

CHAPTER 127

WAREHOUSE KEEPERS AND GRAIN DEALERS SECURITY ACT

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127.01 Definitions. In this chapter, unless the context otherwise requires:

(1) "Affiliate" means any officer, director, partner, member or manager of a warehouse keeper or grain dealer, any firm or corporation owned or operated by an officer, director, partner, member or manager of a warehouse keeper or grain dealer and any person acting as agent for a warehouse keeper or grain dealer, who is engaged in the business of buying grain from, or contracting for the growing of grain by, a producer on behalf of a warehouse keeper or grain dealer.

(1g) "Asset" means anything of value owned, including current assets, fixed assets and other assets.

(1r) "Audited financial statement" means a financial statement on which an independent certified public accountant, or a public accountant, who holds a certificate of authority under ch. 442, has expressed an opinion in accordance with generally accepted accounting principles and has conducted an audit in accordance with generally accepted auditing standards.

(2) "Balance sheet" means a statement of the assets, liabilities and equity on a specific date.

(3) "Capacity" means the maximum amount of grain, measured in bushels, which may be stored in a warehouse. The capacity of a warehouse shall be determined by dividing the cubic volume of all bins by 1.244 cubic feet.

(4) "Cash payment" means payment in the form of currency, certified check, money order, barter, or advance money transfer arrangement with a bank which is evidenced in writing.

(5d) "Class A grain dealer" means any of the following:

(a) A person engaged in the business of buying grain from or selling grain for producers for introduction into commercial channels, who is not an exempt dealer or a Class B or Class C grain dealer.

(b) A feeder of livestock or poultry or a producer that expends \$400,000 or more annually for the purchase of grain from producers or a person that buys grain from producers only in connection with or incidental to the operation of a feed mill or other manufacturing operation and that expends \$400,000 or more annually for the purchase of grain from producers.

(5p) "Class B grain dealer" means a person that buys grain from producers only in connection with or incidental to the operation of a feed mill or other manufacturing operation and that expends less than \$400,000 annually for the purchase of grain from producers.

(5t) "Class C grain dealer" means a feeder of livestock or poultry or a producer that expends less than \$400,000 annually for the purchase of grain from producers solely for his or her own use as a feed or seed or a producer that is engaged solely in selling grain that he or she has produced.

(6) "Current assets" means cash and assets, including trade or investment items, that may be readily converted into cash in the

ordinary course of business within one year after the date of the balance sheet.

(7) "Current liabilities" means those liabilities that are due and payable within a period of one year after the date of the balance sheet.

(8) "Deferred payment contract" means any agreement to purchase grain from or to sell grain for producers if full payment for the grain is not made when the grain dealer obtains title to or takes control of the grain.

(9) "Deferred price contract" means any agreement to purchase grain from or sell grain for producers if the purchase price has not been specifically agreed upon at the time the grain dealer obtains title to, or takes control of the grain.

(10) "Department" means the department of agriculture, trade and consumer protection.

(11) "Depositor" means:

(a) A person who delivers grain to a warehouse keeper for storage, conditioning, shipping, handling or eventual sale.

(b) An owner or legal holder of a scale ticket, warehouse receipt or other document issued by a warehouse keeper for grain, who is lawfully entitled to possession or payment for the grain represented by the ticket, receipt or other document.

(12) "Equity" means the excess of total assets over total liabilities.

(13) "Equity statement" means a report of the change in equity from the beginning to the end of the accounting period.

(13m) "Exempt dealer" means a dealer who buys grain from producers only on the basis of currency, certified check, money order, barter or an advance money transfer arrangement with a bank which is evidenced in writing.

(14) "Exempt warehouse keeper" means a warehouse keeper operating one or more warehouses which have a combined total capacity of less than 50,000 bushels available for public storage.

(15) "Federal act" means the federal warehouse act under 7 USC 241 to 271, in effect on September 1, 1985.

(16) "Financial statement" means a financial statement that meets the requirements under s. 127.06 (2).

(17) "Fixed assets" means those assets representing investments of a more permanent nature, such as land, buildings, machinery and equipment.

(18) "Grain" means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flaxseed, milo, sunflower seed and mixed grain as defined in the federal grain standards act of 1916 (7 USC 71 et. seq.) as amended on July 1, 1980. The term does not include canning crops for processing or grain used or intended for use solely for sowing purposes.

(19) "Grain dealer" means a Class A grain dealer, Class B grain dealer, Class C grain dealer or exempt grain dealer. "Grain dealer" does not include:

(c) A broker acting solely as an agent bringing buyers and sellers together without taking title to or possession of any grain or the proceeds.

(d) A person engaged solely in buying or selling commodity futures on a board of trade or commodity exchange.

(21) "Income statement" means a report of the financial results of business operations for a specific period.

(22) "Interim statement" means a financial statement prepared on a date other than the end of a fiscal year.

(23) "Liability" means an obligation to pay money or other assets or to render a service to another person either currently or in the future.

(24) "Other assets" means noncurrent assets other than fixed assets.

(25) "Producer" means an owner, tenant or operator of land who is engaged in the growing and production of grain on the land.

(25m) "Reviewed financial statement" means a financial statement that is reported on by an independent certified public accountant, or a public accountant who holds a certificate of authority under ch. 442, in accordance with generally accepted accounting principles applicable to reviewed statements but that is not audited by the accountant.

(26) "Statement of cash flows" means a report that summarizes the financing and investing activities of an entity, including cash generated from operations and changes in cash during the period that is covered by the report.

(28) "Warehouse" means any building, bin or storage facility used for receiving, storing, conditioning, shipping or handling grain. This term does not include transport vehicles or facilities used for on-farm drying.

(29) "Warehouse keeper" means a person, including a cooperative association, engaged in operating one or more warehouses in this state for the receiving, conditioning, storing or shipping of grain for others. "Warehouse keeper" does not include a person licensed under the federal act.

History: 1979 c. 335; 1983 a. 284; 1985 a. 29 ss. 1811 to 1818, 1827, 1829m, 1831, 1833; 1989 a. 282; 1991 a. 39; 1993 a. 112

127.02 Registration requirement for warehouse keepers; fees. (1) **REQUIREMENT; EXCEPTION.** No person may act as a warehouse keeper unless the person obtains an annual warehouse keeper's certificate of registration issued by the department. The requirements of this section do not apply to an exempt warehouse keeper unless the warehouse keeper holds himself or herself out as a bonded or registered warehouse keeper.

(2) **APPLICATION.** An application for an annual warehouse keeper's certificate of registration shall be filed on a form prescribed by the department. The application shall include information reasonably required by the department for registration purposes. An application shall be accompanied by all applicable fees and surcharges under sub. (3).

(3) **FEEES.** (a) **Registration fees.** The fee for an annual warehouse keeper's certificate of registration is \$50. A warehouse keeper maintaining more than one business location in this state shall pay an additional registration fee of \$25 for each additional location.

(am) **Registration fee surcharge.** An applicant for an annual warehouse keeper's certificate of registration shall pay a registration fee surcharge of \$500 if the department determines that, within 365 days prior to submitting an application for a warehouse keeper's certificate of registration, the applicant acted as a warehouse keeper without a certificate of registration in violation of sub. (1). Payment of the registration fee surcharge does not relieve the applicant of other civil or criminal liability that may result from acting as a warehouse keeper without a certificate of registration, but does not constitute evidence of a violation of law.

(b) **Inspection fees.** 1. A warehouse keeper shall pay an annual inspection fee to the department based on the combined storage

capacity of all of the warehouse keeper's warehouses. The inspection fee is, if the combined storage capacity is:

- a. Less than 150,000 bushels, \$300.
- b. At least 150,000 bushels but less than 250,000 bushels, \$325.
- c. At least 250,000 bushels but less than 500,000 bushels, \$375.
- d. At least 500,000 bushels but less than 750,000 bushels, \$425.
- e. At least 750,000 bushels but less than 1,000,000 bushels, \$475.
- f. One million bushels or more, \$525.

2. In addition to the inspection fee specified under subd. 1., a warehouse keeper shall annually pay to the department an inspection fee of \$100 for each business location other than the warehouse keeper's principal business location.

(c) **Deposit of fees.** All fees and surcharges received under this subsection shall be credited to the appropriation under s. 20.115 (1) (jm).

(d) **Rules.** The department may promulgate rules modifying the amount of the fees and surcharges established under this subsection.

(3m) **REGISTRATION CONTINGENT ON PAYMENT OF FEES AND SURCHARGE.** The department may not issue or renew a certificate of registration under sub. (1) unless the applicant pays all fees and any applicable surcharge required under sub. (3), as set forth in a statement from the department. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not required to be paid as a condition of registration under this section.

(4) **EXPIRATION; NONTRANSFERABLE.** The annual warehouse keeper's certificate of registration expires on August 31 of each year and is not transferable.

(5) **DISPLAY.** A warehouse keeper shall display prominently a copy of the annual warehouse keeper's certificate of registration in each business location in this state operated by the warehouse keeper.

History: 1979 c. 335; 1985 a. 29; 1993 a. 16.

127.03 Registration requirement for dealers. (1) **REQUIREMENT.** No person may act as a grain dealer unless the person obtains an annual grain dealer's certificate of registration issued by the department. The requirements of this section do not apply to a Class C grain dealer unless the Class C grain dealer registers voluntarily or to an exempt grain dealer.

(2) **APPLICATION.** An application for an annual grain dealer's certificate of registration shall be filed on a form prescribed by the department. The application shall include information reasonably required by the department for registration purposes. An application shall be accompanied by all applicable fees and surcharges under sub. (3).

(3) **REGISTRATION FEES.** (a) The fee for an annual grain dealer's certificate of registration shall be as follows:

1. For a Class A grain dealer, \$400, plus a surcharge of \$250 if the grain dealer's financial statement is not audited.
2. For a Class B grain dealer, \$175.
3. For a Class C grain dealer, \$50.

(b) In addition to the fee specified under par. (a), if a grain dealer operates more than one truck, the grain dealer shall pay an additional registration fee of \$10 for each additional truck that he or she uses for dealing in grain.

(bg) An applicant for an annual grain dealer's certificate of registration shall pay a registration fee surcharge of \$500 if the department determines that, within 365 days prior to submitting an application for a grain dealer's certificate of registration, the applicant acted as a grain dealer without a certificate of registration in violation of sub. (1). Payment of the registration fee surcharge does not relieve the applicant of other civil or criminal lia-

bility that may result from acting as a grain dealer without a certificate of registration, but does not constitute evidence of a violation of law.

(br) The department may promulgate rules modifying the amount of the fees and surcharges established under this subsection.

(c) All fees and surcharges received under this subsection shall be credited to the appropriation under s. 20.115 (1) (jm).

(3m) REGISTRATION CONTINGENT ON PAYMENT OF FEES AND SURCHARGE The department may not issue or renew a certificate of registration under sub. (1) unless the applicant pays all fees and any applicable surcharge under sub. (3), as set forth in a statement from the department. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not required to be paid as a condition of registration under this section.

(4) EXPIRATION; NONTRANSFERABLE The annual grain dealer's certificate of registration expires on August 31 of each year and is not transferable.

(5) DISPLAY A grain dealer shall display prominently a copy of the annual grain dealer's certificate of registration on each truck used for dealing in grain operated by the grain dealer and at the grain dealer's permanent business address, if he or she is required to maintain a permanent business address under s. 127.10 (6).

History: 1979 c. 335; 1991 a. 39; 1993 a. 16.

127.04 Applicability to nonresident grain dealers. A nonresident grain dealer, not maintaining an office or place of business in this state, engaged in this state in buying grain from or selling grain for producers in this state, is subject to registration and other provisions of this chapter relating to the purchase or sale of grain, whether or not the purchase or sale transaction takes place wholly or in part in this state.

History: 1979 c. 335; 1985 a. 29 s. 3200 (3).

127.05 Warehouse keeper's insurance. (1) REQUIREMENT; EXCEPTION A warehouse keeper shall file and maintain with the department a certificate or other satisfactory evidence of fire and extended coverage insurance issued by an insurance company authorized to do business in this state insuring all grain in the custody of the warehouse keeper, whether held for others or owned by the warehouse keeper, at the full local market value of the grain. The requirements of this section do not apply to an exempt warehouse keeper unless the warehouse keeper holds himself or herself out as a bonded warehouse keeper.

(2) CANCELLATION An insurance policy required under this chapter shall provide that the policy may not be canceled by the warehouse keeper or insurance company except on 30 days' prior written notice served on the department in person or by certified mail. The warehouse keeper shall obtain and file satisfactory evidence of replacement insurance with the department within the 30-day period and prior to the expiration of the policy. The department shall suspend the registration of a warehouse keeper without prior notice or hearing if the warehouse keeper does not secure and file satisfactory evidence of replacement insurance as required under this section.

History: 1979 c. 335.

127.06 Financial statement; warehouse keepers and grain dealers. (1) FILING REQUIREMENTS (a) Except as provided in par. (c), each warehouse keeper and each Class A grain dealer shall file with the department a financial statement with his or her initial application for a certificate of registration filed under s. 127.02 (2) or 127.03 (2). If a warehouse keeper's warehouses have a combined storage capacity of less than 500,000 bushels, the financial statement of that warehouse keeper shall be audited or reviewed. If a warehouse keeper's warehouses have a combined storage capacity of 500,000 bushels or more, the financial statement of that warehouse keeper shall be audited. If a Class A grain dealer buys or sells less than \$2,000,000 of grain during the grain dealer's fiscal year, the financial statement of that

grain dealer shall be audited or reviewed. If a Class A grain dealer buys or sells \$2,000,000 or more of grain during the grain dealer's fiscal year, the financial statement of that grain dealer shall be audited. All financial statements shall conform to the requirements under sub. (2).

(b) Except as provided in par. (c), each registered warehouse keeper and each Class A grain dealer shall file a financial statement with the department annually, on or before the 15th day of the 4th month after the close of the warehouse keeper's or grain dealer's fiscal year, or as otherwise required by the department. A financial statement filed under this paragraph shall be audited or reviewed as specified in par. (a). All financial statements shall conform to the requirements under sub. (2).

(c) The filing requirements under pars. (a) and (b) do not apply to an exempt warehouse keeper, unless the exempt warehouse keeper claims to be a bonded warehouse keeper.

(d) Notwithstanding par. (c), the department may require any warehouse keeper or Class A grain dealer to file a financial statement or interim statement at any time the department deems it necessary.

(2) CONTENTS. (a) Except as provided in par. (b), a financial statement shall consist of a balance sheet, income statement, equity statement, statement of cash flows, notes to financial statements and other information required by the department, and shall be prepared in conformity with generally accepted accounting principles. Except as provided in par. (b), a warehouse keeper's financial statement shall disclose, separately and clearly, the warehouse keeper's obligations to depositors in the form of negotiable and nonnegotiable warehouse receipts, scale tickets and collateral warehouse receipts. Except as provided in par. (b), a grain dealer's financial statement shall disclose, separately and clearly, the grain dealer's obligations to producers in the form of scale tickets, receipts, settlement sheets and contracts for grain purchased from producers. All reviewed financial statements shall be sworn to by the warehouse keeper or grain dealer filing the statement.

(b) A warehouse keeper or a Class A grain dealer that has not previously engaged in those businesses may file an initial financial statement, consisting of an opening balance sheet and notes to that balance sheet, prepared in conformity with generally accepted accounting principles.

(3) ACCESS TO STATEMENT A financial statement is not subject to s. 19.35 and the department may keep a financial statement closed to the public, although the department may utilize and release a financial statement in an enforcement action, administrative hearing or court proceeding.

History: 1979 c. 335; 1981 c. 335 s. 26; 1985 a. 29; 1991 a. 39, 269.

127.07 Warehouse keeper's and grain dealer's bond or security. (1) PERMISSIVE BOND Any warehouse keeper or grain dealer may maintain a bond ensuring the warehouse keeper's or grain dealer's faithful performance of his or her duties as a warehouse keeper or a grain dealer.

(2) REQUIRED BOND FOR WAREHOUSE KEEPERS AND GRAIN DEALERS CLAIMING TO BE BONDED No warehouse keeper or grain dealer may claim to be a bonded warehouse keeper or bonded grain dealer unless the warehouse keeper or grain dealer files supplementary reports and financial statements with the department in accordance with sub. (5) and s. 127.06 (1) and maintains a bond on file with the department complying with minimum bonding requirements under sub. (6).

(3) REQUIRED BOND OR SECURITY; WAREHOUSE KEEPERS AND GRAIN DEALERS FAILING TO MEET MINIMUM FINANCIAL STANDARDS (a) No person may act as a warehouse keeper or Class A grain dealer without maintaining compliance with the minimum financial standards under sub. (4) unless the warehouse keeper or grain dealer:

1. Files supplementary reports with the department under sub. (5); and

2. Maintains a bond on file with the department complying with the requirements under sub. (6) or security complying with the requirements under sub. (7).

(b) This subsection does not apply to an exempt warehouse keeper, unless the exempt warehouse keeper claims to be a bonded warehouse keeper.

(4) MINIMUM FINANCIAL STANDARDS. (a) *Warehouse keepers.* The minimum financial standards for a warehouse keeper are met if the warehouse keeper maintains all of the following:

1. A minimum ratio of current assets to current liabilities of 1.25 to 1 on the annual financial statement under s. 127.06 (1) (b).

2. A minimum ratio of current assets to current liabilities of 1.0 to 1.0 at all times of the year other than the end of the warehouse keeper's fiscal year.

3. Equity that is equal to \$50,000 or the product obtained by multiplying the bushel capacity of the warehouse by 10 cents, whichever is greater.

(b) *Class A grain dealers.* The minimum financial standards for a Class A grain dealer are met if the grain dealer maintains all of the following:

1. A minimum ratio of current assets to current liabilities on the annual financial statement under s. 127.06 (1) (b) as follows:

a. Before September 1, 1992, a ratio of 1.1 to 1.

b. Beginning on September 1, 1992, and ending on August 31, 1994, a ratio of 1.2 to 1.

c. On and after September 1, 1994, a ratio of 1.25 to 1.

2. A minimum ratio of current assets to current liabilities of 1.0 to 1.0 at all times of the year other than the end of the grain dealer's fiscal year.

3. Equity that is equal to \$10,000 or 5% of the dollar amount that the grain dealer paid during the grain dealer's last completed fiscal year for grain purchased from producers, whichever is greater, but a grain dealer is not required to have an equity that is more than \$500,000.

(c) *Notification requirement.* A warehouse keeper or Class A grain dealer shall immediately notify the department whenever the warehouse keeper or grain dealer knows or has reason to know that he or she is not meeting the financial standards under this subsection.

(5) SUPPLEMENTARY REPORTS. (a) *Warehouse keepers.* A warehouse keeper's supplementary report that is required to be filed under sub. (2) or (3) shall be filed with the department on or before the 10th day of each month and it shall state the inventory of each type of grain in storage in each of the warehouse keeper's warehouses on the last day of the previous month.

(b) *Grain dealers.* A grain dealer's supplementary report that is required to be filed under sub. (2) or (3) shall be filed with the department on or before the 10th day of each month and it shall state all of the following:

1. The total number of bushels of grain, and the total purchase cost of each type of grain, purchased during the previous month.

2. The total number of bushels purchased of each type of grain for which the grain dealer has not yet paid, and the amount remaining to be paid for each type of grain.

(6) MINIMUM BONDING REQUIREMENTS. (a) *General requirements.* A bond filed with the department under this section shall be:

1. Made payable to the department for the benefit of depositors or for the benefit of producers selling grain to a grain dealer.

2. Endorsed by a surety company authorized to do business in this state.

3. In a form approved by the department and shall contain all of the terms and conditions required by the department.

4. Continuing and subject to cancellation only upon 90 days' written notice to the department. A bond may not be canceled by a warehouse keeper, grain dealer or surety company except on 90

days' written notice to the department, served in person or by certified mail.

(b) *Amount of bond, warehouse keepers.* The amount of a warehouse keeper's bond filed with the department under this section may not be less than 20% of the current market value of the grains stored in the warehouse, except that no bond may be in an amount less than \$25,000 and no bond is required to be in an amount greater than \$500,000.

(c) *Amount of bond, grain dealers.* The amount of a grain dealer's bond filed with the department under this section shall be in a principal amount, to the next highest \$1,000, equal to 10% of the aggregate dollar amount paid by the grain dealer to producers for grain purchased from them during the grain dealer's last completed fiscal year or, in the case of a grain dealer that has been engaged in business as a grain dealer for less than one year or that has not previously engaged in business as a grain dealer, 10% of the dollar amount estimated by the department to be paid by the grain dealer to producers for grain purchased from them during the next year. The bond may not be less than \$25,000 and is not required to be more than \$500,000.

(7) MINIMUM SECURITY REQUIREMENTS. (a) *General requirements.* Security filed with the department under this section shall be:

1. Evidenced by a private surety agreement assigning sufficient security to the department for the benefit of depositors or for the benefit of producers selling grain to a grain dealer. The surety agreement shall:

a. Be filed with the department.

b. Be in the form required by the department; and

c. Contain all the terms and conditions required by the department.

2. In one of the following forms:

a. Cash or negotiable securities.

b. Stocks, bonds or other marketable securities at current market value.

c. Pledges of or a security interest in other property readily convertible into cash, including inventory and accounts receivable but excluding depositor-owned grain, subject to rights of possession or control over the security as the department considers necessary.

d. Irrevocable bank letters of credit.

(b) *Amount of security, warehouse keepers.* The amount of a warehouse keeper's security filed with the department under this section shall not be less than 20% of the current market value of the grains stored in the warehouse except that no security may be in an amount less than \$25,000 and no security is required to be in an amount greater than \$500,000.

(c) *Amount of security, grain dealers.* The amount of a grain dealer's security filed with the department under this section shall be in a principal amount, to the next highest \$1,000, equal to 10% of the aggregate dollar amount paid by the grain dealer to producers for grain purchased from them during the grain dealer's last completed fiscal year or, in the case of a grain dealer that has been engaged in business as a grain dealer for less than one year or that has not previously engaged in business as a grain dealer, 10% of the dollar amount estimated by the department to be paid by the grain dealer to producers for grain purchased from them during the next year. The security may not be less than \$25,000 and is not required to be more than \$500,000.

(8) REPLACEMENT OF A CANCELED BOND. (a) *Notification.* If the department receives a notice of cancellation of a bond filed under sub. (2) or (3), the department shall notify the warehouse keeper or grain dealer in writing as to the amount and terms of any replacement bond that must be filed with the department to comply with this section. Notice shall be served by certified mail or by personal service.

(b) *Replacement bond.* A warehouse keeper or grain dealer shall obtain and file a satisfactory replacement bond with the

department, according to the terms of the notice under par. (a), within 30 days after receipt of the notice from the department. If a warehouse keeper or grain dealer fails to obtain and file a replacement bond according to the terms of the department notice within 30 days after receipt of the notice, the department shall by a summary special order summarily suspend the warehouse keeper's or grain dealer's certificate of registration. If a warehouse keeper or grain dealer fails to obtain and file a replacement bond according to the terms of the department notice within 60 days after the receipt of the notice, the department shall by a summary special order summarily revoke the warehouse keeper's or grain dealer's certificate of registration. A summary special order issued under this paragraph is subject to the conditions under s. 127.17 (1) (b) 2. and 3.

(9) ADDITIONAL BOND OR SECURITY (a) *Notification.* If the department determines that the amount of a bond or security filed under sub. (2) or (3) does not meet the minimum requirements under sub. (6) or (7), the department shall notify the warehouse keeper or grain dealer in writing as to the amount and terms of any additional bond or security that is required. Notice shall be served by certified mail or personal service.

(b) *Additional bond or security.* A warehouse keeper or grain dealer shall obtain and file satisfactory additional bond or security with the department, according to the terms of the notice under par. (a), within 30 days after receipt of the notice from the department. If a warehouse keeper or grain dealer fails to obtain and file additional bond or security according to the terms of the department notice within 30 days after receipt of the notice, the department shall by a summary special order summarily suspend the warehouse keeper's or grain dealer's certificate of registration. If a warehouse keeper or grain dealer fails to obtain and file additional bond or security according to the terms of the department notice within 60 days after receipt of the notice, the department shall by a summary special order summarily revoke the warehouse keeper's or grain dealer's certificate of registration. A summary special order issued under this paragraph is subject to the conditions under s. 127.17 (1) (b) 2. and 3.

(9m) INTERIM SECURITY While an initial financial statement under s. 127.06 (2) (b) is being prepared by a warehouse keeper or grain dealer that has not previously engaged in those businesses, or while a notice under sub. (8) (a) to file a replacement bond or a notice under sub. (9) (a) to file an additional bond or security is pending, the department may require the warehouse keeper or grain dealer to file with the department a bond or security, including a bond that does not meet the requirements of sub. (6) or security that does not meet the requirements of sub. (7), in the interim until the warehouse keeper or grain dealer files a bond that meets the requirements under sub. (6) and, if applicable, the notice under sub. (8) (a) or (9) (a) or until the warehouse keeper or grain dealer files security that meets the requirements under sub. (7) and, if applicable, the notice under sub. (9) (a). The department may reject any bond or security filed under this subsection that the department finds unacceptable.

(10) REMOVAL OF BOND OR SECURITY REQUIREMENT A warehouse keeper or grain dealer who has filed a bond or security under sub. (3) is required to maintain the bond or security until the department releases him or her from the requirement. A warehouse keeper or grain dealer may petition the department at any time for removal of the requirement that a bond or security be maintained. If the department is satisfied, based on 2 successive annual financial statements, that the warehouse keeper or grain dealer has demonstrated compliance with the minimum financial standards, the department may release the warehouse keeper or grain dealer from the obligation to maintain a bond or security.

History: 1979 c. 335; 1985 a. 29; 1991 a. 39, 269.

127.09 Duties of warehouse keeper. (1) SCALE TICKET OR RECEIPT No warehouse keeper may receive grain from any depositor unless the warehouse keeper furnishes the depositor or the depositor's agent with a scale ticket or other written evidence

of receipt or storage at the time the grain is received. The document shall include the kind, quality and weight of grain received, and other terms and conditions under which the grain is received. Scale tickets and receipts for grain shall be considered storage receipts unless otherwise clearly designated. A warehouse keeper shall keep copies of all scale tickets and receipts for at least 6 years or for as long as the scale ticket or receipt remains outstanding, whichever is longer. A warehouse keeper shall make copies of all scale tickets and receipts available to the department for inspection and copying upon request.

(2) WEIGHT, GRADE, QUALITY A warehouse keeper shall make accurate determinations of the weight of grain through the use of accurate weighing equipment. If determinations are made on the basis of grade and quality, the warehouse keeper shall make accurate determinations of grade and quality through the use of accurate testing and grading equipment.

(3) MAINTAIN FACILITIES A warehouse keeper shall maintain equipment and facilities which are adequate to protect grain from loss or abnormal deterioration while in storage and is responsible for the care and safekeeping of grain while in storage.

(4) MAINTAIN SUFFICIENT INVENTORY A warehouse keeper shall at all times maintain grain inventories sufficient in quantity and quality to meet all outstanding obligations for grain received or held in storage for depositors.

(5) RECORDS AND ACCOUNTS A warehouse keeper shall maintain current, complete and accurate records and accounts of all grain received into or withdrawn from the warehouse, including daily position records, which will permit the ready determination of total grain on hand or in storage, and all obligations relating to grain received or withdrawn.

History: 1979 c. 335; 1985 a. 29.

127.10 Duties of grain dealers. (1) DOCUMENTATION. No grain dealer may purchase grain from or sell grain for any producer unless the grain dealer furnishes the producer or the producer's agent with written documentation evidencing the purchase or sales transaction at the time the grain is purchased or received for sale. Documentation shall include a record of the kind and weight of grain purchased or received for sale, the date of receipt by the grain dealer and the price and terms of purchase or sale. The grain dealer shall furnish scale tickets or other appropriate receipts to the producer or producer's agent whenever grain is received.

(2) WEIGHT, GRADE, QUALITY A grain dealer shall make accurate determinations of the weight of grain through the use of accurate weighing equipment. If determinations are made on the basis of grade and quality, the grain dealer shall make accurate determinations of grade and quality through the use of accurate testing and grading equipment.

(3) RECORDS AND ACCOUNTS If a grain dealer uses any deferred payment or deferred price contracts, the grain dealer shall maintain records and accounts which indicate all of the grain dealer's liabilities and obligations under those contracts, including the names and addresses of the other parties to the contracts. All required records and accounts shall be current, complete and accurate.

(4) COMPLIANCE WITH CONTRACTS A grain dealer buying grain from or selling grain for producers shall make payment for the grain when due under the terms of any purchase or sale contract or agreement. A forged check, check drawn on an account with insufficient funds or other nonnegotiable check is not considered payment under the terms of any purchase or sale contract or agreement.

(5) DEFERRED PAYMENT OR DEFERRED PRICE CONTRACT A grain dealer who uses any deferred payment or deferred price contract shall furnish the producer with a written contract at the time the contract is entered into or when the grain dealer obtains title to or takes control of the grain, whichever is earliest. The contract shall state the price or the formula on which the price is to be based,

terms of the purchase or sale and the date on which payment is to be made.

(6) **PERMANENT BUSINESS LOCATION.** (a) A Class A grain dealer and Class B grain dealer shall maintain a permanent business address at which the grain dealer may be readily contacted during business hours. A grain dealer's permanent business address shall be provided to every producer from whom the grain dealer buys grain or for whom the grain dealer sells grain.

(b) Any grain dealer under par. (a) who purchases grain under a deferred price contract shall have business hours that begin at 9:30 a.m. and that continue until 1:30 p.m. each week day. The business hours that are required under this paragraph shall be prominently posted at the business location.

History: 1979 c. 335; 1985 a. 29 ss. 1872 to 1876, 3200 (3); 1991 a. 39.

127.105 Liability of warehouse keepers and grain dealers. (1) A warehouse keeper or grain dealer is liable to a producer if a subsidiary or affiliate of the warehouse keeper or grain dealer fails to pay the producer in full, in cash and according to the terms of the contract between the subsidiary or affiliate and the producer, amounts owed to the producer by the subsidiary or affiliate.

(2) Any corporation or cooperative that owns, controls or acts as a warehouse keeper or grain dealer is liable to a producer if the warehouse keeper or grain dealer fails to pay in full, in cash and according to the terms of the contract between the warehouse keeper or grain dealer and the producer, amounts owed to the producer by the warehouse keeper or grain dealer.

(3) The department may commence an action in the circuit court for the county in which the warehouse keeper or grain dealer is located to enforce this section.

History: 1991 a. 39

127.11 Prohibitions; warehouse keepers and grain dealers. (1) **MISREPRESENTATION OF WEIGHT, GRADE OR QUALITY.** No warehouse keeper or grain dealer may misrepresent the weight, grade or quality of grain received from or delivered to any person.

(2) **FALSE OR MISLEADING STATEMENT.** No warehouse keeper or grain dealer may make any false or misleading statement in any application for a certificate of registration or in any other statement or report required to be submitted to the department.

History: 1979 c. 335; 1985 a. 29 s. 1885; Stats. 1985 s. 127.11

127.12 Producers and depositors; duties and prohibitions. (1) No producer or depositor who contracts for the future sale and delivery of grain at an agreed price may refuse to sell or deliver grain at the agreed price in accordance with the terms of the contract.

(2) A grain dealer may, prior to purchasing grain from, or selling grain for, a producer or depositor, require as a condition to the purchase or sale that the producer or depositor provide the grain dealer with a written statement which specifies the existence, nature and amount of any liens or security interests in the grain and the identity of any lien or security interest holders. No producer or depositor may falsify any information provided to a grain dealer under this subsection, or fraudulently withhold information to obtain a sale of grain.

History: 1985 a. 29

127.13 Enforcement procedures. (1) **AUTHORITY OF DEPARTMENT.** The department may investigate or inspect a warehouse keeper or grain dealer's operation at any time deemed necessary to determine qualifications for a certificate of registration, compliance with this chapter or rules promulgated under this chapter, the sufficiency of grain on hand to meet obligations to depositors or the ability of the grain dealer or warehouse keeper to make payment for grain when due. In connection with an investigation, the department may require a grain dealer or warehouse keeper to file a sworn or audited statement of business operations

and financial position, including a current daily position statement.

(2) **ANNUAL INSPECTION OF WAREHOUSES.** The department shall inspect each warehouse in this state operated by a warehouse keeper annually and may inspect such a warehouse at other times.

(3) **PERIODIC REVIEW OF GRAIN DEALERS' RECORDS.** The department shall periodically review the records of each grain dealer in this state.

History: 1979 c. 335; 1985 a. 29 s. 1878; Stats. 1985 s. 127.13; 1991 a. 39

127.14 Payment of claims. (1) **FILING; NOTICE; AUDIT; PAYMENT** (a) **Filing.** Any depositor or producer injured by the breach of any grain dealer or warehouse keeper obligation under this chapter may file with the department a claim. Upon receipt of the claim or any other evidence of default, the department, by order, may require all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department.

(b) **Notice.** Notice of the entry of the order shall be given by posting a copy of the order at the warehouse or at the grain dealers place of business and on each truck operated by the grain dealer and by publication of a class 3 notice, under ch. 985, in the affected area. The date of last insertion shall not be less than 30 days prior to the last date for the filing of the claims.

(c) **Audit; allowance of claims.** The department shall make the necessary audit and by order allow or disallow all claims presented. Notice of allowance or disallowance and request for the payment within 30 days of the claims allowed shall be sent to the grain dealer or warehouse keeper and his or her surety, if any, by registered mail.

(d) **Payment of claims.** The department may demand, collect and receive from the grain dealer or warehouse keeper or from any surety, the amount determined to be necessary to satisfy the claims. The department, by special order, may direct the warehouse keeper or grain dealer to deliver ownership or control of grain to the department in a quantity determined necessary to satisfy the claims. The department may commence an action to enforce these orders in the circuit court for the county where the warehouse is located or any county where the grain dealer has conducted business. Upon receipt of the money or the ownership or control of grain to be applied to the satisfaction of the claims, the department shall make distribution to the claimants in accordance with the order allowing claims, in full or proportionately, as the case may be. No claims covering transactions in which the producer and any other party having an interest in the transaction has granted to the grain dealer a written extension of credit may be allowed or paid under this subsection.

(e) **Breach affecting a limited number of claimants.** The department is not required to proceed under this section if a claim is limited to an individual producer or depositor, or to a small number of producers or depositors.

(2) **PRIORITY.** The claim of a producer against a grain dealer because of grain sold or delivered for sale to the grain dealer is entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of producers and if such a claim is filed the preference shall be allowed on the amount due each producer. This preference shall also be given in bankruptcy proceedings to the extent permitted by the federal law. This section shall not otherwise affect or impair any other lien, security or priority for the claim or judgment. A final judgment or order of a court or a department order under sub. (1) is not a prerequisite to the filing of a claim in any insolvency or other creditor's proceeding, or to the allowance of a preference under this subsection.

History: 1979 c. 335; 1981 c. 314; 1985 a. 29 ss. 1880, 1884, 3200 (3); Stats. 1985 s. 127.14

127.15 Rule-making authority. The department may promulgate rules necessary for the efficient administration and

enforcement of this chapter and the regulation of grain marketing and warehousing practices. Rules may include, but are not limited to, minimum contract specifications, minimum requirements for warehouse receipts or requirements for uniform warehouse receipts, minimum requirements for scale tickets, settlements and other documents, minimum requirements for required records and accounts evidencing transactions in grain and specific prohibited trade practices.

History: 1979 c. 335; 1985 a. 29 s. 1882; Stats. 1985 s. 127.15

127.16 Administration. In the administration of the chapter, the department shall have all the powers and authority vested in it under ch. 93.

History: 1979 c. 335; 1985 a. 29 s. 1883; Stats. 1985 s. 127.16

127.17 Enforcement; penalties; private remedy.

(1) ORDER If the department determines that a warehouse keeper or grain dealer is not in compliance with a requirement of this chapter or rule promulgated under this chapter, the department may:

(a) *Special order.* By special order, require compliance or require the person to take steps deemed reasonably necessary to remedy existing deficiencies, prevent the loss, damage or abnormal deterioration of grain, or otherwise ensure compliance.

(b) *Summary special order.* 1. If necessary to prevent clear and imminent harm to producers or depositors, issue a special order as provided in par. (a) on a summary basis.

2. A summary special order is subject both to the right of an informal preliminary hearing and to the right of a full hearing if requested within 10 days after service of the order. The department shall, within 10 days after receipt of a full hearing request, or as soon thereafter as possible, hold a hearing under ch. 227.

3. A request for a hearing does not operate to stay the special order pending the hearing.

(2) DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION CERTIFICATE. (a) *Grounds; procedure for suspension or revocation.* Violation of this chapter, or any rule adopted or special order issued under this chapter is grounds for denial, suspension or revocation of a certificate of registration. The department may suspend or revoke the dealer's or warehouse keeper's certificate of registration either by special order or, if necessary to prevent clear and imminent harm to producers or depositors, by a summary special order subject to the conditions specified under sub. (1) (b) 2. and 3.

(b) *Suspension of grain dealer registration.* If a grain dealer's certificate of registration is suspended, the grain dealer may purchase or receive grain from producers and may sell or ship grain, under the supervision of the department.

(c) *Revocation of a dealer registration.* If a grain dealer's certificate of registration is revoked, the grain dealer may not purchase, receive, sell or ship grain except as the department permits by order. If a grain dealer's certificate of registration is revoked the grain dealer shall notify every holder of a deferred payment or deferred price contract and the department shall cause a notice to

be published in a newspaper having general circulation in the county where the grain dealer's principal place of business is located at least 2 times during the 2 weeks after revocation and shall cause a notice to be published in the official state newspaper at least 2 times during the 2 weeks after revocation. If a grain dealer's certificate of registration is revoked, all outstanding deferred payment or deferred price contracts are terminated. A terminated deferred payment or deferred price contract becomes due and payable on the date of revocation. To the extent possible the date of revocation shall be considered to be the date on which payment was to have been made under the contract giving equitable consideration to extenuating factors.

(d) *Suspension of a warehouse keeper's registration.* If a warehouse keeper's certificate of registration is suspended, the warehouse keeper may purchase or receive grain from depositors and may sell or ship grain, under the supervision of the department.

(e) *Revocation of a warehouse keeper's registration.* If a warehouse keeper's certificate of registration is revoked, the warehouse keeper may not purchase, receive, sell or ship grain except as the department permits by order. If a warehouse keeper's certificate of registration is revoked, the warehouse keeper shall notify every depositor of that fact and the department shall cause a notice to be published in a newspaper having general circulation in the county where the warehouse is located at least 2 times during the 2 weeks after revocation and shall cause a notice to be published in the official state newspaper at least 2 times during the 2 weeks after revocation.

(3) INJUNCTION In addition to other penalties or remedies under this chapter, the department may petition any court of competent jurisdiction for a temporary or permanent injunction, including an ex parte temporary restraining order, to prevent, restrain or enjoin any person from violating this chapter or any rule or special order of the department.

(4) PENALTIES. (a) *Forfeitures.* The department may commence an action to recover a forfeiture of not less than \$250 nor more than \$5,000 for each violation of this chapter or any rules promulgated or special orders issued under this chapter.

(b) *Fine or imprisonment.* Any person who intentionally violates this chapter, or any rules promulgated or special orders issued under this chapter, shall be fined not more than \$10,000 or imprisoned not more than one year in the county jail or both for each violation.

(5) PRIVATE REMEDY. Any person who is injured as a result of a violation of this chapter, or any rules promulgated or special orders issued under this chapter, may bring an action and may recover the amount of the proven damages, together with costs, including all reasonable attorney fees. This remedy is not exclusive.

History: 1979 c. 335; 1985 a. 29 ss. 1886, 1888; Stats. 1985 s. 127.17; 1991 a. 39

127.18 Conflict with chs. 401 to 411. In the event of any conflict between this chapter and chs. 401 to 411, this chapter shall control.

History: 1979 c. 335; 1981 c. 390; 1985 a. 29 s. 1887; Stats. 1985 s. 127.18; 1991 a. 148, 304, 315.