

House Study Bill 725

Conference Committee Text

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1 1 Section 1. Section 203.8, unnumbered paragraph 1, Code
1 2 1995, is amended to read as follows:
1 3 A person required to be licensed as a grain dealer shall
1 4 pay the purchase price to the owner or the owner's agent for
1 5 grain upon delivery or demand of the owner or agent, but not
1 6 later than thirty days after delivery by the owner or agent
1 7 unless in accordance with the terms of a credit-sale contract
1 8 that satisfies the requirements of this chapter.
1 9 Sec. 2. NEW SECTION. 203.12B APPOINTMENT OF DEPARTMENT
1 10 AS RECEIVER.
1 11 1. As used in this section:
1 12 a. "Grain dealer assets" means the same as defined in
1 13 section 203.12A, including any proceeds from a deficiency bond
1 14 or irrevocable letter of credit, or any insurance policy
1 15 relating to those assets.
1 16 b. "Interested seller" means a person who delivers or has
1 17 delivered grain to a grain dealer who has not been paid as
1 18 provided in section 203.8 or according to the terms of a
1 19 credit sale contract breached by the grain dealer.
1 20 c. "Issuer" means a person who issues a deficiency bond or
1 21 an irrevocable letter of credit pursuant to section 203.3, or
1 22 an issuer of grain assets.
1 23 2. a. The department may file a verified petition in
1 24 district court requesting that the department be appointed as
1 25 a receiver, and the district court shall appoint the
1 26 department as receiver, in order to protect interested
1 27 sellers, if any of the following apply:
1 28 (1) The grain dealer's license is revoked or suspended
1 29 under section 203.10.
1 30 (2) There is evidence that the grain dealer has engaged or
1 31 is engaging in business under this chapter without obtaining a
1 32 license as required pursuant to section 203.3.
1 33 b. Upon being appointed as a receiver, the department
1 34 shall take custody and provide for the disposition of the
1 35 grain dealer assets of the grain dealer under the supervision
2 1 of the court. The petition shall be filed in the county in
2 2 which the grain dealer maintains its principal place of
2 3 business in this state. The court may issue ex parte any
2 4 temporary order as it determines necessary to preserve or
2 5 protect the grain dealer assets and the rights of interested
2 6 sellers. The petition shall be accompanied by the
2 7 department's plan for disposition of grain dealer assets which
2 8 shall provide terms as may be necessary to preserve or protect
2 9 the grain dealer assets and the rights of interested sellers,
2 10 less expenses incurred by the department in connection with
2 11 the receivership. The plan may provide for the delivery or
2 12 sale of grain as provided in section 203C.4. The plan may
2 13 provide for the operation of the business of the grain dealer
2 14 on a temporary basis and any other course of action or
2 15 procedure which will serve the interests of interested
2 16 sellers. The petition shall be filed with the clerk of the
2 17 district court who shall set a date for a hearing in the same
2 18 manner as provided in section 203C.3. Copies of the petition,
2 19 the notice of hearing, and the department's plan of
2 20 disposition shall be delivered to the following:
2 21 (1) The grain dealer and each issuer who shall receive

2 22 copies delivered in the manner required for service of an
2 23 original notice.

2 24 (2) Interested sellers as determined by the department who
2 25 shall receive copies delivered by ordinary mail.

2 26 The failure of a person to receive the required
2 27 notification shall not invalidate the proceedings on the
2 28 petition or any part of the petition for the appointment of
2 29 the department as the receiver. A person is not a party to
2 30 the action unless admitted by the court upon application.

2 31 3. When appointed as a receiver, the department shall
2 32 publish notice of the appointment in the same manner provided
2 33 in section 203C.3.

2 34 4. The department may employ or appoint a person to appear
2 35 on behalf of the department in any proceedings before the
3 1 court as provided in section 203C.3.

3 2 5. An action of the department shall not be subject to the
3 3 provisions of chapter 17A. A person employed or appointed by
3 4 the department as receiver shall be deemed to be an employee
3 5 of the state as defined in section 669.2. Chapter 669 is
3 6 applicable to any claim as defined in section 669.2 against
3 7 the person carrying out the duties of the department acting as
3 8 receiver.

3 9 6. When the department is appointed as a receiver, the
3 10 issuer shall be joined as a party, and may be ordered by the
3 11 court to pay indemnification proceeds, and shall be discharged
3 12 from further liability as provided in section 203C.4. The
3 13 department shall provide notice to interested sellers within
3 14 one hundred twenty days after the date of appointment. A
3 15 failure of a person to file a timely claim as provided by the
3 16 department shall defeat the claim, except to the extent of any
3 17 excess grain dealer assets remaining after all timely claims
3 18 are paid in full.

3 19 7. If the court approves the sale of grain, the department
3 20 shall employ or appoint a merchandiser who shall enjoy the
3 21 same status, exercise the same powers, and receive
3 22 compensation to the same extent as a merchandiser employed or
3 23 appointed pursuant to section 203C.4. A person employed or
3 24 appointed as a merchandiser must meet the following
3 25 requirements:

3 26 a. Be experienced or knowledgeable in the operation of
3 27 grain dealers as provided in this chapter.

3 28 b. Be experienced or knowledgeable in the marketing of
3 29 grain.

3 30 c. Not have had a license issued pursuant to section 203.3
3 31 suspended or revoked.

3 32 d. Not have any pecuniary interest in the grain dealer
3 33 assets of the grain dealer and not have a business
3 34 relationship with the grain dealer.

3 35 8. The sale of the grain shall proceed in the same manner
4 1 as grain sold pursuant to section 203C.4. The department may,
4 2 with the approval of the court, continue the operation of all
4 3 or any part of the business of the grain dealer on a temporary
4 4 basis and take any other course of action or procedure which
4 5 will serve the interests of interested sellers. The
4 6 department is entitled to reimbursement out of grain dealer
4 7 assets for costs directly attributable to the receivership.
4 8 The department shall be reimbursed from the grain dealer
4 9 assets in the same manner as provided in section 203C.4. If
4 10 the approved plan of disposition requires a distribution of
4 11 cash proceeds, the department shall submit to the court a
4 12 proposed plan of distribution of those proceeds. The plan
4 13 shall be approved and executed and the department shall be
4 14 discharged and the receivership terminated in the same manner
4 15 as provided in section 203C.4.

4 16 EXPLANATION
4 17 This bill amends chapter 203 which provides for the
4 18 regulation of grain dealers by the department of agriculture

4 19 and land stewardship. Generally, a grain dealer is a person
4 20 who buys during any calendar month 500 bushels of grain or
4 21 more from producers of the grain for purposes of resale,
4 22 milling, or processing. This bill provides that the
4 23 department may file a petition in district court requesting
4 24 that the department be appointed as a receiver of grain and
4 25 grain related assets of a grain dealer. The provisions are
4 26 similar to receivership procedures and powers provided under
4 27 chapter 203C for grain warehouses. The bill provides
4 28 procedures for filing a petition and providing notice to
4 29 persons interested in the disposition of the grain dealer
4 30 assets. The bill provides that a petition by the department
4 31 must be accompanied by a plan for the distribution of the
4 32 grain dealer assets. The plan may provide for the operation
4 33 of all or any part of the business of the grain dealer on a
4 34 temporary basis.

4 35 The bill also provides for the powers and duties of the
5 1 department acting as receiver, including for the payment of
5 2 claims. The bill provides for the appointment of a
5 3 merchandiser to accomplish the sale of grain. The bill
5 4 provides that the department is entitled to reimbursement out
5 5 of the grain or proceeds held in receivership for expenses.
5 6 The bill requires the department to receive court approval of
5 7 any disposition of cash proceeds. When the plan is approved
5 8 by the court and executed by the department, the receivership
5 9 is terminated. At termination, the department is required to
5 10 file a final report with the court.

5 11 Section 203.8 currently requires a grain dealer to pay an
5 12 owner of grain within 30 days of demand, unless the purchase
5 13 is pursuant to a credit sale contract. The bill amends
5 14 section 203.8 to provide that the 30-day requirement applies
5 15 to persons required to be licensed as grain dealers.

5 16 LSB 4240HC 76

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