

3/24/87 Referred from Regular Calendar to Agric. Comm.
S-4-9-87 amended/so Pass

MAR 5 1987

Place On Calendar

HOUSE FILE 411
BY COMMITTEE ON AGRICULTURE

(Formerly House Study Bill 188)

Passed House, Date 3/13/87 Passed Senate, Date 4-14-87

Vote: Ayes 82 Nays 11 Vote: Ayes 49 Nays 0

Approved May 26, 1987
Passed 5/15/87
Vote 88-7
A BILL FOR
Passed 5-6-87
Vote 43-0

1 An Act relating to the grain indemnity fund, by eliminating
2 credit sale contracts from its protection, providing for
3 distribution of receivership assets excluding proceeds of the
4 fund, raising minimum net worth requirements, and providing
5 definitions, eliminating participation by federally licensed
6 warehouses, and providing a penalty for late payment of fees,
7 eligibility standards, for the appointment of additional
8 members to the Iowa grain indemnity fund board, the adjustment
9 of fees, a procedure for determining the value of losses,
10 requirements for recovery from the fund, and the retroactive
11 applicability of certain of its provisions.

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

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HF 411

**SUB COMMITTEE ASSIGNMENTS,
CHAIR:
COMMITTEE:**

1 Section 1. Section 542.15, subsection 8, Code 1987, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 8. A licensed grain dealer who purchases grain by credit
5 sale contract shall obtain from the seller a signed acknow-
6 ledgement stating that the seller has received notice that
7 grain purchased by credit sale contract is not protected by
8 the grain depositors and sellers indemnity fund. The form for
9 the acknowledgement shall be prescribed by the department, and
10 the licensed grain dealer, the seller, and the department
11 shall each be provided a copy.

12 Sec. 2. section 543.4, subsection 4, Code 1987, is amended
13 to read as follows:

14 4. The plan of disposition, as approved by the court,
15 shall provide for the distribution of the stored commodities,
16 or the proceeds from the sale of commodities, or the proceeds
17 from any insurance policy, deficiency bond, or irrevocable
18 letter of credit, less expenses incurred by the department in
19 connection with the receivership, ~~plus the proceeds from the~~
20 ~~grain depositors and sellers indemnity fund in an amount~~
21 ~~determined pursuant to section 543A-3~~ to depositors as their
22 interests are determined. Distribution shall be without
23 regard to any setoff, counterclaim, or storage lien or charge.

24 Sec. 3. Section 543.6, subsection 4, paragraph a, Code
25 1987, is amended to read as follows:

26 a. The warehouse operator shall have and maintain a net
27 worth of at least twenty twenty-five cents per bushel of
28 warehouse capacity, or maintain a deficiency bond or an
29 irrevocable letter of credit in the amount of two thousand
30 dollars for each one thousand dollars or fraction thereof of
31 net worth deficiency. However, a person shall not be licensed
32 as a class 1 warehouse operator if the person has a net worth
33 of less than twenty-five thousand dollars.

34 Sec. 4. Section 543.6, subsection 5, paragraph a, Code
35 1987, is amended to read as follows:

1 a. The warehouse operator shall have and maintain a net
2 worth of at least ~~twenty~~ twenty-five cents per bushel of
3 warehouse capacity, or maintain a deficiency bond or an
4 irrevocable letter of credit in the amount of two thousand
5 dollars for each one thousand dollars or fraction thereof of
6 net worth deficiency. However, a person shall not be licensed
7 as a class 2 warehouse operator if the person has a net worth
8 of less than ten thousand dollars.

9 Sec. 5. Section 543A.1, subsections 3 and 4, Code 1987,
10 are amended to read as follows:

11 3. "Depositor" means a person who deposits grain in a
12 state warehouse for storage, handling, or shipment, or who is
13 the owner or legal holder of an outstanding warehouse receipt
14 issued by a state warehouse, or who is lawfully entitled to
15 possession of the grain.

16 4. "Fund" means the grain depositors and sellers
17 indemnification indemnity fund created in section 543A.3.

18 Sec. 6. Section 543A.1, subsections 6 and 7, Code 1987,
19 are amended by striking the subsections, inserting in lieu
20 thereof the following, and renumbering subsequent subsections:

21 6. "Assessable grain" means all grain to which a licensed
22 grain dealer obtains title except if title transfers by credit
23 sale contract, and all grain received for storage by a
24 licensed warehouse operator.

25 Sec. 7. Section 543A.1, subsection 11, Code 1987, is
26 amended to read as follows:

27 ~~10~~ 10. "Seller" means a person who sells grain which the
28 person has produced or caused to be produced to a licensed
29 grain dealer, ~~and includes~~ but excludes a person who executes
30 a credit sale contract as a seller.

31 Sec. 8. Section 543A.2, Code 1987, is amended to read as
32 follows:

33 543A.2 PERSONS PARTICIPATING IN FUND.

34 All licensed grain dealers and licensed warehouse operators
35 shall participate in the fund. ~~In addition, a grain warehouse~~

1 licensed under the United States Warehouse Act, 7-8-S.C.-2417
2 may participate in the fund and be subject to this chapter if
3 a cooperative agreement exists both between the federal agency
4 and the department and between the federal licensee and the
5 department. The agreement between the department and the
6 federal licensee shall be ratified each year the federal
7 licensee elects to participate in the fund. A participating
8 federally licensed grain warehouse shall meet the minimum net
9 worth requirements of section 543.6.

10 Sec. 9. Section 543A.3, subsections 1 and 2, Code 1987,
11 are amended to read as follows:

12 1. The grain depositors and sellers indemnity fund is
13 created in the state treasury. The general fund of the state
14 is not liable for claims presented against the grain
15 depositors and sellers indemnity fund under section 543A.6.
16 The fund consists of a per-bushel fee on assessable grain sold
17 remitted by licensed grain dealers, and licensed warehouse
18 operators, ~~and participating federally licensed grain~~
19 ~~warehouses~~; an annual fee charged to and remitted by licensed
20 grain dealers, and licensed warehouse operators, ~~and~~
21 ~~participating federally licensed grain warehouses~~; sums
22 collected by the department by legal action on behalf of the
23 fund; and interest, property, or securities acquired through
24 the use of moneys in the fund. The moneys collected under
25 this section and deposited in the fund shall be used
26 exclusively to indemnify depositors and sellers as provided in
27 section 543A.6 and to pay the administrative costs of this
28 chapter.

29 2. The grain dealer, or warehouse operator, ~~or~~
30 ~~participating federally licensed warehouse~~ shall forward the
31 per-bushel fee to the department in the manner and using the
32 forms prescribed by the department. If the per-bushel fee has
33 not been ~~forwarded to~~ received by the department by the date
34 required by the department, the grain dealer, or warehouse
35 operator, ~~or participating federally licensed warehouse~~ is

1 subject to an interest a penalty of ten dollars for each day
 2 the grain dealer, or warehouse operator, ~~or participating~~
 3 ~~federally-licensed-warehouse-fails-to-forward-the-fee is~~
 4 delinquent. Interest ~~shall be simple interest, and shall be~~
 5 ~~the maximum lawful rate of interest for the month the payment~~
 6 ~~was due~~. If the per-bushel fee has not been forwarded to
 7 received by the department within thirty days after the
 8 payment was due, the grain dealer's or warehouse operator's
 9 ~~license or the participating-warehouse-operator's cooperative~~
 10 ~~agreement~~ shall be suspended. The per-bushel fee shall be
 11 collected only once on each bushel of grain.

12 Sec. 10. Section 543A.3, subsection 3, paragraph a,
 13 unnumbered paragraph 1, Code 1987, is amended to read as
 14 follows:

15 All licensed grain dealers, and licensed warehouse
 16 operators, ~~and participating federally-licensed grain~~
 17 ~~warehouses~~ shall annually remit a fee to be deposited into the
 18 fund which is determined as follows:

19 Sec. 11. Section 543A.3, subsection 3, paragraph b, Code
 20 1987, is amended to read as follows:

21 b. Payment of the required amount shall be made before the
 22 grain dealer's or warehouse operator's license is renewed, ~~or~~
 23 ~~before the participating federal licensee's agreement with the~~
 24 ~~department is ratified~~.

25 Sec. 12. Section 543A.3, subsection 4, Code 1987, is
 26 amended to read as follows:

27 4. A person who applies for a grain dealer's or warehouse
 28 operator's license ~~or a federal licensee who elects to~~
 29 ~~participate in the fund~~ who has not previously paid the full
 30 fee required by subsection 3, shall pay that amount before the
 31 license is issued ~~or the agreement is ratified~~.

32 Sec. 13. Section 543A.4, Code 1987, is amended to read as
 33 follows:

34 543A.4 INDEMNITY FUND BOARD.

35 The Iowa grain indemnity fund board is established to

1 advise the department on matters relating to the fund and to
2 perform the duties provided it in this chapter. The board is
3 composed of the secretary ~~of the department~~ of agriculture or
4 a designee who shall serve as president; the commissioner of
5 insurance or a designee who shall serve as secretary; the
6 state treasurer or a designee who shall serve as treasurer;
7 and ~~two~~ four representatives of the grain industry appointed
8 by the governor, subject to confirmation by the senate, ~~one~~
9 two of whom shall be ~~a representative~~ representatives of grain
10 ~~depositors and sellers~~ producers and who shall be actively
11 participating producers, and ~~one~~ two of whom shall be a
12 representative representatives of grain dealers and warehouse
13 operators and who shall be actively participating grain
14 dealers and warehouse operators, each of whom shall be
15 selected from a list of three nominations made by the
16 secretary of agriculture. The term of membership of the grain
17 industry representatives is three years, and the
18 representatives are eligible for reappointment. However, only
19 actively participating producers, and grain dealers and
20 warehouse operators are eligible for reappointment. The grain
21 industry representatives are entitled to forty dollars per
22 diem for each day spent in the performance of the duties of
23 the board, plus actual expenses incurred in the performance of
24 those duties. ~~Three~~ Four members of the board constitute a
25 quorum, and the affirmative vote of ~~three~~ four members is
26 necessary for any action taken by the board, except that a
27 lesser number may adjourn a meeting. A vacancy in the
28 membership of the board does not impair the rights of a quorum
29 to exercise all the rights and perform all the duties of the
30 board.

31 Sec. 14. Section 543A.5, Code 1987, is amended to read as
32 follows:

33 543A.5 ADJUSTMENTS TO FEE.

34 1. The board shall review annually the debits of and
35 credits to the grain depositors and sellers indemnity fund

1 created in section 543A.3 and shall make any adjustments in
 2 the per-bushel fee required under section 543A.3, subsection
 3 2, and the dealer-warehouse fee required under section 543A.3,
 4 subsection 3, that are necessary to maintain the fund within
 5 the limits established under this section. Not later than the
 6 first day of May of each year, the board shall determine the
 7 proposed amount of the per-bushel fee based on the expected
 8 volume of grain on which the fee is to be collected and that
 9 is likely to be handled under this chapter, and shall also
 10 determine any adjustment to the dealer-warehouse fee. ~~The~~
 11 ~~per-bushel-fee-and-the-dealer-warehouse-fee-shall-be-adjusted~~
 12 ~~on-a-pro-rata-basis.~~ The board shall make any changes in the
 13 previous year's fees in accordance with chapter 17A. Changes
 14 in the fees shall become effective on the following first day
 15 of July. The per-bushel fee shall not exceed one-quarter cent
 16 per bushel on all ~~grains-on-which-the-fee-is-to-be-paid~~
 17 assessable grain. Until the per-bushel fee is adjusted or
 18 waived as provided in this section, the per-bushel fee is one-
 19 quarter cent on all ~~other-grains-on-which-the-fee-is-paid~~
 20 assessable grain.

21 2. If, at the end of any fiscal year, the assets of the
 22 fund exceed six million dollars, less any encumbered balances
 23 or pending or unsettled claims, the per-bushel fee required
 24 under section 543A.3, subsection 2, and the dealer-warehouse
 25 fee required under section 543A.3, subsection 3, shall be
 26 waived until the board reinstates the fees ~~on-a-pro-rata~~
 27 basis. The board shall reinstate the ~~fee fees~~ if the assets
 28 of the fund, less any unencumbered balances or pending or
 29 unsettled claims, are three million dollars or less.

30 Sec. 15. Section 543A.6, subsection 1, Code 1987, is
 31 amended to read as follows:

32 1. ~~When-a-depositor-or-settler-has-made-a-demand-for~~
 33 ~~settlement-of-an-obligation-concerning-grain-on-which-a-fee~~
 34 ~~was-required-to-be-remitted-under-section-543A.3-and-the~~
 35 ~~licensed-grain-dealer-or-licensed-warehouse-operator-has~~

1 ~~failed to honor the demand, the depositor or seller, after~~
2 ~~providing the department with evidence of the demand and the~~
3 ~~dishonoring of the demand, may file a claim with the~~
4 ~~department for indemnification of damages from the grain~~
5 ~~depositors and sellers indemnity fund~~ A depositor or seller
6 may file a claim concerning assessable grain with the
7 department for indemnification of a loss from the grain
8 depositors and sellers indemnity fund. A claim shall be filed
9 in the manner prescribed by the board. A claim shall not be
10 filed prior to the earlier of: 1) the revocation,
11 termination, or cancellation of the license of the grain
12 dealer or warehouse operator; and 2) the filing of a petition
13 in bankruptcy by a grain dealer or warehouse operator. How-
14 ever, to be timely a claim shall be filed within one hundred
15 twenty days of the revocation, termination, or cancellation of
16 the license of the grain dealer or warehouse operator. The
17 value of a loss is to be measured as follows:

18 a. The board shall ~~establish~~ determine the dollar value of
19 ~~the loss a claim~~ incurred by a depositor holding a warehouse
20 receipt or a scale weight ticket for grain that the depositor
21 delivered to the licensed warehouse operator, ~~and by a seller~~
22 ~~who has delivered grain sold on a credit sale contract to a~~
23 ~~licensed grain dealer.~~ The value shall be based on the
24 average fair market price being paid for the grain to
25 producers by the three licensed grain dealers nearest the
26 warehouse operator ~~or grain dealer for the grain~~ on the
27 earlier of the following:

28 (1) The date of license suspension or the revocation,
29 termination, or cancellation.

30 (2) The date on which the department received notice that
31 the receipt, scale weight ticket, or credit sale contract was
32 dishonored by the licensed warehouse operator or licensed
33 grain dealer filed a petition in bankruptcy.

34 However, the board may accept the valuation of a claim as
35 determined by a court of competent jurisdiction as the value

1 of the claim. All depositors filing claims under this section
 2 shall be bound by the value determined by the board. The
 3 value of the loss is the outstanding balance on the validated
 4 claim at time of payment from the fund.

5 b. The dollar value of ~~the loss~~ a claim incurred by a
 6 seller who has sold grain or delivered grain for sale or
 7 exchange and who is a creditor of the licensed grain dealer
 8 for all or part of the value of the grain shall be based on
 9 the amount stated on the obligation on the date of the sale.
 10 However, the board may accept the valuation of a claim as
 11 determined by a court of competent jurisdiction as the value
 12 of the claim. The value of the loss is the outstanding
 13 balance on the validated claim at the time of payment from the
 14 fund.

15 Sec. 16. Section 543A.6, subsections 2, 3, and 5, Code
 16 1987, are amended to read as follows:

17 2. The grain depositors and sellers indemnity fund is
 18 liable to a depositor or seller for a claim which arises on or
 19 after May 15, 1986, for ninety percent of the loss, as
 20 determined under subsection 1, but not more than one hundred
 21 fifty thousand dollars per claimant. ~~The aggregate amount~~
 22 ~~recovered by a depositor or seller under all remedies shall~~
 23 ~~not exceed ninety percent of the value of the loss. If the~~
 24 ~~moneys recovered by a depositor or seller under all remedies~~
 25 ~~exceed ninety percent of the value of the loss, the depositor~~
 26 ~~or seller shall reimburse the fund in the amount that exceeds~~
 27 ~~ninety percent of the value of the loss.~~

28 3. The board shall determine the validity of all claims
 29 presented against the fund. ~~A claim filed under this section~~
 30 ~~for losses on grain other than grain stored in a warehouse~~
 31 ~~operated by a licensed warehouse operator is not valid unless~~
 32 ~~the seller has made a demand for settlement of the obligation~~
 33 ~~within twelve months after the grain is priced or delivered~~
 34 ~~for sale, whichever occurs later except that if the notice~~
 35 ~~provided in section 542.12 has been given, the seller must~~

1 ~~make the demand for settlement of the obligation within the~~
2 ~~one hundred twenty day period.~~ A depositor or seller whose
3 claim has been refused by the board may appeal the refusal to
4 either the district court of Polk county or the district court
5 of the county in which the depositor or seller resides. The
6 department board shall provide for payment from the fund to a
7 depositor or seller whose claim has been found to be valid.

8 5. ~~If a depositor or seller files an action for legal or~~
9 ~~equitable remedies in a state or federal court having~~
10 ~~jurisdiction in those matters that includes a claim against~~
11 ~~grain upon which the depositor or seller may file a claim~~
12 ~~against the fund at a later date, the depositor or seller~~
13 ~~shall also file with the department a copy of the action filed~~
14 ~~with the court.~~ In the event of payment of a loss under this
15 section, the ~~department shall be~~ fund is subrogated to the
16 extent of the amount of any payments to all rights, powers,
17 privileges, and remedies of the depositor or seller against
18 any person regarding the loss. The depositor or seller shall
19 render all necessary assistance to aid the department and the
20 board in securing the rights granted in this section. No
21 action or claim initiated by a depositor or seller and pending
22 at the time of payment from the fund shall be compromised or
23 settled without the consent of the department board.

24 Sec. 17. This Act shall not affect a claim for
25 indemnification by any person from the depositors and sellers
26 indemnity fund, if the claim arose from a purchase of grain by
27 a credit sale contract, and the contract was executed before
28 the effective date of this Act.

29 Sec. 18. Section 6 of this Act and the corresponding uses
30 of the term "assessable grain" in sections 543A.3, subsection
31 1, and 543A.5, subsection 1, are retroactive to May 15, 1986.

32 EXPLANATION

33 Section 1 provides that sellers shall be notified by grain
34 dealers that grain purchased by credit sale contract is not
35 protected by the indemnity fund. It also eliminates the

1 restrictions relating to the financial responsibility of the
2 creditor.

3 Section 2 revises the statutory distribution of assets in a
4 receivership of a warehouse by excluding proceeds of the
5 indemnity fund from the distribution.

6 Sections 3 and 4 raise the minimum net worth required to be
7 maintained by warehouse operators from twenty cents to twenty-
8 five cents per bushel of warehouse capacity.

9 Section 5 refines the definition of "depositor" in section
10 543A.1 to provide that only depositors in state warehouses are
11 involved, and corrects a misreference in the definition of the
12 "fund".

13 Section 6 strikes the definition of "grain bank" and "grain
14 sold" and replaces them with a new definition of "assessable
15 grain". The new definition is then used in section 7 and
16 section 11. The effect is to include grain bank storage both
17 under the assessment and the protection of the fund, and also
18 to provide that a grain dealer is assessed on grain sold to
19 the grain dealer and a licensed warehouse is assessed on grain
20 stored.

21 Section 7 amends the definition of "seller" to exclude
22 persons who execute credit sale contracts. These sellers
23 would no longer be protected by the grain indemnity fund.

24 Section 8 eliminates a provision which permitted federally
25 licensed warehouses to participate in the grain indemnity
26 fund.

27 Section 9 provides that if the department does not receive
28 the per-bushel fee from a grain dealer or warehouse operator
29 as prescribed by the department, a ten dollar penalty shall be
30 imposed in place of the current interest penalty. It also
31 provides that the license of a dealer or operator shall be
32 suspended in the per-bushel fee is more than thirty days late.

33 Sections 10, 11, and 12 conform language to section 8.

34 Section 13 provides for the appointment of two additional
35 representatives of the grain industry to serve on the Iowa

1 grain indemnity fund board.

2 Section 14 eliminates the pro rata adjustment of the per-
3 bushel fee and the dealer-warehouse fee, but permits the grain
4 indemnity fund board to adjust each fee independently.

5 Section 15 details the procedure that shall be used by the
6 board to determine the value of a loss incurred by a depositor
7 or a seller.

8 Section 16 provides that a claimant who recovers more than
9 the amount guaranteed by the fund, need not reimburse the fund
10 for that amount, as is required under present law. The sec-
11 tion also removes a requirement that there must be a demand
12 for settlement within certain periods if a claim is to be
13 valid, and removes a requirement that depositors and sellers
14 file copies of actions relating to potential claims against
15 the fund with the department.

16 Section 17 provides that purchasers of grain by credit sale
17 contract are not deprived of any protection provided under
18 present chapter 543A, if the contract was executed before the
19 effective date of this Act.

20 Section 18 provides that provisions relating to "assessable
21 grain" as defined in section 6 are retroactively applied.

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SENATE 40
May 6, 1987

HOUSE AMENDMENT TO
SENATE AMENDMENT TO
HOUSE FILE 411

S-4006

1 Amend Senate amendment, H-3839, to House File 411
2 as follows:
3 1. Page 2, line 49, by striking the words
4 "warehouse operator" and inserting the following:
5 "grain dealer".
6 2. Page 3, by inserting after line 5, the
7 following:
8 "____. Page 1, line 10, by striking the words
9 "dealer, the seller, and the department" and inserting
10 the following: "dealer and the seller."
11 3. Page 4, by inserting after line 33 the
12 following:
13 "____. Page 2, line 24, by inserting after the
14 word "operator." the following: "However, assessable
15 grain does not include the following:
16 a. Grain purchased by an Iowa licensed grain
17 dealer from another licensed grain dealer, regardless
18 of which jurisdiction licenses the other grain dealer.
19 b. Grain deposited in a licensed grain warehouse
20 for custom drying, cleaning, conditioning, or
21 processing if the grain is redelivered to the
22 depositor immediately, as defined by rules adopted by
23 the department.""
24 4. Page 4, by inserting after line 33, the
25 following:
26 "____. Page 2, line 23, by striking the words "for
27 storage".
28 _____. Page 4, line 29, by striking the word
29 "previously" and inserting the following:
30 "previously".
31 _____. Page 7, line 23, by striking the words
32 "grain-dealer" and inserting the following: "or grain
33 dealer".
34 _____. Page 7, line 26, by striking the words "or
35 grain-dealer" and inserting the following: "or grain
36 dealer".
37 _____. Page 9, by striking lines 29 through 31."
38 5. Page 4, by inserting after line 37, the
39 following:
40 "____. Title page, by striking lines 10 and 11,
41 and inserting the following: "and requirements for
42 recovery from the fund.""
43 6. By renumbering, relettering, or redesignating
44 and correcting internal references as necessary.

S-4006
Filed May 5, 1987

RECEIVED FROM THE HOUSE

Senate Concurred
5-6-87

HOUSE FILE 411

S-3491

1 Amend House File 411, as passed by the House, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 542.1, subsection 3, Code
6 1987, is amended to read as follows:

7 3. "Grain dealer" means a person who buys during
8 any calendar month five hundred bushels of grain or
9 more from the producers of the grain for purposes of
10 resale, milling, or processing. However, "grain
11 dealer" does not include a producer of grain who is
12 buying grain for the producer's own use as seed or
13 feed; a person solely engaged in buying grain future
14 contracts on the board of trade; a person who
15 purchases grain only for sale in a registered feed; a
16 person who purchases grain for sale in a nonregistered
17 customer-formula feed regulated by chapter 198, who
18 purchases less than a total of fifty thousand bushels
19 of grain annually from producers, and who is also
20 exempt as an incidental warehouse operator under
21 chapter 543; a person engaged in the business of
22 selling agricultural seeds regulated by chapter 199; a
23 person buying grain only as a farm manager; an
24 executor, administrator, trustee, guardian, or
25 conservator of an estate; a bargaining agent as
26 defined in section 542A.1; or a custom livestock
27 feeder.

28 Sec. 2. Section 542.3, subsection 4, paragraph b,
29 Code 1987, is amended to read as follows:

30 b. The grain dealer shall submit, as required by
31 the department, a financial statement that is
32 accompanied by an unqualified opinion based upon an
33 audit performed by a certified public accountant
34 licensed in this state. However, the department may
35 accept a qualification in an opinion that is
36 unavoidable by any audit procedure that is permitted
37 under generally accepted accounting principles. An
38 opinion that is qualified because of a limited audit
39 procedure or because the scope of an audit is limited
40 shall not be accepted by the department. The
41 department shall not require that a grain dealer
42 submit more than one such unqualified opinion per
43 year. The grain dealer may elect, however, to submit
44 a financial statement that is accompanied by the
45 report of a certified public accountant licensed in
46 this state that is based upon a review performed by
47 the certified public accountant in lieu of the audited
48 financial statement specified in this paragraph, and
49 if a grain dealer makes this election the department
50 shall cause the grain dealer to be inspected not less

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1 than twice during each twelve-month period, but not
2 more than five times in a twenty-four month period
3 without good cause, in the manner provided in section
4 542.9. In addition, the department shall cause a
5 grain dealer who makes this election to submit to the
6 department, in a form and manner prescribed by the
7 department, an interim financial statement no less
8 than once in every three-calendar-month period.

9 However, the department shall not require that a grain
10 dealer submit more than one such report of a certified
11 public accountant per year that is based upon a review
12 performed in lieu of the audited financial statement.

13 If a grain dealer making the election engages in
14 credit sale contracts, the grain dealer shall also
15 comply with the provisions of section 542.15,
16 subsection 8.

17 Sec. 3. Section 542.3, subsection 5, paragraph b,
18 Code 1987, is amended to read as follows:

19 b. The grain dealer shall submit, as required by
20 the department, a financial statement that is
21 accompanied by an unqualified opinion based upon an
22 audit performed by a certified public accountant
23 licensed in this state. However, the department may
24 accept a qualification in an opinion that is
25 unavoidable by any audit procedure that is permitted
26 under generally accepted accounting principles. An
27 opinion that is qualified because of a limited audit
28 procedure or because the scope of an audit is limited
29 shall not be accepted by the department. The
30 department shall not require that a grain dealer
31 submit more than one such unqualified opinion per
32 year. The grain dealer may elect, however, to submit
33 a financial statement that is accompanied by the
34 report of a certified public accountant licensed in
35 this state that is based upon a review performed by
36 the certified public accountant in lieu of the audited
37 financial statement specified in this paragraph, and
38 if a grain dealer makes this election the department
39 shall cause the grain dealer to be inspected not less
40 than twice during each twelve-month period, but not
41 more than five times in a twenty-four month period
42 without good cause, in the manner provided in section
43 542.9. In addition, the department shall cause a
44 grain dealer who makes this election to submit to the
45 department, in a form and manner prescribed by the
46 department, an interim financial statement no less
47 than once in every three-calendar-month period.
48 However, the department shall not require that a
49 warehouse operator submit more than one such report of
50 a certified public accountant per year that is based

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1 upon a review performed in lieu of the audited
2 financial statement. If a grain dealer making the
3 election engages in credit sale contracts, the grain
4 dealer shall also comply with the provisions of
5 section 542.15, subsection 8."

6 2. Page 1, lines 24 and 25, by striking the words
7 "paragraph a, Code 1987, is" and inserting the
8 following: "paragraphs a and b, Code 1987, are".

9 3. Page 1, by inserting after line 33 the
10 following:

11 "b. The warehouse operator shall submit, as
12 required by the department, a financial statement that
13 is accompanied by an unqualified opinion based upon an
14 audit performed by a certified public accountant
15 licensed in this state. However, the department may
16 accept a qualification in an opinion that is
17 unavoidable by any audit procedure that is permitted
18 under generally accepted accounting principles. An
19 opinion that is qualified because of a limited audit
20 procedure or because the scope of an audit is limited
21 shall not be accepted by the department. The
22 department shall not require that a warehouse operator
23 submit more than one such unqualified opinion per
24 year. The warehouse operator may elect, however, to
25 submit a financial statement that is accompanied by
26 the report of a certified public accountant licensed
27 in this state that is based upon a review performed by
28 the certified public accountant in lieu of the audited
29 financial statement specified in this paragraph, and
30 if a warehouse operator makes this election the
31 department shall cause the warehouse to be inspected
32 not less than twice during each twelve-month period,
33 but not more than five times in a twenty-four month
34 period without good cause, in the manner provided in
35 section 543.2. In addition, the department shall
36 cause a warehouse operator who makes this election to
37 submit to the department, in a form and manner
38 prescribed by the department, an interim financial
39 statement no less than once in every three-calendar-
40 month period. However, the department shall not
41 require that a warehouse operator submit more than one
42 such report of a certified public accountant per year
43 that is based upon a review performed in lieu of the
44 certified financial statement."

45 4. Page 1, lines 34 and 35, by striking the words
46 "paragraph a, Code 1987, is" and inserting the
47 following: "paragraphs a and b, Code 1987, are".

48 5. Page 2, by inserting after line 8, the
49 following:

50 "b. The warehouse operator shall submit, as

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1 required by the department, a financial statement that
2 is accompanied by an unqualified opinion based upon an
3 audit performed by a certified public accountant
4 licensed in this state. However, the department may
5 accept a qualification in an opinion that is
6 unavoidable by any audit procedure that is permitted
7 under generally accepted accounting principles. An
8 opinion that is qualified because of a limited audit
9 procedure or because the scope of an audit is limited
10 shall not be accepted by the department. The
11 department shall not require that a warehouse operator
12 submit more than one such unqualified opinion per
13 year. The warehouse operator may elect, however, to
14 submit a financial statement that is accompanied by
15 the report of a certified public accountant licensed
16 in this state that is based upon a review performed by
17 the certified public accountant in lieu of the audited
18 financial statement specified in this paragraph, and
19 if a warehouse operator makes this election the
20 department shall cause the warehouse to be inspected
21 not less than twice during each twelve-month period,
22 but not more than five times in a twenty-four month
23 period without good cause, in the manner provided in
24 section 543.2. In addition, the department shall
25 cause a warehouse operator who makes this election to
26 submit to the department, in a form and manner
27 prescribed by the department, an interim financial
28 statement no less than once in every three-calendar-
29 month period. However, the department shall not
30 require that a warehouse operator submit more than one
31 such report of a certified public accountant per year
32 that is based upon a review performed in lieu of the
33 qualified financial statement."

34 6. Title page, line 1, by inserting after the
35 word "by" the following: "further defining the term
36 "grain dealer", limiting financial reporting by grain
37 dealers and warehouse operators,".

38 7. By renumbering as necessary.

S-3491
Filed April 9, 1987

BY COMMITTEE ON AGRICULTURE
BERL E. PRIEBE, Chairperson

ADOPTED
4-14-87

HOUSE FILE 411

H-3885

- 1 Amend the amendment, H-3839, to House File 411, as
2 follows:
3 1. Page 3, by inserting after line 5, the
4 following:
5 "_____. Page 1, line 10, by striking the words
6 "dealer, the seller, and the department" and inserting
7 the following: "dealer and the seller."
8 2. Page 4, by inserting after line 33, the
9 following:
10 "_____. Page 2, line 23, by striking the words "for
11 storage".
12 "_____. Page 4, line 29, by striking the word
13 "previously" and inserting the following:
14 "previously".
15 "_____. Page 7, line 23, by striking the words
16 "grain-dealer" and inserting the following: "or grain
17 dealer".
18 "_____. Page 7, line 26, by striking the words "or
19 grain-dealer" and inserting the following: "or grain
20 dealer".
21 "_____. Page 9, by striking lines 29 through 31."
22 3. Page 4, by inserting after line 37, the
23 following:
24 "_____. Title page, by striking lines 10 and 11,
25 and inserting the following: "and requirements for
26 recovery from the fund."
27 4. By renumbering as necessary.

H-3885 FILED APRIL 21, 1987 BY KOENIGS of Mitchell
Adopted 5/5/87

HOUSE FILE 411

H-4082

- 1 Amend Senate amendment, H-3839, to House File 411
2 as follows:
3 1. Page 2, line 49, by striking the words
4 "warehouse operator" and inserting the following:
5 "grain dealer".
6 2. Page 4, by inserting after line 33 the
7 following:
8 "_____. Page 2, line 24, by inserting after the
9 word "operator." the following: "However, assessable
10 grain does not include the following:
11 a. Grain purchased by an Iowa licensed grain
12 dealer from another licensed grain dealer, regardless
13 of which jurisdiction licenses the other grain dealer.
14 b. Grain deposited in a licensed grain warehouse
15 for custom drying, cleaning, conditioning, or
16 processing if the grain is redelivered to the
17 depositor immediately, as defined by rules adopted by
18 the department.""

H-4082 FILED APRIL 29, 1987 BY KOENIGS of Mitchell
Adopted 5/5/87

SENATE AMENDMENT TO HOUSE FILE 411

H-3839

Amend House File 411, as passed by the House, as follows:

1. Page 1, by inserting before line 1 the following:

"Section 1. Section 542.1, subsection 3, Code 1987, is amended to read as follows:

3. "Grain dealer" means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of resale, milling, or processing. However, "grain dealer" does not include a producer of grain who is buying grain for the producer's own use as seed or feed; a person solely engaged in buying grain future contracts on the board of trade; a person who purchases grain only for sale in a registered feed; a person who purchases grain for sale in a nonregistered customer-formula feed regulated by chapter 198, who purchases less than a total of fifty thousand bushels of grain annually from producers, and who is also exempt as an incidental warehouse operator under chapter 543; a person engaged in the business of selling agricultural seeds regulated by chapter 199; a person buying grain only as a farm manager; an executor, administrator, trustee, guardian, or conservator of an estate; a bargaining agent as defined in section 542A.1; or a custom livestock feeder.

Sec. 2. Section 542.3, subsection 4, paragraph b, Code 1987, is amended to read as follows:

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the department shall cause the grain dealer to be inspected not less

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than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9. In addition, the department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period.

However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement.

If a grain dealer making the election engages in credit sale contracts, the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

Sec. 3. Section 542.3, subsection 5, paragraph b, Code 1987, is amended to read as follows:

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the department shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9. In addition, the department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a warehouse operator submit more than one such report of a certified public accountant per year that is based

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1 upon a review performed in lieu of the audited
2 financial statement. If a grain dealer making the
3 election engages in credit sale contracts, the grain
4 dealer shall also comply with the provisions of
5 section 542.15, subsection 8."

6 2. Page 1, lines 24 and 25, by striking the words
7 "paragraph a, Code 1987, is" and inserting the
8 following: "paragraphs a and b, Code 1987, are".

9 3. Page 1, by inserting after line 33 the
10 following:

11 "b. The warehouse operator shall submit, as
12 required by the department, a financial statement that
13 is accompanied by an unqualified opinion based upon an
14 audit performed by a certified public accountant
15 licensed in this state. However, the department may
16 accept a qualification in an opinion that is
17 unavoidable by any audit procedure that is permitted
18 under generally accepted accounting principles. An
19 opinion that is qualified because of a limited audit
20 procedure or because the scope of an audit is limited
21 shall not be accepted by the department. The
22 department shall not require that a warehouse operator
23 submit more than one such unqualified opinion per
24 year. The warehouse operator may elect, however, to
25 submit a financial statement that is accompanied by
the report of a certified public accountant licensed
27 in this state that is based upon a review performed by
28 the certified public accountant in lieu of the audited
29 financial statement specified in this paragraph, and
30 if a warehouse operator makes this election the
31 department shall cause the warehouse to be inspected
32 not less than twice during each twelve-month period,
33 but not more than five times in a twenty-four month
34 period without good cause, in the manner provided in
35 section 543.2. In addition, the department shall
36 cause a warehouse operator who makes this election to
37 submit to the department, in a form and manner
38 prescribed by the department, an interim financial
39 statement no less than once in every three-calendar-
40 month period. However, the department shall not
41 require that a warehouse operator submit more than one
42 such report of a certified public accountant per year
43 that is based upon a review performed in lieu of the
44 certified financial statement."

45 4. Page 1, lines 34 and 35, by striking the words
46 "paragraph a, Code 1987, is" and inserting the
47 following: "paragraphs a and b, Code 1987, are".

48 5. Page 2, by inserting after line 8, the
49 following:

50 "b. The warehouse operator shall submit, as

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required by the department, a financial statement that
 2 is accompanied by an unqualified opinion based upon an
 3 audit performed by a certified public accountant
 4 licensed in this state. However, the department may
 5 accept a qualification in an opinion that is
 6 unavoidable by any audit procedure that is permitted
 7 under generally accepted accounting principles. An
 8 opinion that is qualified because of a limited audit
 9 procedure or because the scope of an audit is limited
 10 shall not be accepted by the department. The
 11 department shall not require that a warehouse operator
 12 submit more than one such unqualified opinion per
 13 year. The warehouse operator may elect, however, to
 14 submit a financial statement that is accompanied by
 15 the report of a certified public accountant licensed
 16 in this state that is based upon a review performed by
 17 the certified public accountant in lieu of the audited
 18 financial statement specified in this paragraph, and
 19 if a warehouse operator makes this election the
 20 department shall cause the warehouse to be inspected
 21 not less than twice during each twelve-month period,
 22 but not more than five times in a twenty-four month
 23 period without good cause, in the manner provided in
 24 section 543.2. In addition, the department shall
 25 cause a warehouse operator who makes this election to
 submit to the department, in a form and manner
 2. prescribed by the department, an interim financial
 28 statement no less than once in every three-calendar-
 29 month period. However, the department shall not
 30 require that a warehouse operator submit more than one
 31 such report of a certified public accountant per year
 32 that is based upon a review performed in lieu of the
 33 qualified financial statement."
 34 6. Title page, line 1, by inserting after the
 35 word "by" the following: "further defining the term
 36 "grain dealer", limiting financial reporting by grain
 37 dealers and warehouse operators,".
 38 7. By renumbering as necessary.

H-3839 FILED APRIL 16, 1987 RECEIVED FROM THE SENATE

House Concurred 5/5/87

HOUSE FILE 411

H-3923

1 Amend the Senate amendment, H-3839, to House File
 2 411 as follows:
 3 1. Page 4, by inserting after line 33 the
 4 following:
 5 "____. Page 2, line 24, by inserting after the
 6 word "operator." the following: "However, assessable
 7 grain does not include grain purchased by an Iowa
 8 licensed grain dealer from another licensed grain
 9 dealer, regardless of which jurisdiction licenses the
 10 other grain dealer."

H-3923 FILED APRIL 23, 1987 BY KOENIGS of Mitchell

WITHDRAWN *5/5/87*

NSB 188

Agriculture

Handwritten initials

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the grain indemnity fund, by eliminating
2 credit sale contracts from its protection, providing for
3 distribution of receivership assets excluding proceeds of the
4 fund, raising minimum net worth requirements, and providing
5 definitions, eliminating participation by federally licensed
6 warehouses, and providing a penalty for late payment of fees,
7 eligibility standards, adjustment of fees, a procedure for
8 determining the value of losses, requirements for recovery
9 from the fund, and the retroactive applicability of certain of
10 its provisions.

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

12
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24

SUB COMMITTEE ASSIGNMENTS

CHAIR: *Eddie*
COMMITTEE: *Agriculture*
12/26/87

1 Section 1. Section 542.15, subsection 8, Code 1987, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 8. A licensed grain dealer who purchases grain by credit-
5 sale contract shall obtain from the seller a signed acknow-
6 ledgement stating that the seller has received notice that
7 grain purchased by credit-sale contract is not protected by
8 the grain depositors and sellers indemnity fund. The form for
9 the acknowledgement shall be prescribed by the department, and
10 the licensed grain dealer, the seller, and the department
11 shall each be provided a copy.

12 Sec. 2. section 543.4, subsection 4, Code 1987, is amended
13 to read as follows:

14 4. The plan of disposition, as approved by the court,
15 shall provide for the distribution of the stored commodities,
16 or the proceeds from the sale of commodities, or the proceeds
17 from any insurance policy, deficiency bond, or irrevocable
18 letter of credit, less expenses incurred by the department in
19 connection with the receivership, ~~plus-the-proceeds-from-the~~
20 ~~grain-depositors-and-sellers-indemnity-fund-in-an-amount~~
21 ~~determined-pursuant-to-section-543A-3~~ to depositors as their
22 interests are determined. Distribution shall be without
23 regard to any setoff, counterclaim, or storage lien or charge.

24 Sec. 3. Section 543.6, subsection 4, paragraph a, Code
25 1987, is amended to read as follows:

26 a. The warehouse operator shall have and maintain a net
27 worth of at least twenty twenty-five cents per bushel of
28 warehouse capacity, or maintain a deficiency bond or an
29 irrevocable letter of credit in the amount of two thousand
30 dollars for each one thousand dollars or fraction thereof of
31 net worth deficiency. However, a person shall not be licensed
32 as a class 1 warehouse operator if the person has a net worth
33 of less than twenty-five thousand dollars.

34 Sec. 4. Section 543.6, subsection 5, paragraph a, Code
35 1987, is amended to read as follows:

1 a. The warehouse operator shall have and maintain a net
2 worth of at least twenty twenty-five cents per bushel of
3 warehouse capacity, or maintain a deficiency bond or an
4 irrevocable letter of credit in the amount of two thousand
5 dollars for each one thousand dollars or fraction thereof of
6 net worth deficiency. However, a person shall not be licensed
7 as a class 2 warehouse operator if the person has a net worth
8 of less than ten thousand dollars.

9 Sec. 5. Section 543A.1, subsections 3 and 4, Code 1987,
10 are amended to read as follows:

11 3. "Depositor" means a person who deposits grain in a
12 state warehouse for storage, handling, or shipment, or who is
13 the owner or legal holder of an outstanding warehouse receipt
14 issued by a state warehouse, or who is lawfully entitled to
15 possession of the grain.

16 4. "Fund" means the grain depositors and sellers
17 indemnification indemnity fund created in section 543A.3.

18 Sec. 6. Section 543A.1, subsections 6 and 7, Code 1987,
19 are amended by striking the subsections, inserting in lieu
20 thereof the following, and renumbering subsequent subsections:

21 6. "Assessable grain" means all grain to which a licensed
22 grain dealer obtains title except if title transfers by credit
23 sale contract, and all grain received for storage by a
24 licensed warehouse operator.

25 Sec. 7. Section 543A.1, subsection 11, Code 1987, is
26 amended to read as follows:

27 ~~10~~ 10. "Seller" means a person who sells grain which the
28 person has produced or caused to be produced to a licensed
29 grain dealer, ~~and includes~~ but excludes a person who executes
30 a credit sale contract as a seller.

31 Sec. 8. Section 543A.2, Code 1987, is amended to read as
32 follows:

33 543A.2 PERSONS PARTICIPATING IN FUND.

34 All licensed grain dealers and licensed warehouse operators
35 shall participate in the fund. ~~In addition, a grain warehouse~~

~~1 licensed under the United States Warehouse Act, 7-6-S-C-241,
2 may participate in the fund and be subject to this chapter if
3 a cooperative agreement exists both between the federal agency
4 and the department and between the federal licensee and the
5 department.--The agreement between the department and the
6 federal licensee shall be ratified each year the federal
7 licensee elects to participate in the fund.--A participating
8 federally licensed grain warehouse shall meet the minimum net
9 worth requirements of section 543.6.~~

10 Sec. 9. Section 543A.3, subsections 1 and 2, Code 1987,
11 are amended to read as follows:

12 1. The grain depositors and sellers indemnity fund is
13 created in the state treasury. The general fund of the state
14 is not liable for claims presented against the grain
15 depositors and sellers indemnity fund under section 543A.6.
16 The fund consists of a per-bushel fee on assessable grain ~~and~~
17 remitted by licensed grain dealers, and licensed warehouse
18 operators, ~~and participating federally licensed grain~~
19 ~~warehouses~~; an annual fee charged to and remitted by licensed
20 grain dealers, and licensed warehouse operators, ~~and~~
21 ~~participating federally licensed grain warehouses~~; sums
22 collected by the department by legal action on behalf of the
23 fund; and interest, property, or securities acquired through
24 the use of moneys in the fund. The moneys collected under
25 this section and deposited in the fund shall be used
26 exclusively to indemnify depositors and sellers as provided in
27 section 543A.6 and to pay the administrative costs of this
28 chapter.

29 2. The grain dealer, or warehouse operator, ~~or~~
30 ~~participating federally licensed warehouse~~ shall forward the
31 per-bushel fee to the department in the manner and using the
32 forms prescribed by the department. If the per-bushel fee has
33 not been ~~forwarded to~~ received by the department by the date
34 required by the department, the grain dealer, or warehouse
35 operator, ~~or participating federally licensed warehouse~~ is

1 subject to ~~an interest~~ a penalty of ten dollars for each day
2 the grain dealer, or warehouse operator, ~~or participating~~
3 ~~federally-licensed-warehouse-fails-to-forward-the-fee~~ is
4 delinquent. ~~Interest shall be simple interest, and shall be~~
5 ~~the maximum lawful rate of interest for the month the payment~~
6 ~~was due.~~ If the per-bushel fee has not been ~~forwarded to~~
7 received by the department within thirty days after the
8 payment was due, the grain dealer's or warehouse operator's
9 ~~license or the participating-warehouse-operator's cooperative~~
10 ~~agreement~~ shall be suspended. The per-bushel fee shall be
11 collected only once on each bushel of grain.

12 Sec. 10. Section 543A.3, subsection 3, paragraph a,
13 unnumbered paragraph 1, Code 1987, is amended to read as
14 follows:

15 All licensed grain dealers, and licensed warehouse
16 operators, ~~and participating-federally-licensed-grain~~
17 ~~warehouses~~ shall annually remit a fee to be deposited into the
18 fund which is determined as follows:

19 Sec. 11. Section 543A.3, subsection 3, paragraph b, Code
20 1987, is amended to read as follows:

21 b. Payment of the required amount shall be made before the
22 grain dealer's or warehouse operator's license is renewed, ~~or~~
23 ~~before the participating-federal-licensee's agreement with the~~
24 ~~department is ratified.~~

25 Sec. 12. Section 543A.3, subsection 4, Code 1987, is
26 amended to read as follows:

27 4. A person who applies for a grain dealer's or warehouse
28 operator's license ~~or a federal licensee who elects to~~
29 ~~participate in the fund~~ who has not previously paid the full
30 fee required by subsection 3, shall pay that amount before the
31 license is issued ~~or the agreement is ratified.~~

32 Sec. 13. Section 543A.5, Code 1987, is amended to read as
33 follows:

34 543A.5 ADJUSTMENTS TO FEE.

35 1. The board shall review annually the debits of and

1 credits to the grain depositors and sellers indemnity fund
2 created in section 543A.3 and shall make any adjustments in
3 the per-bushel fee required under section 543A.3, subsection
4 2, and the dealer-warehouse fee required under section 543A.3,
5 subsection 3, that are necessary to maintain the fund within
6 the limits established under this section. Not later than the
7 first day of May of each year, the board shall determine the
8 proposed amount of the per-bushel fee based on the expected
9 volume of grain on which the fee is to be collected and that
10 is likely to be handled under this chapter, and shall also
11 determine any adjustment to the dealer-warehouse fee. The
12 ~~per-bushel-fee-and-the-dealer-warehouse-fee-shall-be-adjusted~~
13 ~~on-a-pro-rata-basis;~~ The board shall make any changes in the
14 previous year's fees in accordance with chapter 17A. Changes
15 in the fees shall become effective on the following first day
16 of July. The per-bushel fee shall not exceed one-quarter cent
17 per bushel on all ~~grains-on-which-the-fee-is-to-be-paid~~
18 assessable grain. Until the per-bushel fee is adjusted or
19 waived as provided in this section, the per-bushel fee is one-
20 quarter cent on all ~~other-grains-on-which-the-fee-is-paid~~
21 assessable grain.

22 2. If, at the end of any fiscal year, the assets of the
23 fund exceed six million dollars, less any encumbered balances
24 or pending or unsettled claims, the per-bushel fee required
25 under section 543A.3, subsection 2, and the dealer-warehouse
26 fee required under section 543A.3, subsection 3, shall be
27 waived until the board reinstates the fees ~~on-a-pro-rata~~
28 basis. The board shall reinstate the fee fees if the assets
29 of the fund, less any unencumbered balances or pending or
30 unsettled claims, are three million dollars or less.

31 Sec. 14. Section 543A.6, subsection 1, Code 1987, is
32 amended to read as follows:

33 1. ~~When-a-depositor-or-seller-has-made-a-demand-for~~
34 ~~settlement-of-an-obligation-concerning-grain-on-which-a-fee~~
35 ~~was-required-to-be-remitted-under-section-543A.3-and-the~~

1 licensed-grain-dealer-or-licensed-warehouse-operator-has
2 failed-to-honor-the-demand,-the-depositor-or-seller,-after
3 providing-the-department-with-evidence-of-the-demand-and-the
4 dishonoring-of-the-demand,-may-file-a-claim-with-the
5 department-for-indemnification-of-damages-from-the-grain
6 depositors-and-sellers-indemnity-fund A depositor or seller
7 may file a claim concerning assessable grain with the
8 department for indemnification of a loss from the grain
9 depositors and sellers indemnity fund. A claim shall be filed
10 in the manner prescribed by the board. A claim shall not be
11 filed prior to the earlier of: 1) the revocation,
12 termination, or cancellation of the license of the grain
13 dealer or of the license or cooperative agreement of the
14 warehouse operator or participating federally licensed
15 warehouse; and 2) the filing of a petition in bankruptcy by a
16 grain dealer, warehouse operator, or participating federally
17 licensed warehouse. However, to be timely a claim shall be
18 filed within one hundred twenty days of the revocation,
19 termination, or cancellation of the license of the grain
20 dealer or of the license or cooperative agreement of the
21 warehouse operator or participating federally licensed
22 warehouse. The value of a loss is to be measured as follows:
23 a. The board shall establish determine the dollar value of
24 the loss incurred by a depositor holding a warehouse receipt
25 or a scale weight ticket for grain that the depositor
26 delivered to the licensed warehouse operator,-and-by-a-seller
27 who-has-delivered-grain-sold-on-a-credit-sale-contract-to-a
28 licensed-grain-dealer. The value shall be based on the
29 average fair market price being paid for the grain to
30 producers by the three licensed grain dealers nearest the
31 warehouse operator or-grain-dealer-for-the-grain on the
32 earlier of the following:
33 (1) The date of license suspension-or-the revocation,
34 termination, or cancellation.
35 (2) The date on which the-department-received-notice-that

1 ~~the receipt, scale weight ticket, or credit sale contract was~~
2 ~~dishonored by~~ the licensed warehouse operator or licensed
3 grain dealer filed a petition in bankruptcy.
4 However, the board may accept the valuation of a claim as
5 determined by a court of competent jurisdiction as the value
6 of the claim. All depositors filing claims under this section
7 shall be bound by the value determined by the board. The
8 value of the loss is the outstanding balance on the validated
9 claim at time of payment from the fund.

10 b. The dollar value of ~~the loss~~ a claim incurred by a
11 seller who has sold grain or delivered grain for sale or
12 exchange and who is a creditor of the licensed grain dealer
13 for all or part of the value of the grain shall be based on
14 the amount stated on the obligation on the date of the sale.
15 However, the board may accept the valuation of a claim as
16 determined by a court of competent jurisdiction as the value
17 of the claim. The value of the loss is the outstanding
18 balance on the validated claim at the time of payment from the
19 fund.

20 Sec. 15. Section 543A.6, subsections 2, 3, and 5, Code
21 1987, are amended to read as follows:

22 2. The grain depositors and sellers indemnity fund is
23 liable to a depositor or seller for a claim which arises on or
24 after May 15, 1986, for ninety percent of the loss, as
25 determined under subsection 1, but not more than one hundred
26 fifty thousand dollars per claimant. ~~The aggregate amount~~
27 ~~recovered by a depositor or seller under all remedies shall~~
28 ~~not exceed ninety percent of the value of the loss.---if the~~
29 ~~moneys recovered by a depositor or seller under all remedies~~
30 ~~exceed ninety percent of the value of the loss, the depositor~~
31 ~~or seller shall reimburse the fund in the amount that exceeds~~
32 ~~ninety percent of the value of the loss.~~

33 3. The board shall determine the validity of all claims
34 presented against the fund. ~~A claim filed under this section~~
35 ~~for losses on grain other than grain stored in a warehouse~~

1 operated-by-a-licensed-warehouse-operator-is-not-valid-unless
2 the-seller-has-made-a-demand-for-settlement-of-the-obligation
3 within-twelve-months-after-the-grain-is-priced-or-delivered
4 for-sale, whichever-occurs-later-except-that-if-the-notice
5 provided-in-section-542-12-has-been-given, the-seller-must
6 make-the-demand-for-settlement-of-the-obligation-within-the
7 one-hundred-twenty-day-period. A depositor or seller whose
8 claim has been refused by the board may appeal the refusal to
9 either the district court of Polk county or the district court
10 of the county in which the depositor or seller resides. The
11 department board shall provide for payment from the fund to a
12 depositor or seller whose claim has been found to be valid.

13 5. If-a-depositor-or-seller-files-an-action-for-legal-or
14 equitable-remedies-in-a-state-or-federal-court-having
15 jurisdiction-in-those-matters-that-includes-a-claim-against
16 grain-upon-which-the-depositor-or-seller-may-file-a-claim
17 against-the-fund-at-a-later-date, the-depositor-or-seller
18 shall-also-file-with-the-department-a-copy-of-the-action-filed
19 with-the-court. In the event of payment of a loss under this
20 section, the department-shall-be fund is subrogated to the
21 extent of the amount of any payments to all rights, powers,
22 privileges, and remedies of the depositor or seller against
23 any person regarding the loss. The depositor or seller shall
24 render all necessary assistance to aid the department and the
25 board in securing the rights granted in this section. No
26 action or claim initiated by a depositor or seller and pending
27 at the time of payment from the fund shall be compromised or
28 settled without the consent of the department board.

29 Sec. 16. This Act shall not affect a claim for
30 indemnification by any person from the depositors and sellers
31 indemnity fund, if the claim arose from a purchase of grain by
32 a credit sale contract, and the contract was executed before
33 the effective date of this Act.

34 Sec. 17. Section 6 of this Act and the corresponding uses
35 of the term "assessable grain" in sections 543A.3, subsection

1 1, and 543A.5, subsection 1, are retroactive to May 15, 1986.

2

EXPLANATION

3 Section 1 provides that sellers shall be notified by grain
4 dealers that grain purchased by credit sale contract is not
5 protected by the indemnity fund. It also eliminates the
6 restrictions relating to the financial responsibility of the
7 creditor.

8 Section 2 revises the statutory distribution of assets in a
9 receivership of a warehouse by excluding proceeds of the
10 indemnity fund from the distribution.

11 Sections 3 and 4 raise the minimum net worth required to be
12 maintained by warehouse operators from twenty cents to twenty-
13 five cents per bushel of warehouse capacity.

14 Section 5 refines the definition of "depositor" in section
15 543A.1 to provide that only depositors in state warehouses are
16 involved, and corrects a misreference in the definition of the
17 "fund".

18 Section 6 strikes the definition of "grain bank" and "grain
19 sold" and replaces them with a new definition of "assessable
20 grain". The new definition is then used in section 7 and
21 section 11. The effect is to include grain bank storage both
22 under the assessment and the protection of the fund, and also
23 to provide that a grain dealer is assessed on grain sold to
24 the grain dealer and a licensed warehouse is assessed on grain
25 stored.

26 Section 7 amends the definition of "seller" to exclude
27 persons who execute credit sale contracts. These sellers
28 would no longer be protected by the grain indemnity fund.

29 Section 8 eliminates a provision which permitted federally
30 licensed warehouses to participate in the grain indemnity
31 fund.

32 Section 9 provides that if the department does not receive
33 the per-bushel fee from a grain dealer or warehouse operator
34 as prescribed by the department, a ten dollar penalty shall be
35 imposed in place of the current interest penalty. It also

1 provides that the license of a dealer or operator shall be
2 suspended in the per-bushel fee is more than thirty days late.

3 Sections 10, 11, and 12 conform language to section 8.

4 Section 13 eliminates the pro rata adjustment of the per-
5 bushel fee and the dealer-warehouse fee, but permits the grain
6 indemnity fund board to adjust each fee independently.

7 Section 14 details the procedure that shall be used by the
8 board to determine the value of a loss incurred by a depositor
9 or a seller.

10 Section 15 provides that a claimant who recovers more than
11 the amount guaranteed by the fund, need not reimburse the fund
12 for that amount, as is required under present law. The sec-
13 tion also removes a requirement that there must be a demand
14 for settlement within certain periods if a claim is to be
15 valid, and removes a requirement that depositors and sellers
16 file copies of actions relating to potential claims against
17 the fund with the department.

18 Section 16 provides that purchasers of grain by credit sale
19 contract are not deprived of any protection provided under
20 present chapter 543A, if the contract was executed before the
21 effective date of this Act.

22 Section 17 provides that provisions relating to "assessable
23 grain" as defined in section 6 are retroactively applied.

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CHAPTER 147

GRAIN DEALER AND AGRICULTURAL WAREHOUSE OPERATOR REGULATION

H.F. 411

AN ACT relating to the grain indemnity fund, by further defining the term "grain dealer", limiting financial reporting by grain dealers and warehouse operators, eliminating credit sale contracts from its protection, providing for distribution of receivership assets excluding proceeds of the fund, raising minimum net worth requirements, and providing definitions, eliminating participation by federally licensed warehouses, and providing a penalty for late payment of fees, eligibility standards, for the appointment of additional members to the Iowa grain indemnity fund board, the adjustment of fees, a procedure for determining the value of losses, and requirements for recovery from the fund.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 542.1, subsection 3, Code 1987, is amended to read as follows:

3. "Grain dealer" means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of resale, milling, or processing. However, "grain dealer" does not include a producer of grain who is buying grain for the producer's own use as seed or feed; a person solely engaged in buying grain future contracts on the board of trade; a person who purchases grain only for sale in a registered feed; a person who purchases grain for sale in a nonregistered customer-formula feed regulated by chapter 198, who purchases less than a total of fifty thousand bushels of grain annually from producers, and who is also exempt as an incidental warehouse operator under chapter 543; a person engaged in the business of selling agricultural seeds regulated by chapter 199; a person buying grain only as a farm manager; an executor, administrator, trustee, guardian, or conservator of an estate; a bargaining agent as defined in section 542A.1; or a custom livestock feeder.

Sec. 2. Section 542.3, subsection 4, paragraph b, Code 1987, is amended to read as follows:

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the department shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9. In addition, the department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement. If a grain dealer making the election engages in credit sale contracts, the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

Sec. 3. Section 542.3, subsection 5, paragraph b, Code 1987, is amended to read as follows:

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public

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Sec. 10. Section 543A.1, subsection 11, Code 1987, is amended to read as follows:

~~11~~ 10. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes but excludes a person who executes a credit sale contract as a seller.

Sec. 11. Section 543A.2, Code 1987, is amended to read as follows:

543A.2 PERSONS PARTICIPATING IN FUND.

All licensed grain dealers and licensed warehouse operators shall participate in the fund. In addition, a grain warehouse licensed under the United States Warehouse Act, 7 U.S.C. 241, may participate in the fund and be subject to this chapter if a cooperative agreement exists both between the federal agency and the department and between the federal licensee and the department. The agreement between the department and the federal licensee shall be ratified each year the federal licensee elects to participate in the fund. A participating federally licensed grain warehouse shall meet the minimum net worth requirements of section 543.6.

Sec. 12. Section 543A.3, subsections 1 and 2, Code 1987, are amended to read as follows:

1. The grain depositors and sellers indemnity fund is created in the state treasury. The general fund of the state is not liable for claims presented against the grain depositors and sellers indemnity fund under section 543A.6. The fund consists of a per-bushel fee on assessable grain sold remitted by licensed grain dealers; and licensed warehouse operators; and participating federally licensed grain warehouses; an annual fee charged to and remitted by licensed grain dealers; and licensed warehouse operators; and participating federally licensed grain warehouses; sums collected by the department by legal action on behalf of the fund; and interest, property, or securities acquired through the use of moneys in the fund. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 543A.6 and to pay the administrative costs of this chapter.

2. The grain dealer; or warehouse operator; or participating federally licensed warehouse shall forward the per-bushel fee to the department in the manner and using the forms prescribed by the department. If the per-bushel fee has not been forwarded to received by the department by the date required by the department, the grain dealer; or warehouse operator; or participating federally licensed warehouse is subject to an interest a penalty of ten dollars for each day the grain dealer; or warehouse operator; or participating federally licensed warehouse fails to forward the fee is delinquent. Interest shall be simple interest, and shall be the maximum lawful rate of interest for the month the payment was due. If the per-bushel fee has not been forwarded to received by the department within thirty days after the payment was due, the grain dealer's or warehouse operator's license or the participating warehouse operator's cooperative agreement shall be suspended. The per-bushel fee shall be collected only once on each bushel of grain.

Sec. 13. Section 543A.3, subsection 3, paragraph a, unnumbered paragraph 1, Code 1987, is amended to read as follows:

All licensed grain dealers; and licensed warehouse operators; and participating federally licensed grain warehouses shall annually remit a fee to be deposited into the fund which is determined as follows:

Sec. 14. Section 543A.3, subsection 3, paragraph b, Code 1987, is amended to read as follows:

b. Payment of the required amount shall be made before the grain dealer's or warehouse operator's license is renewed; or before the participating federal licensee's agreement with the department is ratified.

Sec. 15. Section 543A.3, subsection 4, Code 1987, is amended to read as follows:

4. A person who applies for a grain dealer's or warehouse operator's license or a federal licensee who elects to participate in the fund who has not previously paid the full fee required by subsection 3, shall pay that amount before the license is issued or the agreement is ratified.

accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the department shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9. In addition, the department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement. If a grain dealer making the election engages in credit sale contracts, the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

Sec. 4. Section 542.15, subsection 8, Code 1987, is amended by striking the subsection and inserting in lieu thereof the following:

8. A licensed grain dealer who purchases grain by credit sale contract shall obtain from the seller a signed acknowledgement stating that the seller has received notice that grain purchased by credit sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgement shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

Sec. 5. Section 543.4, subsection 4, Code 1987, is amended to read as follows:

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, ~~plus the proceeds from the grain depositors and sellers indemnity fund in an amount determined pursuant to section 543A.3 to~~ depositors as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

Sec. 6. Section 543.6, subsection 4, paragraphs a and b, Code 1987, are amended to read as follows:

a. The warehouse operator shall have and maintain a net worth of at least ~~twenty~~ twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited

grain with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board. A claim shall not be filed prior to the earlier of: 1) the revocation, termination, or cancellation of the license of the grain dealer or warehouse operator; and 2) the filing of a petition in bankruptcy by a grain dealer or warehouse operator. However, to be timely a claim shall be filed within one hundred twenty days of the revocation, termination, or cancellation of the license of the grain dealer or warehouse operator. The value of a loss is to be measured as follows:

a. The board shall establish determine the dollar value of the loss a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered to the licensed warehouse operator; and by a seller who has delivered grain sold on a credit sale contract to a licensed or grain dealer. The value shall be based on the average fair market price being paid for the grain to producers by the three licensed grain dealers nearest the warehouse operator or grain dealer for the grain on the earlier of the following:

(1) The date of license suspension or the revocation, termination, or cancellation.

(2) The date on which the department received notice that the receipt, scale weight ticket, or credit sale contract was dishonored by the licensed warehouse operator or licensed grain dealer filed a petition in bankruptcy.

However, the board may accept the valuation of a claim as determined by a court of competent jurisdiction as the value of the claim. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

b. The dollar value of the loss a claim incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of the sale. However, the board may accept the valuation of a claim as determined by a court of competent jurisdiction as the value of the claim. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

Sec. 19. Section 543A.6, subsections 2, 3, and 5, Code 1987, are amended to read as follows:

2. The grain depositors and sellers indemnity fund is liable to a depositor or seller for a claim which arises on or after May 15, 1986, for ninety percent of the loss, as determined under subsection 1, but not more than one hundred fifty thousand dollars per claimant. The aggregate amount recovered by a depositor or seller under all remedies shall not exceed ninety percent of the value of the loss. If the moneys recovered by a depositor or seller under all remedies exceed ninety percent of the value of the loss, the depositor or seller shall reimburse the fund in the amount that exceeds ninety percent of the value of the loss.

3. The board shall determine the validity of all claims presented against the fund. A claim filed under this section for losses on grain other than grain stored in a warehouse operated by a licensed warehouse operator is not valid unless the seller has made a demand for settlement of the obligation within twelve months after the grain is priced or delivered for sale, whichever occurs later except that if the notice provided in section 542.12 has been given, the seller must make the demand for settlement of the obligation within the one hundred twenty-day period. A depositor or seller whose claim has been refused by the board may appeal the refusal to either the district court of Polk county or the district court of the county in which the depositor or seller resides. The department board shall provide for payment from the fund to a depositor or seller whose claim has been found to be valid.

5. If a depositor or seller files an action for legal or equitable remedies in a state or federal court having jurisdiction in those matters that includes a claim against grain upon which the depositor or seller may file a claim against the fund at a later date, the depositor or seller shall also file with the department a copy of the action filed with the court. In the event of payment of a loss under this section, the department shall be fund is subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor

Sec. 16. Section 543A.4, Code 1987, is amended to read as follows:

543A.4 INDEMNITY FUND BOARD.

The Iowa grain indemnity fund board is established to advise the department on matters relating to the fund and to perform the duties provided it in this chapter. The board is composed of the secretary of the department of agriculture or a designee who shall serve as president; the commissioner of insurance or a designee who shall serve as secretary; the state treasurer or a designee who shall serve as treasurer; and ~~two~~ four representatives of the grain industry appointed by the governor, subject to confirmation by the senate, ~~one~~ two of whom shall be ~~a representative~~ representatives of grain depositors and sellers producers and who shall be actively participating producers, and ~~one~~ two of whom shall be ~~a representative~~ representatives of grain dealers and warehouse operators and who shall be actively participating grain dealers and warehouse operators, each of whom shall be selected from a list of three nominations made by the secretary of agriculture. The term of membership of the grain industry representatives is three years, and the representatives are eligible for reappointment. However, only actively participating producers, and grain dealers and warehouse operators are eligible for reappointment. The grain industry representatives are entitled to forty dollars per diem for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. ~~Three~~ Four members of the board constitute a quorum, and the affirmative vote of ~~three~~ four members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

Sec. 17. Section 543A.5, Code 1987, is amended to read as follows:

543A.5 ADJUSTMENTS TO FEE.

1. The board shall review annually the debits of and credits to the grain depositors and sellers indemnity fund created in section 543A.3 and shall make any adjustments in the per-bushel fee required under section 543A.3, subsection 2, and the dealer-warehouse fee required under section 543A.3, subsection 3, that are necessary to maintain the fund within the limits established under this section. Not later than the first day of May of each year, the board shall determine the proposed amount of the per-bushel fee based on the expected volume of grain on which the fee is to be collected and that is likely to be handled under this chapter, and shall also determine any adjustment to the dealer-warehouse fee. ~~The per-bushel fee and the dealer-warehouse fee shall be adjusted on a pro rata basis.~~ The board shall make any changes in the previous year's fees in accordance with chapter 17A. Changes in the fees shall become effective on the following first day of July. The per-bushel fee shall not exceed one-quarter cent per bushel on all grains on which the fee is to be paid assessable grain. Until the per-bushel fee is adjusted or waived as provided in this section, the per-bushel fee is one-quarter cent on all other grains on which the fee is paid assessable grain.

2. If, at the end of any fiscal year, the assets of the fund exceed six million dollars, less any encumbered balances or pending or unsettled claims, the per-bushel fee required under section 543A.3, subsection 2, and the dealer-warehouse fee required under section 543A.3, subsection 3, shall be waived until the board reinstates the fees on a pro rata basis. The board shall reinstate the fee fees if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

Sec. 18. Section 543A.6, subsection 1, Code 1987, is amended to read as follows:

1. When a depositor or seller has made a demand for settlement of an obligation concerning grain on which a fee was required to be remitted under section 543A.3 and the licensed grain dealer or licensed warehouse operator has failed to honor the demand, the depositor or seller, after providing the department with evidence of the demand and the dishonoring of the demand, may file a claim with the department for indemnification of damages from the grain depositors and sellers indemnity fund A depositor or seller may file a claim concerning assessable

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or seller against any person regarding the loss. The depositor or seller shall render all necessary assistance to aid the department and the board in securing the rights granted in this section. No action or claim initiated by a depositor or seller and pending at the time of payment from the fund shall be compromised or settled without the consent of the department board.

Sec. 20. This Act shall not affect a claim for indemnification by any person from the depositors and sellers indemnity fund, if the claim arose from a purchase of grain by a credit sale contract, and the contract was executed before the effective date of this Act.

Approved May 26, 1987

CHAPTER 148

LICENSE REVOCATIONS FOR OWI

H.F. 488

AN ACT relating to the time period for a hearing on the revocation of a person's license for operating a motor vehicle while under the influence of alcohol or a drug.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321J.13, subsection 2, unnumbered paragraph 1, Code 1987, is amended to read as follows:

The department shall grant the person an opportunity to be heard within ~~thirty~~ forty-five days of receipt of a request for a hearing if the request is made not later than ~~twenty~~ thirty days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 and either of the following:

Sec. 2. Section 321J.13, subsection 4, shall apply to persons whose motor vehicle license or nonresident operating privilege has been revoked prior to July 1, 1986 under section 321B.7, 321B.13, or 321B.16 as they existed prior to July 1, 1986 to the extent that a person may reopen a hearing on the revocation if the person submits a petition stating that a criminal action on a charge of a violation of section 321.281 as it existed prior to July 1, 1986 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321.281 had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department and shall require the department to rescind the revocation and destroy any record of the revocation.

Approved May 27, 1987

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