

# State of Wisconsin



1995 Assembly Bill 230

Date of enactment: **August 9, 1995**  
Date of publication\*: **August 23, 1995**

## 1995 WISCONSIN ACT 42

AN ACT *to repeal* 127.17 (1) (a) (title) and 127.17 (1) (b) 2. and 3.; *to renumber and amend* 127.01 (1), 127.01 (5t), 127.01 (25), 127.02 (3) (b) 1., 127.02 (3) (b) 2., 127.06 (2) (b), 127.06 (3), 127.10 (5), 127.13 (1), 127.17 (1) (intro.), 127.17 (1) (a), 127.17 (1) (b) 1., 127.17 (2) (c) and 127.17 (2) (e); *to amend* 20.115 (1) (jm), 127.01 (1r), 127.01 (4), 127.01 (5p), 127.01 (6), 127.01 (11), 127.01 (13), 127.01 (15), 127.01 (16), 127.01 (18), 127.01 (19) (intro.), 127.01 (21), 127.01 (22), 127.01 (28), 127.02 (title), (1) and (2), 127.02 (3) (a) and (am), 127.02 (3m), (4) and (5), 127.03 (2), 127.03 (3) (title) and (a) (intro.), 127.03 (3) (a) 2., 127.03 (3) (a) 3., 127.03 (3) (b), 127.03 (3) (bg), 127.03 (3m), (4) and (5), 127.04, 127.05, 127.06 (title), 127.06 (2) (title) and (a), 127.09, 127.10 (title), (1) and (2), 127.10 (4), 127.10 (6), 127.105, 127.11 (2), 127.12 (2), 127.13 (2) and (3), 127.15, 127.16, 127.17 (2) (title), (a) and (b), 127.17 (2) (c) (title), 127.17 (2) (d), 127.17 (2) (e) (title), 127.17 (3) and 127.17 (5); *to repeal and recreate* 127.01 (5d), 127.01 (8) and (9), 127.01 (13m) and (14), 127.01 (25m), 127.01 (26), 127.02 (3) (b) (title), 127.03 (title) and (1), 127.06 (1), 127.07, 127.13 (title) and 127.14; and *to create* 127.01 (5r), 127.01 (5t) (a) and (b), 127.01 (25) (b), 127.03 (3) (a) 2m., 127.03 (3) (bk), 127.05 (3) and (4), 127.06 (1m), 127.06 (3), 127.06 (5) and (6), 127.065, 127.067, 127.069, 127.10 (5) (b), 127.13 (1) (c) and 127.17 (1) (b) of the statutes; **relating to:** regulation of grain dealers and warehouse keepers.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 20.115 (1) (jm) of the statutes is amended to read:

20.115 (1) (jm) *Warehouse keeper and grain dealer regulation.* All moneys received from the warehouse keeper ~~registration license~~ and inspection fees and surcharges under s. 127.02 (3) and from the grain dealer ~~registration license~~ fees and surcharges under s. 127.03 (3) for the administration and enforcement of the warehouse keepers and grain dealers security act program under ch. 127.

**SECTION 2.** 127.01 (1) of the statutes is renumbered 127.01 (1) (intro.) and amended to read:

127.01 (1) (intro.) "Affiliate" means any of the following:

(a) ~~An officer, director, or partner, member or manager of a warehouse keeper or grain dealer, any.~~

(b) ~~A firm or corporation owned or operated by an officer, director, or partner, member or manager of a warehouse keeper or grain dealer and any.~~

(c) ~~A person acting who, as agent for a warehouse keeper or grain dealer, who is engaged in the business of buying buys or receives grain from, or contracting for the growing of grain by, a producer on behalf of or contracts with a producer to grow grain for delivery to a warehouse keeper or grain dealer.~~

**SECTION 3.** 127.01 (1r) of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

127.01 (1r) "Audited financial statement" means a financial statement on which an independent certified public accountant, or a an independent public accountant, who holds holding a certificate of authority under ch. 442, has expressed an opinion ~~in accordance with~~ according to generally accepted accounting principles and has conducted an audit ~~in accordance with~~ according to generally accepted auditing standards.

**SECTION 4.** 127.01 (4) of the statutes is amended to read:

127.01 (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 or irrevocable letter of credit.~~

**SECTION 5.** 127.01 (5d) of the statutes is repealed and recreated to read:

127.01 (5d) "Class A grain dealer" means a person, other than an exempt grain dealer, a Class B grain dealer, a Class B2 grain dealer or a Class C grain dealer, who does any of the following:

(a) Buys grain from producers for resale or for introduction into commercial channels.

(b) Sells, on behalf of producers, grain received from those producers.

(c) A person who is a feeder of livestock or poultry or who operates a feed mill or other manufacturing facility if the person spends \$400,000 or more during that person's fiscal year to buy grain from producers.

**SECTION 6.** 127.01 (5p) of the statutes is amended to read:

127.01 (5p) "Class B grain dealer" means a person ~~that, other than a Class B2 grain dealer, who~~ buys grain from producers only in connection with ~~or incidental to~~ the operation of a feed mill or other manufacturing operation ~~and that expends facility operated by that person and who spends less than \$400,000 annually for the purchase of during that person's fiscal year to buy grain from producers.~~

**SECTION 7.** 127.01 (5r) of the statutes is created to read:

127.01 (5r) "Class B2 grain dealer" means a person who buys grain from producers only in connection with the operation of a feed mill or other manufacturing facility operated by that person, who spends less than \$50,000 during that person's fiscal year to buy grain from producers and who does not buy any grain under a deferred payment contract or a deferred price contract.

**SECTION 8.** 127.01 (5t) of the statutes is renumbered 127.01 (5t) (intro.) and amended to read:

127.01 (5t) (intro.) "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 who buys~~ 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. "Class C grain dealer" does not include a person who does any of the following:

**SECTION 9.** 127.01 (5t) (a) and (b) of the statutes are created to read:

127.01 (5t) (a) Spends at least \$400,000 during that person's fiscal year to buy grain from producers.

(b) Sells grain other than grain that the person produced.

**SECTION 10.** 127.01 (6) of the statutes is amended to read:

127.01 (6) "Current assets" means cash and assets, ~~including trade or investment items, that may can~~ be readily converted into cash in the ordinary course of business within one year after the date of the balance sheet.

**SECTION 11.** 127.01 (8) and (9) of the statutes are repealed and recreated to read:

127.01 (8) "Deferred payment contract" means a contract for the sale of grain from a producer to a grain dealer under which the grain dealer takes custody of the grain more than 7 calendar days before paying the producer in full for the grain.

(9) "Deferred price contract" means a contract for the sale of grain from a producer to a grain dealer under which the grain dealer takes custody of the grain before the grain dealer and the producer agree on the price that the grain dealer will pay for the grain.

**SECTION 12.** 127.01 (11) of the statutes is amended to read:

127.01 (11) "Depositor" means any of the following:

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

(b) ~~An owner or legal holder of A person who owns or legally holds~~ a scale ticket, warehouse receipt or other document that is 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 and that entitles that person to receive possession of that grain or its equivalent.~~

**SECTION 13.** 127.01 (13) of the statutes is amended to read:

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

**SECTION 14.** 127.01 (13m) and (14) of the statutes are repealed and recreated to read:

127.01 (13m) "Exempt grain dealer" means a person who buys grain from producers and who makes full cash payment for all grain that the person receives from producers before taking custody of the grain.

(14) "Exempt warehouse keeper" means a warehouse keeper who has a total of less than 50,000 bushels of grain obligations to others, for all of the warehouse keeper's warehouses, at any time during a license year. "Exempt warehouse keeper" does not include a warehouse keeper who represents to any person that the warehouse keeper is bonded or has filed security with the department for the benefit of depositors.

**SECTION 15.** 127.01 (15) of the statutes is amended to read:

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

**SECTION 16.** 127.01 (16) of the statutes is amended to read:

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

**SECTION 17.** 127.01 (18) of the statutes is amended to read:

127.01 (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 to 87k.~~ "Grain" does not include canning crops for processing or grain used or intended for use solely for sowing planting purposes.

**SECTION 18.** 127.01 (19) (intro.) of the statutes is amended to read:

127.01 (19) (intro.) "Grain dealer" means a Class A grain dealer, Class B grain dealer, Class B2 grain dealer, Class C grain dealer or exempt grain dealer. "Grain dealer" does not include any of the following:

**SECTION 19.** 127.01 (21) of the statutes is amended to read:

127.01 (21) "Income statement" means a report of the financial results of business operations for ~~a specific the accounting period covered by the report.~~

**SECTION 20.** 127.01 (22) of the statutes is amended to read:

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

**SECTION 21.** 127.01 (25) of the statutes is renumbered 127.01 (25) (intro.) and amended to read:

127.01 (25) (intro.) "Producer" means an a person who is not a Class A grain dealer, a Class B grain dealer, a Class B2 grain dealer or an exempt grain dealer and who is one of the following:

(a) An owner, tenant or operator of land who is engaged in the growing and production of producing grain on the land in this state.

**SECTION 22.** 127.01 (25) (b) of the statutes is created to read:

127.01 (25) (b) An owner, tenant or operator of land who is engaged in growing and producing grain on land outside of this state and who sells that grain to a grain dealer in this state or deposits that grain with a warehouse keeper in this state.

**SECTION 23.** 127.01 (25m) of the statutes is repealed and recreated to read:

127.01 (25m) "Reviewed financial statement" means a financial statement, other than an audited finan-

cial statement, that meets all of the following requirements:

(a) The grain dealer or warehouse keeper attests in writing, under oath, that the financial statement is accurate.

(b) The financial statement is reviewed according to generally accepted accounting principles by an independent certified public accountant or an independent public accountant who holds a certificate of authority under ch. 442.

**SECTION 24.** 127.01 (26) of the statutes is repealed and recreated to read:

127.01 (26) "Statement of cash flows" means a report of cash receipts and cash disbursements from operating, investing and financing activities, including an explanation of changes in cash and cash equivalents for the accounting period covered by the report.

**SECTION 25.** 127.01 (28) of the statutes is amended to read:

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

**SECTION 26.** 127.02 (title), (1) and (2) of the statutes are amended to read:

**127.02 (title) ~~Registration requirement for warehouse keepers; Warehouse keepers' licenses and fees.~~**

(1) REQUIREMENT, EXCEPTION. No person may act as a warehouse keeper unless the person obtains holds an annual warehouse keeper's certificate of registration license issued by the department. ~~The requirements of this section do not apply to, except that an exempt warehouse keeper unless the warehouse keeper holds himself or herself out as a bonded or registered warehouse keeper is not required to hold a license.~~

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

**SECTION 27.** 127.02 (3) (a) and (am) of the statutes are amended to read:

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

(am) (title) Registration License fee surcharge. An applicant for an annual warehouse keeper's certificate of registration license shall pay a registration license 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 license~~, the applicant acted as a warehouse keeper without a ~~certificate of registration license~~ in violation of sub. (1). Payment of the ~~registration license~~ 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 license~~, but does not constitute evidence of a violation of law.

**SECTION 28.** 127.02 (3) (b) (title) of the statutes is repealed and recreated to read:

127.02 (3) (b) (title) *Basic inspection fee.*

**SECTION 29.** 127.02 (3) (b) 1. of the statutes is renumbered 127.02 (3) (b), and 127.02 (3) (b) (intro.), as renumbered, is amended to read:

127.02 (3) (b) (intro.) 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 in this state. The inspection fee is, if the combined storage capacity is:

**SECTION 30.** 127.02 (3) (b) 2. of the statutes is renumbered 127.02 (3) (bm) and amended to read:

127.02 (3) (bm) (title) *Supplementary inspection fee.*

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

**SECTION 31.** 127.02 (3m), (4) and (5) of the statutes are amended to read:

127.02 (3m) (title) ~~REGISTRATION LICENSING CONTINGENT ON PAYMENT OF FEES AND SURCHARGE.~~ The department may not issue or renew a ~~certificate of registration license~~ 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~~ An annual warehouse keeper's ~~certificate of registration license~~ 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 license~~ in each ~~business location warehouse~~ in this state operated by the warehouse keeper.

**SECTION 32.** 127.03 (title) and (1) of the statutes are repealed and recreated to read:

**127.03 (title) Grain dealers licenses and fees. (1) REQUIREMENT.** (a) Except as provided in par. (d), no person may do any of the following:

1. Operate as a Class A grain dealer unless the person holds an annual license from the department as a Class A grain dealer.

2. Operate as a Class B grain dealer unless the person holds an annual license from the department as a Class A grain dealer or a Class B grain dealer.

3. Operate as a Class B2 grain dealer unless the person holds an annual license from the department as a Class A grain dealer, a Class B grain dealer or a Class B2 grain dealer.

(b) No grain dealer may claim to be bonded or claim to have filed security with the department for the benefit of producers unless that grain dealer holds an annual license from the department as a Class A grain dealer, a Class B grain dealer or a Class B2 grain dealer.

(c) A Class C grain dealer is not required to be licensed but may voluntarily apply for and receive an annual license from the department as a Class C grain dealer.

(d) Paragraph (a) does not apply to an exempt grain dealer.

**SECTION 33.** 127.03 (2) of the statutes is amended to read:

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

**SECTION 34.** 127.03 (3) (title) and (a) (intro.) of the statutes are amended to read:

127.03 (3) (title) ~~REGISTRATION LICENSE FEES.~~ (a) (intro.) The fee for an annual grain dealer's ~~certificate of registration~~ shall be license is as follows:

**SECTION 35.** 127.03 (3) (a) 2. of the statutes is amended to read:

127.03 (3) (a) 2. For a Class B grain dealer, \$175 plus a surcharge of \$250 if the grain dealer's financial statement under s. 127.06 (2) is not audited.

**SECTION 36.** 127.03 (3) (a) 2m. of the statutes is created to read:

127.03 (3) (a) 2m. For a Class B2 grain dealer, \$50.

**SECTION 37.** 127.03 (3) (a) 3. of the statutes is amended to read:

127.03 (3) (a) 3. For a Class C grain dealer voluntarily licensed under sub. (1) (c), \$50.

**SECTION 38.** 127.03 (3) (b) of the statutes is amended to read:

127.03 (3) (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 license~~ fee of \$10 for each additional truck that ~~he or she~~ the grain dealer uses for dealing in grain.

**SECTION 39.** 127.03 (3) (bg) of the statutes is amended to read:

127.03 (3) (bg) ~~An~~ Except as provided in par. (bk), an applicant for an annual grain dealer's ~~certificate of~~

registration license shall pay a registration license 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 license, the applicant acted as a grain dealer without a certificate of registration in violation of license required in sub. (1). Payment of the registration license fee surcharge does not relieve the applicant of other civil or criminal liability that may result from acting as a grain dealer without a certificate of registration license required in sub. (1), but does not constitute evidence of a violation of law.

**SECTION 40.** 127.03 (3) (bk) of the statutes is created to read:

127.03 (3) (bk) If a grain dealer held a license as a Class B2 grain dealer but operated as a Class A grain dealer or a Class B grain dealer, the surcharge under par. (bg) is \$250 rather than \$500.

**SECTION 41.** 127.03 (3m), (4) and (5) of the statutes are amended to read:

127.03 (3m) (title) ~~REGISTRATION LICENSING CONTINGENT ON PAYMENT OF FEES AND SURCHARGE.~~ The department may not issue or renew a certificate of registration license 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~~ An annual grain dealer's certificate of registration license 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 annual license on each truck used ~~that the grain dealer uses~~ for dealing in grain operated by the grain dealer ~~and~~. A grain dealer shall also display a copy of the grain dealer's annual license at the grain dealer's permanent business address, if he or she ~~the grain dealer~~ is required to maintain a permanent business address under s. 127.10 (6).

**SECTION 42.** 127.04 of the statutes is amended to read:

**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~~ who buys grain from or sells grain for producers who produced the grain 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 without regard to whether those purchases or sales take place wholly or in part in this state and without regard to whether the grain dealer maintains an office or place of business in this state.

**SECTION 43.** 127.05 of the statutes is amended to read:

**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 that insures~~ 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) (title) ~~CANCELLATION AND REPLACEMENT.~~ An insurance policy required under ~~this chapter sub. (1)~~ 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 satisfactory replacement insurance and shall file satisfactory evidence of that replacement insurance with the department within the 30-day period and prior to the expiration of the policy 20 days after the cancellation notice is served on the department and at least 10 days before the cancellation takes effect. The department shall suspend the registration license 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.

**SECTION 44.** 127.05 (3) and (4) of the statutes are created to read:

127.05 (3) INSURANCE DISCLOSURE. Before storing grain for any depositor, a warehouse keeper, including an exempt warehouse keeper, shall clearly disclose in writing and post in a conspicuous location, observable by the public, all of the following information:

(a) Whether the grain is insured against fire and other natural perils, including a listing of the types of perils covered.

(b) Whether the warehouse keeper has liability insurance covering the warehouse keeper's grain storage operations and whether the insurance covers liability resulting from fraud or malfeasance by the warehouse keeper.

(4) DEDUCTIBLES. Neither an insurance policy under sub. (1) nor a warehouse keeper's liability insurance policy may contain any deductible clause that limits the insurer's liability to depositors for the full value of the depositor's covered losses under the policy. This subsection does not prohibit a clause under which the warehouse keeper agrees to indemnify the insurer for a portion of each claim by a depositor that is paid by the insurer under the policy, as long as the clause does not limit the insurer's obligation to pay each depositor.

**SECTION 45.** 127.06 (title) of the statutes is amended to read:

**127.06 (title) Financial statement statements; warehouse keepers and grain dealers.**

**SECTION 46.** 127.06 (1) of the statutes is repealed and recreated to read:

**127.06 (1) WAREHOUSE KEEPERS; FINANCIAL STATEMENTS REQUIRED.** (a) A warehouse keeper required to be licensed under s. 127.02 (1) shall do all of the following:

1. File a financial statement with the warehouse keeper's initial application for a license.

2. Except as provided in par. (e), file an annual financial statement with the department on or before the 15th day of the 4th month beginning after the close of the warehouse keeper's fiscal year.

(b) A financial statement filed under par. (a) shall be either a reviewed financial statement or an audited financial statement, except that the financial statement shall be an audited financial statement if any of the following apply:

1. The warehouse keeper's warehouses have a combined storage capacity of at least 500,000 bushels.

2. The warehouse keeper is a sole proprietor and the financial statement is not prepared according to the historical cost basis method of accounting.

(c) The department may require an exempt warehouse keeper to file an annual audited financial statement or reviewed financial statement if the department determines that such filing is necessary to protect depositors.

(d) The department may require a warehouse keeper, including an exempt warehouse keeper, to file a supplementary financial statement or an interim statement whenever the department determines that such filing is necessary to protect depositors. The department may require a financial statement filed under this paragraph to be an audited financial statement or a reviewed financial statement.

(e) The department may extend the filing deadline under par. (a) 2. by up to 30 days in response to a written request from a warehouse keeper or an independent certified public accountant, or an independent public accountant holding a certificate of authority under ch. 442, that is auditing or reviewing the financial statement for a warehouse keeper if the department receives the request on or before the 5th day of the 4th month beginning after the close of the warehouse keeper's fiscal year and if the request states the reason for the extension.

**SECTION 47.** 127.06 (1m) of the statutes is created to read:

**127.06 (1m) GRAIN DEALERS; FINANCIAL STATEMENTS REQUIRED.** (a) The following grain dealers shall file financial statements under par. (b):

1. A Class A grain dealer.

2. A Class B grain dealer that uses any deferred price contract or deferred payment contract.

3. A grain dealer that claims to be bonded or claims to have filed security with the department for the benefit of producers.

(b) A grain dealer specified in par. (a) shall do all of the following:

1. File a financial statement with the grain dealer's initial application for a license under s. 127.03 (2).

2. Except as provided in par. (e), file an annual financial statement with the department on or before the 15th day of the 4th month beginning after the close of the grain dealer's fiscal year.

(c) A financial statement filed under par. (b) shall be either a reviewed financial statement or an audited financial statement, except that the financial statement shall be an audited financial statement if any of the following apply:

1. The grain dealer is a Class A grain dealer that buys or sells at least \$2,000,000 worth of grain from producers during the grain dealer's fiscal year.

2. The grain dealer is a sole proprietor and the financial statement is not prepared according to the historical cost basis method of accounting.

(d) The department may require a Class A grain dealer or a Class B grain dealer that uses any deferred price contract or deferred payment contract to file a supplementary financial statement or an interim statement whenever the department determines that such filing is necessary to protect producers. The department may require a financial statement filed under this paragraph to be an audited financial statement or a reviewed financial statement.

(e) The department may extend the filing deadline under par. (b) 2. by up to 30 days in response to a written request from a grain dealer or an independent certified public accountant, or an independent public accountant who holds a certificate of authority under ch. 442, that is auditing or reviewing the financial statement for a grain dealer, if the department receives the written request on or before the 5th day of the 4th month beginning after the close of the grain dealer's fiscal year and if the request states the reason for the extension.

**SECTION 48.** 127.06 (2) (title) and (a) of the statutes are amended to read:

**127.06 (2) (title) CONTENTS; GENERAL.** (a) Except as provided in ~~par. (b)~~ sub. (3) or (4), a financial statement under sub. (1) or (1m) 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~~ according to generally accepted accounting principles.

(b) Except as provided in ~~par. (b)~~ sub. (4), 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 and other grain storage receipts.

(c) Except as provided in ~~par. (b) sub. (4)~~, 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.~~

**SECTION 49.** 127.06 (2) (b) of the statutes is renumbered 127.06 (4) and amended to read:

127.06 (4) (title) INITIAL FINANCIAL STATEMENT. ~~A~~ If a warehouse keeper or a Class A grain dealer that has not previously engaged in those businesses may file an initial financial statement, consisting operated as a warehouse keeper or grain dealer, the financial statement included with that warehouse keeper's or grain dealer's initial license application may consist of an opening balance sheet and notes to that balance sheet, prepared in conformity with according to generally accepted accounting principles.

**SECTION 50.** 127.06 (3) of the statutes is renumbered 127.06 (7) and amended to read:

127.06 (7) (title) ACCESS TO FINANCIAL STATEMENT CLOSED TO PUBLIC INSPECTION. ~~A~~ Neither a financial statement nor a disclosure of grain purchases under sub. (5) is not subject to open to public inspection under s. 19.35 and the. The department may keep a financial statement closed to the public, although the department may utilize and release introduce a financial statement as evidence in an enforcement action, brought by or on behalf of the department or in an administrative hearing or court proceeding in which the department is a named party, subject to any protective orders made by the court or administrative tribunal.

**SECTION 51.** 127.06 (3) of the statutes is created to read:

127.06 (3) FINANCIAL STATEMENT OF SOLE PROPRIETOR. If a warehouse keeper or grain dealer is a sole proprietor, the financial statement for that sole proprietor shall consist of a statement of financial condition, statement of changes in net worth, notes to the financial statements and other information required by the department, except that the financial statement for the sole proprietor's grain operations shall comply with sub. (2) (a).

**SECTION 52.** 127.06 (5) and (6) of the statutes are created to read:

127.06 (5) GRAIN DEALER; DISCLOSURE OF AMOUNT OF GRAIN PURCHASED. With every financial statement filed under sub. (1m), a grain dealer shall file a statement, on a form furnished by the department, showing the total dollar value of grain that the grain dealer purchased from producers during the grain dealer's last completed fiscal year and during each month of that fiscal year.

(6) LIABILITY ADJUSTMENTS. (a) For purposes of s. 127.065 (1) (c) or 127.067 (1) (c), a warehouse keeper or

grain dealer may deduct, from the amount of a liability reported in the warehouse keeper's or grain dealer's financial statement, any of the liability adjustments allowed for the warehouse keeper or grain dealer under pars. (b) to (f) if the amount of the liability adjustments and of the offsetting assets are disclosed in the notes to the financial statement. The total amount of the liability adjustments under pars. (b) to (f) may not exceed the total amount of the corresponding assets, identified in the notes to the financial statement, that justify the adjustments.

(b) A grain dealer may deduct amounts that the grain dealer has borrowed from a lending institution and deposited with a commodities broker to maintain an account to hedge grain transactions. The amount of the deduction shall be the lesser of the amount deposited with the commodities broker or the amount owed to the lending institution for funds borrowed from the lending institution and deposited with the commodities broker.

(c) A grain dealer may deduct amounts that the grain dealer has borrowed from a lending institution to buy grain that has been shipped and is in transit if the grain dealer has a collectible account receivable for that grain on the date of the balance sheet. The amount of the deduction shall be the lesser of the amount receivable by the grain dealer for the grain that has been shipped and is in transit or the amount that the grain dealer owes to the lending institution for funds used to buy that grain.

(d) A grain dealer may deduct amounts that the grain dealer has borrowed from a lending institution and that are secured by grain owned by the grain dealer and held in the grain dealer's inventory. The amount of the deduction shall be the lesser of the value of the grain pledged as security or the amount owed to the lending institution.

(e) A grain dealer may deduct amounts that the grain dealer has borrowed from a lending institution and used to buy grain that the grain dealer holds in inventory on the date of the balance sheet if the grain dealer has entered into a written contract to sell the grain. The amount of the deduction shall be the lesser of the amount owed to the lending institution or the value of the grain purchased with the borrowed funds and held in inventory to fill the sales contract.

(f) A warehouse keeper or a grain dealer may deduct amounts that the warehouse keeper or grain dealer has borrowed from a lending institution and used to pay for fertilizer, pesticides, herbicides or seed that the warehouse keeper or grain dealer holds in inventory on the date of the balance sheet. The amount of the deduction shall be the lesser of the amount owed to the lending institution or the cost of the fertilizer, pesticides, herbicides or seed purchased with the borrowed funds.

**SECTION 53.** 127.065 of the statutes is created to read:  
**127.065 Minimum financial standards; warehouse keepers. (1) REQUIREMENT.** Except as provided in sub. (2), a warehouse keeper other than an exempt

warehouse keeper shall meet all of the following financial standards:

(a) On the date of the warehouse keeper's initial financial statement under s. 127.06 (1) (a) 1. and at the end of each fiscal year, the ratio of the warehouse keeper's current assets to current liabilities shall be at least 1.25 to 1.

(b) At all times other than the times under par. (a), the ratio of the warehouse keeper's current assets to current liabilities shall be at least 1 to 1.

(c) The warehouse keeper's total assets shall at all times exceed total liabilities, adjusted as provided in s. 127.06 (6), by at least \$50,000 or the product obtained by multiplying the capacity of the warehouse keeper's warehouses by 10 cents, whichever is greater.

(2) EXEMPTIONS. A warehouse keeper is not required to comply with sub. (1) if the warehouse keeper does all of the following:

(a) Files with the department a bond or other security that complies with s. 127.07.

(b) Files monthly reports with the department under s. 127.069.

(3) NOTICE OF CHANGES. A warehouse keeper that is required to comply with sub. (1) shall notify the department whenever the warehouse keeper knows or has reason to believe that the warehouse keeper no longer meets a financial standard under sub. (1).

**SECTION 54.** 127.067 of the statutes is created to read:

**127.067 Minimum financial standards; grain dealers.** (1) REQUIREMENT. Except as provided in sub. (2), each Class B grain dealer that uses any deferred payment contract or deferred price contract to buy grain from a producer and each Class A grain dealer shall meet all of the following financial standards:

(a) On the date of the grain dealer's initial financial statement under s. 127.06 (1m) (b) 1. and at the end of each fiscal year, the ratio of the grain dealer's current assets to current liabilities shall be at least 1.25 to 1.

(b) At all times other than the times under par. (a), the ratio of the grain dealer's current assets to current liabilities shall be at least 1 to 1.

(c) The grain dealer's total assets shall at all times exceed total liabilities, adjusted as provided in s. 127.06 (6), by \$15,000 or the amount required to achieve a ratio of total liabilities to equity of not more than 5 to 1, whichever is greater.

(2) EXEMPTIONS. A grain dealer is not required to comply with sub. (1) if the grain dealer does all of the following:

(a) Files with the department a bond or other security that complies with s. 127.07.

(b) Files monthly reports with the department under s. 127.069.

(3) NOTICE OF CHANGES. A grain dealer that is required to comply with sub. (1) shall notify the department whenever the grain dealer knows or has reason to believe

that the grain dealer no longer meets a financial standard under sub. (1).

**SECTION 55.** 127.069 of the statutes is created to read:

**127.069 Monthly reports; warehouse keepers and grain dealers.** (1) WAREHOUSE KEEPER. A warehouse keeper, other than an exempt warehouse keeper, that does not meet the financial standards under s. 127.065 (1) shall file monthly reports with the department. The warehouse keeper shall file each monthly report no later than the 10th day of each month. Each monthly report 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.

(2) GRAIN DEALERS. (a) All of the following shall file monthly reports with the department:

1. A Class A grain dealer that does not meet the financial standards under s. 127.067 (1).

2. A Class B grain dealer that uses any deferred payment contract or deferred price contract to buy grain from producers and that does not meet the financial standards under s. 127.067 (1).

3. A grain dealer that claims to be bonded or that claims to have filed security with the department for the benefit of producers.

(b) A grain dealer shall file the monthly report under par. (a) with the department no later than the 10th day of each month. The report shall include all of the following:

1. The total number of bushels of each type of grain, and the total cost of each type of grain, that the grain dealer purchased from producers during the previous month.

2. The total number of bushels of each type of grain purchased from producers under a deferred payment contract or deferred price contract for which the grain dealer had not paid as of the last day of the previous month.

3. The amount that the grain dealer owed producers for each type of grain identified under subd. 2. as of the last day of the previous month. The grain dealer shall estimate the amount owed for grain purchased under deferred price contracts based on the pricing formulas in the contracts and the market prices for grain as of the last day of the previous month.

**SECTION 56.** 127.07 of the statutes is repealed and recreated to read:

**127.07 Security requirements; warehouse keepers and grain dealers.** (1) WAREHOUSE KEEPERS. A warehouse keeper that claims to be bonded or claims to have filed security for the benefit of depositors or that does not meet the financial standards under s. 127.065 (1) and that is not an exempt warehouse keeper shall file with the department, and maintain, security under this section.

(2) GRAIN DEALERS. All of the following grain dealers shall file with the department, and maintain, security under this section:

(a) Class A grain dealer that does not meet the financial standards under s. 127.067 (1).



(b) A Class B grain dealer that uses any deferred payment contract or deferred price contract to buy grain from producers and that does not meet the financial standards under s. 127.067 (1).

(c) A grain dealer that claims to be bonded or that claims to have filed security for the benefit of producers.

(3) FORM OF SECURITY. Security filed and maintained under sub. (1) or (2) shall comply with the standards promulgated by the department by rule and shall be in one of the following forms:

(a) A continuous surety bond that is subject to cancellation by the surety company only upon 90 days' written notice to the department. Notice of cancellation may not affect any liability incurred on the bond within 90 days after notice is served on the department.

(b) Cash or negotiable securities.

(c) Stocks, bonds or other marketable securities at current market value.

(d) An irrevocable bank letter of credit that is issued for an initial period of one year and is automatically renewed at the end of each period unless, at least 90 days before the scheduled renewal date, the issuing bank gives the department written notice that the letter of credit will not be renewed.

(e) Personal surety bonds or other 3rd party guarantees that are fully backed by security under par. (b) or (c).

(4) AMOUNT OF SECURITY; WAREHOUSE KEEPERS. A warehouse keeper that is required to file and maintain security under sub. (1) shall file and maintain security in an amount that is at least 20% of the current market value of all grain that the warehouse keeper has in storage for depositors or \$25,000, whichever is greater.

(5) AMOUNT OF SECURITY; GRAIN DEALERS. (a) Except as provided under par. (b), a grain dealer that is required to file and maintain security under sub. (2) shall file and maintain security in an amount that is at least equal to the sum of the following, increased to the next highest \$1,000:

1. The total amount that the grain dealer owed to producers under deferred payment contracts as of the last day of the previous month or as of another date specified by the department.

2. The estimated total amount that the grain dealer owed to producers under deferred price contracts as of the last day of the previous month or as of another date specified by the department. The grain dealer shall estimate the amount owed based on the pricing formulas in the contracts and the market prices for grain as of the last day of the previous month or as of the date specified by the department.

3. One of the following:

a. Before September 1, 1996, an amount equal to 20% of the dollar amount of the grain dealer's average monthly purchases from producers for the 3 months in which the grain dealer made the largest monthly purchases from producers during the preceding 12 months.

b. Beginning on September 1, 1996, an amount equal to 35% of the dollar amount of the grain dealer's average monthly purchases from producers for the 3 months in which the grain dealer made the largest monthly purchases from producers during the preceding 12 months.

(b) If a grain dealer has operated as a grain dealer for less than one year, the grain dealer shall file and maintain security in an amount specified by the department. The department shall specify an amount that is equal to the amount that the department projects to be the dollar amount of the grain dealer's monthly average grain purchases during the 3 months in which the grain dealer is likely to make the largest monthly purchases from producers during the following 12 months, multiplied by the percentage under par. (a) 3. or, beginning on September 1, 1996, under par. (a) 4.

(6) DEMANDS FOR SECURITY. (a) The department may require a warehouse keeper or grain dealer to file security whenever one of the following occurs:

1. The warehouse keeper ceases to meet the financial standards under s. 127.065 (1) or the grain dealer ceases to meet the financial standards under s. 127.067 (1).

2. The department receives notice of cancellation of a surety bond, or notice of nonrenewal of a letter of credit, filed with the department as security.

3. Security filed with the department falls below the amount required under sub. (4) or (5) because of a depreciation in the value of the security or an increase in the amount of security required or for any other reason.

4. The warehouse keeper or grain dealer fails to provide information requested by the department that is relevant to a determination of security requirements.

(b) If the department requires a warehouse keeper or grain dealer to file security with the department under par. (a), the department shall issue a written demand for security to the warehouse keeper or grain dealer. The demand shall indicate why the security is required, the amount of security required, the basis on which the department determined the amount of security required and the deadline for filing security.

(c) If a warehouse keeper or grain dealer fails to file security by the deadline specified under par. (b), the department may summarily suspend the license of the warehouse keeper or grain dealer.

(d) If a warehouse keeper or grain dealer fails to file security by the deadline specified under par. (b), the warehouse keeper or grain dealer shall, within 5 days after the deadline, give notice of its failure to file security to all depositors or producers to whom the warehouse keeper or grain dealer is obligated under a grain storage contract or a grain purchase contract. If a warehouse keeper or grain dealer fails to notify depositors or producers under this paragraph, the department shall notify those producers or depositors by publishing a class 3 notice under ch. 985.

(7) **RELEASE OF SECURITY.** The department may, upon request, release security filed by a warehouse keeper or grain dealer under this section only if one of the following occurs:

(a) The warehouse keeper or grain dealer achieves and maintains compliance with the applicable financial standards under s. 127.065 (1) or 127.067 (1) as evidenced by 2 successive annual financial statements or one annual financial statement and a reviewed financial statement for the first quarter of the following fiscal year.

(b) The warehouse keeper or grain dealer demonstrates to the department's satisfaction that the amount of security on file exceeds the amount required under sub. (4) or (5).

(c) The warehouse keeper or grain dealer files alternative security of equal value.

(d) The warehouse keeper or grain dealer is no longer in business and demonstrates to the department's satisfaction that all obligations to producers or depositors have been satisfied in full.

**SECTION 57.** 127.09 of the statutes is amended to read:

**127.09 (title) Duties of a 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, warehouse receipt or other written evidence of storage receipt or storage at the time the grain is received. The document storage receipt 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~~ accurately determine the weight of grain through the use of using accurate weighing equipment. If ~~determinations are made on the basis of a warehouse keeper determines the grade and or~~ quality of grain, the warehouse keeper shall ~~make accurate determinations of~~ accurately determine the grade and or quality through the use of using accurate testing and grading and testing equipment.

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

(4) **MAINTAIN SUFFICIENT INVENTORY.** A warehouse keeper shall at all times maintain grain inventories suffi-

cient in quantity and quality to meet all outstanding obligations for grain received from or held in storage for depositors.

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

**SECTION 58.** 127.10 (title), (1) and (2) of the statutes are amended to read:

**127.10 (title) Duties of a grain dealers dealer. (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 of the grain or the formula on which the price is to be based and other terms of purchase or sale. ~~The A~~ grain dealer shall furnish scale tickets or other appropriate receipts to ~~the a~~ producer or the producer's agent whenever immediately upon receiving grain is received from the producer or the producer's agent.

(2) **WEIGHT; GRADE; QUALITY.** A grain dealer shall ~~make accurate determinations of~~ accurately determine the weight of grain through the use of using accurate weighing equipment. If ~~determinations are made on the basis of a grain dealer determines the grade and or~~ quality of grain, the grain dealer shall ~~make accurate determinations of~~ accurately determine the grade and or quality through the use of using accurate testing and grading and testing equipment.

**SECTION 59.** 127.10 (4) of the statutes is amended to read:

127.10 (4) **COMPLIANCE WITH CONTRACTS.** A grain dealer buying grain from or selling grain for producers shall ~~make payment pay~~ for the grain when payment is due under the terms of any the 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 the contract or agreement.

**SECTION 60.** 127.10 (5) of the statutes is renumbered 127.10 (5) (a) and amended to read:

127.10 (5) (a) ~~A grain dealer who uses any~~ deferred payment or deferred price contract shall be in writing. A grain dealer shall furnish the producer with a copy of the 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 within 7 days after the grain dealer takes title to the grain covered by the con-

~~tract. The contract shall state the price of the grain or, in the case of a deferred price contract, the formula on by which the price is to be based, terms of the purchase or sale and the date on which payment is to be made will be determined and the deadline by which the price will be determined.~~

**SECTION 61.** 127.10 (5) (b) of the statutes is created to read:

127.10 (5) (b) A deferred payment contract or deferred price contract shall specify the date by which the grain dealer agrees to pay the producer in full. That date may not be more than 180 days after the day on which the contract price is established.

**SECTION 62.** 127.10 (6) of the statutes is amended to read:

127.10 (6) (title) PERMANENT BUSINESS LOCATION; BUSINESS HOURS. (a) ~~A~~ Each Class A grain dealer and Class B grain dealer and Class B2 grain dealer shall maintain a permanent business address at which the grain dealer may be readily contacted during business hours. A grain dealer shall provide written notice of the 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. Each Class A grain dealer, Class B grain dealer and Class B2 grain dealer shall keep business hours at the grain dealer's permanent business address under par. (a). On each day that the Chicago Board of Trade is open, the grain dealer shall be open for business beginning at least one-half hour before the opening of the Chicago Board of Trade and continuing until at least one-half hour after the closing of the Chicago Board of Trade. The grain dealer's business hours that are required under this paragraph shall be prominently posted at the business location grain dealer's permanent business address under par. (a).~~

**SECTION 63.** 127.105 of the statutes is amended to read:

**127.105 Liability of warehouse keepers and grain dealers.** (1) A warehouse keeper or grain dealer is liable to a producer or depositor 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 when due, or fails to return stored grain to the depositor upon demand, according to a contract for the storage, purchase or sale of grain.

(2) Any corporation or cooperative that owns, controls or acts as a warehouse keeper or grain dealer is liable to a producer or depositor 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 the producer when due, or fails to return stored grain to the depositor upon demand, according to a contract for the storage, purchase or sale of grain.~~

(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 on behalf of producers or depositors to obtain payment of amounts owed under this section. The department may settle any claim of a producer or depositor under this section with the consent of the claimant and may decline to represent a claimant who does not agree to a settlement recommended by the department.

**SECTION 64.** 127.11 (2) of the statutes is amended to read:

127.11 (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 license or in any other statement or report that the warehouse keeper or grain dealer is required to be submitted submit to the department under this chapter.

**SECTION 65.** 127.12 (2) of the statutes is amended to read:

127.12 (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 buying grain from or selling grain for a producer or depositor require the producer to provide the grain dealer with a written statement which specifies the existence, nature and amount of that discloses any liens or security interests in the grain, the nature and amount of those liens or security interests 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.

**SECTION 66.** 127.13 (title) of the statutes is repealed and recreated to read:

**127.13 (title) Inspection and investigation.**

**SECTION 67.** 127.13 (1) of the statutes is renumbered 127.13 (1) (a) and amended to read:

127.13 (1) (a) The department may investigate or inspect the operations of a warehouse keeper or grain dealer's operation at any time deemed necessary to determine qualifications for a certificate of registration, dealer to determine whether the warehouse keeper or grain dealer is in compliance with this chapter or rules promulgated under this chapter, the sufficiency of whether a warehouse keeper has sufficient grain on hand to meet obligations to depositors or the ability of the whether a grain dealer or warehouse keeper to make payment is able to pay for grain when payment is due.

(b) In connection with an investigation or inspection under par. (a), 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.

**SECTION 68.** 127.13 (1) (c) of the statutes is created to read:

127.13 (1) (c) A warehouse keeper or grain dealer shall make available to the department, upon demand, documents and records that the warehouse keeper or grain dealer is required to keep under this chapter or rules promulgated under this chapter so that the department may inspect or copy the documents and records.

**SECTION 69.** 127.13 (2) and (3) of the statutes are amended to read:

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

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

**SECTION 70.** 127.14 of the statutes is repealed and recreated to read:

**127.14 Claims by producers and depositors; default proceedings and payment of claims.** (1) FILING CLAIMS. Any of the following may file a written claim with the department under this section:

(a) A producer who claims that a grain dealer has failed to pay the producer for grain when due.

(b) A depositor who claims that a warehouse keeper has failed to return stored grain upon demand.

(2) INITIATING DEFAULT PROCEEDINGS. Upon receiving a written claim under sub. (1), or upon receiving other evidence that a warehouse keeper or grain dealer has defaulted on obligations to producers or depositors, the department may initiate a default proceeding under this section. To initiate a default proceeding, the department shall issue an order requiring all interested producers or depositors to file verified proofs of claim with the department before a specified date or be barred from participating in any recovery made by the department. The department shall publish notice of the order in all of the following ways:

(a) By posting a copy of the order in a prominent location at each place of business in this state operated by the warehouse keeper or grain dealer and on each truck operated by the warehouse keeper or grain dealer that can be readily located.

(b) By mailing a copy of the order to the warehouse keeper or grain dealer and to the warehouse keeper's or grain dealer's surety, if any.

(c) By publishing the contents of the order as a class 3 notice under ch. 985, with the last insertion of the notice not later than 30 days before the deadline for filing claims.

(d) By mailing a copy of the order, or equivalent notice, to those producers or depositors who are identified

by the department and who appear to have unpaid claims against the warehouse keeper or grain dealer.

(3) AUDIT; PROPOSED ORDER. If the department initiates a default proceeding under this section, the department shall audit producer or depositor claims filed with the department and shall issue a proposed order allowing or disallowing claims. The department shall mail a copy of the proposed order to the warehouse keeper or grain dealer, to the warehouse keeper's or grain dealer's surety, if any, and to each producer or depositor who filed a timely claim in the proceeding.

(4) UNTIMELY CLAIMS DISALLOWED. (a) The department shall disallow a claim of a producer or depositor filed after the claim filing deadline specified under sub. (2) unless the department waives the claim filing deadline for good cause shown.

(b) The department shall disallow a claim for any payment that was due more than 60 days before the date on which the department first received a written claim under sub. (1).

(5) NOTICE AND HEARING. The department shall hold a public hearing on its proposed order under sub. (3). The department shall provide a notice of the hearing to each person to whom the department is required to provide a copy of its proposed order under sub. (3).

(6) FINAL ORDER AFTER HEARING. (a) Before issuing a final decision and order in a default proceeding under this section, the department shall follow the procedures in s. 227.46, except that if after the hearing under sub. (5) there are no objections to the department's proposed order, the department may adopt the proposed order as the department's final decision and order without further notice or hearing.

(b) The department shall serve its final decision and order on each person to whom the department is required to provide a copy of its proposed order under sub. (3).

(7) CONVERTING SECURITY TO PAY ALLOWED CLAIMS. For the purpose of paying claims allowed under sub. (6), the department may convert any security that a warehouse keeper or grain dealer filed with the department and may apply the proceeds to pay the allowed claims.

(8) OBTAINING PAYMENT OF ALLOWED CLAIMS. The department may demand and receive payment of claims allowed under sub. (6) on behalf of producers or depositors and may commence an action in court to recover those claims. The department may demand and receive grain, money or other assets in order to satisfy claims of producers or depositors.

(9) PAYING ALLOWED CLAIMS. The department may distribute any grain, money or other assets recovered by the department under sub. (7) or (8) to satisfy claims of producers or depositors allowed by the department under sub. (6). The department shall distribute recovered assets on a proportionate basis based on the amount of each allowed claim. If recovered assets exceed allowed claims,

the department shall return the excess to the person who provided the assets.

(10) PRIORITY OF PRODUCER CLAIMS IN INSOLVENCY PROCEEDINGS AND OTHER CREDITOR'S ACTIONS. A producer's claim against a grain dealer for grain sold to that grain dealer is entitled to the same priority in a state insolvency proceeding or other creditor's action as is a claim for labor. This subsection does not affect or impair any other lien, security or priority held by the producer. Neither a final court judgment awarding a producer claim nor a department order allowing a claim under sub. (6) is a prerequisite to filing a producer claim in a state insolvency proceeding or other creditor's action or to the allowance of the priority under this subsection.

SECTION 71. 127.15 of the statutes is amended to read:

**127.15 Rule-making authority.** The department may promulgate rules necessary for the efficient administration and enforcement of this chapter and for 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 rules related to grain storage and sales contracts, grain storage receipts, records and accounts kept by warehouse keepers and grain dealers, security filed by warehouse keepers and grain dealers, disclosures to producers and depositors, grain storage and purchase practices and fees paid by warehouse keepers and grain dealers under ss. 127.02 and 127.03.

SECTION 72. 127.16 of the statutes is amended to read:

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

SECTION 73. 127.17 (1) (intro.) of the statutes is renumbered 127.17 (1) (a) (intro.) and amended to read:

127.17 (1) (a) (intro.) If the department determines that a warehouse keeper or grain dealer is ~~not in compliance with a requirement of~~ has violated this chapter or a rule promulgated under this chapter, the department may do any of the following:

SECTION 74. 127.17 (1) (a) (title) of the statutes is repealed.

SECTION 75. 127.17 (1) (a) of the statutes is renumbered 127.17 (1) (a) 1. and amended to read:

127.17 (1) (a) 1. By special order, require ~~compliance or require the person the warehouse keeper or grain dealer to comply or to~~ take specific steps ~~deemed considered~~ reasonably necessary to achieve compliance, including steps to remedy existing deficiencies, or to prevent the

loss, damage or abnormal deterioration of grain, ~~or otherwise ensure compliance.~~

SECTION 76. 127.17 (1) (b) of the statutes is created to read:

127.17 (1) (b) A warehouse keeper or grain dealer named in a summary special order under par. (a) 2. may, within 10 days after receiving the order, request a hearing on the order. The department shall hold an informal hearing as soon as possible after receiving a hearing request but no later than 10 days after receiving the hearing request unless the warehouse keeper or grain dealer waives the informal hearing or agrees to a later date for the informal hearing. If the matter is not resolved at the informal hearing, the department shall hold a formal contested case hearing under ch. 227 on the order as soon as reasonably possible. A request for a hearing does not stay a summary special order pending the hearing.

SECTION 77. 127.17 (1) (b) 1. of the statutes is renumbered 127.17 (1) (a) 2. and amended to read:

127.17 (1) (a) 2. If necessary to prevent clear and imminent harm to producers or depositors, issue a special order as ~~provided in par. (a) under subd. 1.~~ on a summary basis.

SECTION 78. 127.17 (1) (b) 2. and 3. of the statutes are repealed.

SECTION 79. 127.17 (2) (title), (a) and (b) of the statutes are amended to read:

127.17 (2) (title) DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION CERTIFICATE LICENSE.

(a) *Grounds; procedure for suspension or revocation.* ~~Violation of~~ The department may deny, suspend or revoke a warehouse keeper's or grain dealer's license if the warehouse keeper or grain dealer violates this chapter; or any rule adopted promulgated 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 a license by special order under sub. (1) (a) 1.~~ 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) (a) 2. and 3.~~

(b) (title) *Suspension of grain dealer registration license.* If a grain dealer's certificate of registration license is suspended, the grain dealer may not purchase or receive grain from producers and ~~may or~~ sell or ship grain, except under the supervision of the department.

SECTION 80. 127.17 (2) (c) (title) of the statutes is amended to read:

127.17 (2) (c) (title) *Revocation of a grain dealer registration license.*

SECTION 81. 127.17 (2) (c) of the statutes is renumbered 127.17 (2) (c) 1. and amended to read:

127.17 (2) (c) 1. If a grain dealer's ~~certificate of registration license~~ is revoked, the grain dealer may not pur-

chase, receive, sell or ship grain except as the department permits by order.

~~2. If a grain dealer's certificate of registration license is revoked, the grain dealer shall notify every holder of a promptly give notice of that revocation to every producer with whom the grain dealer has an outstanding deferred payment contract or deferred price contract and.~~

~~3. If a grain dealer's license is revoked, the department shall cause a notice to be published publish notice of that revocation in a newspaper having general circulation in the county where the grain dealer's principal place of business is located and in the official state newspaper at least 2-times twice 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.~~

4. If a grain dealer's certificate of registration license is revoked, all outstanding deferred payment ~~or contracts~~ and deferred price contracts are terminated. A terminated deferred payment contract 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.

**SECTION 82.** 127.17 (2) (d) of the statutes is amended to read:

127.17 (2) (d) (title) *Suspension of a warehouse keeper's registration license.* If a warehouse keeper's ~~certificate of registration license~~ is suspended, the warehouse keeper may not purchase or receive grain from depositors ~~and may or~~ sell or ship grain, except under the supervision of the department.

**SECTION 83.** 127.17 (2) (e) (title) of the statutes is amended to read:

127.17 (2) (e) (title) *Revocation of a warehouse keeper's registration license.*

**SECTION 84.** 127.17 (2) (e) of the statutes is renumbered 127.17 (2) (e) 1. and amended to read:

127.17 (2) (e) 1. If a warehouse keeper's ~~certificate of registration license~~ is revoked, the warehouse keeper may not purchase, receive, sell or ship grain except as the department permits by order.

~~2. If a warehouse keeper's certificate of registration license is revoked, the warehouse keeper shall promptly notify every depositor of that fact and the revocation.~~

3. If a warehouse keeper's license is revoked, the department shall ~~cause a notice to be published~~ publish notice of the revocation in a newspaper having general circulation in the county where the warehouse is located and in the official state newspaper at least ~~2-times~~ twice 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.~~

**SECTION 85.** 127.17 (3) of the statutes is amended to read:

127.17 (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 promulgated or special order ~~of~~ issued by the department under this chapter.

**SECTION 86.** 127.17 (5) of the statutes is amended to read:

127.17 (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 against the violator and may recover twice the amount of ~~the~~ that person's proven damages, together with costs, including all reasonable attorney fees. This remedy is not exclusive.

**SECTION 87. Effective date.**

(1) This act takes effect on September 1, 1995, or the day after publication, whichever is later.