges upon the revocation of the warehouse operator's license.

(3) Such other provisions as may be prescribed by the regulatory body.

SECTION 22. Receipt and Ticket Forms; Printing; Cash Bond; Recovery. All receipt and all ticket forms shall be supplied by the regulatory body except where the regulatory body, in writing, approves the form and gives permission to a warehouse operator to have receipts or tickets printed. Requests for receipts and tickets shall be on forms furnished by the regulatory body and shall be accompanied by payment to cover the costs of printing, packaging, and shipping, as determined by the regulatory body. Where privately printed, the printer shall furnish the regulatory body an affidavit showing the number of receipts and tickets printed, and the serial numbers thereof, and the warehouse operator shall, at the discretion of the regulatory body, furnish a bond in such form, and in such amount, as determined by the regulatory body, to cover any loss resulting from the unlawful use of any receipt or ticket. All receipts and tickets remaining unused may be recovered by the regulatory body if the license required by this Act is revoked or suspended. The regulatory may establish requirements so receipts can be issued electronically.

SECTION 23. Rebates and Preferences Prohibited. No licensed warehouse operator shall:

(a) Directly or indirectly, by any special charge, rebate, draw back, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the receiving, storage, shipping, conditioning, or handling of any commodity than the operator demands, collects, or receives from any person for doing a like and contemporaneous service in the receiving, storage, conditioning, shipping, or handling of any commodity under substantially similar circumstances or conditions; or

(b) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever; or

(c) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SECTION 24. Records.

(a) Every licensed warehouse operator shall keep in a place of safety a complete and accurate set of records and accounts of all transactions pertaining to the operation for a warehouse, including records and accounts of all commodities received therein and withdrawn therefrom, of all unissued receipts and tickets in the operator's possession, of all receipts and tickets issued, copies of all contracts and of the receipts and tickets returned to and cancelled by him. Such records shall be retained by the warehouse operator for such a period as may be prescribed by the regulatory body; Provided, that copies of receipts or other documents evidencing ownership of any commodity or liability as a warehouse operator shall be retained so long as such documents are outstanding, and any such document which has been cancelled shall be retained for a period of not less than () years from the date of cancellation.

(b) All such records and accounts shall be kept in numerical sequence, separate and distinct

from records and accounts of any other business, and shall be subject to inspection by the regulatory body at all reasonable times.

(c) The regulatory body may prescribe the form and content of all such records.

SECTION 25. Posting of License, Rates, and Signs. Each licensed warehouse operator shall **(1)** Immediately upon receipt of a license post it in a conspicuous place in the office of licensed warehouse or, if a station license, in the main office of such station; **(2)** keep conspicuously displayed in each operational office the approved schedule of charges for services; and **(3)** post at or near the main entrance to each of the licensed warehouses a sign, as prescribed by the regulatory body, which shall include the name under which such warehouse is operated and the term "Licensed and Bonded".

SECTION 26. Outside Storage. The regulatory body by rule shall establish the requirements and provisions that covers the outside piling and storage of commodities.

SECTION 27. Sanitation. Every warehouse operator shall be required to exercise such precautions and surveillance as is necessary to provide the safe and adequate storage of stored commodities in the warehouse from being contaminated in any way from chemicals, pesticides, fertilizers, adulterated seeds, animals, birds, or any such thing as may contaminate or reduce the quality of the stored commodity.

SECTION 28. Number of Exams Required. The regulatory body shall establish by rule the number of examinations that will be performed at each licensee per license period.

SECTION 29. Unlawful Practices of a Warehouse Operator. It is unlawful for a warehouse operator to:

- (a)** Issue a receipt for any commodity that is not in the operator's warehouse at the time the receipt is issued;
- (b)** Issue a receipt in excess of the amount of commodities held in the operator's Licensed warehouse to cover the receipt;
- (c)** Remove, deliver, direct, assist, or permit any person to remove, or deliver any commodity from any warehouse for which receipts have been issued and are outstanding without receiving and cancelling the receipt issued therefor;
- (d)** Sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from a licensed warehouse any commodity received for deposit for storage, conditioning, shipping, or handling for which tickets have been issued without written approval of the holder of the ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouse operator;
- (e)** Remove, deliver, direct, assist, or permit any person to deliver, or remove any commodities from any warehouse, whereby the amount of any fairly representative grade or class of any commodity in the warehouses of the licensee is reduced below the amount for which receipts or tickets for the particular commodity are outstanding;
- (f)** Issue a receipt showing a grade or description different from the grade or description of the commodity delivered;
- (g)** Issue a receipt or ticket that exceeds the amount of the actual quantity of commodities delivered;
- (h)** Fail to deliver commodities upon demand by the depositor;
- (i)** Knowingly accept for storage any commodity destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if the commodities are commingled with any uncontaminated commodity;
- (j)** Terminate storage of a commodity without giving thirty days' written notice to the depositor.

SECTION 30. Remedies of Regulatory Body on Discovery of Shortage or Refusal to Submit to Inspection.

(a) Whenever it appears to the satisfaction of the regulatory body that a licensed warehouse operator does not have in their possession sufficient quantity and quality of commodities to cover the obligation as an examination of the records reveal; or by a discrepancy between the physical inventory and total stocks on hand for that commodity; or when such warehouse operator refuses to submit his records or property to lawful inspection, the regulatory body may give notice to the warehouse operator to comply with all or any of the following requirements:

(1) Cover such shortage; by purchase and payment of sufficient quantity and quality of the commodity;

(2) Give additional bond as requested by the regulatory body;

(3) Submit to such inspection as the regulatory body may deem necessary;

(b) If such warehouse operator fails to comply with the terms of such notice within twenty-four hours for the date of its issuance, or within such further time as the regulatory body may allow, the regulatory body may petition the courts of that country, state, or county where the licensed warehouse operator's principal place of business is located for an order:

(1) Authorizing the regulatory body to seize and take possession of all or a portion of any and all commodities located in the licensed warehouse or warehouses of such warehouse operator, and of all pertinent records and property.

(c) Upon taking possession the regulatory body shall give written notice of its action to the surety on the bond of the warehouse operator and may notify depositors, as shown by the warehouse operator's records, to present their receipts and tickets for inspection, or to account for the same. The regulatory body may thereupon cause an examination or other investigation to be made of the affairs of such warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of such shortage and compute the shortage as to each depositor as indicated by the records, if practicable. The regulatory body shall notify the warehouse operator and the surety of the bond of the approximate amount of such shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouse operator.

(d) The regulatory body shall retain possession obtained under this section until such time as the warehouse operator or the surety on bond shall have satisfied the claims of all depositors, or until such time as the regulatory body is ordered by the court to surrender possession.

(e) If during or after an examination or other investigation provided for in this section, or at any other time, the regulatory body has evidence that the warehouse operator is in a failed position, the regulatory body may petition the court of jurisdiction for the appointment of a receiver to operate or liquidate the business of the warehouse operator in accordance with law.

(f) At any time within ten days after the regulatory body takes possession, the warehouse operator may serve notice upon the regulatory body to appear a court having jurisdiction over the matter at a time to be affixed by the court, which shall not be less than five, nor more than fifteen days from the date of the service of such notice, and show cause why such possession should not be restored to the warehouse operator.

(g) All necessary expenses incurred by the regulatory body, or any receiver appointed under this section, in carrying out the provisions of this section may be recovered from the warehouse operator in a separate civil action brought by the regulatory body in a court or recovered at the same time and as a part of the seizure or receivership action filed under this section. As a part of the expenses so incurred, there is authorized to be included the cost of adequate liability insurance necessary to protect the regulatory body, the receiver, and other engaged in carrying out the provisions of this section.

SECTION 31. Injunction Against Operating Without a License or Interfering with

Regulatory Body. The regulatory body may apply for, and the court(s) are vested with jurisdiction to issue, a temporary or permanent injunction against the operation of a warehouse, or the issuance of receipts or tickets, with out a license, and against interference by any person with the carrying out by the regulatory body, or by any receiver appointed under the provisions of this Act, of its duties and powers under this Act.

SECTION 32. Depositor's Request for Examination of Warehouse. In addition to all other inspections and investigations authorized by this Act, the regulatory body may, upon written request by any person having an interest in a commodity deposited in a warehouse and upon payment (amount to be established by the regulatory body) in advance by such person, cause such warehouse to be examined to include, but not limited to, verification of outstanding receipts and tickets with the commodities on hand, or a specific commodity, and issue a report to the person that made the request. If a shortage is discovered, then the regulatory body shall advise each depositor of that shortage with respect to that commodity. If the cost of the examination is more than the pre-payment set by the regulatory body, the person requesting such examination shall pay the additional cost to the regulatory body, unless a shortage is found to exist.

SECTION 33. Penalties.

(a) Every person who violates or fails to comply with any of the provisions of this Act or to comply with any lawfully authorized order, direction, demand, rule, or regulation of the regulatory body shall be subject to a fine not exceeding (regulatory body will establish an amount) dollars or to imprisonment as prescribed by law , or both.

(b) Every person who issues or aids in issuing a receipt or ticket knowing that the commodity for which such receipt or ticket is issued has not been actually received at the licensed warehouse, every person who issued or aids in issuing a duplicate, or additional negotiable receipt for commodities knowing that a former negotiable receipt for the same commodity or any part thereof is outstanding and uncanceled, except in the case of a lost, stolen or destroyed receipt, as provided in this Act, and every person who shall fraudulently and without proper authority represent, forge, alter, counterfeit or simulate and license provided for in this Act, shall be subject to a fine as established by the regulatory body or to imprisonment as established by the courts, or both.

(c) Except in case of sale or other disposition of a commodity in lawful enforcement of the warehouse operator's lien or on the warehouse operator's lawful termination of storage, conditioning, shipping, or handling agreements, or except as permitted by regulations of the regulatory body when necessary to effectuate the purposes of the Act:

(1) Every person who delivers any commodity out of a warehouse for which a license has been issued, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of such commodity is outstanding and uncanceled, with obtaining the possession of such receipt at or before the time of such delivery shall be subject to a fine established by the regulatory body or to imprisonment as established by the courts, or to both; and

(2) Any person who delivers any commodity out of a warehouse for which a license has been issued, knowingly that a non-negotiable receipt or ticket is outstanding and uncanceled, without the prior written approval of the person lawfully entitled to delivery under such non-negotiable receipt or ticket and without such delivery being shown on the appropriate records of the warehouse operator, shall be subject to a fine as established by the regulatory body or imprisonment as established by the court, or to both.

(d) Every person who fraudulently issues or aids in fraudulently issuing a receipt or ticket knowing that it contains any false statement, and every person who issues receipt for commodities owned solely or jointly by himself and does no state the fact of such ownership in

such receipt, shall be subject to a fine established by the regulatory body or to imprisonment as established by the courts, or to both.

(e) Every person who deposits commodities to which he has no title, or upon which there is a lien or mortgage, and who takes for such commodities a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, and every person who changes any receipt or ticket subsequent to issuance except for notation by the warehouse operator of partial delivery, shall be subject to a fine established by the regulatory body or to imprisonment as established by the courts, or to both.

SECTION 34. Deposit of Fees. All fees received by the regulatory body under the Act shall be deposited to the appropriation available to the regulatory body, or to a dedicated fund available without fiscal year limitation, and shall be available to the regulatory body in the administration of this Act.

SECTION 35. Bond Requisites.

(a) Each applicant for a license to operate a warehouse under this Act shall, as a condition of to the granting thereof, file or have on file with the regulatory body a bond, in favor to the regulatory body, executed by the applicant as principal, and by a corporate surety licensed to do business in the country or state.

(b) Such bond shall:

(1) Be in such form and amount and contain such terms and conditions as the regulatory body shall prescribe. The regulatory body shall establish, by rule the minimum and maximum amounts of bonds, and establish the formula by which the bond amounts required under this section shall be computed.

(2) Be conditioned upon the faithful performance of all obligations of a licensed warehouse operator under the terms of this Act and regulation thereunder from the effective date of the bond until the license is revoked or the bond is cancelled as provided in this Act. , whichever occurs first; and

(3) Be further conditioned upon the faithful performance from the effective date of the bond and there after, whether or not said warehouse(s) remains licensed under this Act, of such obligations as a warehouse operator under contracts with the respective depositors of commodities in the warehouse(s) as exist on the effective date of the bond or are thereafter assumed prior to the time the license of the warehouse operator is revoked or the bond is cancelled as provided herein, which ever occurs first.

(c) The applicant may give a single bond meeting the requirements of the Act and all licensed warehouses operated under a license shall be deemed as one warehouse for the purpose of such bond.

(d) The total aggregate liability of the surety on any bond required by this Act shall be limited to the amount specified in the bond and shall not accumulate for each successive license period.

(e) Any person required to submit a bond to the regulatory body under the terms of of this Act has the option to give the regulatory body a certificate of deposit, letter of credit, or other security acceptable to the regulatory body payable to the regulatory body as trustee, in lieu of bond or a portion thereof. The principal amount of the certificate of deposit, letter of credit, or other security shall be the same as required for a surety bond under this Act or may be in an amount which, when added to the bond, will satisfy the licensee's requirements for surety bond under this Act, and the interest thereon shall be made payable to the purchaser of the certificate of deposit or other security. The certificate of deposit, letter of credit, or other security shall remain on deposit until it is released, cancelled, or discharged as provided for by rule of the regulatory body. The provisions of this Act that apply to a bond required under this

Act apply to each certificate of deposit, letter of credit, or other security given in lieu of such a bond.

SECTION 36. Additional Bond. Whenever the regulatory body shall determine that a previously approved bond is insufficient; it shall require an additional bond to be given by the warehouse operator, conforming with the requirements of this Act.

SECTION 37. Cancellation of Bond; Suspension and Revocation of License.

(a) No licensed warehouse operator may cancel an approved bond without the prior approval of the regulatory body and its approval of a substitute bond. The surety on a bond may cancel a bond required by this Act only after the expiration of ninety days from the date the surety shall have mailed a notice of intent to cancel, to the regulatory body. The surety shall, at the time of giving notice to the regulatory body, send a copy of such notice to any other governmental agency requesting it. The regulatory body shall promptly, upon receipt of the notice, shall notify the warehouse operator involved.

(b) Notwithstanding any other provision of this Act, failure of the warehouse operator to provide a new bond within ninety days after the regulatory body receives notice of cancellation from the surety shall cause the license to be revoked.

SECTION 38. Depositor's Lien.

(a) When a depositor stores a commodity with a warehouse operator, the depositor has a first priority lien on the commodity or the proceeds therefrom or on commodities owned by the warehouse operator if the depositor has written evidence of ownership disclosing a storage obligation. The lien arises at the commencement of the storage obligation. The lien terminates when the storage liability of the warehouse operator to the depositor terminates.

(b) The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse operator, regardless of whether the creditor's lien or security interest attached to the commodity or proceeds before or after the date on which the depositor's lien attached under subsection (a) of this section.

(c) A depositor who claims a lien under this subsection (a) of this section need not file any notice of the lien in order to perfect the lien.

(d) The lien created by subsection (a) of this section is discharged, except as to the proceeds therefrom and except as to commodities owned by the warehouse operator upon sale of the commodity by the warehouse operator to a buyer in the ordinary course of business.

SECTION 39. Depositor's Claims, Processing by Regulatory Body. In the event of a failure of a warehouse operator, the regulatory body may process claims in the following manner:

(a) The regulatory body may give notice and provide a reasonable time to potential claimants to file their claims along with evidence of ownership disclosing a storage obligation to the regulatory body.

(b) The regulatory body may investigate each claim and shall determine if the claimant has a valid storage obligation. The regulatory body may, in writing, notify each claimant and the failed warehouse operator of the regulatory body's determination as to the status and amount of each claimant's claim. A claimant, or failed warehouse operator may request a hearing on the regulatory body's determination within twenty days of receipt of written notification, and a hearing shall be held.

(c) The regulatory body may examine the failed warehouse operator to determine whether the warehouse operator has in his possession sufficient quantities of commodities to cover storage obligations. In the event of a shortage, the regulatory body shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the

depositor. Each commodity shall be treated separately for the purpose of determining shortages.

(d) The regulatory body shall determine the amount, if any, due each claimant by the surety and make demand upon the bond in the manner as set forth in this Act.

SECTION 40. Depositor's Lien; Liquidation Procedure. Upon the failure of a warehouse operator, the statutory lien created in Section 38 shall be liquidated by the regulatory body to satisfy valid claims of depositors in the following manner:

(a) The regulatory body may take possession of all commodities in the warehouse(s) . These commodities shall be distributed or sold and the proceeds distributed to satisfy the outstanding receipts, tickets, or other written evidences of ownership. If a shortage exists, the regulatory body shall distribute the commodities or the proceeds from the sale of the commodities on a prorated basis to the depositors. To the extent the commodities or the proceeds from their sale are inadequate to satisfy the claims of depositors shall be considered a claim on the bond, and shall be settled in accordance with Section 39.

SECTION 41. Action on Bond by Regulatory Body; Grounds. The regulatory body may bring action upon the bond of a warehouse operator against both principal against whom a claim has been made and the surety in a the court of jurisdiction to recover the damages caused by any failure to comply with the provisions of the Act or the rules adopted hereunder. Recovery for damages against a warehouse operator on bond furnished to the regulatory body shall be limited to the bond amount that would be required for that warehouse operator as required in Section 35.

SECTION 42. Action on Bond by Regulatory Body; Failure to File a Claim on Request; Effect. If a depositor creditor after notification by the regulatory body, fails, refuses, or neglects to file a claim against a warehouse operator within the time allotted by the regulatory bond, the regulatory body shall thereupon be relieved of further duty or action under this Act on behalf of the depositor creditor.

SECTION 43. Action on Bond by Regulatory Body; Records as to Depositor Creditors Missing or Information Incomplete; Effect. Where by reason of the absence of records or other circumstances making it impossible or unreasonable for the regulatory body to ascertain the names and addresses of all the depositor creditors, the regulatory body after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make demand on a warehouse operator's bond on the basis of information then in their possession, and thereafter shall not be liable or responsible for claims or the handling of claims that may subsequently appear or be discovered.

SECTION 44. Action on Bond by Regulatory Body; Powers of Regulatory Body. Upon ascertaining all claims and statements in the manner set forth in this Act, the regulatory body may then make demand upon the warehouse operator's bond on behalf of those claimants whose claims have been determined as valid, and has the power to settle or compromise the valid claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved.

SECTION 45. Action on Bond by Regulatory Body; When Authorized: New Bond, When Required; Penalty for Failure to File. Upon the refusal of the surety company to pay the demanded amounts for claims determined valid by the regulatory body, the regulatory body may thereupon bring an action on the warehouse operator's bond in behalf of those depositor creditor's having a valid claim. Upon any action being commenced on the bond, the regulatory body may require the filing of a new bond, and immediately upon the recovery in any action on the bond shall be filed. The failure to file the new bond or otherwise satisfy the security requirement of this Act within

ten days in either case constitutes grounds for the suspension or revocation of the license of any principal on the bond.

SECTION 46. Action by Depositor Upon Bond.

(a) If no action upon the bond of a licensed warehouse operator is commenced within thirty days after written demand to the regulatory body, the depositor creditor shall have a right of action upon such bond for the recovery of all damages suffered by such depositor by reason of the failure of the warehouse operator. The depositor shall give the regulatory body immediate written notice of the commencement of any such action.

(b) Recovery of a claim under such bond as provided by this section shall be prorated when the claims exceed the liability under such bond: Provided, that it shall not be necessary for any depositor suing on such bond to join other depositors in such suit and the burden of establishing proration shall be on the surety as a matter of defense.

(c) A claim against the warehouse operator's bond must be filed with the surety on bond within one hundred and twenty day after proper notification of termination or revocation of the license.

SECTION 47. Commodity Indemnity Fund Program; Fund Established; Contents, Deposits, Disbursements, Use.

(a) There is hereby established a fund to be known as the commodity indemnity fund. The commodity indemnity fund shall consist of assessments collected from depositors submitted by licensees.

(b) Collected assessments shall be remitted to the regulatory body on a monthly basis and shall be deposited in the commodity indemnity fund. The regulatory body shall appoint a custodian to the commodity indemnity fund. Disbursements shall be on authorization of the regulatory body. No appropriation is required for disbursement from this fund.

(c) The commodity indemnity fund shall be exclusively for purposes of paying claimants pursuant to this Act, and paying necessary expenses of administering the commodity indemnity fund, provided however, that moneys equivalent to one half of the interest earned by the fund may be paid to the regulatory body to defray cost of administering a warehouse examination program. The regulatory body shall not be liable for any claims presented against the fund.

SECTION 48. Commodity Indemnity Fund Assessments; Limitations, Status. The rate of the assessment collected from depositors shall be established by rule by the regulatory body. The assessments shall be imposed until such time as the commodity indemnity fund balance, less any outstanding claims, reaches five million dollars. For any month which the commodity indemnity fund balance, less outstanding claims, exceeds five million dollars, no assessment shall be imposed. The regulatory body shall provide a written notice to licensees whether or not assessments are to be imposed.

SECTION 49. Commodity Indemnity Fund, Additional Security. When the regulatory body has reason to believe the licensee does not have in his possession sufficient quantity and quality of a commodity to cover the outstanding obligation for that commodity, or when the licensee does not have a sufficient net worth to outstanding financial obligations ratio, require from the licensee and assessment, or at the regulatory body's option, the posting of a bond or other additional security in an dollar amount to equal the dollar amount of the shortage or the amount of the deficiency in net worth. A failure of the licensee to pay the assessment or post the additional bond or other security within thirty day of the regulatory body's written notification, constitutes grounds for the suspension or revocation of the license issued under this Act.

SECTION 50. Commodity Indemnity Fund Advisory Committee.

(a) There is hereby created a commodity indemnity fund advisory committee consisting of six members to be appointed by the regulatory body. Of the initial appointments, three shall be for two-year terms and three shall be for three-year terms. Thereafter, appointments shall be for three-year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(b) The committee shall be composed of three producers primarily engaged in the production of commodities defined by this Act and three licensed warehouse operators.

(c) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. Each committee member shall be reimbursed for their travel and subsistence expense in carrying out the duties of the committee. The expenses of the committee and its operation shall be paid from the commodity indemnity fund.

(d) The committee shall have the power and duty to advise the regulatory body concerning the assessments, administration of the commodity indemnity fund, and payment of claims from the fund.

SECTION 51. Commodity Indemnity Fund ; Processing of Claims. In the event a warehouse operator fails, as defined in Section 1, or otherwise fails to comply with the provisions of this Act or rules promulgated hereunder, the regulatory body shall process the claims of depositors producing receipts, tickets or other written evidence of ownership disclosing a storage obligation for damages caused by the failure, in the following manner:

(a) The regulatory body shall give notice and provide a reasonable time to potential claimants to file their claims along with evidence of ownership to the regulatory body.

(b) The regulatory body may investigate each claim and determine whether that claim is a valid claim for a storage obligation. The regulatory body shall notify each claimant, the warehouse operator, and the committee of the regulatory body's determination as to the validity and amount of each claimant's claim. A claimant or warehouse operator may request a hearing on the regulatory body's determination within twenty days of receipt of written notification and a hearing shall be held by the regulatory body. Upon determining the amounts of all valid claims, the regulatory body shall pay the claims from the commodity indemnity fund.

(c) The regulatory body may examine a failed warehouse operator to determine whether the warehouse operator has in his possession, sufficient quantities and qualities of commodities to cover the outstanding storage obligations. In the event of a shortage, the regulatory body shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor against the commodity indemnity fund. Each commodity shall be treated separately for the purpose of determining shortages.

SECTION 52. Commodity Indemnity Fund; Failure to File a Claim in Time. If a depositor creditor, after notification, refuses or neglects to file a claim with the regulatory body against a warehouse operator as requested by the regulatory body, then the regulatory body shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the commodity indemnity fund.

SECTION 53. Commodity Indemnity Fund; Payment Limitations. Subject to the provisions of section 54 and section 55 and to a maximum payment of one million dollars on all claims against a single licensee, approved claims against a licensed warehouse operator shall be paid from the

commodity indemnity fund in the following manner:

- (a) Approved claims against a licensed warehouse operator shall be paid in full;
- (b) In the event that approved claims against a single licensee exceed one million dollars, recovery on those claims shall be prorated.

SECTION 54. Commodity Indemnity Fund; Additional Payment Limitations. In addition to the payment limitations imposed by section 53, payment of any claim approved before the commodity indemnity fund reaches a balance of two million dollars, shall be limited to the following amounts:

- (a) For claims against a licensed warehouse operator, payment shall not exceed the lesser of one million dollars or an amount equal to the licensee's total bushels of licensed capacity multiplied by the rate of twenty-five cents.
- (b) The unpaid balance of any claim subject to this section shall be paid when the commodity indemnity reaches a balance of two million dollars, provided that the total paid on the claims shall not exceed the limit specified in section 53.

SECTION 55. Commodity Indemnity Fund; Payment of Claims; Restrictions, Priority.

The requirement that the regulatory body pay claims under this Act only exists so long as the commodity indemnity fund contains sufficient money to pay the claims. Under no circumstances whatsoever may any funds (other than assessment amounts and other money obtained under this Act) be used to pay claims. In the event that the amount in the commodity indemnity fund is insufficient to pay all approved claims in the amount provided under section 53 and section 54, the claims shall be paid in the order in which they were filed with the regulatory body, until such time as sufficient moneys are available in the commodity indemnity fund to pay all of the claims.

SECTION 56. Commodity Indemnity Fund; Debt and Obligation of Warehouse Operator; Recovery by Regulatory Body:

Amounts paid from the commodity fund in satisfaction of any approved claim shall constitute a debt and obligation of the warehouse operator against whom the claim was made. On behalf of the commodity indemnity fund, the regulatory body may bring suit, file a claim, or intervene in any legal proceeding to recover from the warehouse operator the amount of the payment made from the commodity indemnity fund, together with costs and attorneys' fees incurred.

SECTION 57. Commodity Indemnity Fund; Proceedings Against Licensee. The regulatory body may deny, suspend, or revoke the license of any warehouse operator who fails to timely pay assessments to the commodity fund or against whom a claim has been made, approved, and paid from the commodity indemnity fund, together with costs and attorneys' fees incurred.

SECTION 58. Deposits as Bailments. Whenever any commodity shall be delivered to a licensed warehouse operator, and the ticket or receipt issued therefor provides for the return of a like amount of like kind, grade, and class to the holder thereof, such delivery shall be a bailment and not a sale of the commodity so delivered. In no case shall such commodities be liable to seizure upon process of any court in an action against such bailee, except action by the legal holder of the receipt to enforce the terms thereof. Such commodities, in the event of failure of insolvency of such bailee, shall be applied exclusively to the redemption of such outstanding receipts and tickets covering commodities so stored with such bailee. The commodities on hand in any warehouse or warehouses with a particular license shall be applied to the redemption and satisfaction of receipts and tickets which were issued pursuant to the particular license. Commodities in special piles or special bins shall be applied exclusively against the receipts or tickets issued therefor.

SECTION 59. Application Limited. The provisions of this Act shall not apply to any warehouse operator covered by a license issued under the United States Warehouse Act.

SECTION 60. Effective Date. This Act shall become effective on _____; Provided, that the regulatory body shall have authority upon the enactment of this Act to exercise any powers conferred on it by this Act to the extent necessary to facilitate its full administration on and after such date.