

3/10/97 Agriculture

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SENATE FILE 356
BY BARTZ

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

A BILL FOR

1 An Act providing a system for the establishment, assessment, and
2 collection of civil penalties imposed on grain dealers and
3 warehouse operators.

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

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S.F. 356

1 Section 1. NEW SECTION. 203.11A CIVIL PENALTIES.

2 1. The department shall establish, by rule, civil
3 penalties which may be administratively or judicially assessed
4 against a grain dealer for a violation of this chapter.

5 2. The amount of the civil penalty shall not exceed one
6 thousand five hundred dollars. Each day that a violation
7 continues shall constitute a separate violation. The amount
8 of the civil penalty that may be assessed in a case shall not
9 exceed the amount recommended by the grain industry peer
10 review panel established pursuant to section 203.11B. Moneys
11 collected in civil penalties by the department or the attorney
12 general shall be deposited in the grain depositors and sellers
13 indemnity fund created in section 203D.3.

14 3. The penalties may be administratively assessed only
15 after an opportunity for a contested case hearing under
16 chapter 17A. The department may be represented in an
17 administrative or judicial hearing by the attorney general. A
18 civil penalty shall be paid within thirty days from the date
19 that an order or judgment for the penalty becomes final. When
20 a person against whom a civil penalty is administratively
21 assessed under this section seeks timely judicial review of an
22 order imposing the penalty as provided under chapter 17A, the
23 order is not final until all judicial review processes are
24 completed. When a person against whom a civil penalty is
25 judicially assessed under this section seeks a timely appeal
26 of judgment, the judgment is not final until the right of
27 appeal is exhausted.

28 4. A person who fails to timely pay a civil penalty as
29 provided in this section shall pay, in addition, interest at
30 the rate of one and one-half percent of the unpaid balance of
31 the assessed penalty for each month or part of a month that
32 the penalty remains unpaid.

33 Sec. 2. NEW SECTION. 203.11B GRAIN INDUSTRY PEER REVIEW
34 PANEL.

35 1. The department shall establish a grain industry peer

1 review panel to assist the department in assessing a civil
2 penalty pursuant to this section or section 203C.36A. The
3 secretary shall appoint the following members:

4 a. Two natural persons who are grain dealers licensed
5 under this chapter and actively engaged in the grain dealer
6 business.

7 b. Two natural persons who are warehouse operators
8 licensed pursuant to chapter 203C and actively engaged in the
9 grain warehouse business.

10 c. One natural person who is an agricultural producer
11 actively engaged in grain farming.

12 2. a. The members appointed pursuant to this section
13 shall serve four-year terms beginning and ending as provided
14 in section 69.19. However, the secretary shall appoint
15 initial members to serve for less than four years to ensure
16 that members serve staggered terms. A member is eligible for
17 reappointment. A vacancy on the panel shall be filled for the
18 unexpired portion of the regular term in the same manner as
19 regular appointments are made.

20 b. The panel shall elect a chairperson who shall serve for
21 a term of one year. The panel shall meet on a regular basis
22 and at the call of the chairperson or upon the written request
23 to the chairperson of three or more members. Three members
24 constitute a quorum and the affirmative vote of a majority of
25 the members present is necessary for any substantive action to
26 be taken by the panel. The majority shall not include any
27 member who has a conflict of interest and a statement by a
28 member that the member has a conflict of interest is
29 conclusive for this purpose. A vacancy in the membership does
30 not impair the duties of the panel.

31 c. Notwithstanding section 7E.6, the members shall only
32 receive reimbursement for actual expenses for performance of
33 their official duties, as provided by the department.

34 d. The panel shall be staffed by employees of the
35 department.

1 3. The panel may propose a schedule of penalties for minor
2 and serious violations of this chapter and chapter 203C. The
3 department may adopt rules based on the recommendations of the
4 panel as approved by the secretary.

5 4. a. The panel shall review cases of grain dealers
6 regulated under this chapter and warehouse operators regulated
7 under chapter 203C who are subject to civil penalties as
8 provided in section 203.11A or 203C.36A. A review shall be
9 performed upon request by the department or the person subject
10 to the civil penalty.

11 b. The department shall present reports to the panel in
12 regard to investigations which may result in the assessment of
13 a civil penalty against a person. The reports may be reviewed
14 by the panel in closed session pursuant to section 21.5, and
15 are confidential. In presenting the reports, the department
16 shall make available to the panel records of persons which are
17 otherwise confidential under section 22.7, 203.16, or 203C.24.
18 However, a determination to take disciplinary action against a
19 person shall be made exclusively by the department.

20 c. The panel may establish procedures for the review and
21 establish a system of prioritizing cases for review,
22 consistent with rules adopted by the department. The
23 department shall adopt rules establishing a period for the
24 review and response by the panel which must be completed prior
25 to a contested case hearing under chapter 17A. A hearing
26 shall not be delayed after the required period for review and
27 response, except as provided in chapter 17A or the Iowa rules
28 of civil procedure. The rules adopted by the department may
29 exclude review of minor violations. The review may also
30 include the manner of assessing and collecting the civil
31 penalty.

32 d. The findings and recommendations of the panel shall be
33 included in a response delivered to the department and the
34 person subject to the penalty. The response may include a
35 recommendation that a proposed civil penalty be modified or

1 suspended, that an alternative method of collection be
2 instituted, or that conditions be placed upon the license of a
3 grain dealer.

4 5. This section does not apply to an action by the
5 department for a license suspension or revocation. This
6 section also does not require a review or response if the case
7 is subject to criminal prosecution or involves a petition
8 seeking injunctive relief.

9 6. A response by the panel may be used as evidence in an
10 administrative hearing, or a civil or criminal case, except to
11 the extent that information contained in the report is
12 considered confidential pursuant to section 22.7, 203.16, or
13 203C.24.

14 Sec. 3. Section 203.16, Code 1997, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 8. Disclosure to the grain industry peer
17 review panel as provided in section 203.11B.

18 Sec. 4. Section 203C.24, Code 1997, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 8. Disclosure to the grain industry peer
21 review panel as provided in section 203.11B.

22 Sec. 5. NEW SECTION. 203C.36A CIVIL PENALTIES.

23 1. The department shall establish, by rule, civil
24 penalties which may be administratively or judicially assessed
25 against a warehouse operator for a violation of this chapter.

26 2. The amount of the civil penalty shall not exceed one
27 thousand five hundred dollars. Each day that a violation
28 continues shall constitute a separate violation. The amount
29 of the civil penalty that may be assessed in an administrative
30 case shall not exceed the amount recommended by the grain
31 industry peer review panel established pursuant to section
32 203.11B. Moneys collected in civil penalties by the
33 department or the attorney general shall be deposited in the
34 grain depositors and sellers indemnity fund created in section
35 203D.3.

1 3. The penalties may be administratively assessed only
2 after an opportunity for a contested case hearing under
3 chapter 17A. The department may be represented in an
4 administrative or judicial hearing by the attorney general. A
5 civil penalty shall be paid within thirty days from the date
6 that an order or judgment for the penalty becomes final. When
7 a person against whom a civil penalty is administratively
8 assessed under this section seeks timely judicial review of an
9 order imposing the penalty as provided under chapter 17A, the
10 order is not final until all judicial review processes are
11 completed. When a person against whom a civil penalty is
12 judicially assessed under this section seeks a timely appeal
13 of judgment, the judgment is not final until the right of
14 appeal is exhausted.

15 4. A person who fails to timely pay a civil penalty as
16 provided in this section shall pay, in addition, interest at
17 the rate of one and one-half percent of the unpaid balance of
18 the assessed penalty for each month or part of a month that
19 the penalty remains unpaid.

20 Sec. 6. Section 203D.3, subsection 1, Code 1997, is
21 amended to read as follows:

22 1. The grain depositors and sellers indemnity fund is
23 created in the state treasury as a separate account. The
24 general fund of the state is not liable for claims presented
25 against the ~~grain-depositors-and-sellers-indemnity~~ fund under
26 section 203D.6. The fund consists of a per-bushel fee on
27 purchased grain remitted by licensed grain dealers and
28 licensed warehouse operators; an annual fee charged to and
29 remitted by licensed grain dealers and licensed warehouse
30 operators; delinquency penalties; civil penalties collected by
31 the department or attorney general pursuant to sections
32 203.11A and 203C.36A; sums collected by the department by
33 legal action on behalf of the fund; and interest, property, or
34 securities acquired through the use of moneys in the fund.
35 The fiscal year of the fund begins July 1. Fiscal quarters of

1 the fund begin July 1, October 1, January 1, and April 1. The
2 finances of the fund shall be calculated on an accrual basis
3 in accordance with generally accepted accounting principles.
4 The moneys collected under this section and deposited in the
5 fund shall be used exclusively to indemnify depositors and
6 sellers as provided in section 203D.6 and to pay the
7 administrative costs of this chapter.

8

EXPLANATION

9 This bill amends chapters 203, 203C, and 203D providing for
10 the regulation of grain dealers and warehouse operators
11 required to be licensed by the department of agriculture and
12 land stewardship, and providing for the Iowa grain depositors
13 and sellers indemnity fund.

14 The bill requires the department to establish, by rule,
15 civil penalties which may be administratively or judicially
16 assessed against a grain dealer or warehouse operator for a
17 violation of the chapters regulating those persons. The
18 amount of the civil penalty shall not exceed \$1,500. The bill
19 provides procedures for administratively assessing the civil
20 penalties. The amount of the civil penalty cannot exceed the
21 amount recommended by the grain industry peer review panel as
22 established by the bill. The bill provides that moneys
23 collected in civil penalties by the department or the attorney
24 general must be deposited in the grain depositors and sellers
25 indemnity fund.

26 The bill establishes a grain industry peer review panel to
27 assist the department in assessing a civil penalty. The bill
28 provides that the secretary of agriculture shall appoint
29 members to the panel who represent grain dealers, warehouse
30 operators, and producers. The bill provides procedures for
31 the operation of the panel and reimbursement of member
32 expenses. The bill provides that the panel may propose a
33 schedule of penalties for minor and serious violations, and
34 may review cases of persons required to be licensed as grain
35 dealers or warehouse operators and who are subject to civil

1 penalties. A review is performed upon request by the
2 department or the person subject to the civil penalty. The
3 bill provides for the consideration of information by the
4 panel that would otherwise be confidential. The findings and
5 recommendations of the panel must be included in a response
6 delivered to the department and the person subject to the
7 penalty. The response may include a recommendation that a
8 proposed civil penalty be modified or suspended, that an
9 alternative method of collection be instituted, or that
10 conditions be placed upon the license of a grain dealer or
11 warehouse operator. The panel cannot take action relating to
12 a license suspension or revocation. A review or response is
13 not required if the department refers a violation for criminal
14 prosecution, or in an action involving injunctive relief. The
15 bill provides that a response by the panel may be used as
16 evidence in an administrative hearing, or a civil or criminal
17 case, except to the extent that information contained in the
18 report is considered confidential.

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