

**CHAPTER 147****GRAIN DEALER AND AGRICULTURAL WAREHOUSE OPERATOR REGULATION***H.F. 411*

**AN ACT** relating to the grain indemnity fund, by further defining the term "grain dealer", limiting financial reporting by grain dealers and warehouse operators, eliminating credit sale contracts from its protection, providing for distribution of receivership assets excluding proceeds of the fund, raising minimum net worth requirements, and providing definitions, eliminating participation by federally licensed warehouses, and providing a penalty for late payment of fees, eligibility standards, for the appointment of additional members to the Iowa grain indemnity fund board, the adjustment of fees, a procedure for determining the value of losses, and requirements for recovery from the fund.

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

Section 1. Section 542.1, subsection 3, Code 1987, 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 from producers, 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 542.3, subsection 4, paragraph b, Code 1987, is amended to read as follows:

b. The grain dealer shall submit, as required by the department, 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 department 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 department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. 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 department 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 department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement. 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.

Sec. 3. Section 542.3, subsection 5, paragraph b, Code 1987, is amended to read as follows:

b. The grain dealer shall submit, as required by the department, 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 department 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 department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. 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 department 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 department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement. 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.

Sec. 4. Section 542.15, subsection 8, Code 1987, is amended by striking the subsection and inserting in lieu thereof the following:

8. A licensed grain dealer who purchases grain by credit sale contract shall obtain from the seller a signed acknowledgement stating that the seller has received notice that grain purchased by credit sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgement shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

Sec. 5. Section 543.4, subsection 4, Code 1987, is amended to read as follows:

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, deficiency bond, or irrevocable letter of credit, less expenses incurred by the department 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 as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

Sec. 6. Section 543.6, subsection 4, paragraphs a and b, Code 1987, are amended to read as follows:

a. The warehouse operator shall have and maintain a net worth of at least ~~twenty~~ twenty-five 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.

b. The warehouse operator shall submit, as required by the department, 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 department 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 department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. 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 department 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 department shall cause a warehouse operator who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a warehouse operator submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the certified financial statement.

Sec. 7. Section 543.6, subsection 5, paragraphs a and b, Code 1987, are amended to read as follows:

a. The warehouse operator shall have and maintain a net worth of at least ~~twenty~~ twenty-five 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.

b. The warehouse operator shall submit, as required by the department, 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 department 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 department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. 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 department 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 department shall cause a warehouse operator who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a warehouse operator submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the qualified financial statement.

Sec. 8. Section 543A.1, subsections 3 and 4, Code 1987, are amended to read as follows:

3. "Depositor" means a person who deposits grain in a state warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a state warehouse, or who is lawfully entitled to possession of the grain.

4. "Fund" means the grain depositors and sellers ~~indemnification~~ indemnity fund created in section 543A.3.

Sec. 9. Section 543A.1, subsections 6 and 7, Code 1987, are amended by striking the subsections, inserting in lieu thereof the following, and renumbering subsequent subsections:

6. "Assessable grain" means all grain to which a licensed grain dealer obtains title except if title transfers by credit sale contract, and all grain received by a licensed warehouse operator. However, assessable grain does not include the following:

a. Grain purchased by an Iowa licensed grain dealer from another licensed grain dealer, regardless of which jurisdiction licenses the other grain dealer.

b. Grain deposited in a licensed grain warehouse for custom drying, cleaning, conditioning, or processing if the grain is redelivered to the depositor immediately, as defined by rules adopted by the department.

Sec. 10. Section 543A.1, subsection 11, Code 1987, is amended to read as follows:

~~11~~ 10. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, ~~and includes~~ but excludes a person who executes a credit sale contract as a seller.

Sec. 11. Section 543A.2, Code 1987, is amended to read as follows:

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 department and between the federal licensee and the department. The agreement between the department 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. 12. Section 543A.3, subsections 1 and 2, Code 1987, are amended to read as follows:

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 assessable grain sold remitted by licensed grain dealers, and licensed warehouse operators, ~~and participating federally licensed grain warehouses;~~ an annual fee charged to and remitted by licensed grain dealers, ~~and~~ licensed warehouse operators, ~~and participating federally licensed grain warehouses;~~ sums collected by the department 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, ~~or~~ warehouse operator, ~~or participating federally licensed warehouse~~ shall forward the per-bushel fee to the department in the manner and using the forms prescribed by the department. If the per-bushel fee has not been ~~forwarded to~~ received by the department by the date required by the department, the grain dealer, ~~or~~ warehouse operator, ~~or participating federally licensed warehouse~~ is subject to ~~an interest~~ a penalty of ten dollars for each day the grain dealer, ~~or~~ warehouse operator, ~~or participating federally licensed warehouse~~ fails to forward the fee ~~is delinquent~~. 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~~ received by the department 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.

Sec. 13. Section 543A.3, subsection 3, paragraph a, unnumbered paragraph 1, Code 1987, is amended to read as follows:

All licensed grain dealers, and 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:

Sec. 14. Section 543A.3, subsection 3, paragraph b, Code 1987, is amended to read as follows:

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 department is ratified.~~

Sec. 15. Section 543A.3, subsection 4, Code 1987, is amended to read as follows:

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.~~

Sec. 16. Section 543A.4, Code 1987, is amended to read as follows:

543A.4 INDEMNITY FUND BOARD.

The Iowa grain indemnity fund board is established to advise the department 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 commissioner of insurance or a designee who shall serve as secretary; the state treasurer or a designee who shall serve as treasurer; and ~~two~~ four representatives of the grain industry appointed by the governor, subject to confirmation by the senate, ~~one~~ two of whom shall be a representative representatives of grain depositors and sellers producers and who shall be actively participating producers, and ~~one~~ two of whom shall be a representative representatives of grain dealers and warehouse operators and who shall be actively participating 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. However, only actively participating producers, and grain dealers and warehouse operators 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~~ Four members of the board constitute a quorum, and the affirmative vote of ~~three~~ four 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. 17. Section 543A.5, Code 1987, is amended to read as follows:

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, and shall also determine any adjustment to the dealer-warehouse fee. 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 assessable grain. 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 assessable grain.

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 fees if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

Sec. 18. Section 543A.6, subsection 1, Code 1987, is amended to read as follows:

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 department with evidence of the demand and the dishonoring of the demand, may file a claim with the department for indemnification of damages from the grain depositors and sellers indemnity fund A depositor or seller may file a claim concerning assessable

grain with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board. A claim shall not be filed prior to the earlier of: 1) the revocation, termination, or cancellation of the license of the grain dealer or warehouse operator; and 2) the filing of a petition in bankruptcy by a grain dealer or warehouse operator. However, to be timely a claim shall be filed within one hundred twenty days of the revocation, termination, or cancellation of the license of the grain dealer or warehouse operator. The value of a loss is to be measured as follows:

a. The board shall establish determine the dollar value of the loss a claim 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 or grain dealer. The value shall be based on the average fair market price being paid for the grain to producers by the three licensed grain dealers nearest the warehouse operator or grain dealer for the grain on the earlier of the following:

(1) The date of license suspension or the revocation, termination, or cancellation.

(2) The date on which the department received notice that the receipt, scale weight ticket, or credit-sale contract was dishonored by the licensed warehouse operator or licensed grain dealer filed a petition in bankruptcy.

However, the board may accept the valuation of a claim as determined by a court of competent jurisdiction as the value of the claim. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

b. The dollar value of the loss a claim 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. However, the board may accept the valuation of a claim as determined by a court of competent jurisdiction as the value of the claim. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

Sec. 19. Section 543A.6, subsections 2, 3, and 5, Code 1987, are amended to read as follows:

2. The grain depositors and sellers indemnity fund is liable to a depositor or seller for a claim which arises on or after May 15, 1986, 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 department board shall provide for payment from the fund to a depositor or seller whose claim has been found to be valid.

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 department a copy of the action filed with the court. In the event of payment of a loss under this section, the department shall be fund is 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 department and the board 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 department board.

Sec. 20. This Act shall not affect a claim for indemnification by any person from the depositors and sellers indemnity fund, if the claim arose from a purchase of grain by a credit sale contract, and the contract was executed before the effective date of this Act.

Approved May 26, 1987

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## CHAPTER 148

### LICENSE REVOCATIONS FOR OWI

*H.F. 488*

**AN ACT** relating to the time period for a hearing on the revocation of a person's license for operating a motor vehicle while under the influence of alcohol or a drug.

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

Section 1. Section 321J.13, subsection 2, unnumbered paragraph 1, Code 1987, is amended to read as follows:

The department shall grant the person an opportunity to be heard within ~~thirty~~ thirty forty-five days of receipt of a request for a hearing if the request is made not later than ~~twenty thirty~~ days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 and either of the following:

Sec. 2. Section 321J.13, subsection 4, shall apply to persons whose motor vehicle license or nonresident operating privilege has been revoked prior to July 1, 1986 under section 321B.7, 321B.13, or 321B.16 as they existed prior to July 1, 1986 to the extent that a person may reopen a hearing on the revocation if the person submits a petition stating that a criminal action on a charge of a violation of section 321.281 as it existed prior to July 1, 1986 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321.281 had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department and shall require the department to rescind the revocation and destroy any record of the revocation.

Approved May 27, 1987