

34-273. Sale of perishable grain or grain that will injure other property; warehouseman's duty of care; liability for neglect. (a) In case any public warehouseman discovers that any grain stored in such warehouseman's warehouse, other than in special bins, is out of condition or is becoming so and that it is not in such warehouseman's power to preserve the grain, such warehouseman shall immediately give such notice of that fact as is reasonable and possible under the circumstances to the owner of such grain or to the person in whose name the grain is stored and shall also give notice of that fact to the secretary.

(b) The secretary, unless otherwise requested by the owner of such grain or the person in whose name the grain is stored, shall cause an inspection to be made of the grain. If it is found on such inspection that the grain is out of condition, or is becoming so, and the owner of the grain fails to promptly remove it, the warehouseman may sell the grain upon giving the same public notice of sale as is required by this act for the sale of grain to satisfy the lien of a warehouseman, except that the grain may be sold at either public or private sale without advertising if, in the opinion of the secretary, such grain should be sold without delay and written authority to make sale without advertisement is given by the secretary to the warehouseman. For the purpose of this section, the owner of such grain shall be deemed to be the holder of warehouse receipts of the oldest dates then in circulation or uncanceled and the grain represented by which has not previously been declared out of condition.

(c) Nothing herein contained shall be held to relieve any warehouseman from exercising due care and vigilance in preserving any such grain after discovery that the same is out of condition, or is becoming so, but such grain shall be kept separate and apart from all direct contact with other grain and shall not be mixed with other grain while in store in such warehouse. Any public warehouseman guilty of any act of neglect which has the effect of depreciating property stored in a public warehouse under the warehouseman's control, shall be liable on the warehouseman's bond or letter of credit therefor to the person damaged thereby. After grain has been sold as authorized by this section, the warehouseman shall not be liable thereafter for the delivery of such grain even though the receipt therefor is negotiable, but shall be liable as a trustee for the amount of the proceeds of such sale in excess of the amount of any lawful charges for which the warehouseman had a lien at the time of such sale.

History: L. 1931, ch. 194, § 51; L. 1984, ch. 150, § 13; L. 1997, ch. 160, § 33; L. 2000, ch. 30, § 6; Mar. 30.