

FEB 24 2006
Agriculture

HOUSE FILE 2538
BY WHITAKER

(COMPANION TO LSB 5845SS
BY BOLKCOM)

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

A BILL FOR

1 An Act providing for the indemnification of organic producers for
2 contamination of organic crops.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2538

TL5B 5845HH 81
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1 Section 1. Section 203D.1, Code 2005, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 1A. "Contamination" means the presence of
4 a plant or plant part that causes a producer a loss as
5 provided in section 203D.6A.

6 NEW SUBSECTION. 1B. "Corn" means the same as defined in
7 section 185C.1.

8 NEW SUBSECTION. 3A. "First purchaser" means any of the
9 following:

10 a. A first purchaser as defined in section 185.1 who
11 purchases soybeans from an organic producer for the first time
12 in the same manner as provided in chapter 185.

13 b. A first purchaser as defined in section 185C.1 who
14 purchases corn from an organic producer for the first time in
15 the same manner as provided in chapter 185C.

16 NEW SUBSECTION. 8A. "Organic crop" means a crop including
17 but not limited to corn or soybeans that is certified or
18 otherwise qualifies as organic as provided in chapter 190C.
19 "Organic crop" includes the crop as planted, growing, and
20 harvested, and any grain obtained from harvesting that crop.

21 NEW SUBSECTION. 8B. "Organic producer" means a producer
22 as defined in section 190C.1 who produces an organic crop as
23 certified by the department pursuant to chapter 190C.

24 NEW SUBSECTION. 10. "Soybeans" means the same as defined
25 in section 185.1.

26 Sec. 2. Section 203D.1, subsection 8, Code 2005 is amended
27 to read as follows:

28 8. "Loss" means any of the following:

29 a. The amount of a claim held by a seller or depositor
30 against a grain dealer or warehouse operator which has not
31 been recovered through other legal and equitable remedies
32 including the liquidation of assets.

33 b. The amount of a claim held by an organic producer for
34 the contamination of the organic producer's organic crop,
35 including the grain obtained from the harvested organic crop

1 as provided in section 203D.6A.

2 Sec. 3. Section 203D.3, subsection 1, Code 2005, is
3 amended to read as follows:

4 1. The grain depositors and sellers indemnity fund is
5 created in the state treasury as a separate account.

6 a. The general fund of the state is not liable for claims
7 presented against the grain depositors and sellers indemnity
8 fund under section 203D.6 or 203D.6A.

9 b. The fund consists of a per-bushel fee on purchased
10 grain remitted by licensed grain dealers and licensed
11 warehouse operators; an annual fee charged to and remitted by
12 licensed grain dealers and licensed warehouse operators;
13 delinquency penalties; sums collected by the department by
14 legal action on behalf of the fund; and interest, property, or
15 securities acquired through the use of moneys in the fund.

16 c. The fiscal year of the fund begins July 1. Fiscal
17 quarters of the fund begin July 1, October 1, January 1, and
18 April 1. The finances of the fund shall be calculated on an
19 accrual basis in accordance with generally accepted accounting
20 principles.

21 d. The moneys collected under this section and deposited
22 in the fund shall be used exclusively to indemnify do all of
23 the following:

24 (1) Indemnify depositors and sellers as provided in
25 section 203D.6 and-to-pay.

26 (2) Indemnify organic producers as provided in section
27 203D.6A.

28 (3) Pay the administrative costs of this chapter.

29 Sec. 4. Section 203D.6, Code 2005, is amended by adding
30 the following new unnumbered paragraph 1 before subsection 1:

31 NEW UNNUMBERED PARAGRAPH. This section applies to a person
32 who is a depositor or seller for indemnification of a loss
33 from the grain depositors and sellers indemnity fund due to a
34 loss of grain by a grain dealer or warehouse operator.

35 Sec. 5. Section 203D.6, subsection 1, Code 2005, is

1 amended to read as follows:

2 1. PERSONS WHO MAY FILE CLAIMS -- TIME OF FILING. A
3 depositor or seller may file a claim with the department for
4 indemnification of a loss from the grain depositors and
5 sellers indemnity fund.--~~A claim shall be filed~~ in the manner
6 prescribed by the board. A claim shall not be filed prior to
7 the incurrence date, which is the earlier of the following:

8 a. The revocation, termination, or cancellation of the
9 license of the grain dealer or warehouse operator.

10 b. The filing of a petition in bankruptcy by a grain
11 dealer or warehouse operator.

12 To be timely, a claim shall be filed within one hundred
13 twenty days of the incurrence date.

14 Sec. 6. NEW SECTION. 203D.6A CLAIMS AGAINST FUND --
15 CONTAMINATION OF ORGANIC CROPS.

16 This section applies to a person who is an organic producer
17 for the indemnification of a loss due to the contamination of
18 an organic crop.

19 An organic producer may file a claim with the board
20 pursuant to section 203D.6B for a loss based on the diminution
21 of value of the organic producer's organic crop due to
22 contamination. Contamination occurs when there is a presence
23 of a plant or plant part, including but not limited to crop
24 pollen or crop seed, on property in which the organic producer
25 holds a legal or equitable interest, if the plant or plant
26 part was intentionally or unintentionally transferred from a
27 location other than property in which the organic producer
28 holds a legal or equitable interest, and its presence alters
29 the genetic characteristics of an organic crop on the organic
30 producer's property or is commingled with organic crops stored
31 on the organic producer's property. Contamination may result
32 from the transfer of seeds or the pollination of the organic
33 producer's organic crops or other plants inhabiting the
34 organic producer's property. For purposes of determining
35 eligibility for filing a claim under this section, it is not

1 relevant whether a contaminated crop meets the requirements of
2 chapter 190C.

3 Sec. 7. NEW SECTION. 203D.6B PROCEDURE FOR FILING AND
4 DETERMINATION OF CLAIMS.

5 1. A claim by an organic producer shall be filed in the
6 manner prescribed by the board.

7 2. The board shall determine a claim to be eligible for
8 payment from the fund if the board finds all of the following:

9 a. The claim was timely filed according to procedures
10 required by the board. However, a claim shall not be timely
11 filed if the claim is filed later than twelve months after the
12 organic crop subject to the claim has been harvested.

13 b. The claimant qualifies as an organic producer.

14 c. The claim derives from a loss due to contamination of
15 the organic producer's organic crop.

16 d. The organic producer's loss was not due to the reckless
17 disregard of sound management practices required to prevent
18 contamination of the organic producer's organic crop,
19 including requirements provided in chapter 190C.

20 e. There is adequate documentation to establish the
21 existence of a claim and to determine the amount of the loss.
22 The board may require that the organic producer provide
23 invoices provided by the first purchaser.

24 3. The board shall determine the dollar value of a claim
25 incurred by an organic producer eligible to file a claim under
26 this section based on the organic producer's loss.

27 a. The value of the claim shall be the difference between
28 the organic crop's fair market price or contract price if a
29 contract was executed prior to the contamination, whichever is
30 more, as if the contamination had not occurred and the fair
31 market price of the contaminated organic crop or contract
32 price if the price is discounted under the contract, whichever
33 is more.

34 (1) The board shall determine the fair market value for
35 the organic crop as if the contamination had not occurred

1 based on the market price received by organic producers for an
2 organic crop of a similar type and condition, and with the
3 same intrinsic characteristics, on the date that the organic
4 producer sold the organic crop.

5 (2) The board may presume that the fair market price for
6 the contaminated organic crop is the same price accepted by
7 the organic producer of the organic crop from the first
8 purchaser who purchased the organic crop with knowledge of the
9 contamination.

10 b. An organic producer filing a claim under this section
11 shall be bound by the value determined by the board. The
12 value of the loss is the outstanding balance on the validated
13 claim at the time of payment from the fund.

14 4. Upon a determination that a claim is eligible for
15 payment, the board shall provide for payment of ninety percent
16 of the loss, but not more than one hundred fifty thousand
17 dollars per claimant.

18 5. The board shall provide for notice to a claimant of the
19 indemnity board's determination of eligibility and value of
20 the organic producer's loss. The notice shall be delivered by
21 restricted certified mail. Within twenty days of the delivery
22 of the notice, the organic producer may request a hearing for
23 the review of either determination. The request shall be made
24 in the manner provided by the board. The hearing and any
25 further appeal shall be conducted as a contested case subject
26 to chapter 17A. An organic producer whose claim has been
27 refused by the board may appeal the refusal to either the
28 district court of Polk county or the district court of the
29 county in which the organic producer resides.

30 6. If at any time the board determines that insufficient
31 moneys are contained in the indemnity fund to make payment of
32 all claims, the board may order that payment be deferred on
33 specified claims. The board shall hold those claims for
34 payment until the board determines that the indemnity fund
35 again contains sufficient moneys.

1 (NOP). The department of agriculture and land stewardship
2 maintains authority to provide for inspections and the
3 examination of agricultural products to ensure that they are
4 produced in accordance with NOP.

5 The bill provides for instances when contamination affects
6 an organic crop. Contamination occurs when there is a
7 presence of a plant or plant part, including but not limited
8 to pollen or seed, on the organic producer's property
9 originating from neighboring land, if its presence alters the
10 genetic characteristics of a plant growing on the producer's
11 property or is commingled with crops stored on the producer's
12 property (regardless of whether the crop may still be
13 considered organic). The board must make a determination of
14 the organic producer's loss based on criteria established in
15 the bill. The value of the loss is based on the diminution of
16 value of the organic producer's crop. Generally, the board
17 must compare the value of the contaminated organic crop and
18 the value of the organic crop if the contamination had not
19 occurred, which may include the value that the organic
20 producer would have received under a contract. Upon a
21 determination that a claim is eligible for payment, the board
22 must provide for payment of 90 percent of the loss, but not
23 more than \$150,000 per claimant.

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