

CHAPTER 553

H.B. No. 2501

AN ACT

relating to the regulation of warehouses and certain cotton buyers.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 14.003, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) The following information prepared by the department in the course of its regulatory authority under this subchapter or required to be submitted to the department in accordance with the department's administration of this subchapter is confidential and not subject to public disclosure:

- (1) inspection reports containing information regarding grain inventory; and*
- (2) financial information provided to the department to establish net worth for purposes of licensure.*

SECTION 2. Subchapter A, Chapter 14, Agriculture Code, is amended by adding Section 14.0091 to read as follows:

Sec. 14.0091. OBLIGATIONS OF WAREHOUSEMAN. The obligations of a warehouseman include the obligation to:

- (1) deliver a commodity to a person holding a receipt for a commodity stored in the warehouse; and*
- (2) maintain the quantity and quality of a commodity as evidenced by and indicated on a warehouse receipt.*

SECTION 3. The heading of Section 14.010, Agriculture Code, is amended to read as follows:

Sec. 14.010. RECOVERY ON BOND; LIABILITY OF WAREHOUSEMAN.

SECTION 4. Section 14.010, Agriculture Code, is amended by adding Subsection (c) to read as follows:

(c) A warehouseman is liable for damages for loss of or injury to a commodity caused by the warehouseman's failure to exercise the care that a reasonably prudent person would exercise in regard to the commodity under similar circumstances, but, unless otherwise agreed, a warehouseman is not liable for damages to a commodity that could not have been avoided through the exercise of that care.

SECTION 5. Section 14.017, Agriculture Code, is amended by adding Subsection (f) to read as follows:

(f) Unless previously canceled in accordance with the provisions of Chapter 7, Business & Commerce Code, a Texas commodity warehouse receipt issued under this chapter expires 10 years after the date of issuance.

SECTION 6. Subchapter A, Chapter 14, Agriculture Code, is amended by adding Section 14.0261 to read as follows:

Sec. 14.0261. WAREHOUSE RECEIPT AS PRIMA FACIE EVIDENCE. In an action involving a warehouseman that is brought under this subchapter, a warehouse receipt constitutes prima facie evidence of the truth of the facts stated in the receipt.

SECTION 7. Subchapter A, Chapter 14, Agriculture Code, is amended by adding Section 14.0262 to read as follows:

Sec. 14.0262. RECOVERY OF COURT COSTS. (a) On prevailing in an action commenced by the department through the attorney general under this subchapter, the department and the attorney general are each entitled to recover:

- (1) investigation costs and fees;*
- (2) reasonable attorney's fees;*
- (3) court costs; and*

(4) other costs relating to the action, including the cost of depositions and other forms of discovery and copying charges.

(b) The costs recoverable under this section are in addition to other relief available to the department or attorney general.

SECTION 8. Subchapter A, Chapter 14, Agriculture Code, is amended by adding Section 14.036 to read as follows:

Sec. 14.036. POSTING OF STORAGE RATES OR TARIFFS. (a) A public commodity warehouse licensed under this subchapter shall post a copy of the storage rates and tariffs charged by the warehouse at the main warehouse office and at each warehouse operating under the license. The public warehouse shall post any change to the posted rates or tariffs not later than the 14th day before the day on which the change is to take effect.

(b) Department inspectors shall check compliance with this section during inspections of a public commodity warehouse under this subchapter.

SECTION 9. Title 132A, Revised Statutes, is amended by adding Article 9103 to read as follows:

Art. 9103. NONAGRICULTURAL PUBLIC WAREHOUSES

Sec. 1. DEFINITIONS. In this article:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "Public warehouse" means a house, building, or room in which personal property that is not an agricultural commodity is stored and protected by a public warehouseman from damage by the elements. "Public warehouse" does not include a self-service storage facility as defined in Chapter 59, Property Code.

(3) "Public warehouseman" means a person who stores personal property that is not an agricultural commodity for hire and issues a negotiable warehouse receipt for such property.

(4) "Agricultural commodity" means wheat, grain sorghum, corn, oats, barley, rye, soybeans, cotton, rice, peas, beans, or any other agricultural product customarily stored in a public warehouse.

Sec. 2. WAREHOUSE REGULATION. A public warehouse operating under this article is under the supervision of the department.

Sec. 3. CERTIFICATE TO TRANSACT BUSINESS. No person may operate a public warehouse without first obtaining a certificate to transact business as a public warehouseman from the department.

Sec. 4. APPLICATION FOR CERTIFICATE. (a) To obtain a certificate to transact business under this article, a person must apply in writing to the department on a form prescribed by the department. The application must state the name and location of the public warehouse and:

(1) the name of each person with an interest as owner or principal in the public warehouse; or

(2) the name of the president, secretary, and treasurer of the corporation if a corporation owns or manages the public warehouse.

(b) The department shall issue the certificate and retain for department records a copy of the application.

Sec. 5. BOND. (a) A person receiving a certificate to transact business shall file a bond with the department.

(b) The bond must be:

(1) payable to the state;

(2) of good and sufficient surety;

(3) conditioned on faithful performance of the applicant's duty as a public warehouseman; and

(4) in the amount of \$5,000.

(c) A bond is subject to approval by the department.

Sec. 6. RECEIPTS. (a) *The owner or depositor of property stored in a public warehouse may request from the public warehouseman a negotiable receipt for the property stored in the warehouse.*

(b) *The receipt shall be signed by the public warehouseman or the warehouseman's agent and state the information required by Section 7.202 of the Uniform Commercial Code.*

(c) *The public warehouseman shall number receipts consecutively in the order of their issue and shall keep a correct record of receipts issued that is available for public inspection at reasonable hours.*

Sec. 7. DUPLICATE RECEIPTS. (a) *A public warehouseman may not issue a duplicate receipt or two receipts bearing the same number from the same public warehouse during the same calendar year, except as provided by Subsection (b) of this section.*

(b) *If a receipt is lost or destroyed, the public warehouseman shall issue a new receipt that:*

(1) *bears the same date and number as the original receipt;*

(2) *is plainly marked "duplicate" on its face; and*

(3) *is secured with a deposit:*

(A) *made by the person requesting the duplicate receipt; and*

(B) *acceptable to the warehouseman to protect a person who may hold the original receipt in good faith and for valuable consideration.*

Sec. 8. RECEIPT TO BE ISSUED ONLY ON DELIVERY. *A public warehouseman may not issue a receipt until the goods secured by the receipt are actually delivered to the public warehouse and are under the control of the public warehouseman issuing the receipt.*

Sec. 9. DELIVERY. (a) *A public warehouseman shall immediately deliver property held in the warehouse on:*

(1) *presentation of a properly endorsed receipt issued by the warehouseman to represent the property; and*

(2) *payment by the holder of the receipt of all proper warehouse charges on property represented by the receipt.*

(b) *Unless a receipt has been lost or canceled, a public warehouseman may not deliver property represented by a receipt until the receipt is surrendered and canceled.*

(c) *On delivery of goods represented by a receipt, the public warehouseman shall cancel the receipt by writing "canceled" in ink on the receipt and placing the warehouseman's name on the face of the receipt. A canceled receipt is void and may not be circulated.*

(d) *A public warehouseman who fails to strictly comply with this section is liable to the legal holder of the receipt for the full value at the time of the default of the property represented by the receipt.*

Sec. 10. EXCEPTIONS. (a) *This article does not apply to private warehouses or the issuance of receipts by the owners or managers of private warehouses.*

(b) *This article does not prohibit a public warehouseman from issuing the same type of receipt issued by a private warehouse, provided that the face of the receipt is plainly marked: "Not a public warehouse receipt."*

(c) *This article does not apply to public warehouses owned, controlled, operated, or leased by motor carriers licensed by and within the jurisdiction of the Railroad Commission of Texas under the provisions of Article 911b, Vernon's Texas Civil Statutes, or their agents.*

Sec. 11. STORAGE CHARGES. (a) *The department may set minimum storage charges for a public warehouse operating under this article.*

(b) *The department is not required to set equal charges at all places or all times and may take into consideration the local conditions and volume of business of each public warehouse.*

Sec. 12. REVOCATION OF CERTIFICATE. *After a hearing the commissioner may deny, suspend, or revoke a certificate to transact business and may impose administrative sanctions and penalties and seek injunctive relief and civil penalties against a public warehouseman as provided by Article 9100, Revised Statutes.*

SECTION 10. Chapter 113, Agriculture Code, is repealed.

SECTION 11. This Act takes effect September 1, 1993.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 11, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2501 on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 23, 1993, by a viva-voce vote.

Approved June 8, 1993.

Effective Sept. 1, 1993.