



Sen. John M. Sullivan

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1 AMENDMENT TO SENATE BILL 1945

2 AMENDMENT NO. _____. Amend Senate Bill 1945 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Grain Code is amended by adding Sections
5 1-10, 1-25, 10-15, 10-25, and 25-5 as follows:

6 (240 ILCS 40/1-10)

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

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

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

13 "Claimant" means:

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

15 (1) who possesses warehouse receipts issued from an
16 Illinois location covering grain owned or stored by a

1 failed warehouseman; or

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

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

13 (i) the grain dealer or warehouseman failed within
14 21 days after the loan of money, the surrender of
15 warehouse receipts, or the delivery of grain, as the
16 case may be, and no warehouse receipt was issued or
17 payment in full was not made on the grain sale, as the
18 case may be; or

19 (ii) written notice was given by the person to the
20 Department within 21 days after the loan of money, the
21 surrender of warehouse receipts, or the delivery of
22 grain, as the case may be, stating that no warehouse
23 receipt was issued or payment in full made on the grain
24 sale, as the case may be; or

25 (b) a producer not included in item (a)(3) in the
26 definition of "Claimant" who possesses evidence of the sale at

1 an Illinois location of grain delivered to a failed grain
2 dealer, or its designee in Illinois and who was not paid in
3 full.

4 "Class I warehouseman" means a warehouseman who is
5 authorized to issue negotiable and non-negotiable warehouse
6 receipts.

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

9 "Code" means this Grain Code.

10 "Collateral" means:

11 (a) irrevocable letters of credit;

12 (b) certificates of deposit;

13 (c) cash or a cash equivalent; or

14 (d) any other property acceptable to the Department to the
15 extent there exists equity in that property. For the purposes
16 of this item (d), "equity" is the amount by which the fair
17 market value of the property exceeds the amount owed to a
18 creditor who has a valid, prior, perfected security interest in
19 or other valid, prior, perfected lien on the property.

20 "Corporation" means the Illinois Grain Insurance
21 Corporation.

22 "Daily position record" means a grain inventory
23 accountability record maintained on a daily basis that includes
24 an accurate reflection of changes in grain inventory, storage
25 obligations, company-owned inventory by commodity, and other
26 information that is required by the Department.

1 "Daily grain transaction report" means a record of the
2 daily transactions of a grain dealer showing the amount of all
3 grain received and shipped during each day and the amount on
4 hand at the end of each day.

5 "Date of delivery of grain" means:

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

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

10 (c) in reference to grain in storage with a warehouseman,
11 the date a warehouse receipt representing stored grain is
12 delivered to the issuer of the warehouse receipt for the
13 purpose of selling the stored grain or, if no warehouse receipt
14 was issued:

15 (1) the date the purchase price for stored grain is
16 established; or

17 (2) if sold by price later contract, the date of the
18 price later contract.

19 "Department" means the Illinois Department of Agriculture.

20 "Depositor" means a person who has evidence of a storage
21 obligation from a warehouseman.

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

24 "Electronic document" means a document that is generated,
25 sent, received, or stored by electrical, digital, magnetic,
26 optical electromagnetic, or any other similar means,

1 including, but not limited to, electronic data interchange,
2 electronic mail, telegram, telex, or telecopy.

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

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

9 "Equity assets" means:

10 (a) The equity in any property of the licensee or failed
11 licensee, other than grain assets. For purposes of this item
12 (a):

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

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

1 year of the date of failure of the licensee.

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

3 (a) a formal declaration of insolvency;

4 (b) a revocation of a license;

5 (c) a failure to apply for license renewal, leaving
6 indebtedness to claimants;

7 (d) a denial of license renewal, leaving indebtedness to
8 claimants; or

9 (e) a voluntary surrender of a license, leaving
10 indebtedness to claimants.

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

14 "Fund" means the Illinois Grain Insurance Fund.

15 "Grain" means corn, soybeans, wheat, oats, rye, barley,
16 grain sorghum, canola, buckwheat, flaxseed, edible soybeans,
17 and other like agricultural commodities that may be designated
18 by rule.

19 "Grain assets" means:

20 (a) all grain owned and all grain stored by a licensee or
21 failed licensee, wherever located, including redeposited grain
22 of a licensee or failed licensee;

23 (b) (blank);

24 (c) identifiable proceeds, including, but not limited to,
25 insurance proceeds, received by or due to a licensee or failed
26 licensee resulting from the sale, exchange, destruction, loss,

1 or theft of grain, or other disposition of grain by the
2 licensee or failed licensee; or

3 (d) assets in hedging or speculative margin accounts held
4 by commodity or security exchanges on behalf of a licensee or
5 failed licensee and any moneys due or to become due to a
6 licensee or failed licensee, less any secured financing
7 directly associated with those assets or moneys, from any
8 transactions on those exchanges.

9 For purposes of this Act, storage charges, drying charges,
10 price later contract service charges, and other grain service
11 charges received by or due to a licensee or failed licensee
12 shall not be deemed to be grain assets, nor shall such charges
13 be deemed to be proceeds from the sale or other disposition of
14 grain by a licensee or a failed licensee, or to have been
15 directly or indirectly traceable from, to have resulted from,
16 or to have been derived in whole or in part from, or otherwise
17 related to, the sale or other disposition of grain by the
18 licensee or failed licensee.

19 "Grain dealer" means a person who is licensed by the
20 Department to engage in the business of buying grain from
21 producers.

22 "Grain Indemnity Trust Account" means a trust account
23 established by the Director under Section 205-410 of the
24 Department of Agriculture Law (20 ILCS 205/205-410) that is
25 used for the receipt and disbursement of moneys paid from the
26 Fund and proceeds from the liquidation of and collection upon

1 grain assets, equity assets, collateral, and guarantees of or
2 relating to failed licensees. The Grain Indemnity Trust Account
3 shall be used to pay valid claims, authorized refunds from the
4 Fund, and expenses incurred in preserving, liquidating, and
5 collecting upon grain assets, equity assets, collateral, and
6 guarantees relating to failed licensees.

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

9 "Guarantee" means a document executed by a guarantor by
10 which the guarantor assumes all or part of the obligations of a
11 licensee to claimants.

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

16 "Licensed storage capacity" means the maximum grain
17 storage capacity measured in bushels approved by the applicable
18 licensing agency for use by a warehouseman.

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

22 "Official grain standards" means the official grade
23 designations as adopted by the United States Department of
24 Agriculture under the United States Grain Standards Act and
25 regulations adopted under that Act (7 U.S.C. 71 et seq. and 7
26 CFR 810.201 et seq.).

1 "Permanent storage capacity" means the capacity of
2 permanent structures available for storage of grain on a
3 regular and continuous basis, measured in bushels.

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

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

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

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

24 "Regulatory Fund" means the fund created under Article 35.

25 "Related persons" means affiliates of a licensee, key
26 persons of a licensee, owners of a licensee, and persons who

1 have control over a licensee. For the purposes of this
2 definition:

3 (a) "Affiliate" means a person who has direct or
4 indirect control of a licensee, is controlled by a
5 licensee, or is under common control with a licensee.

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

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

22 (d) "Control" means the power to exercise authority
23 over or direct the management or policies of a business
24 entity.

25 (e) "Indirect" means an interest in a business held by
26 the holder not through the holder's actual holdings in the

1 business, but through the holder's holdings in another
2 business or other businesses.

3 (f) Notwithstanding any other provision of this Act,
4 the term "related person" does not include a lender,
5 secured party, or other lien holder solely by reason of the
6 existence of the loan, security interest, or lien, or
7 solely by reason of the lender, secured party, or other
8 lien holder having or exercising any right or remedy
9 provided by law or by agreement with a licensee or a failed
10 licensee.

11 "Reserve Fund" means a separate and discrete fund of up to
12 \$2,000,000 held by the Corporation as set forth in Section
13 30-25.

14 "Successor agreement" means an agreement by which a
15 licensee succeeds to the grain obligations of a former
16 licensee.

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

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

22 "Valid claim" means a request for payment under the
23 provisions of this Code, submitted by a claimant, the amount
24 and category of which have been determined by the Department,
25 to the extent that determination is not subject to further
26 administrative review or appeal. Each grain sale transaction

1 and each storage obligation shall be considered a separate and
2 discrete request for payment even though one or more requests
3 are contained on one claim form or are filed with the
4 Department in one document.

5 "Warehouse" means a building, structure, or enclosure in
6 which grain is stored for the public for compensation, whether
7 grain of different owners is commingled or whether identity of
8 different lots of grain is preserved.

9 "Warehouse receipt" means a receipt for the storage of
10 grain issued by a warehouseman.

11 "Warehouseman" means a person who is licensed:

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

14 (b) under the United States Warehouse Act but
15 participates in the Fund under subsection (c) of Section
16 30-10.

17 (Source: P.A. 92-16, eff. 6-28-01; 93-225, eff. 7-21-03.)

18 (240 ILCS 40/1-25)

19 Sec. 1-25. Rules. The Department may promulgate rules that
20 are necessary for the implementation and administration of this
21 Code.

22 (a) The Department shall adopt rules governing electronic
23 systems under which electronic warehouse receipts are ~~may be~~
24 issued and transferred. Licensees shall not be required,
25 however, to issue or use electronic warehouse receipts. These

1 rules shall be adopted after the United States Department of
2 Agriculture adopts regulations concerning an electronic
3 receipt transfer system pursuant to 7 U.S.C. 242, 250.

4 (b) The Department shall adopt rules governing electronic
5 price later contracts. Licensees and producers shall not be
6 required, however, to issue or use electronic price later
7 contracts.

8 (Source: P.A. 93-225, eff. 7-21-03.)

9 (240 ILCS 40/10-15)

10 Sec. 10-15. Price later contracts.

11 (a) Price later contracts shall contain provisions ~~be~~
12 ~~written on forms~~ prescribed or authorized by the Department and
13 shall be in either written or electronic form. If in written
14 form, price ~~Price~~ later contract forms shall be printed by a
15 person authorized to print those contracts by the Department
16 after that person has agreed to comply with each of the
17 following:

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

21 (2) That all price later contracts shall be numbered
22 consecutively and a complete record of these contracts
23 shall be retained showing for whom printed and the
24 consecutive numbers printed on the contracts.

25 (3) That a duplicate copy of all invoices rendered for

1 printing price later contracts that will show the
2 consecutive numbers printed on the contracts, and the
3 number of contracts printed, shall be promptly forwarded to
4 the Department.

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

8 Price later contracts that are in electronic form shall be
9 numbered consecutively.

10 (b) A grain dealer purchasing grain by price later contract
11 shall at all times own grain, rights in grain, proceeds from
12 the sale of grain, and other assets acceptable to the
13 Department as set forth in this Code totaling 90% of the unpaid
14 balance of the grain dealer's obligations for grain purchased
15 by price later contract. That amount shall at all times remain
16 unencumbered and shall be represented by the aggregate of the
17 following:

18 (1) Grain owned by the grain dealer valued by means of
19 the hedging procedures method that includes marking open
20 contracts to market.

21 (2) Cash on hand.

22 (3) Cash held on account in federally or State licensed
23 financial institutions.

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

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

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

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

4 (8) Marketable securities, including mutual funds.

5 (9) Irrevocable letters of credit in favor of the
6 Department and acceptable to the Department.

7 (10) Price later contract service charges due or to
8 become due to the licensee.

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

11 (c) For the purpose of computing the dollar value of grain
12 and the balance due on price later contract obligations, the
13 value of grain shall be figured at the current market price.

14 (d) Title to grain sold by price later contract shall
15 transfer to a grain dealer at the time of delivery of the
16 grain. Therefore, no storage charges shall be made with respect
17 to grain purchased by price later contract. A service charge
18 for handling the contract, however, may be made.

19 (e) Subject to subsection (f) of this Section, if a price
20 later contract is not signed by all parties within 30 days of
21 the last date of delivery of grain intended to be sold by price
22 later contract, then the grain intended to be sold by price
23 later contract shall be priced on the next business day after
24 30 days from the last date of delivery of grain intended to be
25 sold by price later contract at the market price of the grain
26 at the close of the next business day after the 29th day. When

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

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

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

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

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

26 (j) Failure to comply with the requirements of this Section

1 may result in suspension of the privilege to purchase grain by
2 price later contract for up to one year.

3 (k) When a producer with a price later contract selects a
4 price for all or any part of the grain represented by that
5 contract, then within 5 business days after that price
6 selection, the licensee shall mail to that producer a
7 confirmation of the price selection, clearly and succinctly
8 indicating the price selected. If the price later contract is
9 in electronic form, the licensee shall, within 5 business days
10 after that price selection, e-mail to that producer a
11 confirmation of the price selection, clearly and succinctly
12 indicating the price selected, in full satisfaction of the
13 mailing requirement in the previous sentence.

14 (l) The issuance and use of price later contracts in
15 electronic form pursuant to the rules promulgated by the
16 Department are specifically authorized by this Code, and any
17 such price later contracts shall have the same validity and
18 enforceability, for all purposes, as those in non-electronic
19 form. For purposes of this Code, the word "written", and
20 derivatives thereof, when used in relation to price later
21 contracts, shall include price later contracts created or
22 displayed electronically.

23 (Source: P.A. 93-225, eff. 7-21-03.)

24 (240 ILCS 40/10-25)

25 Sec. 10-25. Warehouse receipts and storage of grain.

1 (a) When grain is delivered to a warehouseman at a location
2 where grain is also purchased, the licensee shall give written
3 evidence of delivery of grain and that written evidence shall
4 be marked to indicate whether the grain is delivered for
5 storage or for sale. In the absence of adequate evidence of
6 sale, the grain shall be construed to be in storage.

7 (b) Upon demand by a depositor, a warehouseman shall issue
8 warehouse receipts for grain delivered into storage.

9 (c) There shall be no charge for the first warehouse
10 receipt issued to a depositor for a given lot of grain. Charges
11 for any additional warehouse receipts for grain previously
12 covered by a warehouse receipt must be commensurate with the
13 cost of issuance of the additional warehouse receipt.

14 (d) A warehouseman shall issue warehouse receipts only in
15 accordance with the following requirements:

16 (1) Warehouse receipts shall be consecutively numbered
17 in a form prescribed by the Department and issued
18 consecutively by the warehouseman.

19 (2) In the case of a lost or destroyed warehouse
20 receipt, the new warehouse receipt shall bear the same date
21 as the original and shall be plainly marked on its face
22 "duplicate in lieu of lost or destroyed warehouse receipt
23 number", and the warehouseman shall duly fill in
24 the blank with the appropriate warehouse receipt number.

25 (3) Warehouse receipts shall be printed by a person
26 authorized by the Department. The person shall register

1 with the Department and pay an annual registration fee of
2 \$100 to print warehouse receipts.

3 (4) Negotiable warehouse receipts shall be issued only
4 for grain actually in storage with the warehouseman from
5 which it is issued or redeposited by that warehouseman as
6 provided in subsection (e) of Section 10-20.

7 (5) A warehouseman shall not insert in any negotiable
8 warehouse receipt issued by it any language that in any way
9 limits or modifies its liability or responsibility.

10 (e) Upon delivery of grain covered by a negotiable
11 warehouse receipt, the holder of the negotiable warehouse
12 receipt must surrender the warehouse receipt for cancellation,
13 and a warehouseman must cancel and issue a new negotiable
14 warehouse receipt for the balance of grain in storage.

15 (f) When all grain, the storage of which is evidenced by a
16 warehouse receipt, is delivered from storage, the warehouse
17 receipt shall be plainly marked across its face with the word
18 "cancelled" and shall have written on it the date of
19 cancellation, the name of the person canceling the warehouse
20 receipt, and such other information as required by rule, and is
21 thereafter void.

22 (g) When a warehouseman delivers grain out of storage but
23 fails to collect and cancel the negotiable warehouse receipt,
24 the warehouseman shall be liable to any purchaser of the
25 negotiable warehouse receipt for value in good faith for
26 failure to deliver the grain to the purchaser, whether the

1 purchaser acquired the negotiable warehouse receipt before or
2 after the delivery of the grain by the warehouseman. If,
3 however, grain has been lawfully sold by a warehouseman to
4 satisfy its warehouseman's lien, the warehouseman shall not be
5 liable for failure to deliver the grain pursuant to the demands
6 of a holder of a negotiable warehouse receipt to the extent of
7 the amount of grain sold.

8 (h) Except as otherwise provided by this Code or other
9 applicable law, a warehouseman shall deliver the grain upon
10 demand made by the holder of a warehouse receipt pertaining to
11 that grain if the demand is accompanied by:

12 (1) satisfaction of the warehouseman's lien;

13 (2) in the case of a negotiable warehouse receipt, a
14 properly endorsed negotiable warehouse receipt; or

15 (3) in the case of a non-negotiable warehouse receipt,
16 written evidence that the grain was delivered to the
17 warehouseman and that the depositor is entitled to it.

18 (i) If no warehouse receipt is issued to a depositor, a
19 warehouseman shall deliver grain upon the demand of a depositor
20 if the demand is accompanied by satisfaction of the
21 warehouseman's lien and written evidence that the grain was
22 delivered to the warehouseman and the depositor is entitled to
23 it.

24 (j) If a warehouseman refuses or fails to deliver grain in
25 compliance with a demand by a holder of a warehouse receipt or
26 a depositor, the burden is on the warehouseman to establish the

1 existence of a lawful excuse for the refusal.

2 (k) If a warehouse receipt has been lost or destroyed, a
3 warehouseman may issue a substitute warehouse receipt, as
4 provided for in this Section, upon delivery to the warehouseman
5 of an affidavit under oath stating that the applicant for the
6 substitute warehouse receipt is entitled to the original
7 warehouse receipt and setting forth the circumstances that
8 resulted in the loss or destruction of the original warehouse
9 receipt. The warehouseman may request from the depositor a bond
10 in double the value of the grain represented by the original
11 warehouse receipt at the time of issuance of the substitute
12 warehouse receipt so as to protect the warehouseman from any
13 liability or expense that it, or any person injured by the
14 delivery, may incur by reason of the original warehouse receipt
15 remaining outstanding.

16 (l) A warehouse receipt that is to be used for collateral
17 purposes by a warehouseman must be first issued by the
18 warehouseman to itself.

19 (m) The Department shall approve temporary storage space in
20 an amount to be determined by the Department if all the
21 following conditions are met:

22 (1) The warehouseman pays all fees and assessments
23 associated with the temporary storage space.

24 (2) The warehouseman demonstrates that there is a need
25 for additional storage on a temporary basis due to a bumper
26 crop or otherwise.

1 (3) The structure for the storage of grain meets all of
2 the following requirements:

3 (A) The grain storage area has a permanent base
4 made of concrete, asphalt, or a material having similar
5 structural qualities.

6 (B) Hot spot detectors, aeration fans, and ducts
7 are provided to assure that the quality of grain in
8 storage is maintained.

9 (C) The grain storage structure has rigid
10 sidewalls made of concrete, wood, metal, or a material
11 having similar structural qualities.

12 (D) The grain storage structure is equipped with a
13 waterproof covering of sufficient strength to support
14 a person's weight and with inlets to allow airflow.

15 (E) Access to the grain is provided for the purpose
16 of sampling and making examinations.

17 (4) Temporary storage space shall be considered an
18 increase in the licensed storage capacity of the licensee
19 and shall be subject to Section 5-30.

20 (5) The authorization to use temporary storage space
21 for the storage of grain shall expire at the end of 6
22 months after the date of approval by the Department or May
23 15th, whichever comes first.

24 (n) The Department may approve emergency storage space at
25 the request of the licensee according to rule.

26 (o) The issuance and transfer of the warehouse receipts in

1 electronic form pursuant to rules promulgated by the Department
2 are specifically authorized by this Code, and any such
3 warehouse receipts shall have the same validity and
4 enforceability, for all purposes, as those in non-electronic
5 ~~non-electrical~~ form. For purposes of this Code, the words
6 "written" and "printed", and derivatives thereof, when used in
7 relation to warehouse receipts, shall include warehouse
8 receipts created or displayed electronically.

9 (Source: P.A. 94-211, eff. 7-14-05.)

10 (240 ILCS 40/25-5)

11 Sec. 25-5. Adjudication of claims. When a licensee has
12 experienced a failure, the Department shall process the claims
13 in the following manner:

14 (a) The Department shall publish once each week for 3
15 successive weeks in at least 3 newspapers of general
16 circulation within the county of the licensee, and shall mail
17 or deliver to each claimant whose name and post office address
18 are known or are reasonably ascertainable by the Department, a
19 notice stating:

20 (1) That the licensee has experienced a failure and the
21 date of that failure.

22 (2) The place and post office address where claims may
23 be filed.

24 (3) The procedure for filing claims, as determined by
25 rule.

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

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

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

8 (b) Time of notice.

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

12 (2) The published notice as provided for in subsection
13 (a) of this Section shall be published in at least 3
14 newspapers of general circulation in the area formerly
15 served by the failed licensee.

16 (3) The notice as provided for in subsection (a) of
17 this Section shall be mailed by certified mail, return
18 receipt requested, within 60 days after the date of failure
19 to each claimant whose name and post office address are
20 known by the Department within 60 days after the date of
21 failure.

22 (c) Every claim filed must be in writing, verified, and
23 signed by a person who has the legal authority to file a claim
24 on behalf of the claimant and must state information sufficient
25 to notify the Department of the nature of the claim and the
26 amount sought.

1 (d) A claim shall be barred and disallowed in its entirety
2 if:

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

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

15 (e) Subsequent notice.

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

23 (2) The notice mailed as provided for in item (e) (1) of
24 this Section shall not extend the period of time in which a
25 claimant may file its claim beyond the claim date. A
26 claimant to whom notice is mailed under item (e) (1) of this

1 Section, however, shall have the later of the claim date or
2 7 days after the date notice was mailed to file a claim
3 with the Department.

4 (f) The Department shall determine the validity, category,
5 and amount of each claim within 120 days after the date of
6 failure of the licensee and shall give written notice within
7 that time period to each claimant and to the failed licensee of
8 the Department's determination as to the validity, category,
9 and amount of each claim.

10 (g) A claimant or the failed licensee may request a hearing
11 on the Department's determination within 30 days after receipt
12 of the written notice and the hearing shall be held in the
13 county of the location of the principal office or place of
14 business, in Illinois, ~~residence~~ of the failed licensee
15 ~~claimant~~ and in accordance with rules. Under no circumstances
16 shall payment to claimants who have not requested a hearing be
17 delayed by reason of the request for a hearing by any unrelated
18 claimant.

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

1 (i) For the purposes of this Article, the "reasonably
2 ascertainable" standard shall be satisfied when the Department
3 conducts a review of the failed licensee's books and records
4 and an interview of office and clerical personnel of the failed
5 licensee.

6 (j) It is the intent of this Act that the time periods and
7 deadlines in this Section 25-5 are absolute, and are not to be
8 tolled, or their operation halted or delayed. In the event of a
9 bankruptcy by a licensee, the Director shall seek to have
10 commenced any proceedings that are necessary and appropriate to
11 lift the automatic stay or make it otherwise inapplicable to
12 the actions of the Department with regard to the claims
13 determination process. In all other cases, the Department shall
14 seek to have commenced the proceedings necessary to
15 expeditiously remove or lift any order of any court or
16 administrative agency that might attempt to delay the time
17 periods and deadlines contained in this Section 25-5.

18 (Source: P.A. 93-225, eff. 7-21-03.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law."