

1 AN ACT concerning agriculture.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Grain Code is amended by changing  
5 Sections 1-5, 1-10, 1-15, 1-20, 1-25, 5-5, 5-10, 5-15, 5-20,  
6 5-25, 5-30, 10-5, 10-10, 10-15, 10-20, 15-15, 15-20, 15-30,  
7 15-35, 15-40, 15-45, 20-10, 20-15, 20-20, 25-5, 25-10, 25-20,  
8 30-5, and 30-10 and by adding Section 30-25 and Article 35 as  
9 follows:

10 (240 ILCS 40/1-5)

11 Sec. 1-5. Purpose. ~~The---Illinois---grain---industry~~  
12 ~~comprises--a--significant--and--vital--part--of--the--State's~~  
13 ~~economy.----The--grain--industry--can-function-to-its-fullest~~  
14 ~~competitive-and-profitable-potential,--thus--contributing--to~~  
15 ~~the--economic--health-of-this-State,--when-it-operates-under-a~~  
16 ~~coordinated-and-integrated-structure.---The--purpose--of--this~~  
17 ~~Code-is-to-provide-a-single-system-of-governmental-regulation~~  
18 ~~of--the--Illinois--grain--industry.~~ It is also the primary  
19 purpose of this Code to promote the State's welfare by  
20 improving the economic stability of agriculture through the  
21 existence of the Illinois Grain Insurance Fund in order to  
22 protect producers in the event of the failure of a licensed  
23 grain dealer or licensed warehouseman and to ensure the  
24 existence of an adequate resource so that persons holding  
25 valid claims may be compensated for losses occasioned by the  
26 failure of a licensed grain dealer or licensed warehouseman.  
27 To that end, this Code shall be liberally construed and  
28 liberally administered in favor of claimants.

29 In addition, the Illinois grain industry comprises a  
30 significant and vital part of the State's economy and as such  
31 can function to its fullest competitive and profitable

1 potential, thus contributing to the economic health of this  
2 State, when it operates under a coordinated and integrated  
3 regulatory structure. Thus, a further purpose of this Code is  
4 to provide a single system of governmental regulation of the  
5 Illinois grain industry.

6 (Source: P.A. 89-287, eff. 1-1-96.)

7 (240 ILCS 40/1-10)

8 Sec. 1-10. Definitions. As used in this Act:

9 "Board" means the governing body of the Illinois Grain  
10 Insurance Corporation.

11 "Certificate" means a document, other than the license,  
12 issued by the Department that certifies that a grain dealer's  
13 license has been issued and is in effect.

14 "Claimant" means:

15 (a) a person, including, without limitation, a lender:

16 (1) who possesses warehouse receipts issued from an  
17 Illinois location covering grain owned or stored by a  
18 failed warehouseman; or

19 (2) who has other written evidence of a storage  
20 obligation of a failed warehouseman issued from an  
21 Illinois location in favor of the holder, including, but  
22 not limited to, scale tickets, settlement sheets, and  
23 ledger cards; or

24 (3) who has loaned money to a warehouseman and was  
25 to receive a warehouse receipt issued from an Illinois  
26 location as security for that loan, who surrendered  
27 warehouse receipts as part of a grain sale at an Illinois  
28 location, or who delivered grain out of storage with the  
29 warehouseman as part of a grain sale at an Illinois  
30 location; and

31 (i) the grain dealer or warehouseman failed  
32 within 21 days after the loan of money, the  
33 surrender of warehouse receipts, or the delivery of

1 grain, as the case may be, and no warehouse receipt  
2 was issued or payment in full was not made on the  
3 grain sale, as the case may be; or

4 (ii) written notice was given by the person to  
5 the Department within 21 days after the loan of  
6 money, the surrender of warehouse receipts, or the  
7 delivery of grain, as the case may be, stating that  
8 no warehouse receipt was issued or payment in full  
9 made on the grain sale, as the case may be; or

10 (b) a producer not included in item (a)(3) in the  
11 definition of "Claimant" who possesses evidence of the sale  
12 at an Illinois location of grain delivered to a failed grain  
13 dealer, or its designee in Illinois and who was not paid in  
14 full.

15 "Class I warehouseman" means a warehouseman who is  
16 authorized to issue negotiable and non-negotiable warehouse  
17 receipts.

18 "Class II warehouseman" means a warehouseman who is  
19 authorized to issue only non-negotiable warehouse receipts.

20 "Code" means this the Grain Code.

21 "Collateral" means:

22 (a) irrevocable letters of credit;

23 (b) certificates of deposit;

24 (c) cash or a cash equivalent; or

25 (d) any other property acceptable to the Department to  
26 the extent there exists equity in that property. For the  
27 purposes of this item (d), "equity" is the amount by which  
28 the fair market value of the property exceeds the amount owed  
29 to a creditor who has a valid, prior, perfected security  
30 interest in or other valid, prior, perfected lien on the  
31 property.

32 "Corporation" means the Illinois Grain Insurance  
33 Corporation.

34 "Daily position record" means a grain inventory

1 accountability record maintained on a daily basis that  
2 includes an accurate reflection of changes in grain  
3 inventory, storage obligations, company-owned inventory by  
4 commodity, and other information that is required by the  
5 Department.

6 "Daily grain transaction report" means a record of the  
7 daily transactions of a grain dealer showing the amount of  
8 all grain received and shipped during each day and the amount  
9 on hand at the end of each day.

10 "Date of delivery of grain" means:

11 (a) the date grain is delivered to a grain dealer, or  
12 its designee in Illinois, for the purpose of sale;

13 (b) the date grain is delivered to a warehouseman, or  
14 its designee in Illinois, for the purpose of storage; or

15 (c) in reference to grain in storage with a  
16 warehouseman, the date a warehouse receipt representing  
17 stored grain is delivered to the issuer of the warehouse  
18 receipt for the purpose of selling the stored grain or, if no  
19 warehouse receipt was issued:

20 (1) the date the purchase price for stored grain is  
21 established; or

22 (2) if sold by price later contract, the date of  
23 the price later contract.

24 "Department" means the Illinois Department of  
25 Agriculture.

26 "Depositor" means a person who has evidence of a storage  
27 obligation from a warehouseman.

28 "Director", unless otherwise provided, means the Illinois  
29 Director of Agriculture, or the Director's designee.

30 "Electronic document" means a document that is generated,  
31 sent, received, or stored by electrical, digital, magnetic,  
32 optical electromagnetic, or any other similar means,  
33 including, but not limited to, electronic data interchange,  
34 electronic mail, telegram, telex, or telecopy.

1       "Electronic warehouse receipt" means a warehouse receipt  
 2       that is issued or transmitted in the form of an electronic  
 3       document.

4       "Emergency storage" means space measured in bushels and  
 5       used for a period of time not to exceed 3 months for storage  
 6       of grain as a consequence of an emergency situation.

7       "Equity assets" means:

8       (a) The equity in any property of the licensee or failed  
 9       licensee, other than grain assets. For purposes of this item

10      (a):

11           (1) "equity" is the amount by which the fair market  
 12           value of the property exceeds the amount owed to a  
 13           creditor who has a valid security interest in or other  
 14           valid lien on the property that was perfected before the  
 15           date of failure of the licensee;

16           (2) a creditor is not deemed to have a valid  
 17           security interest or other valid lien on property if (i)  
 18           the property can be directly traced as being from the  
 19           sale of grain by the licensee or failed licensee; (ii)  
 20           the security interest was taken as additional collateral  
 21           on account of an antecedent debt owed to the creditor;  
 22           and (iii) the security interest or other lien was  
 23           perfected (A) on or within 90 days before the date of  
 24           failure of the licensee or (B) when the creditor is a  
 25           related person, within one year of the date of failure of  
 26           the licensee.

27      "Failure" means, in reference to a licensee:

28           (a) a formal declaration of insolvency;

29           (b) a revocation of a license;

30           (c) a failure to apply for license renewal, leaving  
 31           indebtedness to claimants;

32           (d) a denial of license renewal, leaving indebtedness to  
 33           claimants; or

34           (e) a voluntary surrender of a license, leaving

1 indebtedness to claimants.

2 "Federal warehouseman" means a warehouseman licensed by  
3 the United States government under the United States  
4 Warehouse Act (7 U.S.C. 241 et seq.).

5 "Fund" means the Illinois Grain Insurance Fund.

6 "Grain" means corn, soybeans, wheat, oats, rye, barley,  
7 grain sorghum, canola, buckwheat, flaxseed, edible soybeans,  
8 and other like agricultural commodities that may be  
9 designated by rule.

10 "Grain assets" means:

11 (a) all grain owned and all grain stored by a licensee  
12 or failed licensee, wherever located, including redeposited  
13 grain of a licensee or failed licensee;

14 (b) (blank) redeposited--grain--of-a-licensee-or-failed  
15 licensee;

16 (c) identifiable proceeds, including, but not limited  
17 to, insurance proceeds, received by or due to a licensee or  
18 failed licensee resulting from the sale, exchange,  
19 destruction, loss, or theft of grain, or other disposition of  
20 grain by the licensee or failed licensee; or

21 (d) assets in hedging or speculative margin accounts  
22 held by commodity or security exchanges on behalf of a  
23 licensee or failed licensee and any moneys due or to become  
24 due to a licensee or failed licensee, less any secured  
25 financing directly associated with those assets or moneys,  
26 from any transactions on those exchanges.

27 For purposes of this Act, storage charges, drying  
28 charges, price later contract service charges, and other  
29 grain service charges received by or due to a licensee or  
30 failed licensee shall not be deemed to be grain assets, nor  
31 shall such charges be deemed to be proceeds from the sale or  
32 other disposition of grain by a licensee or a failed  
33 licensee, or to have been directly or indirectly traceable  
34 from, to have resulted from, or to have been derived in whole

1 or in part from, or otherwise related to, the sale or other  
2 disposition of grain by the licensee or failed licensee.

3 "Grain dealer" means a person who is licensed by the  
4 Department to engage in the business of buying grain from  
5 producers.

6 "Grain Indemnity Trust Account" means a trust account  
7 established by the Director under Section 205-410 of the  
8 Department of Agriculture Law (20 ILCS 205/205-410) that is  
9 used for the receipt and disbursement of moneys paid from the  
10 Fund and proceeds from the liquidation of and collection upon  
11 grain assets, equity assets, collateral, and ~~or~~ guarantees of  
12 or relating to failed licensees. The Grain Indemnity Trust  
13 Account shall be used to pay valid claims, authorized refunds  
14 from the Fund, and expenses incurred in preserving,  
15 liquidating, and collecting upon grain assets, equity assets,  
16 collateral, and guarantees relating to failed licensees.

17 "Guarantor" means a person who assumes all or part of the  
18 obligations of a licensee to claimants.

19 "Guarantee" means a document executed by a guarantor by  
20 which the guarantor assumes all or part of the obligations of  
21 a licensee to claimants.

22 "Incidental grain dealer" means a grain dealer who  
23 purchases grain only in connection with a feed milling  
24 operation and whose total purchases of grain from producers  
25 during the grain dealer's fiscal year do not exceed \$100,000.

26 "Licensed storage capacity" means the maximum grain  
27 storage capacity measured in bushels approved by the  
28 applicable licensing agency for use by a warehouseman.

29 "Licensee" means a grain dealer or warehouseman who is  
30 licensed by the Department and a federal warehouseman that is  
31 a participant in the Fund, under subsection (c) of Section  
32 30-10.

33 "Official grain standards" means the official grade  
34 designations as adopted by the United States Department of

1 Agriculture under the United States Grain Standards Act and  
2 regulations adopted under that Act (7 U.S.C. 71 et seq. and 7  
3 CFR 810.201 et seq.).

4 "Permanent storage capacity" means the capacity of  
5 permanent structures available for storage of grain on a  
6 regular and continuous basis, and measured in bushels.

7 "Person" means any individual or entity, including, but  
8 not limited to, a sole proprietorship, a partnership, a  
9 corporation, a cooperative, an association, a limited  
10 liability company, an estate, ~~or~~ a trust, or a governmental  
11 agency.

12 "Price later contract" means a written contract for the  
13 sale of grain whereby any part of the purchase price may be  
14 established by the seller after delivery of the grain to a  
15 grain dealer according to a pricing formula contained in the  
16 contract. Title to the grain passes to the grain dealer at  
17 the time of delivery. The precise form and the general terms  
18 and conditions of the contract shall be established by rule.

19 "Producer" means the owner, tenant, or operator of land  
20 who has an interest in and receives all or part of the  
21 proceeds from the sale of the grain produced on the land.

22 "Producer protection holding corporation" means a holding  
23 corporation to receive, hold title to, and liquidate assets  
24 of or relating to a failed licensee, including assets in  
25 reference to collateral or guarantees relating to a failed  
26 licensee.

27 "Regulatory Fund" means the fund created under Article  
28 35.

29 "Related persons" means affiliates of a licensee, key  
30 persons of a licensee, owners of a licensee, and persons who  
31 have control over a licensee. For the purposes of this  
32 definition:

33 (a) "Affiliate" means a person who has direct or  
34 indirect control of a licensee, is controlled by a



1 licensee, or is under common control with a licensee.

2 (b) "Key person" means an officer, a director, a  
3 trustee, a partner, a proprietor, a manager, a managing  
4 agent, or the spouse of a licensee. An officer or a  
5 director of an entity organized or operating as a  
6 cooperative, however, shall not be considered to be a  
7 "key person".

8 (c) "Owner" means the holder of: over 10% of the  
9 total combined voting power of a corporation or over 10%  
10 of the total value of shares of all classes of stock of a  
11 corporation; over a 10% interest in a partnership; over  
12 10% of the value of a trust computed actuarially; or over  
13 10% of the legal or beneficial interest in any other  
14 business, association, endeavor, or entity that is a  
15 licensee. For purposes of computing these percentages, a  
16 holder is deemed to own stock or other interests in a  
17 business entity whether the ownership is direct or  
18 indirect.

19 (d) "Control" means the power to exercise authority  
20 over or direct the management or policies of a business  
21 entity.

22 (e) "Indirect" means an interest in a business held  
23 by the holder not through the holder's actual holdings in  
24 the business, but through the holder's holdings in  
25 another business or other businesses.

26 (f) Notwithstanding any other provision of this  
27 Act, the term "related person" does not include a lender,  
28 secured party, or other lien holder solely by reason of  
29 the existence of the loan, security interest, or lien, or  
30 solely by reason of the lender, secured party, or other  
31 lien holder having or exercising any right or remedy  
32 provided by law or by agreement with a licensee or a  
33 failed licensee.

34 "Reserve Fund" means a separate and discrete fund of up

1 to \$2,000,000 held by the Corporation as set forth in Section  
2 30-25.

3 "Successor agreement" means an agreement by which a  
4 licensee succeeds to the grain obligations of a former  
5 licensee.

6 "Temporary storage space" means space measured in bushels  
7 and used for 6 months or less for storage of grain on a  
8 temporary basis due to a need for additional storage in  
9 excess of permanent storage capacity.

10 "Trust account" means the Grain Indemnity Trust Account.

11 "Valid claim" means a request for payment under the  
12 provisions of this Code claim, submitted by a claimant, the  
13 whose amount and category of which have been determined by  
14 the Department, to the extent that determination is not  
15 subject to further administrative review or appeal. Each  
16 grain sale transaction and each storage obligation shall be  
17 considered a separate and discrete request for payment even  
18 though one or more requests are contained on one claim form  
19 or are filed with the Department in one document.

20 "Warehouse" means a building, structure, or enclosure in  
21 which grain is stored for the public for compensation,  
22 whether grain of different owners is commingled or whether  
23 identity of different lots of grain is preserved.

24 "Warehouse receipt" means a receipt for the storage of  
25 grain issued by a warehouseman.

26 "Warehouseman" means a person who is licensed:

27 (a) by the Department to engage in the business of  
28 storing grain for compensation; or

29 (b) under the United States Warehouse Act but who  
30 participates in the Fund under subsection (c) of Section  
31 30-10.

32 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;  
33 92-16, eff. 6-28-01.)

1 (240 ILCS 40/1-15)

2 Sec. 1-15. Powers and duties of Director. The Director  
3 has all powers necessary and proper to fully and effectively  
4 execute the provisions of this Code and has the general duty  
5 to implement this Code. The Director's powers and duties  
6 include, but are not limited to, the following:

7 (1) The Director may, upon application, issue or refuse  
8 to issue licenses under this Code, and the Director may  
9 extend, renew, reinstate, suspend, revoke, or accept  
10 voluntary surrender of licenses under this Code.

11 (2) The Director shall examine and inspect each licensee  
12 at least once each calendar year. The examination shall cover  
13 all aspects of the grain operations of the licensee,  
14 including but not necessarily limited to options trades and  
15 programs and farmer marketing programs.

16 The Department shall perform one of 3 types of  
17 examinations of licensees.

18 (A) Basic Examination. The basic examination shall  
19 be performed when the licensee's merchandising and trade  
20 practices involve minimal market risk, which might  
21 include those situations in which the licensee uses cash  
22 back-to-back contracts, traditional hedges with the  
23 Chicago Board of Trade, and price later contracts. The  
24 specific components and guidelines of the basic  
25 examination are to be as provided by rule, but shall at a  
26 minimum include verification of grain quality and  
27 quantity, reconciliation of records with grain  
28 transactions, computation of current ratios, and checking  
29 of posting procedures for accuracy.

30 (B) Intermediate Examination. The intermediate  
31 examination shall be performed when the licensee's  
32 merchandising and trade practices involve an increased  
33 amount of risk, which might include those situations in  
34 which the licensee uses guaranteed minimum price

1 contracts, purchases options, or writes options. This  
2 examination shall include all those things performed as  
3 part of the basic examination. In addition, the specific  
4 components and guidelines of the intermediate examination  
5 are to be as provided by rule, but shall at a minimum  
6 include verification of grain quality and quantity,  
7 reconciliation of records with grain transactions, and  
8 checking of posting procedures for accuracy.

9 (C) Advanced Examination. The advanced examination  
10 shall be performed when the licensee's merchandising and  
11 grain trading practices involve the most risk, which  
12 might include those situations in which the licensee has  
13 discretionary trading authority from producers, uses  
14 premium offer type contracts, or has contracts with  
15 producers that cover multiple crop years. This  
16 examination shall include all those things performed as  
17 part of the basic examination and the intermediate  
18 examination. In addition, the specific components and  
19 guidelines of the advanced examination are to be provided  
20 by rule, but shall at a minimum include grain market risk  
21 evaluation and appropriate levels thereof for the  
22 licensee and adequacy of internal controls.

23 Using these guidelines, the Department shall determine  
24 the level of examination to be applied to each licensee. In  
25 addition, the Department may, in its sole discretion, engage  
26 the services of accounting experts, grain risk management  
27 experts, or both as part of any intermediate or advanced  
28 examination. The Regulatory Fund may be used as a source of  
29 payment for the services of accounting experts, grain risk  
30 management experts, or both.

31 The Director may inspect the premises used by a licensee  
32 at any time. The books, accounts, records, and papers of a  
33 licensee are at all times during business hours subject to  
34 inspection by the Director. Each licensee may also be

1 required to make reports of its activities, obligations, and  
2 transactions that are deemed necessary by the Director to  
3 determine whether the interests of producers and the holders  
4 of warehouse receipts are adequately protected and  
5 safeguarded. The Director may take action or issue orders  
6 that in the opinion of the Director are necessary to prevent  
7 fraud upon or discrimination against producers or depositors  
8 of grain by a licensee. The sole and exclusive means of  
9 halting the warehouse and grain dealer business activities of  
10 a licensee, however, are set forth in Section 15-40 relating  
11 to suspension and revocation of licenses.

12 (3) The Director may, upon his or her initiative or upon  
13 the written verified complaint of any person setting forth  
14 facts that if proved would constitute grounds for a refusal  
15 to issue or renew a license or for a suspension or revocation  
16 of a license, investigate the actions of any person applying  
17 for, holding, or claiming to hold a license or any related  
18 party of that person.

19 (4) The Director (but not the Director's designee) may  
20 issue subpoenas and bring before the Department any person  
21 and take testimony either at an administrative hearing or by  
22 deposition with witness fees and mileage fees and in the same  
23 manner as prescribed in the Code of Civil Procedure. The  
24 Director or the Director's designee may administer oaths to  
25 witnesses at any proceeding that the Department is authorized  
26 by law to conduct. The Director (but not the Director's  
27 designee) may issue subpoenas duces tecum to command the  
28 production of records relating to a licensee, guarantor,  
29 related business, related person, or related party. Subpoenas  
30 are subject to the rules of the Department.

31 (5) Notwithstanding other judicial remedies, the  
32 Director may file a complaint and apply for a temporary  
33 restraining order or preliminary or permanent injunction  
34 restraining or enjoining any person from violating or

1 continuing to violate this Code or its rules.

2 (6) The Director shall act as Trustee for the Trust  
3 Account, act as Trustee over all collateral, guarantees,  
4 grain assets, and equity assets held by the Department for  
5 the benefit of claimants, and exercise certain powers and  
6 perform related duties under Section 20-5 of this Code and  
7 Section 205-410 of the Department of Agriculture Law (20 ILCS  
8 205/205-410), except that the provisions of the Trust and  
9 Trustees Act do not apply to the Trust Account or any other  
10 trust created under this Code.

11 (7) The Director shall personally serve as president of  
12 the Corporation.

13 (8) The Director shall collect and deposit all monetary  
14 penalties, printer registration fees, funds, and assessments  
15 authorized under this Code into the Fund.

16 (9) The Director may initiate any action necessary to  
17 pay refunds from the Fund. The Director may initiate refunds  
18 for errors of assessments that do not exceed \$2,000 per  
19 licensee, lender, or grain seller without authorization by  
20 the Board.

21 (10) The Director shall maintain a holding corporation  
22 to receive, hold title to, and liquidate assets of or  
23 relating to a failed licensee, including assets in reference  
24 to collateral or guarantees, and deposit the proceeds into  
25 the Fund.

26 (11) The Director may initiate, participate in, or  
27 withdraw from any proceedings to liquidate and collect upon  
28 grain assets, equity assets, collateral, and guarantees  
29 relating to a failed licensee, including, but not limited to,  
30 all powers needed to carry out the provisions of Section  
31 20-15.

32 (12) The Director, as Trustee or otherwise, may take any  
33 action that may be reasonable or appropriate to enforce this  
34 Code and its rules.

1 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;  
2 92-16, eff. 6-28-01.)

3 (240 ILCS 40/1-20)

4 Sec. 1-20. Administrative review and venue. Final  
5 administrative decisions of the Department are subject to  
6 judicial review under Article III of the Code of Civil  
7 Procedure and its rules. The term "administrative decision"  
8 is defined as in Section 3-101 of the Code of Civil  
9 Procedure. An action to review a final administrative  
10 decision under this Code may be commenced in the Circuit  
11 Court of any county in which any part of the transaction  
12 occurred that gave rise to the claim that was the subject of  
13 the proceedings before the Department.

14 (Source: P.A. 89-287, eff. 1-1-96.)

15 (240 ILCS 40/1-25)

16 Sec. 1-25. Rules. The Department may promulgate rules  
17 that are necessary for the implementation and administration  
18 of this Code.

19 The Department shall adopt rules governing electronic  
20 systems under which electronic warehouse receipts may be  
21 issued and transferred. Licensees shall not be required,  
22 however, to issue or use electronic warehouse receipts. These  
23 rules shall be adopted after the United States Department of  
24 Agriculture adopts regulations concerning an electronic  
25 receipt transfer system pursuant to 7 U.S.C. 242, 250.

26 (Source: P.A. 89-287, eff. 1-1-96.)

27 (240 ILCS 40/5-5)

28 Sec. 5-5. Licenses required; applications; exemptions.

29 (a) Except as provided in subsection (e), a person may  
30 not engage in the business of buying grain from producers, or  
31 storing grain for compensation, as--a--grain--dealer,--an

1 ~~incidental-grain-dealer, or a warehouseman~~ in the State of  
2 Illinois without a license issued by the Department, or in  
3 the case of a federal warehouseman, by the United States  
4 government.

5 (b) An application for a license shall be filed with the  
6 Department, shall be in a form prescribed by the Department,  
7 and shall set forth the name of the applicant, the directors  
8 and officers if the applicant is a corporation, the partners  
9 if the applicant is a partnership, the members of the  
10 governing body and all persons with management or supervisory  
11 authority if the applicant is an entity other than a  
12 corporation or partnership, the location of the principal  
13 office or place of business of the applicant, the location of  
14 the principal office or place of business of the applicant in  
15 Illinois, and the location or locations in Illinois at which  
16 the applicant proposes to engage in business as a licensee,  
17 the fiscal year of the applicant, the kind of grain that the  
18 applicant proposes to buy, handle, or store, the type of  
19 business that the applicant proposes to conduct, and  
20 additional information that the Department may require by  
21 rule.

22 (c) The application for a warehouseman shall state  
23 whether the applicant proposes to store grain only for others  
24 or for the applicant and for others and shall also state the  
25 storage capacity for which the applicant desires to be  
26 licensed.

27 (d) If an applicant has been engaged in business as a  
28 grain dealer for one year or more, the application shall  
29 state the aggregate dollar amount paid to producers for grain  
30 during the applicant's last completed fiscal year. If the  
31 applicant has been engaged in business for less than one year  
32 or has not engaged in the business of buying grain from  
33 producers ~~as-a-grain-dealer~~, the application shall state the  
34 estimated aggregate dollar amount to be paid by the applicant



1 to producers for grain purchased from producers during the  
2 applicant's first fiscal year.

3 (e) The following persons are exempt from being licensed  
4 as a grain dealer or incidental grain dealer:

5 (1) A person purchasing grain from producers only  
6 for resale as agricultural seed.

7 (2) A producer purchasing grain from producers only  
8 for its own use as seed or feed.

9 (Source: P.A. 89-287, eff. 1-1-96.)

10 (240 ILCS 40/5-10)

11 Sec. 5-10. Financial statement and fee requirements to  
12 obtain or amend a license.

13 (a) Applications for a new license to operate as a Class  
14 I warehouseman or grain dealer shall be accompanied by each  
15 of the following:

16 (1) A financial statement made within 90 days after  
17 the applicant's fiscal year end and prepared in  
18 conformity with generally accepted accounting principles  
19 following an examination conducted in accordance with  
20 generally accepted auditing standards that has attached  
21 the unqualified opinion, or a qualified opinion if the  
22 qualification, in the sole discretion of the Department,  
23 does not unduly diminish the financial stability of the  
24 licensee or applicant, ~~or other opinion acceptable to~~  
25 the Department, of an independent certified public  
26 accountant licensed under Illinois law or an entity  
27 permitted to engage in the practice of public accounting  
28 under item (b)(3) of Section 14 of the Illinois Public  
29 Accounting Act.

30 (A) If the applicant has been engaged in  
31 business prior to the application, the financial  
32 statement shall set forth the financial position and  
33 results in operations for the most recent fiscal

1 year of the applicant. The financial statement  
2 shall consist of a balance sheet, statement of  
3 income, statement of retained earnings, statement of  
4 cash flows, notes to financial statements, and other  
5 information as required by the Department.

6 (B) If the applicant has not been engaged in  
7 business prior to the application, the financial  
8 statement shall consist of a balance sheet, notes to  
9 financial statements, and other information as  
10 required by the Department.

11 (2) An application fee of \$200 ~~\$100~~ for each  
12 license, \$100 of which shall be deposited into the  
13 General Revenue Fund and the balance of which shall be  
14 deposited into the Regulatory Fund.

15 (3) A fee for each required certificate. The  
16 amount of the fee for each certificate shall be  
17 established by rule. Fees shall be deposited into the  
18 Regulatory Fund.

19 (b) Applications for a new license to operate as a Class  
20 II warehouseman or incidental grain dealer shall be  
21 accompanied by:

22 (1) A financial statement prepared in accordance  
23 with the requirements of item (a)(1) of Section 5-10 or,  
24 instead, a financial statement made within 90 days of the  
25 date of the application prepared or certified by an  
26 independent accountant and verified under oath by the  
27 applicant. The financial statement shall set forth the  
28 balance sheet and other information with respect to the  
29 financial resources of the applicant that the Department  
30 may require. If the applicant has been engaged in  
31 business prior to the application, the financial  
32 statement shall also set forth a statement of income of  
33 the applicant.

34 (2) An application fee of \$150 ~~\$100~~ for each

1           license, \$100 of which shall be deposited into the  
2           General Revenue Fund and the balance of which shall be  
3           deposited into the Regulatory Fund.

4           (3) A fee for each required certificate. The  
5           amount of the fee for each certificate shall be  
6           established by rule. Fees shall be deposited into the  
7           Regulatory Fund.

8           (c) Applications to amend a warehouseman's licensed  
9           storage capacity, including applications in reference to  
10          temporary storage and emergency storage or to otherwise amend  
11          a license, shall be accompanied by a filing fee of \$100, \$50  
12          of which shall be deposited into the General Revenue Fund and  
13          the balance of which shall be deposited into the Regulatory  
14          Fund \$50.

15          (Source: P.A. 89-287, eff. 1-1-96.)

16           (240 ILCS 40/5-15)

17           Sec. 5-15. Renewal of license.

18           (a) The application for renewal of a license shall be  
19          filed with the Department annually within 90 days after the  
20          licensee's fiscal year end. The Department may, upon request  
21          of the licensee, payment of an extension fee of \$100 \$50, \$50  
22          of which shall be deposited into the General Revenue Fund and  
23          the balance of which shall be deposited into the Regulatory  
24          Fund, and delivery to the Department of a preliminary  
25          financial statement compiled reviewed by an independent  
26          certified public accountant licensed under Illinois law or an  
27          entity permitted to engage in the practice of public  
28          accounting under item (b)(3) of Section 14 of the Illinois  
29          Public Accounting Act or, in the case of a Class II  
30          warehouseman or incidental grain dealer, a preliminary  
31          financial statement reviewed by an independent accountant  
32          that meets the financial requirements of subsection (b) of  
33          Section 5-25, extend, for up to but not exceeding 30 days,

1 the period of time during which the application for renewal  
2 of a license may be filed. The Department, however, may  
3 provide by rule for reducing the filing period for an  
4 application for renewal of a license to no less than 60 days  
5 after the licensee's fiscal year end if the Department  
6 determines that an applicant has financial deficiencies, or  
7 there are other factors, that would create a substantial risk  
8 of failure ~~loss-to-potential-claimants~~. The Department must  
9 give written notice of the reduced filing period to the  
10 licensee at least 60 days before the earlier deadline imposed  
11 by the Department to file the application for renewal of a  
12 license. Notice is deemed given when mailed by certified  
13 mail, return receipt requested, properly addressed and with  
14 sufficient postage attached.

15 (b) The application for renewal shall be accompanied by  
16 the financial statement required by Section 5-20.

17 (c) Failure to meet all of the conditions to renew the  
18 license may result in a denial of renewal of the license. The  
19 licensee may request an administrative hearing to dispute the  
20 denial of renewal, after which the Director shall enter an  
21 order either renewing or refusing to renew the license.

22 (Source: P.A. 89-287, eff. 1-1-96.)

23 (240 ILCS 40/5-20)

24 Sec. 5-20. Financial statement and fee requirements for  
25 the renewal of a license.

26 (a) Applications for a renewal of a license to operate  
27 as a Class I warehouseman or grain dealer shall be  
28 accompanied by each of the following:

29 (1) A financial statement made within 90 days after  
30 the applicant's fiscal year end and prepared in  
31 conformity with generally accepted accounting principles  
32 following an examination conducted in accordance with  
33 generally accepted auditing standards that has attached

1       the unqualified opinion, or a qualified opinion if the  
2       qualification, in the sole discretion of the Department,  
3       does not unduly diminish the financial stability of the  
4       licensee or applicant, ~~7-or-other-opinion-acceptable-to~~  
5       ~~the--Department,~~ 7 of an independent certified public  
6       accountant licensed under Illinois law or an entity  
7       permitted to engage in the practice of public accounting  
8       under item (b)(3) of Section 14 of the Illinois Public  
9       Accounting Act. The financial statement shall consist of  
10      a balance sheet, statement of income, statement of  
11      retained earnings, statement of cash flows, notes to  
12      financial statements, and other information as required  
13      by the Department. The financial statement shall set  
14      forth the financial position and results in operations  
15      for the most recent fiscal year of the applicant.

16           (2) A fee of \$200 ~~\$100~~ for each license, \$100 of  
17      which shall be deposited into the General Revenue Fund  
18      and the balance of which shall be deposited into the  
19      Regulatory Fund.

20           (3) A fee for each required certificate. The  
21      amount of the fee for each certificate shall be  
22      established by rule. Fees shall be deposited into the  
23      Regulatory Fund.

24      (b) Applications for a renewal of a license to operate  
25      as a Class II warehouseman or incidental grain dealer shall  
26      be accompanied by each of the following:

27           (1) A financial statement prepared in accordance  
28      with the requirements of item (a)(1) of Section 5-10 or,  
29      instead, a financial statement made within 90 days after  
30      the date of the application prepared or certified by an  
31      independent accountant and verified under oath by the  
32      applicant. The financial statement shall set forth the  
33      balance sheet and statement of income of the applicant  
34      and other information with respect to the financial

1 resources of the applicant that the Department may  
2 require.

3 (2) A fee of \$150 ~~\$100~~ for each license, \$100 of  
4 which shall be deposited into the General Revenue Fund  
5 and the balance of which shall be deposited into the  
6 Regulatory Fund.

7 (3) A fee for each required certificate. The  
8 amount of the fee for each certificate shall be  
9 established by rule. Fees shall be deposited into the  
10 Regulatory Fund.

11 (Source: P.A. 89-287, eff. 1-1-96.)

12 (240 ILCS 40/5-25)

13 Sec. 5-25. Licensing standards and requirements. The  
14 Department shall issue, amend, or renew a license if the  
15 Department is satisfied that the applicant or licensee meets  
16 the standards and requirements of this Section. The  
17 standards and requirements of subsections (a) and (b) of this  
18 Section must be observed and complied with at all times  
19 during the term of the license.

20 (a) General requirements.

21 (1) The applicant or licensee must have a good  
22 business reputation, have not been involved in improper  
23 manipulation of books and records or other improper  
24 business practices, and have the qualifications and  
25 background essential for the conduct of the business of a  
26 licensee. The Department must be satisfied as to the  
27 business reputation, background, and qualifications of  
28 the management and principal officers of the applicant or  
29 licensee. The Department may obtain criminal histories  
30 of management and principal officers of the applicant or  
31 licensee.

32 (2) The applicant or licensee must maintain a  
33 permanent business location in the State of Illinois. At

1 Each location where the licensee is transacting business,  
2 ~~that-place-of-business~~ shall remain open from at least  
3 one-half hour before the daily opening to at least  
4 one-half hour after the daily closing of the Chicago  
5 Board of Trade, unless otherwise approved by the  
6 Department.

7 (3) The applicant or licensee must have insurance  
8 on all grain in its possession or custody as required in  
9 this Code.

10 (4) The applicant or licensee shall at all times  
11 keep sufficiently detailed books and records to reflect  
12 compliance with all requirements of this Code. The  
13 Department may require that certain records located  
14 outside the State of Illinois, if any, be brought to a  
15 specified location in Illinois for review by the  
16 Department.

17 (5) The applicant or licensee and each of its  
18 officers, directors, partners, and managers must not have  
19 been found guilty of a criminal violation of this Code,  
20 any of its predecessor statutes, or any similar or  
21 related statute or law of the United States or any other  
22 state or jurisdiction within 10 3 years of the date of  
23 application for the issuance or renewal of a license.

24 (6) The applicant or licensee and each of its  
25 officers, directors, managers, and partners, that at any  
26 one time have been a licensee under this Code or any of  
27 its predecessor statutes, or licensed under any similar  
28 or related statute or law of the United States or any  
29 other state or jurisdiction, must not have had its  
30 license terminated or revoked by the Department, by the  
31 United States, or by any other state or jurisdiction,  
32 within 2 years of the date of application for the  
33 issuance or renewal of a license leaving unsatisfied  
34 indebtedness to claimants.

1           (7) The applicant or licensee and each of its  
2 officers, directors, managers, and partners must not have  
3 been an officer, director, manager, or partner of a  
4 former licensee under this Code or any of its predecessor  
5 statutes, or of a business formerly licensed under any  
6 similar or related statute or law of the United States or  
7 any other state or jurisdiction, that had its license  
8 terminated or revoked by the Department, by the United  
9 States, or by any other state or jurisdiction, within 2  
10 years of the date of application for the issuance or  
11 renewal of a license, leaving unsatisfied indebtedness to  
12 claimants, unless the applicant or licensee makes a  
13 sufficient showing to the Department that the applicable  
14 person or related party was not materially and  
15 substantially involved as a principal in the business  
16 that had its license terminated or revoked. An interim  
17 or temporary manager that is employed by a licensee to  
18 reorganize the licensee or to manage the licensee until  
19 its business is sold, transferred, or liquidated is not  
20 in violation of this subsection (7) solely because of  
21 that employment as an interim or temporary manager.

22 (b) Financial requirements.

23           (1) The applicant or licensee's financial statement  
24 must show a current ratio of the total adjusted current  
25 assets to the total adjusted current liabilities of at  
26 least one to one.

27           (A) Adjusted current assets shall be  
28 calculated by deducting from the stated current  
29 assets shown on the balance sheet submitted by the  
30 applicant or licensee any current asset, as  
31 calculated in item (B) of this subdivision (1),  
32 resulting from notes receivable from related  
33 persons, accounts receivable from related persons,  
34 stock subscriptions receivable, and any other



1 related person receivables.

2 (B) A disallowed current asset shall be netted  
3 against any related liability and the net result, if  
4 an asset, shall be subtracted from the current  
5 assets.

6 (2) The applicant or licensee's financial statement  
7 and balance sheet must show an adjusted debt to adjusted  
8 equity ratio of not more than 3 to one.

9 (A) Adjusted debt shall be calculated by  
10 totaling current and long-term liabilities and  
11 reducing the total liabilities, up to the amount of  
12 current liabilities, by the liquid assets appearing  
13 in the current asset section of the balance sheet  
14 submitted by the applicant or licensee. For the  
15 purposes of this Section, liquid assets include but  
16 are not limited to cash, depository accounts, direct  
17 obligations of the U.S. Government, marketable  
18 securities, grain assets, balances in margin  
19 accounts, and tax refunds.

20 (B) Adjusted equity shall be calculated by  
21 deducting from the stated net worth shown on the  
22 balance sheet submitted by the applicant or licensee  
23 any asset, as calculated in item (C) of this  
24 subdivision (2), resulting from notes receivable  
25 from related persons, accounts receivable from  
26 related persons, stock subscriptions receivable, or  
27 any other related person receivables.

28 (C) A disallowed asset shall be netted against  
29 any related liability and the net result, if an  
30 asset, shall be subtracted from the stated net  
31 worth, or if a liability it shall remain a  
32 liability.

33 (3) An applicant or licensee must have an adjusted  
34 equity of at least \$50,000 as determined by the method

1 specified in item (b)(2) of this Section. Beginning with  
2 the first fiscal year of a licensee ending after 2004,  
3 the adjusted equity, as defined by the method specified  
4 in item (b)(2) of this Section, shall be increased by  
5 \$10,000 per fiscal year until the adjusted equity of an  
6 applicant or licensee is at least \$100,000.

7 (4) For the purposes of this Section, notes  
8 receivable from related persons, accounts receivable from  
9 related persons, and any other related person receivables  
10 are not a disallowed asset if the related person is also  
11 a licensee and meets all of the financial requirements of  
12 this Code.

13 (5) An applicant for a new license shall not be  
14 permitted to collateralize the requirements of items  
15 (b)(1) and (b)(3) of this Section in order to satisfy the  
16 requirements for a new license.

17 (Source: P.A. 89-287, eff. 1-1-96.)

18 (240 ILCS 40/5-30)

19 Sec. 5-30. Grain Insurance Fund assessments. The  
20 Illinois Grain Insurance Fund is established as a  
21 continuation of the fund created under the Illinois Grain  
22 Insurance Act, now repealed. Licensees, and applicants for a  
23 new license, first sellers of grain to grain dealers at  
24 Illinois locations, and lenders to licensees shall pay  
25 assessments as set forth in this Section.

26 (a) Subject to subsection (e) of this Section, a  
27 licensee that is newly licensed after the effective date of  
28 this Code shall pay an assessment into the Fund for 3  
29 consecutive years. These assessments are known as "newly  
30 licensed assessments". Except as provided in item (6) of  
31 subsection (b) of this Section, the first installment  
32 assessment shall be paid at the time of or before the  
33 issuance of a new license, the second installment assessment

1 shall be paid on or before the first anniversary date of the  
2 issuance of the new license, and the third installment  
3 assessment shall be paid on or before the second anniversary  
4 date of the issuance of the new license. For a grain dealer,  
5 the initial payment of each of the 3 installments assessments  
6 shall be based upon the total estimated value of grain  
7 purchases by the grain dealer for the applicable year with  
8 the final installment assessment amount determined as set  
9 forth in item (6) of subsection (b) of this Section. After  
10 the licensee has paid or was required to pay the last 3  
11 installments of the newly licensed assessments first--3  
12 assessments-to-the-Department-for-payment-into-the-Fund, the  
13 licensee shall be subject to subsequent assessments as set  
14 forth in subsection (d) of this Section.

15 (b) Grain dealer newly licensed assessments.

16 (1) The first installment assessment for a grain  
17 dealer shall be an amount equal to:

18 (A) \$0.000145 multiplied by the total value of  
19 grain purchases for the grain dealer's first fiscal  
20 year as shown in the final financial statement for  
21 that year provided to the Department under Section  
22 5-20; and

23 (B) \$0.000255 multiplied by that portion of  
24 the value of grain purchases for the grain dealer's  
25 first fiscal year that exceeds the adjusted equity  
26 of the licensee multiplied by 20, as shown on the  
27 final financial statement for the licensee's first  
28 fiscal year provided to the Department under Section  
29 5-20.

30 (2) The minimum amount assessment for the first  
31 installment assessment shall be \$500 \$1,000 and the  
32 maximum shall be \$15,000 \$10,000.

33 (3) The second installment assessment for a grain  
34 dealer shall be an amount equal to:

1 (A) \$0.0000725 multiplied by the total value  
2 of grain purchases for the grain dealer's second  
3 fiscal year as shown in the final financial  
4 statement for that year provided to the Department  
5 under Section 5-20; and

6 (B) \$0.0001275 multiplied by that portion of  
7 the value of grain purchases for the grain dealer's  
8 second fiscal year that exceeds the adjusted equity  
9 of the licensee multiplied by 20, as shown on the  
10 final financial statement for the licensee's second  
11 fiscal year provided to the Department under Section  
12 5-20.

13 (4) The third installment assessment for a grain  
14 dealer shall be an amount equal to:

15 (A) \$0.0000725 multiplied by the total value  
16 of grain purchases for the grain dealer's third  
17 fiscal year as shown in the final financial  
18 statement for that year provided to the Department  
19 under Section 5-20; and

20 (B) \$0.0001275 multiplied by that portion of  
21 the value of grain purchases for the grain dealer's  
22 third fiscal year that exceeds the adjusted equity  
23 of the licensee multiplied by 20, as shown on the  
24 final financial statement for the licensee's third  
25 fiscal year.

26 (5) The minimum amount of the second and third  
27 installments assessments shall be \$250 \$500 per year and  
28 the maximum for each year shall be \$7,500 \$5,000.

29 (6) Each of the newly licensed first-3 assessments  
30 shall be adjusted up or down based upon the actual annual  
31 grain purchases for each year as shown in the final  
32 financial statement for that year provided to the  
33 Department under Section 5-20. The adjustments shall be  
34 determined by the Department within 30 days of the date

1 of approval of renewal of a license. Refunds shall be  
2 paid out of the Fund within 60 days after the  
3 Department's determination. Additional amounts owed for  
4 any installment assessments shall be paid within 30 days  
5 after notification by the Department ~~as--provided--in~~  
6 ~~subsection-(f)-of-this-Section.~~

7 (7) For the purposes of grain dealer newly licensed  
8 assessments under subsection (b) of this Section, the  
9 total value of grain purchases shall be the total value  
10 of first time grain purchases by Illinois locations from  
11 producers.

12 (8) The second and third installments shall be paid  
13 to the Department within 60 days after the date posted on  
14 the written notice of assessment. The Department shall  
15 immediately deposit all paid installments into the Fund.

16 (c) Warehouseman newly licensed assessments.

17 (1) The first assessment for a warehouseman shall  
18 be an amount equal to:

19 (A) \$0.00085 multiplied by the total permanent  
20 storage capacity of the warehouseman at the time of  
21 license issuance; and

22 (B) \$0.00099 multiplied by that portion of the  
23 permanent storage capacity of the warehouseman at  
24 the time of license issuance that exceeds the  
25 adjusted equity of the licensee multiplied by 5, all  
26 as shown on the final financial statement for the  
27 licensee provided to the Department under Section  
28 5-10.

29 (2) The minimum amount assessment for the first  
30 installment assessment shall be \$500 ~~\$1,000~~ and the  
31 maximum shall be \$15,000 ~~\$10,000~~.

32 (3) The second and third installments assessments  
33 shall be an amount equal to:

34 (A) \$0.000425 multiplied by the total

1 permanent storage capacity of the warehouseman at  
2 the time of license issuance; and

3 (B) \$0.000495 multiplied by that portion of  
4 the permanent licensed storage capacity of the  
5 warehouseman at the time of license issuance that  
6 exceeds the adjusted equity of the licensee  
7 multiplied by 5, as shown on the final financial  
8 statement for the licensee's last completed fiscal  
9 year provided to the Department under Section 5-20.

10 (4) The minimum amount assessment for the second  
11 and third installments assessments shall be \$250 ~~\$500~~ per  
12 installment assessment and the maximum for each  
13 installment assessment shall be \$7,500 ~~\$5,000~~.

14 (5) Every warehouseman shall pay an assessment when  
15 increasing available permanent storage capacity in an  
16 amount equal to \$0.001 multiplied by the total number of  
17 bushels to be added to permanent storage capacity. The  
18 minimum assessment on any increase in permanent storage  
19 capacity shall be \$50 and the maximum assessment shall be  
20 \$20,000. The assessment based upon an increase in  
21 permanent storage capacity shall be paid at or before the  
22 time of approval of the increase in permanent storage  
23 capacity. This assessment on the increased permanent  
24 storage capacity does not relieve the warehouseman of any  
25 assessments as set forth in subsection (d) of this  
26 Section.

27 (6) Every warehouseman shall pay an assessment of  
28 \$0.0005 per bushel when increasing available storage  
29 capacity by use of temporary storage space. The minimum  
30 assessment on temporary storage space shall be \$100. The  
31 assessment based upon temporary storage space shall be  
32 paid at or before the time of approval of the amount of  
33 the temporary storage space. This assessment on the  
34 temporary storage space capacity does not relieve the

1 warehouseman of any assessments as set forth in  
2 subsection (d) of this Section.

3 (7) Every warehouseman shall pay an assessment of  
4 \$0.001 per bushel of emergency storage space. The  
5 minimum assessment on any emergency storage space shall  
6 be \$100. The assessment based upon emergency storage  
7 space shall be paid at or before the time of approval of  
8 the amount of the emergency storage space. This  
9 assessment on the emergency storage space does not  
10 relieve the warehouseman of any assessments as set forth  
11 in subsection (d) of this Section.

12 (8) The second and third installments shall be paid  
13 to the Department within 60 days after the date posted on  
14 the written notice of assessment. The Department shall  
15 immediately deposit all paid installments into the Fund.

16 (d) Grain dealer subsequent assessments; warehouseman  
17 subsequent assessments Subsequent-assessments.

18 (1) Subject to paragraph (4) of this subsection  
19 (d), if on the first working day of a calendar quarter  
20 when a licensee is not already subject to an assessment  
21 under this subsection (d) (the assessment determination  
22 date), if the equity in the Fund is less than \$6,000,000  
23 below-\$3,000,000-on-September--1st--of--any--year, every  
24 grain dealer who has, or was required to have, already  
25 paid the newly licensed first,--second,---and---third  
26 assessments shall be assessed by the Department in a  
27 total an amount equal to:

28 (A) \$0.0000725 multiplied by the total value  
29 of grain purchases for the grain dealer's last  
30 completed fiscal year prior to the assessment  
31 determination date as shown in the final financial  
32 statement for that year provided to the Department  
33 under Section 5-20; and

34 (B) \$0.0001275 multiplied by that portion of

1 the value of grain purchases for the grain dealer's  
 2 last completed fiscal year prior to the assessment  
 3 determination date that exceeds the adjusted equity  
 4 of the licensee multiplied by 20, as shown on the  
 5 final financial statement for the licensee's last  
 6 completed fiscal year provided to the Department  
 7 under Section 5-20.

8 The minimum total amount for the grain dealer's a  
 9 subsequent assessment shall be ~~\$250~~ \$500 per 12-month  
 10 period year and the maximum amount shall be ~~\$7,500~~ \$5,000  
 11 per 12-month period year. For the purposes of grain  
 12 dealer assessments under this item (1) of subsection (d)  
 13 of this Section, the total value of grain purchases shall  
 14 be the total value of first time grain purchases by  
 15 Illinois locations from producers.

16 (2) Subject to paragraph (4) of this subsection  
 17 (d), if on the first working day of a calendar quarter  
 18 when a licensee is not subject to an assessment under  
 19 this subsection (d) (the assessment determination date),  
 20 if the equity in the Fund is less than \$6,000,000 below  
 21 ~~\$3,000,000--on--September--1st---of---any---year,~~ every  
 22 warehouseman who has, or was required to have, already  
 23 paid the newly licensed ~~first,--second,---and---third~~  
 24 assessments shall be assessed a warehouseman subsequent  
 25 assessment by the Department in a total an amount equal  
 26 to:

27 (A) \$0.000425 multiplied by the total licensed  
 28 storage capacity of the warehouseman as of the first  
 29 day of September that immediately precedes the  
 30 assessment determination date ~~1st-of-that-year;~~ and

31 (B) \$0.000495 multiplied by that portion of  
 32 the licensed storage capacity of the warehouseman as  
 33 of the first day of September that immediately  
 34 precedes the assessment determination date ~~1st-of~~



1           that-year that exceeds the adjusted equity of the  
2           licensee multiplied by 5, as shown on the final  
3           financial statement for the licensee's last  
4           completed fiscal year provided to the Department  
5           under Section 5-20.

6           The minimum total amount for a warehouseman  
7           subsequent assessment shall be \$250 ~~\$500~~ per 12-month  
8           period year and the maximum amount shall be \$7,500 ~~\$5,000~~  
9           per 12-month period year.

10           (3) Subject to paragraph (4) of this subsection  
11           (d), if the equity in the Fund is below \$6,000,000 on the  
12           first working day of a calendar quarter when a licensee  
13           is not already subject to an assessment under this  
14           subsection (d) (the assessment determination date), every  
15           incidental grain dealer who has, or was required to have,  
16           already paid all 3 installments of the newly licensed  
17           assessments shall be assessed by the Department in a  
18           total amount equal to \$100. It shall be paid to the  
19           Department within 60 days after the date posted on the  
20           written notification by the Department, which shall be  
21           sent after the first day of the calendar quarter  
22           immediately following the assessment determination date.

23           (4) Following the payment of the final quarterly  
24           installment by grain dealers and warehousemen, the next  
25           assessment determination date can be no sooner than the  
26           first working day of the sixth full calendar month  
27           following the payment.

28           (5) All assessments under paragraphs (1) and (2) of  
29           this subsection (d) shall be effective as of the first  
30           day of the calendar quarter immediately following the  
31           assessment determination date and shall be paid to the  
32           Department by licensees in 4 equal installments by the  
33           twentieth day of each consecutive calendar quarter  
34           following notice by the Department of the assessment. The

1        Department shall give written notice to all licensees of  
2        when the assessment is effective, and the rate of the  
3        assessment, by mail within 20 days after the assessment  
4        determination date.

5        (6) After an assessment under paragraph (1) and (2)  
6        of this subsection (d) is instituted, the amount of any  
7        unpaid installments for the assessment shall not be  
8        adjusted based upon any change in the financial  
9        statements or licensed storage capacity of a licensee.

10       (7) If the due date for the payment by a licensee  
11       of the third assessment under subsections (b) and (c) of  
12       this Section 5-30 is after the assessment determination  
13       date, that licensee shall not be subject to any of the 4  
14       installments of an assessment under paragraphs (1) and  
15       (2) of this subsection (d).

16       (8) The Department shall immediately deposit all  
17       paid assessments into the Fund. If the due date for the  
18       payment by a licensee of the third assessment is after  
19       September 1st in a year when the equity in the Fund is  
20       below \$3,000,000, that licensee shall not be subject to a  
21       subsequent assessment for that year.

22       (e) Newly licensed; exemptions.

23       (1) For the purpose of assessing fees for the Fund  
24       under subsection (a) of this Section, and subject to the  
25       provisions of item (e)(2) of this Section, the Department  
26       shall consider the following to be newly licensed:

27                (A) A person that becomes a licensee for the  
28                first time after the effective date of this Code.

29                (B) A licensee who has a lapse in licensing of  
30                more than 30 days. A license shall not be  
31                considered to be lapsed after its revocation or  
32                termination if an administrative or judicial action  
33                is pending or if an order from an administrative or  
34                judicial body continues an existing license.

1           (C) A grain dealer that is a general  
2 partnership in which there is a change in  
3 partnership interests and that change is greater  
4 than 50% during the partnership's fiscal year.

5           (D) A grain dealer that is a limited  
6 partnership in which there is a change in the  
7 controlling interest of a general partner and that  
8 change is greater than 50% of the total controlling  
9 interest during the limited partnership's fiscal  
10 year.

11           (E) A grain dealer that is a limited liability  
12 company in which there is a change in membership  
13 interests and that change is greater than 50% during  
14 the limited liability company's fiscal year.

15           (F) A grain dealer that is the result of a  
16 statutory consolidation if that person has adjusted  
17 equity of less than 90% of the combined adjusted  
18 equity of the predecessor persons who consolidated.  
19 For the purposes of this paragraph, the adjusted  
20 equity of the resulting person shall be determined  
21 from the approved or certified financial statement  
22 submitted to the Department for the first fiscal  
23 year of the resulting person. For the purpose of  
24 this paragraph, the combined adjusted equity of the  
25 predecessor persons shall be determined by combining  
26 the adjusted equity of each predecessor person as  
27 set forth in the most recent approved or certified  
28 financial statement of each predecessor person  
29 submitted to the Department.

30           (G) A grain dealer that is the result of a  
31 statutory merger if that person has adjusted equity  
32 of less than 90% of the combined adjusted equity of  
33 the predecessor persons who merged. For the  
34 purposes of this paragraph, the adjusted equity of

1 the resulting person shall be determined from the  
2 approved or certified financial statement submitted  
3 to the Department for the first fiscal year of the  
4 resulting person ending after the merger. For the  
5 purposes of this paragraph, the combined adjusted  
6 equity of the predecessor persons shall be  
7 determined by combining the adjusted equity of each  
8 predecessor person as set forth in the most recent  
9 approved or certified financial statement submitted  
10 to the Department for the last fiscal year of each  
11 predecessor person ending on the date of or before  
12 the merger.

13 (H) A grain dealer that is a general  
14 partnership in which there is a change in  
15 partnership interests and that change is 50% or less  
16 during the partnership's fiscal year if the adjusted  
17 equity of the partnership after the change is less  
18 than 90% of the adjusted equity of the partnership  
19 before the change. For the purpose of this  
20 paragraph, the adjusted equity of the partnership  
21 after the change shall be determined from the  
22 approved or certified financial statement submitted  
23 to the Department for the first fiscal year ending  
24 after the change. For the purposes of this  
25 paragraph, the adjusted equity of the partnership  
26 before the change shall be determined from the  
27 approved or certified financial statement submitted  
28 to the Department for the last fiscal year of the  
29 partnership ending on the date of or before the  
30 change.

31 (I) A grain dealer that is a limited  
32 partnership in which there is a change in the  
33 controlling interest of a general partner and that  
34 change is 50% or less of the total controlling

1 interest during the partnership's fiscal year if the  
2 adjusted equity of the partnership after the change  
3 is less than 90% of the adjusted equity of the  
4 partnership before the change. For the purposes of  
5 this paragraph, the adjusted equity of the  
6 partnership after the change shall be determined  
7 from the approved or certified financial statement  
8 submitted to the Department for the first fiscal  
9 year ending after the change. For the purposes of  
10 this paragraph, the adjusted equity of the  
11 partnership before the change shall be determined  
12 from the approved or certified financial statement  
13 submitted to the Department for the last fiscal year  
14 of the partnership ending on the date of or before  
15 the change.

16 (J) A grain dealer that is a limited liability  
17 company in which there is a change in membership  
18 interests and that change is 50% or less of the  
19 total membership interests during the limited  
20 liability company's fiscal year if the adjusted  
21 equity of the limited liability company after the  
22 change is less than 90% of the adjusted equity of  
23 the limited liability company before the change.  
24 For the purposes of this paragraph, the adjusted  
25 equity of the limited liability company after the  
26 change shall be determined from the approved or  
27 certified financial statement submitted to the  
28 Department for the first fiscal year ending after  
29 the change. For the purposes of this paragraph, the  
30 adjusted equity of the limited liability company  
31 before the change shall be determined from the  
32 approved or certified financial statement submitted  
33 to the Department for the last fiscal year of the  
34 limited liability company ending on the date of or

1 before the change.

2 (K) A grain dealer that is the result of a  
3 statutory consolidation or merger if one or more of  
4 the predecessor persons that consolidated or merged  
5 into the resulting grain dealer was not a licensee  
6 under this Code at the time of the consolidation or  
7 merger.

8 (2) For the purpose of assessing fees for the Fund  
9 as set forth in subsection (a) of this Section, the  
10 Department shall consider the following as not being  
11 newly licensed and, therefore, exempt from further  
12 assessment unless an assessment is required by subsection  
13 (d) of this Section:

14 (A) A person resulting solely from a name  
15 change of a licensee.

16 (B) A warehouseman changing from a Class I  
17 warehouseman to a Class II warehouseman or from a  
18 Class II warehouseman to a Class I warehouseman  
19 under this Code.

20 (C) A licensee that becomes a wholly owned  
21 subsidiary of another licensee.

22 (D) Subject to item (e)(1)(K) of this Section,  
23 a person that is the result of a statutory  
24 consolidation if that person has adjusted equity  
25 greater than or equal to 90% of the combined  
26 adjusted equity of the predecessor persons who  
27 consolidated. For the purposes of this paragraph,  
28 the adjusted equity of the resulting person shall be  
29 determined from the approved or certified financial  
30 statement submitted to the Department for the first  
31 fiscal year of the resulting person. For the purpose  
32 of this paragraph, the combined adjusted equity of  
33 the predecessor persons shall be determined by  
34 combining the adjusted equity net--worth of each

1 predecessor person as set forth in the most recent  
2 approved or certified financial statement of each  
3 predecessor person submitted to the Department.

4 (E) Subject to item (e)(1)(K) of this Section,  
5 a person that is the result of a statutory merger if  
6 that person has adjusted equity greater than or  
7 equal to 90% of the combined adjusted equity of the  
8 predecessor persons who merged. For the purposes of  
9 this paragraph, the adjusted equity of the resulting  
10 person shall be determined from the approved or  
11 certified financial statement submitted to the  
12 Department for the first fiscal year of the  
13 resulting person ending after the merger. For the  
14 purposes of this paragraph, the combined adjusted  
15 equity of the predecessor persons shall be  
16 determined by combining the adjusted equity of each  
17 predecessor person as set forth in the most recent  
18 approved or certified financial statement, submitted  
19 to the Department for the last fiscal year of each  
20 predecessor person ending on the date of or before  
21 the merger.

22 (F) A general partnership in which there is a  
23 change in partnership interests and that change is  
24 50% or less during the partnership's fiscal year and  
25 the adjusted equity of the partnership after the  
26 change is greater than or equal to 90% of the  
27 adjusted equity of the partnership before the  
28 change. For the purposes of this paragraph, the  
29 adjusted equity of the partnership after the change  
30 shall be determined from the approved or certified  
31 financial statement submitted to the Department for  
32 the first fiscal year ending after the change. For  
33 the purposes of this paragraph, the adjusted equity  
34 of the partnership before the change shall be

1           determined from the approved or certified financial  
2           statement submitted to the Department for the last  
3           fiscal year of the partnership ending on the date of  
4           or before the change.

5           (G) A limited partnership in which there is a  
6           change in the controlling interest of a general  
7           partner and that change is 50% or less of the total  
8           controlling interest during the partnership's fiscal  
9           year and the adjusted equity of the partnership  
10          after the change is greater than or equal to 90% of  
11          the adjusted equity of the partnership before the  
12          change. For the purposes of this paragraph, the  
13          adjusted equity of the partnership after the change  
14          shall be determined from the approved or certified  
15          financial statement submitted to the Department for  
16          the first fiscal year ending after the change. For  
17          the purposes of this paragraph, the adjusted equity  
18          of the partnership before the change shall be  
19          determined from the approved or certified financial  
20          statement submitted to the Department for the last  
21          fiscal year of the partnership ending on the date of  
22          or before the change.

23          (H) A limited liability company in which there  
24          is a change in membership interests and that change  
25          is 50% or less of the total membership interests  
26          during the limited liability company's fiscal year  
27          if the adjusted equity of the limited liability  
28          company after the change is greater than or equal to  
29          90% of the adjusted equity of the limited liability  
30          company before the change. For the purposes of this  
31          paragraph, the adjusted equity of the limited  
32          liability company after the change shall be  
33          determined from the approved or certified financial  
34          statement submitted to the Department for the first



1 fiscal year ending after the change. For the  
2 purposes of this paragraph, the adjusted equity of  
3 the limited liability company before the change  
4 shall be determined from the approved or certified  
5 financial statement submitted to the Department for  
6 the last fiscal year of the limited liability  
7 company ending on the date of or before the change.

8 (I) A licensed warehouseman that is the result  
9 of a statutory merger or consolidation to the extent  
10 the combined storage capacity of the resulting  
11 warehouseman has been assessed under this Code  
12 before the statutory merger or consolidation, except  
13 that any storage capacity of the resulting  
14 warehouseman that has not previously been assessed  
15 under this Code shall be assessed as provided in  
16 items (c)(5), (c)(6), and (c)(7) of this Section.

17 (J) A federal warehouseman who participated in  
18 the Fund under Section 30-10 and who subsequently  
19 received an Illinois license to the extent the  
20 storage capacity of the warehouseman was assessed  
21 under this Code prior to Illinois licensing.

22 (f) Grain seller initial assessments and regular  
23 assessments. Assessments under this subsection (f) apply only  
24 to the first sale of grain to a grain dealer at an Illinois  
25 location.

26 (1) The grain seller initial assessment period is  
27 that period of time beginning on the effective date of  
28 this amendatory Act of the 93rd General Assembly and  
29 ending on the first assessment determination date  
30 thereafter when the equity in the fund is at least  
31 \$6,000,000.

32 (2) Subject to paragraph (3) of this subsection (f)  
33 (i) if during the grain seller initial assessment period  
34 the equity in the Fund is less than \$3,000,000 or (ii) if

1 at any time after the grain seller initial assessment  
2 period the equity in the Fund is less than \$2,000,000, on  
3 the first working day of a calendar quarter when a grain  
4 seller is not already subject to an assessment under this  
5 subsection (f) (the assessment determination date), each  
6 person who settles for grain (sold to a grain dealer at  
7 an Illinois location) during the 12-month period  
8 commencing on the first day of the succeeding calendar  
9 quarter (the assessment period) shall pay an assessment  
10 equal to \$0.0004 multiplied by the net market value of  
11 grain settled for (payment received for grain sold).

12 (3) The next assessment determination date can be  
13 no sooner than the first working day of the fourth full  
14 calendar month following the end of the assessment  
15 period.

16 (4) "Net market value" of grain means the gross  
17 sales price of that grain adjusted by application of the  
18 grain dealer's discount schedule in effect at the time of  
19 sale and after deduction of any statutory commodity  
20 check-offs. Other charges such as storage charges, drying  
21 charges, and transportation costs shall not be deducted  
22 in arriving at the net market value of grain sold to a  
23 grain dealer. The net market value of grain shall be  
24 determined from the settlement sheet or other applicable  
25 written evidence of the sale of grain to the grain  
26 dealer.

27 (5) All assessments under this subsection (f) shall  
28 commence on the first day of the calendar quarter  
29 immediately following the assessment determination date  
30 and shall continue for a period of 12 consecutive  
31 calendar months. The assessments shall be collected by  
32 licensees at the time of settlement during the assessment  
33 period, and shall be remitted by licensees to the  
34 Department by the twentieth day of each calendar quarter,

1 commencing with the second calendar quarter following the  
2 assessment determination date. The Department shall give  
3 written notice to all licensees of when an assessment  
4 under this subsection (f) is to begin and end, and the  
5 appropriate level of the assessment, by mail within 20  
6 days after the assessment determination date.

7 (6) Assessments under this subsection (f) apply  
8 only to grain for which settlement is made during the  
9 assessment period, without regard to the date the grain  
10 was sold to the licensee.

11 (7) The collection and remittance of assessments  
12 from first sellers of grain under this subsection (f) is  
13 the sole responsibility of the licensees to whom the  
14 grain is sold. Sellers of grain shall not be penalized by  
15 reason of any licensee's failure to comply with this  
16 subsection (f). Failure of a licensee to collect any  
17 assessment shall not relieve the grain seller from paying  
18 the assessment, and the grain seller shall promptly remit  
19 the uncollected assessments upon demand by the licensee,  
20 which may be accounted for in settlement of grain  
21 subsequently sold to that licensee. Licensees who do not  
22 collect assessments as required by this subsection (f),  
23 or who do not remit those assessments to the Department  
24 within the time deadlines required by this subsection  
25 (f), shall remit the amount of the assessments that  
26 should have been remitted to the Department and in  
27 addition shall be subject to a monetary penalty in an  
28 amount not to exceed \$1,000.

29 (8) Notwithstanding the other provisions of this  
30 subsection (f), no assessment shall be levied against  
31 grain sold by the Department as a result of a failure.

32 (g) Lender assessments.

33 (1) Subject to the provisions of this subsection  
34 (g), if on the first working day of a calendar quarter

1 when a person is not already subject to an assessment  
2 under this subsection (g) the equity in the Fund is less  
3 than \$6,000,000, each person holding warehouse receipts  
4 issued from an Illinois location on grain owned or stored  
5 by a licensee to secure a loan to that licensee shall be  
6 assessed a quarterly lender assessment for each of 4  
7 consecutive calendar quarters beginning with the calendar  
8 quarter next succeeding the assessment determination  
9 date.

10 (2) Each quarterly lender assessment shall be at the  
11 rate of \$0.00000055 per bushel per day for bushels  
12 covered by a warehouse receipt held as security for the  
13 loan during that calendar quarter times the applicable  
14 commodity price times the lender assessment multiplier,  
15 if any, determined by the Department in accordance with  
16 paragraph (3) of this subsection (g). With respect to  
17 each calendar quarter within the assessment period, the  
18 "applicable commodity price" shall be the closing price  
19 paid by the licensee on the last working day of that  
20 calendar quarter for the base commodity for which the  
21 warehouse receipt was issued.

22 (3) With respect to the second assessment period  
23 beginning after June 30, 2003, the Department shall  
24 determine and apply a lender assessment multiplier equal  
25 to 250,000 divided by the aggregate dollar amount of  
26 lender assessments imposed under this subsection (g)  
27 under the first assessment period beginning after June  
28 30, 2003. With respect to the third assessment period  
29 beginning after June 30, 2003, the Department shall  
30 determine and apply a lender assessment multiplier equal  
31 to 250,000 divided by the average of aggregate dollar  
32 amounts of lender assessments imposed under this  
33 subsection (g) under the first 2 assessment periods  
34 beginning after June 30, 2003. With respect to assessment

1 periods thereafter, the Department shall determine and  
2 apply a lender assessment multiplier equal to 250,000  
3 divided by the average of the 3 most recent aggregate  
4 dollar amounts of lender assessments imposed under this  
5 subsection (g).

6 (4) The next assessment determination date can be no  
7 sooner than the first working day of the fourth full  
8 calendar month following the end of the assessment  
9 period.

10 (5) The Department shall give written notice by mail  
11 within 20 days after the assessment determination date to  
12 all licensees of when assessments under this subsection  
13 (g) are to begin and end, the rate of the lender  
14 assessment, and the lender assessment multiplier, if any,  
15 that shall apply.

16 (6) It is the responsibility of a licensee to inform  
17 each of its lenders and other persons by virtue of whose  
18 relationship with the licensee this subsection (g) will  
19 apply as to the onset of an assessment for which that  
20 person might be liable and the applicable lender  
21 assessment multiplier, if any. The notification must be  
22 in writing and, as to persons subject to assessment under  
23 this subsection (g) on the assessment determination date,  
24 must be sent no later than 20 days after the licensee  
25 receives notice of an assessment from the Department. As  
26 to persons not subject to assessment under this  
27 subsection (g) as of the assessment determination date,  
28 the notice shall be sent or given no later than the  
29 closing of any transaction subsequent to the assessment  
30 determination date involving the licensee and by virtue  
31 of which transaction the person is made subject to  
32 assessment under this subsection (g).

33 (7) Within 20 days after the end of each calendar  
34 quarter within the assessment period, each licensee shall

1 send to each lender with which it has been associated  
2 during that calendar quarter and to the Department a  
3 written notice of quarterly assessment together with the  
4 information needed to determine the amount of the  
5 quarterly assessment owing with respect to loans from  
6 that lender. This information shall include the number of  
7 bushels covered by each warehouse receipt, organized by  
8 commodity, held as security for the loan owing to that  
9 lender, the number of days each of those warehouse  
10 receipts was outstanding during that calendar quarter,  
11 the applicable commodity price, the applicable lender  
12 assessment multiplier, the amount of the resulting  
13 quarterly lender assessment, and the due date of the  
14 quarterly assessment.

15 (8) Each quarterly assessment shall be due and paid  
16 by the lender or its designee to the Department within 20  
17 days after the end of the calendar quarter to which the  
18 assessment pertains.

19 (9) Lenders shall not be penalized by reason of any  
20 licensee's failure to comply with this subsection (g).  
21 Failure of a licensee to comply with this subsection (g)  
22 shall not relieve the lender from paying the assessment,  
23 and the lender shall promptly remit the uncollected  
24 assessments by the due date as set forth in the notice  
25 from the licensee.

26 (10) This subsection (g) applies to any person who  
27 holds a grain warehouse receipt issued by a licensee from  
28 an Illinois location pursuant to any transaction,  
29 regardless of its form, that creates a security interest  
30 in the grain including, without limitation, the advancing  
31 of money or other value to or for the benefit of a  
32 licensee upon the licensee's issuance or negotiation of a  
33 grain warehouse receipt and pursuant to or in connection  
34 with an agreement between the licensee and a

1       counter-party for the repurchase of the grain by the  
 2       licensee or designee of the licensee. For purposes of  
 3       this subsection (g), any such transaction shall be  
 4       treated as one in which grain is held as security for a  
 5       loan outstanding to a licensee within the meaning of this  
 6       subsection (g), and such a person shall be treated as a  
 7       lender.

8           (11) The Department shall immediately deposit all  
 9       paid assessments under this subsection (g) into the Fund.

10       (h) Equity in the Fund shall exclude moneys owing to the  
 11       State or the Reserve Fund as a result of transfers to the  
 12       Fund from the General Revenue Fund or the Reserve Fund under  
 13       subsection (h) of Section 25-20. Notwithstanding the  
 14       foregoing, for purposes of calculating equity in the Fund  
 15       during the grain seller initial assessment period and  
 16       assessing grain sellers, it shall be presumed that the State  
 17       is owed, prior to repayment, only \$2,000,000 and the Reserve  
 18       Fund contains a balance of \$2,000,000. Under no  
 19       circumstances, however, shall there be more than 2  
 20       consecutive grain seller assessments during the initial  
 21       assessment period, unless there is a failure that reduces the  
 22       equity in the Fund to below \$3,000,000. Except-for-the-first  
 23       assessment-made-under-this--Section,--and--assessments--under  
 24       items--(e)(5),--(e)(6),--and--(e)(7)--of--this--Section,--all  
 25       assessments--shall--be--paid--to--the--Department--within--60--days  
 26       after--the--date--posted--on--the--written--notice--of--assessment.  
 27       The--Department--shall--forward--all--paid--assessments--to--the  
 28       Fund.

29       (Source: P.A. 91-213, eff. 7-20-99.)

30           (240 ILCS 40/10-5)

31           Sec. 10-5. Duties and requirements of licensees.

32           (a) Each licensee shall have adequate property insurance  
 33       covering grain in its possession or custody and adequate

1 liability, property, theft, hazard, and workers' compensation  
2 insurance.

3 (1) Every insurance policy shall contain a  
4 provision that it will not be cancelled by the principal  
5 or the insurance company except on 60 days prior written  
6 notice to the Director and the principal insured.  
7 Cancellation of the policy does not affect the liability  
8 accrued or that may accrue under the policy before the  
9 expiration of the 60 days. The notice shall contain the  
10 termination date.

11 (2) Each licensee shall keep a general insurance  
12 account showing the policy number, issuing company,  
13 amount, binding date, and expiration date of insurance  
14 coverage and the property covered by insurance.

15 (3) In reference to a warehouseman, notwithstanding  
16 any provision to the contrary contained in the warehouse  
17 receipts involved, a warehouseman is not obligated to  
18 provide property insurance on Commodity Credit  
19 Corporation grain ("CCC-owned grain"). The warehouseman,  
20 however, shall continue to carry the insurance required  
21 on loan grain that becomes CCC-owned grain until the date  
22 stated in a written notice from CCC or its agent  
23 instructing the warehouseman to cancel the insurance on  
24 the grain as of that date. If CCC-owned grain is not  
25 covered by property insurance, recovery by the Commodity  
26 Credit Corporation from the Fund shall be reduced by the  
27 amount of property insurance proceeds that would have  
28 been available to cover any loss to CCC-owned grain had  
29 the CCC-owned grain been covered by property insurance.

30 (b) A licensee shall immediately notify the Department  
31 when there is a change of management or cessation of  
32 operations or change in fiscal year end.

33 (c) All grain trades, grain merchandising transactions,  
34 grain origination plans and programs, and transactions or



1 arrangements that represent or reflect rights and obligations  
2 in grain must be clearly identified and disclosed in the  
3 books and records of the licensee, for audit and examination  
4 purposes.

5 (Source: P.A. 89-287, eff. 1-1-96.)

6 (240 ILCS 40/10-10)

7 Sec. 10-10. Duties and requirements of grain dealers.

8 (a) Long and short market position.

9 (1) Grain dealers shall at all times maintain an  
10 accurate and current long and short market position  
11 record for each grain commodity. The position record  
12 shall at a minimum contain the net position of all grain  
13 owned, wherever located, grain purchased and sold, and  
14 any grain option contract purchased or sold.

15 (2) Grain dealers, except grain dealers regularly  
16 and continuously reporting to the Commodity Futures  
17 Trading Commission or grain dealers who have obtained the  
18 permission of the Department to have different open long  
19 or short market positions, may maintain an open position  
20 in the grain commodity of which the grain dealer buys the  
21 greatest number of bushels per fiscal year not to exceed  
22 one bushel for each \$10 of adjusted equity at fiscal year  
23 end up to a maximum open position of 50,000 bushels and  
24 one-half that number of bushels up to 25,000 bushels for  
25 all other grain commodities that the grain dealer buys. A  
26 grain dealer, however, may maintain an open position of  
27 up to 5,000 bushels for each grain commodity the grain  
28 dealer buys.

29 (b) The license issued by the Department to a grain  
30 dealer shall be posted in the principal office of the  
31 licensee in this State. A certificate shall be posted in  
32 each location where the licensee engages in business as a  
33 grain dealer. In the case of a licensee operating a truck or

1 tractor trailer unit for the purpose of purchasing grain, the  
2 licensee shall have a certificate carried in each truck or  
3 tractor trailer unit used in connection with the licensee's  
4 grain dealer business.

5 (c) The licensee must have at all times sufficient  
6 financial resources to pay producers on demand for grain  
7 purchased from them.

8 (d) A licensee that is solely a grain dealer shall on a  
9 daily basis maintain an accurate and current daily grain  
10 transaction report.

11 (e) A licensee that is both a grain dealer and a  
12 warehouseman shall at all times maintain an accurate and  
13 current daily position record.

14 (f) In the case of a change of ownership of a grain  
15 dealer, the obligations of a grain dealer do not cease until  
16 the grain dealer has surrendered all unused price later  
17 contracts to the Department and the successor has executed a  
18 successor's agreement that is acceptable to the Department,  
19 or the successor has otherwise provided for the grain  
20 obligations of its predecessor in a manner that is acceptable  
21 to the Department.

22 (g) If a grain dealer proposes to cease doing business  
23 as a grain dealer and there is no successor, it is the duty  
24 of the grain dealer to surrender all unused price later  
25 contracts to the Department, together with an affidavit  
26 accounting for all grain dealer obligations setting forth the  
27 arrangements made with producers for final disposition of the  
28 grain dealer obligations and indicating the procedure for  
29 payment in full of all outstanding grain obligations. It is  
30 the duty of the Department to give notice by publication that  
31 a grain dealer has ceased doing business without a successor.  
32 After payment in full of all outstanding grain obligations,  
33 it is the duty of the grain dealer to surrender its license.

34 (Source: P.A. 91-213, eff. 7-20-99.)

1 (240 ILCS 40/10-15)

2 Sec. 10-15. Price later contracts.

3 (a) Price later contracts shall be written on forms  
4 prescribed or authorized by the Department. Price later  
5 contract forms shall be printed by a person authorized to  
6 print those contracts by the Department after that person has  
7 agreed to comply with each of the following:

8 (1) That all price later contracts shall be printed  
9 as prescribed by the Department and shall be printed  
10 only for a licensed grain dealer.

11 (2) That all price later contracts shall be  
12 numbered consecutively and a complete record of these  
13 contracts shall be retained showing for whom printed and  
14 the consecutive numbers printed on the contracts.

15 (3) That a duplicate copy of all invoices rendered  
16 for printing price later contracts that will show the  
17 consecutive numbers printed on the contracts, and the  
18 number of contracts printed, shall be promptly forwarded  
19 to the Department.

20 (4) that the person shall register with the  
21 Department and pay an annual registration fee of \$100 to  
22 print price later contracts.

23 (b) A grain dealer purchasing grain by price later  
24 contract shall at all times own grain, rights in grain,  
25 proceeds from the sale of grain, and other assets acceptable  
26 to the Department as set forth in this Code totaling 90% of  
27 the unpaid balance of the grain dealer's obligations for  
28 grain purchased by price later contract. That amount shall  
29 at all times remain unencumbered and shall be represented by  
30 the aggregate of the following:

31 (1) Grain owned by the grain dealer valued by means  
32 of the hedging procedures method that includes marking  
33 open contracts to market.

34 (2) Cash on hand.

1           (3) Cash held on account in federally or State  
2 licensed financial institutions.

3           (4) Investments held in time accounts with  
4 federally or State licensed financial institutions.

5           (5) Direct obligations of the U.S. government.

6           (6) Funds on deposit in grain margin accounts.

7           (7) Balances due or to become due to the licensee  
8 on price later contracts.

9           (8) Marketable securities, including mutual funds.

10          (9) Irrevocable letters of credit in favor of the  
11 Department and acceptable to the Department.

12          (10) Price later contract service charges due or to  
13 become due to the licensee.

14          (11) Other evidence of proceeds from or of grain  
15 that is acceptable to the Department.

16          (c) For the purpose of computing the dollar value of  
17 grain and the balance due on price later contract  
18 obligations, the value of grain shall be figured at the  
19 current market price.

20          (d) Title to grain sold by price later contract shall  
21 transfer to a grain dealer at the time ~~on-the-date~~ of  
22 delivery of the grain. Therefore, no storage charges shall  
23 be made with respect to grain purchased by price later  
24 contract. A service charge for handling the contract,  
25 however, may be made.

26          (e) Subject to subsection (f) of this Section, if a  
27 price later contract is not signed by all parties within 30  
28 days of the last date of delivery of grain intended to be  
29 sold by price later contract, then the grain intended to be  
30 sold by price later contract shall be priced on the next  
31 business day after 30 days from the last date of delivery of  
32 grain intended to be sold by price later contract at the  
33 market price of the grain at the close of the next business  
34 day after the 29th day. When the grain is priced under this

1 subsection, the grain dealer shall send notice to the seller  
2 of the grain within 10 days. The notice shall contain the  
3 number of bushels sold, the price per bushel, all applicable  
4 discounts, the net proceeds, and a notice that states that  
5 the Grain Insurance Fund shall provide protection for a  
6 period of only 160 days from the date of pricing of the  
7 grain.

8 In the event of a failure, if a price later contract is  
9 not signed by all the parties to the transaction, the  
10 Department may consider the grain to be sold by price later  
11 contract if a preponderance of the evidence indicates the  
12 grain was to be sold by price later contract.

13 (f) If grain is in storage with a warehouseman and is  
14 intended to be sold by price later contract, that grain shall  
15 be considered as remaining in storage and not be deemed sold  
16 by price later contract until the date the price later  
17 contract is signed by all parties.

18 (g) Scale tickets or other approved documents with  
19 respect to grain purchased by a grain dealer by price later  
20 contract shall contain the following: "Sold Grain; Price  
21 Later".

22 (h) Price later contracts shall be issued consecutively  
23 and recorded by the grain dealer as established by rule.

24 (i) A licensee grain-dealer shall not issue a collateral  
25 warehouse receipt on grain purchased by a price later  
26 contract to the extent the purchase price has not been paid  
27 by the licensee grain-dealer.

28 (j) Failure to comply with the requirements of this  
29 Section may result in suspension of the privilege to purchase  
30 grain by price later contract for up to one year.

31 When a producer with a price later contract selects  
32 a price for all or any part of the grain represented by that  
33 contract, then within 5 business days after that price  
34 selection, the licensee shall mail to that producer a

1 confirmation of the price selection, clearly and succinctly  
2 indicating the price selected.

3 (Source: P.A. 91-213, eff. 7-20-99.)

4 (240 ILCS 40/10-20)

5 Sec. 10-20. Duties and requirements of warehouseman.

6 (a) It is the duty of every warehouseman to receive for  
7 storage any grain that may be tendered to it in the ordinary  
8 course of business so far as the licensed storage capacity of  
9 the warehouse permits and if the grain is of a kind  
10 customarily stored by the warehouseman and is in suitable  
11 condition for storage.

12 (1) If the condition of grain offered for storage  
13 might adversely affect the condition of grain in the  
14 warehouse, a warehouseman need not receive the grain for  
15 storage, but if a warehouseman does receive the grain,  
16 then it must be stored in a manner that will not lower  
17 the grade of other grain in the warehouse.

18 (2) A warehouseman shall provide competent  
19 personnel and equipment to weigh and grade all grain in  
20 and out of storage.

21 (3) A warehouseman shall maintain all licensed  
22 warehouse facilities in a manner suitable to preserve the  
23 quality and quantity of grain stored.

24 (b) For the purposes of the Department's examinations, a  
25 warehouseman shall provide and maintain safe and adequate  
26 means of ingress and egress to the various and surrounding  
27 areas of the facilities, storage bins, and compartments of  
28 the warehouse.

29 (c) Except as provided in this item (c), a warehouseman  
30 shall at all times have a sufficient quantity of grain of  
31 like kind and quality to meet its outstanding storage  
32 obligations. For purposes of this Section, "like kind and  
33 quality" means the type of commodity and a combination of

1 grade, specialty traits, if any, and class or sub-class as  
2 applicable.

3 (d) A warehouseman shall not store grain in excess of  
4 the capacity for which it is licensed.

5 (e) A warehouseman may redeposit grain from its  
6 warehouse with another warehouseman or a federal warehouseman  
7 in an additional quantity not to exceed the licensed storage  
8 capacity of its own warehouse.

9 (1) If grain is redeposited as provided in this  
10 Section, a warehouseman must retain the receipt it  
11 obtains from the second warehouseman as proof of the  
12 redeposit and retain sufficient control over the  
13 redeposited grain as is necessary to comply with  
14 directions of the original depositor regarding  
15 disposition of the redeposited grain.

16 (2) While grain is en route from the redepositing  
17 warehouseman to the second warehouseman, a redepositing  
18 warehouseman must retain an original or a duplicate bill  
19 of lading instead of and until such time as it obtains  
20 possession of the warehouse receipt as proof of  
21 disposition of the redeposited grain.

22 (f) Schedule of rates and licenses.

23 (1) A warehouseman shall file its schedule of rates  
24 with the Department and shall post its warehouse license  
25 and a copy of the schedule of rates on file with the  
26 Department in a conspicuous place in each location of the  
27 warehouseman where grain is received.

28 (2) The schedule of rates shall be on a form  
29 prescribed by the Department and shall include the names  
30 and genuine signatures of all persons authorized to sign  
31 warehouse receipts issued by the warehouseman.

32 (3) To change the schedule of rates or the name of  
33 any person authorized to sign warehouse receipts, a  
34 warehouseman must file with the Department a revised

1 schedule of rates and, thereafter, post the revised  
2 schedule of rates at each location of the warehouseman  
3 where grain is received. The revised schedule of rates  
4 shall be deemed filed with the Department on the earlier  
5 of the date it is delivered to the Department or mailed  
6 to the Department by certified mail properly addressed  
7 with sufficient postage attached. The revised schedule  
8 of rates shall be effective on the date the schedule of  
9 rates is posted after delivery or mailing to the  
10 Department in accordance with this Section. Revised  
11 schedules of rates shall apply only to grain delivered  
12 for storage after the effective date of the revised  
13 schedule of rates. No grain in storage at the time of  
14 the effective date of a revised schedule of rates shall  
15 be subject to a revised schedule of rates until one year  
16 after the date of delivery of grain, unless otherwise  
17 provided by a written contract.

18 (4) The schedule of rates may provide for the  
19 negotiation of different rates for large deliveries of  
20 grain if those rates are applied on a uniform basis to  
21 all depositors under the same circumstances.

22 (g) A warehouseman may refuse to accept grain if the  
23 identity of the grain is to be preserved. If a warehouseman  
24 accepts grain and the identity of the grain is to be  
25 preserved, the evidence of storage shall state on its face  
26 that the grain is stored with its identity preserved and the  
27 location of that grain.

28 (h) A warehouseman shall at all times maintain an  
29 accurate and current daily position record on a daily basis.

30 (i) In the case of a change of ownership of a warehouse,  
31 the obligations of a warehouseman do not cease until its  
32 successor is properly licensed under this Code or the United  
33 States Warehouse Act, it has surrendered all unused warehouse  
34 receipts to the Department and has executed a successor's



1 agreement, or the successor has otherwise provided for the  
2 obligations of its predecessor.

3 (j) If a warehouseman proposes to cease doing business  
4 as a warehouseman and there is no successor, it is the duty  
5 of the warehouseman to surrender all unused warehouse  
6 receipts to the Department, together with an affidavit  
7 accounting for all warehouse receipts setting forth the  
8 arrangements made with depositors for final disposition of  
9 the grain in storage and indicating the procedure for payment  
10 in full of all outstanding obligations. After payment in full  
11 of all outstanding obligations, it is the duty of the  
12 warehouseman to surrender its license.

13 (k) Requests by a warehouseman for special examinations,  
14 grain inventory computation, or verification of grain  
15 quantity or quality shall be accompanied by a fee of \$200.

16 (l) Nothing in this Section is deemed to prohibit a  
17 warehouseman from entering into agreements with depositors of  
18 grain relating to allocation or reservation of storage space.

19 (Source: P.A. 89-287, eff. 1-1-96.)

20 (240 ILCS 40/15-15)

21 Sec. 15-15. Violations of open position limits.

22 (a) Violations of maximum allowable open position limits  
23 by more than 1,000 bushels but less than twice the maximum  
24 allowable open position limits.

25 (1) If a licensee violates the maximum allowable  
26 open position limits of item (a)(2) of Section 10-10 and  
27 the open position is more than 1,000 bushels but less  
28 than twice the maximum allowable open position limits,  
29 the licensee shall be required to:

30 (A) Post collateral with the Department in an  
31 amount equal to \$1 per bushel for each bushel of  
32 soybeans in excess of the maximum allowable open  
33 position limits and 50 cents per bushel of each

1 bushel for all other grain in excess of the maximum  
2 allowable open position limits or \$2,500, whichever  
3 is greater; and

4 (B) Pay a penalty in an amount not to exceed  
5 \$250.

6 (2) If a licensee commits 2 violations as set forth  
7 in item (a) (1) of Section 15-10 within a 2 year period,  
8 the licensee must:

9 (A) post collateral with the Department in an  
10 amount equal to \$1 per bushel for each bushel of  
11 soybeans in excess of the maximum allowable open  
12 position limits and 50 cents per bushel of each  
13 bushel for all other grain in excess of the maximum  
14 allowable open position limits or \$5,000, whichever  
15 is greater; and

16 (B) pay a penalty in the amount of ~~\$750~~ \$500.

17 (3) If a licensee commits 3 or more violations as  
18 set forth in item (a)(1) of Section 15-10 within a 5 year  
19 period, the licensee must:

20 (A) post collateral with the Department in an  
21 amount equal to \$2 per bushel for each bushel of  
22 soybeans in excess of the maximum allowable open  
23 position limits and \$1 per bushel of each bushel for  
24 all other grain in excess of the maximum allowable  
25 open position limits or \$10,000, whichever is  
26 greater; and

27 (B) pay a penalty in an amount greater than  
28 ~~\$2,000~~ \$1,000 but less than ~~\$20,000~~ \$10,000.

29 (b) Violations of maximum allowable open position limits  
30 that equal or exceed twice the maximum allowable open  
31 position.

32 (1) If a licensee violates the maximum allowable  
33 open position limits of item (a)(2) of Section 10-10 and  
34 the open position equals or exceeds twice the maximum

1 allowable open position limits, the licensee must:

2 (A) post collateral with the Department in an  
3 amount equal to \$1 per bushel for each bushel of  
4 soybeans in excess of the maximum allowable open  
5 position and 50 cents per bushel for each bushel of  
6 all other grain in excess of the maximum allowable  
7 open position limits or \$5,000, whichever is  
8 greater; and

9 (B) pay a penalty in the amount of \$500.00.

10 (2) If a licensee commits 2 violations as set forth  
11 in item (b)(1) of Section 15-10 within a 2 year period,  
12 the licensee must:

13 (A) post collateral with the Department in an  
14 amount equal to \$2 per bushel for each bushel of  
15 soybeans in excess of the maximum allowable open  
16 position limits and \$1 per bushel for each bushel of  
17 all other grain in excess of the maximum allowable  
18 open position limits or \$10,000, whichever is  
19 greater; and

20 (B) pay a penalty in an amount greater than  
21 \$750 ~~\$500~~ but less than \$15,000 ~~\$10,000~~.

22 (3) If a licensee commits 3 or more violations as  
23 set forth in item (b)(1) of Section 15-5 within a 5 year  
24 period, the licensee must:

25 (A) post collateral with the Department in an  
26 amount equal to \$2 per bushel for each bushel of  
27 soybeans in excess of the maximum allowable open  
28 position limits and \$1 per bushel for each bushel  
29 for all other grain in excess of the maximum  
30 allowable open position limits or \$10,000, whichever  
31 is greater; and

32 (B) pay a penalty in an amount greater than  
33 \$2,000 ~~\$1,000~~ but less than \$20,000 ~~\$10,000~~.

34 (Source: P.A. 89-287, eff. 1-1-96.)

1 (240 ILCS 40/15-20)

2 Sec. 15-20. Grain quantity and grain quality violations.

3 (a) Grain quantity deficiencies of more than \$1,000 but  
4 less than \$20,000.

5 (1) If a licensee fails to have a sufficient  
6 quantity of grain in store to meet outstanding storage  
7 obligations and the value of the grain quantity  
8 deficiency as determined by the formula set forth in  
9 subsection (c) of Section 15-20 is more than \$1,000 but  
10 less than \$20,000, the licensee must:

11 (A) post collateral with the Department in an  
12 amount equal to the value of the grain quantity  
13 deficiency or \$2,500, whichever is greater; and

14 (B) pay a penalty of \$250.

15 (2) If a licensee commits 2 violations as set forth  
16 in item (a)(1) of Section 15-20 within a 2 year period,  
17 the licensee must:

18 (A) post collateral with the Department in an  
19 amount equal to the value of the grain quantity  
20 deficiency or \$10,000, whichever is greater; and

21 (B) pay a penalty of \$750 ~~\$500~~.

22 (3) If a licensee commits 3 or more violations as  
23 set forth in item (a)(1) of Section 15-20 within a 5 year  
24 period, the licensee must:

25 (A) post collateral with the Department in an  
26 amount equal to the value of the grain quantity  
27 deficiency or \$20,000, whichever is greater; and

28 (B) pay a penalty of no less than \$2,000  
29 ~~\$1,000~~ and no greater than \$20,000 ~~\$10,000~~.

30 (b) Grain quantity deficiencies of \$20,000 or more.

31 (1) If a licensee fails to have sufficient quantity  
32 of grain in store to meet outstanding storage obligations  
33 and the value of the grain quantity deficiency as  
34 determined by the formula set forth in subsection (c) of

1 Section 15-20 equals or exceeds \$20,000, the licensee  
2 must:

3 (A) post collateral with the Department in an  
4 amount equal to twice the value of the grain  
5 quantity deficiency; and

6 (B) pay a penalty of \$500.

7 (2) If a licensee commits 2 violations as set forth  
8 in item (b)(1) of Section 15-20 within a 2 year period,  
9 the licensee must:

10 (A) post collateral with the Department in an  
11 amount equal to twice the value of the grain  
12 quantity deficiency or \$20,000, whichever is  
13 greater; and

14 (B) pay a penalty of no less than \$750 ~~\$500~~  
15 and no greater than \$15,000 ~~\$10,000~~.

16 (3) If a licensee commits 3 or more violations as  
17 set forth in item (b)(1) of Section 15-20 within a 5 year  
18 period, the licensee must:

19 (A) post collateral with the Department in an  
20 amount equal to twice the value of the grain  
21 quantity deficiency or \$40,000, whichever is  
22 greater; and

23 (B) pay a penalty of no less than \$2,000  
24 ~~\$1,000~~ and no greater than \$20,000 ~~\$10,000~~.

25 (c) To determine the value of the grain quantity  
26 deficiency for the purposes of this Section, the rate shall  
27 be \$1 per bushel for soybeans and 50 cents per bushel for all  
28 other grains.

29 (d) If a licensee fails to have sufficient quality of  
30 grain in store to meet outstanding storage obligations when  
31 the value of the grain quality deficiency exceeds \$1,000, the  
32 licensee must post collateral with the Department in an  
33 amount equal to the value of the grain quality deficiency.  
34 For the purposes of this Section, the value of the grain

1 quality deficiency shall be determined by applying prevailing  
2 market discount factors to all grain quality factors.

3 (Source: P.A. 89-287, eff. 1-1-96; 89-463, eff. 5-31-96.)

4 (240 ILCS 40/15-30)

5 Sec. 15-30. Financial and record keeping deficiencies;  
6 collateral and guarantees.

7 (a) An applicant or a licensee has a financial  
8 deficiency if it does not meet the minimum financial  
9 requirements of Section 5-25 and subsection (b) of Section  
10 10-15 of this Code.

11 (b) A licensee must collateralize all financial  
12 deficiencies at the rate of one dollar's worth of collateral  
13 for each dollar of the aggregate sum of the individual ratio  
14 deficiencies, the net worth deficiencies, and 90% asset  
15 requirement deficiencies.

16 (c) A licensee who is found to have record keeping  
17 deficiencies, other than in reference to violations as set  
18 forth in subsection (b) of Section 10-15 and in Sections  
19 15-15 and 15-20, may be required by the Department to post  
20 collateral up to the amount of \$10,000.

21 (d) If an applicant for a new license or a renewal of a  
22 license has financial deficiencies or the Department has  
23 reason to believe that the financial stability of an  
24 applicant or a licensee is in question, the Department may  
25 require the applicant or licensee to provide the Department,  
26 in addition to collateral, personal, corporate, or other  
27 related person guarantees in a form and in an amount  
28 satisfactory to the Department.

29 (e) Subject to subsection (c) of Section 5-15, the  
30 posting of collateral and the delivery of guarantees does not  
31 relieve a licensee of the continuing obligation to otherwise  
32 comply with the requirements imposed by the Code.

33 (Source: P.A. 89-287, eff. 1-1-96.)

1 (240 ILCS 40/15-35)

2 Sec. 15-35. Return of collateral and guarantees. If the  
3 next fiscal year's financial statement of a licensee received  
4 by the Department and an examination performed by the  
5 Department after delivery or posting of any required  
6 collateral or the guarantee indicates compliance by the  
7 licensee with all statutory requirements of this Code for  
8 which the collateral and guarantees were required, the  
9 collateral and guarantee shall be returned within 90 days a  
10 ~~reasonable-period-of-time~~ to the licensee and the guarantor  
11 following a written request for the return. The financial  
12 statement must comply with the requirements of Section 5-20.  
13 (Source: P.A. 89-287, eff. 1-1-96.)

14 (240 ILCS 40/15-40)

15 Sec. 15-40. Suspension and revocation of license.

16 (a) The Director may suspend a license and take  
17 possession and control of all grain assets and equity assets  
18 (except that the Department may not take possession and  
19 control of any equity asset on which there is a valid prior  
20 perfected security interest or other valid prior perfected  
21 lien without the prior, written permission of the secured  
22 party or lien holder) of the suspended licensee if the  
23 Department has reason to believe that any of the following  
24 has occurred:

25 (1) A licensee has made a formal declaration of  
26 insolvency; failed to apply for license renewal, leaving  
27 indebtedness to claimants; or been denied a license  
28 renewal, leaving indebtedness to claimants ~~experienced-a~~  
29 ~~failure-or-is-unable-to-financially-satisfy-claimants--in~~  
30 ~~accordance-with-applicable-statute,-rule,-or-agreement-if~~  
31 ~~a--bona--fide-dispute-does-not-exist-between-the-licensee~~  
32 ~~and-a-claimant.~~

33 (2) A licensee has failed to pay a producer, on

1 demand, for grain purchased from that producer, assuming  
2 no bona fide dispute exists with regard to the payment.

3 (3) A licensee is otherwise unable to financially  
4 satisfy claimants in accordance with any applicable  
5 statute, rule, or agreement, assuming a bona fide dispute  
6 does not exist between the licensee and the claimant.

7 (4) A licensee has violated any of the other  
8 provisions of this Code and the violation, or the pattern  
9 of the violations, would create a substantial risk of  
10 failure ~~violated any of the provisions of this Code and~~  
11 ~~the violation or the pattern of the violations indicates~~  
12 ~~an immediate danger of loss to potential claimants.~~

13 (5) (3) A licensee has failed fails to pay a  
14 penalty or post collateral or guarantees by the date  
15 ordered by the Director.

16 (6) (4) A licensee has failed fails to pay an  
17 assessment as required by Section 5-30.

18 (b) The Director may revoke a license if ~~any of the~~  
19 ~~following occurs:~~ (1) the Director finds, after an  
20 administrative hearing, that any of the grounds for  
21 suspension under item (a)(1), (a)(2), (a)(3), or (a)(4),  
22 (a)(5), or (a)(6) of Section 15-40 have occurred.

23 (c) (2) When a licensee voluntarily files for bankruptcy  
24 under the federal bankruptcy laws, that filing constitutes a  
25 revocation of the license of the licensee on the day that the  
26 filing occurs.

27 (d) (3) When an order for relief is entered in reference  
28 to a licensee as a consequence of a petition for involuntary  
29 bankruptcy filed under the federal bankruptcy laws, that  
30 order constitutes a revocation of the license on the date of  
31 that order.

32 (e) (e) Within 10 days after suspension of a license,  
33 an administrative hearing shall be commenced to determine  
34 whether the license shall be reinstated or revoked. Whenever



1 an administrative hearing is scheduled, the licensee shall be  
2 served with written notice of the date, place, and time of  
3 the hearing at least 5 days before the hearing date. The  
4 notice may be served by personal service on the licensee or  
5 by mailing it by registered or certified mail, return receipt  
6 requested, to the licensee's place of business. The Director  
7 may, after a hearing, issue an order either revoking or  
8 reinstating the license.

9 (Source: P.A. 89-287, eff. 1-1-96.)

10 (240 ILCS 40/15-45)

11 Sec. 15-45. Criminal offenses.

12 (a) A person who causes a warehouse receipt for grain to  
13 be issued knowing that the grain for which that warehouse  
14 receipt is issued is not under the licensee's control at the  
15 time of issuing that warehouse receipt, or who causes a  
16 licensee to issue a warehouse receipt for grain knowing that  
17 the warehouse receipt contains any false representation, is  
18 guilty of a Class 2 3 felony.

19 (b) A person who, knowingly and without lawful  
20 authority, disposes of grain represented by outstanding  
21 warehouse receipts or covered by unreceipted storage  
22 obligations is guilty of a Class 2 3 felony.

23 (c) A person who, knowingly and without lawful  
24 authority:

25 (1) withholds records from the Department;

26 (2) keeps, creates, or files with the Department  
27 false, misleading, or inaccurate records;

28 (3) alters records without permission of the  
29 Department; or

30 (4) presents to the Department any materially false  
31 or misleading records;

32 is guilty of a Class 2 3 felony.

33 (d) A licensee who, after suspension or revocation of

1 its license, knowingly and without legal authority refuses to  
2 surrender to the Department all books, accounts, and records  
3 relating to the licensee that are in its possession or  
4 control is guilty of a Class 2 3 felony.

5 (e) A licensee who knowingly impedes, obstructs,  
6 hinders, or otherwise prevents or attempts to prevent the  
7 Director from performing his or her duties under this Code,  
8 or who knowingly refuses to permit inspection of its  
9 premises, books, accounts, or records by the Department, is  
10 guilty of a Class A misdemeanor.

11 (f) A person who, knowingly and without a license,  
12 engages in the business of a grain dealer or a warehouseman  
13 for which a license is required under the Code is guilty of a  
14 Class A misdemeanor.

15 (g) A person who, intentionally, knowingly and without  
16 lawful authority:

17 (1) fails to maintain sufficient assets as required  
18 by subsection (b) of Section 10-15; or

19 (2) issues a collateral warehouse receipt covering  
20 grain purchased by a price later contract to the extent  
21 the purchase price has not been paid by the grain dealer;  
22 is guilty of a Class 3 4 felony.

23 (h) In case of a continuing violation, each day a  
24 violation occurs constitutes a separate and distinct offense.

25 (Source: P.A. 89-287, eff. 1-1-96.)

26 (240 ILCS 40/20-10)

27 Sec. 20-10. Lien on grain assets and equity assets.

28 (a) A statutory lien shall be imposed on all grain  
29 assets and equity assets in favor of and to secure payment of  
30 obligations of the licensee to:

31 (1) A person, including, without limitation, a  
32 lender:

33 (A) who possesses warehouse receipts issued

1 from an Illinois warehouse location covering grain  
2 owned or stored by a warehouseman;

3 (B) who has other written evidence of a  
4 storage obligation of a warehouseman issued from an  
5 Illinois warehouse location in favor of the holder,  
6 including, but not limited to, scale tickets,  
7 settlement sheets, and ledger cards; or

8 (C) who has loaned money to a warehouseman and  
9 was to receive a warehouse receipt from an Illinois  
10 location as security for that loan, who surrendered  
11 warehouse receipts as a part of a grain sale at an  
12 Illinois location, or who has delivered grain out of  
13 storage with the warehouseman as a part of a grain  
14 sale at an Illinois location and:

15 (i) the grain dealer or warehouseman  
16 experienced a failure within 21 days  
17 thereafter, a warehouse receipt was not issued,  
18 and payment in full was not made; or

19 (ii) written notice was given by the  
20 person to the Department within 21 days  
21 thereafter stating that a warehouse receipt was  
22 not issued and payment in full was not made.

23 (2) A producer who possesses evidence of the sale  
24 at an Illinois location of grain delivered to that failed  
25 a grain dealer, or its designee, and who was not fully  
26 paid in full.

27 This statutory lien arises, attaches, and is perfected at  
28 the date of delivery of grain, and is at that time deemed  
29 assigned by the operation of this Code to the Department.

30 (b) The lien on grain assets created under this Section  
31 shall be preferred and prior to any other lien, encumbrance,  
32 or security interest relating to those assets described in  
33 the definition of "grain assets" in Section 1-10, regardless  
34 of the time the other lien, encumbrance, or security

1 interest attached or became perfected. The lien on equity  
2 assets created under this Section shall also be preferred and  
3 prior to any other lien, encumbrance, or security interest  
4 relating to "equity assets" as defined in Section 1-10 to the  
5 ~~extent a creditor does not have a valid security interest in,~~  
6 ~~or other lien on, the property that was --perfected-- prior--to~~  
7 ~~the--date--of--failure--of--the--licensee.~~ The lien on equity  
8 assets created under this Section, however, shall be  
9 subordinate and subject to any other lien, encumbrance, or  
10 security interest relating to "equity assets" as--defined--in  
11 ~~Section--1-10~~ to the extent a creditor has a valid security  
12 interest in or other valid lien on the property that was  
13 perfected prior to the date of failure of the licensee;  
14 provided, however, that a creditor is not deemed to have a  
15 valid security interest or other valid lien on property if  
16 (i) the property can be directly traced as being from the  
17 sale of grain by the licensee or failed licensee; (ii) the  
18 security interest was taken as additional collateral on  
19 account of an antecedent debt owed to the creditor; and (iii)  
20 the security interest or other lien was perfected (A) on or  
21 within 90 days before the date of failure of the licensee or  
22 (B) when the creditor is a related person, within one year of  
23 the date of failure of the licensee.

24 (c) To the extent any portion of this Code conflicts  
25 with any portion of the Uniform Commercial Code, the  
26 provisions of this Code control.

27 (d) If an adversarial proceeding is commenced to recover  
28 "grain assets" or "equity assets" upon which a lien created  
29 under this Section is imposed and if the Department declines  
30 to take part in that adversarial proceeding, the Department,  
31 upon application to the Director by any claimant, shall  
32 assign to the claimant the statutory lien to permit the  
33 claimant to pursue the lien in the adversarial proceeding,  
34 but only if the assignment and adversarial proceeding will

1 not delay the Department's liquidation and distribution of  
2 grain assets, equity assets, collateral, and guarantees,  
3 including proceeds thereof, to all claimants holding valid  
4 claims.

5 (Source: P.A. 89-287, eff. 1-1-96.)

6 (240 ILCS 40/20-15)

7 Sec. 20-15. Liquidation procedures. When a licensee  
8 experiences a failure, the Department has the authority to  
9 and shall:

10 (a) Immediately post notice at all locations of the  
11 failed licensee stating that the licensee has experienced a  
12 failure and that the license has been terminated and is no  
13 longer effective.

14 (b) Immediately take physical control and possession of  
15 the failed licensee's facility, including but not limited to  
16 all offices and grain storage facilities, books, records, and  
17 any other property necessary or desirable to liquidate grain  
18 assets and equity assets.

19 (c) Give public notice and notify all known potential  
20 claimants by certified mail of the licensee's failure and the  
21 processes necessary to file grain claims with the Department  
22 as set forth in Section 25-5.

23 (d) Perform an examination of the failed licensee.

24 (e) Seize and take possession of, protect, liquidate,  
25 and collect upon all grain assets, collateral, and guarantees  
26 of or relating to the failed licensee and deposit the  
27 proceeds into the Trust Account. If at any time it appears,  
28 however, in the judgment of the Department that the costs of  
29 seizing and taking possession of, protecting, liquidating,  
30 and collecting upon any or all of the grain assets,  
31 collateral, and guarantees equals or exceeds the expected  
32 recovery to the Department, the Department may elect not to  
33 pursue seizing and taking possession of, protecting,

1 liquidating, and collecting upon any or all of the assets.

2 (f) Seize, take possession of, protect, liquidate, and  
3 collect upon the equity assets of the failed licensee and  
4 deposit the proceeds into the Trust account if the Department  
5 has first obtained the written consent of all applicable  
6 secured parties or lien holders, if any. If at any time it  
7 appears, however, in the judgment of the Department that the  
8 costs of seizing and taking possession of, protecting,  
9 liquidating, and collecting upon any or all of the equity  
10 assets equals or exceeds the expected recovery to the  
11 Department, the Department may elect not to pursue seizing  
12 and taking possession of, protecting, liquidating, and  
13 collecting upon any or all of the equity assets. If the  
14 Department does not otherwise pursue seizing and taking  
15 possession of, protecting, liquidating, and collecting upon  
16 any of the equity assets, the Department may bring or  
17 participate in any liquidation or collection proceedings  
18 involving the applicable secured parties or other interested  
19 party, if any, and shall have the rights and remedies  
20 provided by law, including the right to enforce its lien by  
21 any available judicial procedure.

22 If an applicable secured party or lien holder does not  
23 consent to the Department seizing, taking possession of,  
24 liquidating, or collecting upon the equity assets, the  
25 secured party or lien holder shall have the rights and  
26 remedies provided by law or by agreement with the licensee or  
27 failed licensee, including the right to enforce its security  
28 interest or lien by any available judicial procedure.

29 (g) Make available on demand to an applicable secured  
30 party or lien holder the equity asset, to the extent the  
31 Department seized or otherwise gained possession or control  
32 of the equity asset, but the secured party or lien holder  
33 does not consent to the Department liquidating and collecting  
34 upon the equity asset.

1 (Source: P.A. 89-287, eff. 1-1-96.)

2 (240 ILCS 40/20-20)

3 Sec. 20-20. Liquidation expenses.

4 (a) The Trustee shall pay from the Trust Account all  
5 reasonable expenses incurred by the trustee on or after the  
6 date of failure in reference to seizing, preserving, and  
7 liquidating the grain assets, equity assets, collateral, and  
8 guarantees of or relating to a failed licensee, including,  
9 but not limited to, the hiring of temporary field personnel,  
10 equipment rental, auction expenses, mandatory commodity  
11 check-offs, and clerical expenses.

12 (b) Except as to claimants holding valid claims, any  
13 outstanding indebtedness of a failed licensee that has  
14 accrued before the date of failure shall not be paid by the  
15 Trustee and shall represent a separate cause of action of the  
16 creditor against the failed licensee.

17 (c) The Trustee shall report all expenditures paid from  
18 the Trust Account to the Corporation at least annually.

19 (d) To the extent assets are available under subsection  
20 (g) of Section 25-20 and upon presentation of documentation  
21 satisfactory to the Trustee, the Trustee shall transfer from  
22 the Trust Account to the Regulatory Fund an amount not to  
23 exceed the expenses incurred by the Department in performance  
24 of its duties under Article 20 of this Code, in reference to  
25 the failed licensee.

26 (Source: P.A. 89-287, eff. 1-1-96.)

27 (240 ILCS 40/25-5)

28 Sec. 25-5. Adjudication of claims. When a licensee has  
29 experienced a failure, the Department shall process the  
30 claims in the following manner:

31 (a) The Department shall publish once each week for 3  
32 successive weeks in at least 3 newspapers of general

1 circulation within the county of the licensee, and shall mail  
2 or deliver to each claimant whose name and post office  
3 address are known or are reasonably ascertainable by the  
4 Department, a notice stating:

5 (1) That the licensee has experienced a failure and  
6 the date of that failure.

7 (2) The place and post office address where claims  
8 may be filed.

9 (3) The procedure for filing claims, as determined  
10 by rule.

11 (4) That a claimant's claims shall be barred if not  
12 filed with the Department on or before the later of:

13 (A) the claim date, which shall be 90 days  
14 after the date of failure of the licensee; or

15 (B) 7 days from the date notice was mailed to  
16 a claimant if the date notice was mailed to that  
17 claimant is on or before the claim date.

18 (b) Time of notice.

19 (1) The first date of publication of the notice as  
20 provided for in subsection (a) of this Section shall be  
21 within 30 days after the date of failure.

22 (2) The published notice as provided for in  
23 subsection (a) of this Section shall be published in at  
24 least 3 newspapers of general circulation in the area  
25 formerly served by the failed licensee.

26 (3) The notice as provided for in subsection (a) of  
27 this Section shall be mailed by certified mail, return  
28 receipt requested, within 60 days after the date of  
29 failure to each claimant whose name and post office  
30 address are known by the Department within 60 days after  
31 the date of failure.

32 (c) Every claim filed must be in writing, and verified,  
33 and signed by a person who has the legal authority to file a  
34 claim on behalf of the claimant and must state information



1 sufficient to notify the Department of the nature of the  
2 claim and the amount sought.

3 (d) A claim shall be barred and disallowed in its  
4 entirety if:

5 (1) notice is published and given to the claimant  
6 as provided for in subsections (a) and (b) of this  
7 Section and the claimant does not file a claim with the  
8 Department on or before the claim date; or

9 (2) the claimant's name or post office address is  
10 not known by the Department or cannot, within 60 days  
11 after the date of failure, be reasonably ascertained by  
12 the Department and the claimant does not file a claim  
13 with the Department on or before the later of the claim  
14 date or 7 days after the date notice was mailed to that  
15 claimant if the date notice was mailed to that claimant  
16 is on or before the claim date.

17 (e) Subsequent notice.

18 (1) If, more than 60 days after the date of failure  
19 but before the claim date, the Department learns of the  
20 name and post office address of a claimant who was  
21 previously not notified by the Department by mail, the  
22 Department shall mail by certified mail, return receipt  
23 requested, the notice to the claimant as provided for in  
24 subsection (a) of this Section.

25 (2) The notice mailed as provided for in item  
26 (e)(1) of this Section shall not extend the period of  
27 time in which a claimant may file its claim beyond the  
28 claim date. A claimant to whom notice is mailed under  
29 item (e)(1) of this Section, however, shall have the  
30 later of the claim date or 7 days after the date notice  
31 was mailed to file a claim with the Department.

32 (f) The Department shall determine the validity,  
33 category, and amount of each claim within 120 days after the  
34 date of failure of the licensee and.--(g)--The--Department

1 shall give written notice within that time period to each  
2 claimant and to the failed licensee of the Department's  
3 determination as to the validity, category, and amount of  
4 each claim.

5 (g) (h) A claimant or the failed licensee may request a  
6 hearing on the Department's determination within 30 days  
7 after receipt of the written notice and the hearing shall be  
8 held in the county of residence of the claimant and in  
9 accordance with rules. Under no circumstances shall payment  
10 to claimants who have not requested a hearing be delayed by  
11 reason of the request for a hearing by any unrelated  
12 claimant.

13 (h) Within 30 days after a failure of a licensee, the  
14 Director shall appoint an Administrative Law Judge for the  
15 hearings. The Director shall appoint a person licensed to  
16 practice law in this State; who is believed to be  
17 knowledgeable with regard to agriculture and the grain  
18 industry in Illinois; who has no conflict of interest; and  
19 who at the time of his or her appointment is not working for  
20 or employed by the Department in any capacity whatsoever.

21 (i) For the purposes of this Article, the "reasonably  
22 ascertainable" standard shall be satisfied when the  
23 Department conducts a review of the failed licensee's books  
24 and records and an interview of office and clerical personnel  
25 of the failed licensee.

26 (j) It is the intent of this Act that the time periods  
27 and deadlines in this Section 25-5 are absolute, and are not  
28 to be tolled, or their operation halted or delayed. In the  
29 event of a bankruptcy by a licensee, the Director shall seek  
30 to have commenced any proceedings that are necessary and  
31 appropriate to lift the automatic stay or make it otherwise  
32 inapplicable to the actions of the Department with regard to  
33 the claims determination process. In all other cases, the  
34 Department shall seek to have commenced the proceedings

1 necessary to expeditiously remove or lift any order of any  
2 court or administrative agency that might attempt to delay  
3 the time periods and deadlines contained in this Section  
4 25-5.

5 (Source: P.A. 89-287, eff. 1-1-96.)

6 (240 ILCS 40/25-10)

7 Sec. 25-10. Claimant compensation. Within 30 days after  
8 the day on which a claim becomes a valid claim, a claimant  
9 shall be compensated to the extent of its valid claim as  
10 provided in this Section.

11 It is the express intent of this legislation that each  
12 undisputed portion of a claim shall be paid in accordance  
13 with the deadlines of this Code, even if there are disputed  
14 portions of the claim. For example, the amount of a valid  
15 claim calculated for an "unpriced obligation" shall be paid  
16 to the claimant despite the fact that claimant additionally  
17 seeks the amount for a "priced obligation".

18 Each claimant shall be compensated in accordance with the  
19 following provisions:

20 (a) Valid claims filed by warehouse claimants shall be  
21 paid 100% of the amount determined by the Department out of  
22 the net proceeds of the liquidation of grain assets as set  
23 forth in this subsection (a). To the extent the net proceeds  
24 are insufficient, warehouse claimants shall be paid their pro  
25 rata share of the net proceeds of the liquidation of grain  
26 assets and, subject to subsection (j) of this Section, an  
27 additional amount per claimant not to exceed the balance of  
28 their respective claims out of the Fund.

29 (b) Subject to subsection (j) of this Section, if the  
30 net proceeds as set forth in subsection (a) of this Section  
31 are insufficient to pay in full all valid claims filed by  
32 warehouse claimants as payment becomes due, the balance shall  
33 be paid out of the Fund in accordance with subsection (b) of

1 Section 25-20.

2 (c) Valid claims filed by producers who:

3 (1) have delivered grain within 21 days before the  
4 date of failure, or the date of suspension if the  
5 suspension results in a failure, for which pricing of  
6 that grain has been completed before date of failure; or

7 (2) gave written notice to the Department within 21  
8 days of the date of delivery of grain, if the pricing of  
9 that grain has been completed, that payment in full for  
10 that grain has not been made;

11 shall be paid, subject to subsection (j) of this Section,  
12 100% of the amount of the valid claim determined by the  
13 Department. Valid claims that are included in subsection (c)  
14 of this Section shall receive no payment under subsection (d)  
15 of this Section, and any claimant having a valid claim under  
16 this subsection (c) determined by the Department to be in  
17 excess of the limits, if any, imposed under subsection (j) of  
18 this Section shall be paid only sums in excess of those  
19 limits to the extent additional money is available under  
20 subsection (d)(2) of Section 25-20.

21 (d) Valid claims that are not included in subsection (c)  
22 of this Section that are filed by producers where the later  
23 date of completion of ~~who-completed~~ delivery or and pricing  
24 of the ~~grain in-reference-to-the-valid-claim,--~~ whichever is  
25 ~~later,~~ within 160 days before the date of failure shall be  
26 paid 85% of the amount of the valid claim determined by the  
27 Department or \$250,000 ~~\$100,000~~, whichever is less, per  
28 claimant. In computing the 160-day period, the phrase "date  
29 of completion of delivery" means the date of the last  
30 delivery of grain to be applied to the quantity requirement  
31 of the contract, and the phrase "the later date" means the  
32 date closest to the date of failure. In addition, for claims  
33 filed by producers for grain sold on a contract, however, the  
34 later of the date of execution of the contract or the date of

1 delivery of ~~grain-in-reference-to~~ the grain covered by the  
2 price later contract must not be more than 365 270 days  
3 before the date of failure in order for the claimant to  
4 receive any compensation. In computing the 365-day period,  
5 the phrase "the later of the date" means the date closest to  
6 the date of failure, and the phrase "date of delivery" means  
7 the date of the last delivery of grain to be applied to the  
8 quantity requirement of the price later contract.

9 (e) Valid claims filed by producers for grain sold on a  
10 price later contract, for which the final price has not been  
11 established, shall be paid 85% of the amount of the valid  
12 claims determined by the Department or \$250,000 ~~\$100,000~~,  
13 whichever is less, per claimant, if the later of the date of  
14 execution of the contract or the date of delivery of ~~grain-in~~  
15 ~~reference-to~~ the grain covered by the price later contract  
16 occurred not ~~no~~ more than 365 270 days before the date of  
17 failure. In computing the 365-day period, the phrase "the  
18 later of the date" means the date closest to the date of  
19 failure, and the phrase "date of delivery" means the date of  
20 the last delivery of grain to be applied to the quantity  
21 requirement of the price later contract.

22 The execution of subsequent price later contracts by the  
23 producer and the licensee for grain previously covered by a  
24 price later contract shall not extend the coverage of a claim  
25 beyond the original 365 270 days.

26 (f) The maximum payment to producers under subsections  
27 (d) and (e) of this Section, combined, shall be \$250,000  
28 ~~\$100,000~~ per claimant.

29 (g) The following claims shall be barred and disallowed  
30 in their entirety and shall not be entitled to any recovery  
31 from the Fund or the Trust Account:

32 (1) Claims filed by producers where both the date  
33 of completion of delivery and the date of pricing of the  
34 grain are ~~who-completed-pricing-of-the-grain-in-reference~~

1       ~~to their claim~~ in excess of 160 days before the date of  
2 failure.

3           (2) Claims filed by producers for grain sold on a  
4 price later contract if the later of the date of  
5 execution of the contract or the date of delivery of  
6 grain in reference to the grain covered by the price  
7 later contract occurred more than 365 ~~270~~ days before the  
8 date of failure. In computing the 365-day period, the  
9 phrase "the later of the date" means the date closest to  
10 the date of failure, and the phrase "date of delivery"  
11 means the date of the last delivery of grain to be  
12 applied to the quantity requirement of the price later  
13 contract.

14           (3) Claims filed by any claimant that are based  
15 upon or acquired by fraudulent or illegal acts of the  
16 claimant.

17       (h) To the extent moneys are available, additional pro  
18 rata payments may be made to claimants under subsection (d)  
19 of Section 25-20.

20       (i) For purposes of this Section, a claim filed in  
21 connection with warehouse receipts that are possessed under a  
22 collateral pledge of a producer, or that are subject to a  
23 perfected security interest, or that were acquired by a  
24 secured party or lien holder under an obligation of a  
25 producer, shall be deemed to be a claim filed by the producer  
26 and not a claim filed by the secured party or the lien  
27 holder, regardless of whether the producer is in default  
28 under that collateral pledge, security agreement, or other  
29 obligation.

30       ~~(j) With respect to any failure occurring on or after~~  
31 ~~July 17, 1998,~~ The maximum payment out of the Fund for  
32 claimants under subsection (a), (b) of this Section shall be  
33 \$1,000,000 per claimant and the maximum payment out of the  
34 Fund for claimants under subsections (c), (d), and (e) of

1 this Section, combined, shall be \$1,000,000 per claimant.

2 (k) The amounts to be paid to warehouse valid claimants  
3 and grain dealer valid claimants shall be calculated  
4 according to the following:

5 (1) Valid claimants who have warehouse claims, or  
6 who have grain dealer claims for grain sold, delivered  
7 but unpriced as of the date of failure, shall have  
8 "unpriced obligations", and to determine the per bushel  
9 value of these valid claims the Department shall use an  
10 average of the cash bid prices on the date of failure  
11 from grain dealers located within the market area of the  
12 failed licensee, and the cash bid price offered by the  
13 failed licensee on the date of failure, less  
14 transportation, handling costs, and discounts applicable  
15 as of that date.

16 (2) Valid claimants who have grain dealer claims  
17 for grain sold, delivered, and priced as of the date of  
18 failure shall have "priced obligations", and the price  
19 per bushel to be used in calculating the compensation due  
20 these valid claimants shall be that which has been agreed  
21 upon by the failed licensee and the claimant, less  
22 applicable discounts. For purposes of this item (2), a  
23 person has "priced" his or her grain if he or she has  
24 done those things necessary under the agreement to set,  
25 choose, or select a price for any portion of the grain  
26 under the agreement, without regard to whether he or she  
27 has received a check in payment for the grain, or could  
28 have received a check in payment for the grain, prior to  
29 the failure.

30 (l) Arrangements whereby a producer agrees with a  
31 licensee to defer receipt of payment of amounts due from the  
32 sale of grain are covered by this Code and are not to be  
33 considered loans by the producer to the licensee, despite  
34 payments to the producer as an inducement for the leaving of

1 moneys with the licensee, unless the licensee has executed  
2 and delivered to the producer a promissory note covering  
3 those amounts.

4 (Source: P.A. 91-213, eff. 7-20-99.)

5 (240 ILCS 40/25-20)

6 Sec. 25-20. Priorities and repayments.

7 (a) All valid claims shall be paid from the Trust  
8 Account, as provided in Section 25-10, first from the  
9 proceeds realized from liquidation of and collection upon the  
10 grain assets relating to the failed licensee, as to warehouse  
11 claimants, and the equity assets as to a secured party or  
12 lien holder who has consented to the Department liquidating  
13 and collecting upon the equity asset as set forth in  
14 subsection (f) of Section 20-15, and the remaining equity  
15 assets, collateral, and guarantees relating to the failed  
16 licensee, as to grain dealer claimants.

17 (b) If the proceeds realized from liquidation of and  
18 collection upon the grain assets, equity assets, collateral,  
19 and guarantees relating to the failed licensee are  
20 insufficient to pay all valid claims as provided in Section  
21 25-10 and subsection (a) of this Section as payment on those  
22 claims becomes due, the Director shall request from the Board  
23 sufficient funds to be transferred from the Fund to the Trust  
24 Account to pay the balance owed to claimants as determined  
25 under Section 25-10. If a request is made by the Director  
26 for a transfer of funds to the Trust Account from the Fund,  
27 the Board shall act on that request within 25 days after the  
28 date of that request. Once moneys are transferred from the  
29 Fund to the Trust Account, the Director shall pay the balance  
30 owed to claimants in accordance with Section 25-10.

31 (c) Net proceeds from liquidation of grain assets as set  
32 forth in subsection (a) of Section 25-10 received by the  
33 Department, to the extent not already paid to warehouse



1 claimants, shall be prorated among the fund and all warehouse  
2 claimants who have not had their valid claims paid in full.

3 (1) The pro rata distribution to the Fund shall be  
4 based upon the total amount of valid claims of all  
5 warehouse claimants who have had their valid claims paid  
6 in full. The pro rata distribution to each warehouse  
7 claimant who has not had his or her valid claims paid in  
8 full shall be based upon the total amount of that  
9 claimant's original valid claims.

10 (2) If the net proceeds from the liquidation of  
11 grain assets as set forth in subsection (a) of Section  
12 25-10 exceed all amounts needed to satisfy all valid  
13 claims filed by warehouse claimants, the balance  
14 remaining shall be paid into the Trust Account or as set  
15 forth in subsection (h).

16 (d) Subject to subsections (c) and (h):

17 (1) The proceeds realized from liquidation of and  
18 collection upon the grain assets, equity assets,  
19 collateral, and guarantees relating to the failed  
20 licensee or any other assets relating to the failed  
21 licensee that are received by the Department, to the  
22 extent not already paid to claimants, shall be first used  
23 to repay the Fund for moneys transferred to the Trust  
24 Account.

25 (2) After the Fund is repaid in full for the moneys  
26 transferred from it to pay the valid claims in reference  
27 to a failed licensee, any remaining proceeds realized  
28 from liquidation of and collection upon the grain assets,  
29 equity assets, collateral, and guarantees relating to the  
30 failed licensee thereafter received by the Department  
31 shall be prorated to the claimants holding valid claims  
32 who have not received 100% of the amount of their valid  
33 claims based upon the unpaid amount of their valid  
34 claims.

1 (e) After all claimants have received 100% of the amount  
2 of their valid claims, to the extent moneys are available  
3 interest at the rate of 6% per annum shall be assessed and  
4 paid to the Fund on all moneys transferred from the Fund to  
5 the Trust Account.

6 (f) After the Fund is paid the interest as provided in  
7 subsection (e) of this Section, then those claims barred and  
8 disallowed under subsection (g) of Section 25-10 shall be  
9 paid on a pro rata basis only to the extent that moneys are  
10 available.

11 (g) Once all claims become valid claims and have been  
12 paid in full and all interest as provided in subsection (e)  
13 of this Section is paid in full, and all claims are paid in  
14 full under subsection (f), any remaining grain assets, equity  
15 assets, collateral, and guarantees, and the proceeds realized  
16 from liquidation of and collection upon the grain assets,  
17 equity assets, collateral, and guarantees relating to the  
18 failed licensee, shall be returned to the failed licensee or  
19 its assignee, or as otherwise directed by a court of  
20 competent jurisdiction.

21 (h) If amounts in the Fund are insufficient to pay all  
22 valid claims, the Corporation shall transfer from the Reserve  
23 Fund to the Fund amounts sufficient to satisfy the valid  
24 claims, and to the extent the amounts thus transferred are  
25 insufficient to pay all valid claims, the General Assembly  
26 shall appropriate to the Corporation amounts sufficient to  
27 satisfy the valid claims. If for any reason the General  
28 Assembly fails to make an appropriation to satisfy  
29 outstanding valid claims, this Code constitutes an  
30 irrevocable and continuing appropriation of all amounts  
31 necessary for that purpose and the irrevocable and continuing  
32 authority for and direction to the State Comptroller and to  
33 the State Treasurer to make the necessary transfers and  
34 disbursements from the revenues and funds of the State for

1 that purpose. Subject to payments to warehouse claimants as  
2 set forth in subsection (c) of Section 25-20, the State shall  
3 be first reimbursed, and the Reserve Fund shall thereafter be  
4 reimbursed to the extent needed to restore the Reserve Fund  
5 to a level of \$2,000,000 of principal (not including income  
6 on the assets in the Reserve Fund) as soon as funds become  
7 available for any amounts paid under subsection (g) of this  
8 Section upon replenishment of the Fund from assessments under  
9 subsections subsection (d), (f), and (g) of Section 5-30 and  
10 collection upon grain assets, equity assets, collateral, and  
11 guarantees relating to the failed licensee.

12 (i) The Department shall have those rights of equitable  
13 subrogation which may result from a claimant receiving from  
14 the Fund payment in full of the obligations of the failed  
15 licensee to the claimant.

16 (Source: P.A. 91-213, eff. 7-20-99.)

17 (240 ILCS 40/30-5)

18 Sec. 30-5. Illinois Grain Insurance Corporation.

19 (a) The Corporation is a political subdivision, body  
20 politic, and public corporation. The governing powers of the  
21 Corporation are vested in the Board of Directors composed of  
22 the Director, who shall personally serve as president; the  
23 Attorney General or his or her designee, who shall serve as  
24 secretary; the State Treasurer or his or her designee, who  
25 shall serve as treasurer; the Director of the Department of  
26 Insurance or his or her designee; and the chief fiscal  
27 officer of the Department. Three members of the Board  
28 constitute a quorum at any meeting of the Board, and the  
29 affirmative vote of 3 members is necessary for any action  
30 taken by the Board at a meeting, except that a lesser number  
31 may adjourn a meeting from time to time. A vacancy in the  
32 membership of the Board does not impair the right of a quorum  
33 to exercise all the rights and perform all the duties of the

1 Board and Corporation.

2 (b) The Corporation has the following powers, together  
3 with all powers incidental or necessary to the discharge of  
4 those powers in corporate form:

5 (1) To have perpetual succession by its corporate  
6 name as a corporate body.

7 (2) To adopt, alter, and repeal bylaws, not  
8 inconsistent with the provisions of this Code, for the  
9 regulation and conduct of its affairs and business.

10 (3) To adopt and make use of a corporate seal and  
11 to alter the seal at pleasure.

12 (4) To avail itself of the use of information,  
13 services, facilities, and employees of the State of  
14 Illinois in carrying out the provisions of this Code.

15 (5) To receive funds, printer registration fees,  
16 and penalties assessed by the Department under this Code.

17 (6) To administer the Fund by investing funds of  
18 the Corporation that the Board may determine are not  
19 presently needed for its corporate purposes.

20 (7) To receive funds from the Trust Account for  
21 deposit into the Fund.

22 (8) Upon the request of the Director, to make  
23 payment from the Fund and the Reserve Fund to the Trust  
24 Account when payment is necessary to compensate claimants  
25 in accordance with the provisions of Section 25-20 or for  
26 payment of refunds to licensees in accordance with the  
27 provisions of this Code.

28 (9) To authorize, receive, and disburse funds by  
29 electronic means.

30 (10) To make any inquiry and investigation deemed  
31 appropriate with regard to the failure of any licensee,  
32 including but not limited to analyzing the causes of and  
33 reasons for the failure; determining the adequacy and  
34 accuracy of Department examinations and other regulatory

1 measures with regard to the failed licensee; and  
2 analyzing whether the handling of the liquidation and  
3 payment process by the Department was done in a manner  
4 that served the interests of those persons whose  
5 interests this Code was designed to protect.

6 (11) (9) To have those powers that are necessary or  
7 appropriate for the exercise of the powers specifically  
8 conferred upon the Corporation and all incidental powers  
9 that are customary in corporations.

10 (c) A committee of advisors shall be created to provide  
11 technical assistance and advice and make recommendations to  
12 the Board. The advisory committee shall assist the board in  
13 understanding pertinent developments in grain production and  
14 marketing and the grain industry. The advisory committee  
15 shall be composed of one grain producer designated by the  
16 Illinois Farm Bureau; one grain producer designated by the  
17 Illinois Farmers Union; one grain producer designated by the  
18 Illinois Corn Growers Association; one grain producer  
19 designated by the Illinois Soybean Association; 2  
20 representatives of the grain industry, designated by the  
21 Grain and Feed Association of Illinois; and 2 representatives  
22 of the lending industry, one each designated by the Illinois  
23 Bankers Association and the Community Bankers of Illinois.  
24 Members of the advisory committee shall serve terms of 2  
25 years from the date of their designation. Members of the  
26 advisory committee shall have the right to attend all  
27 meetings of the Board and participate in Board discussions,  
28 but shall not have a vote.

29 (Source: P.A. 91-213, eff. 7-20-99.)

30 (240 ILCS 40/30-10)

31 Sec. 30-10. Participants in the Fund.

32 (a) A licensee under this Code is subject to this  
33 Article and shall collect and pay assessments into the Fund

1 as provided in Section 5-30.

2 (b) Except as provided in subsection (c) of this  
3 Section, a person engaged in the business of a grain dealer  
4 or warehouseman but not licensed under this Code shall not  
5 participate in or benefit from the Fund and its claimants  
6 shall not receive proceeds from the Fund.

7 (c) Participation of federal warehousemen.

8 (1) A federal warehouseman may participate in the  
9 Fund. If a federal warehouseman chooses to participate  
10 in the Fund, it shall to the extent permitted by federal  
11 law:

12 (A) pay assessments into the Fund;

13 (B) be deemed a licensee and a warehouseman  
14 under this Code;

15 (C) be subject to this Code; and

16 (D) execute a cooperative agreement between  
17 itself and the Department.

18 (2) The cooperative agreement shall, at a minimum,  
19 provide each of the following to the extent permitted by  
20 federal law:

21 (A) Authorization for the Department to obtain  
22 information about the federal warehouseman  
23 including, but not limited to, bushel capacity of  
24 storage space, financial stability, and examinations  
25 performed by employees of the United States  
26 Department of Agriculture.

27 (B) That the federal warehouseman submits  
28 itself to the jurisdiction of the Department and  
29 that it agrees to be subject to and bound by this  
30 Code and deemed a licensee under this Code.

31 (C) That in the event of a failure of the  
32 federal warehouseman, the Department shall have  
33 authority to seize, liquidate, and collect upon all  
34 grain assets, collateral, and guarantees relating to

1 the federal warehouseman as in the case of any other  
2 licensee.

3 (D) Such other requirements as established by  
4 rule.

5 (3) A federal warehouseman that participates in the  
6 Fund shall at a minimum meet the licensing requirements  
7 of this Code and shall comply with all requirements of a  
8 licensee and a warehouseman under this Code to the extent  
9 permitted by federal law.

10 (d) A federal warehouseman that participates in the Fund  
11 or a warehouseman that desires to or has become a federal  
12 warehouseman cannot withdraw from participation in the Fund  
13 for the benefit of existing depositors until the occurrence  
14 of all of the following:

15 (1) Payment in full by the federal warehouseman or  
16 withdrawing warehouseman of all assessments under  
17 subsection (a) of Section 5-30.

18 (2) Payment in full by the federal warehouseman or  
19 withdrawing warehouseman of all assessments instituted  
20 under subsection (d) of Section 5-30 on or after an  
21 assessment determination date that occurs before if--the  
22 ~~Fund--is--under--\$3,000,000-at-any-time-after~~ the federal  
23 warehouseman or withdrawing warehouseman notifies the  
24 Department that it desires to withdraw from participation  
25 in the Fund and before the issuance by the Department of  
26 a certificate of withdrawal from the Fund.

27 (3) The expiration of 30 days following the later  
28 of:

29 (A) the date the federal warehouseman or  
30 withdrawing warehouseman has ceased providing its  
31 depositors with coverage under the Fund;

32 (B) the date the federal warehouseman or  
33 withdrawing warehouseman has posted at each of its  
34 locations a notice stating when it will cease

1 providing its depositors with coverage under the  
2 Fund;

3 (C) notification of all potential claimants by  
4 the federal warehouseman or withdrawing warehouseman  
5 of the date on which it will cease providing its  
6 depositors with coverage under the Fund; and

7 (D) Completion of an audit and examination  
8 satisfactory to the Department as provided for in  
9 this Code and by rule, which is to be the  
10 Department's final examination.

11 (4) Obtaining releases of liability from all  
12 existing depositors or posting collateral with the  
13 Department for 270 days after withdrawing from the Fund  
14 in an amount equal to the liability to existing  
15 depositors who have not executed releases before the  
16 completion of the Department's final examination.

17 (5) Compliance with all notification requirements  
18 as provided for in this Code and by rule.

19 (6) Issuance by the Department of a certificate of  
20 withdrawal from the Fund when the federal warehouseman or  
21 withdrawing warehouseman has met all requirements for  
22 withdrawal from participation in the Fund.

23 (e) Before a federal warehouseman or a warehouseman that  
24 desires to or has become a federal warehouseman may withdraw  
25 from participation in the Fund, it must pay for an audit and  
26 examination and must provide to the Department all names and  
27 addresses of potential claimants for the purposes of  
28 notification of withdrawal of participation in the Fund.

29 (Source: P.A. 89-287, eff. 1-1-96.)

30 (240 ILCS 40/30-25 new)

31 Sec. 30-25. Grain Insurance Reserve Fund. Upon payment  
32 in full of all money that has been transferred to the Fund  
33 prior to June 30, 2003 from the General Revenue Fund as



1 provided for under subsection (h) of Section 25-20, the State  
2 of Illinois shall remit \$2,000,000 to the Corporation to be  
3 held in a separate and discrete account to be used to the  
4 extent the assets in the Fund are insufficient to satisfy  
5 claimants as payment of their claims become due as set forth  
6 in subsection (h) of Section 25-20. The remittance of the  
7 \$2,000,000 reserve shall be made to the Corporation within 60  
8 days of payment in full of all money transferred to the Fund  
9 as set forth above in this Section 30-25. All income received  
10 by the Reserve Fund shall be deposited in the Fund within 35  
11 days of the end of each calendar quarter.

12 (240 ILCS 40/Art. 35 heading new)

13 ARTICLE 35. REGULATORY FUND

14 (240 ILCS 40/35-5 new)

15 Sec. 35-5. Regulatory Fund.

16 (a) The Regulatory Fund is created as a trust fund in  
17 the State Treasury. The Regulatory Fund shall receive  
18 license, certificate, and extension fees under Sections 5-10,  
19 5-15, and 5-20 and funds under subsection (g) of Section  
20 25-20 and shall pay expenses as set forth in this Article 35.

21 (b) Any funds received by the Director under Sections  
22 5-10, 5-15, and 5-20 and funds disbursed for deposit to the  
23 Regulatory Fund under subsection (g) of Section 25-20 shall  
24 be deposited with the Treasurer as ex officio custodian and  
25 held separate and apart from any public money of this State,  
26 with interest accruing on moneys in the Regulatory Fund  
27 deposited into the Regulatory Fund. Disbursement from the  
28 Fund for expenses as set forth in this Article 35 shall be by  
29 voucher ordered by the Director, accompanied by documentation  
30 satisfactory to the Treasurer and the Comptroller supporting  
31 the payment warrant drawn by the Comptroller and  
32 countersigned by the Treasurer. Moneys in the Regulatory Fund

1 shall not be subject to appropriation by the General Assembly  
2 but shall be subject to audit by the Auditor General.  
3 Interest earned on moneys deposited into the Regulatory Fund  
4 shall be deposited into the Regulatory Fund.

5 (c) Fees deposited into the Regulatory Fund under  
6 Sections 5-10, 5-15, and 5-20 shall be expended only for the  
7 following program expenses of the Department;

8 (1) Implementation and monitoring of programs of  
9 the Department solely under this Code, including an  
10 electronic warehouse receipt program.

11 (2) Employment or engagement of certified public  
12 accountants to assist in oversight and regulation of  
13 licensees in the course of an intermediate or advanced  
14 examination under Section 1-15.

15 (3) Training and education of examiners and other  
16 Department employees in reference to Department programs  
17 established to implement the Department's duties solely  
18 under the Code.

19 (d) Any expenses incurred by the Department in  
20 performance of its duties under Article 20 of the Code shall  
21 be reimbursed to the Department out of the net assets of a  
22 liquidation to the extent available under subsection (q) of  
23 Section 25-20 and shall be deposited into the Regulatory Fund  
24 and shall be expended solely for program expenses under the  
25 Code.

26 Section 99. Effective date. This Act takes effect upon  
27 becoming law.