

1 AN ACT concerning warehouses.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Grain Code is amended by changing Sections
5 20-20, 25-20, 30-5, 30-15, and 35-5 as follows:

6 (240 ILCS 40/20-20)

7 Sec. 20-20. Liquidation expenses; Asset Preservation
8 Account.

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

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

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

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

31 (e) The Department shall establish and maintain an Asset
32 Preservation Account as provided in Section 205-410 of the

1 Department of Agriculture Law of the Civil Administrative Code
2 of Illinois that shall contain a maximum of \$50,000. The funds
3 in the Asset Preservation Account are to be used solely by the
4 Trustee for the reasonable expenses incurred by the Department
5 on or after the date of failure for preserving and liquidating
6 grain assets, equity assets, collateral, and guarantees of or
7 relating to a failed licensee, provided that the Department has
8 made a determination that the benefit of preserving and
9 liquidating the grain assets, equity assets, collateral, and
10 guarantees exceeds the anticipated costs of the preservation
11 and liquidation, and only to the extent that all liquid and
12 available moneys in the Grain Indemnity Trust Account relating
13 to the particular failure have been exhausted. The Asset
14 Preservation Account shall be funded by the income earned on
15 the assets in the Fund. The income must be transferred to the
16 Asset Preservation Account on a monthly basis, within 10
17 business days after the end of each calendar month, and to the
18 extent necessary to maintain the \$50,000 balance. The Trustee,
19 or his or her designee, must file a report of all receipts by
20 and disbursements from the Asset Preservation Account with the
21 Board prior to each meeting of the Board.

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

23 (240 ILCS 40/25-20)

24 Sec. 25-20. Priorities and repayments.

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

34 (b) If the proceeds realized from liquidation of and
35 collection upon the grain assets, equity assets, collateral,

1 and guarantees relating to the failed licensee are insufficient
2 to pay all valid claims as provided in Section 25-10 and
3 subsection (a) of this Section as payment on those claims
4 becomes due, the Director shall request from the Board
5 sufficient funds to be transferred from the Fund to the Trust
6 Account to pay the balance owed to claimants as determined
7 under Section 25-10. If a request is made by the Director for a
8 transfer of funds to the Trust Account from the Fund, the Board
9 shall act on that request within 25 days after the date of that
10 request. Once moneys are transferred from the Fund to the Trust
11 Account, the Director shall pay the balance owed to claimants
12 in accordance with Section 25-10.

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

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

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

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

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

1 for moneys transferred to the Trust Account.

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

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

16 (f) After the Fund is paid the interest as provided in
17 subsection (e) of this Section, then those claims barred and
18 disallowed under items (1) and (2) of subsection (g) of Section
19 25-10 shall be paid on a pro rata basis only to the extent that
20 moneys are available.

21 (g) Once all claims become valid claims and have been paid
22 in full and all interest as provided in subsection (e) of this
23 Section is paid in full, ~~and~~ all claims are paid in full under
24 subsection (f), and all payments are made as required under
25 Section 20-20(d), any remaining grain assets, equity assets,
26 collateral, and guarantees, and the proceeds realized from
27 liquidation of and collection upon the grain assets, equity
28 assets, collateral, and guarantees relating to the failed
29 licensee, shall be returned to the failed licensee or its
30 assignee, or as otherwise directed by a court of competent
31 jurisdiction.

32 (h) If amounts in the Fund are insufficient to pay all
33 valid claims, the Corporation shall transfer from the Reserve
34 Fund to the Fund amounts sufficient to satisfy the valid
35 claims, and to the extent the amounts thus transferred are
36 insufficient to pay all valid claims, the General Assembly

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

20 (i) The Department shall have those rights of equitable
21 subrogation which may result from a claimant receiving from the
22 Fund payment in full of the obligations of the failed licensee
23 to the claimant.

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

25 (240 ILCS 40/30-5)

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

27 (a) The Corporation is a political subdivision, body
28 politic, and public corporation. The governing powers of the
29 Corporation are vested in the Board of Directors composed of
30 the Director, who shall personally serve as president; the
31 Attorney General or his or her designee, who shall serve as
32 secretary; the State Treasurer or his or her designee, who
33 shall serve as treasurer; the Director of the Department of
34 Insurance or his or her designee; and the chief fiscal officer
35 of the Department. Three members of the Board constitute a

1 quorum at any meeting of the Board, and the affirmative vote of
2 3 members is necessary for any action taken by the Board at a
3 meeting, except that a lesser number may adjourn a meeting from
4 time to time. A vacancy in the membership of the Board does not
5 impair the right of a quorum to exercise all the rights and
6 perform all the duties of the Board and Corporation.

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

10 (1) To have perpetual succession by its corporate name
11 as a corporate body.

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

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

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

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

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

25 (7) To receive funds from the Trust Account for deposit
26 into the Fund.

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

33 (9) To authorize, receive, and disburse funds by
34 electronic means.

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

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

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

13 (12) To make payments from the Fund to the Asset
14 Preservation Account in accordance with Section 20-20(e)
15 of this Code.

16 (c) A committee of advisors shall be created to provide
17 technical assistance and advice and make recommendations to the
18 Board. The advisory committee shall assist the board in
19 understanding pertinent developments in grain production and
20 marketing and the grain industry. The advisory committee shall
21 be composed of one grain producer designated by the Illinois
22 Farm Bureau; one grain producer designated by the Illinois
23 Farmers Union; one grain producer designated by the Illinois
24 Corn Growers Association; one grain producer designated by the
25 Illinois Soybean Association; 2 representatives of the grain
26 industry, designated by the Grain and Feed Association of
27 Illinois; and 2 representatives of the lending industry, one
28 each designated by the Illinois Bankers Association and the
29 Community Bankers of Illinois. Members of the advisory
30 committee shall serve terms of 2 years from the date of their
31 designation. Members of the advisory committee shall have the
32 right to attend all meetings of the Board and participate in
33 Board discussions, but shall not have a vote.

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

1 Sec. 30-15. Investments of the Fund.

2 (a) All assessments by the Department under Section 5-30
3 shall be held by the Corporation in the Fund.

4 (b) Subject to applicable law, the assets of the Fund may
5 be invested and reinvested at the discretion of the
6 Corporation, and the income from these investments shall be
7 deposited to the credit of the Fund and shall be available for
8 the same purposes as all other assets of the Fund.

9 (c) Except as provided in Section 20-20(e), the ~~The~~ assets
10 of the Fund shall not be available for any purpose other than
11 the payment of valid claims under this Code and the payment of
12 refunds of amounts that the Board determines have been
13 inappropriately paid into the Fund, and may not be transferred
14 to any other fund, other than the Trust Account when necessary
15 to pay valid claims under this Code or to pay refunds
16 authorized by the Board.

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

18 (240 ILCS 40/35-5)

19 Sec. 35-5. Regulatory Fund.

20 (a) The Regulatory Fund is created as a trust fund in the
21 State Treasury. The Regulatory Fund shall receive license,
22 certificate, and extension fees under Sections 5-10, 5-15, and
23 5-20 and funds under subsection (g) of Section 25-20 and shall
24 pay expenses as set forth in this Article 35.

25 (b) Any funds received by the Director under Sections 5-10,
26 5-15, and 5-20 and funds disbursed for deposit to the
27 Regulatory Fund under subsection (g) of Section 25-20 shall be
28 deposited with the Treasurer as ex officio custodian and held
29 separate and apart from any public money of this State, with
30 interest accruing on moneys in the Regulatory Fund deposited
31 into the Regulatory Fund. Disbursement from the Fund for
32 expenses as set forth in this Article 35 shall be by voucher
33 ordered by the Director, accompanied by documentation
34 satisfactory to the Treasurer and the Comptroller supporting
35 the payment warrant drawn by the Comptroller and countersigned

1 by the Treasurer. Moneys in the Regulatory Fund shall not be
2 subject to appropriation by the General Assembly but shall be
3 subject to audit by the Auditor General. Interest earned on
4 moneys deposited into the Regulatory Fund shall be deposited
5 into the Regulatory Fund.

6 (c) Fees deposited into the Regulatory Fund under Sections
7 5-10, 5-15, and 5-20 shall be expended only for the following
8 program expenses of the Department;

9 (1) Implementation and monitoring of programs of the
10 Department solely under this Code, including an electronic
11 warehouse receipt program.

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

16 (3) Training and education of examiners and other
17 Department employees in reference to Department programs
18 established to implement the Department's duties solely
19 under the Code.

20 (d) Any expenses incurred by the Department in performance
21 of its duties under Article 20 of the Code shall be reimbursed
22 to the Department out of the net assets of a liquidation to the
23 extent available under subsection (g) ~~(g)~~ of Section 25-20 and
24 shall be deposited into the Regulatory Fund and shall be
25 expended solely for program expenses under the Code.

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