



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2533

Introduced 2/20/2009, by Rep. Dan Reitz

SYNOPSIS AS INTRODUCED:

240 ILCS 40/1-10
240 ILCS 40/1-25
240 ILCS 40/10-15
240 ILCS 40/10-25
240 ILCS 40/25-5

Amends the Grain Code. Changes the meaning of "price later contract" to include a contract "in written or electronic form". Provides that the Department of Agriculture shall adopt rules governing electronic price later contracts. Provides that when a price later contract is in electronic form, the mailing requirement may be satisfied by e-mail. Provides that electronic and non-electronic price later contracts have the "same validity and enforceability". Provides that warehouse receipts in electronic form have the "same validity and enforceability" as those in non-electronic form. Changes the hearing location for claimants and failed licensees to the failed licensee's "principal office or place of business, in Illinois" (instead of the residence of the claimant). Effective immediately.

LRB096 03551 RCE 13576 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning warehouses.

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 Sections
5 1-10, 1-25, 10-15, 10-25, and 25-5 as follows:

6 (240 ILCS 40/1-10)

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

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

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

13 "Claimant" means:

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

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

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

22 (3) who has loaned money to a warehouseman and was to
23 receive a warehouse receipt issued from an Illinois

1 location as security for that loan, who surrendered
2 warehouse receipts as part of a grain sale at an Illinois
3 location, or who delivered grain out of storage with the
4 warehouseman as part of a grain sale at an Illinois
5 location; and

6 (i) the grain dealer or warehouseman failed within
7 21 days after the loan of money, the surrender of
8 warehouse receipts, or the delivery of grain, as the
9 case may be, and no warehouse receipt was issued or
10 payment in full was not made on the grain sale, as the
11 case may be; or

12 (ii) written notice was given by the person to the
13 Department within 21 days after the loan of money, the
14 surrender of warehouse receipts, or the delivery of
15 grain, as the case may be, stating that no warehouse
16 receipt was issued or payment in full made on the grain
17 sale, as the case may be; or

18 (b) a producer not included in item (a)(3) in the
19 definition of "Claimant" who possesses evidence of the sale at
20 an Illinois location of grain delivered to a failed grain
21 dealer, or its designee in Illinois and who was not paid in
22 full.

23 "Class I warehouseman" means a warehouseman who is
24 authorized to issue negotiable and non-negotiable warehouse
25 receipts.

26 "Class II warehouseman" means a warehouseman who is

1 authorized to issue only non-negotiable warehouse receipts.

2 "Code" means this Grain Code.

3 "Collateral" means:

4 (a) irrevocable letters of credit;

5 (b) certificates of deposit;

6 (c) cash or a cash equivalent; or

7 (d) any other property acceptable to the Department to the
8 extent there exists equity in that property. For the purposes
9 of this item (d), "equity" is the amount by which the fair
10 market value of the property exceeds the amount owed to a
11 creditor who has a valid, prior, perfected security interest in
12 or other valid, prior, perfected lien on the property.

13 "Corporation" means the Illinois Grain Insurance
14 Corporation.

15 "Daily position record" means a grain inventory
16 accountability record maintained on a daily basis that includes
17 an accurate reflection of changes in grain inventory, storage
18 obligations, company-owned inventory by commodity, and other
19 information that is required by the Department.

20 "Daily grain transaction report" means a record of the
21 daily transactions of a grain dealer showing the amount of all
22 grain received and shipped during each day and the amount on
23 hand at the end of each day.

24 "Date of delivery of grain" means:

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

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

3 (c) in reference to grain in storage with a warehouseman,
4 the date a warehouse receipt representing stored grain is
5 delivered to the issuer of the warehouse receipt for the
6 purpose of selling the stored grain or, if no warehouse receipt
7 was issued:

8 (1) the date the purchase price for stored grain is
9 established; or

10 (2) if sold by price later contract, the date of the
11 price later contract.

12 "Department" means the Illinois Department of Agriculture.

13 "Depositor" means a person who has evidence of a storage
14 obligation from a warehouseman.

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

17 "Electronic document" means a document that is generated,
18 sent, received, or stored by electrical, digital, magnetic,
19 optical electromagnetic, or any other similar means,
20 including, but not limited to, electronic data interchange,
21 electronic mail, telegram, telex, or telecopy.

22 "Electronic warehouse receipt" means a warehouse receipt
23 that is issued or transmitted in the form of an electronic
24 document.

25 "Emergency storage" means space measured in bushels and
26 used for a period of time not to exceed 3 months for storage of

1 grain as a consequence of an emergency situation.

2 "Equity assets" means:

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

6 (1) "equity" is the amount by which the fair market
7 value of the property exceeds the amount owed to a creditor
8 who has a valid security interest in or other valid lien on
9 the property that was perfected before the date of failure
10 of the licensee;

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

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

22 (a) a formal declaration of insolvency;

23 (b) a revocation of a license;

24 (c) a failure to apply for license renewal, leaving
25 indebtedness to claimants;

26 (d) a denial of license renewal, leaving indebtedness to

1 claimants; or

2 (e) a voluntary surrender of a license, leaving
3 indebtedness to claimants.

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

7 "Fund" means the Illinois Grain Insurance Fund.

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

12 "Grain assets" means:

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

16 (b) (blank);

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

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

1 transactions on those exchanges.

2 For purposes of this Act, storage charges, drying charges,
3 price later contract service charges, and other grain service
4 charges received by or due to a licensee or failed licensee
5 shall not be deemed to be grain assets, nor shall such charges
6 be deemed to be proceeds from the sale or other disposition of
7 grain by a licensee or a failed licensee, or to have been
8 directly or indirectly traceable from, to have resulted from,
9 or to have been derived in whole or in part from, or otherwise
10 related to, the sale or other disposition of grain by the
11 licensee or failed licensee.

12 "Grain dealer" means a person who is licensed by the
13 Department to engage in the business of buying grain from
14 producers.

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

26 "Guarantor" means a person who assumes all or part of the

1 obligations of a licensee to claimants.

2 "Guarantee" means a document executed by a guarantor by
3 which the guarantor assumes all or part of the obligations of a
4 licensee to claimants.

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

9 "Licensed storage capacity" means the maximum grain
10 storage capacity measured in bushels approved by the applicable
11 licensing agency for use by a warehouseman.

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

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

20 "Permanent storage capacity" means the capacity of
21 permanent structures available for storage of grain on a
22 regular and continuous basis, measured in bushels.

23 "Person" means any individual or entity, including, but not
24 limited to, a sole proprietorship, a partnership, a
25 corporation, a cooperative, an association, a limited
26 liability company, an estate, a trust, or a governmental

1 agency.

2 "Price later contract" means a ~~written~~ contract, in written
3 or electronic form, for the sale of grain whereby any part of
4 the purchase price may be established by the seller after
5 delivery of the grain to a grain dealer according to a pricing
6 formula contained in the contract. Title to the grain passes to
7 the grain dealer at the time of delivery. The precise form and
8 the general terms and conditions of the contract shall be
9 established by rule.

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

13 "Producer protection holding corporation" means a holding
14 corporation to receive, hold title to, and liquidate assets of
15 or relating to a failed licensee, including assets in reference
16 to collateral or guarantees relating to a failed licensee.

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

18 "Related persons" means affiliates of a licensee, key
19 persons of a licensee, owners of a licensee, and persons who
20 have control over a licensee. For the purposes of this
21 definition:

22 (a) "Affiliate" means a person who has direct or
23 indirect control of a licensee, is controlled by a
24 licensee, or is under common control with a licensee.

25 (b) "Key person" means an officer, a director, a
26 trustee, a partner, a proprietor, a manager, a managing

1 agent, or the spouse of a licensee. An officer or a
2 director of an entity organized or operating as a
3 cooperative, however, shall not be considered to be a "key
4 person".

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

15 (d) "Control" means the power to exercise authority
16 over or direct the management or policies of a business
17 entity.

18 (e) "Indirect" means an interest in a business held by
19 the holder not through the holder's actual holdings in the
20 business, but through the holder's holdings in another
21 business or other businesses.

22 (f) Notwithstanding any other provision of this Act,
23 the term "related person" does not include a lender,
24 secured party, or other lien holder solely by reason of the
25 existence of the loan, security interest, or lien, or
26 solely by reason of the lender, secured party, or other

1 lien holder having or exercising any right or remedy
2 provided by law or by agreement with a licensee or a failed
3 licensee.

4 "Reserve Fund" means a separate and discrete fund of up to
5 \$2,000,000 held by the Corporation as set forth in Section
6 30-25.

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

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

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

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

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

1 different lots of grain is preserved.

2 "Warehouse receipt" means a receipt for the storage of
3 grain issued by a warehouseman.

4 "Warehouseman" means a person who is licensed:

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

7 (b) under the United States Warehouse Act but
8 participates in the Fund under subsection (c) of Section
9 30-10.

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

11 (240 ILCS 40/1-25)

12 Sec. 1-25. Rules. The Department may promulgate rules that
13 are necessary for the implementation and administration of this
14 Code.

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

22 (b) The Department shall adopt rules governing electronic
23 price later contracts. Licensees and producers shall not be
24 required, however, to issue or use electronic price later
25 contracts.

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

2 (240 ILCS 40/10-15)

3 Sec. 10-15. Price later contracts.

4 (a) Price later contracts shall contain provisions ~~be~~
5 ~~written on forms~~ prescribed or authorized by the Department and
6 shall be in either written or electronic form. If in written
7 form, price ~~Price~~ later contract forms shall be printed by a
8 person authorized to print those contracts by the Department
9 after that person has agreed to comply with each of the
10 following:

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

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

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

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

1 Price later contracts that are in electronic form shall be
2 numbered consecutively.

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

11 (1) Grain owned by the grain dealer valued by means of
12 the hedging procedures method that includes marking open
13 contracts to market.

14 (2) Cash on hand.

15 (3) Cash held on account in federally or State licensed
16 financial institutions.

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

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

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

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

23 (8) Marketable securities, including mutual funds.

24 (9) Irrevocable letters of credit in favor of the
25 Department and acceptable to the Department.

26 (10) Price later contract service charges due or to

1 become due to the licensee.

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

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

7 (d) Title to grain sold by price later contract shall
8 transfer to a grain dealer at the time of delivery of the
9 grain. Therefore, no storage charges shall be made with respect
10 to grain purchased by price later contract. A service charge
11 for handling the contract, however, may be made.

12 (e) Subject to subsection (f) of this Section, if a price
13 later contract is not signed by all parties within 30 days of
14 the last date of delivery of grain intended to be sold by price
15 later contract, then the grain intended to be sold by price
16 later contract shall be priced on the next business day after
17 30 days from the last date of delivery of grain intended to be
18 sold by price later contract at the market price of the grain
19 at the close of the next business day after the 29th day. When
20 the grain is priced under this subsection, the grain dealer
21 shall send notice to the seller of the grain within 10 days.
22 The notice shall contain the number of bushels sold, the price
23 per bushel, all applicable discounts, the net proceeds, and a
24 notice that states that the Grain Insurance Fund shall provide
25 protection for a period of only 160 days from the date of
26 pricing of the grain.

1 In the event of a failure, if a price later contract is not
2 signed by all the parties to the transaction, the Department
3 may consider the grain to be sold by price later contract if a
4 preponderance of the evidence indicates the grain was to be
5 sold by price later contract.

6 (f) If grain is in storage with a warehouseman and is
7 intended to be sold by price later contract, that grain shall
8 be considered as remaining in storage and not be deemed sold by
9 price later contract until the date the price later contract is
10 signed by all parties.

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

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

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

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

22 (k) When a producer with a price later contract selects a
23 price for all or any part of the grain represented by that
24 contract, then within 5 business days after that price
25 selection, the licensee shall mail to that producer a
26 confirmation of the price selection, clearly and succinctly

1 indicating the price selected. If the price later contract is
2 in electronic form, the licensee shall, within 5 business days
3 after that price selection, e-mail to that producer a
4 confirmation of the price selection, clearly and succinctly
5 indicating the price selected, in full satisfaction of the
6 mailing requirement in the previous sentence.

7 (1) The issuance and use of price later contracts in
8 electronic form pursuant to the rules promulgated by the
9 Department are specifically authorized by this Code, and any
10 such price later contracts shall have the same validity and
11 enforceability, for all purposes, as those in non-electronic
12 form. For purposes of this Code, the word "written", and
13 derivatives thereof, when used in relation to price later
14 contracts, shall include price later contracts created or
15 displayed electronically.

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

17 (240 ILCS 40/10-25)

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

19 (a) When grain is delivered to a warehouseman at a location
20 where grain is also purchased, the licensee shall give written
21 evidence of delivery of grain and that written evidence shall
22 be marked to indicate whether the grain is delivered for
23 storage or for sale. In the absence of adequate evidence of
24 sale, the grain shall be construed to be in storage.

25 (b) Upon demand by a depositor, a warehouseman shall issue

1 warehouse receipts for grain delivered into storage.

2 (c) There shall be no charge for the first warehouse
3 receipt issued to a depositor for a given lot of grain. Charges
4 for any additional warehouse receipts for grain previously
5 covered by a warehouse receipt must be commensurate with the
6 cost of issuance of the additional warehouse receipt.

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

9 (1) Warehouse receipts shall be consecutively numbered
10 in a form prescribed by the Department and issued
11 consecutively by the warehouseman.

12 (2) In the case of a lost or destroyed warehouse
13 receipt, the new warehouse receipt shall bear the same date
14 as the original and shall be plainly marked on its face
15 "duplicate in lieu of lost or destroyed warehouse receipt
16 number", and the warehouseman shall duly fill in
17 the blank with the appropriate warehouse receipt number.

18 (3) Warehouse receipts shall be printed by a person
19 authorized by the Department. The person shall register
20 with the Department and pay an annual registration fee of
21 \$100 to print warehouse receipts.

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

26 (5) A warehouseman shall not insert in any negotiable

1 warehouse receipt issued by it any language that in any way
2 limits or modifies its liability or responsibility.

3 (e) Upon delivery of grain covered by a negotiable
4 warehouse receipt, the holder of the negotiable warehouse
5 receipt must surrender the warehouse receipt for cancellation,
6 and a warehouseman must cancel and issue a new negotiable
7 warehouse receipt for the balance of grain in storage.

8 (f) When all grain, the storage of which is evidenced by a
9 warehouse receipt, is delivered from storage, the warehouse
10 receipt shall be plainly marked across its face with the word
11 "cancelled" and shall have written on it the date of
12 cancellation, the name of the person canceling the warehouse
13 receipt, and such other information as required by rule, and is
14 thereafter void.

15 (g) When a warehouseman delivers grain out of storage but
16 fails to collect and cancel the negotiable warehouse receipt,
17 the warehouseman shall be liable to any purchaser of the
18 negotiable warehouse receipt for value in good faith for
19 failure to deliver the grain to the purchaser, whether the
20 purchaser acquired the negotiable warehouse receipt before or
21 after the delivery of the grain by the warehouseman. If,
22 however, grain has been lawfully sold by a warehouseman to
23 satisfy its warehouseman's lien, the warehouseman shall not be
24 liable for failure to deliver the grain pursuant to the demands
25 of a holder of a negotiable warehouse receipt to the extent of
26 the amount of grain sold.

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

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

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

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

11 (i) If no warehouse receipt is issued to a depositor, a
12 warehouseman shall deliver grain upon the demand of a depositor
13 if the demand is accompanied by satisfaction of the
14 warehouseman's lien and written evidence that the grain was
15 delivered to the warehouseman and the depositor is entitled to
16 it.

17 (j) If a warehouseman refuses or fails to deliver grain in
18 compliance with a demand by a holder of a warehouse receipt or
19 a depositor, the burden is on the warehouseman to establish the
20 existence of a lawful excuse for the refusal.

21 (k) If a warehouse receipt has been lost or destroyed, a
22 warehouseman may issue a substitute warehouse receipt, as
23 provided for in this Section, upon delivery to the warehouseman
24 of an affidavit under oath stating that the applicant for the
25 substitute warehouse receipt is entitled to the original
26 warehouse receipt and setting forth the circumstances that

1 resulted in the loss or destruction of the original warehouse
2 receipt. The warehouseman may request from the depositor a bond
3 in double the value of the grain represented by the original
4 warehouse receipt at the time of issuance of the substitute
5 warehouse receipt so as to protect the warehouseman from any
6 liability or expense that it, or any person injured by the
7 delivery, may incur by reason of the original warehouse receipt
8 remaining outstanding.

9 (l) A warehouse receipt that is to be used for collateral
10 purposes by a warehouseman must be first issued by the
11 warehouseman to itself.

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

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

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

20 (3) The structure for the storage of grain meets all of
21 the following requirements:

22 (A) The grain storage area has a permanent base
23 made of concrete, asphalt, or a material having similar
24 structural qualities.

25 (B) Hot spot detectors, aeration fans, and ducts
26 are provided to assure that the quality of grain in

1 storage is maintained.

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

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

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

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

13 (5) The authorization to use temporary storage space
14 for the storage of grain shall expire at the end of 6
15 months after the date of approval by the Department or May
16 15th, whichever comes first.

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

19 (o) The issuance and transfer of the warehouse receipts in
20 electronic form pursuant to rules promulgated by the Department
21 are specifically authorized by this Code, and any such
22 warehouse receipts shall have the same validity and
23 enforceability, for all purposes, as those in non-electronic
24 ~~non-electrical~~ form. For purposes of this Code, the words
25 "written" and "printed", and derivatives thereof, when used in
26 relation to warehouse receipts, shall include warehouse

1 receipts created or displayed electronically.

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

3 (240 ILCS 40/25-5)

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

7 (a) The Department shall publish once each week for 3
8 successive weeks in at least 3 newspapers of general
9 circulation within the county of the licensee, and shall mail
10 or deliver to each claimant whose name and post office address
11 are known or are reasonably ascertainable by the Department, a
12 notice stating:

13 (1) That the licensee has experienced a failure and the
14 date of that failure.

15 (2) The place and post office address where claims may
16 be filed.

17 (3) The procedure for filing claims, as determined by
18 rule.

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

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

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

1 (b) Time of notice.

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

5 (2) The published notice as provided for in subsection
6 (a) of this Section shall be published in at least 3
7 newspapers of general circulation in the area formerly
8 served by the failed licensee.

9 (3) The notice as provided for in subsection (a) of
10 this Section shall be mailed by certified mail, return
11 receipt requested, within 60 days after the date of failure
12 to each claimant whose name and post office address are
13 known by the Department within 60 days after the date of
14 failure.

15 (c) Every claim filed must be in writing, verified, and
16 signed by a person who has the legal authority to file a claim
17 on behalf of the claimant and must state information sufficient
18 to notify the Department of the nature of the claim and the
19 amount sought.

20 (d) A claim shall be barred and disallowed in its entirety
21 if:

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

26 (2) the claimant's name or post office address is not

1 known by the Department or cannot, within 60 days after the
2 date of failure, be reasonably ascertained by the
3 Department and the claimant does not file a claim with the
4 Department on or before the later of the claim date or 7
5 days after the date notice was mailed to that claimant if
6 the date notice was mailed to that claimant is on or before
7 the claim date.

8 (e) Subsequent notice.

9 (1) If, more than 60 days after the date of failure but
10 before the claim date, the Department learns of the name
11 and post office address of a claimant who was previously
12 not notified by the Department by mail, the Department
13 shall mail by certified mail, return receipt requested, the
14 notice to the claimant as provided for in subsection (a) of
15 this Section.

16 (2) The notice mailed as provided for in item (e)(1) of
17 this Section shall not extend the period of time in which a
18 claimant may file its claim beyond the claim date. A
19 claimant to whom notice is mailed under item (e)(1) of this
20 Section, however, shall have the later of the claim date or
21 7 days after the date notice was mailed to file a claim
22 with the Department.

23 (f) The Department shall determine the validity, category,
24 and amount of each claim within 120 days after the date of
25 failure of the licensee and shall give written notice within
26 that time period to each claimant and to the failed licensee of

1 the Department's determination as to the validity, category,
2 and amount of each claim.

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

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

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

25 (j) It is the intent of this Act that the time periods and
26 deadlines in this Section 25-5 are absolute, and are not to be

1 tolled, or their operation halted or delayed. In the event of a
2 bankruptcy by a licensee, the Director shall seek to have
3 commenced any proceedings that are necessary and appropriate to
4 lift the automatic stay or make it otherwise inapplicable to
5 the actions of the Department with regard to the claims
6 determination process. In all other cases, the Department shall
7 seek to have commenced the proceedings necessary to
8 expeditiously remove or lift any order of any court or
9 administrative agency that might attempt to delay the time
10 periods and deadlines contained in this Section 25-5.

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.