

## 2012 Kansas Statutes

**34-228. Warehouseman's license; application; financial statement; waiver; qualifications; license fee; examination of warehouse.** (a) Any person desiring to engage in business as a public warehouseman in this state shall, before the transaction of any such business, make written application to the secretary for a license for each separate warehouse or, if the applicant owns more than one warehouse at one point, all of such warehouses may be incorporated in one application, at which the person desires to engage in such business. The application for a license shall be on a form designated by the secretary and shall contain the individual name and address of each person interested as principal in the business and, if the business is operated or to be operated by a corporation, setting forth the names of the president and secretary, and such further information as the secretary may require.

(b) (1) Every application for a public warehouse license shall be accompanied by a current financial statement. The statement shall include such information as required by the secretary to administer and enforce the public warehouse laws of this state, including, but not limited to a current balance sheet, statement of income, including profit and loss, statement of retained earnings and statement of changes in financial position. The applicant shall certify under oath that the statement as prepared accurately reflects the financial condition of the applicant as of the date specified and presents fairly the results of operations of the applicant's public warehouse business for the period specified. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by: (A) A report of audit or review conducted by an independent certified public accountant or an independent public accountant in accordance with standards established by the American institute of certified public accountants and the accountant's certifications, assurances, opinions, comments and notes with respect to the statement; or (B) a compilation report of the financial statement, prepared by a grain commission firm or management firm which is authorized pursuant to rules and regulations of the federal commodity credit corporation to provide compilation reports of financial statements of warehousemen.

(2) Except as otherwise provided, the secretary, upon request of an applicant, may grant a waiver of the requirements of this subsection for a period of not more than 30 days if the applicant furnishes evidence of good and substantial reasons for the waiver. The secretary may extend such waiver beyond 30 days for grain stored in an alternative location other than a location identified in the public warehouse license, if the secretary determines that the owner of the grain would suffer substantial hardship to require the grain to be stored at a location identified in the license. The secretary may determine what constitutes substantial hardship and what length of time the grain may be stored at such alternative location.

(c) (1) Every applicant for a license to operate one or more public warehouses and every person licensed to operate one or more warehouses shall at all times maintain total net worth liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses equal to at least \$.25 per bushel of the storage capacity of the warehouse or warehouses except: (A) No person shall be granted a license or shall continue to be licensed unless the person has a net worth of at least \$25,000; and (B) any deficiency in net worth required above the \$25,000 minimum may be supplied by an increase in the amount of the applicant's or licensee's bond or letter of credit as provided by K.S.A. 34-229, and amendments thereto.

(2) In determining total net worth: (A) Credit may be given for insurable property such as buildings, machinery, equipment and merchandise inventory only to the extent that the property is protected by insurance against loss or damage by fire; and (B) capital stock, as such, shall not be considered a liability.

(d) No license shall be issued to a person or entity not previously licensed in this state and making application for an original license who, in this state or any other jurisdiction, within the 10 years immediately prior to the date of the application of the person or entity for a license, has been convicted of or has pleaded guilty or nolo contendere to any crime which would constitute:

(1) Embezzlement;

(2) any felony defined in any statute contained in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated, or subsection (a)(6) of K.S.A. 2012 Supp. 21-6412, and amendments thereto;

(3) unauthorized delivery of stored goods;

(4) any felony defined in any statute contained in chapter 34 of the Kansas Statutes Annotated, and amendments thereto; or

(5) a violation of the United States warehouse act (7 U.S.C. § 241 et seq.).

(e) The secretary may investigate any applicant making application for an original license for the purpose of determining if such person would be qualified to receive such license under the provisions of this section.

(f) (1) Every application for a public warehouse license shall be accompanied by a license fee which shall be determined and fixed by the secretary by rules and regulations. The license fee shall not be more than the applicable amount shown in the following fee schedule plus not more than \$500 for each functional unit:

Capacity in Bushels ANNUAL FEE

Not more than

1 to 100,000 \$500.00

100,001 to 150,000 525

150,001 to 250,000 550

250,001 to 300,000 600

300,001 to 350,000 625

350,001 to 400,000 650

400,001 to 450,000 700

450,001 to 500,000 725

500,001 to 600,000 775

600,001 to 700,000 800

700,001 to 800,000 850

800,001 to 900,000 875

900,001 to 1,000,000 900

1,000,001 to 1,750,000 1225

1,750,001 to 2,500,000 1400

2,500,001 to 5,000,000 1750

5,000,001 to 7,500,000 2100

7,500,001 to 10,000,000 2375

10,000,001 to 12,500,000 2600

12,500,001 to 15,000,000 2800

15,000,001 to 17,500,000 3000

17,500,001 to 20,000,000 3225

For each 2,500,000 bushels or fraction over 20,000,000 bushels 350

(2) Whenever a licensed warehouseman purchases or acquires additional facilities, the warehouseman, if

otherwise qualified, may acquire a license for the remainder of an unexpired license period by paying to the secretary a license fee computed as follows: If the unexpired license period is nine months or more, the annual fee; if the unexpired license period is more than six months and less than nine months, 75% of the annual fee; if the unexpired license period is more than three months and not more than six months, 50% of the annual fee; and if the unexpired license period is three months or less than three months, 25% of the annual fee.

(3) In addition to any other applicable fee, the secretary shall charge and collect a fee each time a public warehouse license is amended in an amount of not more than \$300 which shall be determined and fixed by the secretary by rules and regulations.

(4) Nothing in this subsection shall be construed to authorize a refund for any unused portion of an issued license.

(g) The secretary shall examine each warehouse operated by a licensed public warehouseman at least once in each 12-month period. The licensed public warehouseman may request additional examinations of any warehouse operated by the warehouseman. The cost of additional examinations when requested by the warehouseman shall be charged to the warehouseman requesting the examination. The cost of each additional examination requested by a warehouseman shall be an amount determined therefor in accordance with an hourly rate fixed by the secretary of not more than \$50 per hour, subject to a minimum charge of four hours for the examination, plus amounts for subsistence expense at the rate fixed under K.S.A. 75-3207a, and amendments thereto, and for mileage expense in accordance with the schedule of charges established under K.S.A. 75-4607, and amendments thereto. The secretary, at the secretary's discretion, may make additional examinations of a warehouse and if a discrepancy is found on that examination, or if one was found on the last previous examination, the cost of the examination shall be paid by the warehouseman.

(h) When the secretary authorizes a grain handling facility to be physically monitored, pursuant to subsection (a) (3) of K.S.A. 34-102, and amendments thereto, the cost and expenses of the monitoring shall be paid by the owner of the facility at the same rates fixed in subsection (g).

(i) As used in this section, "functional unit" means a public warehouse which has the capacity to store, weigh in and weigh out grain. Any outlying storage facility which is not a functional unit shall have its storage capacity included as part of the combined capacity of the warehouseman's nearest functional unit.

**History:** L. 1931, ch. 194, § 6; L. 1955, ch. 232, § 5; L. 1957, ch. 253, § 1; L. 1962, ch. 34, § 2; L. 1967, ch. 229, § 1; L. 1973, ch. 2, § 13; L. 1975, ch. 440, § 6; L. 1982, ch. 178, § 2; L. 1983, ch. 137, § 1; L. 1984, ch. 151, § 1; L. 1984, ch. 150, § 8; L. 1985, ch. 137, § 3; L. 1987, ch. 147, § 1; L. 1989, ch. 121, § 3; L. 1990, ch. 142, § 3; L. 1995, ch. 191, § 1; L. 1996, ch. 42, § 1; L. 1997, ch. 160, § 18; L. 1998, ch. 46, § 1; L. 2000, ch. 30, § 1; L. 2011, ch. 30, § 150; July 1.