

# Senate Study Bill 2273

## 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, if any of the following apply:  
1 27 (1) The grain dealer's license is revoked or suspended  
1 28 under section 203.10.  
1 29 (2) There is evidence that the grain dealer has engaged or  
1 30 is engaging in business under this chapter without obtaining a  
1 31 license as required pursuant to section 203.3.  
1 32 b. Upon being appointed as a receiver, the department  
1 33 shall take custody and provide for the disposition of the  
1 34 grain dealer assets of the grain dealer under the supervision  
1 35 of the court. The petition shall be filed in the county in  
2 1 which the grain dealer maintains its principal place of  
2 2 business in this state. The court may issue ex parte any  
2 3 temporary order as it determines necessary to preserve or  
2 4 protect the grain dealer assets and the rights of interested  
2 5 sellers. The petition shall be accompanied by the  
2 6 department's plan for disposition of grain dealer assets which  
2 7 shall provide terms as may be necessary to preserve or protect  
2 8 the grain dealer assets and the rights of interested sellers,  
2 9 less expenses incurred by the department in connection with  
2 10 the receivership. The plan may provide for the delivery or  
2 11 sale of grain as provided in section 203C.4. The plan may  
2 12 provide for the operation of the business of the grain dealer  
2 13 on a temporary basis and any other course of action or  
2 14 procedure which will serve the interests of interested  
2 15 sellers. The petition shall be filed with the clerk of the  
2 16 district court who shall set a date for a hearing in the same  
2 17 manner as provided in section 203C.3. Copies of the petition,  
2 18 the notice of hearing, and the department's plan of  
2 19 disposition shall be delivered to the following:  
2 20 (1) The grain dealer and each issuer who shall receive  
2 21 copies delivered in the manner required for service of an

2 22 original notice.

2 23 (2) Interested sellers as determined by the department who  
2 24 shall receive copies delivered by ordinary mail.

2 25 The failure of a person to receive the required  
2 26 notification shall not invalidate the proceedings on the  
2 27 petition or any part of the petition for the appointment of  
2 28 the department as the receiver. A person is not a party to  
2 29 the action unless admitted by the court upon application.

2 30 3. When appointed as a receiver, the department shall  
2 31 publish notice of the appointment in the same manner provided  
2 32 in section 203C.3.

2 33 4. The department may employ or appoint a person to appear  
2 34 on behalf of the department in any proceedings before the  
2 35 court as provided in section 203C.3.

3 1 5. An action of the department shall not be subject to the  
3 2 provisions of chapter 17A. A person employed or appointed by  
3 3 the department as receiver shall be deemed to be an employee  
3 4 of the state as defined in section 669.2. Chapter 669 is  
3 5 applicable to any claim as defined in section 669.2 against  
3 6 the person carrying out the duties of the department acting as  
3 7 receiver.

3 8 6. When the department is appointed as a receiver, the  
3 9 issuer shall be joined as a party, and may be ordered by the  
3 10 court to pay indemnification proceeds, and shall be discharged  
3 11 from further liability as provided in section 203C.4. The  
3 12 department shall provide notice to interested sellers within  
3 13 one hundred twenty days after the date of appointment. A  
3 14 failure of a person to file a timely claim as provided by the  
3 15 department shall defeat the claim, except to the extent of any  
3 16 excess grain dealer assets remaining after all timely claims  
3 17 are paid in full.

3 18 7. If the court approves the sale of grain, the department  
3 19 shall employ or appoint a merchandiser who shall enjoy the  
3 20 same status, exercise the same powers, and receive  
3 21 compensation to the same extent as a merchandiser employed or  
3 22 appointed pursuant to section 203C.4. A person employed or  
3 23 appointed as a merchandiser must meet the following  
3 24 requirements:

3 25 a. Be experienced or knowledgeable in the operation of  
3 26 grain dealers as provided in this chapter.

3 27 b. Be experienced or knowledgeable in the marketing of  
3 28 grain.

3 29 c. Not have had a license issued pursuant to section 203.3  
3 30 suspended or revoked.

3 31 d. Not have any pecuniary interest in the grain dealer  
3 32 assets of the grain dealer and not have a business  
3 33 relationship with the grain dealer.

3 34 8. The sale of the grain shall proceed in the same manner  
3 35 as grain sold pursuant to section 203C.4. The department may,  
4 1 with the approval of the court, continue the operation of all  
4 2 or any part of the business of the grain dealer on a temporary  
4 3 basis and take any other course of action or procedure which  
4 4 will serve the interests of interested sellers. The  
4 5 department is entitled to reimbursement out of grain dealer  
4 6 assets for costs directly attributable to the receivership.  
4 7 The department shall be reimbursed from the grain dealer  
4 8 assets in the same manner as provided in section 203C.4. If  
4 9 the approved plan of disposition requires a distribution of  
4 10 cash proceeds, the department shall submit to the court a  
4 11 proposed plan of distribution of those proceeds. The plan  
4 12 shall be approved and executed and the department shall be  
4 13 discharged and the receivership terminated in the same manner  
4 14 as provided in section 203C.4.

4 15 EXPLANATION

4 16 This bill amends chapter 203 which provides for the  
4 17 regulation of grain dealers by the department of agriculture  
4 18 and land stewardship. Generally, a grain dealer is a person

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

4 34 The bill also provides for the powers and duties of the  
4 35 department acting as receiver, including for the payment of  
5 1 claims. The bill provides for the appointment of a  
5 2 merchandiser to accomplish the sale of grain. The bill  
5 3 provides that the department is entitled to reimbursement out  
5 4 of the grain or proceeds held in receivership for expenses.  
5 5 The bill requires the department to receive court approval of  
5 6 any disposition of cash proceeds. When the plan is approved  
5 7 by the court and executed by the department, the receivership  
5 8 is terminated. At termination, the department is required to  
5 9 file a final report with the court.

5 10 Section 203.8 currently requires a grain dealer to pay an  
5 11 owner of grain within 30 days of demand, unless the purchase  
5 12 is pursuant to a credit sale contract. The bill amends  
5 13 section 203.8 to provide that the 30-day requirement applies  
5 14 to persons required to be licensed as grain dealers.

5 15 LSB 4240SC 76

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