

**CHAPTER 1152**  
**GRAIN INDEMNITY FUND**  
*S.F. 2116*

**AN ACT** relating to grain dealers and warehouses, by providing licensing requirements, establishing a grain depositories and sellers indemnity fund, providing a penalty, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 542.1, subsection 3, Code Supplement 1985, is amended to read as follows:

3. "Grain dealer" means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of resale, milling, or processing. However, "grain dealer" does not include a producer of grain who is buying grain for the producer's own use as seed or feed; a person solely engaged in buying grain future contracts on the board of trade; a person who purchases grain only for sale in a registered feed; a person who purchases grain for sale in a nonregistered customer-formula feed regulated by chapter 198, who purchases less than a total of fifty thousand bushels of grain annually, and who is also exempt as an incidental warehouse operator under chapter 543; a person engaged in the business of selling agricultural seeds regulated by chapter 199; a person buying grain only as a farm manager; an executor, administrator, trustee, guardian, or conservator of an estate; a bargaining agent as defined in section 542A.1; or a custom livestock feeder.

Sec. 2. Section 542.1, Code Supplement 1985, is amended by adding the following new subsection:

**NEW SUBSECTION. 7.** "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit sale contract as a seller.

Sec. 3. Section 542.3, subsections 4, 5, and 7, Code Supplement 1985, is amended to read as follows:

4. In order to receive and retain a class 1 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least fifty thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than twenty-five thousand dollars. A bond submitted for purposes of this paragraph shall be in addition to any bond otherwise required under this chapter.

b. The grain dealer shall submit, as required by the commission, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the commission may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the commission. The grain dealer may elect, however, to submit a financial statement satisfying the requirements of subsection 5, paragraph "b," that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the commission shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9. In addition, the commission shall cause a grain dealer who makes this election to submit to the commission, in a form and manner prescribed by the commission, an interim financial statement no less than once in every three calendar month period. If a grain dealer making the election engages in credit

sale contracts, the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

c. The grain dealer shall have and maintain current assets equal to at least ninety percent of current liabilities or provide a deficiency bond or an irrevocable letter of credit under the following conditions:

(1) A grain dealer with current assets equal to at least forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than six consecutive months in a twelve-month period.

(2) A grain dealer with current assets equal to less than forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than thirty consecutive days in a twelve-month period.

A bond submitted for purposes of this paragraph shall be in addition to any other bond permitted or required under this chapter.

5. In order to receive and retain a class 2 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least twenty-five thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than ten thousand dollars. A bond submitted for purposes of this paragraph shall be in addition to any bond otherwise required under this chapter.

b. The grain dealer shall submit, as required by the commission, a financial statement that is accompanied by the report of an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant. However, the commission may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the commission. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the commission shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 542.9. In addition, the commission shall cause a grain dealer who makes this election to submit to the commission, in a form and manner prescribed by the commission, an interim financial statement no less than once in every three calendar month period. If a grain dealer making the election engages in credit sale contracts, the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

c. The grain dealer shall have and maintain current assets equal to at least ninety percent of current liabilities or provide a deficiency bond or an irrevocable letter of credit under the following conditions:

(1) A grain dealer with current assets equal to at least forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or

irrevocable letter of credit shall not be used for longer than six consecutive months in a twelve-month period.

(2) A grain dealer with current assets equal to less than forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than thirty consecutive days in a twelve-month period.

A bond submitted for purposes of this paragraph shall be in addition to any other bond permitted or required under this chapter.

7. a. When the net worth or current ratio of a licensee in good standing is less than that required by this section, the grain dealer shall correct the deficiency or file the necessary ~~additional~~ a deficiency bond or an irrevocable letter of credit within thirty days of written notice by the commission. Unless the deficiency is corrected or the ~~additional~~ deficiency bond or irrevocable letter of credit is filed within thirty days, the grain dealer license shall be suspended.

b. If the commission finds that the welfare of grain producers requires emergency action, and incorporates a finding to that effect in its order, immediate suspension of the a license may be ordered notwithstanding the thirty-day period otherwise allowed by paragraph "a" of this subsection.

Sec. 4. Section 542.3, Code Supplement 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 8. A deficiency bond or irrevocable letter of credit filed with the commission pursuant to this section shall not be canceled by the issuer on less than ninety days' notice by certified mail to the commissioner and the principal.

Sec. 5. Section 542.4, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

**542.4 PARTICIPATION IN INDEMNITY FUND REQUIRED.**

A person licensed to operate as a grain dealer under this chapter shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 543A.

Sec. 6. Section 542.9, unnumbered paragraph 1, Code 1985, is amended to read as follows:

The commission may inspect the premises used by any grain dealer in the conduct of the dealer's business at any time, and the books, accounts, records, and papers of every grain dealer which pertain to grain purchases are subject to inspection by the commission during ordinary business hours. The commission shall cause the business premises and books, accounts, records, and papers of every grain dealer to be inspected not less than once during each twelve-month period, but not more than ~~three~~ four times in a twenty-four month period without good cause. However, if a class 1 grain dealer elects to submit the ~~unaudited financial statement under section 542.3, subsection 4, paragraph "b,"~~ the commission shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause. The transporter of grain in transit shall possess bills of lading or other documents covering the grain, and shall present them to any law enforcement officer or to a person designated as an enforcement officer under section 542.13 on demand. If there is good cause to believe that a person is engaged without a license in the business of a grain dealer in this state, the commission may inspect the books, papers, and records of the person which pertain to grain purchases.

Sec. 7. Section 542.10, unnumbered paragraph 2, Code 1985, is amended to read as follows:

The commission may revoke a grain dealer's license upon information without hearing if a grain dealer fails to have sufficient bond on file with the commission, or if a grain dealer fails to submit to inspection.

Sec. 8. Section 542.12, Code 1985, is amended to read as follows:

**542.12 CLAIMS — NOTICE.**

Upon revocation, termination, or cancellation of a grain dealer license, any claim for the purchase price of grain against the grain dealer shall be made in writing and filed with the grain dealer and with the surety on the grain dealer bond issuer of a deficiency bond or of an irrevocable letter of credit and with the commission within one hundred twenty days after revocation, termination, or cancellation. Failure to make this timely claim shall relieve relieves the surety issuer and the grain depositors and sellers indemnity fund provided in chapter 543A of all obligations to the claimant. However, this section shall not be construed to reduce below the face amount of the bond then in effect the aggregate liability of the surety to other claimants.

Upon revocation of a grain dealer license, the commission shall cause notice of ~~such~~ the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall state the name and address of the grain dealer, and the effective date of revocation, and the name and address of the surety on the grain dealer bond. The notice shall also state that any claims against the grain dealer shall be made in writing and sent by ordinary mail or delivered personally within one hundred twenty days after revocation to the grain dealer, and the surety on the grain dealer bond to the issuer of a deficiency bond or of an irrevocable letter of credit, and to the commission, and the notice shall state that the failure to make a timely claim does not relieve the grain dealer from liability to the claimant.

Sec. 9. Section 542.15, Code Supplement 1985, is amended by adding the following new subsection:

**NEW SUBSECTION. 8.** A licensed grain dealer purchasing grain by credit sale contract and who does not submit a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state shall at all times maintain grain, rights in grain, proceeds from the sale of grain, or a combination thereof totaling at least ninety percent of the dealer's obligation for grain purchased by credit sale contract. The required amount shall be evidenced or represented by one or more of the following:

- a. Grain actually held by the dealer in licensed storage facilities.
- b. Rights in grain evidenced or represented by one or more of the following:
  - (1) A warehouse receipt issued by a warehouse licensed under chapter 543 or under the United States Warehouse Act, or by other documentation acceptable as evidence of inventory under the United States Warehouse Act.
  - (2) Evidence of grain forwarded to another warehouse under provisions of 543.39.
- c. Sufficient proceeds from and of the grain evidenced or represented by one or more of the following:
  - (1) Cash on hand or cash held on account in federally or state chartered financial institutions.
  - (2) Short term investments held in time accounts with federally or state chartered financial institutions.
  - (3) Balances on grain margin accounts.
  - (4) Credit sales contracts for grain shipped to a processor, terminal, or recognized grain merchandising entity, less any payment or advance that has been received provided that the price term of the contract remains open.
  - (5) Other evidence or proceeds from or of grain acceptable to the commission, including an irrevocable letter of credit.

For the purpose of computing the dollar value of inventories and credit sale obligations, the value of grain shall be figured at the then current market.

A grain dealer shall keep records of credit sale obligations and evidence of grain, rights in grain and the proceeds from or of grain so as to clearly indicate compliance with the requirements of this subsection.

Sec. 10. Section 542.18, subsection 2, Code 1985, is amended to read as follows:

2. As a condition of the granting of a license under this section, the applicant shall file with the commission a bond payable to the state of Iowa with a corporate surety approved by the commission in a penal sum of twenty-five thousand dollars per license, conditioned that the grain seller owns or controls, free of liens, any grain offered for sale. Cancellation of bonds A bond issued by a surety under this section shall meet the requirements of section 542.4 not be canceled by the surety before at least ninety days' notice by certified mail to the commission and the bonded grain seller. The liability of a surety on any bond under this section shall not accumulate for each successive license period during which the bond is in force.

Sec. 11. Section 542.19, subsection 2, Code 1985, is amended to read as follows:

2. If a co-operative agreement is in effect under this section, the bonding indemnification requirements of this chapter may be satisfied by:

a. Filing with the commission evidence of a bond or an irrevocable letter of credit on file with a state or of participation in an indemnity fund in a state with which Iowa has a co-operative agreement as provided for by this section.

b. Such bond Indemnification proceeds shall be co-payable to the state of Iowa for the benefit of sellers of grain under this chapter in Iowa.

c. The bond shall be in an amount at least equal to the amounts required by this chapter; provided, however, that any bond required under this chapter for any financial deficiency shall be in addition to the bond posted in any other state.

Any bond Indemnification proceeds required by this chapter may be made co-payable to any state with whom this state has entered into contracts or agreements as authorized by this section, for the benefit of sellers of grain in that state.

Sec. 12. Section 543.1, subsection 8, Code 1985, is amended to read as follows:

8. "Warehouse operator" means any a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

Sec. 13. Section 543.1, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 23. "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. 14. Section 543.2, Code 1985, is amended to read as follows:

543.2 DUTIES AND POWERS OF THE COMMISSION.

The commission may exercise general supervision over the storage, warehousing, classifying according to grade or otherwise, weighing, and certification of agricultural products. The commission may inspect or cause to be inspected any warehouse. Inspections may be made at times and for purposes as the commission determines. The Except as provided in section 543.6, the commission shall cause every licensed warehouse and its contents to be inspected once in every twelve-month period; provided that if a class 1 warehouse operator elects to submit the unaudited financial statement under section 543.6, subsection 4, paragraph "b," the commission shall cause the warehouse to be inspected twice in every twelve-month period. The commission may require the filing of reports relating to a warehouse or its operation. If upon inspection a deficiency is found to exist as to the quantity or quality of agricultural products stored, as indicated on the warehouse operator's books and records according to official grain standards, the commission may require an employee of the commission to remain at the licensed warehouse and supervise all operations involving agricultural

products stored there under this chapter until the deficiency is corrected. The charge for the cost of maintaining an employee of the commission at a warehouse to supervise the correction of a deficiency is one hundred fifty dollars per day.

PARAGRAPH DIVIDED. The commission may make available to the United States government, or any of its agencies, including the commodity credit corporation, the results of inspections made and inspection reports submitted to it by employees of the commission, upon payment to it of charges as determined by the commission, but the charges shall not be less than the actual cost of services rendered, as determined by the commission. The commission may enter into contracts and agreements for such purpose and shall keep a record of all money thus received. All such money shall be paid over to the treasurer of state as miscellaneous receipts. The commission may classify any warehouse in accordance with its suitability for the storage of agricultural products and shall specify in any license issued for the operation of any a warehouse the only type or types and the quantity of agricultural products which may be exclusively stored in the warehouse. The commission may prescribe, within the limitations of this chapter, the duties of licensed warehouse operators with respect to the care of and responsibility for the contents of licensed warehouses. Grain grades shall be determined under the official grain standards. The commission may from time to time publish data in connection with the administration of this chapter as may be of public interest. The commission shall administer this chapter.

Sec. 15. Section 543.3, subsection 3, Code 1985, is amended to read as follows:

3. When a petition is filed by the commission under subsection 1 the clerk of court shall set a date for hearing on the commission's proposed plan of disposition at a time not less than ten nor more than fifteen days after the date the petition is filed. Copies of the petition, the notice of hearing, and the commission's plan of disposition shall be served upon the licensee and upon the surety company issuing the licensee's issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 543.6 in the manner required for service of an original notice. A delay in effecting service upon the licensee or surety shall issuer is not be cause for denying the appointment of a receiver and shall is not be grounds for invalidating any action or proceeding in connection therewith with the appointment.

Sec. 16. Section 543.4, subsections 1, 2, 4, 6, and 7, Code 1985, are amended to read as follows:

1. When the commission is appointed as receiver under this chapter the surety on the issuer of a deficiency bond or of the licensee an irrevocable letter of credit pursuant to section 543.6 shall be joined as a party defendant by the commission. If required by the court, the surety issuer shall pay the bond indemnification proceeds or so much thereof as the court finds necessary into the court, and when so paid the surety issuer shall be absolutely discharged from any further liability under the bond or irrevocable letter of credit to the extent of the payment.

2. When appointed as receiver under this chapter the commission is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or other evidence of deposit issued by the licensee to file their claims within one hundred twenty days after the date of appointment. Failure to timely file a claim shall defeat the claim with respect to the surety bond issuer of a deficiency bond or of an irrevocable letter of credit, grain depositors and sellers indemnity fund created in chapter 543A, and any commodities or proceeds from the sale of commodities, except to the extent of any excess commodities or proceeds of sale remaining after all timely claims are paid in full.

4. The plan of disposition, as approved by the court, shall provide for the distribution of the stored commodities, or the proceeds from the sale of commodities, or the proceeds from any insurance policy, or surety deficiency bond, or any combination thereof or irrevocable letter of credit, less expenses incurred by the commission in connection with the receivership, plus the

proceeds from the grain depositors and sellers indemnity fund in an amount determined pursuant to section 543A.3 to depositors on a pro rata basis as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

6. The commission shall be is entitled to reimbursement out of commodities or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored commodities, and for all other costs directly attributable to the receivership. The right of reimbursement of the commission shall be is prior to any claims against the commodities or proceeds of sales thereof of commodities, and shall constitute constitutes a claim against the surety a deficiency bond of the licensee or irrevocable letter of credit.

7. In the event If the approved plan of disposition requires the sale of commodities, or the a distribution of cash proceeds from the surety bond, or both, the commission shall submit to the court a proposed plan of distribution of those proceeds. Upon such notice and hearing as may be required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the commission, the commission shall be discharged and the receivership terminated.

Sec. 17. Section 543.5, unnumbered paragraph 1, Code 1985, is amended to read as follows:

The commission shall from time to time make such adopt rules as it may deem deems necessary for the efficient administration of the provisions of this chapter, and may at its discretion designate an employee or officer of the commission to act for the commission in any details connected with such administration, including the issuance of licenses and approval of warehouse deficiency bonds or irrevocable letters of credit in the name of the commission, but not including matters requiring a public hearing or suspension or revocation of licenses.

Sec. 18. Section 543.6, subsections 4 and 5, Code 1985, are amended to read as follows:

4. In order to receive and retain a class 1 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least fifty thousand dollars twenty cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars. A bond submitted for purposes of this paragraph shall be in addition to any bond otherwise required under this chapter.

b. The warehouse operator shall submit, as required by the commission, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the commission may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the commission. The warehouse operator may elect, however, to submit a financial statement satisfying the requirements of subsection 5, paragraph "b," that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a warehouse operator makes this election the commission shall cause the warehouse operator to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 543.2. In addition, the commission shall cause a warehouse operator who

makes this election to submit to the commission, in a form and manner prescribed by the commission, an interim financial statement no less than once in every three calendar month period.

5. In order to receive and maintain a class 2 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five thousand dollars twenty cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 2 warehouse operator if the person has a net worth of less than ten thousand dollars. A bond submitted for purposes of this paragraph shall be in addition to any bond otherwise required under this chapter.

b. The warehouse operator shall submit, as required by the commission, a financial statement that is accompanied by the report of an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant. However, the commission may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the commission. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a warehouse operator makes this election the commission shall cause the warehouse to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four month period without good cause, in the manner provided in section 543.2. In addition, the commission shall cause a warehouse operator who makes this election to submit to the commission, in a form and manner prescribed by the commission, an interim financial statement no less than once in every three calendar month period.

Sec. 19. Section 543.6, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 8. A deficiency bond or irrevocable letter of credit filed with the commission pursuant to this section shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the commission and the principal.

Sec. 20. Section 543.11, unnumbered paragraph 1, Code 1985, is amended to read as follows:

1. When the commission determines that a bond filed under this chapter and approved by the commission, is, or has become, insufficient to secure the faithful performance of the obligations of the licensed warehouse operator, or when the commission determines that insurance is not fully provided as required under section 543.15, it may require the licensed warehouse operator to provide additional bond or additional evidence of insurance coverage so that the bond and insurance conform with the requirements of this chapter. If additional insurance is not provided within five thirty days after receipt by the licensee of notice by certified mail, the license of the warehouse operator concerned shall be automatically suspended. If additional insurance is not filed within another ten days, the warehouse license shall be automatically revoked. If additional bond is not provided within thirty days after receiving notice, the warehouse license shall be suspended. If additional bond is not filed within ten days following suspension, the warehouse license shall be automatically revoked. When a license is so revoked, the commission shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The commission shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse



not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail sent to the last known address of each person having grain in storage as provided in this section subsection.

Sec. 21. Section 543.11, unnumbered paragraph 2, Code 1985, is amended by striking the paragraph and inserting in lieu thereof the following:

2. If the commission determines that the net worth of a licensed warehouse operator is not in compliance with the requirements of section 543.6, the commission shall issue a notice to the warehouse operator and shall suspend the warehouse operator's license if the warehouse operator does not provide evidence of compliance within thirty days of the issuance of the notice. The commission shall inspect the warehouse at the end of the thirty-day period. If evidence of compliance is not provided within sixty days of the issuance of the notice, the commission shall revoke the warehouse operator's license, and shall again inspect the warehouse. If a license is revoked, the commission shall give notice of the revocation to each holder of an outstanding warehouse receipt and to all known persons who have grain retained in open storage. The revocation notice shall state that the grain must be removed from the warehouse not later than the thirtieth day after the issuance of the revocation notice. The revocation notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection. The commission shall conduct a final inspection of the warehouse at the end of the thirty-day period following the issuance of the revocation notice.

3. When the commission receives notice that a deficiency bond or irrevocable letter of credit is being canceled by the issuer, and determines that upon the cancellation the warehouse operation will not be in compliance with section 543.6, the commission shall suspend the warehouse operator's license if a new deficiency bond or irrevocable letter of credit is not received by the commission within sixty days of receipt by the commission of the notice of cancellation. If a new deficiency bond or irrevocable letter of credit is not received by the commission within thirty days following suspension, the warehouse operator's license shall be revoked. When a license is revoked, the commission shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation, and shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

Sec. 22. Section 543.12, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

**543.12 PARTICIPATION IN FUND REQUIRED.**

A person licensed to operate a warehouse under this chapter shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 543A.

Sec. 23. Section 543.13, unnumbered paragraph 1, Code 1985, is amended by striking the paragraph.

Sec. 24. Section 543.13, subsections 1 and 3, Code 1985, are amended by striking the subsections and inserting in lieu thereof the following:

1. A warehouse operator who stores only agricultural products other than bulk grain shall have and maintain a net worth of at least ten percent of the value of the warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be eligible for a license to store only agricultural products other than bulk grain if the person has a net worth of less than ten thousand dollars.

3. A bond, deficiency bond, or irrevocable letter of credit on agricultural products other than bulk grain shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the commission and the principal. When the commission receives notice from an issuer that it has canceled the bond, deficiency bond, or irrevocable letter of credit on agricultural products other than bulk grain of a warehouse operator, the commission shall automatically suspend the warehouse operator's authorization to store or accept for storage agricultural products other than bulk grain if a new bond, deficiency bond, or irrevocable letter of credit is not received by the commission within sixty days of the issuance of the notice of cancellation. The commission shall conduct an inspection of the licensee's warehouse immediately at the end of the sixty-day period. If a new bond, deficiency bond, or irrevocable letter of credit is not provided within ninety days of the issuance of the notice of cancellation, the commission shall revoke the warehouse operator's authorization to store or accept for storage agricultural products other than bulk grain. The commission shall conduct a further inspection of the licensee's warehouse after the ninety-day period. When an authorization to store or accept for storage agricultural products other than bulk grain is revoked, the commission shall give notice of the revocation to all known persons who have agricultural products other than bulk grain in storage, and shall notify them that the agricultural products other than bulk grain must be removed from the warehouse not later than one hundred twenty days after the issuance of the notice of cancellation. The revocation notice shall be sent by ordinary mail to the last known address of each person having agricultural products other than bulk grain in storage. The commission shall cause a final inspection of the licensee's warehouse after the end of the one hundred twenty-day period.

Sec. 25. Section 543.14, Code 1985, is amended to read as follows:

**543.14 ACTION ON BOND NOTICE - CLAIM.**

Any A person injured by the breach of any an obligation of a warehouse operator, for the performance of which a bond on agricultural products other than bulk grain, a deficiency bond, or an irrevocable letter of credit has been given under any of the provisions of this chapter, may sue on such the bond on agricultural products other than bulk grain, deficiency bond, or irrevocable letter of credit in the person's own name in any a court of competent jurisdiction to recover any damages the person may have has sustained by reason of such the breach.

Upon revocation, termination, or cancellation of a warehouse license, any a claim against the warehouse operator arising under this chapter shall be made in writing with the warehouse operator, and with the surety on the warehouse issuer of a bond on agricultural products other than bulk grain, a deficiency bond, or of an irrevocable letter of credit, and, if the claim relates to bulk grain, with the commission within one hundred twenty days after revocation, termination, or cancellation. Failure to make a timely claim shall relieve relieves the surety issuer and, if the claim relates to bulk grain, the grain depositors and sellers indemnity fund provided in chapter 543A of all obligations to the claimant, however, this section shall not be construed to reduce the aggregate liability of the surety to other claimants below the face amount of the bond then in effect. Upon revocation of a warehouse license, the commission shall cause notice of such the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the warehouse operator, and the effective date of revocation, and the name and address of the surety on the warehouse bond. The notice shall also state that any claims against the warehouse operator shall be made in writing and sent by ordinary mail to the warehouse operator, and to the surety on the warehouse bond issuer of a bond on agricultural products other than bulk grain, deficiency bond, or of an irrevocable letter of credit, and to the commission within one hundred twenty days after revocation, and the notice shall state that the failure to make a timely claim does not relieve the warehouse operator from liability to the claimant. The provisions of this This paragraph shall does not apply if a receiver is appointed as provided in this chapter pursuant to a petition which is filed by the

commission prior to the expiration of one hundred twenty days after revocation, termination, or cancellation of the license.

Sec. 26. Section 543.15, unnumbered paragraph 1, Code 1985, is amended to read as follows:

All agricultural products in storage in a licensed warehouse, ~~or a warehouse operated under temporary permit as provided in this chapter,~~ and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouse operator for the current value of ~~such~~ the agricultural products against loss by fire, inherent explosion, or windstorm. ~~Such~~ The insurance shall be carried in an insurance company or companies authorized to do business in this state, and evidence of ~~such~~ insurance coverage in a form to be approved by the commission shall be filed with the commission. No insurance policy shall be canceled by the insurance company on less than ~~fifteen~~ sixty days' notice by certified mail to the commission and the principal unless ~~such~~ the policy is being replaced with another policy and evidence of the new policy is filed with the commission at the time of cancellation of the policy on file. ~~Such~~ The insurance shall be provided by, and carried in the name of, the warehouse operator. Claimants against ~~such~~ the insurance shall have precedence in the following order:

Sec. 27. Section 543.17, subsection 4, Code 1985, is amended to read as follows:

4. All bulk grain whether open storage or having been placed on warehouse receipt shall be is covered by the warehouse operator's bond as required under the provisions of this chapter grain depositors and sellers indemnity fund created in chapter 543A.

Sec. 28. Section 543.18, subsection 3, Code 1985, is amended to read as follows:

3. A statement that the receipt is issued subject to the Iowa ~~bonded~~ warehouse Act and the rules and regulations prescribed thereunder pursuant to the Act.

Sec. 29. Section 543.34, Code 1985, is amended to read as follows:

**543.34 USE OF TERM "BONDED WAREHOUSE" DISPLAY OF LICENSE.**

~~Upon the filing, with the approval by the commission, of a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse may be designated as "bonded" but no warehouse shall be designated as "bonded" and no name or description conveying the impression that it is so bonded, shall be used, unless a bond, as provided for in section 543.13, has been approved by the commission and is uncanceled and on file with the commission, nor unless the license issued under this chapter for the conduct of such warehouse remains in effect. Every warehouse operator's license issued under the provisions of this chapter shall be conspicuously displayed in the office of the warehouse for the operation of which the license has been issued.~~

Sec. 30. Section 543.39, subsection 2, Code 1985, is amended to read as follows:

2. ~~At such time as~~ When the warehouse operator ~~may begin~~ begins to use the additional facilities described in this section, the operator must furnish additional bond acceptable to the commission have sufficient net worth under 543.6 or provide a deficiency bond or an irrevocable letter of credit to cover the increase in the operator's gross capacity.

Sec. 31. **NEW SECTION. 543A.1 DEFINITIONS.**

1. "Board" means the Iowa grain indemnity fund board created in section 543A.4.
2. "Commission" means the Iowa state commerce commission.
3. "Depositor" means a person who deposits grain in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the grain.
4. "Fund" means the grain depositors and sellers indemnification fund created in section 543A.3.
5. "Grain" means wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act, but does not include agricultural products other than bulk grain.

5A. "Grain bank" means grain which is deposited in a warehouse until removed for the personal use of the depositor.

5B. "Grain sold" means grain which crosses the scales of a grain dealer or warehouse operator other than for grain bank storage, and other grain purchased by a grain dealer. "Grain sold" includes the pledge or other encumbrance of grain as security for a loan extended under a federal price support loan program. The date of sale of grain which is security for a loan extended under a federal price support loan program is the date the grain is delivered to the warehouse operator. The purchase price of the grain is the principal amount of the loan extended and the purchase invoice for the grain is the documentation required for extension of the loan.

6. "Licensed grain dealer" means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 542.3.

7. "Licensed warehouse operator" means the same as in section 543.1.

7A. "Loss" means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.

8. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit sale contract as a seller.

Sec. 32. NEW SECTION. 543A.2 PERSONS PARTICIPATING IN FUND.

All licensed grain dealers and licensed warehouse operators shall participate in the fund. In addition, a grain warehouse licensed under the United States Warehouse Act, 7 U.S.C. 241, may participate in the fund and be subject to this chapter if a cooperative agreement exists both between the federal agency and the commission and between the federal licensee and the commission. The agreement between the commission and the federal licensee shall be ratified each year the federal licensee elects to participate in the fund. A participating federally licensed grain warehouse shall meet the minimum net worth requirements of section 543.6.

Sec. 33. NEW SECTION. 543A.3 GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND.

1. The grain depositors and sellers indemnity fund is created in the state treasury. The general fund of the state is not liable for claims presented against the grain depositors and sellers indemnity fund under section 543A.6. The fund consists of a per-bushel fee on grain sold remitted by licensed grain dealers, licensed warehouse operators, and participating federally licensed grain warehouses; an annual fee charged to and remitted by licensed grain dealers, licensed warehouse operators, and participating federally licensed grain warehouses; sums collected by the commission by legal action on behalf of the fund; and interest, property, or securities acquired through the use of moneys in the fund. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 543A.6 and to pay the administrative costs of this chapter.

2. The grain dealer, warehouse operator, or participating federally licensed warehouse shall forward the per-bushel fee to the commission in the manner and using the forms prescribed by the commission. If the per-bushel fee has not been forwarded to the commission by the date required by the commission, the grain dealer, warehouse operator, or participating federally licensed warehouse is subject to an interest penalty for each day the grain dealer, warehouse operator, or participating federally licensed warehouse fails to forward the fee. Interest shall be simple interest, and shall be the maximum lawful rate of interest for the month the payment was due. If the per-bushel fee has not been forwarded to the commission within thirty days after the payment was due, the grain dealer's or warehouse operator's license or the participating warehouse operator's cooperative agreement shall be suspended. The per-bushel fee shall be collected only once on each bushel of grain.

3. a. All licensed grain dealers, licensed warehouse operators, and participating federally licensed grain warehouses shall annually remit a fee to be deposited into the fund which is determined as follows:

- (1) For class 1 grain dealers, five hundred dollars.
- (2) For class 2 grain dealers, two hundred fifty dollars.
- (3) For warehouse operators or participating federally licensed grain warehouses:
  - (a) For intended storage of bulk grain in any quantity less than twenty thousand bushels, forty-two dollars plus seven dollars for each two thousand bushels or fraction thereof in excess of twelve thousand bushels.
  - (b) For intended storage of bulk grain in any quantity not less than twenty thousand bushels and not more than fifty thousand bushels, seventy dollars plus four and a half dollars for each three thousand bushels or fraction thereof in excess of twenty thousand bushels.
  - (c) For intended storage of bulk grain in any quantity not less than fifty thousand bushels and not more than seventy thousand bushels, one hundred fifteen dollars plus four and a half dollars for each four thousand bushels or fraction thereof in excess of fifty thousand bushels.
  - (d) For intended storage of bulk grain in any quantity not less than seventy thousand bushels, one hundred thirty-seven and a half dollars plus two and three-quarters dollars for each five thousand bushels or fraction thereof in excess of seventy thousand bushels.
- b. Payment of the required amount shall be made before the grain dealer's or warehouse operator's license is renewed, or before the participating federal licensee's agreement with the commission is ratified.
4. A person who applies for a grain dealer's or warehouse operator's license or a federal licensee who elects to participate in the fund who has not previously paid the full fee required by subsection 3, shall pay that amount before the license is issued or the agreement is ratified.
5. All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the commission.
6. The administrative costs of this chapter shall be paid from the fund after approval of the costs by the board.

**Sec. 34. NEW SECTION. 543A.4 INDEMNITY FUND BOARD.**

The Iowa grain indemnity fund board is established to advise the commission on matters relating to the fund and to perform the duties provided it in this chapter. The board is composed of the secretary of the department of agriculture or a designee who shall serve as president; the director of the department of insurance or a designee who shall serve as secretary; the state treasurer or a designee who shall serve as treasurer; and two representatives of the grain industry appointed by the governor, subject to confirmation by the senate, one of whom shall be a representative of grain depositors and sellers and one of whom shall be a representative of grain dealers and warehouse operators, each of whom shall be selected from a list of three nominations made by the secretary of agriculture. The term of membership of the grain industry representatives is three years, and the representatives are eligible for reappointment. The grain industry representatives are entitled to forty dollars per diem for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. Three members of the board constitute a quorum, and the affirmative vote of three members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

**Sec. 35. NEW SECTION. 543A.5 ADJUSTMENTS TO FEE.**

1. The board shall review annually the debits of and credits to the grain depositors and sellers indemnity fund created in section 543A.3 and shall make any adjustments in the per-bushel fee required under section 543A.3, subsection 2, and the dealer-warehouse fee required under section 543A.3, subsection 3 that are necessary to maintain the fund within the limits established under this section. Not later than the first day of May of each year, the board shall determine the proposed amount of the per-bushel fee based on the expected volume of grain on which the fee is to be collected and that is likely to be handled under this chapter. The per-bushel fee and the dealer-warehouse fee shall be adjusted on a pro rata basis. The board shall

make any changes in the previous year's fees in accordance with chapter 17A. Changes in the fees shall become effective on the following first day of July. The per-bushel fee shall not exceed one-quarter cent per bushel on all grains on which the fee is to be paid. Until the per-bushel fee is adjusted or waived as provided in this section, the per-bushel fee is one-quarter cent on all other grains on which the fee is paid.

2. If, at the end of any fiscal year, the assets of the fund exceed six million dollars, less any encumbered balances or pending or unsettled claims, the per-bushel fee required under section 543A.3, subsection 2, and the dealer-warehouse fee required under section 543A.3, subsection 3, shall be waived until the board reinstates the fees on a pro rata basis. The board shall reinstate the fee if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

Sec. 36. NEW SECTION. 543A.6 CLAIMS AGAINST FUND.

1. When a depositor or seller has made a demand for settlement of an obligation concerning grain on which a fee was required to be remitted under section 543A.3 and the licensed grain dealer or licensed warehouse operator has failed to honor the demand, the depositor or seller, after providing the commission with evidence of the demand and the dishonoring of the demand, may file a claim with the commission for indemnification of damages from the grain depositors and sellers indemnity fund to be measured as follows:

a. The board shall establish the dollar value of the loss incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered to the licensed warehouse operator, and by a seller who has delivered grain sold on a credit-sale contract to a licensed grain dealer. The value shall be based on the average fair market price being paid to producers by the three licensed grain dealers nearest the warehouse operator or grain dealer for the grain on the earlier of the date of license suspension or the date on which the commission received notice that the receipt, scale weight ticket, or credit-sale contract was dishonored by the licensed warehouse operator or licensed grain dealer. All depositors filing claims under this section shall be bound by the value determined by the board.

b. The dollar value of the loss incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of the sale.

2. The grain depositors and sellers indemnity fund is liable to a depositor or seller for a claim which arises on or after the effective date of this Act for ninety percent of the loss, as determined under subsection 1, but not more than one hundred fifty thousand dollars per claimant. The aggregate amount recovered by a depositor or seller under all remedies shall not exceed ninety percent of the value of the loss. If the moneys recovered by a depositor or seller under all remedies exceed ninety percent of the value of the loss, the depositor or seller shall reimburse the fund in the amount that exceeds ninety percent of the value of the loss.

3. The board shall determine the validity of all claims presented against the fund. A claim filed under this section for losses on grain other than grain stored in a warehouse operated by a licensed warehouse operator is not valid unless the seller has made a demand for settlement of the obligation within twelve months after the grain is priced or delivered for sale, whichever occurs later except that if the notice provided in section 542.12 has been given, the seller must make the demand for settlement of the obligation within the one hundred twenty-day period. A depositor or seller whose claim has been refused by the board may appeal the refusal to either the district court of Polk county or the district court of the county in which the depositor or seller resides. The commission shall provide for payment from the fund to a depositor or seller whose claim has been found to be valid.

4. If at any time the fund does not contain sufficient assets to pay valid claims, the commission shall hold those claims for payment until the fund again contains sufficient assets. Claims against the fund shall be paid in the order in which they are found to be valid. However, no claims shall be paid before the fund initially reaches one million dollars.

5. If a depositor or seller files an action for legal or equitable remedies in a state or federal court having jurisdiction in those matters that includes a claim against grain upon which the depositor or seller may file a claim against the fund at a later date, the depositor or seller shall also file with the commission a copy of the action filed with the court. In the event of payment of a loss under this section, the commission shall be subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor or seller against any person regarding the loss. The depositor or seller shall render all necessary assistance to aid the commission in securing the rights granted in this section. No action or claim initiated by a depositor or seller and pending at the time of payment from the fund shall be compromised or settled without the consent of the commission.

Sec. 37. NEW SECTION. 543A.7 NO OBLIGATION OF STATE.

This chapter does not imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees, or officials, either elective or appointive, in respect of any agreement or undertaking to which this chapter relates.

Sec. 38. Licensed grain dealers and licensed warehouse operators shall maintain a bond in an amount as required by the law in effect on January 1, 1986, or an irrevocable letter of credit in the amount of the bond, until the grain dealer or warehouse operator has qualified for a license under the license requirements specified in this Act. The license of a grain dealer or warehouse operator who has received notice of the cancellation of the required bond shall not be revoked if prior to revocation, the licensee satisfies the license requirements of this Act or, if the licensee is in compliance with the license requirements in effect on January 1, 1986, the licensee provides an irrevocable letter of credit in the amount of the bond to the commission. However, all licensed grain dealers and licensed warehouse operators shall satisfy the license requirements of this Act on or by September 30, 1986. Failure to meet the requirements by that date shall result in the revocation or nonrenewal of their license.

Sec. 39. Notwithstanding the provisions of section 543A.5, the indemnity fund is liable for claims which arise on or after the effective date of this Act but before October 1, 1986 only if the claim is against a licensed grain dealer or licensed warehouse operation who has complied with section 30 of this Act by maintaining the bond or irrevocable letter of credit, by qualifying for a license under the requirements imposed by this Act, or by providing the irrevocable letter of credit and meeting the January 1, 1986 license requirements. For claims arising on or after October 1, 1986, the indemnity fund is liable for claims against grain dealers or warehouse operators who have satisfied the licensing requirements of this Act or against a participating federally licensed grain warehouse who has satisfied 543A.2.

Sec. 40. This Act, being deemed of immediate importance, takes effect from and after its publication in the Marshalltown Times-Republican, a newspaper published in Marshalltown, Iowa, and in The Belle Plaine Union, a newspaper published in Belle Plaine, Iowa.

Approved April 25, 1986

I hereby certify that the foregoing Act, Senate File 2116, was published in the Marshalltown Times-Republican, Marshalltown, Iowa, on May 2, 1986, and in The Belle Plaine Union, Belle Plaine, Iowa, on May 14, 1986.

MARY JANE ODELL, *Secretary of State*