

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 Article 35 as follows:

9 (240 ILCS 40/1-5)

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

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 and who was not paid in full; or-

14 (c) a person who made prepayments to a failed licensee
15 for agricultural production inputs (seed, feed, petroleum
16 products, fertilizer, and chemicals) and, at the time of the
17 licensee's failure, had not received possession of all of
18 those prepaid agricultural production inputs.

19 "Class I warehouseman" means a warehouseman who is
20 authorized to issue negotiable and non-negotiable warehouse
21 receipts.

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

24 "Code" means this the Grain Code.

25 "Collateral" means:

26 (a) irrevocable letters of credit;

27 (b) certificates of deposit;

28 (c) cash or a cash equivalent; or

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

1 property.

2 "Corporation" means the Illinois Grain Insurance
3 Corporation.

4 "Daily position record" means a grain inventory
5 accountability record maintained on a daily basis that
6 includes an accurate reflection of changes in grain
7 inventory, storage obligations, company-owned inventory by
8 commodity, and other information that is required by the
9 Department.

10 "Daily grain transaction report" means a record of the
11 daily transactions of a grain dealer showing the amount of
12 all grain received and shipped during each day and the amount
13 on hand at the end of each day.

14 "Date of delivery of grain" means:

15 (a) the date grain is delivered to a grain dealer, or
16 its designee, for the purpose of sale;

17 (b) the date grain is delivered to a warehouseman, or
18 its designee for the purpose of storage; or

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

24 (1) the date the purchase price for stored grain is
25 established; or

26 (2) if sold by price later contract, the date of
27 the price later contract.

28 "Department" means the Illinois Department of
29 Agriculture.

30 "Depositor" means a person who has evidence of a storage
31 obligation from a warehouseman.

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

34 "Electronic document" means a document that is generated,

1 sent, received, or stored by electrical, digital, magnetic,
2 optical electromagnetic, or any other similar means,
3 including electronic data interchange, electronic mail,
4 telegram, telex, or telecopy.

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

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

11 "Equity assets" means:

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

14 (a):

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

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

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

32 (a) a formal declaration of insolvency;

33 (b) a revocation of a license;

34 (c) a failure to apply for license renewal, leaving

1 indebtedness to claimants;

2 (d) a denial of license renewal, leaving indebtedness to
3 claimants; or

4 (e) a voluntary surrender of a license, leaving
5 indebtedness to claimants.

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

9 "Fund" means the Illinois Grain Insurance Fund.

10 "Grain" means corn, soybeans, wheat, oats, rye, barley,
11 grain sorghum, canola, buckwheat, flaxseed, edible soybeans,
12 and other like agricultural commodities that may be
13 designated by rule.

14 "Grain assets" means:

15 (a) all grain owned and all grain stored by a licensee
16 or failed licensee, wherever located, including redeposited
17 grain of a licensee or failed licensee;

18 (b) (blank) redeposited--grain--of-a-licensee-or-failed
19 licensee;

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

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

31 For purposes of this Act, storage charges, drying
32 charges, price later contract service charges, and other
33 grain service charges received by or due to a licensee or
34 failed licensee shall not be deemed to be grain assets, nor

1 shall such charges be deemed to be proceeds from the sale or
2 other disposition of grain by a licensee or a failed
3 licensee, or to have been directly or indirectly traceable
4 from, to have resulted from, or to have been derived in whole
5 or in part from, or otherwise related to, the sale or other
6 disposition of grain by the licensee or failed licensee.

7 "Grain dealer" means a person who is licensed by the
8 Department to engage in the business of buying grain from
9 producers.

10 "Grain claimant" means a person described in subsection
11 (a) or (b) of the definition of "Claimant".

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

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

25 "Guarantee" means a document executed by a guarantor by
26 which the guarantor assumes all or part of the obligations of
27 a licensee to claimants.

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

32 "Licensed storage capacity" means the maximum grain
33 storage capacity measured in bushels approved by the
34 applicable licensing agency for use by a warehouseman.

1 "Licensee" means a grain dealer or warehouseman who is
2 licensed by the Department and a federal warehouseman that is
3 a participant in the Fund, under subsection (c) of Section
4 30-10.

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

10 "Permanent storage capacity" means the capacity of
11 permanent structures available for storage of grain on a
12 regular and continuous basis, and measured in bushels.

13 "Person" means any individual or entity, including, but
14 not limited to, a sole proprietorship, a partnership, a
15 corporation, a cooperative, an association, a limited
16 liability company, an estate, ~~or~~ a trust, or a governmental
17 agency.

18 "Prepayment claimant" means a person described in
19 subsection (c) of the definition of "Claimant".

20 "Price later contract" means a written contract for the
21 sale of grain whereby any part of the purchase price may be
22 established by the seller after delivery of the grain to a
23 grain dealer according to a pricing formula contained in the
24 contract. Title to the grain passes to the grain dealer at
25 the time of delivery. The precise form and the general terms
26 and conditions of the contract shall be established by rule.

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

30 "Producer protection holding corporation" means a holding
31 corporation to receive, hold title to, and liquidate assets
32 of or relating to a failed licensee, including assets in
33 reference to collateral or guarantees relating to a failed
34 licensee.

1 "Regulatory Fund" means the fund created under Article
2 35.

3 "Related persons" means affiliates of a licensee, key
4 persons of a licensee, owners of a licensee, and persons who
5 have control over a licensee. For the purposes of this
6 definition:

7 (a) "Affiliate" means a person who has direct or
8 indirect control of a licensee, is controlled by a
9 licensee, or is under common control with a licensee.

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

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

27 (d) "Control" means the power to exercise authority
28 over or direct the management or policies of a business
29 entity.

30 (e) "Indirect" means an interest in a business held
31 by the holder not through the holder's actual holdings in
32 the business, but through the holder's holdings in
33 another business or other businesses.

34 (f) Notwithstanding any other provision of this

1 Act, the term "related person" does not include a lender,
2 secured party, or other lien holder solely by reason of
3 the existence of the loan, security interest, or lien, or
4 solely by reason of the lender, secured party, or other
5 lien holder having or exercising any right or remedy
6 provided by law or by agreement with a licensee or a
7 failed licensee.

8 "Successor agreement" means an agreement by which a
9 licensee succeeds to the grain obligations of a former
10 licensee.

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

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

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

25 "Warehouse" means a building, structure, or enclosure in
26 which grain is stored for the public for compensation,
27 whether grain of different owners is commingled or whether
28 identity of different lots of grain is preserved.

29 "Warehouse receipt" means a receipt for the storage of
30 grain issued by a warehouseman.

31 "Warehouseman" means a person who is licensed:

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

34 (b) under the United States Warehouse Act but who

1 participates in the Fund under subsection (c) of Section
2 30-10.

3 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;
4 92-16, eff. 6-28-01.)

5 (240 ILCS 40/1-15)

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

11 (1) The Director may, upon application, issue or refuse
12 to issue licenses under this Code, and the Director may
13 extend, renew, reinstate, suspend, revoke, or accept
14 voluntary surrender of licenses under this Code.

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

20 The Department shall perform one of 3 types of
21 examinations of licensees.

22 (A) Basic Examination. The basic examination shall
23 be performed when the licensee's merchandising and trade
24 practices involve minimal market risk, such as when the
25 licensee uses cash back-to-back contracts, traditional
26 hedges with the Chicago Board of Trade, and price later
27 contracts. This examination shall include verification of
28 quality and quantity of all grain recorded as stored in
29 the facilities, as reconciled with the daily position
30 record. All storage and contractual categories of grain
31 risk as reflected in the daily position record and the
32 long and short position shall be reconciled with detailed
33 lists. A representative number of individual grain

1 transactions shall be examined (reposted) for proper
2 recording, summarizing, and control. Financial ratios
3 shall be computed and evaluated. Other examination
4 guidelines may be provided by rule.

5 (B) Intermediate Examination. The intermediate
6 examination shall be performed when the licensee's
7 merchandising and trade practices involve an increased
8 amount of risk, such as when the licensee uses guaranteed
9 minimum price contracts or purchases options. This
10 examination shall include all those things performed as
11 part of the basic examination. In addition, the
12 intermediate examination shall include a search for
13 unrecorded grain transactions, which may be performed by
14 mailing of confirmations to a representative number of
15 patrons and vendors and to all grain brokers. Grain
16 transactions shall be reviewed for proper authorization
17 and likelihood of delivery. All grain risk, including
18 option risk, shall be evaluated for proper offsets. A
19 determination shall be made as to whether there are
20 sufficient grain assets and equity assets to cover all
21 grain risk and whether sufficient credit resources are
22 readily available to support and sustain grain risk
23 positions. Other examination guidelines may be provided
24 by rule. If it is determined that grain risk is not
25 adequately covered, then the Department may require
26 actions to be taken to establish adequate cover or may
27 require that the licensee cease and desist certain grain
28 operations in order to reduce that risk; additional
29 penalties may be provided by rule.

30 (C) Advanced Examination. The advanced examination
31 shall be performed when the licensee's merchandising and
32 grain trading practices involve the most risk, such as
33 when the licensee has discretionary trading authority
34 from producers, uses premium offer type contracts, writes

1 or sells options without an exact offset of risk, has
2 contracts with producers that cover multiple crop years,
3 or has any property held as collateral by the Department.
4 This examination shall include all those things performed
5 as part of the basic examination and the intermediate
6 examination. In addition, the advanced examination shall
7 include an evaluation of all grain market risk compared
8 to financial ability to support that outstanding risk.
9 Grain positions shall be evaluated for risk in excess of
10 normal grain merchandising risk. Economic conditions,
11 management ability, credit limits, and internal controls
12 shall be considered in determining appropriate levels of
13 risk for the licensee. A representative number of grain
14 transactions shall be examined to verify the existence
15 and proper functioning of internal controls.
16 Confirmations shall be mailed to a representative number
17 of patrons, vendors, and brokers to ascertain the
18 validity of grain transactions. A determination shall be
19 made of the probability of continued operations by the
20 licensee. Other examination guidelines may be provided by
21 rule. If it is determined that grain risk is excessive
22 given the licensee's financial situation or that internal
23 controls are inadequate, then the Department may order
24 the licensee to cease and desist certain of its grain
25 activities in order to appropriately reduce that risk and
26 may order further internal controls. Additional penalties
27 may be provided by rule.

28 Using these guidelines, the Department shall determine
29 the level of examination to be applied to each licensee. In
30 addition, the Department may, in its sole discretion, engage
31 the services of accounting experts, grain risk management
32 experts, or both as part of any advanced examination, and the
33 licensee being examined shall reimburse the Department for
34 all related costs.

1 The Director may inspect the premises used by a licensee
2 at any time. The books, accounts, records, and papers of a
3 licensee are at all times during business hours subject to
4 inspection by the Director. Each licensee may also be
5 required to make reports of its activities, obligations, and
6 transactions that are deemed necessary by the Director to
7 determine whether the interests of producers and the holders
8 of warehouse receipts are adequately protected and
9 safeguarded. The Director may take action or issue orders
10 that in the opinion of the Director are necessary to prevent
11 fraud upon or discrimination against producers or depositors
12 of grain by a licensee. The sole and exclusive means of
13 halting the warehouse and grain dealer business activities of
14 a licensee, however, are set forth in Section 15-40 relating
15 to suspension and revocation of licenses.

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

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

1 (5) Notwithstanding other judicial remedies, the
2 Director may file a complaint and apply for a temporary
3 restraining order or preliminary or permanent injunction
4 restraining or enjoining any person from violating or
5 continuing to violate this Code or its rules.

6 (6) The Director shall act as Trustee for the Trust
7 Account, act as Trustee over all collateral, guarantees,
8 grain assets, and equity assets held by the Department for
9 the benefit of claimants, and exercise certain powers and
10 perform related duties under Section 20-5 of this Code and
11 Section 205-410 of the Department of Agriculture Law (20 ILCS
12 205/205-410), except that the provisions of the Trust and
13 Trustees Act do not apply to the Trust Account or any other
14 trust created under this Code.

15 (7) The Director shall personally serve as president of
16 the Corporation.

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

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

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

29 (11) The Director may initiate, participate in, or
30 withdraw from any proceedings to liquidate and collect upon
31 grain assets, equity assets, collateral, and guarantees
32 relating to a failed licensee, including, but not limited to,
33 all powers needed to carry out the provisions of Section
34 20-15.

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

4 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;
5 92-16, eff. 6-28-01.)

6 (240 ILCS 40/1-20)

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

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

18 (240 ILCS 40/1-25)

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

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

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

30 (240 ILCS 40/5-5)

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

1 (a) Except as provided in subsection (e), a person may
2 not engage in the business of buying grain from producers, or
3 storing grain for compensation, as--a--grain--dealer,--an
4 incidental-grain-dealer,--or-a-warehouseman in the State of
5 Illinois without a license issued by the Department, or in
6 the case of a federal warehouseman, by the United States
7 government.

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

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

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

1 estimated aggregate dollar amount to be paid by the applicant
2 to producers for grain purchased from producers during the
3 applicant's first fiscal year.

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

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

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

10 Any producer who purchases or intends to purchase more
11 than 100,000 bushels of grain from other producers during any
12 fiscal period, for use as feed and seed, and also uses or
13 intends to use price later contracts for any portion of those
14 purchases, however, must provide to the Department a bond to
15 guarantee the faithful performance of its payment obligations
16 for those purchases.

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

18 (240 ILCS 40/5-10)

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

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

24 (1) A financial statement made within 90 days after
25 the applicant's fiscal year end and prepared in
26 conformity with generally accepted accounting principles
27 following an examination conducted in accordance with
28 generally accepted auditing standards that has attached
29 the unqualified opinion~~7-or-ether-opinion--aceceptable--to~~
30 ~~the---Department7~~ of an independent certified public
31 accountant licensed under Illinois law or an entity
32 permitted to engage in the practice of public accounting
33 under item (b)(3) of Section 14 of the Illinois Public

1 Accounting Act.

2 (A) If the applicant has been engaged in
3 business prior to the application, the financial
4 statement shall set forth the financial position and
5 results in operations for the most recent fiscal
6 year of the applicant. The financial statement
7 shall consist of a balance sheet, statement of
8 income, statement of retained earnings, statement of
9 cash flows, notes to financial statements, and other
10 information as required by the Department.

11 (B) If the applicant has not been engaged in
12 business prior to the application, the financial
13 statement shall consist of a balance sheet, notes to
14 financial statements, and other information as
15 required by the Department.

16 (2) An application fee of \$300 ~~\$100~~ for each
17 license, \$100 of which shall be deposited into the
18 General Revenue Fund and the balance of which shall be
19 deposited into the 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 new license to operate as a Class
25 II warehouseman or incidental grain dealer shall be
26 accompanied by:

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 of the
30 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 other information with respect to the
34 financial resources of the applicant that the Department

1 may require. If the applicant has been engaged in
2 business prior to the application, the financial
3 statement shall also set forth a statement of income of
4 the applicant.

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

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

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

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

21 (240 ILCS 40/5-15)

22 Sec. 5-15. Renewal of license.

23 (a) The application for renewal of a license shall be
24 filed with the Department annually within 90 days after the
25 licensee's fiscal year end. The Department may, upon request
26 of the licensee, payment of an extension fee of \$250 ~~\$50~~, \$50
27 of which shall be deposited into the General Revenue Fund and
28 the balance of which shall be deposited into the Regulatory
29 Fund, and delivery to the Department of a preliminary
30 financial statement compiled reviewed by an independent
31 certified public accountant licensed under Illinois law or an
32 entity permitted to engage in the practice of public
33 accounting under item (b)(3) of Section 14 of the Illinois

1 Public Accounting Act or, in the case of a Class II
2 warehouseman or incidental grain dealer, a preliminary
3 financial statement reviewed by an independent accountant
4 that meets the financial requirements of subsection (b) of
5 Section 5-25, extend, for up to but not exceeding 30 days,
6 the period of time during which the application for renewal
7 of a license may be filed. The Department, however, may
8 provide by rule for reducing the filing period for an
9 application for renewal of a license to no less than 60 days
10 after the licensee's fiscal year end if the Department
11 determines that an applicant has financial deficiencies, or
12 there are other factors, that would create a substantial risk
13 of failure ~~loss-to-potential-claimants~~. The Department must
14 give written notice of the reduced filing period to the
15 licensee at least 60 days before the earlier deadline imposed
16 by the Department to file the application for renewal of a
17 license. Notice is deemed given when mailed by certified
18 mail, return receipt requested, properly addressed and with
19 sufficient postage attached.

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

22 (c) Failure to meet all of the conditions to renew the
23 license may result in a denial of renewal of the license. The
24 licensee may request an administrative hearing to dispute the
25 denial of renewal, after which the Director shall enter an
26 order either renewing or refusing to renew the license.

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

28 (240 ILCS 40/5-20)

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

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

1 (1) A financial statement made within 90 days after
2 the applicant's fiscal year end and prepared in
3 conformity with generally accepted accounting principles
4 following an examination conducted in accordance with
5 generally accepted auditing standards that has attached
6 the unqualified opinion~~, or other opinion acceptable to~~
7 ~~the Department,~~ of an independent certified public
8 accountant licensed under Illinois law or an entity
9 permitted to engage in the practice of public accounting
10 under item (b)(3) of Section 14 of the Illinois Public
11 Accounting Act. The financial statement shall consist of
12 a balance sheet, statement of income, statement of
13 retained earnings, statement of cash flows, notes to
14 financial statements, and other information as required
15 by the Department. The financial statement shall set
16 forth the financial position and results in operations
17 for the most recent fiscal year of the applicant.

18 (2) A fee of \$300 ~~\$100~~ for each license, \$100 of
19 which shall be deposited into the General Revenue Fund
20 and the balance of which shall be deposited into the
21 Regulatory Fund.

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

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

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

1 balance sheet and statement of income of the applicant
2 and other information with respect to the financial
3 resources of the applicant that the Department may
4 require.

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

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

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

14 (240 ILCS 40/5-25)

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

22 (a) General requirements.

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

1 (2) The applicant or licensee must maintain a
2 permanent business location in the State of Illinois. At
3 Each location where the licensee is transacting business,
4 ~~that--place--of--business~~ shall remain open from at least
5 one-half hour before the daily opening to at least
6 one-half hour after the daily closing of the Chicago
7 Board of Trade, unless otherwise approved by the
8 Department.

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

12 (4) The applicant or licensee shall at all times at
13 its principal business location in the State of Illinois
14 keep sufficiently detailed books and records, including
15 but not limited to Grain Seller Assessments, to reflect
16 compliance with all requirements of this Code.

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 mean only those
28 stated current assets shown on the balance sheet
29 submitted by the applicant or licensee that are
30 grain assets, as defined in this Code, and the
31 equity value of any equity assets, as defined in
32 this Code, and in addition shall--be--calculated by
33 deducting from the stated current assets shown on
34 the balance sheet submitted by the applicant or

1 licensee any current asset, as calculated in item
2 (B) of this subdivision (1), resulting from notes
3 receivable from related persons, accounts
4 receivable from related persons, stock subscriptions
5 receivable, and any other related person
6 receivables.

7 (B) A disallowed current asset shall be netted
8 against any related liability and the net result, if
9 an asset, shall be subtracted from the current
10 assets.

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

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

25 (B) Adjusted equity shall be calculated by
26 including only those assets that are grain assets,
27 as defined in this Code, and the equity value of any
28 equity assets, as defined in this Code, and in
29 addition by deducting from the stated net worth
30 shown on the balance sheet submitted by the
31 applicant or licensee any asset, as calculated in
32 item (C) of this subdivision (2), resulting from
33 notes receivable from related persons, accounts
34 receivable from related persons, stock subscriptions

1 receivable, or any other related person receivables.

2 (C) A disallowed asset shall be netted against
3 any related liability and the net result, if an
4 asset, shall be subtracted from the stated net
5 worth, or if a liability it shall remain a
6 liability.

7 (3) An applicant or licensee must have an adjusted
8 equity of at least \$50,000 as determined by the method
9 specified in item (b)(2) of this Section.

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

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

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

21 (240 ILCS 40/5-30)

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

29 (a) Subject to subsection (e) of this Section, a
30 licensee that is newly licensed after the effective date of
31 this Code shall pay an assessment into the Fund for 3
32 consecutive years. These assessments are known as "newly
33 licensed assessments". Except as provided in item (6) of

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

18 (b) Grain dealer newly licensed assessments.

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

21 (A) \$0.000145 multiplied by the total value of
 22 grain purchases for the grain dealer's first fiscal
 23 year as shown in the final financial statement for
 24 that year provided to the Department under Section
 25 5-20; and

26 (B) \$0.000255 multiplied by that portion of
 27 the value of grain purchases for the grain dealer's
 28 first fiscal year that exceeds the adjusted equity
 29 of the licensee multiplied by 20, as shown on the
 30 final financial statement for the licensee's first
 31 fiscal year provided to the Department under Section
 32 5-20.

33 (2) The minimum amount assessment for the first
 34 installment assessment shall be \$1,000 and the maximum

1 shall be \$10,000.

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

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

9 (B) \$0.0001275 multiplied by that portion of
10 the value of grain purchases for the grain dealer's
11 second fiscal year that exceeds the adjusted equity
12 of the licensee multiplied by 20, as shown on the
13 final financial statement for the licensee's second
14 fiscal year provided to the Department under Section
15 5-20.

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

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

23 (B) \$0.0001275 multiplied by that portion of
24 the value of grain purchases for the grain dealer's
25 third 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 third
28 fiscal year.

29 (5) The minimum amount of the second and third
30 installments assessments shall be \$500 per year and the
31 maximum for each year shall be \$5,000.

32 (6) Each of the newly licensed first-3 assessments
33 shall be adjusted up or down based upon the actual annual
34 grain purchases for each year as shown in the final

1 financial statement for that year provided to the
 2 Department under Section 5-20. The adjustments shall be
 3 determined by the Department within 30 days of the date
 4 of approval of renewal of a license. Refunds shall be
 5 paid out of the Fund within 60 days after the
 6 Department's determination. Additional amounts owed for
 7 any installment assessments shall be paid within 30 days
 8 after notification by the Department as--provided--in
 9 subsection-(f)-of-this-Section.

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

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

19 (c) Warehouseman newly licensed assessments.

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

22 (A) \$0.00085 multiplied by the total permanent
 23 storage capacity of the warehouseman at the time of
 24 license issuance; and

25 (B) \$0.00099 multiplied by that portion of the
 26 permanent storage capacity of the warehouseman at
 27 the time of license issuance that exceeds the
 28 adjusted equity of the licensee multiplied by 5, all
 29 as shown on the final financial statement for the
 30 licensee provided to the Department under Section
 31 5-10.

32 (2) The minimum amount assessment for the first
 33 installment assessment shall be \$1,000 and the maximum
 34 shall be \$10,000.

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

3 (A) \$0.000425 multiplied by the total
4 permanent storage capacity of the warehouseman at
5 the time of license issuance; and

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

13 (4) The minimum amount assessment for the second
14 and third installments assessments shall be \$500 per
15 installment assessment and the maximum for each
16 installment assessment shall be \$5,000.

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

30 (6) Every warehouseman shall pay an assessment of
31 \$0.0005 per bushel when increasing available storage
32 capacity by use of temporary storage space. The minimum
33 assessment on temporary storage space shall be \$100. The
34 assessment based upon temporary storage space shall be

1 paid at or before the time of approval of the amount of
 2 the temporary storage space. This assessment on the
 3 temporary storage space capacity does not relieve the
 4 warehouseman of any assessments as set forth in
 5 subsection (d) of this Section.

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

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

19 (d) Grain dealer single assessments and double
 20 assessments; warehouseman single assessments and double
 21 Subsequent assessments.

22 (1) Subject to paragraph (5) of this subsection
 23 (d), if on the first working day of a calendar quarter
 24 when a licensee is not already subject to an assessment
 25 under this subsection (d) (the assessment determination
 26 date), if the equity in the Fund is greater than
 27 \$2,000,000 but less than \$5,000,000 below--\$3,000,000--on
 28 September-1st-of-any-year, every grain dealer who has, or
 29 was required to have, already paid the newly licensed
 30 ~~first, second, and third~~ assessments shall be assessed by
 31 the Department in a total an amount equal to:

32 (A) \$0.00009425 ~~\$0.0000725~~ multiplied by the
 33 total value of grain purchases for the grain
 34 dealer's last completed fiscal year as shown in the

1 final financial statement for that year provided to
2 the Department under Section 5-20; and

3 (B) \$0.00016575 ~~\$0.0001275~~ multiplied by that
4 portion of the value of grain purchases for the
5 grain dealer's last completed fiscal year that
6 exceeds the adjusted equity of the licensee
7 multiplied by 20, 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 The minimum total amount for the grain dealer single
11 a--subsequent assessment shall be \$250 ~~\$500~~ per year and
12 the maximum amount shall be \$10,000 ~~\$5,000~~ per 12-month
13 period year. For the purposes of grain dealer
14 assessments under this item (1) of subsection (d) of this
15 Section, the total value of grain purchases shall be the
16 total value of first time grain purchases by Illinois
17 locations from producers.

18 (2) Subject to paragraph (5) of this subsection
19 (d), if on the first working day of a calendar quarter
20 when a licensee is not subject to an assessment under
21 this subsection (d) (the assessment determination date),
22 if the equity in the Fund is greater than \$2,000,000 but
23 less than \$5,000,000 ~~below-\$3,000,000-on-September-1st-of~~
24 ~~any--year~~, every warehouseman who has, or was required to
25 have, already paid the newly licensed first,--second,--and
26 third assessments shall be assessed a warehouseman single
27 assessment by the Department in a total an amount equal
28 to:

29 (A) \$0.0005525 ~~\$0.000425~~ multiplied by the
30 total licensed storage capacity of the warehouseman
31 as of September 1st of that year; and

32 (B) \$0.0006435 ~~\$0.000495~~ multiplied by that
33 portion of the licensed storage capacity of the
34 warehouseman as of September 1st of that year that

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

5 The minimum total amount for a warehouseman single
6 subsequent assessment shall be \$250 \$500 per 12-month
7 period year and the maximum amount shall be \$10,000
8 \$5,000 per 12-month period year.

9 (3) Subject to paragraph (5) of this subsection
10 (d), if on the first working day of a calendar quarter
11 when a licensee is not subject to an assessment under
12 this subsection (d) (the assessment determination date),
13 the equity in the Fund is \$2,000,000 or less, every grain
14 dealer who has, or was required to have, already paid the
15 newly licensed assessment shall be assessed a grain
16 dealer double assessment by the Department in a total
17 amount equal to:

18 (A) \$0.0001885 multiplied by the total value
19 of grain purchases for the grain dealer's last
20 completed fiscal year, as shown in the financial
21 statement for that year provided to the Department
22 under Section 5-20; and

23 (B) \$0.0003375 multiplied by that portion of
24 the value of grain purchases for the grain dealer's
25 last completed fiscal year that exceeds the adjusted
26 equity of the licensee multiplied by 20, as shown on
27 the final financial statement for the licensee's
28 last completed fiscal year provided to the
29 Department under Section 5-20.

30 The minimum total amount for this grain dealer double
31 assessment shall be \$500 per 12-month period and the maximum
32 amount shall be \$20,000 per 12-month period. For the purpose
33 of grain dealer assessments under this item (3), the total
34 value of grain purchases shall be the total value of

1 first-time grain purchases by Illinois locations from
2 producers.

3 (4) Subject to paragraph (5) of this subsection
4 (d), if on the first working day of a calendar quarter
5 when a licensee is not subject to an assessment under
6 this subsection (d) (the assessment determination date),
7 the equity in the Fund is \$2,000,000 or less, every
8 warehouseman who has, or was required to have, already
9 paid the newly licensed assessments shall be assessed a
10 warehouseman double assessment by the Department in a
11 total amount equal to:

12 (A) \$0.001105 multiplied by the then current
13 total licensed storage capacity of the warehouseman;
14 and

15 (B) \$0.001287 multiplied by that portion of
16 the then current total licensed storage capacity of
17 the warehouseman that exceeds the adjusted equity of
18 the licensee multiplied by 5, as shown on the final
19 financial statement for the licensee's last
20 completed fiscal year provided to the Department
21 under Section 5-20. The minimum amount for this
22 Warehouseman Double Assessment shall be \$500 per
23 12-month period and the maximum amount shall be
24 \$20,000 per 12-month period.

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

30 (6) All assessments under paragraphs (1), (2), (3),
31 and (4) of this subsection (d) shall be effective as of
32 the first day of the calendar quarter immediately
33 following the assessment determination date and shall be
34 paid to the Department by licensees in 4 equal

1 installments by the twentieth day of each consecutive
 2 calendar quarter following notice by the Department of
 3 the assessment. The Department shall give written notice
 4 to all licensees of when the assessment is effective, and
 5 the rate of the assessment, by mail within 20 days before
 6 the assessment determination date.

7 (7) After an assessment under paragraph (1), (2),
 8 (3), or (4) of this subsection (d) is instituted, the
 9 amount of any unpaid installments for the assessment
 10 shall not be adjusted based upon any change in the
 11 financial statements or licensed storage capacity of a
 12 licensee.

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

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

25 (e) Newly licensed; exemptions.

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

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

32 (B) A licensee who has a lapse in licensing of
 33 more than 30 days. A license shall not be
 34 considered to be lapsed after its revocation or

1 termination if an administrative or judicial action
2 is pending or if an order from an administrative or
3 judicial body continues an existing license.

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

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

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

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

33 (G) A grain dealer that is the result of a
34 statutory merger if that person has adjusted equity

1 of less than 90% of the combined adjusted equity of
2 the predecessor persons who merged. For the
3 purposes of this paragraph, the adjusted equity of
4 the resulting person shall be determined from the
5 approved or certified financial statement submitted
6 to the Department for the first fiscal year of the
7 resulting person ending after the merger. For the
8 purposes of this paragraph, the combined adjusted
9 equity of the predecessor persons shall be
10 determined by combining the adjusted equity of each
11 predecessor person as set forth in the most recent
12 approved or certified financial statement submitted
13 to the Department for the last fiscal year of each
14 predecessor person ending on the date of or before
15 the merger.

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

34 (I) A grain dealer that is a limited

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

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

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

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

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

17 (A) A person resulting solely from a name
18 change of a licensee.

19 (B) A warehouseman changing from a Class I
20 warehouseman to a Class II warehouseman or from a
21 Class II warehouseman to a Class I warehouseman
22 under this Code.

23 (C) A licensee that becomes a wholly owned
24 subsidiary of another licensee.

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

1 purpose of this paragraph, the combined adjusted
2 equity of the predecessor persons shall be
3 determined by combining the net worth of each
4 predecessor person as set forth in the most recent
5 approved or certified financial statement of each
6 predecessor person submitted to the Department.

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

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

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

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

26 (H) A limited liability company in which there
27 is a change in membership interests and that change
28 is 50% or less of the total membership interests
29 during the limited liability company's fiscal year
30 if the adjusted equity of the limited liability
31 company after the change is greater than or equal to
32 90% of the adjusted equity of the limited liability
33 company before the change. For the purposes of this
34 paragraph, the adjusted equity of the limited

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

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

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

25 (f) Grain seller single assessments and double
26 assessments. Assessments under this subsection (f) apply only
27 to the first sale of grain to a grain dealer at an Illinois
28 location.

29 (1) Subject to paragraph (3) of this subsection
30 (f), if on the first working day of a calendar quarter
31 when a grain seller is not already subject to an
32 assessment under this subsection (f) (the assessment
33 determination date), the equity in the Fund is greater
34 than \$2,000,000 and less than \$5,000,000, each person who

1 settles for grain (sold to a grain dealer at an Illinois
2 location) during the 12-month period commencing on the
3 first day of the succeeding calendar quarter (the
4 assessment period) shall pay an assessment equal to
5 \$0.0002 (the grain seller single assessment) multiplied
6 by the net market value of grain settled for (payment
7 received for grain sold).

8 (2) Subject to paragraph (3) of this subsection
9 (f), if on the first working day of a calendar quarter
10 when a grain seller is not already subject to an
11 assessment under this subsection (f) (the assessment
12 determination date), the equity in the Fund is \$2,000,000
13 or less, each person who settles for grain (sold to a
14 grain dealer at an Illinois location) during the
15 assessment period shall pay an assessment equal to
16 \$0.0004 (the grain seller double assessment) multiplied
17 by the net market value of grain settled for.

18 (3) The next assessment determination date can be
19 no sooner than the first working day of the fourth full
20 calendar month following the end of the assessment
21 period.

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

33 (5) All assessments under paragraphs (1) and (2) of
34 this subsection (f) shall commence on the first day of

1 the calendar quarter immediately following the assessment
2 determination date and shall continue for a period of 12
3 consecutive calendar months. The assessments shall be
4 collected by licensees at the time of settlement during
5 the assessment period, and shall be remitted by licensees
6 to the Department by the twentieth day of each calendar
7 quarter, commencing with the second calendar quarter
8 following the assessment determination date. The
9 Department shall give written notice to all licensees of
10 when an assessment under this subsection (f) is to begin
11 and end, and the appropriate level of the assessment, by
12 mail within 20 days before the assessment determination
13 date.

14 (6) Assessments under this subsection (f) apply
15 only to grain for which settlement is made during the
16 assessment period, without regard to the date the grain
17 was sold to the licensee.

18 (7) The collection and remittance of assessments
19 from first sellers of grain under this subsection (f) is
20 the sole responsibility of the licensees to whom the
21 grain is sold. Sellers of grain shall not be penalized by
22 reason of any licensee's failure to comply with this
23 subsection (f). Failure of a licensee to collect any
24 grain seller single assessment or grain seller double
25 assessment shall not relieve the grain seller from paying
26 the assessment, and the grain seller shall promptly remit
27 the uncollected assessments upon demand by the licensee,
28 which may be accounted for in settlement of grain
29 subsequently sold to that licensee. Licensees who do not
30 collect assessments as required by this subsection (f),
31 or who do not remit those assessments to the Department
32 within the time deadlines required by this subsection
33 (f), shall remit the amount of the assessments that
34 should have been remitted to the Department and in

1 addition shall be subject to a monetary penalty in an
2 amount not to exceed \$25,000.

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

6 (g) Lender single assessments and lender double
7 assessments

8 (1) Subject to paragraph (3) of this subsection
9 (g), if on the first working day of a calendar quarter
10 when a person is not already subject to an assessment
11 under this subsection (g) (the assessment determination
12 date), the equity in the Fund is greater than \$2,000,000
13 and less than \$5,000,000, each person holding warehouse
14 receipts on grain stored at an Illinois location to
15 secure a loan to a licensee shall be assessed at the rate
16 of \$0.0002 on the average daily balance of outstanding
17 loan amounts so secured (the lender single
18 assessment) during the 12-month period commencing with the
19 first day of the succeeding calendar quarter (the
20 assessment period).

21 (2) Subject to paragraph (3) of this subsection
22 (g), if on the first working day of a calendar quarter
23 when a person is not already subject to an assessment
24 under this subsection (g) (the assessment determination
25 date), the equity in the Fund is \$2,000,000 or less, each
26 person holding warehouse receipts on grain stored at an
27 Illinois location to secure a loan to a licensee shall be
28 assessed at the rate of \$0.0004 on the average daily
29 balance of outstanding loan amounts so secured (the
30 lender double assessment) during the 12-month period
31 commencing with the first day of the succeeding calendar
32 quarter (the assessment period).

33 (3) The next assessment determination date can be
34 no sooner than the first working day of the fourth full

1 calendar month following the end of the Assessment
2 Period.

3 (4) All amounts due from persons under this
4 subsection (g) shall be paid to the Department within 20
5 days after the end of the assessment period. Persons not
6 paying the assessments in accordance with this subsection
7 (g) shall be required to remit the amounts of those
8 assessments and, in addition, shall be subject to a
9 monetary penalty in an amount not to exceed \$25,000. It
10 is the responsibility of a licensee to inform each of its
11 lenders as to the onset of an assessment for which the
12 lender might be liable. The notification must be in
13 writing and must be sent within 5 days after the licensee
14 receives notice of an assessment from the Department.

15 (5) For purposes of this subsection (g), persons
16 who receive warehouse receipts as part of so-called
17 "repurchase" arrangements are deemed to have made a loan
18 to the licensee secured by the warehouse receipts and are
19 subject to assessment under this subsection (g).

20 (h) Equity in the Fund shall exclude any amount of money
21 in the Fund that has been transferred from the General
22 Revenue Fund under subsection (h) of Section 25-20. Except
23 for--the--first--assessment--made--under--this--Section,--and
24 assessments--under--items--(e)(5),--(e)(6),--and--(e)(7)--of--this
25 Section,--all--assessments--shall--be--paid--to--the--Department
26 within--60--days--after--the--date--posted--on--the--written--notice--of
27 assessment.-----The---Department---shall--forward--all--paid
28 assessments--to--the--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 (f) If grain is in storage with a warehouseman and is
9 intended to be sold by price later contract, that grain shall
10 be considered as remaining in storage and not be deemed sold
11 by price later contract until the date the price later
12 contract is signed by all parties.

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

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

19 (i) A licensee grain-dealer shall not issue a collateral
20 warehouse receipt on grain purchased by a price later
21 contract to the extent the purchase price has not been paid
22 by the licensee grain-dealer.

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

26 (k) When a producer with a price later contract selects
27 a price for all or any part of the grain represented by that
28 contract, then within 3 business days after that price
29 selection, the licensee shall mail to that producer a
30 confirmation of the price selection, clearly and succinctly
31 indicating the price selected.

32 (l) A licensee shall send letters, by registered mail,
33 to the holders of all of its outstanding price later
34 contracts no more than 60 days and no less than 30 days

1 before the end of the 365-day period that commenced on the
2 later of the date of execution of each of the price later
3 contracts or delivery of the grain covered by the price later
4 contracts. These letters shall be headed "Reminder
5 Notification" and shall clearly indicate the date the 365-day
6 period of coverage under the Code ends for each of those
7 outstanding price later contracts.

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

9 (240 ILCS 40/10-20)

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

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

17 (1) If the condition of grain offered for storage
18 might adversely affect the condition of grain in the
19 warehouse, a warehouseman need not receive the grain for
20 storage, but if a warehouseman does receive the grain,
21 then it must be stored in a manner that will not lower
22 the grade of other grain in the warehouse.

23 (2) A warehouseman shall provide competent
24 personnel and equipment to weigh and grade all grain in
25 and out of storage.

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

29 (b) For the purposes of the Department's examinations, a
30 warehouseman shall provide and maintain safe and adequate
31 means of ingress and egress to the various and surrounding
32 areas of the facilities, storage bins, and compartments of
33 the warehouse.

1 (c) A warehouseman shall at all times have a sufficient
2 quantity of grain of like kind and quality to meet its
3 outstanding storage obligations.

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

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

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

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

23 (f) Schedule of rates and licenses.

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

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

33 (3) To change the schedule of rates or the name of
34 any person authorized to sign warehouse receipts, a

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

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

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

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

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

1 receipts to the Department and has executed a successor's
2 agreement, or the successor has otherwise provided for the
3 obligations of its predecessor.

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

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

17 (l) For purposes of this Section, "like kind and
18 quality" means the type of commodity and a combination of
19 grade, specialty traits, if any, and class or sub-class as
20 applicable.

21 (m) Nothing in this Section is deemed to prohibit a
22 warehouseman from entering into agreements with depositors of
23 grain relating to allocation or reservation of storage space.

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

25 (240 ILCS 40/15-15)

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

27 (a) Violations of maximum allowable open position limits
28 by more than 1,000 bushels but less than twice the maximum
29 allowable open position limits.

30 (1) If a licensee violates the maximum allowable
31 open position limits of item (a)(2) of Section 10-10 and
32 the open position is more than 1,000 bushels but less
33 than twice the maximum allowable open position limits,

1 the licensee shall be required to:

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 limits and 50 cents per bushel of each
6 bushel for all other grain in excess of the maximum
7 allowable open position limits or \$2,500, whichever
8 is greater; and

9 (B) Pay a penalty in an amount not to exceed
10 \$250.

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

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

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

22 (3) If a licensee commits 3 or more violations as
23 set forth in item (a)(1) of Section 15-10 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 of each bushel for
29 all other grain in excess of the maximum allowable
30 open position limits or \$10,000, whichever is
31 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 (b) Violations of maximum allowable open position limits

1 that equal or exceed twice the maximum allowable open
2 position.

3 (1) If a licensee violates the maximum allowable
4 open position limits of item (a)(2) of Section 10-10 and
5 the open position equals or exceeds twice the maximum
6 allowable open position limits, the licensee must:

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

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

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

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

25 (B) pay a penalty in an amount greater than
26 \$750 ~~\$500~~ but less than \$15,000 ~~\$10,000~~.

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

30 (A) post collateral with the Department in an
31 amount equal to \$2 per bushel for each bushel of
32 soybeans in excess of the maximum allowable open
33 position limits and \$1 per bushel for each bushel
34 for all other grain in excess of the maximum

1 allowable open position limits or \$10,000, whichever
2 is greater; and

3 (B) pay a penalty in an amount greater than
4 \$2,000 ~~\$1,000~~ but less than \$20,000 ~~\$10,000~~.

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

6 (240 ILCS 40/15-20)

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

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

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

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

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

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

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

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

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

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

33 (B) pay a penalty of no less than \$2,000

1 ~~\$17,000~~ and no greater than \$20,000 ~~\$10,000~~.

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

3 (1) If a licensee fails to have sufficient quantity
4 of grain in store to meet outstanding storage obligations
5 and the value of the grain quantity deficiency as
6 determined by the formula set forth in subsection (c) of
7 Section 15-20 equals or exceeds \$20,000, the licensee
8 must:

9 (A) post collateral with the Department in an
10 amount equal to twice the value of the grain
11 quantity deficiency; and

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

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

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

20 (B) pay a penalty of no less than \$750 ~~\$500~~
21 and no greater 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 15-20 within a 5 year
24 period, the licensee must:

25 (A) post collateral with the Department in an
26 amount equal to twice the value of the grain
27 quantity deficiency or \$40,000, whichever is
28 greater; and

29 (B) pay a penalty of no less than \$2,000
30 ~~\$17,000~~ and no greater than \$20,000 ~~\$10,000~~.

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

1 (d) If a licensee fails to have sufficient quality of
2 grain in store to meet outstanding storage obligations when
3 the value of the grain quality deficiency exceeds \$1,000, the
4 licensee must post collateral with the Department in an
5 amount equal to the value of the grain quality deficiency.
6 For the purposes of this Section, the value of the grain
7 quality deficiency shall be determined by applying prevailing
8 market discount factors to all grain quality factors.

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

10 (240 ILCS 40/15-30)

11 Sec. 15-30. Financial and record keeping deficiencies;
12 collateral and guarantees.

13 (a) An applicant or a licensee has a financial
14 deficiency if it does not meet the minimum financial
15 requirements of Section 5-25 and subsection (b) of Section
16 10-15 of this Code.

17 (b) A licensee must collateralize all financial
18 deficiencies at the rate of one dollar's worth of collateral
19 for each dollar of the aggregate sum of the individual ratio
20 deficiencies, the net worth deficiencies, and 90% asset
21 requirement deficiencies.

22 (c) A licensee who is found to have record keeping
23 deficiencies, other than in reference to violations as set
24 forth in subsection (b) of Section 10-15 and in Sections
25 15-15 and 15-20, may be required by the Department to post
26 collateral up to the amount of \$10,000.

27 (d) If an applicant for a new license or a renewal of a
28 license has financial deficiencies or the Department has
29 reason to believe that the financial stability of an
30 applicant or a licensee is in question, the Department may
31 require the applicant or licensee to provide the Department,
32 in addition to collateral, personal, corporate, or other
33 related person guarantees in a form and in an amount

1 satisfactory to the Department.

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

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

7 (240 ILCS 40/15-35)

8 Sec. 15-35. Return of collateral and guarantees. If the
9 next fiscal year's financial statement of a licensee received
10 by the Department and an examination performed by the
11 Department after delivery or posting of any required
12 collateral or the guarantee indicates compliance by the
13 licensee with all statutory requirements of this Code for
14 which the collateral and guarantees were required, the
15 collateral and guarantee shall be returned within 90 days a
16 ~~reasonable-period-of-time~~ to the licensee and the guarantor
17 following a written request for the return. The financial
18 statement must comply with the requirements of Section 5-20.

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

20 (240 ILCS 40/15-40)

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

22 (a) The Director shall ~~may~~ suspend a license and take
23 possession and control of all grain assets and equity assets
24 (except that the Department may not take possession and
25 control of any equity asset on which there is a valid
26 security interest or other valid lien without the prior,
27 written permission of the secured party or lien holder) of
28 the suspended licensee if the Department has reason to
29 believe that any of the following has occurred:

30 (1) A licensee has made a formal declaration of
31 insolvency; failed to apply for license renewal, leaving
32 indebtedness to claimants; or been denied a license

1 renewal, leaving indebtedness to claimants experienced--a
 2 failure--or-is-unable-to-financially-satisfy-claimants-in
 3 accordance-with-applicable-statute,-rule,-or-agreement-if
 4 a-bona-fide-dispute-does-not-exist-between--the--licensee
 5 and-a-claimant.

6 (2) A licensee has failed to pay a producer, on
 7 demand, for grain purchased from that producer, assuming
 8 no bona fide dispute exists with regard to the payment,
 9 and does not make that payment after being ordered to do
 10 so by the Department.

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

15 (4) A licensee has violated any of the other
 16 provisions of this Code and the violation, or the pattern
 17 of the violations, indicates an immediate danger of loss
 18 to potential claimants violated-any-of-the-provisions-of
 19 this-Code-and---the--violation--or--the--pattern--of--the
 20 violations--indicates--an--immediate--danger--of--loss-to
 21 potential-claimants.

22 (5) (3) A licensee has failed fails to pay a
 23 penalty or post collateral or guarantees by the date
 24 ordered by the Director.

25 (6) (4) A licensee has failed fails to pay an
 26 assessment as required by Section 5-30.

27 (b) The Director may revoke a license if any--of--the
 28 following---occurs+---(1) the Director finds, after an
 29 administrative hearing, that any of the grounds for
 30 suspension under item (a)(1), (a)(2), (a)(3), or (a)(4),
 31 (a)(5), or (a)(6) of Section 15-40 have occurred.

32 (c) (2) When a licensee voluntarily files for bankruptcy
 33 under the federal bankruptcy laws, that filing constitutes a
 34 revocation of the license of the licensee on the day that the

1 filing occurs.

2 (d) ~~(3)~~ When an order for relief is entered in reference
3 to a licensee as a consequence of a petition for involuntary
4 bankruptcy filed under the federal bankruptcy laws, that
5 order constitutes a revocation of the license on the date of
6 that order.

7 (e) ~~(e)~~ Within 10 days after suspension of a license,
8 an administrative hearing shall be commenced to determine
9 whether the license shall be reinstated or revoked. Whenever
10 an administrative hearing is scheduled, the licensee shall be
11 served with written notice of the date, place, and time of
12 the hearing at least 5 days before the hearing date. The
13 notice may be served by personal service on the licensee or
14 by mailing it by registered or certified mail, return receipt
15 requested, to the licensee's place of business. The Director
16 may, after a hearing, issue an order either revoking or
17 reinstating the license.

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

19 (240 ILCS 40/15-45)

20 Sec. 15-45. Criminal offenses.

21 (a) A person who causes a warehouse receipt for grain to
22 be issued knowing that the grain for which that warehouse
23 receipt is issued is not under the licensee's control at the
24 time of issuing that warehouse receipt, or who causes a
25 licensee to issue a warehouse receipt for grain knowing that
26 the warehouse receipt contains any false representation, is
27 guilty of a Class 2 3 felony.

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

32 (c) A person who, knowingly and without lawful
33 authority:

- 1 (1) withholds records from the Department;
- 2 (2) keeps, creates, or files with the Department
- 3 false, misleading, or inaccurate records;
- 4 (3) alters records without permission of the
- 5 Department; or
- 6 (4) presents to the Department any materially false
- 7 or misleading records;

8 is guilty of a Class 2 3 felony.

9 (d) A licensee who, after suspension or revocation of
10 its license, knowingly and without legal authority refuses to
11 surrender to the Department all books, accounts, and records
12 relating to the licensee that are in its possession or
13 control is guilty of a Class 2 3 felony.

14 (e) A licensee who knowingly impedes, obstructs,
15 hinders, or otherwise prevents or attempts to prevent the
16 Director from performing his or her duties under this Code,
17 or who knowingly refuses to permit inspection of its
18 premises, books, accounts, or records by the Department, is
19 guilty of a Class A misdemeanor.

20 (f) A person who, knowingly and without a license,
21 engages in the business of a grain dealer or a warehouseman
22 for which a license is required under the Code is guilty of a
23 Class A misdemeanor.

24 (g) A person who, intentionally, knowingly and without
25 lawful authority:

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

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

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

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

1 (240 ILCS 40/20-10)

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

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

6 (1) A person, including, without limitation, a
7 lender:

8 (A) who possesses warehouse receipts issued
9 from an Illinois warehouse location covering grain
10 owned or stored by a warehouseman;

11 (B) who has other written evidence of a
12 storage obligation of a warehouseman issued from an
13 Illinois warehouse location in favor of the holder,
14 including, but not limited to, scale tickets,
15 settlement sheets, and ledger cards; or

16 (C) who has loaned money to a warehouseman and
17 was to receive a warehouse receipt from an Illinois
18 location as security for that loan, who surrendered
19 warehouse receipts as a part of a grain sale at an
20 Illinois location, or who has delivered grain out of
21 storage with the warehouseman as a part of a grain
22 sale at an Illinois location and:

23 (i) the grain dealer or warehouseman
24 experienced a failure within 21 days
25 thereafter, a warehouse receipt was not issued,
26 and payment in full was not made; or

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

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

1 (3) A person who made prepayments to a failed
 2 licensee for agricultural production inputs (seed, feed,
 3 petroleum products, fertilizer, and chemicals) and at
 4 time of the licensee's failure had not received
 5 possession of all of those prepaid agricultural
 6 production inputs.

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

10 (b) The lien on grain assets created under this Section
 11 shall be preferred and prior to any other lien, encumbrance,
 12 or security interest relating to those assets described in
 13 the definition of "grain assets" in Section 1-10, regardless
 14 of the time the other lien, encumbrances, or security
 15 interest attached or became perfected. The lien on equity
 16 assets created under this Section shall also be preferred and
 17 prior to any other lien, encumbrance, or security interest
 18 relating to "equity assets" as defined in Section 1-10 ~~to the~~
 19 ~~extent a creditor does not have a valid security interest in,~~
 20 ~~or other lien on, the property that was --perfected-- prior --to~~
 21 ~~the--date--of--failure--of--the--licensee.~~ The lien on equity
 22 assets created under this Section, however, shall be
 23 subordinate and subject to any other lien, encumbrance, or
 24 security interest relating to "equity assets" ~~as--defined--in~~
 25 ~~Section--1-10~~ to the extent a creditor has a valid security
 26 interest in or other valid lien on the property that was
 27 perfected prior to the date of failure of the licensee.

28 (c) To the extent any portion of this Code conflicts
 29 with any portion of the Uniform Commercial Code, the
 30 provisions of this Code control.

31 (d) If an adversarial proceeding is commenced to recover
 32 "grain assets" or "equity assets" upon which a lien created
 33 under this Section is imposed and if the Department declines
 34 to take part in that adversarial proceeding, the Department,

1 upon application to the Director by any claimant, shall
2 assign to the claimant the statutory lien to permit the
3 claimant to pursue the lien in the adversarial proceeding,
4 but only if the assignment and adversarial proceeding will
5 not delay the Department's liquidation and distribution of
6 grain assets, equity assets, collateral, and guarantees,
7 including proceeds thereof, to all claimants holding valid
8 claims.

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

10 (240 ILCS 40/20-15)

11 Sec. 20-15. Liquidation procedures. When a licensee
12 experiences a failure, the Department has the authority to
13 and shall:

14 (a) Immediately post notice at all locations of the
15 failed licensee stating that the licensee has experienced a
16 failure and that the license has been terminated and is no
17 longer effective.

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

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

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

28 (e) Seize and take possession of, protect, liquidate,
29 and collect upon all grain assets, collateral, and guarantees
30 of or relating to the failed licensee and deposit the
31 proceeds into the Trust Account. If at any time it appears,
32 however, in the judgment of the Department that the costs of
33 seizing and taking possession of, liquidating, and collecting

1 upon any or all of the grain assets, collateral, and
2 guarantees equals or exceeds the expected recovery to the
3 Department, the Department may elect not to pursue seizing
4 and taking possession of, liquidating, and collecting upon
5 any or all of the assets.

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

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

32 (g) Make available on demand to an applicable secured
33 party or lien holder the equity asset, to the extent the
34 Department seized or otherwise gained possession or control

1 of the equity asset, but the secured party or lien holder
2 does not consent to the Department liquidating and collecting
3 upon the equity asset.

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

5 (240 ILCS 40/20-20)

6 Sec. 20-20. Liquidation expenses.

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

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

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

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

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

29 (240 ILCS 40/25-5)

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

1 (a) The Department shall publish once each week for 3
2 successive weeks in a newspaper of general circulation within
3 the county of the licensee, and shall mail or deliver to each
4 claimant whose name and post office address are known or are
5 reasonably ascertainable by the Department, a notice stating:

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

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

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

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

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

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

19 (b) Time of notice.

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

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

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

33 (c) Every claim filed must be in writing, and verified,
34 and signed by a person who has the legal authority to file a

1 claim on behalf of the claimant and must state information
2 sufficient to notify the Department of the nature of the
3 claim and the amount sought.

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

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

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

18 (e) Subsequent notice.

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

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

33 (f) The Department shall determine the validity,
34 category, and amount of each claim within 120 days after the

1 date of failure of the licensee ~~and--(g)--~~The-Department
2 shall give written notice within that time period to each
3 claimant and to the failed licensee of the Department's
4 determination as to the validity, category, and amount of
5 each claim.

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

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

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

27 (j) The time periods and deadlines in this Section 25-5
28 are absolute, and they are not to be tolled, or their
29 operation halted or delayed, by reason of a bankruptcy
30 filing, litigation, administrative order, or any other reason
31 whatsoever. In the event of a bankruptcy by a licensee, the
32 Director shall, with dispatch, authorize or take legal action
33 and authorize or commence proceedings that are necessary and
34 appropriate to lift the automatic stay or make it otherwise

1 inapplicable to the actions of the Department with regard to
2 the claims determination process. In all other cases, the
3 Department shall expeditiously act to remove any order of any
4 court or administrative agency that might attempt to delay
5 the time periods and deadlines contained in this Section
6 25-5.

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

8 (240 ILCS 40/25-10)

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

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

20 In addition, in the event of a bankruptcy filing when the
21 automatic stay that purportedly applies to the payment of
22 amounts due to valid claimants under this Code by reason of a
23 failure, or in the event of any other order of a court or
24 administrative agency that purports to halt, delay, or
25 otherwise prevent the payment of all amounts due to valid
26 claimants under this Code within the time deadline provided,
27 then the Department shall do the following: within the time
28 deadlines stated in this Code, pay all valid claimants, pro
29 rata, from all amounts not considered to be in the bankruptcy
30 estate; provide to each valid claimant a written
31 communication indicating the amount being paid and the amount
32 yet due, providing an explanation as to why the full payment
33 has not been made, and containing a promise to pay the

1 remaining amounts yet due as soon as funds become available;
 2 and expeditiously and vigorously take legal or administrative
 3 action, and commence legal or administrative proceedings,
 4 that are necessary and appropriate to remove or lift any
 5 orders of any court or administrative agency that have
 6 halted, delayed, or impeded in any way the payment of all
 7 amounts due to valid claimants under this Code.

8 Each claimant shall be compensated in accordance with the
 9 following provisions:

10 (a) Subject to subsection (i) of this Section, valid
 11 claims filed by warehouse claimants shall be paid 100% of the
 12 amount determined by the Department. Any person lending money
 13 to a licensee and taking warehouse receipts on grain from the
 14 licensee as collateral to secure the loan must demonstrate to
 15 the Department, as part of that person's warehouse claim
 16 filing, that it used the same care and reasonable business
 17 practices to confirm the existence of the grain collateral,
 18 prior to taking the warehouse receipts, as it ordinarily uses
 19 to confirm the existence of other types of collateral, taking
 20 into account, however, reasonable differences between stored
 21 grain and other types of collateral. The warehouse claim
 22 filing shall contain a written statement specifying the
 23 measures taken to confirm the existence of the grain. The
 24 Department may require further information in that regard, in
 25 the sole discretion of the Department. If the Department
 26 concludes that the lender making the claim did not adequately
 27 confirm the existence of the collateral, in accordance with
 28 this subsection, the warehouse claim shall be denied in
 29 accordance-with-the-following-provisions:

30 (a)--Valid--claims--filed-by-warehouse-claimants--shall--be
 31 paid-100%-of-the-amount-determined-by-the-Department--out--of
 32 the--net--proceeds--of-the-liquidation-of-grain-assets-as-set
 33 forth-in-this-subsection-(a).--To-the-extent-the-net-proceeds
 34 are-insufficient, warehouse-claimants-shall-be-paid-their-pro

1 rata-share-of-the-net-proceeds-of-the--liquidation--of--grain
 2 assets--and,--subject--to--subsection-(j)-of-this-Section,--an
 3 additional-amount-per-claimant-not-to-exceed-the--balance--of
 4 their-respective-claims-out-of-the-Fund.

5 (b)--Subject--to--subsection--(j)-of-this-Section,--if-the
 6 net-proceeds-as-set-forth-in-subsection-(a)-of--this--Section
 7 are--insufficient--to--pay--in-full-all-valid-claims-filed-by
 8 warehouse-claimants-as-payment-becomes-due,--the-balance-shall
 9 be-paid-out-of-the-Fund-in-accordance-with-subsection-(b)--of
 10 Section-25-20.

11 (b) (e) Valid claims filed by producers who:

12 (1) have delivered grain within 21 days before the
 13 date of failure, or the date of suspension if the
 14 suspension results in a failure, for which pricing of
 15 that grain has been completed before date of failure; or

16 (2) gave written notice to the Department within 21
 17 days of the date of delivery of grain, if the pricing of
 18 that grain has been completed, that payment in full for
 19 that grain has not been made;

20 shall be paid, subject to subsection (i) (j) of this Section,
 21 100% of the amount of the valid claim determined by the
 22 Department. Valid claims that are included in subsection (b)
 23 (e) of this Section shall receive no payment under subsection
 24 (c) (d) of this Section, and any claimant having a valid
 25 claim under this subsection (b) (e) determined by the
 26 Department to be in excess of the limits, if any, imposed
 27 under subsection (i) (j) of this Section shall be paid only
 28 sums in excess of those limits to the extent additional money
 29 is available under subsection (d)(2) of Section 25-20.

30 (c) (d) Valid claims that are not included in subsection
 31 (b) (e) of this Section that are filed by producers where the
 32 later date of completion of who--completed delivery or and
 33 pricing of the grain in--reference--to--the--valid-claim,
 34 whichever is later, within 160 days before the date of

1 failure shall be limited in payment from the Fund to paid 85%
2 of the amount of the valid claim determined by the Department
3 or \$300,000 ~~\$100,000~~, whichever is less, per claimant. In
4 computing the 365-day period, the phrase "the later of the
5 date" means the date closest to the date of failure. In
6 addition, for claims filed by producers for grain sold on a
7 price later contract, ~~however,~~ the later of the date of
8 execution of the contract or the date of delivery of grain-in
9 reference-to the grain covered by the price later contract
10 must not be more than 365 ~~270~~ days before the date of failure
11 in order for the claimant to receive any compensation. In
12 computing the 365-day period, the phrase "the later of the
13 date" means the date closest to the date of failure.

14 (d) ~~(e)~~ Valid claims filed by producers for grain sold
15 on a price later contract, for which the final price has not
16 been established, shall be limited in payment from the Fund
17 to paid 85% of the amount of the valid claims determined by
18 the Department or \$300,000 ~~\$100,000~~, whichever is less, per
19 claimant, if the later of the date of execution of the
20 contract or the date of delivery of grain-in-reference-to the
21 grain covered by the price later contract occurred not ~~no~~
22 more than 270 days before the date of failure. In computing
23 the 365-day period, the phrase "the later of the date" means
24 the date closest to the date of failure.

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

29 (e) ~~(f)~~ The maximum payment from the Fund to producers
30 under subsections (c) ~~(d)~~ and (d) ~~(e)~~ of this Section,
31 combined, shall be \$300,000 ~~\$100,000~~ per claimant.

32 (f) ~~(g)~~ The following claims shall be barred and
33 disallowed in their entirety and shall not be entitled to any
34 recovery from the Fund or the Trust Account:

1 (1) Claims filed by producers who completed pricing
2 of the grain in reference to their claim in excess of 160
3 days before the date of failure.

4 (2) Claims filed by producers for grain sold on a
5 price later contract if the later of the date of
6 execution of the contract or the date of delivery of
7 grain in reference to the grain covered by the price
8 later contract occurred more than 365 270 days before the
9 date of failure. The phrase "the later of" means the
10 date closest to the date of failure.

11 (3) Claims filed by any claimant that are based
12 upon or acquired by fraudulent or illegal acts of the
13 claimant.

14 (g) ~~(h)~~ To the extent moneys are available, additional
15 pro rata payments may be made to claimants under subsection
16 (d) of Section 25-20.

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

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

34 (j) The amounts to be paid to warehouse valid claimants

1 and grain dealer valid claimants shall be calculated
2 according to the following:

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

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

28 (k) Arrangements whereby a producer agrees with a
29 licensee to defer receipt of payment of amounts due from the
30 sale of grain are covered by this Code and are not to be
31 considered loans by the producer to the licensee, despite
32 payments to the producer as an inducement for the leaving of
33 moneys with the licensee, unless the licensee has executed
34 and delivered to the producer a promissory note covering

1 those amounts.

2 (1) Prepayment claimants shall receive payment for their
3 valid claims in accordance with Section 25-20(a). Under no
4 circumstances shall moneys from the Fund be used to pay any
5 portion of a prepayment claim.

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

7 (240 ILCS 40/25-20)

8 Sec. 25-20. Priorities and repayments.

9 (a) All valid claims shall be paid first from the Trust
10 Account, as provided in Section 25-10, with the moneys from
11 the Trust Account being distributed on a pro rata basis to
12 all claimants first---from--the--proceeds--realized--from
13 liquidation-of-and-collection-upon-the-grain-assets--relating
14 to--the--failed--licensee,--as-to-warehouse-claimants,--and-the
15 equity-assets-as-to-a-secured-party-or-lien--holder--who--has
16 consented--to--the-Department-liquidating-and-collecting-upon
17 the-equity-asset-as-set-forth-in-subsection--(f)--of--Section
18 20-15,--and--the--remaining--equity--assets,--collateral,--and
19 guarantees-relating-to--the--failed--licensee,--as--to--grain
20 dealer-claimants.

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

1 shall pay the balance owed to grain claimants in accordance
2 with Section 25-10.

3 (c) Net proceeds from liquidation of grain assets as set
4 forth in subsection (a) of Section 25-10 received by the
5 Department, to the extent not already paid to grain warehouse
6 claimants, shall be prorated among the fund and all grain
7 warehouse claimants who have not had their valid claims paid
8 in full.

9 (1) The pro rata distribution to the Fund shall be
10 based upon the total amount of valid claims of all grain
11 warehouse claimants who have had their valid claims paid
12 in full. The pro rata distribution to each grain
13 warehouse claimant who has not had his or her valid
14 claims paid in full shall be based upon the total amount
15 of that grain claimant's original valid claims.

16 (2) If the net proceeds from the liquidation of
17 grain assets as set forth in subsection (a) of Section
18 25-10 exceed all amounts needed to satisfy all valid
19 claims filed by grain warehouse claimants, the balance
20 remaining shall be paid into the Trust Account or as set
21 forth in subsection (h).

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

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

31 (2) After the Fund is repaid in full for the moneys
32 transferred from it to pay the valid grain claims in
33 reference to a failed licensee, any remaining proceeds
34 realized from liquidation of and collection upon the

1 grain assets, equity assets, collateral, and guarantees
2 relating to the failed licensee thereafter received by
3 the Department shall be prorated to the claimants holding
4 valid grain claims who have not received 100% of the
5 amount of their valid grain claims based upon the unpaid
6 amount of their valid grain claims.

7 (e) After all grain claimants have received 100% of the
8 amount of their valid claims, to the extent moneys are
9 available interest at the rate of 6% per annum shall be
10 assessed and paid to the Fund on all moneys transferred from
11 the Fund to the Trust Account.

12 (f) After the Fund is paid the interest as provided in
13 subsection (e) of this Section, then those claims barred and
14 disallowed under paragraphs (1) and (2) of subsection (f) (g)
15 of Section 25-10 shall be paid on a pro rata basis only to
16 the extent that moneys are available.

17 (g) Once all grain claims become valid claims and have
18 been paid in full and all interest as provided in subsection
19 (e) of this Section is paid in full, and all claims are paid
20 in full under subsection (f), any remaining grain assets,
21 equity assets, collateral, and guarantees, and the proceeds
22 realized from liquidation of and collection upon the grain
23 assets, equity assets, collateral, and guarantees relating to
24 the failed licensee, shall be paid to the Regulatory Fund as
25 reimbursement for expenses incurred by the Department in
26 performance of its duties under Article 20 of this Code in
27 reference to the failed licensee, and, to the extent not paid
28 to the Regulatory Fund, shall be returned to the failed
29 licensee or its assignee, or as otherwise directed by a court
30 of competent jurisdiction.

31 (h) If amounts in the Fund are insufficient to pay all
32 valid grain claims, the General Assembly shall appropriate to
33 the Corporation amounts sufficient to satisfy the valid grain
34 claims. If for any reason the General Assembly fails to make

1 an appropriation to satisfy outstanding valid grain claims,
2 this Code constitutes an irrevocable and continuing
3 appropriation of all amounts necessary for that purpose and
4 the irrevocable and continuing authority for and direction to
5 the State Comptroller and to the State Treasurer to make the
6 necessary transfers and disbursements from the revenues and
7 funds of the State for that purpose. Subject to payments to
8 warehouse claimants as set forth in subsection (c) of Section
9 25-20, the State shall be reimbursed as soon as funds become
10 available for any amounts paid under subsection (g) of this
11 Section upon replenishment of the Fund from assessments under
12 subsection (d) of Section 5-30 and collection upon grain
13 assets, equity assets, collateral, and guarantees relating to
14 the failed licensee.

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

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

20 (240 ILCS 40/30-5)

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

22 (a) The Corporation is a political subdivision, body
23 politic, and public corporation. The governing powers of the
24 Corporation are vested in the Board of Directors composed of
25 the Director, who shall personally serve as president; the
26 Attorney General or his or her designee, who shall serve as
27 secretary; the State Treasurer or his or her designee, who
28 shall serve as treasurer; the Director of the Department of
29 Insurance or his or her designee; and the chief fiscal
30 officer of the Department. Three members of the Board
31 constitute a quorum at any meeting of the Board, and the
32 affirmative vote of 3 members is necessary for any action
33 taken by the Board at a meeting, except that a lesser number

1 may adjourn a meeting from time to time. A vacancy in the
2 membership of the Board does not impair the right of a quorum
3 to exercise all the rights and perform all the duties of the
4 Board and Corporation.

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

8 (1) To have perpetual succession by its corporate
9 name as a corporate body.

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

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

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

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

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

23 (7) To receive funds from the Trust Account for
24 deposit into the Fund.

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

31 (9) To authorize, receive, and disburse funds by
32 electronic means.

33 (10) To make any inquiry and investigation deemed
34 appropriate with regard to the failure of any licensee,

1 including but not limited to analyzing the causes of and
2 reasons for the failure; determining the adequacy and
3 accuracy of Department examinations and other regulatory
4 measures with regard to the failed licensee; and
5 analyzing whether the handling of the liquidation and
6 payment process by the Department was done in a manner
7 that served the interests of those persons whose
8 interests this Code was designed to protect.

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

13 (c) A committee of advisors shall be created to provide
14 technical assistance and advice and make recommendations to
15 the Board. The advisory committee shall assist the board in
16 understanding pertinent developments in grain production and
17 marketing and the grain industry. The advisory committee
18 shall be composed of one grain producer designated by the
19 Illinois Farm Bureau; one grain producer designated by the
20 Illinois Farmers Union; one grain producer designated by the
21 Illinois Corn Growers Association; one grain producer
22 designated by the Illinois Soybean Association; and one
23 representative of the grain industry, designated by the Grain
24 and Feed Association of Illinois. Members of the advisory
25 committee shall serve terms of 2 years from the date of their
26 designation. Members of the advisory committee shall have
27 the right to attend all meetings of the Board and participate
28 in Board discussions, 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/Art. 35 heading new)

31 ARTICLE 35. REGULATORY FUND

32 (240 ILCS 40/35-5 new)

1 Sec. 35-5. Regulatory Fund.

2 (a) The Regulatory Fund is created as a trust fund in
3 the State Treasury. The Regulatory Fund shall receive
4 license, certificate, and extension fees under Sections 5-10,
5 5-15, and 5-20 and funds under subsection (g) of Section
6 25-20 and shall pay expenses as set forth in this Article 35.

7 (b) Any funds received by the Director under Sections
8 5-10, 5-15, and 5-20 and funds disbursed for deposit to the
9 Regulatory Fund under subsection (g) of Section 25-20 shall
10 be deposited with the Treasurer as ex officio custodian and
11 held separate and apart from any public money of this State,
12 with interest accruing on moneys in the Regulatory Fund
13 deposited into the Regulatory Fund. Disbursement from the
14 Fund for expenses as set forth in this Article 35 shall be by
15 voucher ordered by the Director, accompanied by documentation
16 satisfactory to the Treasurer and the Comptroller supporting
17 the payment arrant drawn by the Comptroller and countersigned
18 by the Treasurer. Moneys in the Regulatory Fund shall not be
19 subject to appropriation by the General Assembly but shall be
20 subject to audit by the Auditor General. Interest earned on
21 moneys deposited into the Regulatory Fund shall be deposited
22 into the Regulatory Fund.

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

26 (1) Implementation and monitoring of programs of
27 the Department solely under this Code, including an
28 electronic warehouse receipt program.

29 (2) Employment or engagement of certified public
30 accountants to assist in oversight and regulation of
31 licensees.

32 (3) Training and education of examiners and other
33 Department employees in reference to Department programs
34 established to implement the Department's duties solely

1 under the Code.

2 (d) Any expenses incurred by the Department in
3 performance of its duties under Article 20 of the Code shall
4 be reimbursed to the Department out of the net assets of a
5 liquidation to the extent available under subsection (q) of
6 Section 25-20 and shall be deposited into the Regulatory Fund
7 and shall be expended solely for program expenses under the
8 Code.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.