

SENATE FILE

253

BY GRATIAS

FILED FEB 13 1985

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act to establish the Iowa grain indemnity authority.
 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 253

1 Section 1. PURPOSE OF THE IOWA GRAIN INDEMNITY AUTHORITY.
2 The purpose of this Act is to generate confidence in the grain
3 marketing system in this state through the establishment of a
4 grain producers' indemnity fund. The general assembly finds
5 that providing for financial security in grain storage and
6 sale transactions is essential to the continued well-being of
7 grain producers and a sound marketing system. The general
8 assembly also finds that this chapter serves a valid public
9 purpose by protecting grain producers, by creating confidence
10 in grain warehouses and grain dealers, by assuring the
11 expectations of businesses and industries that contribute to
12 or support the production and marketing of grain, and by
13 stabilizing the economy of this state.

14 Sec. 2. NEW SECTION. 543A.1 DEFINITIONS.

15 As used in this chapter unless the context otherwise
16 requires:

17 1. "Authority" means the Iowa grain indemnity authority.

18 2. "Board" means the governing body of the Iowa grain
19 indemnity authority.

20 3. "Claimant" means a person who is unable to secure
21 satisfaction of financial obligations due from a grain dealer
22 or grain warehouse in accordance with applicable statutes or
23 rules and within the time limits provided.

24 4. "Commission" means the Iowa state commerce commission.

25 5. "Cooperative agreement" means an agreement made by the
26 commission with a person, local unit of government, or state
27 or federal agency as reasonable and proper to carry out the
28 provisions of this chapter.

29 6. "Director" means the director of the warehouse division
30 of the Iowa state commerce commission.

31 7. "Failure" or "failed" means an inability to financially
32 satisfy creditors in accordance with applicable statutes or
33 rules and within the time limits provided.

34 8. "Fund" means the Iowa grain indemnity fund established
35 by the corporation pursuant to section 543A.4.

1 9. "Grain" means the same as defined in section 542.1.

2 10. "Grain assets" means:

3 a. All grain owned or stored by a grain dealer or
4 warehouse including grain in transit shipped by the grain
5 dealer or grain warehouse for which payment has not been
6 received.

7 b. Redeposited grain.

8 c. Proceeds from the sale of grain.

9 d. The equity in assets in commodity exchange grain margin
10 accounts and any money due or to become due from future con-
11 tracts on any recognized commodity exchange.

12 e. Other unencumbered funds, property, or equity of a
13 grain dealer or grain warehouse which can be directly traced
14 from the sale of grain by the grain dealer or grain warehouse.
15 The funds, property, or equity shall not be deemed encumbered
16 unless the encumbrance results from the advance of good and
17 valuable consideration by the secured party and not as
18 collateral from an antecedent debt.

19 f. Other unencumbered funds, property, or equity in
20 assets.

21 11. "Grain dealer" means the same as defined in section
22 542.1.

23 12. "Grain warehouse" means a warehouse as defined in
24 section 543.1 which deals exclusively or in part in bulk
25 grain.

26 13. "United States Warehouse Act" means the United States
27 Warehouse Act, enacted August 11, 1916, as amended.

28 14. "Valid claim" means a claim arising from a failure of
29 a grain dealer or grain warehouse that occurs after the
30 effective date of this Act and is adjudicated valid by the
31 commission, and equals the net claim after all credits and
32 offsets.

33 Sec. 3. NEW SECTION. 543A.2 IOWA GRAIN INDEMNITY
34 AUTHORITY CREATED.

35 1. The Iowa grain indemnity authority is created. The

1 governing powers of the authority are vested in the board of
2 directors composed of the director of the warehouse division
3 of the Iowa state commerce commission or a designee who shall
4 serve as president; the attorney general or a designee, who
5 shall serve as secretary; a designee of the state treasurer,
6 who shall serve as treasurer; the director of the department
7 of insurance or a designee; and the chief fiscal officer of
8 the commerce commission or a designee. Three members of the
9 board constitute a quorum at a meeting of the board and the
10 affirmative vote of three members is necessary for any action
11 taken by the board at a meeting, except that a lesser number
12 may adjourn a meeting. A vacancy in the membership of the
13 board does not impair the right of a quorum to exercise all
14 the rights and perform all the duties of the board and
15 corporation.

16 2. The authority may:

17 a. Adopt, alter and repeal rules, not inconsistent with
18 this chapter, for the regulation and conduct of its affairs
19 and business.

20 b. Adopt and make use of a seal and alter it at pleasure.

21 c. Avail itself of the use of information, services,
22 facilities, and employees of the state of Iowa in carrying out
23 this chapter.

24 d. Receive funds assessed by the commission under section
25 543A.4.

26 e. Administer the fund by investing any moneys of the
27 authority that the board determines are not presently needed
28 for any of its purposes.

29 f. Have powers as necessary or appropriate for the
30 exercise of the power specifically conferred upon the
31 authority and all such incidental powers as are customary in
32 agencies of the state.

33 3. A director or other person acting on behalf of the
34 authority is not personally liable for damage or injury
35 resulting from the performance of duties under this chapter.

1 Sec. 4. NEW SECTION. 543A.3 GRAIN DEALERS AND WAREHOUSES
2 SUBJECT TO ACT.

3 Every grain dealer and grain warehouse required to be
4 licensed under chapters 542 and 543 is subject to this
5 chapter. Any grain warehouse licensed under the United States
6 Warehouse Act may participate in the Iowa grain indemnity fund
7 and be subject to this chapter, provided that a cooperative
8 agreement exists both between the federal agency and the
9 commission, and between the federal licensee and the
10 commission. A federally licensed grain warehouse that
11 participates in the Iowa grain indemnity fund shall at a
12 minimum meet the bonding requirements of chapter 543.

13 Sec. 5. NEW SECTION. 543A.4 IOWA GRAIN INDEMNITY FUND.

14 Upon establishment of the authority the Iowa grain
15 indemnity fund shall be established and financed by an
16 assessment on corn and soybeans contained in this section.

17 1. Except as provided in subsection 2, every licensed
18 grain dealer subject to this chapter shall collect an
19 assessment of one-half cent on each bushel of corn and one
20 cent on each bushel of soybeans. The grain dealer shall
21 deduct the assessment from the purchase price of the corn at
22 the time of its initial sale, and forward the collected
23 assessments to the board in the manner and at intervals
24 determined by the commission.

25 2. If the amount of reserves in the fund is below five
26 million dollars at the end of the first year after establish-
27 ment of the fund or on May 1 of any year thereafter, every
28 grain dealer subject to this chapter shall collect the
29 assessments specified in subsection 1. If the amount of
30 reserves in the fund is above five million dollars at the end
31 of the first year after establishment of the fund or on May 1
32 of any year thereafter, the assessments shall not be
33 collected.

34 Sec. 6. NEW SECTION. 543A.5 MONEYS HELD IN TRUST.

35 All assessments collected by the grain dealer pursuant to

1 section 543A.4 shall be held by the authority in trust for
2 carrying out the purposes of this chapter. These moneys may
3 be invested and reinvested in the discretion of the authority,
4 and the interest from these investments shall be deposited to
5 the credit of the fund and shall be available for the same
6 purposes as all other money deposited in the fund. The money
7 in the fund shall not be available for any purpose other than
8 the payment of claims pursuant to this chapter, and shall not
9 be transferred to any other fund, other than the general fund
10 when necessary to reimburse the state pursuant to this
11 chapter. This limiting and nontransferability provision is
12 not separable from the whole of this chapter; and if the
13 provision is held invalid, repealed or substantially amended,
14 the entire chapter shall immediately become invalid.

15 Sec. 7. NEW SECTION. 543A.6 STATE APPROPRIATION IN EVENT
16 OF SHORTFALL.

17 Claims filed under this chapter are not obligations of this
18 state or any political subdivision of this state other than
19 the authority. If amounts in the fund are insufficient to pay
20 all approved claims, the general assembly may appropriate to
21 the authority amounts sufficient to satisfy the claims. The
22 state shall be reimbursed for any amounts paid under this
23 section upon replenishment of the fund from fees assessed
24 pursuant to section 543A.4. The authority shall not pledge
25 the credit or taxing power of this state or any political
26 subdivision other than the authority or make its debts payable
27 out of any moneys except those of the authority.

28 Sec. 8. NEW SECTION. 543A.7 CLAIMANTS SECURED BY FUND.

29 The following claimants are covered by the fund:

30 1. Those possessing a warehouse receipt covering grain
31 owned or stored by a grain dealer or warehouse.

32 2. Those possessing written evidence of ownership, other
33 than a warehouse receipt, disclosing a storage obligation of a
34 grain dealer or warehouse. The written evidence of ownership
35 includes unpriced scale tickets, settlement sheets, and ledger

1 cards.

2 3. Those who loaned money to a grain dealer or warehouse
3 and were to receive a warehouse receipt as security for the
4 loan, but the grain dealer or warehouse failed within ten days
5 after receiving the loan and the warehouse receipt was not
6 issued.

7 4. Those who surrendered a warehouse receipt as part of a
8 grain sale transaction for which payment was not received or
9 for which a check or warrant received was not honored and the
10 grain dealer or warehouse failed within ten days after the
11 transaction.

12 5. Those possessing written evidence, other than a credit
13 sale contract as defined in section 542.1, of the sale of
14 grain to a failed grain dealer or warehouse for which full
15 payment was not received within ten days after final delivery.

16 Sec. 9. NEW SECTION. 543A.8 ACTION ON CLAIMS.

17 Within ninety days of the director's approval of a valid
18 claim, the commission shall in accordance with this section
19 compensate from the fund a claimant who has incurred a
20 financial loss due to a failure of a grain dealer or warehouse
21 for all of the valid claim.

22 Sec. 10. NEW SECTION. 543A.9 DUTIES OF THE DIRECTOR.

23 When the director has determined that a grain dealer or
24 grain warehouse has defaulted payment or failed, the director
25 shall:

26 1. Determine valid claims and the amount of the claims to
27 be paid to claimants for financial losses which were incurred
28 due to the failure of a grain dealer or grain warehouse.

29 2. Deposit into the fund any assets of a failed grain
30 dealer or grain warehouse for the purposes of repayment of the
31 fund moneys used to pay claimants. However, a repayment into
32 the fund shall not exceed the principal amount paid to
33 claimants plus interest at the rate of six percent per annum.

34 3. Determine the priority for payment of all valid claims
35 in the order they were approved as valid if the amount in the

1 fund is insufficient to pay all claims in accordance with
2 section 543A.8.

3 Sec. 11. NEW SECTION. 543A.10 DUTIES OF THE COMMISSION.

4 The commission shall:

- 5 1. Collect and deposit all assessments authorized under
6 section 543A.4 into the fund for investment by the authority.
- 7 2. Be subrogated to all the rights of a claimant, and the
8 claimant shall assign all rights, title and interest in any
9 judgment to the commission. The commission shall initiate any
10 action it deems necessary to compel the grain dealer or
11 warehouse against whom an awarded claim arose to repay to the
12 fund the sum of the claims paid from the fund.
- 13 3. Initiate any action it deems necessary to compel the
14 claimant whose claim arose due to a failure, to participate in
15 any legal proceeding in relation to the claim.

16 Sec. 12. NEW SECTION. 543A.11 POWERS OF THE COMMISSION.

17 The commission may adopt rules consistent with this
18 chapter. This chapter does not limit the power of the
19 commission to take disciplinary action against a licensed
20 grain dealer or warehouse for a violation of this chapter or
21 the rules of the commission nor shall the repayment in full of
22 all obligations to the fund by a licensed grain dealer or
23 warehouse nullify or modify the effect of any other
24 disciplinary proceeding brought pursuant to this chapter.

25 Sec. 13. NEW SECTION. 543A.12 SUSPENSION FOR FAILURE TO
26 PAY.

27 Failure to forward the assessments as required by section
28 543A.4 is grounds for the suspension or revocation of a
29 license or a cooperative agreement by the commission.

30 Sec. 14. Section 542.10, unnumbered paragraph 2, Code
31 1985, is amended to read as follows:

32 The commission may revoke a grain dealer's license upon
33 information without hearing if a grain dealer fails to have
34 sufficient bond on file with the commission, if a grain dealer
35 fails to forward the assessments collected under section

1 543A.4, or if a grain dealer fails to submit to inspection.

2 Sec. 15. Section 542.12, Code 1985, is amended to read as
3 follows:

4 542.12 CLAIMS -- NOTICE.

5 Upon revocation, termination or cancellation of a grain
6 dealer license, any a claim for the purchase price of grain
7 against the grain dealer shall be made in writing and filed
8 with the grain dealer, with the commission, and with the
9 surety on the grain dealer bond within one hundred twenty days
10 after revocation, termination or cancellation. Failure to
11 make this timely claim ~~shall-relieve~~ relieves the surety and
12 Iowa grain indemnity fund of all obligations to the claimant.
13 However, this section shall not be construed to reduce below
14 the face amount of the bond then in effect the aggregate
15 liability of the surety to other claimants.

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

31 Sec. 16. Section 543.4, subsection 2, Code 1985, is
32 amended to read as follows:

33 2. When appointed as receiver under this chapter the
34 commission is authorized to give notice in the manner
35 specified by the court to persons holding warehouse receipts

1 or other evidence of deposit issued by the licensee to file
2 their claims within one hundred twenty days after the date of
3 appointment. Failure to timely file a claim ~~shall defeat~~
4 defeats the claim with respect to the surety bond, the Iowa
5 grain indemnity fund, and any commodities or proceeds from the
6 sale of commodities, except to the extent of any excess
7 remaining after all timely claims are paid in full.

8 Sec. 17. Section 543.4, subsection 7, Code 1985, is
9 amended to read as follows:

10 7. ~~In-the-event~~ If the approved plan of disposition
11 requires the sale of commodities, or the distribution of
12 proceeds from the surety bond, or both, and in the case of
13 warehouses dealing in bulk grain, distribution of the proceeds
14 of the grain indemnity fund under chapter 543A, the commission
15 shall submit to the court a proposed plan of distribution of
16 those proceeds. Upon ~~such~~ notice and hearing as ~~may-be~~
17 required by the court, the court shall accept or modify the
18 proposed plan. When the plan is approved by the court and
19 executed by the commission, the commission shall be discharged
20 and the receivership terminated.

21 Sec. 18. Section 543.14, Code 1985, is amended to read as
22 follows:

23 543.14 ACTION ON BOND.

24 Any A person injured by the breach of any obligation of a
25 warehouse operator, for the performance of which a bond has
26 been given under ~~any-of-the-provisions-of~~ this chapter, may
27 sue on ~~such~~ the bond in the person's own name in any court of
28 competent jurisdiction to recover any damages the person ~~may~~
29 ~~have~~ has sustained by reason of ~~such~~ the breach.

30 Upon revocation, termination or cancellation of a warehouse
31 license, any claim against the warehouse operator arising
32 under this chapter shall be made in writing with the warehouse
33 operator and with the surety on the warehouse bond and, in the
34 case of a warehouse dealing in bulk grain, with the commission
35 within one hundred twenty days after revocation, termination

1 or cancellation. Failure to make a timely claim ~~shall-relieve~~
2 relieves the surety of all obligations to the claimant,
3 however, this section ~~shall~~ does not ~~be-construed-to~~ reduce
4 the aggregate liability of the surety to other claimants below
5 the face amount of the bond then in effect. Upon revocation
6 of a warehouse license, the commission shall cause notice of
7 ~~such~~ the revocation to be published once each week for two
8 consecutive weeks in a newspaper of general circulation in
9 each of the counties in which the licensee maintains a
10 business location and in a newspaper of general circulation
11 within the state. The notice shall state the name and address
12 of the warehouse operator, the effective date of revocation,
13 and the name and address of the surety on the warehouse bond
14 and, in the case of a warehouse dealing in bulk grain, the
15 address of the commission. The notice shall also state that
16 any claims against the warehouse operator shall be made in
17 writing and sent by ordinary mail to the warehouse operator
18 and the surety on the warehouse bond and the commission within
19 one hundred twenty days after revocation. ~~The-provisions-of~~
20 ~~this~~ This paragraph ~~shall~~ does not apply if a receiver is
21 appointed as provided in this chapter pursuant to a petition
22 which is filed by the commission prior to the expiration of
23 one hundred twenty days after revocation, termination or
24 cancellation of the license.

25

EXPLANATION

26 This bill creates the Iowa grain indemnity fund to be
27 administered by the Iowa grain indemnity authority for the
28 benefit of those suffering a loss due to the failure of a
29 grain dealer or grain warehouse. The governing powers of the
30 authority are vested in the board of directors consisting of
31 the director of the warehouse division of the commerce
32 commission as president, the attorney general as secretary, a
33 designee of the state treasurer as treasurer, the director of
34 the department of insurance, and the chief fiscal officer of
35 the commerce commission. Every grain dealer and warehouse

1 required to be licensed under chapters 542 and 543 would be
2 subject to this bill except warehouses which deal exclusively
3 in agricultural products other than bulk grain. Warehouses
4 licensed by the federal government may choose to participate.

5 The Iowa grain indemnity fund is funded by assessments
6 collected by grain dealers on corn and soybeans at the time of
7 sale. The assessment rate is one-half cent on each bushel of
8 corn and one cent on each bushel of soybeans. If the fund
9 contains under \$5 million at the end of the first year or any
10 year thereafter the assessments will continue. If the balance
11 is over \$5 million there is no assessment. The assessments
12 will be paid into the fund to be held in trust and invested by
13 the authority to be used only to pay claims. In the event
14 that the fund suffers a shortfall and cannot cover claims
15 filed, funds may be appropriated from the general fund to be
16 repaid from the assessments collected for the fund. Failure
17 to forward the assessments is grounds for suspension or
18 revocation of license.

19 The director of the warehouse division of the commerce
20 commission is responsible for determining the validity of
21 claims, prioritizing claims, and transferring the assets of
22 failed grain dealers and warehouses to settle claims.
23 Claimants must subrogate all claims against a failed grain
24 dealer or warehouse to the commission. A claimant against a
25 failed grain dealer or a failed grain warehouse will be
26 compensated for the total loss.

27 This bill creates a new chapter 543A and refers to sections
28 of that chapter.

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