

Commerce
Bergman, Chairperson
Priebe
Rodgers

FILED MAY 5 1977

SENATE FILE 389

By COMMITTEE ON COMMERCE
Approved 4/29 (p. 1394)

REPRINTED

Passed Senate, Date 2-15-78 (p. 321) Passed House, Date 5/3/78 (P. 2211)

Vote: Ayes 47 Nays 0 Vote: Ayes 86 Nays 3

Approved JUN 23, 1978

Motion to reconsider p. 322 provided 2/28
Repassed Senate 2-28-78 (p. 412)
46-0

A BILL FOR

5189-1 An Act relating to the bonding of grain dealers.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 359

REPRINTED

1 Section 1. Section sixty-eight A point seven (68A.7),
2 Code 1977, is amended by adding the following new subsection:

3 NEW SUBSECTION. Financial statements submitted to
4 Iowa state commerce commission pursuant to chapter five hun-
5 dred forty-two (542) or chapter five hundred forty-three (543)
6 of the Code, by or on behalf of a licensed grain dealer or
7 warehouseman or by an applicant for a grain dealer license
8 or warehouse license.

9 Sec. 2. Section five hundred forty-two point one (542.1),
10 subsection three (3), Code 1977, is amended to read as follows:

11 3. "Grain dealer" shall mean any person who is engaged
12 in the business of buying grain for resale or any person who
13 is engaged in the business of acting as an agent or mer-
14 chandiser who has authority to sell or negotiate the sale
15 of grain on behalf of the owner of such grain and who has
16 authority to receive, manage, or disburse the proceeds of
17 the sale of such grain. This However, "grain dealer" shall
18 not be construed to mean a person solely engaged in buying
19 or selling on the board of trade, grain on-the-board-of-trade
20 or-any future contracts; a person who sells-purchased purchases
21 grain only for sale in a registered feed; a person buying
22 or selling grain only as a farm manager; or an executor,
23 administrator, trustee, guardian, or conservator. Collective
24 bargaining organizations or other persons marketing grain
25 on behalf of its owners through planned marketing arrangements
26 or agreements shall be construed to be a "grain dealer" for
27 purposes of this chapter only; and, as such, shall not
28 necessarily be construed to be buying grain for resale.

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29 Sec. 3. Section five hundred forty-two point one (542.1),
30 Code 1977, is amended by adding the following new subsec-
31 tion:

32 NEW SUBSECTION. "Merchandiser" means a person who buys
33 grain in the capacity of a broker for the purpose of resale
34 for compensation or a commission and who may or may not operate
35 a warehouse or vehicles used in the transportation of grain.

5189 >

1 Sec. 4. Section five hundred forty-two point three (542.3),
2 Code 1977, is amended to read as follows:

3 542.3 LICENSE REQUIRED--FINANCIAL RESPONSIBILITY. ~~No~~
4 A person shall not engage in the business of a grain dealer
5 in this state without having obtained a license issued by
6 the commission. Each application for a license to engage
7 in business as a grain dealer shall be filed with the
8 commission and shall be in a form prescribed by the commission.
9 The application shall include the name of the applicant, its
10 principal officers if the applicant is a corporation or the
11 active members of a partnership if the applicant is a
12 partnership and the location of the principal office or place
13 of business of the applicant. A separate license shall be
14 required for each location at which the records are normally
15 kept for transactions of the grain dealer. The application
16 shall also list the number of trucks or tractor trailer units
17 that will be used in the transportation of grain purchased
18 for resale ~~or grain transported into this state for resale.~~
19 The application shall be accompanied by a complete financial
20 statement of the applicant setting forth the assets,
21 liabilities and the net worth of the applicant. The financial
5194-22 statement must be prepared according to normally accepted
23 accounting principles. Assets shall be shown at original
24 cost less depreciation. Upon a petition filed with the
25 commission, the commission may allow asset valuations in ac-
26 cordance with a competent appraisal. Deferred pricing
27 contracts shall be shown as a liability and valued at the
28 applicable current market price of grain as of the date the
29 financial statement is prepared. In order to receive and
30 retain a license the applicant must have and maintain a net
31 worth of ~~an applicant must exceed five~~ at least fifteen-503/
32 thousand dollars or provide bond in addition to that required
33 by section five hundred forty-two point four (542.4) of the
34 Code in the amount of two thousand dollars for each one
35 thousand dollars or fraction thereof of net worth deficiency.

1 The commission may require additional information or
2 verification with respect to the financial resources of the
3 applicant and the applicant's ability to pay producers for
4 grain purchased from them.

5 Sec. 5. Section five hundred forty-two point four (542.4),
6 Code 1977, is amended to read as follows:

7 542.4 BOND REQUIRED. Any person applying for a license
8 to operate as a grain dealer in accordance with this chapter
9 shall, as a condition to the granting of the license, file
10 with the commission a bond payable to the state of Iowa with
11 a corporate surety approved by the commission in a penal sum
12 of fifteen thousand dollars per license conditioned that the
13 applicant will pay the purchase price of any grain to the
14 seller, and that the grain dealer owns or controls, free of
15 liens, any grain which he or she offers for sale; provided
16 that the aggregate liability of the surety to such persons
17 shall in no event exceed the sum of such bond. One bond,
18 cumulative as to minimum requirements, shall be required where
19 a person has multiple licenses but in no event shall the total
20 amount of bond exceed one hundred thousand dollars. No bond
21 shall be canceled by a surety before at least sixty days'
22 notice by certified mail to the commission and the grain
23 dealer. The liability of the surety shall cover all purchases
24 and transactions made by the grain dealer during the time
25 the bond is in force. A grain dealer's bond filed with this
26 commission shall be in continuous force until canceled by
27 the surety. The liability of the surety on any bond required
28 by the provisions of this chapter shall not accumulate for
29 each successive license period during which the bond is in
30 force.

31 Sec. 6. Section five hundred forty-two point five (542.5),
32 Code 1977, is amended to read as follows:

33 542.5 LICENSE. Upon the filing of the application and
34 compliance with the terms and conditions of this chapter and
35 rules of the commission, the commission shall issue a license

1 to the applicant. The license shall terminate on the thirtieth
2 of June of each year. A grain dealer's license may be renewed
3 annually by the filing of a renewal fee, a current financial
4 statement and a renewal application on a form prescribed by
5 ~~the commission accompanied by a current financial statement~~
6 ~~and the renewal fee.~~ An application for renewal shall be
7 received by the commission before the thirtieth of June.
8 A grain dealer license which has terminated may be reinstated
9 by the commission upon receipt of a proper renewal application,
10 a current financial statement, the renewal fee, and penalty
11 fee in the amount of ten dollars from the grain dealer,
12 provided that such materials are filed within thirty days
13 from the date of termination of the grain dealer license.
14 The commission may cancel a license upon request of the
15 licensee unless a complaint or information is filed against
16 the licensee alleging a violation of a provision of this
17 chapter.

18 Sec. 7. Section five hundred forty-two point eight (542.8),
19 Code 1977, is amended to read as follows:

20 542.8 PAYMENT. A person licensed as a grain dealer shall
21 ~~make payment of~~ pay the purchase price to the owner or his
22 or her agent for grain upon delivery or demand of the owner
23 or his agent, but not later than thirty days after delivery
24 by the owner or agent unless in accordance with the terms
25 of a duly executed deferred payment or deferred pricing
26 contract. ~~A person who holds a bonded warehouse license may~~
27 ~~issue deferred payment contracts in accordance with the~~
28 ~~provisions of section 543.17 and payment shall be made in~~
29 ~~accordance with the terms of the contract.~~ The contract in
30 addition to such other information as may be required shall
31 contain the following:

- 32 1. The seller's name and address.
- 33 2. The conditions of delivery.
- 34 3. The amount and kind of grain delivered.
- 35 4. The price per bushel or basis of value.

1 5. The date payment is to be made.

2 The contract must be numbered and signed by both parties
3 and executed in duplicate. One copy shall be retained by
4 the grain dealer and one copy shall be delivered to the seller.

5 Upon revocation, termination, or cancellation of a grain
6 dealer license, the payment date for all deferred payment
7 or deferred pricing contracts shall be advanced to a date
8 not later than thirty days after the effective date of such
9 revocation, termination or cancellation and the purchase price

10 for all unpriced grain shall be determined as of the effective
11 dates of revocation, termination or cancellation in accordance
12 with all other provisions of the contract. However, if the
13 business of the grain dealer is sold to another licensed grain

14 dealer, deferred payment or deferred pricing contracts may
15 be assigned to the purchaser of the business. As used in
16 this section, delivery means the transfer of title to and
17 possession of grain by the seller to the grain dealer or to
18 another person in accordance with the agreement of the seller

19 and the grain dealer. As used in this section, payment means
20 the actual payment or tender of payment by the grain dealer
21 to the seller of the agreed purchase price, or in the case
22 of disputes as to sales of grain, the undisputed portion of
23 the purchase price without reduction for any separate claim
24 of the grain dealer against the seller.

25 Sec. 8. Section five hundred forty-two point nine (542.9),
26 Code 1977, is amended to read as follows:

27 542.9 INSPECTION OF PREMISES, BOOKS AND RECORDS. The
28 commission may inspect the premises used by any grain deal-
29 er in the conduct of his or her business at any time and the.

30 The books, accounts, records and papers of every such grain
31 dealer shall ~~7-during-ordinary-business-hours~~, be subject to
32 inspection by the commission during ordinary business hours.

33 The transporter of grain in transit shall have in his or her
34 possession bills of lading or other documents covering such
35 grain in transit and such documents shall be available for

1 inspection by the commission upon request. Any grain dealer
 2 licensed in this state who does not have a place of business
 3 within the state upon the request of the commission shall
 4 make available and furnish to the commission ~~upon request~~
 5 at any reasonable time and place the commission may set all
 6 such books, accounts, records and papers of grain transactions
 7 within this state ~~at any reasonable time and place that the~~
 8 ~~commission may set for inspection thereof.~~ Where there is
 9 good cause to believe that a person is engaged without a
 10 license in the business of a grain dealer in this state, the
 11 commission may inspect the books, papers, and records of such
 5185-12 person.

13 Sec. 9. Section five hundred forty-two point ten (542.10),
 14 Code 1977, is amended by striking unnumbered paragraph three
 15 (3).

16 Sec. 10. Chapter five hundred forty-two (542), Code 1977,
 17 is amended by adding the following new section:

18 NEW SECTION. CLAIMS--NOTICE. Upon revocation, termina-
 19 tion or cancellation of a grain dealer license, any claim
 20 for the purchase price of grain against the grain dealer shall
 21 be made in writing and filed with the grain dealer and with
 22 the surety on the grain dealer bond within one hundred twen-
 23 ty days after revocation, termination or cancellation. Failure
 24 to make this timely claim shall relieve the surety of all
 25 obligations to the claimant. However, this section shall
 26 not be construed to reduce below the face amount of the bond
 27 then in effect the aggregate liability of the surety to other
 28 claimants.

29 Upon revocation of a grain dealer license, the commission
 30 shall cause notice of such revocation to be published once
 31 each week for two consecutive weeks in a newspaper of gen-
 5193, 5172-32 eral circulation within the state of Iowa. The notice shall
 33 state the name and address of the grain dealer, the effec-
 34 tive date of revocation, and the name and address of the
 35 surety on the grain dealer bond. The notice shall also state

1 that any claims against the grain dealer shall be made in
2 writing and sent by ordinary mail or delivered personally
3 within one hundred twenty days after revocation to the grain
4 dealer and the surety on the grain dealer bond.

5 Sec. 11. Chapter five hundred forty-two (542), Code 1977,
6 is amended by adding the following new section:

7 NEW SECTION. ENFORCEMENT OFFICERS. The commission may
8 designate by resolution certain of its employees in the
9 warehouse division to be enforcement officers. Each person
10 so designated shall have the authority of a peace officer
11 to make arrests for violations of this chapter.

12 Sec. 12. Chapter five hundred forty-two (542), Code 1977,
13 is amended by adding the following new section:

14 NEW SECTION. NO OBLIGATION OF STATE. Nothing in this
15 chapter shall be construed to imply any guarantee or obliga-
16 tion on the part of the state of Iowa, or any of its agen-
17 cies, employees or officials, either elective or appointive,
18 in respect to any agreement or undertaking to which the pro-
19 visions of this chapter relate.

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20 EXPLANATION

21 This bill:

- 22 1. Further defines "grain dealer" under Chapter 542.
- 23 2. Defines who is a "merchandiser" under Chapter 542.
- 24 3. Imposes a more strenuous financial responsibility re-
25 quirement for persons seeking to be licensed as grain deal-
26 ers.
- 27 4. Provides a procedure whereby a terminated grain deal-
28 er license can be reinstated.
- 29 5. Sets out required terms to be found in grain dealers'
30 contracts.
- 31 6. Sets out a procedure and time for claims against grain
32 dealers when such dealer's license is revoked, terminated
33 or canceled.
- 34 7. Grants the state commerce commission the authority
35 to designate employees as enforcement officers.

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8. Includes financial statements submitted to the commerce commission pursuant to Chapters 542 and 543 as confidential records.

9. Includes clarifying amendments.

LSB 415S
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S-5192
PAGE 3

- 1 one hundred twenty days after the date of revocation.
- 2 The commission shall provide for giving notice to
- 3 all agricultural producers under contract with the
- 4 person holding the bargaining agent permit of the
- 5 revocation of the permit."
- 6 16. Page 2, line 38, by striking the numeral "5"
- 7 and inserting in lieu thereof the numeral "4".
- 8 17. Page 2, lines 41 and 42, by striking the words
- 9 ", either for their own accounts or" and inserting
- 10 in lieu thereof the words "as a bargaining agent".

S-5192 FILED & ADOPTED (p. 320)
FEBRUARY 15, 1978

BY EUGENE M. HILL

SENATE FILE 389

S-5190

- 1 Amend the Briles et al. amendment S-5189, to
- 2 Senate File 389 as follows:
- 3 1. Page 1, line 14, by striking the words "bar-
- 4 gaining agent" and inserting in lieu thereof the words
- 5 ""bargaining agent"".

S-5190 FILED & ADOPTED (p. 320) BY EUGENE M. HILL
FEBRUARY 15, 1978

S-5193

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Amend Senate File 389 as follows:

1. Page 6, by striking line 32, and inserting in lieu thereof the following: "eral circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall".

S-5193 FILED & ADOPTED (p. 321)
FEBRUARY 15, 1978

BY DALE L. TIEDEN
ROLF V. CRAFT

SENATE FILE 389

S-5194

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Amend Senate File 389 as follows:

1. Page 2, line 22, by striking the word "normally" and inserting in lieu thereof the word "generally".

S-5194 FILED & ADOPTED (p. 321)
FEBRUARY 15, 1978

BY PHILIP B. HILL
WARREN E. CURTIS

SENATE FILE 389

S-5195

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Amend Senate File 389 as follows:

1. Page 1, by striking line 21 and inserting in lieu thereof the following: "grain only for sale in a registered feed; a person engaged in the business of selling agricultural seeds regulated by chapter one hundred ninety-nine (199) of the Code; a person buying".

S-5195 FILED *Adopted 2/23 (p. 412)*
FEBRUARY 16, 1978

BY BERL E. PRIEBE

S-5192

- 1 Amend the Briles, et al, amendment, S-5189, to
 2 Senate File 389 as follows:
- 3 1. Page 1, line 8, by striking the word
 4 "conservator" and inserting in lieu thereof the words
 5 "or conservator, of an estate".
- 6 2. Page 1, line 9, by striking the words "by this
 7 Act" and inserting in lieu thereof the words "in
 8 section thirteen (13) of this Act".
- 9 3. Page 1, by striking lines 10 through 14 and
 10 inserting in lieu thereof the following:
- 11 "3. Page 7, by inserting after line 19 the
 12 following:
- 13 Sec. 13. NEW SECTION. As used in sections thirteen
 14 (13) through nineteen (19) of this Act, "bargaining
 15 agent" means a person".
- 16 4. Page 1, by striking lines 20 and 21 and
 17 inserting in lieu thereof the following: "for sale.
 18 Unless the bargaining agent agreement provides that
 19 proceeds from grain sales shall be paid directly to
 20 the agricultural producer by the buyer, the bargaining
 21 agent agreement shall provide that proceeds shall
 22 be paid to and held in trust by either the bargaining
 23 agent, or a third person identified in the bargaining
 24 agent agreement as a trustee, for the benefit of the
 25 agricultural producers. As used in this section the
 26 term "grain" means as provided in section five hundred
 27 forty-two point one (542.1) of the Code."
- 28 5. Page 1, by striking lines 22 through 25 and
 29 inserting in lieu thereof the following:
- 30 "Sec. 14. NEW SECTION. PERMIT REQUIRED OF
 31 BARGAINING AGENT. A".
- 32 6. Page 1, line 35, by striking the words "funds
 33 will beheld" and inserting in lieu thereof the words
 34 "proceeds from sales of grain which are executed by
 35 the bargaining agent on behalf of agricultural
 36 producers will be received and held".
- 37 7. Page 1, by striking lines 39 through 41 and
 38 inserting in lieu thereof the following:
- 39 "Sec. 15. NEW SECTION. BARGAINING AGENT'S PERMIT.
 40 Upon the".
- 41 8. Page 1, line 50, by inserting after the period
 42 the following: "The applicant for a bargaining agent
 43 permit or a renewal thereof shall pay a permit fee
 44 in the amount of twenty-five dollars."
- 45 9. Page 2, by striking lines 3 through 5 and
 46 inserting in lieu thereof the following:
- 47 "Sec. 16. NEW SECTION. BOND REQUIRED OF BARGAINING
 48 AGENT. Any".
- 49 10. Page 2, line 9, by inserting after the word
 50 "bond" the following: "which is in the form and with

1 such surety or sureties as required by the commission".

2 11. Page 2, line 9, by striking the word "fidelity"
3 and inserting in lieu thereof the word "fiduciary".

4 12. Page 2, by striking lines 12 through 14 and
5 inserting in lieu thereof the following:

6 "Sec. 17. NEW SECTION. INSPECTION OF BARGAINING
7 AGENT'S BOOKS".

8 13. Page 2, line 16, by inserting after the word
9 "transactions" the following: ", and all books,
10 accounts, records and papers relating to trust funds
11 or to funds required by this Act to be held in trust,".

12 14. Page 2, by striking lines 22 through 24 and
13 inserting in lieu thereof the following:

14 Sec. 18. NEW SECTION. PENALTIES--MISDEMEANOR.
15 Any person".

16 15. Page 2, by inserting after line 37 the
17 following:

18 "Sec. 19. NEW SECTION. SUSPENSION OR REVOCATION
19 OF PERMIT. The commission may after hearing and upon
20 information being filed with the commission by the
21 head of the warehouse division of the commission or
22 upon complaint filed by any person, suspend or revoke
23 a bargaining agent permit issued under sections
24 thirteen (13) through nineteen (19) of this Act for
25 the violation of or failure to comply with the provi-
26 sions of sections thirteen (13) through nineteen (19)
27 of this Act or any rule adopted thereunder. An
28 information or a verified complaint stating the grounds
29 for suspension or revocation shall be filed with the
30 commission in triplicate. The commission shall notify
31 the permittee of the complaint and furnish the
32 permittee with a copy of the information or the
33 complaint and a copy of the order of the commission
34 fixing the time for a hearing, which time shall be
35 at least five days from the date of notification.
36 If the commission determines that the public good
37 requires immediate action, the commission may, upon
38 the filing of the information or the complaint and
39 without hearing, temporarily suspend a permit pending
40 the determination by it of the complaint. Judicial
41 review of the actions of the commission may be sought
42 in accordance with the terms of the Iowa administrative
43 procedure Act.

44 The commission may revoke a bargaining agent permit
45 upon information without hearing if the permittee
46 fails to have sufficient bond on file with the
47 commission, or if the permittee fails to submit to
48 inspection.

49 Upon revocation of a permit, any claim of a creditor
50 shall be filed against the former permittee within

S-5189

1 Amend Senate File 389 as follows:

2 1. Page 1, by striking lines 12 through 17 and
 3 inserting in lieu thereof the words "in the business
 4 of buying grain for resale or any merchandiser. This
 5 However, "grain dealer" shall".

6 2. Page 1, by striking lines 23 through 28 and
 7 inserting in lieu thereof the words "administrator,
 8 trustee, guardian, conservator; or a bargaining agent
 9 as defined by this Act."

10 3. Page 1, by inserting after line 35 the following:

11 "Sec. _____. Section five hundred forty-two point one
 12 (542.1), Code 1977, is amended by adding the following
 13 new subsection:

5192- 14 NEW SUBSECTION. A bargaining agent means a person,
 15 group, firm, association or corporation who bargains
 16 with buyers for the sale of grain for agriculture pro-
 17 ducers. A bargaining agent shall not take title to the
 18 grain but shall act only for or on behalf of the bene-
 19 ficiaries whose product the bargaining agent is offering
 20 for sale. All funds held by a bargaining agent for and on
 21 behalf of the beneficiaries shall be in trust."

22 4. Page 7, by inserting after line 19 the following:

5192- 23 "Sec. 14. Chapter five hundred forty-two (542), Code
 24 1977, is amended by adding the following new section:

25 NEW SECTION. PERMIT REQUIRED OF BARGAINING AGENT. A
 26 person shall not engage in the business of a bargaining
 27 agent in this state without having obtained a permit
 28 issued by the Iowa state commerce commission. Each
 29 application for a permit to engage in the business of
 30 a bargaining agent shall be made with the commission, on
 31 a form prescribed by the commission which form of applica-
 32 tion shall require only information pertinent and necessary
 33 for the issuance of the bargaining agent permit. The
 34 applicant shall supply the commission with information to
 5192- 35 establish that funds will beheld in trust for the bene-
 36 ficiaries to assure payment of the proceeds of sale. The
 37 application shall also be accompanied by proof of bond
 38 pursuant to section sixteen (16) of this Act.

5192- 39 Sec. 15. Chapter five hundred forty-two (542), Code
 40 1977, is amended by adding the following new section:

41 NEW SECTION. BARGAINING AGENT'S PERMIT. Upon the
 42 filing of the application and compliance with the terms
 43 and conditions of sections thirteen (13) and fourteen (14)
 44 of this Act, the Iowa state commerce commission shall
 45 issue a permit to the applicant. The permit shall be
 46 good for one year from the date of issuance. The permit
 47 may be renewed annually by filing of a renewal applica-
 48 tion on a form prescribed by the commission accompanied by
 49 an annual report of the bargaining agent showing any
 50 additions to or modification of the trust relationship.

1 The commission may cancel a permit upon the request of
2 a permittee.

3 Sec. 16. Chapter five hundred forty-two (542), Code
4 1977, is amended by adding the following new section:

5 NEW SECTION. BOND REQUIRED OF BARGAINING AGENT. Any
6 applicant for a permit to operate as a bargaining agent
7 in accordance with this Act, as a condition to the
8 granting of the permit, shall file with the commerce

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9 commission proof of a bond covering the fidelity responsi-
10 bility of those trustees responsible to the beneficiaries.
11 The bond shall be in a penal sum of fifty thousand dollars.

12 Sec. 17. Chapter five hundred forty-two (542), Code
13 1977, is amended by adding the following new section:

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14 NEW SECTION. INSPECTION OF BARGAINING AGENT'S BOOKS
15 AND RECORDS. A bargaining agent's books, accounts,
16 records and papers of grain transactions shall be subject
17 to inspection by the commission during ordinary business
18 hours. Where there is good cause to believe that a person
19 is engaged without a permit in the business of a bargain-
20 ing agent in this state, the commission may inspect the
21 books, papers, and records of such person.

22 Sec. 18. Chapter five hundred forty-two (542), Code
23 1977, is amended by adding the following new section:

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24 NEW SECTION. PENALTIES--MISDEMEANORS. Any person
25 who engages in business as a bargaining agent without
26 obtaining a permit or any person in violation of any other
27 provision of sections fourteen (14) through seventeen (17)
28 of this Act, or any bargaining agent who refuses to permit
29 inspection of books, accounts or records of grain trans-
30 actions as provided in this chapter, shall be guilty of
31 a simple misdemeanor. Each day that any violation
32 continues shall constitute a separate offense. Any person
33 violating the provisions of this chapter may be restrained
34 by an injunction. The permit of any person who has been
35 found after a hearing, to have willfully violated the pro-
36 visions of this chapter may be suspended for a reasonable
37 time or revoked by the commission."

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38 5. Title page, by striking line 1 and inserting in lieu
39 thereof the following: An Act relating to persons who
40 engage in the business of buying or selling grain, or who
41 participate in the buying or selling of grain, either for
42 their own accounts or for the benefit of others, and pro-
43 viding a penalty."

5192

S-5189 FILED

FEBRUARY 15, 1978

ADOPTED *as amended*

by 51900 5192 2/15 (p.320)

BY JAMES E. BRILES
BERL E. PRIEBE
C. JOSEPH COLEMAN
DALE L. TIEDEN
FRED W. NOLTING
CLOYD E. ROBINSON
STEPHEN W. BIENIUS
MILO MERRITT

C. W. HUTCHINS
JOHN SCOTT
LOUIS P. CULVER
JAMES V. GALLAGHER
MERLIN D. HULSE
JAMES CALHOON
RICHARD F. DRAKE
TOM SLATER

SENATE FILE 389

S-5183

- 1 Amend Senate File 389 as follows:
2 1. Page 1, by striking lines 12 through 17 and
3 inserting in lieu thereof the following: "in the
4 business of buying grain for resale or any
5 merchandiser. This However, "grain dealer" shall.
6 2. Page 1, by striking lines 23 through 28 and
7 inserting in lieu thereof the following:
8 "administrator, trustee, guardian, conservator; or
9 a bargaining agent as defined by this Act."
10 3. Page 3, by striking line 14 and inserting in
11 lieu thereof the following: "seller, and that the
12 grain dealer owns, free of".

S-5183 FILED *w/d 2/15 (p. 320)* BY JAMES E. BRILES
FEBRUARY 14, 1978

SENATE FILE 389

S-5185

- 1 Amend Senate File 389 as follows:
2 1. Page 5, line 31, by inserting after the word
3 "dealer" the words "which pertain to grain purchases".
4 2. Page 6, line 12, by inserting before the
5 period the words "which pertain to grain purchases".

S-5185 FILED & ADOPTED (*p. 321*) BY C. JOSEPH COLEMAN
FEBRUARY 15, 1978

SENATE FILE 389

S-5031

- 1 Amend Senate File 389 as follows:
2 1. Page 2, line 31, by striking the word
3 "fifteen" and inserting in lieu thereof the word
4 "twenty-five".
5 2. Page 3, line 12, by striking the word
6 "fifteen" and inserting in lieu thereof the word
7 "twenty-five".

S-5031 FILED - *Adopted 2/15 (320)* BY CALVIN O. HULTMAN
JANUARY 19, 1978

SENATE FILE 389

S-5052

- 1 Amend Senate File 389 as follows:
2 1. Page 1, line 15, by inserting after the words
3 "of grain", the words ", other than agricultural seeds
4 regulated by chapter one hundred ninety-nine (199)
5 of the Code,".

S-5052 FILED - *Out of order with* BY BERL E. PRIEBE
JANUARY 23, 1978 *adoption of 5189*
2/15

SENATE FILE 389

S-5172

- 1 Amend Senate File 389 as follows:
2 1. Page 6, by striking line 32, and inserting in
3 lieu thereof the following: "eral circulation within
4 the state of Iowa and in a newspaper of general circula-
5 tion within the county of the grain dealer's principal
6 place of business. The notice shall".

S-5172 FILED - *w/d 2/15 (p. 321)* BY DALE L. TIEDEN
FEBRUARY 13, 1978 ROLF V. CRAFT

(AS AMENDED AND PASSED BY THE SENATE FEBRUARY 28, 1978)

Passed Senate, Date 2-9-78 (p. 2243) Passed House, Date 5-3-78 (p. 2211)
Vote: Ayes 45 Nays 0 Vote: Ayes 86 Nays 3
Approved 6-23-78

A BILL FOR

1 An Act relating to persons who engage in the business of
2 buying or selling grain, or who participate in the
3 buying or selling of grain as a bargaining agent for
4 the benefit of others, and providing a penalty.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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_____ = New Language
by the Senate

SENATE FILE 389

H-6409

- 1 Amend Senate File 389 as amended, passed and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 7, by inserting after line 21 the
- 4 following:
- 5 "Bargaining agent shall not mean a person selling
- 6 grain as a farm manager, or an executor, administrator,
- 7 trustee, guardian, or conservator of an estate."

H-6409 FILED *Adopted 5/3* BY DAVITT of Warren
APRIL 28, 1978 *(p. 2210)*

1 Section 1. Section sixty-eight A point seven (68A.7),
2 Code 1977, is amended by adding the following new subsection:

3 NEW SUBSECTION. Financial statements submitted to the
4 Iowa state commerce commission pursuant to chapter five hun-
5 dred forty-two (542) or chapter five hundred forty-three (543)
6 of the Code, by or on behalf of a licensed grain dealer or
7 warehouseman or by an applicant for a grain dealer license
8 or warehouse license.

9 Sec. 2. Section five hundred forty-two point one (542.1),
10 subsection three (3), Code 1977, is amended to read as follows:

11 3. "Grain dealer" shall mean any person who is engaged
12 in the business of buying grain for resale or any merchandiser.
13 This However, "grain dealer" shall not be construed to mean
14 a person solely engaged in buying or selling on the board
15 of trade, grain on-the-board-of-trade-or-any future contracts;
16 a person who sells-purchased purchases grain only for sale
17 in a registered feed; a person engaged in the business of
18 selling agricultural seeds regulated by chapter one hundred
19 ninety-nine (199) of the Code; a person buying or selling
20 grain only as a farm manager; or an executor, administrator,
21 trustee, guardian, or conservator, of an estate; or a bargaining
22 agent as defined in section thirteen (13) of this Act.

23 Sec. 3. Section five hundred forty-two point one (542.1),
24 Code 1977, is amended by adding the following new subsec-
25 tion:

26 NEW SUBSECTION. "Merchandiser" means a person who buys
27 grain in the capacity of a broker for the purpose of resale
28 for compensation or a commission and who may or may not operate
29 a warehouse or vehicles used in the transportation of grain.

30 Sec. 4. Section five hundred forty-two point three (542.3),
31 Code 1977, is amended to read as follows:

32 542.3 LICENSE REQUIRED--FINANCIAL RESPONSIBILITY. No
33 A person shall not engage in the business of a grain dealer
34 in this state without having obtained a license issued by
35 the commission. Each application for a license to engage

1 in business as a grain dealer shall be filed with the
2 commission and shall be in a form prescribed by the commission.
3 The application shall include the name of the applicant, its
4 principal officers if the applicant is a corporation or the
5 active members of a partnership if the applicant is a
6 partnership and the location of the principal office or place
7 of business of the applicant. A separate license shall be
8 required for each location at which the records are normally
9 kept for transactions of the grain dealer. The application
10 shall also list the number of trucks or tractor trailer units
11 that will be used in the transportation of grain purchased
12 for resale ~~or grain transported into this state for resale.~~
13 The application shall be accompanied by a complete financial
14 statement of the applicant setting forth the assets,
15 liabilities and the net worth of the applicant. The financial
16 statement must be prepared according to generally accepted
17 accounting principles. Assets shall be shown at original
18 cost less depreciation. Upon a petition filed with the
19 commission, the commission may allow asset valuations in ac-
20 cordance with a competent appraisal. Deferred pricing
21 contracts shall be shown as a liability and valued at the
22 applicable current market price of grain as of the date the
23 financial statement is prepared. In order to receive and
24 retain a license the applicant must have and maintain a net
25 worth of ~~an applicant must exceed five~~ at least twenty-five
26 thousand dollars or provide bond in addition to that required
27 by section five hundred forty-two point four (542.4) of the
28 Code in the amount of two thousand dollars for each one
29 thousand dollars or fraction thereof of net worth deficiency.
30 The commission may require additional information or
31 verification with respect to the financial resources of the
32 applicant and the applicant's ability to pay producers for
33 grain purchased from them.

34 Sec. 5. Section five hundred forty-two point four (542.4),
35 Code 1977, is amended to read as follows:

1 542.4 BOND REQUIRED. Any person applying for a license
2 to operate as a grain dealer in accordance with this chapter
3 shall, as a condition to the granting of the license, file
4 with the commission a bond payable to the state of Iowa with
5 a corporate surety approved by the commission in a penal sum
6 of ~~fifteen~~ twenty-five thousand dollars per license conditioned
7 that the applicant will pay the purchase price of any grain
8 to the seller, and that the grain dealer owns or controls,
9 free of liens, any grain which he or she offers for sale;
10 provided that the aggregate liability of the surety to such
11 persons shall in no event exceed the sum of such bond. One
12 bond, cumulative as to minimum requirements, shall be required
13 where a person has multiple licenses but in no event shall
14 the total amount of bond exceed one hundred thousand dollars.
15 No bond shall be canceled by a surety before at least sixty
16 days' notice by certified mail to the commission and the grain
17 dealer. The liability of the surety shall cover all purchases
18 and transactions made by the grain dealer during the time
19 the bond is in force. A grain dealer's bond filed with this
20 commission shall be in continuous force until canceled by
21 the surety. The liability of the surety on any bond required
22 by the provisions of this chapter shall not accumulate for
23 each successive license period during which the bond is in
24 force.

25 Sec. 6. Section five hundred forty-two point five (542.5),
26 Code 1977, is amended to read as follows:

27 542.5 LICENSE. Upon the filing of the application and
28 compliance with the terms and conditions of this chapter and
29 rules of the commission, the commission shall issue a license
30 to the applicant. The license shall terminate on the thirtieth
31 of June of each year. A grain dealer's license may be renewed
32 annually by the filing of a renewal fee, a current financial
33 statement and a renewal application on a form prescribed by
34 ~~the commission accompanied by a current financial statement~~
35 ~~and the renewal fee.~~ An application for renewal shall be

1 received by the commission before the thirtieth of June.
2 A grain dealer license which has terminated may be reinstated
3 by the commission upon receipt of a proper renewal application,
4 a current financial statement, the renewal fee, and penalty
5 fee in the amount of ten dollars from the grain dealer,
6 provided that such materials are filed within thirty days
7 from the date of termination of the grain dealer license.
8 The commission may cancel a license upon request of the
9 licensee unless a complaint or information is filed against
10 the licensee alleging a violation of a provision of this
11 chapter.

12 Sec. 7. Section five hundred forty-two point eight (542.8),
13 Code 1977, is amended to read as follows:

14 542.8 PAYMENT. A person licensed as a grain dealer shall
15 ~~make-payment-of~~ pay the purchase price to the owner or his
16 or her agent for grain upon delivery or demand of the owner
17 or his agent, but not later than thirty days after delivery
18 by the owner or agent unless in accordance with the terms
19 of a duly executed deferred payment or deferred pricing
20 contract. ~~A person who holds a bonded warehouse license may~~
21 ~~issue deferred payment contracts in accordance with the~~
22 ~~provisions of section 543.17 and payment shall be made in~~
23 ~~accordance with the terms of the contract.~~ The contract in
24 addition to such other information as may be required shall
25 contain the following:

- 26 1. The seller's name and address.
- 27 2. The conditions of delivery.
- 28 3. The amount and kind of grain delivered.
- 29 4. The price per bushel or basis of value.
- 30 5. The date payment is to be made.

31 The contract must be numbered and signed by both parties
32 and executed in duplicate. One copy shall be retained by
33 the grain dealer and one copy shall be delivered to the seller.
34 Upon revocation, termination, or cancellation of a grain
35 dealer license, the payment date for all deferred payment

1 or deferred pricing contracts shall be advanced to a date
2 not later than thirty days after the effective date of such
3 revocation, termination or cancellation and the purchase price
4 for all unpriced grain shall be determined as of the effective
5 dates of revocation, termination or cancellation in accordance
6 with all other provisions of the contract. However, if the
7 business of the grain dealer is sold to another licensed grain
8 dealer, deferred payment or deferred pricing contracts may
9 be assigned to the purchaser of the business. As used in
10 this section, delivery means the transfer of title to and
11 possession of grain by the seller to the grain dealer or to
12 another person in accordance with the agreement of the seller
13 and the grain dealer. As used in this section, payment means
14 the actual payment or tender of payment by the grain dealer
15 to the seller of the agreed purchase price, or in the case
16 of disputes as to sales of grain, the undisputed portion of
17 the purchase price without reduction for any separate claim
18 of the grain dealer against the seller.

19 Sec. 8. Section five hundred forty-two point nine (542.9),
20 Code 1977, is amended to read as follows:

21 542.9 INSPECTION OF PREMISES, BOOKS AND RECORDS. The
22 commission may inspect the premises used by any grain deal-
23 er in the conduct of his or her business at any time ~~and the~~.
24 The books, accounts, records and papers of every such grain
25 dealer which pertain to grain purchases shall ~~during ordinary~~
26 ~~business-hours,~~ be subject to inspection by the commission
27 during ordinary business hours. The transporter of grain
28 in transit shall have in his or her possession bills of lading
29 or other documents covering such grain in transit and such
30 documents shall be available for inspection by the commission
31 upon request. Any grain dealer licensed in this state who
32 does not have a place of business within the state upon the
33 request of the commission shall make available and furnish
34 to the commission ~~upon request~~ at any reasonable time and
35 place the commission may set all such books, accounts, records

1 and papers of grain transactions within this state ~~at any~~
2 ~~reasonable time and place that the commission may set for~~
3 ~~inspection thereof.~~ Where there is good cause to believe
4 that a person is engaged without a license in the business
5 of a grain dealer in this state, the commission may inspect
6 the books, papers, and records of such person which pertain
7 to grain purchases.

8 Sec. 9. Section five hundred forty-two point ten (542.10),
9 Code 1977, is amended by striking unnumbered paragraph three
10 (3).

11 Sec. 10. Chapter five hundred forty-two (542), Code 1977,
12 is amended by adding the following new section:

13 NEW SECTION. CLAIMS--NOTICE. Upon revocation, termina-
14 tion or cancellation of a grain dealer license, any claim
15 for the purchase price of grain against the grain dealer shall
16 be made in writing and filed with the grain dealer and with
17 the surety on the grain dealer bond within one hundred twen-
18 ty days after revocation, termination or cancellation. Failure
19 to make this timely claim shall relieve the surety of all
20 obligations to the claimant. However, this section shall
21 not be construed to reduce below the face amount of the bond
22 then in effect the aggregate liability of the surety to other
23 claimants.

24 Upon revocation of a grain dealer license, the commission
25 shall cause notice of such revocation to be published once
26 each week for two consecutive weeks in a newspaper of gen-
27 eral circulation within the state of Iowa and in a newspaper
28 of general circulation within the county of the grain dealer's
29 principal place of business when that dealer's principal place
30 of business is located in the state of Iowa. The notice shall
31 state the name and address of the grain dealer, the effec-
32 tive date of revocation, and the name and address of the
33 surety on the grain dealer bond. The notice shall also state
34 that any claims against the grain dealer shall be made in
35 writing and sent by ordinary mail or delivered personally

1 within one hundred twenty days after revocation to the grain
2 dealer and the surety on the grain dealer bond.

3 Sec. 11. Chapter five hundred forty-two (542), Code 1977,
4 is amended by adding the following new section:

5 NEW SECTION. ENFORCEMENT OFFICERS. The commission may
6 designate by resolution certain of its employees in the
7 warehouse division to be enforcement officers. Each person
8 so designated shall have the authority of a peace officer
9 to make arrests for violations of this chapter.

10 Sec. 12. Chapter five hundred forty-two (542), Code 1977,
11 is amended by adding the following new section:

12 NEW SECTION. NO OBLIGATION OF STATE. Nothing in this
13 chapter shall be construed to imply any guarantee or obliga-
14 tion on the part of the state of Iowa, or any of its agen-
15 cies, employees or officials, either elective or appointive,
16 in respect to any agreement or undertaking to which the pro-
17 visions of this chapter relate.

18 Sec. 13. NEW SECTION. As used in sections thirteen (13)
19 through nineteen (19) of this Act, "bargaining agent" means
20 a person, group, firm, association or corporation who bargains
21 with buyers for the sale of grain for agricultural producers.

6409 >
22 A bargaining agent shall not take title to the grain but shall
23 act only for or on behalf of the beneficiaries whose product
24 the bargaining agent is offering for sale. Unless the
25 bargaining agent agreement provides that proceeds from grain
26 sales shall be paid directly to the agricultural producer
27 by the buyer, the bargaining agent agreement shall provide
28 that proceeds shall be paid to and held in trust by either
29 the bargaining agent, or a third person identified in the
30 bargaining agent agreement as a trustee, for the benefit of
31 the agricultural producers. As used in this section the term
32 "grain" means as provided in section five hundred forty-two
33 point one (542.1) of the Code.

34 Sec. 14. NEW SECTION. PERMIT REQUIRED OF BARGAINING
35 AGENT. A person shall not engage in the business of a

1 bargaining agent in this state without having obtained a
2 permit issued by the Iowa state commerce commission. Each
3 application for a permit to engage in the business of a
4 bargaining agent shall be made with the commission, on a form
5 prescribed by the commission which form of application shall
6 require only information pertinent and necessary for the
7 issuance of the bargaining agent permit. The applicant shall
8 supply the commission with information to establish that
9 proceeds from sales of grain which are executed by the
10 bargaining agent on behalf of agricultural producers will
11 be received and held in trust for the beneficiaries to assure
12 payment of the proceeds of sale. The application shall also
13 be accompanied by proof of bond pursuant to section sixteen
14 (16) of this Act.

15 Sec. 15. NEW SECTION. BARGAINING AGENT'S PERMIT. Upon
16 the filing of the application and compliance with the terms
17 and conditions of sections thirteen (13) and fourteen (14)
18 of this Act, the Iowa state commerce commission shall issue
19 a permit to the applicant. The permit shall be good for one
20 year from the date of issuance. The permit may be renewed
21 annually by filing of a renewal application on a form
22 prescribed by the commission accompanied by an annual report
23 of the bargaining agent showing any additions to or
24 modification of the trust relationship. The applicant for
25 a bargaining agent permit or a renewal thereof shall pay a
26 permit fee in the amount of twenty-five dollars. The
27 commission may cancel a permit upon the request of a permittee.

28 Sec. 16. NEW SECTION. BOND REQUIRED OF BARGAINING AGENT.
29 Any applicant for a permit to operate as a bargaining agent
30 in accordance with this Act, as a condition to the granting
31 of the permit, shall file with the commerce commission proof
32 of a bond which is in the form and with such surety or sureties
33 as required by the commission covering the fiduciary responsi-
34 bility of those trustees responsible to the beneficiaries.
35 The bond shall be in a penal sum of fifty thousand dollars.

1 Sec. 17. NEW SECTION. INSPECTION OF BARGAINING AGENT'S
2 BOOKS AND RECORDS. A bargaining agent's books, accounts,
3 records and papers of grain transactions, and all books,
4 accounts, records and papers relating to trust funds or to
5 funds required by this Act to be held in trust, shall be
6 subject to inspection by the commission during ordinary
7 business hours. Where there is good cause to believe that
8 a person is engaged without a permit in the business of a
9 bargaining agent in this state, the commission may inspect
10 the books, papers and records of such person.

11 Sec. 18. NEW SECTION. PENALTIES--MISDEMEANOR. Any person
12 who engages in business as a bargaining agent without obtaining
13 a permit or any person in violation of any other provision
14 of sections fourteen (14) through seventeen (17) of this Act,
15 or any bargaining agent who refuses to permit inspection of
16 books, accounts or records of grain transactions as provided
17 in this chapter, shall be guilty of a simple misdemeanor.
18 Each day that any violation continues shall constitute a
19 separate offense. Any person violating the provisions of
20 this chapter may be restrained by an injunction. The permit
21 of any person who has been found after a hearing, to have
22 willfully violated the provisions of this chapter may be
23 suspended for a reasonable time or revoked by the commission.

24 Sec. 19. NEW SECTION. SUSPENSION OR REVOCATION OF PERMIT.
25 The commission may after hearing and upon information being
26 filed with the commission by the head of the warehouse division
27 of the commission or upon complaint filed by any person,
28 suspend or revoke a bargaining agent permit issued under
29 sections thirteen (13) through nineteen (19) of this Act for
30 the violation of or failure to comply with the provisions
31 of sections thirteen (13) through nineteen (19) of this Act
32 or any rule adopted thereunder. An information or a verified
33 complaint stating the grounds for suspension or revocation
34 shall be filed with the commission in triplicate. The
35 commission shall notify the permittee of the complaint and

1 furnish the permittee with a copy of the information or the
2 complaint and a copy of the order of the commission fixing
3 the time for a hearing, which time shall be at least five
4 days from the date of notification. If the commission
5 determines that the public good requires immediate action,
6 the commission may, upon the filing of the information or
7 the complaint and without hearing, temporarily suspend a
8 permit pending the determination by it of the complaint.
9 Judicial review of the actions of the commission may be sought
10 in accordance with the terms of the Iowa administrative
11 procedure Act.

12 The commission may revoke a bargaining agent permit upon
13 information without hearing if the permittee fails to have
14 sufficient bond on file with the commission, or if the
15 permittee fails to submit to inspection.

16 Upon revocation of a permit, any claim of a creditor shall
17 be filed against the former permittee within one hundred
18 twenty days after the date of revocation. The commission
19 shall provide for giving notice to all agricultural producers
20 under contract with the person holding the bargaining agent
21 permit of the revocation of the permit.

EXPLANATION

22
23 This bill:

- 24 1. Further defines "grain dealer" under Chapter 542.
- 25 2. Defines who is a "merchandiser" under Chapter 542.
- 26 3. Imposes a more strenuous financial responsibility re-
27 quirement for persons seeking to be licensed as grain deal-
28 ers.
- 29 4. Provides a procedure whereby a terminated grain deal-
30 er license can be reinstated.
- 31 5. Sets out required terms to be found in grain dealers'
32 contracts.
- 33 6. Sets out a procedure and time for claims against grain
34 dealers when such dealer's license is revoked, terminated
35 or canceled.

1 7. Grants the state commerce commission the authority
2 to designate employees as enforcement officers.

3 8. Includes financial statements submitted to the com-
4 merce commission pursuant to Chapters 542 and 543 as confi-
5 dential records.

6 9. Includes clarifying amendments.
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8
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10 HOUSE AMENDMENT TO SENATE FILE 389

11
12 S-5812

13 1 Amend Senate File 389 as amended, passed and
14 2 reprinted by the Senate, as follows:

15 3 1. Page 7, by inserting after line 21 the
16 4 following:

17 5 "Bargaining agent shall not mean a person selling
18 6 grain as a farm manager, or an executor, administrator,
19 7 trustee, guardian, or conservator of an estate."

18 S-5812 FILED
19 MAY 5, 1978

RECEIVED FROM THE HOUSE

Senate concurred 5/9 (p. 1343)

SENATE FILE 389

AN ACT

RELATING TO PERSONS WHO ENGAGE IN THE BUSINESS OF BUYING OR SELLING GRAIN, OR WHO PARTICIPATE IN THE BUYING OR SELLING OF GRAIN AS A BARGAINING AGENT FOR THE BENEFIT OF OTHERS, AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section sixty-eight A point seven (68A.7), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. Financial statements submitted to the Iowa state commerce commission pursuant to chapter five hundred forty-two (542) or chapter five hundred forty-three (543) of the Code, by or on behalf of a licensed grain dealer or warehouseman or by an applicant for a grain dealer license or warehouse license.

Sec. 2. Section five hundred forty-two point one (542.1), subsection three (3), Code 1977, is amended to read as follows:

3. "Grain dealer" shall mean any person who is engaged in the business of buying grain for resale or any merchandiser. This However, "grain dealer" shall not be construed to mean a person solely engaged in buying or selling on the board of trade, grain on-the-board-of-trade-or-any future contracts; a person who sells-purchased purchases grain only for sale in a registered feed; a person engaged in the business of selling agricultural seeds regulated by chapter one hundred ninety-nine (199) of the Code; a person buying or selling grain only as a farm manager; or an executor, administrator, trustee, guardian, or conservator of an estate; or a bargaining agent as defined in section thirteen (13) of this Act.

Sec. 3. Section five hundred forty-two point one (542.1), Code 1977, is amended by adding the following new subsection:

tion:

NEW SUBSECTION. "Merchandiser" means a person who buys grain in the capacity of a broker for the purpose of resale for compensation or a commission and who may or may not operate a warehouse or vehicles used in the transportation of grain.

Sec. 4. Section five hundred forty-two point three (542.3), Code 1977, is amended to read as follows:

542.3 LICENSE REQUIRED--FINANCIAL RESPONSIBILITY. No A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the commission. Each application for a license to engage in business as a grain dealer shall be filed with the commission and shall be in a form prescribed by the commission. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which the records are normally kept for transactions of the grain dealer. The application shall also list the number of trucks or tractor trailer units that will be used in the transportation of grain purchased for resale ~~or grain transported into this state for resale.~~ The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a petition filed with the commission, the commission may allow asset valuations in accordance with a competent appraisal. Deferred pricing contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared. In order to receive and

retain a license the applicant must have and maintain a net worth of an-applicant-must-exceed-five at least twenty-five thousand dollars or provide bond in addition to that required by section five hundred forty-two point four (542.4) of the Code in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. The commission may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them.

Sec. 5. Section five hundred forty-two point four (542.4), Code 1977, is amended to read as follows:

542.4 BOND REQUIRED. Any person applying for a license to operate as a grain dealer in accordance with this chapter shall, as a condition to the granting of the license, file with the commission a bond payable to the state of Iowa with a corporate surety approved by the commission in a penal sum of fifteen twenty-five thousand dollars per license conditioned that the applicant will pay the purchase price of any grain to the seller, and that the grain dealer owns or controls, free of liens, any grain which he or she offers for sale; provided that the aggregate liability of the surety to such persons shall in no event exceed the sum of such bond. One bond, cumulative as to minimum requirements, shall be required where a person has multiple licenses but in no event shall the total amount of bond exceed one hundred thousand dollars. No bond shall be canceled by a surety before at least sixty days' notice by certified mail to the commission and the grain dealer. The liability of the surety shall cover all purchases and transactions made by the grain dealer during the time the bond is in force. A grain dealer's bond filed with this commission shall be in continuous force until canceled by the surety. The liability of the surety on any bond required by the provisions of this chapter shall not accumulate for

each successive license period during which the bond is in force.

Sec. 6. Section five hundred forty-two point five (542.5), Code 1977, is amended to read as follows:

542.5 LICENSE. Upon the filing of the application and compliance with the terms and conditions of this chapter and rules of the commission, the commission shall issue a license to the applicant. The license shall terminate on the thirtieth of June of each year. A grain dealer's license may be renewed annually by the filing of a renewal fee, a current financial statement and a renewal application on a form prescribed by the commission ~~accompanied by a current financial statement and the renewal fee~~. An application for renewal shall be received by the commission before the thirtieth of June. A grain dealer license which has terminated may be reinstated by the commission upon receipt of a proper renewal application, a current financial statement, the renewal fee, and penalty fee in the amount of ten dollars from the grain dealer, provided that such materials are filed within thirty days from the date of termination of the grain dealer license. The commission may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

Sec. 7. Section five hundred forty-two point eight (542.8), Code 1977, is amended to read as follows:

542.8 PAYMENT. A person licensed as a grain dealer shall ~~make payment of pay~~ the purchase price to the owner or his or her agent for grain upon delivery or demand of the owner or his agent, but not later than thirty days after delivery by the owner or agent unless in accordance with the terms of a duly executed deferred payment or deferred pricing contract. A person who holds a bonded warehouse license may issue deferred payment contracts in accordance with the

~~provisions of section 543.17 and payment shall be made in accordance with the terms of the contract.~~ The contract in addition to such other information as may be required shall contain the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per bushel or basis of value.
5. The date payment is to be made.

The contract must be numbered and signed by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a grain dealer license, the payment date for all deferred payment or deferred pricing contracts shall be advanced to a date not later than thirty days after the effective date of such revocation, termination or cancellation and the purchase price for all unpriced grain shall be determined as of the effective dates of revocation, termination or cancellation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, deferred payment or deferred pricing contracts may be assigned to the purchaser of the business. As used in this section, delivery means the transfer of title to and possession of grain by the seller to the grain dealer or to another person in accordance with the agreement of the seller and the grain dealer. As used in this section, payment means the actual payment or tender of payment by the grain dealer to the seller of the agreed purchase price, or in the case of disputes as to sales of grain, the undisputed portion of the purchase price without reduction for any separate claim of the grain dealer against the seller.

Sec. 8. Section five hundred forty-two point nine (542.9), Code 1977, is amended to read as follows:

542.9 INSPECTION OF PREMISES, BOOKS AND RECORDS. The commission may inspect the premises used by any grain dealer in the conduct of his or her business at any time ~~and the~~. The books, accounts, records and papers of every such grain dealer which pertain to grain purchases shall, during ordinary business hours, be subject to inspection by the commission during ordinary business hours. The transporter of grain in transit shall have in his or her possession bills of lading or other documents covering such grain in transit and such documents shall be available for inspection by the commission upon request. Any grain dealer licensed in this state who does not have a place of business within the state upon the request of the commission shall make available and furnish to the commission upon request at any reasonable time and place the commission may set all such books, accounts, records and papers of grain transactions within this state at any reasonable time and place that the commission may set for inspection thereof. Where there is good cause to believe that a person is engaged without a license in the business of a grain dealer in this state, the commission may inspect the books, papers, and records of such person which pertain to grain purchases.

Sec. 9. Section five hundred forty-two point ten (542.10), Code 1977, is amended by striking unnumbered paragraph three (3).

Sec. 10. Chapter five hundred forty-two (542), Code 1977, is amended by adding the following new section:

NEW SECTION. CLAIMS--NOTICE. Upon revocation, termination or cancellation of a grain dealer license, any claim for the purchase price of grain against the grain dealer shall be made in writing and filed with the grain dealer and with the surety on the grain dealer bond within one hundred twenty days after revocation, termination or cancellation. Failure to make this timely claim shall relieve the surety of all

obligations to the claimant. However, this section shall not be construed to reduce below the face amount of the bond then in effect the aggregate liability of the surety to other claimants.

Upon revocation of a grain dealer license, the commission shall cause notice of such revocation to be published once each week for two consecutive weeks in a newspaper of general circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall state the name and address of the grain dealer, the effective date of revocation, and the name and address of the surety on the grain dealer bond. The notice shall also state that any claims against the grain dealer shall be made in writing and sent by ordinary mail or delivered personally within one hundred twenty days after revocation to the grain dealer and the surety on the grain dealer bond.

Sec. 11. Chapter five hundred forty-two (542), Code 1977, is amended by adding the following new section:

NEW SECTION. ENFORCEMENT OFFICERS. The commission may designate by resolution certain of its employees in the warehouse division to be enforcement officers. Each person so designated shall have the authority of a peace officer to make arrests for violations of this chapter.

Sec. 12. Chapter five hundred forty-two (542), Code 1977, is amended by adding the following new section:

NEW SECTION. NO OBLIGATION OF STATE. Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect to any agreement or undertaking to which the provisions of this chapter relate.

Sec. 13. NEW SECTION. As used in sections thirteen (13)

through nineteen (19) of this Act, "bargaining agent" means a person, group, firm, association or corporation who bargains with buyers for the sale of grain for agricultural producers.

Bargaining agent shall not mean a person selling grain as a farm manager, or an executor, administrator, trustee, guardian, or conservator of an estate. A bargaining agent shall not take title to the grain but shall act only for or on behalf of the beneficiaries whose product the bargaining agent is offering for sale. Unless the bargaining agent agreement provides that proceeds from grain sales shall be paid directly to the agricultural producer by the buyer, the bargaining agent agreement shall provide that proceeds shall be paid to and held in trust by either the bargaining agent, or a third person identified in the bargaining agent agreement as a trustee, for the benefit of the agricultural producers. As used in this section the term "grain" means as provided in section five hundred forty-two point one (542.1) of the Code.

Sec. 14. NEW SECTION. PERMIT REQUIRED OF BARGAINING AGENT. A person shall not engage in the business of a bargaining agent in this state without having obtained a permit issued by the Iowa state commerce commission. Each application for a permit to engage in the business of a bargaining agent shall be made with the commission, on a form prescribed by the commission which form of application shall require only information pertinent and necessary for the issuance of the bargaining agent permit. The applicant shall supply the commission with information to establish that proceeds from sales of grain which are executed by the bargaining agent on behalf of agricultural producers will be received and held in trust for the beneficiaries to assure payment of the proceeds of sale. The application shall also be accompanied by proof of bond pursuant to section sixteen (16) of this Act.

Sec. 15. NEW SECTION. BARGAINING AGENT'S PERMIT. Upon the filing of the application and compliance with the terms and conditions of sections thirteen (13) and fourteen (14) of this Act, the Iowa state commerce commission shall issue a permit to the applicant. The permit shall be good for one year from the date of issuance. The permit may be renewed annually by filing of a renewal application on a form prescribed by the commission accompanied by an annual report of the bargaining agent showing any additions to or modification of the trust relationship. The applicant for a bargaining agent permit or a renewal thereof shall pay a permit fee in the amount of twenty-five dollars. The commission may cancel a permit upon the request of a permittee.

Sec. 16. NEW SECTION. BOND REQUIRED OF BARGAINING AGENT. Any applicant for a permit to operate as a bargaining agent in accordance with this Act, as a condition to the granting of the permit, shall file with the commerce commission proof of a bond which is in the form and with such surety or sureties as required by the commission covering the fiduciary responsibility of those trustees responsible to the beneficiaries. The bond shall be in a penal sum of fifty thousand dollars.

Sec. 17. NEW SECTION. INSPECTION OF BARGAINING AGENT'S BOOKS AND RECORDS. A bargaining agent's books, accounts, records and papers of grain transactions, and all books, accounts, records and papers relating to trust funds or to funds required by this Act to be held in trust, shall be subject to inspection by the commission during ordinary business hours. Where there is good cause to believe that a person is engaged without a permit in the business of a bargaining agent in this state, the commission may inspect the books, papers and records of such person.

Sec. 18. NEW SECTION. PENALTIES--MISDEMEANOR. Any person who engages in business as a bargaining agent without obtaining a permit or any person in violation of any other provision

of sections thirteen (13) through seventeen (17) of this Act, or any bargaining agent who refuses to permit inspection of books, accounts or records of grain transactions as provided in this chapter, shall be guilty of a simple misdemeanor. Each day that any violation continues shall constitute a separate offense. Any person violating the provisions of this chapter may be restrained by an injunction. The permit of any person who has been found after a hearing, to have willfully violated the provisions of this chapter may be suspended for a reasonable time or revoked by the commission.

Sec. 19. NEW SECTION. SUSPENSION OR REVOCATION OF PERMIT. The commission may after hearing and upon information being filed with the commission by the head of the warehouse division of the commission or upon complaint filed by any person, suspend or revoke a bargaining agent permit issued under sections thirteen (13) through nineteen (19) of this Act for the violation of or failure to comply with the provisions of sections thirteen (13) through nineteen (19) of this Act or any rule adopted thereunder. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the commission in triplicate. The commission shall notify the permittee of the complaint and furnish the permittee with a copy of the information or the complaint and a copy of the order of the commission fixing the time for a hearing, which time shall be at least five days from the date of notification. If the commission determines that the public good requires immediate action, the commission may, upon the filing of the information or the complaint and without hearing, temporarily suspend a permit pending the determination by it of the complaint. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act.

The commission may revoke a bargaining agent permit upon

information without hearing if the permittee fails to have sufficient bond on file with the commission, or if the permittee fails to submit to inspection.

Upon revocation of a permit, any claim of a creditor shall be filed against the former permittee within one hundred twenty days after the date of revocation. The commission shall provide for giving notice to all agricultural producers under contract with the person holding the bargaining agent permit of the revocation of the permit.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 389, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved 6/23, 1978

ROBERT D. RAY
Governor