

34-2,104. Deficit in grain stored in warehouse or grain handling facility; action by secretary for possession; audit and investigation; temporary receiver; receivership. (a) Whenever it appears to the satisfaction of the secretary that a licensed warehouseman does not have possession of sufficient commodities to cover the outstanding receipts and scale tickets issued or assumed by the warehouseman or when a licensed warehouseman refuses to submit records or property to a lawful examination, the secretary may give notice to the warehouseman to comply with all or any of the following requirements:

- (1) Cover any existing shortage;
- (2) give additional bond or letter of credit as requested by the secretary;
- (3) submit to any examination that the secretary considers necessary.

If the warehouseman fails to comply with the terms of the notice within 24 hours from the date of its issuance or within such further time as the secretary allows, the secretary may petition the district court of any county in which is located one of the principal places of business of the licensed warehouseman for an order authorizing the department to take possession of and maintain all or a portion of any and all commodities located in the licensed warehouse or warehouses of the warehouseman and all pertinent records and property.

Upon receipt of the secretary's verified petition setting forth the circumstances of the warehouseman's failure to comply and further stating reasons why immediate possession and maintenance by the department is necessary for the protection of depositors, warehouse receipt holders or sureties, the court shall forthwith issue an order authorizing the department to take immediate possession of and maintain the commodities, records and property for the purposes stated in this section. A copy of the petition and order shall be sent to the warehouseman.

(b) At any time within 10 days after the department takes possession, the warehouseman may file with the court a response to the petition of the secretary stating reasons why the department should not be allowed to retain possession. The court shall set the matter for hearing on a date not less than five nor more than 15 days from the date of the filing of the warehouseman's response. The order placing the department in possession shall not be stayed nor set aside until the court after hearing determines that possession should be restored to the warehouseman.

(c) Upon taking possession, the secretary shall give written notice of its action to the surety on the bond or the financial institution which issued the letter of credit of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all receipts and scale tickets issued for commodities, to present their receipts or scale tickets for inspection or to account for them. The secretary then may cause an audit and other investigation to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown in the warehouseman's records, if practicable. The secretary shall notify the warehouseman and the surety on the warehouseman's bond or the financial institution which issued the letter of credit of the approximate amount of the shortage and notify each depositor affected by the shortage by sending notice to the depositor's last known address as shown by the records of the warehouse.

The department shall retain possession and continue maintenance of commodities, records and property under this section until the warehouseman or the surety on the warehouseman's bond or the financial institution which issued the letter of credit has satisfied the claims of all depositors or until the department is ordered by the court to surrender possession.

(d) If during or after the audit or other investigation provided for in this section, or at any other time, the secretary has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all depositors, or the grain handling facility is operating without a valid federal or state license, the secretary shall forthwith petition the district court for an order appointing a receiver, under article 13 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, to operate or liquidate the business of the warehouseman or unlicensed facility in accordance with the law. The petition may be accompanied by a verified application requesting that the court appoint the secretary to act as temporary receiver until a receiver is appointed. The court may appoint the secretary as temporary receiver in an ex parte proceeding.

(e) While acting as temporary receiver, the secretary shall have all the powers of a receiver and may appoint a special deputy director to take charge of the affairs of the warehouse until a receiver is appointed. The special deputy shall qualify, give bond and receive reasonable compensation as determined by the secretary, subject to the approval of the district court. The compensation shall be paid by the insolvent warehouse or unlicensed facility or, upon appointment of a receiver, may be allowed by the court as costs in the case.

(f) All necessary expenses incurred by the department or any receiver appointed under this section in carrying out the provisions of this section may be recovered from the warehouseman, owner or operator of the unlicensed grain handling facility in a separate civil action brought by the secretary in the district court or may be 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 department, the receiver, and others engaged in carrying out the provisions of this section.

(g) A receiver shall have five months from the date of the receiver's appointment for the settlement and completion of the receivership. For cause shown, this period may be extended by the court, not exceeding three months at a time.

History: L. 1967, ch. 238, § 1; L. 1983, ch. 138, § 1; L. 1989, ch. 121, § 5; L. 1997, ch. 160, § 38; L. 2000, ch. 30, § 7; Mar. 30.