

203C.4 Powers and duties of receiver.

1. When the department is appointed as receiver under this chapter the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 203C.6 shall be joined as a party defendant by the department. If required by the court, the issuer shall pay the indemnification proceeds or so much thereof as the court finds necessary into the court, and when so paid the issuer shall be absolutely discharged from any further liability under the bond or irrevocable letter of credit to the extent of the payment.

2. When appointed as receiver under this chapter the department is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or other evidence of deposit issued by the licensee to file their claims within one hundred twenty days after the date of appointment. Failure to timely file a claim shall defeat the claim with respect to the issuer of a deficiency bond or of an irrevocable letter of credit, grain depositors and sellers indemnity fund created in chapter 203D, and any commodities or proceeds from the sale of commodities, except to the extent of any excess commodities or proceeds of sale remaining after all timely claims are paid in full.

3. When the court approves the sale of commodities, the department shall employ a merchandiser to effect the sale of those commodities. A person employed or appointed as a merchandiser is deemed to be an employee of the state as defined in section 669.2 and chapter 669 is applicable to any claim as defined in section 669.2 against the person acting as a merchandiser. A person employed as a merchandiser must meet the following requirements:

a. The person shall be experienced or knowledgeable in the operation of warehouses licensed under this chapter; and if the person has ever held a license issued under this chapter, the person shall never have had that license suspended or revoked.

b. The person shall be experienced or knowledgeable in the marketing of agricultural products.

c. The person shall not be the holder of a warehouse receipt or scale weight ticket issued by the licensee, and shall not have a claim against the licensee whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the licensee or the licensee's business. The merchandiser shall be entitled to reasonable compensation as determined by the department, payable out of funds appropriated for operating expenses of the department. A sale of commodities shall be made in a commercially reasonable manner and under the supervision of the warehouse bureau of the department. The department shall provide for the payment out of appropriations to the department of all expenses incurred in handling and disposing of commodities. The department shall have authority to sell the commodities, any provision of chapter 554 to the contrary notwithstanding, and any commodities so sold shall be free of all liens and other encumbrances.

4. The plan of disposition, as approved by the court, shall provide for the distribution of the stored commodities, or the proceeds from the sale of commodities, or the proceeds from any insurance policy, deficiency bond, or irrevocable letter of credit, less expenses incurred by the department in connection with the receivership, to depositors as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

5. The department may, with the approval of the court, continue the operation of all or any part of the business of the licensee on a temporary basis and take any other course of action or procedure which will serve the interests of the depositors.

6. The department is entitled to reimbursement out of commodities or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored commodities, and for all other costs directly attributable to the receivership. The right of reimbursement of the department is prior to any claims against the commodities or proceeds of sales of commodities, and constitutes a claim against a deficiency bond or irrevocable letter of credit.

7. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. Upon notice and hearing as required by the court, the court shall accept or modify the

proposed plan. When the plan is approved by the court and executed by the department, the department shall be discharged and the receivership terminated.

8. At the termination of the receivership the department shall file a final report containing the details of its actions, together with such additional information as the court may require.

[C79, 81, §543.4]

86 Acts, ch 1152, §16; 87 Acts, ch 147, §5; 89 Acts, ch 143, §101, 502

C93, §203C.4