

SB1693



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1693

Introduced 2/19/2009, by Sen. Michael W. Frerichs

SYNOPSIS AS INTRODUCED:

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

Amends the Grain Code. Authorizes a claimant that is a lender to receive more than \$1 million out of the Illinois Grain Insurance Fund if it meets certain requirements. Defines "lender". Effective immediately.

LRB096 08487 JDS 18607 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning warehouses.

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

4 Section 5. The Grain Code is amended by changing Sections
5 1-10 and 25-10 as follows:

6 (240 ILCS 40/1-10)

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

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

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

13 "Claimant" means:

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

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

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

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

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

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

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

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

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

26 "Class II warehouseman" means a warehouseman who is

1 authorized to issue only non-negotiable warehouse receipts.

2 "Code" means this Grain Code.

3 "Collateral" means:

4 (a) irrevocable letters of credit;

5 (b) certificates of deposit;

6 (c) cash or a cash equivalent; or

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

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

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

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

24 "Date of delivery of grain" means:

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

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

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

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

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

12 "Department" means the Illinois Department of Agriculture.

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

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

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

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

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

1 grain as a consequence of an emergency situation.

2 "Equity assets" means:

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

5 (a):

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

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

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

22 (a) a formal declaration of insolvency;

23 (b) a revocation of a license;

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

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

1 claimants; or

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

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

7 "Fund" means the Illinois Grain Insurance Fund.

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

12 "Grain assets" means:

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

16 (b) (blank);

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

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

1 transactions on those exchanges.

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

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

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

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

1 obligations of a licensee to claimants.

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

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

9 "Lender" includes the person that extended credit to a
10 licensee and also includes any person to which the original
11 lender sold all or a portion of the original lender's interest
12 in such extension of credit.

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

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

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

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

1 "Person" means any individual or entity, including, but not
2 limited to, a sole proprietorship, a partnership, a
3 corporation, a cooperative, an association, a limited
4 liability company, an estate, a trust, or a governmental
5 agency.

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

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

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

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

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

25 (a) "Affiliate" means a person who has direct or
26 indirect control of a licensee, is controlled by a

1 licensee, or is under common control with a licensee.

2 (b) "Key person" means an officer, a director, a
3 trustee, a partner, a proprietor, a manager, a managing
4 agent, or the spouse of a licensee. An officer or a
5 director of an entity organized or operating as a
6 cooperative, however, shall not be considered to be a "key
7 person".

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

18 (d) "Control" means the power to exercise authority
19 over or direct the management or policies of a business
20 entity.

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

25 (f) Notwithstanding any other provision of this Act,
26 the term "related person" does not include a lender,

1 secured party, or other lien holder solely by reason of the
2 existence of the loan, security interest, or lien, or
3 solely by reason of the lender, secured party, or other
4 lien holder having or exercising any right or remedy
5 provided by law or by agreement with a licensee or a failed
6 licensee.

7 "Reserve Fund" means a separate and discrete fund of up to
8 \$2,000,000 held by the Corporation as set forth in Section
9 30-25.

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

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

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

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

1 "Warehouse" means a building, structure, or enclosure in
2 which grain is stored for the public for compensation, whether
3 grain of different owners is commingled or whether identity of
4 different lots of grain is preserved.

5 "Warehouse receipt" means a receipt for the storage of
6 grain issued by a warehouseman.

7 "Warehouseman" means a person who is licensed:

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

10 (b) under the United States Warehouse Act but
11 participates in the Fund under subsection (c) of Section
12 30-10.

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

14 (240 ILCS 40/25-10)

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

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

1 Each claimant shall be compensated in accordance with the
2 following provisions:

3 (a) Valid claims filed by warehouse claimants shall be paid
4 100% of the amount determined by the Department out of the net
5 proceeds of the liquidation of grain assets as set forth in
6 this subsection (a). To the extent the net proceeds are
7 insufficient, warehouse claimants shall be paid their pro rata
8 share of the net proceeds of the liquidation of grain assets
9 and, subject to subsection (j) of this Section, an additional
10 amount per claimant not to exceed the balance of their
11 respective claims out of the Fund.

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

17 (c) Valid claims filed by producers who:

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

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

26 shall be paid, subject to subsection (j) of this Section, 100%

1 of the amount of the valid claim determined by the Department.
2 Valid claims that are included in subsection (c) of this
3 Section shall receive no payment under subsection (d) of this
4 Section, and any claimant having a valid claim under this
5 subsection (c) determined by the Department to be in excess of
6 the limits, if any, imposed under subsection (j) of this
7 Section shall be paid only sums in excess of those limits to
8 the extent additional money is available under subsection
9 (d) (2) of Section 25-20.

10 (d) Valid claims that are not included in subsection (c) of
11 this Section that are filed by producers where the later date
12 of completion of delivery or pricing of the grain is within 160
13 days before the date of failure shall be paid 85% of the amount
14 of the valid claim determined by the Department or \$250,000,
15 whichever is less, per claimant. In computing the 160-day
16 period, the phrase "date of completion of delivery" means the
17 date of the last delivery of grain to be applied to the
18 quantity requirement of the contract, and the phrase "the later
19 date" means the date closest to the date of failure. In
20 addition, for claims filed by producers for grain sold on a
21 contract, the later of the date of execution of the contract or
22 the date of delivery of the grain covered by the price later
23 contract must not be more than 365 days before the date of
24 failure in order for the claimant to receive any compensation.
25 In computing the 365-day period, the phrase "the later of the
26 date" means the date closest to the date of failure, and the

1 phrase "date of delivery" means the date of the last delivery
2 of grain to be applied to the quantity requirement of the price
3 later contract.

4 (e) Valid claims filed by producers for grain sold on a
5 price later contract, for which the final price has not been
6 established, shall be paid 85% of the amount of the valid
7 claims determined by the Department or \$250,000, whichever is
8 less, per claimant, if the later of the date of execution of
9 the contract or the date of delivery of the grain covered by
10 the price later contract occurred not more than 365 days before
11 the date of failure. In computing the 365-day period, the
12 phrase "the later of the date" means the date closest to the
13 date of failure, and the phrase "date of delivery" means the
14 date of the last delivery of grain to be applied to the
15 quantity requirement of the price later contract.

16 The execution of subsequent price later contracts by the
17 producer and the licensee for grain previously covered by a
18 price later contract shall not extend the coverage of a claim
19 beyond the original 365 days.

20 (f) The maximum payment to producers under subsections (d)
21 and (e) of this Section, combined, shall be \$250,000 per
22 claimant.

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

26 (1) Claims filed by producers where both the date of

1 completion of delivery and the date of pricing of the grain
2 are in excess of 160 days before the date of failure.

3 (2) Claims filed by producers for grain sold on a price
4 later contract if the later of the date of execution of the
5 contract or the date of delivery of grain in reference to
6 the grain covered by the price later contract occurred more
7 than 365 days before the date of failure. In computing the
8 365-day period, the phrase "the later of the date" means
9 the date closest to the date of failure, and the phrase
10 "date of delivery" means the date of the last delivery of
11 grain to be applied to the quantity requirement of the
12 price later contract.

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

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

18 (i) For purposes of this Section, a claim filed in
19 connection with warehouse receipts that are possessed under a
20 collateral pledge of a producer, or that are subject to a
21 perfected security interest, or that were acquired by a secured
22 party or lien holder under an obligation of a producer, shall
23 be deemed to be a claim filed by the producer and not a claim
24 filed by the secured party or the lien holder, regardless of
25 whether the producer is in default under that collateral
26 pledge, security agreement, or other obligation.

1 (j) The maximum payment out of the Fund for claimants under
2 subsection (a) ~~or~~ (b) of this Section shall be \$1,000,000 per
3 claimant and the maximum payment out of the Fund for claimants
4 under subsections (c), (d), and (e) of this Section, combined,
5 shall be \$1,000,000 per claimant; however, notwithstanding any
6 other provision of this Act, a claimant that is a lender may
7 receive more than \$1,000,000 out of the Fund if that lender has
8 sold one or more participating interests in its loan to other
9 lenders and produces satisfactory evidence that: (i) its
10 recovery in excess of \$1,000,000 out of the Fund is made on
11 behalf of the other lender or lenders that have an interest in
12 the loan; (ii) the recovery from the Fund would not exceed the
13 actual financial interest held by the respective lender or
14 lenders on behalf of which the recovery is sought; and (iii) no
15 lender, whether it be the original lender or a lender that
16 purchased a participating interest in the loan, shall in any
17 event recover for its own account more than \$1,000,000 out of
18 the Fund in relation to a claim.

19 (k) The amounts to be paid to warehouse valid claimants and
20 grain dealer valid claimants shall be calculated according to
21 the following:

22 (1) Valid claimants who have warehouse claims, or who
23 have grain dealer claims for grain sold, delivered but
24 unpriced as of the date of failure, shall have "unpriced
25 obligations", and to determine the per bushel value of
26 these valid claims the Department shall use an average of

1 the cash bid prices on the date of failure from grain
2 dealers located within the market area of the failed
3 licensee, and the cash bid price offered by the failed
4 licensee on the date of failure, less transportation,
5 handling costs, and discounts applicable as of that date.

6 (2) Valid claimants who have grain dealer claims for
7 grain sold, delivered, and priced as of the date of failure
8 shall have "priced obligations", and the price per bushel
9 to be used in calculating the compensation due these valid
10 claimants shall be that which has been agreed upon by the
11 failed licensee and the claimant, less applicable
12 discounts. For purposes of this item (2), a person has
13 "priced" his or her grain if he or she has done those
14 things necessary under the agreement to set, choose, or
15 select a price for any portion of the grain under the
16 agreement, without regard to whether he or she has received
17 a check in payment for the grain, or could have received a
18 check in payment for the grain, prior to the failure.

19 (1) Arrangements whereby a producer agrees with a licensee
20 to defer receipt of payment of amounts due from the sale of
21 grain are covered by this Code and are not to be considered
22 loans by the producer to the licensee, despite payments to the
23 producer as an inducement for the leaving of moneys with the
24 licensee, unless the licensee has executed and delivered to the
25 producer a promissory note covering those amounts.

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.