

34-229. Bond or letter of credit; amount; conditions; multiple warehouses; actions thereon; certificate of information, penalty for failure to post. (a) Every applicant for a public warehouse license upon notification by the secretary of the amount of bond or letter of credit required, shall promptly file with the secretary a bond with good corporate surety qualified under the laws of the state of Kansas or letter of credit pursuant to subsection (d). The amount of the bond or letter of credit to be furnished for each warehouse shall be \$.20 per bushel for the first 1,000,000 bushels of licensed capacity; \$.15 per bushel for the next 1,000,000 of licensed capacity; and \$.10 per bushel for all licensed capacity over 2,000,000 bushels. Except as provided further, in no event shall the bond or letter of credit be for an amount less than \$10,000 nor more than \$500,000.

(b) If an applicant for a license or a licensee at any time does not have the total net worth required by K.S.A. 34-228, and amendments thereto, an amount equal to the deficiency shall be added to the amount of the bond required by subsection (a) or letter of credit required by subsection (d).

(c) The bond shall be in favor of the state of Kansas for the benefit of all persons interested, their legal representatives, attorneys or assigns and shall be conditioned on the faithful performance of all the licensee's duties as a public warehouseman and such additional obligations as assumed by the warehouseman under contracts with a federal agency relating to storage of grain in each warehouse. Any person injured by the breach of any obligation of the warehouseman may commence suit on the bond or letter of credit in any court of competent jurisdiction to recover damages that the person has sustained, but any suit commenced shall either be a class action or shall join as parties plaintiff or parties defendant or other persons who may be affected by such suit on the bond or letter of credit. No bond shall be canceled by the surety on less than 60 days' notice by mail to the secretary and the principal except that no such notice shall be required for cancellation of any bond by reason of nonpayment of the premium thereon. The liability of the surety on the bond may continue for each successive license period the bond covers. The total liability of the surety shall be limited to the amount stated on the current bond or on an appropriate rider or endorsement to the current bond. It is the intent of this statute that the bonds be nonaccumulative, that stacking of bonds not occur in excess of the face value of the current bond.

(d) In lieu of a bond, a warehouseman may file with the secretary an irrevocable letter of credit in the amount equal to or greater than the amount of bond required in subsection (a). Such irrevocable letter of credit shall: (1) Be issued by a financial institution which is insured by the federal deposit insurance corporation or issued by farm credit institutions chartered by the farm credit administration; (2) be issued for a period at least six months longer than the expiration date of the underlying license; (3) provide for payment to the state of Kansas for the security liability of the warehouseman; and (4) be on a form approved by the secretary.

(e) If a person applies for licenses for two or more separate public warehouses in this state, the person may give a single bond or letter of credit covering all the applications, and the amount of the bond or letter of credit shall be the total amounts which would be required for the applications if separate bonds or letters of credit were given. In computing the amount of the single bond or letter of credit the warehouseman may add together the capacity of all warehouses to be covered by the bond or letter of credit and use the aggregate capacity for the purpose of computing the bond or letter of credit. If a warehouseman elects to provide a single bond or letter of credit for a number of warehouses, the total assets of all the warehouses shall be subject to liabilities of each individual warehouse.

(f) Whenever the director determines that any bond or letter of credit given by any warehouseman is inadequate and insufficient security against any loss that might arise under the terms of the bond or letter of credit, the secretary shall require any additional bond or letter of credit that the secretary considers necessary to provide adequate security. If the secretary considers the financial condition of the surety upon any warehouseman and the warehouseman's bond or letter of credit to be impaired, the secretary shall require any substituted or additional bond or letter of credit that the secretary considers necessary.

(g) In all actions hereafter commenced in which judgment is rendered against any surety company on any surety bond furnished or any financial institution on any letter of credit issued under the provisions of this section, if it appears from the evidence that the surety company or financial institution has refused without just cause to pay the loss upon demand, the court shall allow the plaintiff a reasonable sum as attorney fees to be recovered and collected as a part of the costs. When a tender is made by the surety company or financial institution before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of the tender, no such costs shall be allowed.

(h) Each licensed public warehouseman shall obtain a certificate setting forth the amount and terms of the bond or letter of credit filed with the secretary pursuant to this section, the name of the corporate surety or financial institution therefor and such other information as the secretary may prescribe by rules and regulations. The certificate of bond or letter of credit information shall be posted in a conspicuous place in the office room of the licensed warehouse, adjacent to the license posted as required by K.S.A. 34-230, and amendments thereto, at all times during the operation of the warehouse.

(i) Transaction of any public warehouse business at any public warehouse without having the certificate of bond or letter of credit information displayed in the office room of the public warehouse as required by this section is a class C nonperson misdemeanor.

History: L. 1931, ch. 194, § 7; L. 1955, ch. 232, § 6; L. 1957, ch. 253, § 2; L. 1963, ch. 251, § 2; L. 1983, ch. 137, § 2; L. 1984, ch. 151, § 2; L. 1985, ch. 137, § 4; L. 1986, ch. 153, § 1; L. 1987, ch. 147, § 3; L. 1993, ch. 159, § 1; L. 1997, ch. 160, § 19; L. 2000, ch. 30, § 2; Mar. 30.