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1 AMENDMENT TO SENATE BILL 214

2 AMENDMENT NO. _____. Amend Senate Bill 214 by replacing
3 everything after the enacting clause with the following:

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)

1 of Section 25-20 and upon presentation of documentation
2 satisfactory to the Trustee, the Trustee shall transfer from
3 the Trust Account to the Regulatory Fund an amount not to
4 exceed the expenses incurred by the Department in performance
5 of its duties under Article 20 of this Code, in reference to
6 the failed licensee.

7 (e) The Department shall establish and maintain an Asset
8 Preservation Account as provided in Section 205-410 of the
9 Department of Agriculture Law of the Civil Administrative Code
10 of Illinois that shall contain a maximum of \$50,000. The funds
11 in the Asset Preservation Account are to be used solely by the
12 Trustee for the reasonable expenses incurred by the Department
13 on or after the date of failure for preserving and liquidating
14 grain assets, equity assets, collateral, and guarantees of or
15 relating to a failed licensee, provided that the Department has
16 made a determination that the benefit of preserving and
17 liquidating the grain assets, equity assets, collateral, and
18 guarantees exceeds the anticipated costs of the preservation
19 and liquidation, and only to the extent that all liquid and
20 available moneys in the Grain Indemnity Trust Account relating
21 to the particular failure have been exhausted. The Asset
22 Preservation Account shall be funded by the income earned on
23 the assets in the Fund. The income must be transferred to the
24 Asset Preservation Account on a monthly basis, within 10
25 business days after the end of each calendar month, and to the
26 extent necessary to maintain the \$50,000 balance. The Trustee,
27 or his or her designee, must file a report of all receipts by
28 and disbursements from the Asset Preservation Account with the
29 Board prior to each meeting of the Board.

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

31 (240 ILCS 40/25-20)

32 Sec. 25-20. Priorities and repayments.

33 (a) All valid claims shall be paid from the Trust Account,

1 as provided in Section 25-10, first from the proceeds realized
2 from liquidation of and collection upon the grain assets
3 relating to the failed licensee, as to warehouse claimants, and
4 the equity assets as to a secured party or lien holder who has
5 consented to the Department liquidating and collecting upon the
6 equity asset as set forth in subsection (f) of Section 20-15,
7 and the remaining equity assets, collateral, and guarantees
8 relating to the failed licensee, as to grain dealer claimants.

9 (b) If the proceeds realized from liquidation of and
10 collection upon the grain assets, equity assets, collateral,
11 and guarantees relating to the failed licensee are insufficient
12 to pay all valid claims as provided in Section 25-10 and
13 subsection (a) of this Section as payment on those claims
14 becomes due, the Director shall request from the Board
15 sufficient funds to be transferred from the Fund to the Trust
16 Account to pay the balance owed to claimants as determined
17 under Section 25-10. If a request is made by the Director for a
18 transfer of funds to the Trust Account from the Fund, the Board
19 shall act on that request within 25 days after the date of that
20 request. Once moneys are transferred from the Fund to the Trust
21 Account, the Director shall pay the balance owed to claimants
22 in accordance with Section 25-10.

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

28 (1) The pro rata distribution to the Fund shall be
29 based upon the total amount of valid claims of all
30 warehouse claimants who have had their valid claims paid in
31 full. The pro rata distribution to each warehouse claimant
32 who has not had his or her valid claims paid in full shall
33 be based upon the total amount of that claimant's original
34 valid claims.

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

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

7 (1) The proceeds realized from liquidation of and
8 collection upon the grain assets, equity assets,
9 collateral, and guarantees relating to the failed licensee
10 or any other assets relating to the failed licensee that
11 are received by the Department, to the extent not already
12 paid to claimants, shall be first used to repay the Fund
13 for moneys transferred to the Trust Account.

14 (2) After the Fund is repaid in full for the moneys
15 transferred from it to pay the valid claims in reference to
16 a failed licensee, any remaining proceeds realized from
17 liquidation of and collection upon the grain assets, equity
18 assets, collateral, and guarantees relating to the failed
19 licensee thereafter received by the Department shall be
20 prorated to the claimants holding valid claims who have not
21 received 100% of the amount of their valid claims based
22 upon the unpaid amount of their valid claims.

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

28 (f) After the Fund is paid the interest as provided in
29 subsection (e) of this Section, then those claims barred and
30 disallowed under items (1) and (2) of subsection (g) of Section
31 25-10 shall be paid on a pro rata basis only to the extent that
32 moneys are available.

33 (g) Once all claims become valid claims and have been paid
34 in full and all interest as provided in subsection (e) of this

1 Section is paid in full, ~~and~~ all claims are paid in full under
2 subsection (f), and all payments are made as required under
3 Section 20-20(d), any remaining grain assets, equity assets,
4 collateral, and guarantees, and the proceeds realized from
5 liquidation of and collection upon the grain assets, equity
6 assets, collateral, and guarantees relating to the failed
7 licensee, shall be returned to the failed licensee or its
8 assignee, or as otherwise directed by a court of competent
9 jurisdiction.

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

34 (i) The Department shall have those rights of equitable

1 subrogation which may result from a claimant receiving from the
2 Fund payment in full of the obligations of the failed licensee
3 to the claimant.

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

5 (240 ILCS 40/30-5)

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

7 (a) The Corporation is a political subdivision, body
8 politic, and public corporation. The governing powers of the
9 Corporation are vested in the Board of Directors composed of
10 the Director, who shall personally serve as president; the
11 Attorney General or his or her designee, who shall serve as
12 secretary; the State Treasurer or his or her designee, who
13 shall serve as treasurer; the Director of the Department of
14 Insurance or his or her designee; and the chief fiscal officer
15 of the Department. Three members of the Board constitute a
16 quorum at any meeting of the Board, and the affirmative vote of
17 3 members is necessary for any action taken by the Board at a
18 meeting, except that a lesser number may adjourn a meeting from
19 time to time. A vacancy in the membership of the Board does not
20 impair the right of a quorum to exercise all the rights and
21 perform all the duties of the Board and Corporation.

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

25 (1) To have perpetual succession by its corporate name
26 as a corporate body.

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

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

32 (4) To avail itself of the use of information,
33 services, facilities, and employees of the State of

1 Illinois in carrying out the provisions of this Code.

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

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

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

9 (8) Upon the request of the Director, to make payment
10 from the Fund and the Reserve Fund to the Trust Account
11 when payment is necessary to compensate claimants in
12 accordance with the provisions of Section 25-20 or for
13 payment of refunds to licensees in accordance with the
14 provisions of this Code.

15 (9) To authorize, receive, and disburse funds by
16 electronic means.

17 (10) To make any inquiry and investigation deemed
18 appropriate with regard to the failure of any licensee,
19 including but not limited to analyzing the causes of and
20 reasons for the failure; determining the adequacy and
21 accuracy of Department examinations and other regulatory
22 measures with regard to the failed licensee; and analyzing
23 whether the handling of the liquidation and payment process
24 by the Department was done in a manner that served the
25 interests of those persons whose interests this Code was
26 designed to protect.

27 (11) To have those powers that are necessary or
28 appropriate for the exercise of the powers specifically
29 conferred upon the Corporation and all incidental powers
30 that are customary in corporations.

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

34 (c) A committee of advisors shall be created to provide

1 technical assistance and advice and make recommendations to the
2 Board. The advisory committee shall assist the board in
3 understanding pertinent developments in grain production and
4 marketing and the grain industry. The advisory committee shall
5 be composed of one grain producer designated by the Illinois
6 Farm Bureau; one grain producer designated by the Illinois
7 Farmers Union; one grain producer designated by the Illinois
8 Corn Growers Association; one grain producer designated by the
9 Illinois Soybean Association; 2 representatives of the grain
10 industry, designated by the Grain and Feed Association of
11 Illinois; and 2 representatives of the lending industry, one
12 each designated by the Illinois Bankers Association and the
13 Community Bankers of Illinois. Members of the advisory
14 committee shall serve terms of 2 years from the date of their
15 designation. Members of the advisory committee shall have the
16 right to attend all meetings of the Board and participate in
17 Board discussions, but shall not have a vote.

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

19 (240 ILCS 40/30-15)

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

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

23 (b) Subject to applicable law, the assets of the Fund may
24 be invested and reinvested at the discretion of the
25 Corporation, and the income from these investments shall be
26 deposited to the credit of the Fund and shall be available for
27 the same purposes as all other assets of the Fund.

28 (c) Except as provided in Section 20-20(e), the ~~The~~ assets
29 of the Fund shall not be available for any purpose other than
30 the payment of valid claims under this Code and the payment of
31 refunds of amounts that the Board determines have been
32 inappropriately paid into the Fund, and may not be transferred
33 to any other fund, other than the Trust Account when necessary

1 to pay valid claims under this Code or to pay refunds
2 authorized by the Board.

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

4 (240 ILCS 40/35-5)

5 Sec. 35-5. Regulatory Fund.

6 (a) The Regulatory Fund is created as a trust fund in the
7 State Treasury. The Regulatory Fund shall receive license,
8 certificate, and extension fees under Sections 5-10, 5-15, and
9 5-20 and funds under subsection (g) of Section 25-20 and shall
10 pay expenses as set forth in this Article 35.

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

27 (c) Fees deposited into the Regulatory Fund under Sections
28 5-10, 5-15, and 5-20 shall be expended only for the following
29 program expenses of the Department;

30 (1) Implementation and monitoring of programs of the
31 Department solely under this Code, including an electronic
32 warehouse receipt program.

33 (2) Employment or engagement of certified public

1 accountants to assist in oversight and regulation of
2 licensees in the course of an intermediate or advanced
3 examination under Section 1-15.

4 (3) Training and education of examiners and other
5 Department employees in reference to Department programs
6 established to implement the Department's duties solely
7 under the Code.

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

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