

S-2/12/99 - agriculture  
S-3/25/99 Do Pass

FEB 18 1999

Place On Calendar

312

HOUSE FILE  
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HF 82)

(p.495) Passed House, Date 3/1/99 Passed Senate, Date 4/20/99  
Vote: Ayes 94 Nays 0 Vote: Ayes 44 Nays 3  
Approved May 10, 1999 (p.1209)

A BILL FOR

1 An Act relating to regulation of the grain industry and providing  
2 for civil penalties.

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

4

HOUSE FILE 312

S-3359

- 1 Amend House File 312, as passed by the House, as
- 2 follows:
- 3 1. By striking page 2, line 6, through page 5,
- 4 line 21.
- 5 2. Page 6, by striking lines 11 through 14.
- 6 3. By striking page 8, line 4, through page 9,
- 7 line 4.
- 8 4. Title page, lines 1 and 2, by striking the
- 9 words "and providing for civil penalties".

*Last* 4/20/99 (p.1208) BY DAVID MILLER

S-3359 FILED APRIL 13, 1999

HF 312

15  
16  
17  
18  
19  
20  
21  
22  
23

1 Section 1. Section 203.1, subsection 8, unnumbered  
2 paragraph 1, Code 1999, is amended to read as follows:

3 "Grain dealer" means a person who buys during any calendar  
4 month five-hundred one thousand bushels of grain or more  
5 directly from the producers of the grain for purposes of  
6 resale, milling, or processing. However, "grain dealer" does  
7 not include any of the following:

8 Sec. 2. Section 203.1, subsection 8, paragraph c, Code  
9 1999, is amended to read as follows:

10 c. A person who purchases grain only for sale in a  
11 registered feed regulated under chapter 198.

12 Sec. 3. Section 203.1, subsection 8, paragraph d, Code  
13 1999, is amended by striking the paragraph and inserting in  
14 lieu thereof the following:

15 d. A person who purchases grain only from grain dealers  
16 licensed under this chapter.

17 Sec. 4. NEW SECTION. 203.2A NOTICE REQUIREMENT FOR GRAIN  
18 PURCHASERS WHO ARE NOT GRAIN DEALERS.

19 A person shall not purchase grain from a producer for  
20 purposes of resale, milling, feeding, or processing, unless  
21 one of the following applies:

22 1. The person is a grain dealer licensed pursuant to  
23 section 203.3.

24 2. The person has purchased less than fifty thousand  
25 bushels of grain from all producers in the twelve months prior  
26 to purchasing grain from the producer.

27 3. a. The person provides notice to the producer. The  
28 notice shall be in the following form:

29 ATTENTION TO PRODUCERS:  
30 THE PERSON PURCHASING THIS GRAIN IS NOT A LICENSED GRAIN  
31 DEALER AND THIS IS NOT A COVERED TRANSACTION ELIGIBLE FOR  
32 INDEMNIFICATION FROM THE GRAIN DEPOSITORS AND SELLERS  
33 INDEMNITY FUND AS PROVIDED IN IOWA CODE SECTION 203D.3.

34 b. The notice shall be provided prior to or at the time of  
35 the purchase. The notice may appear on a separate statement

1 or as part of a document received by the producer, including a  
2 contract or receipt, as required by the department.

3 | c. The form of the notice shall be prescribed by the  
4 department. The notice shall appear in a printed boldface  
5 font in at least ten point type.

6 | Sec. 5. NEW SECTION. 203.11A CIVIL PENALTIES.

7 | 1. The department shall establish, by rule, civil  
8 penalties which may be administratively or judicially assessed  
9 against a grain dealer for a violation of this chapter.

10 | 2. The amount of a civil penalty shall not exceed one  
11 thousand five hundred dollars. Each day that a violation  
12 continues shall constitute a separate violation. The amount  
13 of the civil penalty that may be assessed in a case shall not  
14 exceed the amount recommended by the grain industry peer  
15 review panel established pursuant to section 203.11B. Moneys  
16 collected in civil penalties by the department or the attorney  
17 general shall be deposited in the general fund of the state.

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

32 | 4. A person who fails to timely pay a civil penalty as  
33 provided in this section shall pay, in addition to the  
34 penalty, interest at the rate of one and one-half percent of  
35 the unpaid balance of the assessed penalty for each month or

1 part of a month that the penalty remains unpaid.

2 Sec. 6. NEW SECTION. 203.11B GRAIN INDUSTRY PEER REVIEW  
3 PANEL.

4 1. The department shall establish a grain industry peer  
5 review panel to assist the department in assessing civil  
6 penalties pursuant to this section and section 203C.36A. The  
7 secretary of agriculture shall appoint to the panel the  
8 following members:

9 a. Two natural persons who are grain dealers licensed  
10 under this chapter and actively engaged in the grain dealer  
11 business.

12 b. Two natural persons who are warehouse operators  
13 licensed pursuant to chapter 203C and actively engaged in the  
14 grain warehouse business.

15 c. One natural person who is a producer actively engaged  
16 in grain farming.

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

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

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

4 d. The panel shall be staffed by employees of the  
5 department.

6 3. The panel may propose a schedule of civil penalties for  
7 minor and serious violations of this chapter and chapter 203C.  
8 The department may adopt rules based on the recommendations of  
9 the panel as approved by the secretary of agriculture.

10 4. a. The panel shall review cases of grain dealers  
11 regulated under this chapter and warehouse operators regulated  
12 under chapter 203C who are subject to civil penalties as  
13 provided in section 203.11A or 203C.36A. A review shall be  
14 performed upon the request of the department or the person  
15 subject to the civil penalty.

16 b. The department shall present reports to the panel in  
17 regard to investigations of cases under review which may  
18 result in the assessment of a civil penalty against a person.  
19 The reports may be reviewed by the panel in closed session  
20 pursuant to section 21.5, and are confidential records. In  
21 presenting the reports, the department shall make available to  
22 the panel records of persons which are otherwise confidential  
23 under section 22.7, 203.16, or 203C.24. The panel members  
24 shall maintain the confidentiality of records made available  
25 to the panel. However, a determination to assess a civil  
26 penalty against a person shall be made exclusively by the  
27 department.

28 c. The panel may establish procedures for the review and  
29 establish a system of prioritizing cases for review,  
30 consistent with rules adopted by the department. The  
31 department shall adopt rules establishing a period for the  
32 review and response by the panel which must be completed prior  
33 to a contested case hearing under chapter 17A. A hearing  
34 shall not be delayed after the required period for review and  
35 response, except as provided in chapter 17A or the Iowa rules

1 of civil procedure. The rules adopted by the department may  
2 exclude review of minor violations. The review may also  
3 include the manner of assessing and collecting the civil  
4 penalty.

5 d. The findings and recommendations of the panel shall be  
6 included in a response delivered to the department and the  
7 person subject to the civil penalty. The response may include  
8 a recommendation that a proposed civil penalty be modified or  
9 suspended, that an alternative method of collection be  
10 instituted, or that conditions be placed upon the license of a  
11 grain dealer or warehouse operator.

12 5. This section does not apply to an action by the  
13 department for a license suspension or revocation. This  
14 section also does not require a review or response if the case  
15 is subject to criminal prosecution or involves a petition  
16 seeking injunctive relief.

17 6. A response by the panel may be used as evidence in an  
18 administrative hearing or in a civil or criminal case except  
19 to the extent that information contained in the response is  
20 considered confidential pursuant to section 22.7, 203.16, or  
21 203C.24.

22 Sec. 7. Section 203.15, subsection 7, paragraph c,  
23 subparagraph (2), unnumbered paragraph 2, Code 1999, is  
24 amended to read as follows:

25 A bond filed with the department under this paragraph shall  
26 not be canceled by the issuer on less than ninety days notice  
27 by certified mail to the department and the principal. ~~When~~  
28 ~~the-department-receives-notice-from-an-issuer-that-it-has~~  
29 ~~canceled-the-bond,~~ However, if an adequate replacement bond is  
30 filed with the department, the department may authorize the  
31 cancellation of the original bond before the end of the  
32 ninety-day period. If an adequate replacement bond is not  
33 received by the department within sixty days of the issuance  
34 of the notice of cancellation, the department shall  
35 automatically suspend the grain dealer's license ~~if-a~~

1 replacement-bond-is-not-received-by-the-department-within  
2 sixty-days-of-the-issuance-of-the-notice-of-cancellation. The  
3 department shall cause an inspection of the licensed grain  
4 dealer immediately at the end of the sixty-day period. If a  
5 replacement bond is not filed within another thirty days  
6 following the suspension, the grain dealer license shall be  
7 automatically revoked. When a license is revoked, the  
8 department shall provide notice of the revocation by ordinary  
9 mail to the last known address of each holder of an  
10 outstanding credit-sale contract and all known sellers.

11 Sec. 8. Section 203.16, Code 1999, is amended by adding  
12 the following new subsection:

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

15 Sec. 9. Section 203C.1, subsection 11, Code 1999, is  
16 amended to read as follows:

17 11. "Incidental warehouse operator" means a person  
18 regulated under chapter 198 whose grain storage capacity does  
19 not exceed twenty-five thousand bushels which is used  
20 exclusively for grain owned or grain which will be returned to  
21 the depositor for use in a feeding operation or as an  
22 ingredient in a customer-formula feed, as defined in section  
23 198-1.

24 Sec. 10. Section 203C.1, Code 1999, is amended by adding  
25 the following new subsection:

26 NEW SUBSECTION. 11A. "Incidental warehouse operator  
27 obligation" means a sufficient quantity and quality of grain  
28 to cover company owned grain and deposits of grain for which  
29 actual payment has not been made.

30 Sec. 11. Section 203C.1, subsection 24, Code 1999, is  
31 amended to read as follows:

32 24. "Warehouse operator's obligation" means a sufficient  
33 quantity and quality of grain or other products for which a  
34 warehouse operator is licensed including company owned grain  
35 and grain of depositors as the warehouse operator's records

1 indicate. For an unlicensed warehouse operator it means a  
2 sufficient quantity and quality of grain to cover company  
3 owned grain and all deposits of grain for which actual payment  
4 has not been made. ~~At no time may a warehouse operator have~~  
5 ~~less grain or other agricultural products in the warehouse~~  
6 ~~than the obligations to depositors, as determined by~~  
7 ~~investigation of the warehouse operator's records.~~

8 Sec. 12. Section 203C.17, subsection 1, Code 1999, is  
9 amended to read as follows:

10 1. Any grain which has been received at any licensed  
11 warehouse for which the actual sale price is not fixed and  
12 proper documentation made or payment made shall be construed  
13 to be grain held for storage within the meaning of this  
14 chapter. Grain may be held in open storage or placed on  
15 warehouse receipt. ~~Warehouse receipts~~ A warehouse receipt  
16 shall be issued for all grain held in open storage, within ~~six~~  
17 ~~months~~ one year from the date of delivery to the warehouse,  
18 unless the depositor has signed a statement that the depositor  
19 does not desire a warehouse receipt. The warehouse operator's  
20 tariff shall apply for any grain that is retained in open  
21 storage or under warehouse receipt.

22 Sec. 13. Section 203C.23, Code 1999, is amended to read as  
23 follows:

24 203C.23 WAREHOUSE OPERATOR'S OBLIGATION.

25 1. A warehouse operator shall maintain at all times  
26 sufficient quantity and quality of grain or other agricultural  
27 products to cover the warehouse operator's obligation. A  
28 warehouse operator shall not at any time have less grain or  
29 other agricultural products in the warehouse than the  
30 obligations to depositors, as determined by an investigation  
31 of the warehouse operator's records.

32 2. An incidental warehouse operator shall maintain at all  
33 times sufficient quantity and quality of grain to cover the  
34 incidental warehouse operator's obligation. An incidental  
35 warehouse operator shall not at any time have less grain in a



1 warehouse than the obligations to depositors, as determined by  
2 an investigation of the incidental warehouse operator's  
3 records.

4 Sec. 14. Section 203C.24, Code 1999, is amended by adding  
5 the following new subsection:

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

8 Sec. 15. NEW SECTION. 203C.36A CIVIL PENALTIES.

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

12 2. The amount of a civil penalty shall not exceed one  
13 thousand five hundred dollars. Each day that a violation  
14 continues shall constitute a separate violation. The amount  
15 of the civil penalty that may be assessed in an administrative  
16 case shall not exceed the amount recommended by the grain  
17 industry peer review panel established pursuant to section  
18 203.11B. Moneys collected in civil penalties by the  
19 department or the attorney general shall be deposited in the  
20 general fund of the state.

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

35 4. A person who fails to timely pay a civil penalty as

1 provided in this section shall pay, in addition to the  
2 penalty, interest at the rate of one and one-half percent of  
3 the unpaid balance of the assessed penalty for each month or  
4 part of a month that the penalty remains unpaid.

5

## EXPLANATION

6 This bill amends Code chapters 203 and 203C, providing for  
7 the regulation of grain dealers and warehouse operators  
8 required to be licensed by the department of agriculture and  
9 land stewardship, and providing for the grain depositors and  
10 sellers indemnity fund.

11 The bill increases the amount of grain that a person may  
12 purchase during a calendar year for resale, milling, or  
13 processing from less than 500 to less than 1,000 bushels  
14 without being regulated as a grain dealer. The bill requires  
15 that persons who are not licensed grain dealers must notify a  
16 producer, if the person purchases 50,000 or more bushels of  
17 grain in the last 12 months. The notice must warn the  
18 producer that the grain is not covered by the grain depositors  
19 and sellers indemnity fund.

20 The bill eliminates references to registered feed that is  
21 no longer regulated.

22 The bill amends a provision requiring a grain dealer to  
23 file and maintain a bond with the department. The provision  
24 prohibits the issuer of the bond from cancellation without  
25 providing the department with 90 days' notice. The bill  
26 provides that the department may authorize the cancellation of  
27 the original bond, if an adequate replacement bond is filed  
28 with the department.

29 The bill requires the department to establish, by rule,  
30 civil penalties which may be administratively or judicially  
31 assessed against a grain dealer or warehouse operator for a  
32 violation of the chapters regulating those persons. The  
33 amount of the civil penalty shall not exceed \$1,500. The bill  
34 provides procedures for administratively assessing the civil  
35 penalties. The amount of the civil penalty cannot exceed the

1 amount recommended by the grain industry peer review panel as  
2 established by the bill. The bill provides that moneys  
3 collected in civil penalties by the department or the attorney  
4 general must be deposited in the general fund of the state.

5 The bill establishes a grain industry peer review panel to  
6 assist the department in assessing civil penalties. The bill  
7 provides that the secretary of agriculture shall appoint  
8 members to the panel who represent grain dealers, warehouse  
9 operators, and grain producers. The bill provides procedures  
10 for the operation of the panel and reimbursement of member  
11 expenses. The bill provides that the panel may propose a  
12 schedule of penalties for minor and serious violations, and  
13 may review cases of persons required to be licensed as grain  
14 dealers or warehouse operators and who are subject to civil  
15 penalties. A review is performed upon request by the  
16 department or the person subject to the civil penalty. The  
17 bill provides for the consideration of information by the  
18 panel that would otherwise be confidential. The findings and  
19 recommendations of the panel must be included in a response  
20 delivered to the department and the person subject to the  
21 penalty. The response may include a recommendation that a  
22 proposed civil penalty be modified or suspended, that an  
23 alternative method of collection be instituted, or that  
24 conditions be placed upon the license of a grain dealer or  
25 warehouse operator. The panel cannot take action relating to  
26 a license suspension or revocation. A review or response is  
27 not required if the department refers a violation for criminal  
28 prosecution, or in an action involving injunctive relief. The  
29 bill provides that a response by the panel may be used as  
30 evidence in an administrative hearing, or a civil or criminal  
31 case, except to the extent that information contained in the  
32 report is considered confidential.

33 The bill increases the time from six months to one year  
34 from the date of delivery to the warehouse before a warehouse  
35 receipt must be issued for grain held in open storage (i.e.,

1 unpurchased grain).

2 Finally, the bill provides that incidental warehouse  
3 operators must have sufficient quantity and quality of grain  
4 to cover obligations to depositors.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

AN ACT  
CREATING THE NEW CRIMINAL OFFENSE OF DISARMING A PEACE  
OFFICER OF A DANGEROUS WEAPON.

3. A person who discharges the dangerous weapon while  
disarming or attempting to disarm the peace officer commits a  
class "C" felony.

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

Section 1. NEW SECTION. 708.13 DISARMING A PEACE OFFICER  
OF A DANGEROUS WEAPON.

1. A person who knowingly or intentionally removes or  
attempts to remove a dangerous weapon, as defined in section  
702.7, from the possession of a peace officer, as defined in  
section 724.2A, when the officer is in the performance of any  
act which is within the scope of the lawful duty or authority  
of that officer and the person knew or should have known the  
individual to be a peace officer, commits the offense of  
disarming a peace officer.

2. A person who disarms or attempts to disarm a peace  
officer is guilty of a class "D" felony.

---

RON J. CORBETT  
Speaker of the House

---

MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and  
is known as House File 313, Seventy-eighth General Assembly.

---

ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 21, 1999

---

THOMAS J. VILSACK  
Governor

AN ACT  
RELATING TO REGULATION OF THE GRAIN INDUSTRY AND PROVIDING  
FOR CIVIL PENALTIES.

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

Section 1. Section 203.1, subsection 8, unnumbered paragraph 1, Code 1999, is amended to read as follows:

"Grain dealer" means a person who buys during any calendar month five-hundred one thousand bushels of grain or more directly from the producers of the grain for purposes of resale, milling, or processing. However, "grain dealer" does not include any of the following:

Sec. 2. Section 203.1, subsection 8, paragraph c, Code 1999, is amended to read as follows:

c. A person who purchases grain only for sale in a registered feed regulated under chapter 198.

Sec. 3. Section 203.1, subsection 8, paragraph d, Code 1999, is amended by striking the paragraph and inserting in lieu thereof the following:

d. A person who purchases grain only from grain dealers licensed under this chapter.

Sec. 4. NEW SECTION. 203.2A NOTICE REQUIREMENT FOR GRAIN PURCHASERS WHO ARE NOT GRAIN DEALERS.

A person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing, unless one of the following applies:

1. The person is a grain dealer licensed pursuant to section 203.3.
2. The person has purchased less than fifty thousand bushels of grain from all producers in the twelve months prior to purchasing grain from the producer.
3. a. The person provides notice to the producer. The notice shall be in the following form:

ATTENTION TO PRODUCERS:

THE PERSON PURCHASING THIS GRAIN IS NOT A LICENSED GRAIN DEALER AND THIS IS NOT A COVERED TRANSACTION ELIGIBLE FOR INDEMNIFICATION FROM THE GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND AS PROVIDED IN IOWA CODE SECTION 203D.3.

b. The notice shall be provided prior to or at the time of the purchase. The notice may appear on a separate statement or as part of a document received by the producer, including a contract or receipt, as required by the department.

c. The form of the notice shall be prescribed by the department. The notice shall appear in a printed boldface font in at least ten point type.

Sec. 5. NEW SECTION. 203.11A CIVIL PENALTIES.

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

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in a case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty

becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

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

Sec. 6. NEW SECTION. 203.11B GRAIN INDUSTRY PEER REVIEW PANEL.

1. The department shall establish a grain industry peer review panel to assist the department in assessing civil penalties pursuant to this section and section 203C.36A. The secretary of agriculture shall appoint to the panel the following members:

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

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

c. One natural person who is a producer actively engaged in grain farming.

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

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

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

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

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

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

b. The department shall present reports to the panel in regard to investigations of cases under review which may result in the assessment of a civil penalty against a person. The reports may be reviewed by the panel in closed session pursuant to section 21.5, and are confidential records. In presenting the reports, the department shall make available to the panel records of persons which are otherwise confidential under section 22.7, 203.16, or 203C.24. The panel members shall maintain the confidentiality of records made available to the panel. However, a determination to assess a civil penalty against a person shall be made exclusively by the department.

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

d. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the civil penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a grain dealer or warehouse operator.

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

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

Sec. 7. Section 203.15, subsection 7, paragraph c, subparagraph (2), unnumbered paragraph 2, Code 1999, is amended to read as follows:

A bond filed with the department under this paragraph shall not be canceled by the issuer on less than ninety days notice by certified mail to the department and the principal. ~~When the department receives notice from an issuer that it has canceled the bond,~~ However, if an adequate replacement bond is

filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period. If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation, the department shall automatically suspend the grain dealer's license if a replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation. The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the grain dealer license shall be automatically revoked. When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

Sec. 8. Section 203.16, Code 1999, is amended by adding the following new subsection:

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

Sec. 9. Section 203C.1, subsection 11, Code 1999, is amended to read as follows:

11. "Incidental warehouse operator" means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a ~~customer-formula feed,~~ as defined in section 198-1.

Sec. 10. Section 203C.1, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 11A. "Incidental warehouse operator obligation" means a sufficient quantity and quality of grain to cover company owned grain and deposits of grain for which actual payment has not been made.

Sec. 11. Section 203C.1, subsection 24, Code 1999, is amended to read as follows:



24. "Warehouse operator's obligation" means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator's records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality of grain to cover company owned grain and all deposits of grain for which actual payment has not been made. ~~At no time may a warehouse operator have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by investigation of the warehouse operator's records.~~

Sec. 12. Section 203C.17, subsection 1, Code 1999, is amended to read as follows:

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. ~~Warehouse receipts~~ A warehouse receipt shall be issued for all grain held in open storage, within ~~six months~~ one year from the date of delivery to the warehouse, unless the depositor has signed a statement that the depositor does not desire a warehouse receipt. The warehouse operator's tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

Sec. 13. Section 203C.23, Code 1999, is amended to read as follows:

203C.23 WAREHOUSE OPERATOR'S OBLIGATION.

1. A warehouse operator shall maintain at all times sufficient quantity and quality of grain or other agricultural products to cover the warehouse operator's obligation. A warehouse operator shall not at any time have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by an investigation of the warehouse operator's records.

2. An incidental warehouse operator shall maintain at all times sufficient quantity and quality of grain to cover the

incidental warehouse operator's obligation. An incidental warehouse operator shall not at any time have less grain in a warehouse than the obligations to depositors, as determined by an investigation of the incidental warehouse operator's records.

Sec. 14. Section 203C.24, Code 1999, is amended by adding the following new subsection:

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

Sec. 15. NEW SECTION. 203C.36A CIVIL PENALTIES.

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

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in an administrative case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

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

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

---

RON J. CORBETT  
Speaker of the House

---

MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 312, Seventy-eighth General Assembly.

---

ELIZABETH ISAACSON  
Chief Clerk of the House

Approved May 10, 1999

---

THOMAS J. VILSACK  
Governor