

1 AMENDMENT TO HOUSE BILL 1458

2 AMENDMENT NO. _____. Amend House Bill 1458 by replacing
3 everything after the enacting clause with the following:

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

10 (240 ILCS 40/1-5)

11 Sec. 1-5. Purpose. The---Illinois---grain---industry
12 comprises---a---significant---and---vital---part---of---the---State's
13 economy.---The-grain-industry-can---function---to---its---fullest
14 competitive---and---profitable---potential,---thus-contributing-to
15 the-economic-health-of-this-State,---when-it-operates---under---a
16 eordinated---and---integrated---structure.---The-purpose-of-this
17 Code-is-to-provide-a-single-system-of-governmental-regulation
18 of-the-Illinois-grain---industry. It is also the primary
19 purpose of this Code to promote the State's welfare by
20 improving the economic stability of agriculture through the
21 existence of the Illinois Grain Insurance Fund in order to
22 protect producers in the event of the failure of a licensed

1 grain dealer or licensed warehouseman and to ensure the
 2 existence of an adequate resource so that persons holding
 3 valid claims may be compensated for losses occasioned by the
 4 failure of a licensed grain dealer or licensed warehouseman.
 5 To that end, this Code shall be liberally construed and
 6 liberally administered in favor of claimants.

7 In addition, the Illinois grain industry comprises a
 8 significant and vital part of the State's economy and as such
 9 can function to its fullest competitive and profitable
 10 potential, thus contributing to the economic health of this
 11 State, when it operates under a coordinated and integrated
 12 regulatory structure. Thus, a further purpose of this Code is
 13 to provide a single system of governmental regulation of the
 14 Illinois grain industry.

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

16 (240 ILCS 40/1-10)

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

18 "Board" means the governing body of the Illinois Grain
 19 Insurance Corporation.

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

23 "Claimant" means:

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

25 (1) who possesses warehouse receipts issued from an
 26 Illinois location covering grain owned or stored by a
 27 failed warehouseman; or

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

33 (3) who has loaned money to a warehouseman and was

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

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

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

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

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

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

29 "Code" means this the Grain Code.

30 "Collateral" means:

- 31 (a) irrevocable letters of credit;
- 32 (b) certificates of deposit;
- 33 (c) cash or a cash equivalent; or
- 34 (d) any other property acceptable to the Department to

1 the extent there exists equity in that property. For the
2 purposes of this item (d), "equity" is the amount by which
3 the fair market value of the property exceeds the amount owed
4 to a creditor who has a valid, prior, perfected security
5 interest in or other valid, prior, perfected lien on the
6 property.

7 "Corporation" means the Illinois Grain Insurance
8 Corporation.

9 "Daily position record" means a grain inventory
10 accountability record maintained on a daily basis that
11 includes an accurate reflection of changes in grain
12 inventory, storage obligations, company-owned inventory by
13 commodity, and other information that is required by the
14 Department.

15 "Daily grain transaction report" means a record of the
16 daily transactions of a grain dealer showing the amount of
17 all grain received and shipped during each day and the amount
18 on hand at the end of each day.

19 "Date of delivery of grain" means:

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

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

24 (c) in reference to grain in storage with a
25 warehouseman, the date a warehouse receipt representing
26 stored grain is delivered to the issuer of the warehouse
27 receipt for the purpose of selling the stored grain or, if no
28 warehouse receipt was issued:

29 (1) the date the purchase price for stored grain is
30 established; or

31 (2) if sold by price later contract, the date of
32 the price later contract.

33 "Department" means the Illinois Department of
34 Agriculture.

1 "Depositor" means a person who has evidence of a storage
2 obligation from a warehouseman.

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

5 "Electronic document" means a document that is generated,
6 sent, received, or stored by electrical, digital, magnetic,
7 optical electromagnetic, or any other similar means,
8 including, but not limited to, electronic data interchange,
9 electronic mail, telegram, telex, or telecopy.

10 "Electronic warehouse receipt" means a warehouse receipt
11 that is issued or transmitted in the form of an electronic
12 document.

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

16 "Equity assets" means:

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

19 (a):

20 (1) "equity" is the amount by which the fair market
21 value of the property exceeds the amount owed to a
22 creditor who has a valid security interest in or other
23 valid lien on the property that was perfected before the
24 date of failure of the licensee;

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

1 the licensee.

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

3 (a) a formal declaration of insolvency;

4 (b) a revocation of a license;

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

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

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

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

14 "Fund" means the Illinois Grain Insurance Fund.

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

19 "Grain assets" means:

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

23 (b) ~~(blank) redeposited-grain-of-a--licensee--or--failed~~
24 ~~licensee;~~

25 (c) identifiable proceeds, including, but not limited
26 to, insurance proceeds, received by or due to a licensee or
27 failed licensee resulting from the sale, exchange,
28 destruction, loss, or theft of grain, or other disposition of
29 grain by the licensee or failed licensee; or

30 (d) assets in hedging or speculative margin accounts
31 held by commodity or security exchanges on behalf of a
32 licensee or failed licensee and any moneys due or to become
33 due to a licensee or failed licensee, less any secured
34 financing directly associated with those assets or moneys,

1 from any transactions on those exchanges.

2 For purposes of this Act, storage charges, drying
3 charges, price later contract service charges, and other
4 grain service charges received by or due to a licensee or
5 failed licensee shall not be deemed to be grain assets, nor
6 shall such charges be deemed to be proceeds from the sale or
7 other disposition of grain by a licensee or a failed
8 licensee, or to have been directly or indirectly traceable
9 from, to have resulted from, or to have been derived in whole
10 or in part from, or otherwise related to, the sale or other
11 disposition of grain by the 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 ~~or~~ guarantees of
21 or relating to failed licensees. The Grain Indemnity Trust
22 Account shall be used to pay valid claims, authorized refunds
23 from the Fund, and expenses incurred in preserving,
24 liquidating, and collecting upon grain assets, equity assets,
25 collateral, and guarantees relating to failed licensees.

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

28 "Guarantee" means a document executed by a guarantor by
29 which the guarantor assumes all or part of the obligations of
30 a licensee to claimants.

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

1 "Licensed storage capacity" means the maximum grain
2 storage capacity measured in bushels approved by the
3 applicable licensing agency for use by a warehouseman.

4 "Licensee" means a grain dealer or warehouseman who is
5 licensed by the Department and a federal warehouseman that is
6 a participant in the Fund, under subsection (c) of Section
7 30-10.

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

13 "Permanent storage capacity" means the capacity of
14 permanent structures available for storage of grain on a
15 regular and continuous basis, and measured in bushels.

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

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

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

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

1 licensee.

2 "Regulatory Fund" means the fund created under Article
3 35.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 "Warehouse receipt" means a receipt for the storage of
34 grain issued by a warehouseman.

1 "Warehouseman" means a person who is licensed:

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

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

7 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;
8 92-16, eff. 6-28-01.)

9 (240 ILCS 40/1-15)

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

15 (1) The Director may, upon application, issue or refuse
16 to issue licenses under this Code, and the Director may
17 extend, renew, reinstate, suspend, revoke, or accept
18 voluntary surrender of licenses under this Code.

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

24 The Department shall perform one of 3 types of
25 examinations of licensees.

26 (A) Basic Examination. The basic examination shall
27 be performed when the licensee's merchandising and trade
28 practices involve minimal market risk, which might
29 include those situations in which the licensee uses cash
30 back-to-back contracts, traditional hedges with the
31 Chicago Board of Trade, and price later contracts. The
32 specific components and guidelines of the basic
33 examination are to be as provided by rule, but shall at a

1 minimum include verification of grain quality and
2 quantity, reconciliation of records with grain
3 transactions, computation of current ratios, and checking
4 of posting procedures for accuracy.

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, which might include those situations in
9 which the licensee uses guaranteed minimum price
10 contracts, purchases options, or writes options. This
11 examination shall include all those things performed as
12 part of the basic examination. In addition, the specific
13 components and guidelines of the intermediate examination
14 are to be as provided by rule, but shall at a minimum
15 include verification of grain quality and quantity,
16 reconciliation of records with grain transactions, and
17 checking of posting procedures for accuracy.

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

32 Using these guidelines, the Department shall determine
33 the level of examination to be applied to each licensee. In
34 addition, the Department may, in its sole discretion, engage

1 the services of accounting experts, grain risk management
2 experts, or both as part of any intermediate or advanced
3 examination. The Regulatory Fund may be used as a source of
4 payment for the services of accounting experts, grain risk
5 management experts, or both.

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

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

28 (4) The Director (but not the Director's designee) may
29 issue subpoenas and bring before the Department any person
30 and take testimony either at an administrative hearing or by
31 deposition with witness fees and mileage fees and in the same
32 manner as prescribed in the Code of Civil Procedure. The
33 Director or the Director's designee may administer oaths to
34 witnesses at any proceeding that the Department is authorized

1 by law to conduct. The Director (but not the Director's
2 designee) may issue subpoenas duces tecum to command the
3 production of records relating to a licensee, guarantor,
4 related business, related person, or related party. Subpoenas
5 are subject to the rules of the Department.

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

11 (6) The Director shall act as Trustee for the Trust
12 Account, act as Trustee over all collateral, guarantees,
13 grain assets, and equity assets held by the Department for
14 the benefit of claimants, and exercise certain powers and
15 perform related duties under Section 20-5 of this Code and
16 Section 205-410 of the Department of Agriculture Law (20 ILCS
17 205/205-410), except that the provisions of the Trust and
18 Trustees Act do not apply to the Trust Account or any other
19 trust created under this Code.

20 (7) The Director shall personally serve as president of
21 the Corporation.

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

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

30 (10) The Director shall maintain a holding corporation
31 to receive, hold title to, and liquidate assets of or
32 relating to a failed licensee, including assets in reference
33 to collateral or guarantees, and deposit the proceeds into
34 the Fund.

1 (11) The Director may initiate, participate in, or
2 withdraw from any proceedings to liquidate and collect upon
3 grain assets, equity assets, collateral, and guarantees
4 relating to a failed licensee, including, but not limited to,
5 all powers needed to carry out the provisions of Section
6 20-15.

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

10 (Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;
11 92-16, eff. 6-28-01.)

12 (240 ILCS 40/1-20)

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

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

24 (240 ILCS 40/1-25)

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

28 The Department shall adopt rules governing electronic
29 systems under which electronic warehouse receipts may be
30 issued and transferred. Licensees shall not be required,
31 however, to issue or use electronic warehouse receipts. These
32 rules shall be adopted after the United States Department of

1 Agriculture adopts regulations concerning an electronic
2 receipt transfer system pursuant to 7 U.S.C. 242, 250.

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

4 (240 ILCS 40/5-5)

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

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

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

30 (c) The application for a warehouseman shall state
31 whether the applicant proposes to store grain only for others
32 or for the applicant and for others and shall also state the
33 storage capacity for which the applicant desires to be

1 licensed.

2 (d) If an applicant has been engaged in business as a
3 grain dealer for one year or more, the application shall
4 state the aggregate dollar amount paid to producers for grain
5 during the applicant's last completed fiscal year. If the
6 applicant has been engaged in business for less than one year
7 or has not engaged in the business of buying grain from
8 producers as-a-grain-dealer, the application shall state the
9 estimated aggregate dollar amount to be paid by the applicant
10 to producers for grain purchased from producers during the
11 applicant's first fiscal year.

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

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

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

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

19 (240 ILCS 40/5-10)

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

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

25 (1) A financial statement made within 90 days after
26 the applicant's fiscal year end and prepared in
27 conformity with generally accepted accounting principles
28 following an examination conducted in accordance with
29 generally accepted auditing standards that has attached
30 the unqualified opinion, or a qualified opinion if the
31 qualification, in the sole discretion of the Department,
32 does not unduly diminish the financial stability of the
33 licensee or applicant, 7-or-other-opinion-acceptable-to

1 the--Department, of an independent certified public
2 accountant licensed under Illinois law or an entity
3 permitted to engage in the practice of public accounting
4 under item (b)(3) of Section 14 of the Illinois Public
5 Accounting Act.

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

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

20 (2) An application fee of \$200 ~~\$100~~ for each
21 license, \$100 of which shall be deposited into the
22 General Revenue Fund and the balance of which shall be
23 deposited into the Regulatory Fund.

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

28 (b) Applications for a new license to operate as a Class
29 II warehouseman or incidental grain dealer shall be
30 accompanied by:

31 (1) A financial statement prepared in accordance
32 with the requirements of item (a)(1) of Section 5-10 or,
33 instead, a financial statement made within 90 days of the
34 date of the application prepared or certified by an

1 independent accountant and verified under oath by the
 2 applicant. The financial statement shall set forth the
 3 balance sheet and other information with respect to the
 4 financial resources of the applicant that the Department
 5 may require. If the applicant has been engaged in
 6 business prior to the application, the financial
 7 statement shall also set forth a statement of income of
 8 the applicant.

9 (2) An application fee of \$150 ~~\$100~~ for each
 10 license, \$100 of which shall be deposited into the
 11 General Revenue Fund and the balance of which shall be
 12 deposited into the Regulatory Fund.

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

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

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

25 (240 ILCS 40/5-15)

26 Sec. 5-15. Renewal of license.

27 (a) The application for renewal of a license shall be
 28 filed with the Department annually within 90 days after the
 29 licensee's fiscal year end. The Department may, upon request
 30 of the licensee, payment of an extension fee of \$100 ~~\$50~~, \$50
 31 of which shall be deposited into the General Revenue Fund and
 32 the balance of which shall be deposited into the Regulatory
 33 Fund, and delivery to the Department of a preliminary

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

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

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

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

32 (240 ILCS 40/5-20)

33 Sec. 5-20. Financial statement and fee requirements for

1 the renewal of a license.

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

5 (1) A financial statement made within 90 days after
6 the applicant's fiscal year end and prepared in
7 conformity with generally accepted accounting principles
8 following an examination conducted in accordance with
9 generally accepted auditing standards that has attached
10 the unqualified opinion, or a qualified opinion if the
11 qualification, in the sole discretion of the Department,
12 does not unduly diminish the financial stability of the
13 licensee or applicant, ~~or other opinion acceptable to~~
14 the Department, of an independent certified public
15 accountant licensed under Illinois law or an entity
16 permitted to engage in the practice of public accounting
17 under item (b)(3) of Section 14 of the Illinois Public
18 Accounting Act. The financial statement shall consist of
19 a balance sheet, statement of income, statement of
20 retained earnings, statement of cash flows, notes to
21 financial statements, and other information as required
22 by the Department. The financial statement shall set
23 forth the financial position and results in operations
24 for the most recent fiscal year of the applicant.

25 (2) A fee of \$200 ~~\$100~~ for each license, \$100 of
26 which shall be deposited into the General Revenue Fund
27 and the balance of which shall be deposited into the
28 Regulatory Fund.

29 (3) A fee for each required certificate. The
30 amount of the fee for each certificate shall be
31 established by rule. Fees shall be deposited into the
32 Regulatory Fund.

33 (b) Applications for a renewal of a license to operate
34 as a Class II warehouseman or incidental grain dealer shall

1 be accompanied by each of the following:

2 (1) A financial statement prepared in accordance
3 with the requirements of item (a)(1) of Section 5-10 or,
4 instead, a financial statement made within 90 days after
5 the date of the application prepared or certified by an
6 independent accountant and verified under oath by the
7 applicant. The financial statement shall set forth the
8 balance sheet and statement of income of the applicant
9 and other information with respect to the financial
10 resources of the applicant that the Department may
11 require.

12 (2) A fee of \$150 ~~\$100~~ for each license, \$100 of
13 which shall be deposited into the General Revenue Fund
14 and the balance of which shall be deposited into the
15 Regulatory Fund.

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

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

21 (240 ILCS 40/5-25)

22 Sec. 5-25. Licensing standards and requirements. The
23 Department shall issue, amend, or renew a license if the
24 Department is satisfied that the applicant or licensee meets
25 the standards and requirements of this Section. The
26 standards and requirements of subsections (a) and (b) of this
27 Section must be observed and complied with at all times
28 during the term of the license.

29 (a) General requirements.

30 (1) The applicant or licensee must have a good
31 business reputation, have not been involved in improper
32 manipulation of books and records or other improper
33 business practices, and have the qualifications and

1 background essential for the conduct of the business of a
2 licensee. The Department must be satisfied as to the
3 business reputation, background, and qualifications of
4 the management and principal officers of the applicant or
5 licensee. The Department may obtain criminal histories
6 of management and principal officers of the applicant or
7 licensee.

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

16 (3) The applicant or licensee must have insurance
17 on all grain in its possession or custody as required in
18 this Code.

19 (4) The applicant or licensee shall at all times
20 keep sufficiently detailed books and records to reflect
21 compliance with all requirements of this Code. The
22 Department may require that certain records located
23 outside the State of Illinois, if any, be brought to a
24 specified location in Illinois for review by the
25 Department.

26 (5) The applicant or licensee and each of its
27 officers, directors, partners, and managers must not have
28 been found guilty of a criminal violation of this Code,
29 any of its predecessor statutes, or any similar or
30 related statute or law of the United States or any other
31 state or jurisdiction within 10 3 years of the date of
32 application for the issuance or renewal of a license.

33 (6) The applicant or licensee and each of its
34 officers, directors, managers, and partners, that at any

1 one time have been a licensee under this Code or any of
2 its predecessor statutes, or licensed under any similar
3 or related statute or law of the United States or any
4 other state or jurisdiction, must not have had its
5 license terminated or revoked by the Department, by the
6 United States, or by any other state or jurisdiction,
7 within 2 years of the date of application for the
8 issuance or renewal of a license leaving unsatisfied
9 indebtedness to claimants.

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

31 (b) Financial requirements.

32 (1) The applicant or licensee's financial statement
33 must show a current ratio of the total adjusted current
34 assets to the total adjusted current liabilities of at

1 least one to one.

2 (A) Adjusted current assets shall be
3 calculated by deducting from the stated current
4 assets shown on the balance sheet submitted by the
5 applicant or licensee any current asset, as
6 calculated in item (B) of this subdivision (1),
7 resulting from notes receivable from related
8 persons, accounts receivable from related persons,
9 stock subscriptions receivable, and any other
10 related person receivables.

11 (B) A disallowed current asset shall be netted
12 against any related liability and the net result, if
13 an asset, shall be subtracted from the current
14 assets.

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

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

29 (B) Adjusted equity shall be calculated by
30 deducting from the stated net worth shown on the
31 balance sheet submitted by the applicant or licensee
32 any asset, as calculated in item (C) of this
33 subdivision (2), resulting from notes receivable
34 from related persons, accounts receivable from

1 related persons, stock subscriptions receivable, or
2 any other related person receivables.

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

8 (3) An applicant or licensee must have an adjusted
9 equity of at least \$50,000 as determined by the method
10 specified in item (b)(2) of this Section. Beginning with
11 the first fiscal year of a licensee ending after 2004,
12 the adjusted equity, as defined by the method specified
13 in item (b)(2) of this Section, shall be increased by
14 \$10,000 per fiscal year until the adjusted equity of an
15 applicant or licensee is at least \$100,000.

16 (4) For the purposes of this Section, notes
17 receivable from related persons, accounts receivable from
18 related persons, and any other related person receivables
19 are not a disallowed asset if the related person is also
20 a licensee and meets all of the financial requirements of
21 this Code.

22 (5) An applicant for a new license shall not be
23 permitted to collateralize the requirements of items
24 (b)(1) and (b)(3) of this Section in order to satisfy the
25 requirements for a new license.

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

27 (240 ILCS 40/5-30)

28 Sec. 5-30. Grain Insurance Fund assessments. The
29 Illinois Grain Insurance Fund is established as a
30 continuation of the fund created under the Illinois Grain
31 Insurance Act, now repealed. Licensees, and applicants for a
32 new license, first sellers of grain to grain dealers at
33 Illinois locations, and lenders to licensee shall pay

1 assessments as set forth in this Section.

2 (a) Subject to subsection (e) of this Section, a
3 licensee that is newly licensed after the effective date of
4 this Code shall pay an assessment into the Fund for 3
5 consecutive years. These assessments are known as "newly
6 licensed assessments". Except as provided in item (6) of
7 subsection (b) of this Section, the first installment
8 assessment shall be paid at the time of or before the
9 issuance of a new license, the second installment assessment
10 shall be paid on or before the first anniversary date of the
11 issuance of the new license, and the third installment
12 assessment shall be paid on or before the second anniversary
13 date of the issuance of the new license. For a grain dealer,
14 the ~~initial~~ payment of each of the 3 installments assessments
15 shall be based upon the total estimated value of grain
16 purchases by the grain dealer for the applicable year with
17 the final installment assessment amount determined as set
18 forth in item (6) of subsection (b) of this Section. After
19 the licensee has paid or was required to pay the last 3
20 installments of the newly licensed assessments ~~first--3~~
21 ~~assessments-to-the-Department-for-payment-into-the-Fund~~, the
22 licensee shall be subject to subsequent assessments as set
23 forth in subsection (d) of this Section.

24 (b) Grain dealer newly licensed assessments.

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

27 (A) \$0.000145 multiplied by the total value of
28 grain purchases for the grain dealer's first fiscal
29 year as shown in the final financial statement for
30 that year provided to the Department under Section
31 5-20; and

32 (B) \$0.000255 multiplied by that portion of
33 the value of grain purchases for the grain dealer's
34 first fiscal year that exceeds the adjusted equity

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

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

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

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

15 (B) \$0.0001275 multiplied by that portion of
16 the value of grain purchases for the grain dealer's
17 second fiscal year that exceeds the adjusted equity
18 of the licensee multiplied by 20, as shown on the
19 final financial statement for the licensee's second
20 fiscal year provided to the Department under Section
21 5-20.

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

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

29 (B) \$0.0001275 multiplied by that portion of
30 the value of grain purchases for the grain dealer's
31 third fiscal year that exceeds the adjusted equity
32 of the licensee multiplied by 20, as shown on the
33 final financial statement for the licensee's third
34 fiscal year.

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

4 (6) Each of the newly licensed ~~first-3~~ assessments
5 shall be adjusted up or down based upon the actual annual
6 grain purchases for each year as shown in the final
7 financial statement for that year provided to the
8 Department under Section 5-20. The adjustments shall be
9 determined by the Department within 30 days of the date
10 of approval of renewal of a license. Refunds shall be
11 paid out of the Fund within 60 days after the
12 Department's determination. Additional amounts owed for
13 any installment assessments shall be paid within 30 days
14 after notification by the Department ~~as--provided--in~~
15 ~~subsection-(f)-of-this-Section.~~

16 (7) For the purposes of grain dealer newly licensed
17 assessments under subsection (b) of this Section, the
18 total value of grain purchases shall be the total value
19 of first time grain purchases by Illinois locations from
20 producers.

21 (8) The second and third installments shall be paid
22 to the Department within 60 days after the date posted on
23 the written notice of assessment. The Department shall
24 immediately deposit all paid installments into the Fund.

25 (c) Warehouseman newly licensed assessments.

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

28 (A) \$0.00085 multiplied by the total permanent
29 storage capacity of the warehouseman at the time of
30 license issuance; and

31 (B) \$0.00099 multiplied by that portion of the
32 permanent storage capacity of the warehouseman at
33 the time of license issuance that exceeds the
34 adjusted equity of the licensee multiplied by 5, all

1 as shown on the final financial statement for the
2 licensee provided to the Department under Section
3 5-10.

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

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

9 (A) \$0.000425 multiplied by the total
10 permanent storage capacity of the warehouseman at
11 the time of license issuance; and

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

19 (4) The minimum amount assessment for the second
20 and third installments assessments shall be \$250 ~~\$500~~ per
21 installment assessment and the maximum for each
22 installment assessment shall be \$7,500 ~~\$5,000~~.

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

1 Section.

2 (6) Every warehouseman shall pay an assessment of
3 \$0.0005 per bushel when increasing available storage
4 capacity by use of temporary storage space. The minimum
5 assessment on temporary storage space shall be \$100. The
6 assessment based upon temporary storage space shall be
7 paid at or before the time of approval of the amount of
8 the temporary storage space. This assessment on the
9 temporary storage space capacity does not relieve the
10 warehouseman of any assessments as set forth in
11 subsection (d) of this Section.

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

21 (8) The second and third installments shall be paid
22 to the Department within 60 days after the date posted on
23 the written notice of assessment. The Department shall
24 immediately deposit all paid installments into the Fund.

25 (d) Grain dealer subsequent assessments; warehouseman
26 subsequent assessments Subsequent-assessments.

27 (1) Subject to paragraph (4) of this subsection
28 (d), if on the first working day of a calendar quarter
29 when a licensee is not already subject to an assessment
30 under this subsection (d) (the assessment determination
31 date), if the equity in the Fund is less than \$6,000,000
32 below-\$3,000,000-on-September--1st--of--any--year, every
33 grain dealer who has, or was required to have, already
34 paid the newly licensed first,--second,---and---third

1 assessments shall be assessed by the Department in a
2 total an amount equal to:

3 (A) \$0.0000725 multiplied by the total value
4 of grain purchases for the grain dealer's last
5 completed fiscal year prior to the assessment
6 determination date 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 last completed fiscal year prior to the assessment
12 determination date that exceeds the adjusted equity
13 of the licensee multiplied by 20, as shown on the
14 final financial statement for the licensee's last
15 completed fiscal year provided to the Department
16 under Section 5-20.

17 The minimum total amount for the grain dealer a
18 subsequent assessment shall be ~~\$250~~ \$500 per 12-month
19 period year and the maximum amount shall be ~~\$7,500~~ \$5,000
20 per 12-month period year. For the purposes of grain
21 dealer assessments under this item (1) of subsection (d)
22 of this Section, the total value of grain purchases shall
23 be the total value of first time grain purchases by
24 Illinois locations from producers.

25 (2) Subject to paragraph (4) of this subsection
26 (d), if on the first working day of a calendar quarter
27 when a licensee is not subject to an assessment under
28 this subsection (d) (the assessment determination date),
29 if the equity in the Fund is less than \$6,000,000 below
30 ~~\$3,000,000--on--September--1st---of---any---year,~~ every
31 warehouseman who has, or was required to have, already
32 paid the newly licensed ~~first,--second,---and---third~~
33 assessments shall be assessed a warehouseman subsequent
34 assessment by the Department in a total an amount equal

1 to:

2 (A) \$0.000425 multiplied by the total licensed
3 storage capacity of the warehouseman as of the first
4 day of September that immediately precedes the
5 assessment determination date 1st-of-that-year; and

6 (B) \$0.000495 multiplied by that portion of
7 the licensed storage capacity of the warehouseman as
8 of the first day of September that immediately
9 precedes the assessment determination date 1st-of
10 that-year that exceeds the adjusted equity of the
11 licensee multiplied by 5, as shown on the final
12 financial statement for the licensee's last
13 completed fiscal year provided to the Department
14 under Section 5-20.

15 The minimum total amount for a warehouseman
16 subsequent assessment shall be \$250 \$500 per 12-month
17 period year and the maximum amount shall be \$7,500 \$5,000
18 per 12-month period year.

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

32 (4) Following the payment of the final quarterly
33 installment by grain dealers and warehousemen, the next
34 assessment determination date can be no sooner than the

1 first working day of the sixth full calendar month
2 following the payment.

3 (5) All assessments under paragraphs (1) and (2) of
4 this subsection (d) shall be effective as of the first
5 day of the calendar quarter immediately following the
6 assessment determination date and shall be paid to the
7 Department by licensees in 4 equal installments by the
8 twentieth day of each consecutive calendar quarter
9 following notice by the Department of the assessment. The
10 Department shall give written notice to all licensees of
11 when the assessment is effective, and the rate of the
12 assessment, by mail within 20 days after the assessment
13 determination date.

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

19 (7) If the due date for the payment by a licensee
20 of the third assessment under subsections (b) and (c) of
21 this Section 5-30 is after the assessment determination
22 date, that licensee shall not be subject to any of the 4
23 installments of an assessment under paragraphs (1) and
24 (2) of this subsection (d).

25 (8) The Department shall immediately deposit all
26 paid assessments into the Fund. If-the-due-date--for--the
27 payment--by--a--licensee-of-the-third-assessment-is-after
28 September-1st-in-a-year-when-the-equity-in--the--Fund--is
29 below-\$3,000,000,-that-licensee-shall-not-be-subject-to-a
30 subsequent-assessment-for-that-year.

31 (e) Newly licensed; exemptions.

32 (1) For the purpose of assessing fees for the Fund
33 under subsection (a) of this Section, and subject to the
34 provisions of item (e)(2) of this Section, the Department

1 shall consider the following to be newly licensed:

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

4 (B) A licensee who has a lapse in licensing of
5 more than 30 days. A license shall not be
6 considered to be lapsed after its revocation or
7 termination if an administrative or judicial action
8 is pending or if an order from an administrative or
9 judicial body continues an existing license.

10 (C) A grain dealer that is a general
11 partnership in which there is a change in
12 partnership interests and that change is greater
13 than 50% during the partnership's fiscal year.

14 (D) A grain dealer that is a limited
15 partnership in which there is a change in the
16 controlling interest of a general partner and that
17 change is greater than 50% of the total controlling
18 interest during the limited partnership's fiscal
19 year.

20 (E) A grain dealer that is a limited liability
21 company in which there is a change in membership
22 interests and that change is greater than 50% during
23 the limited liability company's fiscal year.

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

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

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

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

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

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

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

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

11 (K) A grain dealer that is the result of a
12 statutory consolidation or merger if one or more of
13 the predecessor persons that consolidated or merged
14 into the resulting grain dealer was not a licensee
15 under this Code at the time of the consolidation or
16 merger.

17 (2) For the purpose of assessing fees for the Fund
18 as set forth in subsection (a) of this Section, the
19 Department shall consider the following as not being
20 newly licensed and, therefore, exempt from further
21 assessment unless an assessment is required by subsection
22 (d) of this Section:

23 (A) A person resulting solely from a name
24 change of a licensee.

25 (B) A warehouseman changing from a Class I
26 warehouseman to a Class II warehouseman or from a
27 Class II warehouseman to a Class I warehouseman
28 under this Code.

29 (C) A licensee that becomes a wholly owned
30 subsidiary of another licensee.

31 (D) Subject to item (e)(1)(K) of this Section,
32 a person that is the result of a statutory
33 consolidation if that person has adjusted equity
34 greater than or equal to 90% of the combined

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

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

31 (F) A general partnership in which there is a
32 change in partnership interests and that change is
33 50% or less during the partnership's fiscal year and
34 the adjusted equity of the partnership after the

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

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

32 (H) A limited liability company in which there
33 is a change in membership interests and that change
34 is 50% or less of the total membership interests

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

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

26 (J) A federal warehouseman who participated in
27 the Fund under Section 30-10 and who subsequently
28 received an Illinois license to the extent the
29 storage capacity of the warehouseman was assessed
30 under this Code prior to Illinois licensing.

31 (f) Grain seller initial assessments and regular
32 assessments. Assessments under this subsection (f) apply only
33 to the first sale of grain to a grain dealer at an Illinois
34 location.

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

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

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

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

1 dealer.

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

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

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

1 should have been remitted to the Department and in
2 addition shall be subject to a monetary penalty in an
3 amount not to exceed \$1,000.

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

7 (g) Lender assessments.

8 (1) Subject to the provisions 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 equity in the Fund is less
12 than \$6,000,000, each person holding warehouse receipts
13 issued from an Illinois location on grain owned or stored
14 by a licensee to secure a loan to that licensee shall be
15 assessed a quarterly lender assessment for each of 4
16 consecutive calendar quarters beginning with the calendar
17 quarter next succeeding the assessment determination
18 date.

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

31 (3) With respect to the second assessment period
32 beginning after June 30, 2003, the Department shall
33 determine and apply a lender assessment multiplier equal
34 to 250,000 divided by the aggregate dollar amount of

1 lender assessments imposed under this subsection (g)
2 under the first assessment period beginning after June
3 30, 2003. With respect to the third assessment period
4 beginning after June 30, 2003, the Department shall
5 determine and apply a lender assessment multiplier equal
6 to 250,000 divided by the average of aggregate dollar
7 amounts of lender assessments imposed under this
8 subsection (g) under the first 2 assessment periods
9 beginning after June 30, 2003. With respect to assessment
10 periods thereafter, the Department shall determine and
11 apply a lender assessment multiplier equal to 250,000
12 divided by the average of the 3 most recent aggregate
13 dollar amounts of lender assessments imposed under this
14 subsection (g).

15 (4) The next assessment determination date can be no
16 sooner than the first working day of the fourth full
17 calendar month following the end of the assessment
18 period.

19 (5) The Department shall give written notice by mail
20 within 20 days after the assessment determination date to
21 all licensees of when assessments under this subsection
22 (g) are to begin and end, the rate of the lender
23 assessment, and the lender assessment multiplier, if any,
24 that shall apply.

25 (6) It is the responsibility of a licensee to inform
26 each of its lenders and other persons by virtue of whose
27 relationship with the licensee this subsection (g) will
28 apply as to the onset of an assessment for which that
29 person might be liable and the applicable lender
30 assessment multiplier, if any. The notification must be
31 in writing and, as to persons subject to assessment under
32 this subsection (g) on the assessment determination date,
33 must be sent no later than 20 days after the licensee
34 receives notice of an assessment from the Department. As

1 to persons not subject to assessment under this
2 subsection (g) as of the assessment determination date,
3 the notice shall be sent or given no later than the
4 closing of any transaction subsequent to the assessment
5 determination date involving the licensee and by virtue
6 of which transaction the person is made subject to
7 assessment under this subsection (g).

8 (7) Within 20 days after the end of each calendar
9 quarter within the assessment period, each licensee shall
10 send to each lender with which it has been associated
11 during that calendar quarter and to the Department a
12 written notice of quarterly assessment together with the
13 information needed to determine the amount of the
14 quarterly assessment owing with respect to loans from
15 that lender. This information shall include the number of
16 bushels covered by each warehouse receipt, organized by
17 commodity, held as security for the loan owing to that
18 lender, the number of days each of those warehouse
19 receipts was outstanding during that calendar quarter,
20 the applicable commodity price, the applicable lender
21 assessment multiplier, the amount of the resulting
22 quarterly lender assessment, and the due date of the
23 quarterly assessment.

24 (8) Each quarterly assessment shall be due and paid
25 by the lender or its designee to the Department within 20
26 days after the end of the calendar quarter to which the
27 assessment pertains.

28 (9) Lenders shall not be penalized by reason of any
29 licensee's failure to comply with this subsection (g).
30 Failure of a licensee to comply with this subsection (g)
31 shall not relieve the lender from paying the assessment,
32 and the lender shall promptly remit the uncollected
33 assessments by the due date as set forth in the notice
34 from the licensee.

1 (10) This subsection (g) applies to any person who
2 holds a grain warehouse receipt issued by a licensee from
3 an Illinois location pursuant to any transaction,
4 regardless of its form, that creates a security interest
5 in the grain including, without limitation, the advancing
6 of money or other value to or for the benefit of a
7 licensee upon the licensee's issuance or negotiation of a
8 grain warehouse receipt and pursuant to or in connection
9 with an agreement between the licensee and a
10 counter-party for the repurchase of the grain by the
11 licensee or designee of the licensee. For purposes of
12 this subsection (g), any such transaction shall be
13 treated as one in which grain is held as security for
14 loan outstanding to a licensee within the meaning of this
15 subsection (g), and such a person shall be treated as a
16 lender.

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

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

1 after-the-date-posted-on-the-written--notice--of--assessment.
2 The--Department--shall--forward--all--paid-assessments-to-the
3 Fund.

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

5 (240 ILCS 40/10-5)

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

7 (a) Each licensee shall have adequate property insurance
8 covering grain in its possession or custody and adequate
9 liability, property, theft, hazard, and workers' compensation
10 insurance.

11 (1) Every insurance policy shall contain a
12 provision that it will not be cancelled by the principal
13 or the insurance company except on 60 days prior written
14 notice to the Director and the principal insured.
15 Cancellation of the policy does not affect the liability
16 accrued or that may accrue under the policy before the
17 expiration of the 60 days. The notice shall contain the
18 termination date.

19 (2) Each licensee shall keep a general insurance
20 account showing the policy number, issuing company,
21 amount, binding date, and expiration date of insurance
22 coverage and the property covered by insurance.

23 (3) In reference to a warehouseman, notwithstanding
24 any provision to the contrary contained in the warehouse
25 receipts involved, a warehouseman is not obligated to
26 provide property insurance on Commodity Credit
27 Corporation grain ("CCC-owned grain"). The warehouseman,
28 however, shall continue to carry the insurance required
29 on loan grain that becomes CCC-owned grain until the date
30 stated in a written notice from CCC or its agent
31 instructing the warehouseman to cancel the insurance on
32 the grain as of that date. If CCC-owned grain is not
33 covered by property insurance, recovery by the Commodity

1 Credit Corporation from the Fund shall be reduced by the
2 amount of property insurance proceeds that would have
3 been available to cover any loss to CCC-owned grain had
4 the CCC-owned grain been covered by property insurance.

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

8 (c) All grain trades, grain merchandising transactions,
9 grain origination plans and programs, and transactions or
10 arrangements that represent or reflect rights and obligations
11 in grain must be clearly identified and disclosed in the
12 books and records of the licensee, for audit and examination
13 purposes.

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

15 (240 ILCS 40/10-10)

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

17 (a) Long and short market position.

18 (1) Grain dealers shall at all times maintain an
19 accurate and current long and short market position
20 record for each grain commodity. The position record
21 shall at a minimum contain the net position of all grain
22 owned, wherever located, grain purchased and sold, and
23 any grain option contract purchased or sold.

24 (2) Grain dealers, except grain dealers regularly
25 and continuously reporting to the Commodity Futures
26 Trading Commission or grain dealers who have obtained the
27 permission of the Department to have different open long
28 or short market positions, may maintain an open position
29 in the grain commodity of which the grain dealer buys the
30 greatest number of bushels per fiscal year not to exceed
31 one bushel for each \$10 of adjusted equity at fiscal year
32 end up to a maximum open position of 50,000 bushels and
33 one-half that number of bushels up to 25,000 bushels for

1 all other grain commodities that the grain dealer buys. A
2 grain dealer, however, may maintain an open position of
3 up to 5,000 bushels for each grain commodity the grain
4 dealer buys.

5 (b) The license issued by the Department to a grain
6 dealer shall be posted in the principal office of the
7 licensee in this State. A certificate shall be posted in
8 each location where the licensee engages in business as a
9 grain dealer. In the case of a licensee operating a truck or
10 tractor trailer unit for the purpose of purchasing grain, the
11 licensee shall have a certificate carried in each truck or
12 tractor trailer unit used in connection with the licensee's
13 grain dealer business.

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

17 (d) A licensee that is solely a grain dealer shall on a
18 daily basis maintain an accurate and current daily grain
19 transaction report.

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

23 (f) In the case of a change of ownership of a grain
24 dealer, the obligations of a grain dealer do not cease until
25 the grain dealer has surrendered all unused price later
26 contracts to the Department and the successor has executed a
27 successor's agreement that is acceptable to the Department,
28 or the successor has otherwise provided for the grain
29 obligations of its predecessor in a manner that is acceptable
30 to the Department.

31 (g) If a grain dealer proposes to cease doing business
32 as a grain dealer and there is no successor, it is the duty
33 of the grain dealer to surrender all unused price later
34 contracts to the Department, together with an affidavit

1 accounting for all grain dealer obligations setting forth the
2 arrangements made with producers for final disposition of the
3 grain dealer obligations and indicating the procedure for
4 payment in full of all outstanding grain obligations. It is
5 the duty of the Department to give notice by publication that
6 a grain dealer has ceased doing business without a successor.
7 After payment in full of all outstanding grain obligations,
8 it is the duty of the grain dealer to surrender its license.
9 (Source: P.A. 91-213, eff. 7-20-99.)

10 (240 ILCS 40/10-15)

11 Sec. 10-15. Price later contracts.

12 (a) Price later contracts shall be written on forms
13 prescribed or authorized by the Department. Price later
14 contract forms shall be printed by a person authorized to
15 print those contracts by the Department after that person has
16 agreed to comply with each of the following:

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

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

24 (3) That a duplicate copy of all invoices rendered
25 for printing price later contracts that will show the
26 consecutive numbers printed on the contracts, and the
27 number of contracts printed, shall be promptly forwarded
28 to the Department.

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

32 (b) A grain dealer purchasing grain by price later
33 contract shall at all times own grain, rights in grain,

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

7 (1) Grain owned by the grain dealer valued by means
8 of the hedging procedures method that includes marking
9 open contracts to market.

10 (2) Cash on hand.

11 (3) Cash held on account in federally or State
12 licensed financial institutions.

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

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

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

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

19 (8) Marketable securities, including mutual funds.

20 (9) Irrevocable letters of credit in favor of the
21 Department and acceptable to the Department.

22 (10) Price later contract service charges due or to
23 become due to the licensee.

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

26 (c) For the purpose of computing the dollar value of
27 grain and the balance due on price later contract
28 obligations, the value of grain shall be figured at the
29 current market price.

30 (d) Title to grain sold by price later contract shall
31 transfer to a grain dealer at the time ~~on-the-date~~ of
32 delivery of the grain. Therefore, no storage charges shall
33 be made with respect to grain purchased by price later
34 contract. A service charge for handling the contract,

1 however, may be made.

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

18 In the event of a failure, if a price later contract is
19 not signed by all the parties to the transaction, the
20 Department may consider the grain to be sold by price later
21 contract if a preponderance of the evidence indicates the
22 grain was to be sold by price later contract.

23 (f) If grain is in storage with a warehouseman and is
24 intended to be sold by price later contract, that grain shall
25 be considered as remaining in storage and not be deemed sold
26 by price later contract until the date the price later
27 contract is signed by all parties.

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

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

34 (i) A licensee grain-dealer shall not issue a collateral

1 warehouse receipt on grain purchased by a price later
2 contract to the extent the purchase price has not been paid
3 by the licensee grain-dealer.

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

7 (k) When a producer with a price later contract selects
8 a price for all or any part of the grain represented by that
9 contract, then within 5 business days after that price
10 selection, the licensee shall mail to that producer a
11 confirmation of the price selection, clearly and succinctly
12 indicating the price selected.

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

14 (240 ILCS 40/10-20)

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

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

22 (1) If the condition of grain offered for storage
23 might adversely affect the condition of grain in the
24 warehouse, a warehouseman need not receive the grain for
25 storage, but if a warehouseman does receive the grain,
26 then it must be stored in a manner that will not lower
27 the grade of other grain in the warehouse.

28 (2) A warehouseman shall provide competent
29 personnel and equipment to weigh and grade all grain in
30 and out of storage.

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

1 (b) For the purposes of the Department's examinations, a
2 warehouseman shall provide and maintain safe and adequate
3 means of ingress and egress to the various and surrounding
4 areas of the facilities, storage bins, and compartments of
5 the warehouse.

6 (c) Except as provided in this item (c), a warehouseman
7 shall at all times have a sufficient quantity of grain of
8 like kind and quality to meet its outstanding storage
9 obligations. For purposes of this Section, "like kind and
10 quality" means the type of commodity and a combination of
11 grade, specialty traits, if any, and class or sub-class as
12 applicable.

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

15 (e) A warehouseman may redeposit grain from its
16 warehouse with another warehouseman or a federal warehouseman
17 in an additional quantity not to exceed the licensed storage
18 capacity of its own warehouse.

19 (1) If grain is redeposited as provided in this
20 Section, a warehouseman must retain the receipt it
21 obtains from the second warehouseman as proof of the
22 redeposit and retain sufficient control over the
23 redeposited grain as is necessary to comply with
24 directions of the original depositor regarding
25 disposition of the redeposited grain.

26 (2) While grain is en route from the redepositing
27 warehouseman to the second warehouseman, a redepositing
28 warehouseman must retain an original or a duplicate bill
29 of lading instead of and until such time as it obtains
30 possession of the warehouse receipt as proof of
31 disposition of the redeposited grain.

32 (f) Schedule of rates and licenses.

33 (1) A warehouseman shall file its schedule of rates
34 with the Department and shall post its warehouse license

1 and a copy of the schedule of rates on file with the
2 Department in a conspicuous place in each location of the
3 warehouseman where grain is received.

4 (2) The schedule of rates shall be on a form
5 prescribed by the Department and shall include the names
6 and genuine signatures of all persons authorized to sign
7 warehouse receipts issued by the warehouseman.

8 (3) To change the schedule of rates or the name of
9 any person authorized to sign warehouse receipts, a
10 warehouseman must file with the Department a revised
11 schedule of rates and, thereafter, post the revised
12 schedule of rates at each location of the warehouseman
13 where grain is received. The revised schedule of rates
14 shall be deemed filed with the Department on the earlier
15 of the date it is delivered to the Department or mailed
16 to the Department by certified mail properly addressed
17 with sufficient postage attached. The revised schedule
18 of rates shall be effective on the date the schedule of
19 rates is posted after delivery or mailing to the
20 Department in accordance with this Section. Revised
21 schedules of rates shall apply only to grain delivered
22 for storage after the effective date of the revised
23 schedule of rates. No grain in storage at the time of
24 the effective date of a revised schedule of rates shall
25 be subject to a revised schedule of rates until one year
26 after the date of delivery of grain, unless otherwise
27 provided by a written contract.

28 (4) The schedule of rates may provide for the
29 negotiation of different rates for large deliveries of
30 grain if those rates are applied on a uniform basis to
31 all depositors under the same circumstances.

32 (g) A warehouseman may refuse to accept grain if the
33 identity of the grain is to be preserved. If a warehouseman
34 accepts grain and the identity of the grain is to be

1 preserved, the evidence of storage shall state on its face
2 that the grain is stored with its identity preserved and the
3 location of that grain.

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

6 (i) In the case of a change of ownership of a warehouse,
7 the obligations of a warehouseman do not cease until its
8 successor is properly licensed under this Code or the United
9 States Warehouse Act, it has surrendered all unused warehouse
10 receipts to the Department and has executed a successor's
11 agreement, or the successor has otherwise provided for the
12 obligations of its predecessor.

13 (j) If a warehouseman proposes to cease doing business
14 as a warehouseman and there is no successor, it is the duty
15 of the warehouseman to surrender all unused warehouse
16 receipts to the Department, together with an affidavit
17 accounting for all warehouse receipts setting forth the
18 arrangements made with depositors for final disposition of
19 the grain in storage and indicating the procedure for payment
20 in full of all outstanding obligations. After payment in full
21 of all outstanding obligations, it is the duty of the
22 warehouseman to surrender its license.

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

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

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

30 (240 ILCS 40/15-15)

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

32 (a) Violations of maximum allowable open position limits
33 by more than 1,000 bushels but less than twice the maximum

1 allowable open position limits.

2 (1) If a licensee violates the maximum allowable
3 open position limits of item (a)(2) of Section 10-10 and
4 the open position is more than 1,000 bushels but less
5 than twice the maximum allowable open position limits,
6 the licensee shall be required to:

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

14 (B) Pay a penalty in an amount not to exceed
15 \$250.

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

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

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

27 (3) If a licensee commits 3 or more violations as
28 set forth in item (a)(1) of Section 15-10 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 of each bushel for
34 all other grain in excess of the maximum allowable

1 open position limits or \$10,000, whichever is
2 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 (b) Violations of maximum allowable open position limits
6 that equal or exceed twice the maximum allowable open
7 position.

8 (1) If a licensee violates the maximum allowable
9 open position limits of item (a)(2) of Section 10-10 and
10 the open position equals or exceeds twice the maximum
11 allowable open position limits, the licensee must:

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

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

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

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

30 (B) pay a penalty in an amount greater than
31 \$750 ~~\$500~~ but less than \$15,000 ~~\$10,000~~.

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

1 (A) post collateral with the Department in an
2 amount equal to \$2 per bushel for each bushel of
3 soybeans in excess of the maximum allowable open
4 position limits and \$1 per bushel for each bushel
5 for all other grain in excess of the maximum
6 allowable open position limits or \$10,000, whichever
7 is greater; and

8 (B) pay a penalty in an amount greater than
9 \$2,000 ~~\$1,000~~ but less than \$20,000 ~~\$10,000~~.

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

11 (240 ILCS 40/15-20)

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

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

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

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

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

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

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

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

32 (3) If a licensee commits 3 or more violations as
33 set forth in item (a)(1) of Section 15-20 within a 5 year

1 period, the licensee must:

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

5 (B) pay a penalty of no less than \$2,000
6 ~~\$17,000~~ and no greater than \$20,000 ~~\$10,000~~.

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

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

14 (A) post collateral with the Department in an
15 amount equal to twice the value of the grain
16 quantity deficiency; and

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

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

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

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

30 (A) post collateral with the Department in an
31 amount equal to twice the value of the grain
32 quantity deficiency or \$40,000, whichever is
33 greater; and

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

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

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

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

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

15 (240 ILCS 40/15-30)

16 Sec. 15-30. Financial and record keeping deficiencies;
17 collateral and guarantees.

18 (a) An applicant or a licensee has a financial
19 deficiency if it does not meet the minimum financial
20 requirements of Section 5-25 and subsection (b) of Section
21 10-15 of this Code.

22 (b) A licensee must collateralize all financial
23 deficiencies at the rate of one dollar's worth of collateral
24 for each dollar of the aggregate sum of the individual ratio
25 deficiencies, the net worth deficiencies, and 90% asset
26 requirement deficiencies.

27 (c) A licensee who is found to have record keeping
28 deficiencies, other than in reference to violations as set
29 forth in subsection (b) of Section 10-15 and in Sections
30 15-15 and 15-20, may be required by the Department to post
31 collateral up to the amount of \$10,000.

32 (d) If an applicant for a new license or a renewal of a
33 license has financial deficiencies or the Department has

1 reason to believe that the financial stability of an
2 applicant or a licensee is in question, the Department may
3 require the applicant or licensee to provide the Department,
4 in addition to collateral, personal, corporate, or other
5 related person guarantees in a form and in an amount
6 satisfactory to the Department.

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

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

12 (240 ILCS 40/15-35)

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

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

25 (240 ILCS 40/15-40)

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

27 (a) The Director may suspend a license and take
28 possession and control of all grain assets and equity assets
29 (except that the Department may not take possession and
30 control of any equity asset on which there is a valid prior
31 perfected security interest or other valid prior perfected
32 lien without the prior, written permission of the secured

1 party or lien holder) of the suspended licensee if the
2 Department has reason to believe that any of the following
3 has occurred:

4 (1) A licensee has made a formal declaration of
5 insolvency; failed to apply for license renewal, leaving
6 indebtedness to claimants; or been denied a license
7 renewal, leaving indebtedness to claimants ~~experienced-a~~
8 ~~failure-or-is-unable-to-financially-satisfy-claimants--in~~
9 ~~accordance-with-applicable-statute,-rule,-or-agreement-if~~
10 ~~a--bona--fide-dispute-does-not-exist-between-the-licensee~~
11 ~~and-a-claimant.~~

12 (2) A licensee has failed to pay a producer, on
13 demand, for grain purchased from that producer, assuming
14 no bona fide dispute exists with regard to the payment.

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

19 (4) A licensee has violated any of the other
20 provisions of this Code and the violation, or the pattern
21 of the violations, would create a substantial risk of
22 failure ~~violated-any-of-the-provisions-of-this--Code--and~~
23 ~~the--violation-or-the-pattern-of-the-violations-indicates~~
24 ~~an-immediate-danger-of-loss-to-potential-claimants.~~

25 (5) ~~(3)~~ A licensee has failed ~~fails~~ to pay a
26 penalty or post collateral or guarantees by the date
27 ordered by the Director.

28 (6) ~~(4)~~ A licensee has failed ~~fails~~ to pay an
29 assessment as required by Section 5-30.

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

1 (c) ~~(2)~~ When a licensee voluntarily files for bankruptcy
2 under the federal bankruptcy laws, that filing constitutes a
3 revocation of the license of the licensee on the day that the
4 filing occurs.

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

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

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

22 (240 ILCS 40/15-45)

23 Sec. 15-45. Criminal offenses.

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

31 (b) A person who, knowingly and without lawful
32 authority, disposes of grain represented by outstanding
33 warehouse receipts or covered by unreceipted storage

1 obligations is guilty of a Class 2 3 felony.

2 (c) A person who, knowingly and without lawful
3 authority:

4 (1) withholds records from the Department;

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

7 (3) alters records without permission of the
8 Department; or

9 (4) presents to the Department any materially false
10 or misleading records;

11 is guilty of a Class 2 3 felony.

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

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

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

27 (g) A person who, intentionally, knowingly and without
28 lawful authority:

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

31 (2) issues a collateral warehouse receipt covering
32 grain purchased by a price later contract to the extent
33 the purchase price has not been paid by the grain dealer;

34 is guilty of a Class 3 4 felony.

1 (h) In case of a continuing violation, each day a
2 violation occurs constitutes a separate and distinct offense.
3 (Source: P.A. 89-287, eff. 1-1-96.)

4 (240 ILCS 40/20-10)

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

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

9 (1) A person, including, without limitation, a
10 lender:

11 (A) who possesses warehouse receipts issued
12 from an Illinois warehouse location covering grain
13 owned or stored by a warehouseman;

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

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

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

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

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

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

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

1 the date of failure of the licensee.

2 (c) To the extent any portion of this Code conflicts
3 with any portion of the Uniform Commercial Code, the
4 provisions of this Code control.

5 (d) If an adversarial proceeding is commenced to recover
6 "grain assets" or "equity assets" upon which a lien created
7 under this Section is imposed and if the Department declines
8 to take part in that adversarial proceeding, the Department,
9 upon application to the Director by any claimant, shall
10 assign to the claimant the statutory lien to permit the
11 claimant to pursue the lien in the adversarial proceeding,
12 but only if the assignment and adversarial proceeding will
13 not delay the Department's liquidation and distribution of
14 grain assets, equity assets, collateral, and guarantees,
15 including proceeds thereof, to all claimants holding valid
16 claims.

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

18 (240 ILCS 40/20-15)

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

22 (a) Immediately post notice at all locations of the
23 failed licensee stating that the licensee has experienced a
24 failure and that the license has been terminated and is no
25 longer effective.

26 (b) Immediately take physical control and possession of
27 the failed licensee's facility, including but not limited to
28 all offices and grain storage facilities, books, records, and
29 any other property necessary or desirable to liquidate grain
30 assets and equity assets.

31 (c) Give public notice and notify all known potential
32 claimants by certified mail of the licensee's failure and the
33 processes necessary to file grain claims with the Department

1 as set forth in Section 25-5.

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

3 (e) Seize and take possession of, protect, liquidate,
4 and collect upon all grain assets, collateral, and guarantees
5 of or relating to the failed licensee and deposit the
6 proceeds into the Trust Account. If at any time it appears,
7 however, in the judgment of the Department that the costs of
8 seizing and taking possession of, protecting, liquidating,
9 and collecting upon any or all of the grain assets,
10 collateral, and guarantees equals or exceeds the expected
11 recovery to the Department, the Department may elect not to
12 pursue seizing and taking possession of, protecting,
13 liquidating, and collecting upon any or all of the assets.

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

34 If an applicable secured party or lien holder does not

1 consent to the Department seizing, taking possession of,
2 liquidating, or collecting upon the equity assets, the
3 secured party or lien holder shall have the rights and
4 remedies provided by law or by agreement with the licensee or
5 failed licensee, including the right to enforce its security
6 interest or lien by any available judicial procedure.

7 (g) Make available on demand to an applicable secured
8 party or lien holder the equity asset, to the extent the
9 Department seized or otherwise gained possession or control
10 of the equity asset, but the secured party or lien holder
11 does not consent to the Department liquidating and collecting
12 upon the equity asset.

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

14 (240 ILCS 40/20-20)

15 Sec. 20-20. Liquidation expenses.

16 (a) The Trustee shall pay from the Trust Account all
17 reasonable expenses incurred by the trustee on or after the
18 date of failure in reference to seizing, preserving, and
19 liquidating the grain assets, equity assets, collateral, and
20 guarantees of or relating to a failed licensee, including,
21 but not limited to, the hiring of temporary field personnel,
22 equipment rental, auction expenses, mandatory commodity
23 check-offs, and clerical expenses.

24 (b) Except as to claimants holding valid claims, any
25 outstanding indebtedness of a failed licensee that has
26 accrued before the date of failure shall not be paid by the
27 Trustee and shall represent a separate cause of action of the
28 creditor against the failed licensee.

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

31 (d) To the extent assets are available under subsection
32 (g) of Section 25-20 and upon presentation of documentation
33 satisfactory to the Trustee, the Trustee shall transfer from

1 the Trust Account to the Regulatory Fund an amount not to
2 exceed the expenses incurred by the Department in performance
3 of its duties under Article 20 of this Code, in reference to
4 the failed licensee.

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

6 (240 ILCS 40/25-5)

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

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

16 (1) That the licensee has experienced a failure and
17 the date of that failure.

18 (2) The place and post office address where claims
19 may be filed.

20 (3) The procedure for filing claims, as determined
21 by rule.

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

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

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

29 (b) Time of notice.

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

33 (2) The published notice as provided for in

1 subsection (a) of this Section shall be published in at
2 least 3 newspapers of general circulation in the area
3 formerly served by the failed licensee.

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

10 (c) Every claim filed must be in writing, and verified,
11 and signed by a person who has the legal authority to file a
12 claim on behalf of the claimant and must state information
13 sufficient to notify the Department of the nature of the
14 claim and the amount sought.

15 (d) A claim shall be barred and disallowed in its
16 entirety if:

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

21 (2) the claimant's name or post office address is
22 not known by the Department or cannot, within 60 days
23 after the date of failure, be reasonably ascertained by
24 the Department and the claimant does not file a claim
25 with the Department on or before the later of the claim
26 date or 7 days after the date notice was mailed to that
27 claimant if the date notice was mailed to that claimant
28 is on or before the claim date.

29 (e) Subsequent notice.

30 (1) If, more than 60 days after the date of failure
31 but before the claim date, the Department learns of the
32 name and post office address of a claimant who was
33 previously not notified by the Department by mail, the
34 Department shall mail by certified mail, return receipt

1 requested, the notice to the claimant as provided for in
2 subsection (a) of this Section.

3 (2) The notice mailed as provided for in item
4 (e)(1) of this Section shall not extend the period of
5 time in which a claimant may file its claim beyond the
6 claim date. A claimant to whom notice is mailed under
7 item (e)(1) of this Section, however, shall have the
8 later of the claim date or 7 days after the date notice
9 was mailed to file a claim with the Department.

10 (f) The Department shall determine the validity,
11 category, and amount of each claim within 120 days after the
12 date of failure of the licensee ~~and--(g)--The-Department~~
13 shall give written notice within that time period to each
14 claimant and to the failed licensee of the Department's
15 determination as to the validity, category, and amount of
16 each claim.

17 ~~(g)~~ (h) A claimant or the failed licensee may request a
18 hearing on the Department's determination within 30 days
19 after receipt of the written notice and the hearing shall be
20 held in the county of residence of the claimant and in
21 accordance with rules. Under no circumstances shall payment
22 to claimants who have not requested a hearing be delayed by
23 reason of the request for a hearing by any unrelated
24 claimant.

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

33 (i) For the purposes of this Article, the "reasonably
34 ascertainable" standard shall be satisfied when the

1 Department conducts a review of the failed licensee's books
2 and records and an interview of office and clerical personnel
3 of the failed licensee.

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

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

18 (240 ILCS 40/25-10)

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

23 It is the express intent of this legislation that each
24 undisputed portion of a claim shall be paid in accordance
25 with the deadlines of this Code, even if there are disputed
26 portions of the claim. For example, the amount of a valid
27 claim calculated for an "unpriced obligation" shall be paid
28 to the claimant despite the fact that claimant additionally
29 seeks the amount for a "priced obligation".

30 Each claimant shall be compensated in accordance with the
31 following provisions:

32 (a) Valid claims filed by warehouse claimants shall be
33 paid 100% of the amount determined by the Department out of

1 the net proceeds of the liquidation of grain assets as set
2 forth in this subsection (a). To the extent the net proceeds
3 are insufficient, warehouse claimants shall be paid their pro
4 rata share of the net proceeds of the liquidation of grain
5 assets and, subject to subsection (j) of this Section, an
6 additional amount per claimant not to exceed the balance of
7 their respective claims out of the Fund.

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

14 (c) Valid claims filed by producers who:

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

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

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

33 (d) Valid claims that are not included in subsection (c)
34 of this Section that are filed by producers where the later

1 date of completion of ~~who-completed~~ delivery or and pricing
2 of the grain ~~in-reference-to-the-valid-claim,~~ whichever is
3 later, within 160 days before the date of failure shall be
4 paid 85% of the amount of the valid claim determined by the
5 Department or \$250,000 ~~\$100,000~~, whichever is less, per
6 claimant. In computing the 160-day period, the phrase "date
7 of completion of delivery" means the date of the last
8 delivery of grain to be applied to the quantity requirement
9 of the contract, and the phrase "the later date" means the
10 date closest to the date of failure. In addition, for claims
11 filed by producers for grain sold on a contract, however, the
12 later of the date of execution of the contract or the date of
13 delivery of grain--~~in-reference-to~~ the grain covered by the
14 price later contract must not be more than 365 ~~270~~ days
15 before the date of failure in order for the claimant to
16 receive any compensation. In computing the 365-day period,
17 the phrase "the later of the date" means the date closest to
18 the date of failure, and the phrase "date of delivery" means
19 the date of the last delivery of grain to be applied to the
20 quantity requirement of the price later contract.

21 (e) Valid claims filed by producers for grain sold on a
22 price later contract, for which the final price has not been
23 established, shall be paid 85% of the amount of the valid
24 claims determined by the Department or \$250,000 ~~\$100,000~~,
25 whichever is less, per claimant, if the later of the date of
26 execution of the contract or the date of delivery of grain--~~in~~
27 ~~reference--to~~ the grain covered by the price later contract
28 occurred not ~~no~~ more than 365 ~~270~~ days before the date of
29 failure. In computing the 365-day period, the phrase "the
30 later of the date" means the date closest to the date of
31 failure, and the phrase "date of delivery" means the date of
32 the last delivery of grain to be applied to the quantity
33 requirement of the price later contract.

34 The execution of subsequent price later contracts by the

1 producer and the licensee for grain previously covered by a
2 price later contract shall not extend the coverage of a claim
3 beyond the original 365 270 days.

4 (f) The maximum payment to producers under subsections
5 (d) and (e) of this Section, combined, shall be \$250,000
6 ~~\$100,000~~ per claimant.

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

10 (1) Claims filed by producers where both the date
11 of completion of delivery and the date of pricing of the
12 grain are ~~who-completed-pricing-of-the-grain-in-reference~~
13 ~~to--their--claim~~ in excess of 160 days before the date of
14 failure.

15 (2) Claims filed by producers for grain sold on a
16 price later contract if the later of the date of
17 execution of the contract or the date of delivery of
18 grain in reference to the grain covered by the price
19 later contract occurred more than 365 270 days before the
20 date of failure. In computing the 365-day period, the
21 phrase "the later of the date" means the date closest to
22 the date of failure, and the phrase "date of delivery"
23 means the date of the last delivery of grain to be
24 applied to the quantity requirement of the price later
25 contract.

26 (3) Claims filed by any claimant that are based
27 upon or acquired by fraudulent or illegal acts of the
28 claimant.

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

32 (i) For purposes of this Section, a claim filed in
33 connection with warehouse receipts that are possessed under a
34 collateral pledge of a producer, or that are subject to a

1 perfected security interest, or that were acquired by a
2 secured party or lien holder under an obligation of a
3 producer, shall be deemed to be a claim filed by the producer
4 and not a claim filed by the secured party or the lien
5 holder, regardless of whether the producer is in default
6 under that collateral pledge, security agreement, or other
7 obligation.

8 ~~(j) With respect to any failure occurring on or after~~
9 ~~July 17, 1998,~~ The maximum payment out of the Fund for
10 claimants under subsection (a), (b) of this Section shall be
11 \$1,000,000 per claimant and the maximum payment out of the
12 Fund for claimants under subsections (c), (d), and (e) of
13 this Section, combined, shall be \$1,000,000 per claimant.

14 (j) The amounts to be paid to warehouse valid claimants
15 and grain dealer valid claimants shall be calculated
16 according to the following:

17 (1) Valid claimants who have warehouse claims, or
18 who have grain dealer claims for grain sold, delivered
19 but unpriced as of the date of failure, shall have
20 "unpriced obligations", and to determine the per bushel
21 value of these valid claims the Department shall use an
22 average of the cash bid prices on the date of failure
23 from grain dealers located within the market area of the
24 failed licensee, and the cash bid price offered by the
25 failed licensee on the date of failure, less
26 transportation, handling costs, and discounts applicable
27 as of that date.

28 (2) Valid claimants who have grain dealer claims
29 for grain sold, delivered, and priced as of the date of
30 failure shall have "priced obligations", and the price
31 per bushel to be used in calculating the compensation due
32 these valid claimants shall be that which has been agreed
33 upon by the failed licensee and the claimant, less
34 applicable discounts. For purposes of this item (2), a

1 person has "priced" his or her grain if he or she has
2 done those things necessary under the agreement to set,
3 choose, or select a price for any portion of the grain
4 under the agreement, without regard to whether he or she
5 has received a check in payment for the grain, or could
6 have received a check in payment for the grain, prior to
7 the failure.

8 (k) Arrangements whereby a producer agrees with a
9 licensee to defer receipt of payment of amounts due from the
10 sale of grain are covered by this Code and are not to be
11 considered loans by the producer to the licensee, despite
12 payments to the producer as an inducement for the leaving of
13 moneys with the licensee, unless the licensee has executed
14 and delivered to the producer a promissory note covering
15 those amounts.

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

17 (240 ILCS 40/25-20)

18 Sec. 25-20. Priorities and repayments.

19 (a) All valid claims shall be paid from the Trust
20 Account, as provided in Section 25-10, first from the
21 proceeds realized from liquidation of and collection upon the
22 grain assets relating to the failed licensee, as to warehouse
23 claimants, and the equity assets as to a secured party or
24 lien holder who has consented to the Department liquidating
25 and collecting upon the equity asset as set forth in
26 subsection (f) of Section 20-15, and the remaining equity
27 assets, collateral, and guarantees relating to the failed
28 licensee, as to grain dealer claimants.

29 (b) If the proceeds realized from liquidation of and
30 collection upon the grain assets, equity assets, collateral,
31 and guarantees relating to the failed licensee are
32 insufficient to pay all valid claims as provided in Section
33 25-10 and subsection (a) of this Section as payment on those

1 claims becomes due, the Director shall request from the Board
2 sufficient funds to be transferred from the Fund to the Trust
3 Account to pay the balance owed to claimants as determined
4 under Section 25-10. If a request is made by the Director
5 for a transfer of funds to the Trust Account from the Fund,
6 the Board shall act on that request within 25 days after the
7 date of that request. Once moneys are transferred from the
8 Fund to the Trust Account, the Director shall pay the balance
9 owed to claimants in accordance with Section 25-10.

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

15 (1) The pro rata distribution to the Fund shall be
16 based upon the total amount of valid claims of all
17 warehouse claimants who have had their valid claims paid
18 in full. The pro rata distribution to each warehouse
19 claimant who has not had his or her valid claims paid in
20 full shall be based upon the total amount of that
21 claimant's original valid claims.

22 (2) If the net proceeds from the liquidation of
23 grain assets as set forth in subsection (a) of Section
24 25-10 exceed all amounts needed to satisfy all valid
25 claims filed by warehouse claimants, the balance
26 remaining shall be paid into the Trust Account or as set
27 forth in subsection (h).

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

29 (1) The proceeds realized from liquidation of and
30 collection upon the grain assets, equity assets,
31 collateral, and guarantees relating to the failed
32 licensee or any other assets relating to the failed
33 licensee that are received by the Department, to the
34 extent not already paid to claimants, shall be first used

1 to repay the Fund for moneys transferred to the Trust
2 Account.

3 (2) After the Fund is repaid in full for the moneys
4 transferred from it to pay the valid claims in reference
5 to a failed licensee, any remaining proceeds realized
6 from liquidation of and collection upon the grain assets,
7 equity assets, collateral, and guarantees relating to the
8 failed licensee thereafter received by the Department
9 shall be prorated to the claimants holding valid claims
10 who have not received 100% of the amount of their valid
11 claims based upon the unpaid amount of their valid
12 claims.

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

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

23 (g) Once all claims become valid claims and have been
24 paid in full and all interest as provided in subsection (e)
25 of this Section is paid in full, and all claims are paid in
26 full under subsection (f), any remaining grain assets, equity
27 assets, collateral, and guarantees, and the proceeds realized
28 from liquidation of and collection upon the grain assets,
29 equity assets, collateral, and guarantees relating to the
30 failed licensee, shall be returned to the failed licensee or
31 its assignee, or as otherwise directed by a court of
32 competent jurisdiction.

33 (h) If amounts in the Fund are insufficient to pay all
34 valid claims, the Corporation shall transfer from the Reserve

1 Fund to the Fund amounts sufficient to satisfy the valid
2 claims, and to the extent the amounts thus transferred are
3 insufficient to pay all valid claims, the General Assembly
4 shall appropriate to the Corporation amounts sufficient to
5 satisfy the valid claims. If for any reason the General
6 Assembly fails to make an appropriation to satisfy
7 outstanding valid claims, this Code constitutes an
8 irrevocable and continuing appropriation of all amounts
9 necessary for that purpose and the irrevocable and continuing
10 authority for and direction to the State Comptroller and to
11 the State Treasurer to make the necessary transfers and
12 disbursements from the revenues and funds of the State for
13 that purpose. Subject to payments to warehouse claimants as
14 set forth in subsection (c) of Section 25-20, the State shall
15 be first reimbursed, and the Reserve Fund shall thereafter be
16 reimbursed to the extent needed to restore the Reserve Fund
17 to a level of \$2,000,000 of principal (not including income
18 on the assets in the Reserve Fund) as soon as funds become
19 available for any amounts paid under subsection (g) of this
20 Section upon replenishment of the Fund from assessments under
21 subsections subsection (d), (f), and (g) of Section 5-30 and
22 collection upon grain assets, equity assets, collateral, and
23 guarantees relating to the failed licensee.

24 (i) The Department shall have those rights of equitable
25 subrogation which may result from a claimant receiving from
26 the Fund payment in full of the obligations of the failed
27 licensee to the claimant.

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

29 (240 ILCS 40/30-5)

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

31 (a) The Corporation is a political subdivision, body
32 politic, and public corporation. The governing powers of the
33 Corporation are vested in the Board of Directors composed of

1 the Director, who shall personally serve as president; the
2 Attorney General or his or her designee, who shall serve as
3 secretary; the State Treasurer or his or her designee, who
4 shall serve as treasurer; the Director of the Department of
5 Insurance or his or her designee; and the chief fiscal
6 officer of the Department. Three members of the Board
7 constitute a quorum at any meeting of the Board, and the
8 affirmative vote of 3 members is necessary for any action
9 taken by the Board at a meeting, except that a lesser number
10 may adjourn a meeting from time to time. A vacancy in the
11 membership of the Board does not impair the right of a quorum
12 to exercise all the rights and perform all the duties of the
13 Board and Corporation.

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

17 (1) To have perpetual succession by its corporate
18 name as a corporate body.

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

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

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

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

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

32 (7) To receive funds from the Trust Account for
33 deposit into the Fund.

34 (8) Upon the request of the Director, to make

1 payment from the Fund and the Reserve Fund to the Trust
2 Account when payment is necessary to compensate claimants
3 in accordance with the provisions of Section 25-20 or for
4 payment of refunds to licensees in accordance with the
5 provisions of this Code.

6 (9) To authorize, receive, and disburse funds by
7 electronic means.

8 (10) To make any inquiry and investigation deemed
9 appropriate with regard to the failure of any licensee,
10 including but not limited to analyzing the causes of and
11 reasons for the failure; determining the adequacy and
12 accuracy of Department examinations and other regulatory
13 measures with regard to the failed licensee; and
14 analyzing whether the handling of the liquidation and
15 payment process by the Department was done in a manner
16 that served the interests of those persons whose
17 interests this Code was designed to protect.

18 (11) (9) To have those powers that are necessary or
19 appropriate for the exercise of the powers specifically
20 conferred upon the Corporation and all incidental powers
21 that are customary in corporations.

22 (c) A committee of advisors shall be created to provide
23 technical assistance and advice and make recommendations to
24 the Board. The advisory committee shall assist the board in
25 understanding pertinent developments in grain production and
26 marketing and the grain industry. The advisory committee
27 shall be composed of one grain producer designated by the
28 Illinois Farm Bureau; one grain producer designated by the
29 Illinois Farmers Union; one grain producer designated by the
30 Illinois Corn Growers Association; one grain producer
31 designated by the Illinois Soybean Association; 2
32 representatives of the grain industry, designated by the
33 Grain and Feed Association of Illinois; and 2 representatives
34 of the lending industry, one each designated by the Illinois

1 Bankers Association and the Community Bankers of Illinois.
 2 Members of the advisory committee shall serve terms of 2
 3 years from the date of their designation. Members of the
 4 advisory committee shall have the right to attend all
 5 meetings of the Board and participate in Board discussions,
 6 but shall not have a vote.

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

8 (240 ILCS 40/30-10)

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

10 (a) A licensee under this Code is subject to this
 11 Article and shall collect and pay assessments into the Fund
 12 as provided in Section 5-30.

13 (b) Except as provided in subsection (c) of this
 14 Section, a person engaged in the business of a grain dealer
 15 or warehouseman but not licensed under this Code shall not
 16 participate in or benefit from the Fund and its claimants
 17 shall not receive proceeds from the Fund.

18 (c) Participation of federal warehousemen.

19 (1) A federal warehouseman may participate in the
 20 Fund. If a federal warehouseman chooses to participate
 21 in the Fund, it shall to the extent permitted by federal
 22 law:

- 23 (A) pay assessments into the Fund;
- 24 (B) be deemed a licensee and a warehouseman
- 25 under this Code;
- 26 (C) be subject to this Code; and
- 27 (D) execute a cooperative agreement between
- 28 itself and the Department.

29 (2) The cooperative agreement shall, at a minimum,
 30 provide each of the following to the extent permitted by
 31 federal law:

- 32 (A) Authorization for the Department to obtain
- 33 information about the federal warehouseman

1 including, but not limited to, bushel capacity of
2 storage space, financial stability, and examinations
3 performed by employees of the United States
4 Department of Agriculture.

5 (B) That the federal warehouseman submits
6 itself to the jurisdiction of the Department and
7 that it agrees to be subject to and bound by this
8 Code and deemed a licensee under this Code.

9 (C) That in the event of a failure of the
10 federal warehouseman, the Department shall have
11 authority to seize, liquidate, and collect upon all
12 grain assets, collateral, and guarantees relating to
13 the federal warehouseman as in the case of any other
14 licensee.

15 (D) Such other requirements as established by
16 rule.

17 (3) A federal warehouseman that participates in the
18 Fund shall at a minimum meet the licensing requirements
19 of this Code and shall comply with all requirements of a
20 licensee and a warehouseman under this Code to the extent
21 permitted by federal law.

22 (d) A federal warehouseman that participates in the Fund
23 or a warehouseman that desires to or has become a federal
24 warehouseman cannot withdraw from participation in the Fund
25 for the benefit of existing depositors until the occurrence
26 of all of the following:

27 (1) Payment in full by the federal warehouseman or
28 withdrawing warehouseman of all assessments under
29 subsection (a) of Section 5-30.

30 (2) Payment in full by the federal warehouseman or
31 withdrawing warehouseman of all assessments instituted
32 under subsection (d) of Section 5-30 on or after an
33 assessment determination date that occurs before if the
34 Fund is under \$3,000,000 at any time after the federal

1 warehouseman or withdrawing warehouseman notifies the
2 Department that it desires to withdraw from participation
3 in the Fund and before the issuance by the Department of
4 a certificate of withdrawal from the Fund.

5 (3) The expiration of 30 days following the later
6 of:

7 (A) the date the federal warehouseman or
8 withdrawing warehouseman has ceased providing its
9 depositors with coverage under the Fund;

10 (B) the date the federal warehouseman or
11 withdrawing warehouseman has posted at each of its
12 locations a notice stating when it will cease
13 providing its depositors with coverage under the
14 Fund;

15 (C) notification of all potential claimants by
16 the federal warehouseman or withdrawing warehouseman
17 of the date on which it will cease providing its
18 depositors with coverage under the Fund; and

19 (D) Completion of an audit and examination
20 satisfactory to the Department as provided for in
21 this Code and by rule, which is to be the
22 Department's final examination.

23 (4) Obtaining releases of liability from all
24 existing depositors or posting collateral with the
25 Department for 270 days after withdrawing from the Fund
26 in an amount equal to the liability to existing
27 depositors who have not executed releases before the
28 completion of the Department's final examination.

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

31 (6) Issuance by the Department of a certificate of
32 withdrawal from the Fund when the federal warehouseman or
33 withdrawing warehouseman has met all requirements for
34 withdrawal from participation in the Fund.

1 (e) Before a federal warehouseman or a warehouseman that
 2 desires to or has become a federal warehouseman may withdraw
 3 from participation in the Fund, it must pay for an audit and
 4 examination and must provide to the Department all names and
 5 addresses of potential claimants for the purposes of
 6 notification of withdrawal of participation in the Fund.

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

8 (240 ILCS 40/30-25 new)

9 Sec. 30-25. Grain Insurance Reserve Fund. Upon payment
 10 in full of all money that has been transferred to the Fund
 11 prior to June 30, 2003 from the General Revenue Fund as
 12 provided for under subsection (h) of Section 25-20, the State
 13 of Illinois shall remit \$2,000,000 to the Corporation to be
 14 held in a separate and discrete account to be used to the
 15 extent the assets in the Fund are insufficient to satisfy
 16 claimants as payment of their claims become due as set forth
 17 in subsection (h) of Section 25-20. The remittance of the
 18 \$2,000,000 reserve shall be made to the Corporation within 60
 19 days of payment in full of all money transferred to the Fund
 20 as set forth above in this Section 30-25. All income received
 21 by the Reserve Fund shall be deposited in the Fund within 35
 22 days of the end of each calendar quarter.

23 (240 ILCS 40/Art. 35 heading new)

24 ARTICLE 35. REGULATORY FUND

25 (240 ILCS 40/35-5 new)

26 Sec. 35-5. Regulatory Fund.

27 (a) The Regulatory Fund is created as a trust fund in
 28 the State Treasury. The Regulatory Fund shall receive
 29 license, certificate, and extension fees under Sections 5-10,
 30 5-15, and 5-20 and funds under subsection (g) of Section
 31 25-20 and shall pay expenses as set forth in this Article 35.

1 (b) Any funds received by the Director under Sections
2 5-10, 5-15, and 5-20 and funds disbursed for deposit to the
3 Regulatory Fund under subsection (g) of Section 25-20 shall
4 be deposited with the Treasurer as ex officio custodian and
5 held separate and apart from any public money of this State,
6 with interest accruing on moneys in the Regulatory Fund
7 deposited into the Regulatory Fund. Disbursement from the
8 Fund for expenses as set forth in this Article 35 shall be by
9 voucher ordered by the Director, accompanied by documentation
10 satisfactory to the Treasurer and the Comptroller supporting
11 the payment warrant drawn by the Comptroller and
12 countersigned by the Treasurer. Moneys in the Regulatory Fund
13 shall not be subject to appropriation by the General Assembly
14 but shall be subject to audit by the Auditor General.
15 Interest earned on moneys deposited into the Regulatory Fund
16 shall be deposited into the Regulatory Fund.

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

20 (1) Implementation and monitoring of programs of
21 the Department solely under this Code, including an
22 electronic warehouse receipt program.

23 (2) Employment or engagement of certified public
24 accountants to assist in oversight and regulation of
25 licensees in the course of an intermediate or advanced
26 examination under Section 1-15.

27 (3) Training and education of examiners and other
28 Department employees in reference to Department programs
29 established to implement the Department's duties solely
30 under the Code.

31 (d) Any expenses incurred by the Department in
32 performance of its duties under Article 20 of the Code shall
33 be reimbursed to the Department out of the net assets of a
34 liquidation to the extent available under subsection (g) of

1 Section 25-20 and shall be deposited into the Regulatory Fund
2 and shall be expended solely for program expenses under the
3 Code.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.".