

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 Section 1-10 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 a 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
20 Illinois location in favor of the holder, including, but
21 not limited to, scale tickets, settlement sheets, and
22 ledger cards; or

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

30 (i) the grain dealer or warehouseman failed
31 within 21 days after the loan of money, the

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

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

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

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

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

20 "Code" means the Grain Code.

21 "Collateral" means:

22 (a) irrevocable letters of credit;

23 (b) certificates of deposit;

24 (c) cash or a cash equivalent; or

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

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

33 "Daily position record" means a grain inventory
34 accountability record maintained on a daily basis that

1 includes an accurate reflection of changes in grain
2 inventory, storage obligations, company-owned inventory by
3 commodity, and other information that is required by the
4 Department.

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

9 "Date of delivery of grain" means:

10 (a) the date grain is delivered to a grain dealer for
11 the purpose of sale;

12 (b) the date grain is delivered to a warehouseman for
13 the purpose of storage; or

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

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

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

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

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

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

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

32 "Equity assets" means:

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

1 (a):

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

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

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

- 19 (a) a formal declaration of insolvency;
- 20 (b) a revocation of a license;
- 21 (c) a failure to apply for license renewal, leaving
22 indebtedness to claimants;
- 23 (d) a denial of license renewal, leaving indebtedness to
24 claimants; or
- 25 (e) a voluntary surrender of a license, leaving
26 indebtedness to claimants.

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

30 "Fund" means the Illinois Grain Insurance Fund.

31 "Grain" means corn, soybeans, wheat, oats, rye, barley,
32 grain sorghum, canola, buckwheat, flaxseed, edible soybeans,
33 and other like agricultural commodities designated by rule.

34 "Grain assets" means:

1 (a) all grain owned and all grain stored by a licensee
2 or failed licensee, wherever located;

3 (b) redeposited grain of a licensee or failed licensee;

4 (c) identifiable proceeds, including, but not limited
5 to, insurance proceeds, received by or due to a licensee or
6 failed licensee resulting from the sale, exchange,
7 destruction, loss, or theft of grain, or other disposition of
8 grain by the licensee or failed licensee; or

9 (d) assets in hedging or speculative margin accounts
10 held by commodity or security exchanges on behalf of a
11 licensee or failed licensee and any moneys due or to become
12 due to a licensee or failed licensee, less any secured
13 financing directly associated with those assets or moneys,
14 from any transactions on those exchanges.

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

25 "Grain dealer" means a person who is licensed by the
26 Department to engage in the business of buying grain from
27 producers.

28 "Grain Indemnity Trust Account" means a trust account
29 established by the Director under Section 205-410 of the
30 Department of Agriculture Law (20 ILCS 205/205-410) that is
31 used for the receipt and disbursement of moneys paid from the
32 Fund and proceeds from the liquidation of and collection upon
33 grain assets, equity assets, collateral, or guarantees of or
34 relating to failed licensees. The Grain Indemnity Trust

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

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

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

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

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

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

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

26 "Permanent storage capacity" means the capacity of
27 permanent structures available for storage of grain on a
28 regular and continuous basis and measured in bushels.

29 "Person" means any individual or entity, including, but
30 not limited to, a sole proprietorship, a partnership, a
31 corporation, a cooperative, an association, a limited
32 liability company, an estate, or a trust.

33 "Price later contract" means a written contract for the
34 sale of grain whereby any part of the purchase price may be

1 established by the seller after delivery of the grain to a
2 grain dealer according to a pricing formula contained in the
3 contract. Title to the grain passes to the grain dealer at
4 the time of delivery. The precise form and the general terms
5 and conditions of the contract shall be established by rule.

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

9 "Producer protection holding corporation" means a holding
10 corporation to receive, hold title to, and liquidate assets
11 of or relating to a failed licensee, including assets in
12 reference to collateral or guarantees relating to a failed
13 licensee.

14 "Related persons" means affiliates of a licensee, key
15 persons of a licensee, owners of a licensee, and persons who
16 have control over a licensee. For the purposes of this
17 definition:

18 (a) "Affiliate" means a person who has direct or
19 indirect control of a licensee, is controlled by a
20 licensee, or is under common control with a licensee.

21 (b) "Key person" means an officer, a director, a
22 trustee, a partner, a proprietor, a manager, a managing
23 agent, or the spouse of a licensee. An officer or a
24 director of an entity organized or operating as a
25 cooperative, however, shall not be considered to be a
26 "key person".

27 (c) "Owner" means the holder of: over 10% of the
28 total combined voting power of a corporation or over 10%
29 of the total value of shares of all classes of stock of a
30 corporation; over a 10% interest in a partnership; over
31 10% of the value of a trust computed actuarially; or over
32 10% of the legal or beneficial interest in any other
33 business, association, endeavor, or entity that is a
34 licensee. For purposes of computing these percentages, a

1 holder is deemed to own stock or other interests in a
2 business entity whether the ownership is direct or
3 indirect.

4 (d) "Control" means the power to exercise authority
5 over or direct the management or policies of a business
6 entity.

7 (e) "Indirect" means an interest in a business held
8 by the holder not through the holder's actual holdings in
9 the business, but through the holder's holdings in other
10 businesses.

11 (f) Notwithstanding any other provision of this
12 Act, the term "related person" does not include a lender,
13 secured party, or other lien holder solely by reason of
14 the existence of the loan, security interest, or lien, or
15 solely by reason of the lender, secured party, or other
16 lien holder having or exercising any right or remedy
17 provided by law or by agreement with a licensee or a
18 failed licensee.

19 "Successor agreement" means an agreement by which a
20 licensee succeeds to the grain obligations of a former
21 licensee.

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

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

27 "Valid claim" means a claim, submitted by a claimant,
28 whose amount and category have been determined by the
29 Department, to the extent that determination is not subject
30 to further administrative review or appeal.

31 "Warehouse" means a building, structure, or enclosure in
32 which grain is stored for the public for compensation,
33 whether grain of different owners is commingled or whether
34 identity of different lots of grain is preserved.

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

3 "Warehouseman" means a person who is licensed:

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

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

9 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;
10 92-16, eff. 6-28-01.)