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Agriculture

HOUSE FILE 82
BY GREINER

WITHDRAWN

3/1/99 (P. 495)

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

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:

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HF 82

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 bushels~~ **WAVADIGHTIV** ~~of~~ bushels of grain or more from
5 the producers of the grain for purposes of resale, milling, or
6 processing. However, "grain dealer" does not include any of
7 the following:

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

10 a. A producer of grain who ~~is-buying~~ buys less than fifty
11 thousand bushels of grain during a calendar year for the
12 producer's own use as seed or feed.

13 Sec. 3. Section 203.1, subsection 8, paragraph d, Code
14 1999, is amended by striking the paragraph and relettering
15 subsequent paragraphs.

16 Sec. 4. NEW SECTION. 203.11A CIVIL PENALTIES.

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

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

28 3. A civil penalty may be administratively assessed only
29 after an opportunity for a contested case hearing under
30 chapter 17A. The department may be represented in an
31 administrative hearing or judicial proceeding by the attorney
32 general. A civil penalty shall be paid within thirty days
33 from the date that an order or judgment for the penalty
34 becomes final. When a person against whom a civil penalty is
35 administratively assessed under this section seeks timely

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

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

12 Sec. 5. NEW SECTION. 203.11B GRAIN INDUSTRY PEER REVIEW
13 PANEL.

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

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

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

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

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

35 b. The panel shall elect a chairperson who shall serve for

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

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

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

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

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

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

1 penalty against a person shall be made exclusively by the
2 department.

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

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

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

27 | 6. A response by the panel may be used as evidence in an
28 administrative hearing or in a civil or criminal case except
29 to the extent that information contained in the response is
30 considered confidential pursuant to section 22.7, 203.16, or
31 203C.24.

32 | Sec. 6. Section 203.15, subsection 7, paragraph c,
33 subparagraph (2), unnumbered paragraph 2, Code 1999, is
34 amended to read as follows:

35 | A bond filed with the department under this paragraph shall

1 not be canceled by the issuer on less than ninety days notice
2 by certified mail to the department and the principal, unless
3 the bond is replaced with another bond and evidence of the new
4 bond is filed with the department at the time of cancellation
5 of the bond on file. When the department receives notice from
6 an issuer that it has canceled the bond, the department shall
7 automatically suspend the grain dealer's license if a
8 replacement bond is not received by the department within
9 sixty days of the issuance of the notice of cancellation. The
10 department shall cause an inspection of the licensed grain
11 dealer immediately at the end of the sixty-day period. If a
12 replacement bond is not filed within another thirty days
13 following the suspension, the grain dealer license shall be
14 automatically revoked. When a license is revoked, the
15 department shall provide notice of the revocation by ordinary
16 mail to the last known address of each holder of an
17 outstanding credit-sale contract and all known sellers.

18 Sec. 7. Section 203.16, Code 1999, 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. 8. NEW SECTION. 203.18 NOTICE OF DISPOSITION OF
23 GRAIN.

24 When a seller, including a seller's agent, delivers grain
25 to a grain dealer, the seller must notify the grain dealer
26 about the grain's disposition, such as whether the grain is to
27 be held for storage under warehouse receipt, open storage,
28 pursuant to credit-sale contract, according to an agreement
29 with the federal government, or according to any other
30 arrangement. The seller may make the notification orally. As
31 used in this section, grain is deemed delivered when
32 possession of, but not necessarily title to, the grain is
33 transferred.

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

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

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

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

17 Sec. 11. NEW SECTION. 203C.36A CIVIL PENALTIES.

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

21 2. The amount of a civil penalty shall not exceed one
22 thousand five hundred dollars. Each day that a violation
23 continues shall constitute a separate violation. The amount
24 of the civil penalty that may be assessed in an administrative
25 case shall not exceed the amount recommended by the grain
26 industry peer review panel established pursuant to section
27 203.11B. Moneys collected in civil penalties by the
28 department or the attorney general shall be deposited in the
29 general fund of the state.

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

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

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

14 EXPLANATION

15 This bill amends Code chapters 203 and 203C, providing for
16 the regulation of grain dealers and warehouse operators
17 required to be licensed by the department of agriculture and
18 land stewardship, and providing for the grain depositors and
19 sellers indemnity fund.

20 The bill increases the amount of grain that a person may
21 purchase during a calendar year for resale, milling, or
22 processing from less than 500 to less than 1,000 bushels
23 without being regulated as a grain dealer. However, the bill
24 also amends a provision which exempts producers of grain
25 purchasing grain for their own use from regulation under Code
26 chapter 203. The bill provides that a producer of grain who
27 buys 50,000 bushels or more of grain during a calendar year is
28 regulated as a grain dealer. The bill also eliminates an
29 exemption applying to persons purchasing grain for sale in a
30 nonregistered customer-formula feed. Under the bill, these
31 persons must be regulated as grain dealers.

32 The bill amends a provision requiring a grain dealer to
33 file and maintain a bond with the department. The provision
34 prohibits the issuer of the bond from cancellation without
35 providing the department with 90 days' notice. The bill

1 provides that the notice requirement does not apply if the
2 bond is replaced with another bond and evidence of the new
3 bond is filed with the department at the time of the old
4 bond's cancellation.

5 | The bill requires the department to establish, by rule,
6 civil penalties which may be administratively or judicially
7 assessed against a grain dealer or warehouse operator for a
8 violation of the chapters regulating those persons. The
9 amount of the civil penalty shall not exceed \$1,500. The bill
10 provides procedures for administratively assessing the civil
11 penalties. The amount of the civil penalty cannot exceed the
12 amount recommended by the grain industry peer review panel as
13 established by the bill. The bill provides that moneys
14 collected in civil penalties by the department or the attorney
15 general must be deposited in the general fund of the state.

16 | The bill establishes a grain industry peer review panel to
17 assist the department in assessing civil penalties. The bill
18 provides that the secretary of agriculture shall appoint
19 members to the panel who represent grain dealers, warehouse
20 operators, and grain producers. The bill provides procedures
21 for the operation of the panel and reimbursement of member
22 expenses. The bill provides that the panel may propose a
23 schedule of penalties for minor and serious violations, and
24 may review cases of persons required to be licensed as grain
25 dealers or warehouse operators and who are subject to civil
26 penalties. A review is performed upon request by the
27 department or the person subject to the civil penalty. The
28 bill provides for the consideration of information by the
29 panel that would otherwise be confidential. The findings and
30 recommendations of the panel must be included in a response
31 delivered to the department and the person subject to the
32 penalty. The response may include a recommendation that a
33 proposed civil penalty be modified or suspended, that an
34 alternative method of collection be instituted, or that
35 conditions be placed upon the license of a grain dealer or

1 warehouse operator. The panel cannot take action relating to
2 a license suspension or revocation. A review or response is
3 not required if the department refers a violation for criminal
4 prosecution, or in an action involving injunctive relief. The
5 bill provides that a response by the panel may be used as
6 evidence in an administrative hearing, or a civil or criminal
7 case, except to the extent that information contained in the
8 report is considered confidential.

9 The bill requires a seller to at least orally notify a
10 grain dealer about the grain's disposition when the grain is
11 delivered, such as whether the grain is to be held for storage
12 under warehouse receipt, open storage, pursuant to credit-sale
13 contract, according to an agreement with the federal
14 government, or according to any other arrangement.

15 Finally, the bill increases the time from six months to one
16 year from the date of delivery to the warehouse before a
17 warehouse receipt must be issued for grain held in open
18 storage (i.e., unpurchased grain).

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