

FEB 13 2002  
Agriculture

HOUSE FILE 2316  
BY DOLECHECK and RAYHONS

(COMPANION TO 6012SS  
BY ANGELO)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the regulation of grain sold by credit sale  
2 contract, providing for indemnification, and making penalties  
3 applicable.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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HF 2316

1 Section 1. Section 203.1, Code Supplement 2001, is amended  
2 by adding the following new subsections:

3 NEW SUBSECTION. 7A. "Grain credit sale contract indemnity  
4 fund" means the same as defined in section 203D.13.

5 NEW SUBSECTION. 8A. "Grain depositors and sellers  
6 indemnity fund" means the grain depositors and sellers  
7 indemnity fund created in section 203D.3.

8 NEW SUBSECTION. 8B. "Indemnity fund" means the same as  
9 defined in section 203D.1.

10 Sec. 2. Section 203.1, subsection 2, Code Supplement 2001,  
11 is amended to read as follows:

12 2. ~~"credit-sale-contract"~~ "Credit sale contract" means a  
13 contract for the sale of grain pursuant to which the sale  
14 price is to be paid more than thirty days after the delivery  
15 of the grain to the buyer, or a contract which is titled as a  
16 ~~credit-sale~~ credit sale contract, including but not limited to  
17 those contracts commonly referred to as deferred-payment  
18 contracts, deferred-pricing contracts, and price-later  
19 contracts.

20 Sec. 3. Section 203.1, subsection 6, paragraph c, Code  
21 Supplement 2001, is amended to read as follows:

22 c. A substantial risk of loss to ~~the-grain-depositors-and~~  
23 ~~sellers~~ an indemnity fund caused by the possible insolvency of  
24 the grain dealer based on a statistical model provided in  
25 section 203.22.

26 Sec. 4. Section 203.2A, subsection 3, paragraph a, Code  
27 2001, is amended to read as follows:

28 a. The person provides notice to the producer. The notice  
29 shall be in the following form:

30 ATTENTION TO PRODUCERS:  
31 THE PERSON PURCHASING THIS GRAIN IS NOT A LICENSED GRAIN  
32 DEALER AND THIS IS NOT A COVERED TRANSACTION ELIGIBLE FOR  
33 INDEMNIFICATION FROM THE GRAIN DEPOSITORS AND SELLERS  
34 INDEMNITY FUND AS PROVIDED IN IOWA CODE SECTION 203D.3 OR THE  
35 GRAIN CREDIT SALE CONTRACT INDEMNITY FUND AS PROVIDED IN IOWA

1 CODE SECTION 203D.13.

2 Sec. 5. Section 203.4, Code 2001, is amended to read as  
3 follows:

4 203.4 PARTICIPATION IN INDEMNITY FUND REQUIRED.

5 A person licensed to operate as a grain dealer under this  
6 chapter shall ~~participate-in-and~~ comply with and participate  
7 in all of the following:

8 1. Chapter 203D, subchapter 2, and grain depositors and  
9 sellers indemnity fund ~~provided-in-chapter-203D~~.

10 2. Chapter 203D, subchapter 3, and the grain credit sale  
11 contract indemnity fund, if the grain dealer purchases grain  
12 by credit sale contract.

13 Sec. 6. Section 203.5, subsections 1 and 2, Code 2001, are  
14 amended to read as follows:

15 1. The applicant has caused liability to ~~the-fowa-grain~~  
16 ~~depositors-and-sellers~~ an indemnity fund in regard to a  
17 license issued under this chapter or chapter 203C, and the  
18 liability has not been discharged, settled, or satisfied.

19 2. The applicant is owned or controlled by a person who  
20 has caused liability to ~~the~~ an indemnity fund through  
21 operations under a license issued under this chapter or  
22 chapter 203C and the liability has not been discharged,  
23 settled, or satisfied.

24 Sec. 7. Section 203.12, unnumbered paragraph 1, Code 2001,  
25 is amended to read as follows:

26 Upon revocation, termination, or cancellation of a grain  
27 dealer license, any claim for the purchase price of grain  
28 against the grain dealer shall be made in writing and filed  
29 with the grain dealer, and with the issuer of a deficiency  
30 bond or of an irrevocable letter of credit, and with the  
31 department. The claim shall be made within one hundred twenty  
32 days after revocation, termination, or cancellation. ~~Failure~~  
33 A failure to make this a timely claim relieves the issuer and  
34 the ~~grain-depositors-and-sellers~~ appropriate indemnity fund  
35 ~~provided-in-chapter-203D~~ of all obligations to the claimant.

1 Sec. 8. Section 203.12A, subsections 3 and 4, Code  
2 Supplement 2001, are amended to read as follows:

3 3. The lien shall arise and terminate as follows:

4 a. For a covered transaction as provided in section  
5 203D.6, at the time of surrender of warehouse receipts or  
6 other written evidence of ownership as part of a grain sale  
7 transaction or the time of delivery of the grain for sale, and  
8 shall terminate when the liability of the grain dealer to the  
9 seller has been discharged. The lien of all sellers under  
10 this paragraph is hereby assigned to the Iowa grain indemnity  
11 fund board, on behalf of the grain depositors and sellers  
12 indemnity fund.

13 b. For a covered transaction as provided in section  
14 203D.15, at the time that the credit sale contract is executed  
15 and shall terminate when the liability of the grain dealer to  
16 the credit sale contract seller has been discharged. The lien  
17 of all sellers under this paragraph is assigned to the Iowa  
18 grain indemnity fund board, on behalf of the grain credit sale  
19 contract indemnity fund.

20 4. To perfect the lien, the Iowa grain indemnity fund  
21 board must file a lien statement with the office of the  
22 secretary of state. The lien statement shall disclose the  
23 name of the grain dealer; the address of the dealer's  
24 principal place of business; a description of identifiable  
25 grain dealer assets; whether the identifiable grain dealer  
26 assets arise under a covered transaction as provided in  
27 section 203D.6 or 203D.15, if known; and the amount of the  
28 lien.

29 a. ~~The~~ For a covered transaction as provided in section  
30 203D.6, the lien statement is valid only if filed on or after  
31 the date of suspension but not later than sixty days after the  
32 incurrence date as provided in section 203D.6. The lien  
33 statement shall disclose the name of the grain dealer, the  
34 address of the dealer's principal place of business, a  
35 description of identifiable grain dealer assets, and the

1 ~~amount-of-the-lien.~~ The lien amount shall be the board's  
2 estimate of the final cost of reimbursing the grain depositors  
3 and sellers indemnity fund for the payment of claims against  
4 the fund resulting from the breach of the grain dealer's  
5 obligations. The board shall correct the amount not later  
6 than one hundred eighty days following the incurrence date. A  
7 court, upon petition by an affected person, may correct the  
8 amount. The board shall have the burden of proving that the  
9 amount is an accurate estimate.

10 b. For a covered transaction as provided in section  
11 203D.15, the lien statement is valid only if filed on or after  
12 the date of suspension but not later than sixty days after the  
13 incurrence date as provided in section 203D.15. The lien  
14 amount shall be the board's estimate of the final cost of  
15 reimbursing the grain credit sale contract indemnity fund for  
16 the payment of claims against the fund resulting from the  
17 breach of the grain dealer's obligations. The board shall  
18 correct the amount not later than one hundred eighty days  
19 following the incurrence date. A court, upon petition by an  
20 affected person, may correct the amount. The board shall have  
21 the burden of proving that the amount is an accurate estimate.

22 Sec. 9. Section 203.15, subsection 9, Code 2001, is  
23 amended to read as follows:

24 9. A licensed grain dealer who purchases grain by ~~credit-~~  
25 ~~sale~~ credit sale contract shall obtain from the seller a  
26 signed acknowledgment stating that the seller has received  
27 notice as provided in this subsection. The acknowledgment  
28 shall state that grain purchased by ~~credit-sale~~ credit sale  
29 contract is not protected by the grain depositors and sellers  
30 indemnity fund but may be protected under the grain credit  
31 sale contract indemnity fund as provided in chapter 203D. The  
32 form for the acknowledgment shall be prescribed by the  
33 department, and the licensed grain dealer and the seller shall  
34 each be provided a copy.

35 Sec. 10. Section 203.16, subsection 3, Code Supplement

1 2001, is amended to read as follows:

2 3. Disclosure to the Iowa grain indemnity fund board in  
3 regard to ~~licensees~~ a licensee who ~~present~~ presents liability  
4 to the an indemnity fund.

5 Sec. 11. Section 203.19, subsection 2, paragraph a, Code  
6 2001, is amended to read as follows:

7 a. Filing with the department evidence of a bond or an  
8 irrevocable letter of credit on file with a state or of  
9 participation in a fund which has the same purposes as an  
10 indemnity fund in a state with which Iowa has a co-operative  
11 cooperative agreement as provided for by this section.

12 Sec. 12. Section 203.22, Code 2001, is amended to read as  
13 follows:

14 203.22 PRIORITIZATION OF INSPECTIONS OF GRAIN DEALERS.

15 The department shall develop a system to prioritize the  
16 inspections of grain dealers provided in section 203.9. The  
17 system of prioritization shall be computed each year based on  
18 the risk of loss to the ~~grain-depositors-and-sellers~~ indemnity  
19 ~~fund~~ funds caused by the possible insolvency of the grain  
20 dealer. The department shall compute the risk by utilizing an  
21 available statistical model to measure the financial condition  
22 of grain dealers, and especially grain dealers who execute  
23 ~~credit-sale~~ credit sale contracts. Procedures for utilizing  
24 the statistical model shall be adopted by department rules.  
25 The statistical model shall be used to provide risk ratings.  
26 A risk rating shall be used as a factor by the department to  
27 prioritize its inspection schedule. The department may use a  
28 risk rating produced by the statistical model as justification  
29 to inspect the grain dealer at any time. A substantial risk  
30 of loss to ~~the-grain-depositors-and-sellers~~ an indemnity fund  
31 caused by the possible insolvency of the grain dealer based on  
32 the statistical model shall be good cause.

33 Sec. 13. Section 203C.1, Code 2001, is amended by adding  
34 the following new subsections:

35 NEW SUBSECTION. 4A. "Credit sale contract purchased

1 grain" means grain, other than purchased grain, that is  
2 purchased by a grain dealer pursuant to a credit sale  
3 contract.

4 NEW SUBSECTION. 9A. "Grain credit sale contract indemnity  
5 fund" means the grain credit sale contract indemnity fund  
6 created in section 203D.13.

7 NEW SUBSECTION. 9B. "Grain depositors and sellers  
8 indemnity fund" means the grain depositors and sellers  
9 indemnity fund created in section 203D.3.

10 NEW SUBSECTION. 12A. "Indemnity fund" means the same as  
11 defined in section 203D.1.

12 Sec. 14. Section 203C.1, subsection 7A, paragraph d, Code  
13 2001, is amended to read as follows:

14 d. A high risk of loss to ~~the grain depositors and sellers~~  
15 an indemnity fund caused by the possible insolvency of the  
16 warehouse operator based on a statistical model provided in  
17 section 203C.40.

18 Sec. 15. Section 203C.4, subsection 2, Code 2001, is  
19 amended to read as follows:

20 2. When appointed as receiver under this chapter the  
21 department is authorized to give notice in the manner  
22 specified by the court to persons all of the following:

23 a. Persons holding warehouse receipts or other evidence of  
24 deposit issued by the licensee.

25 b. Persons executing credit sale contracts with the  
26 licensee.

27 The notice shall inform persons that they are required to  
28 file their claims within one hundred twenty days after the  
29 date of appointment. ~~Failure~~ A failure to timely file a claim  
30 shall defeat the claim with respect to the issuer of a  
31 deficiency bond or of an irrevocable letter of credit, ~~grain~~  
32 ~~depositors and sellers~~ an indemnity fund ~~created in chapter~~  
33 ~~203D~~, and any commodities or proceeds from the sale of  
34 commodities, except to the extent of any excess commodities or  
35 proceeds of sale remaining after all timely claims are paid in

1 full.

2 Sec. 16. Section 203C.6, subsection 8, paragraphs a and b,  
3 Code 2001, are amended to read as follows:

4 a. The applicant has caused liability to ~~the Iowa grain~~  
5 ~~depositors and sellers~~ an indemnity fund through operations  
6 under a license issued under this chapter or chapter 203, and  
7 the liability has not been discharged, settled, or satisfied.

8 b. The applicant is owned or controlled by a person who  
9 has caused liability to ~~the~~ an indemnity fund through  
10 operations under a license issued under this chapter or  
11 chapter 203, and the liability has not been discharged,  
12 settled, or satisfied.

13 Sec. 17. Section 203C.12, Code 2001, is amended to read as  
14 follows:

15 203C.12 PARTICIPATION IN FUND REQUIRED.

16 A ~~person licensed to operate a~~ licensed warehouse under  
17 ~~this chapter~~ operator shall ~~participate in and~~ comply with and  
18 participate in the following:

19 1. Chapter 203D, subchapter 2, and the grain depositors  
20 and sellers indemnity fund provided in chapter 203D.

21 2. Chapter 203D, subchapter 3, and the grain credit sale  
22 contract indemnity fund, if the licensed warehouse operator  
23 stores grain subject to a credit sale contract.

24 Sec. 18. Section 203C.12A, subsections 3 and 4, Code  
25 Supplement 2001, is amended to read as follows:

26 3. The lien shall arise and terminate as follows:

27 a. For a covered transaction as provided in section  
28 203D.6, the lien shall arise at the commencement of the  
29 storage obligation, and shall terminate when the liability of  
30 the warehouse operator to the depositor has been discharged.  
31 The lien of all depositors is hereby assigned to the Iowa  
32 grain indemnity fund board, on behalf of the grain depositors  
33 and sellers indemnity fund.

34 b. For a covered transaction as provided in section  
35 203D.15, the lien shall arise at the commencement of the

1 storage obligation, and shall terminate when the liability of  
2 the warehouse operator to the depositor has been discharged.  
3 The lien of all depositors is hereby assigned to the Iowa  
4 grain indemnity fund board, on behalf of the grain credit sale  
5 contract indemnity fund.

6 4. To perfect the lien, the Iowa grain indemnity fund  
7 board must file a lien statement with the office of the  
8 secretary of state. The lien statement shall disclose the  
9 name of the warehouse operator, the address of the warehouse  
10 operator's principal place of business, a description of  
11 identifiable warehouse operator assets, and the amount of the  
12 lien.

13 a. For a covered transaction as provided in section  
14 203D.6, the lien statement is valid only if filed on or after  
15 the date of suspension but not later than sixty days after the  
16 incurrence date as provided in section 203D.6. The lien  
17 ~~statement shall disclose the name of the warehouse operator,~~  
18 ~~the address of the warehouse operator's principal place of~~  
19 ~~business, a description of identifiable warehouse operator~~  
20 ~~assets, and the amount of the lien.~~ The lien amount shall be  
21 the board's estimate of the final cost of reimbursing the  
22 grain depositors and sellers indemnity fund for the payment of  
23 claims made against the fund resulting from the breach of the  
24 warehouse operator's obligations. The board shall correct the  
25 amount not later than one hundred eighty days following the  
26 incurrence date. A court, upon petition by an affected  
27 person, may correct the amount. The board shall have the  
28 burden of proving that the amount is an accurate estimate.

29 b. For a covered transaction as provided in section  
30 203D.15, the lien statement is valid only if filed on or after  
31 the date of suspension but not later than sixty days after the  
32 incurrence date as provided in section 203D.15. The lien  
33 amount shall be the board's estimate of the final cost of  
34 reimbursing the grain credit sale contract indemnity fund for  
35 the payment of claims made against the fund resulting from the

1 breach of the warehouse operator's obligations. The board  
2 shall correct the amount not later than one hundred eighty  
3 days following the incurrence date. A court, upon petition by  
4 an affected person, may correct the amount. The board shall  
5 have the burden of proving that the amount is an accurate  
6 estimate.

7 Sec. 19. Section 203C.14, unnumbered paragraph 2, Code  
8 2001, is amended to read as follows:

9 Upon revocation, termination, or cancellation of a  
10 warehouse license, a claim against the warehouse operator  
11 arising under this chapter shall be made in writing with the  
12 warehouse operator, with the issuer of a bond on agricultural  
13 products other than bulk grain and credit sale contract grain,  
14 a deficiency bond, or an irrevocable letter of credit, ~~and,~~  
15 if. If the claim relates to bulk grain or credit sale  
16 contract grain, the notice must be filed with the department  
17 within one hundred twenty days after revocation, termination,  
18 or cancellation. ~~Failure~~ A failure to make a timely claim  
19 relieves the issuer ~~and, if the claim relates to bulk grain,~~  
20 ~~the grain depositors and sellers indemnity fund provided in~~  
21 ~~chapter 203B~~ of all obligations to the claimant. A failure to  
22 make a timely claim for bulk grain relieves the grain  
23 depositors and sellers indemnity fund of all obligations to  
24 the claimant. A failure to make a timely claim for credit  
25 sale contract grain relieves the grain credit sale indemnity  
26 fund of all obligations to the claimant.

27 PARAGRAPH DIVIDED. Upon revocation of a warehouse license,  
28 the department shall cause notice of the revocation to be  
29 published once each week for two consecutive weeks in a  
30 newspaper of general circulation in each of the counties in  
31 which the licensee maintains a business location and in a  
32 newspaper of general circulation within the state. The notice  
33 shall state the name and address of the warehouse operator and  
34 the effective date of revocation. The notice shall also state  
35 that any claims against the warehouse operator ~~shall~~ must be

1 made in writing and sent by ordinary mail to the warehouse  
2 operator, to the issuer of a bond on agricultural products  
3 other than bulk grain and credit sale contract grain,  
4 deficiency bond, or an irrevocable letter of credit, ~~and to.~~  
5 The notice must also state that the claim must also be filed  
6 with the department within one hundred twenty days after  
7 revocation, and the. The notice shall state that the failure  
8 to make a timely claim does not relieve the warehouse operator  
9 from liability to the claimant.

10 PARAGRAPH DIVIDED. This paragraph subsection does not  
11 apply if a receiver is appointed as provided in this chapter  
12 pursuant to a petition which that is filed by the department  
13 prior to the expiration of one hundred twenty days after  
14 revocation, termination, or cancellation of the license.

15 Sec. 20. Section 203C.24, subsection 3, Code Supplement  
16 2001, is amended to read as follows:

17 3. Disclosure to the Iowa grain indemnity fund board in  
18 regard to licensees who present liability to the an indemnity  
19 fund.

20 Sec. 21. Section 203C.17, subsection 4, Code 2001, is  
21 amended to read as follows:

22 4. All bulk grain whether open storage or having been  
23 placed on warehouse receipt is covered by ~~the grain depositors~~  
24 ~~and sellers~~ an indemnity fund created in chapter 203D.

25 Sec. 22. Section 203C.40, Code 2001, is amended to read as  
26 follows:

27 203C.40 PRIORITIZATION OF INSPECTIONS OF WAREHOUSE  
28 OPERATORS.

29 The department shall develop a system to prioritize the  
30 inspections of warehouse operators provided in section 203C.2.  
31 The system of prioritization shall be computed each year based  
32 on the risk of loss to ~~the grain depositors and sellers~~ each  
33 indemnity fund caused by the possible insolvency of the  
34 warehouse operator. The department shall compute the risk by  
35 utilizing an available statistical model to measure the

1 financial condition of warehouse operators. Procedures for  
2 utilizing the statistical model shall be adopted by department  
3 rules. The statistical model shall be used to provide risk  
4 ratings. A risk rating shall be used as a factor by the  
5 department to prioritize its inspection schedule. The  
6 department may inspect a warehouse operator at any time based  
7 on a risk of loss to the fund according to the risk rating. A  
8 substantial risk of loss to the grain depositors and sellers  
9 indemnity fund caused by the possible insolvency of the  
10 warehouse operator based on the statistical model shall be  
11 good cause.

12 SUBCHAPTER 1

13 GENERAL

14 Sec. 23. Section 203D.1, Code 2001, is amended by adding  
15 the following new subsections:

16 NEW SUBSECTION. 1A. "Credit sale contract" means the same  
17 as defined in section 203.1.

18 NEW SUBSECTION. 1B. "Credit sale contract purchased  
19 grain" means grain, other than purchased grain, that is  
20 purchased pursuant to a credit sale contract.

21 NEW SUBSECTION. 5A. "Indemnity fund" means the grain  
22 depositors and sellers indemnity fund or the grain credit sale  
23 contract indemnity fund.

24 NEW SUBSECTION. 7A. "Licensee" means a licensed grain  
25 dealer or licensed warehouse operator.

26 NEW SUBSECTION. 8A. "Purchased grain" means grain that is  
27 entered in the company-owned paid position as evidenced on the  
28 grain dealer's daily position record.

29 Sec. 24. Section 203D.1, subsection 4, Code 2001, is  
30 amended by striking the subsection.

31 Sec. 25. Section 203D.1, subsection 9, Code 2001, is  
32 amended to read as follows:

33 9. "Seller" means a person who sells grain which that the  
34 person has produced or caused to be produced to a licensed  
35 grain dealer, but-excludes including but not limited to a

1 person who executes sells grain by executing a credit sale  
2 contract ~~as-a-seller~~. However, "seller" does not include a  
3 person licensed as a grain dealer in any jurisdiction who  
4 sells grain to a licensed grain dealer.

5 SUBCHAPTER 2

6 GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND

7 Sec. 26. NEW SECTION. 203D.1A DEFINITION -- FUND.

8 As used in this subchapter, "fund" means the grain  
9 depositors and sellers indemnity fund created in section  
10 203D.3.

11 Sec. 27. Section 203D.2, Code 2001, is amended to read as  
12 follows:

13 203D.2 ~~PERSONS-PARTICIPATING-IN-FUND~~ PARTICIPATION  
14 REQUIRED.

15 All licensed grain dealers and licensed warehouse operators  
16 shall participate in the grain depositors and sellers  
17 indemnity fund and comply with the provisions of this  
18 subchapter.

19 Sec. 28. Section 203D.3, subsection 1, Code 2001, is  
20 amended to read as follows:

21 1. The grain depositors and sellers indemnity fund is  
22 created in the state treasury as a separate account. The  
23 general fund of the state is not liable for claims presented  
24 against the grain depositors and sellers indemnity fund under  
25 section 203D.6. The fund consists of a per-bushel fee on  
26 purchased grain remitted by licensed grain dealers and  
27 licensed warehouse operators; an annual fee charged to and  
28 remitted by licensed grain dealers and licensed warehouse  
29 operators; delinquency penalties; sums collected by the  
30 department by legal action on behalf of the fund; and  
31 interest, property, or securities acquired through the use of  
32 moneys in the fund. The fiscal year of the fund begins July  
33 1. Fiscal quarters of the fund begin July 1, October 1,  
34 January 1, and April 1. The finances of the fund shall be  
35 calculated on an accrual basis in accordance with generally

1 accepted accounting principles. The moneys collected under  
2 this section and deposited in the fund shall be used  
3 exclusively to indemnify depositors and sellers as provided in  
4 section 203D.6 and to pay the administrative costs of this  
5 chapter subchapter.

6 Sec. 29. Section 203D.3, subsection 2, unnumbered  
7 paragraph 1, Code 2001, is amended to read as follows:

8 A per-bushel fee shall be assessed on all purchased grain.  
9 ~~As-used-in-this-chapter, "purchased-grain" means grain which~~  
10 ~~is-entered-in-the-company-owned-paid-position-as-evidenced-on~~  
11 ~~the-grain-dealer's-daily-position-record.~~ However, if the  
12 grain dealer provides documentation regarding the transaction  
13 satisfactory to the department, the following transactions  
14 shall be excluded from the fee:

15 Sec. 30. Section 203D.3, subsection 6, Code 2001, is  
16 amended to read as follows:

17 6. The administrative costs of this chapter subchapter  
18 shall be paid from the fund after approval of the costs by the  
19 board.

20 Sec. 31. Section 203D.4, Code 2001, is amended to read as  
21 follows:

22 203D.4 INDEMNITY FUND BOARD.

23 1. The Iowa grain indemnity fund board is established to  
24 advise the department on matters relating to the fund  
25 indemnity funds and to perform the duties provided it in this  
26 chapter.

27 a. The board is composed of the secretary of agriculture  
28 or a designee who shall serve as president; the commissioner  
29 of insurance or a designee who shall serve as secretary; the  
30 state treasurer or a designee who shall serve as treasurer;  
31 and four representatives of the grain industry appointed by  
32 the governor, subject to confirmation by the senate, two of  
33 whom shall be representatives of producers and who shall be  
34 actively participating producers, and two of whom shall be  
35 representatives of grain dealers and warehouse operators and

1 who shall be actively participating grain dealers and  
2 warehouse operators, each of whom shall be selected from a  
3 list of three nominations made by the secretary of  
4 agriculture. The term of membership of the grain industry  
5 representatives is three years, and the representatives are  
6 eligible for reappointment. However, only actively  
7 participating producers, and grain dealers and warehouse  
8 operators are eligible for reappointment. The grain industry  
9 representatives are entitled to a per diem as specified in  
10 section 7E.6 for each day spent in the performance of the  
11 duties of the board, plus actual expenses incurred in the  
12 performance of those duties.

13 b. Four members of the board constitute a quorum, and the  
14 affirmative vote of four members is necessary for any action  
15 taken by the board, except that a lesser number may adjourn a  
16 meeting. A vacancy in the membership of the board does not  
17 impair the rights of a quorum to exercise all the rights and  
18 perform all the duties of the board.

19 2. The duties of the board include all of the following:

20 a. The review and determination of claims, and the review  
21 and approval of administrative costs of the fund indemnity  
22 funds. ~~To carry out these duties, the board has the power to~~  
23 adopt

24 b. The adoption of rules regarding its organization and  
25 procedures, including but not limited to rules for determining  
26 claims. ~~Further, the board shall approve~~

27 c. The approval of rules proposed by the department for  
28 the administration of the per-bushel fee fees prior to their  
29 adoption by the department. The board may provide comment and  
30 advice to the department ~~in regard to~~ regarding the  
31 department's administration of chapters 203 and 203C where the  
32 department's policies and rules may affect the exposure of ~~the~~  
33 an indemnity fund to liability. However, the board shall not  
34 become actively involved in a determination by the department  
35 as to whether disciplinary action is to be taken against a

1 particular licensee. The board is not a forum for review or  
2 appeal in regard to any particular action taken by the  
3 department against a licensee.

4 3. The department through the grain warehouse bureau shall  
5 perform the administrative functions necessary for the  
6 operation of the board and the each indemnity fund.

7 a. Administrative The department's costs incurred in  
8 administering each indemnity fund approved by the board shall  
9 be paid from the that fund.

10 b. The rules of the department shall contain the rules of  
11 the board adopted for its organization and its procedures.  
12 The department shall adopt rules for the administration of the  
13 per-bushel fee fees upon the board's approval of the rules  
14 proposed by the department.

15 c. The secretary of agriculture, ~~as president of the board~~  
16 ~~as well as head of the department of agriculture and land~~  
17 ~~stewardship~~, shall administer the department so as to minimize  
18 the risk of loss to the fund while protecting interests of  
19 depositors and sellers of grain. Policies and rules for the  
20 administration of chapters 203 and 203C which, as determined  
21 by the secretary of agriculture, may affect the exposure of  
22 the fund, shall be presented to the board for comment prior to  
23 their adoption by the department.

24 d. The department shall make reports to the board in  
25 regard to licensee investigations which may result in  
26 disciplinary action against a licensee and exposure of the  
27 fund. The reports may be discussed by the board in closed  
28 session pursuant to section 21.5, and are confidential. In  
29 making the report, the department shall make available to the  
30 board records of licensees which are otherwise confidential  
31 under section 22.7, 203.16, or 203C.24. However, a  
32 determination to take disciplinary action against a particular  
33 licensee shall be made exclusively by the department. A  
34 report to the board is not a prerequisite to disciplinary  
35 action against a licensee. Review of any action against a

1 licensee, whether or not relating to the fund, shall be made  
2 exclusively through the department.

3 Sec. 32. Section 203D.5, subsection 1, Code 2001, is  
4 amended to read as follows:

5 1. The board shall review annually the debits of and  
6 credits to the grain depositors and sellers indemnity fund  
7 created in section 203D.3 and shall make any adjustments in  
8 the per-bushel fee required under section 203D.3, subsection  
9 2, and the dealer-warehouse fee required under section 203D.3,  
10 subsection 3, that are necessary to maintain the fund within  
11 the limits established under this section. Not later than the  
12 first day of May of each year, the board shall determine the  
13 proposed amount of the per-bushel fee based on the expected  
14 volume of grain on which the fee is to be collected and that  
15 is likely to be handled under this ~~chapter~~ subchapter, and  
16 shall also determine any adjustment to the dealer-warehouse  
17 fee. The board shall make any changes in the previous year's  
18 fees in accordance with chapter 17A. Changes in the fees  
19 shall become effective on the following first day of July.  
20 The per-bushel fee shall not exceed one-quarter cent per  
21 bushel on all purchased grain as defined in section 203D.3.  
22 Until the per-bushel fee is adjusted or waived as provided in  
23 this section, the per-bushel fee is one-quarter cent on all  
24 purchased grain.

25 SUBCHAPTER 3

26 THE GRAIN CREDIT SALE CONTRACT INDEMNITY FUND

27 Sec. 33. NEW SECTION. 203D.11 DEFINITION -- FUND.

28 As used in this subchapter, "fund" means the grain credit  
29 sale contract indemnity fund created in section 203D.13.

30 Sec. 34. NEW SECTION. 203D.12 PARTICIPATION REQUIRED.

31 A licensee shall participate in the grain credit sale  
32 contract indemnity fund and comply with the provisions of this  
33 subchapter if the licensee does any of the following:

34 1. Purchases grain under a credit sale contract as  
35 provided in chapter 203.

1 2. Receives and stores grain that is purchased under a  
2 credit sale contract as provided in chapter 203C.

3 Sec. 35. NEW SECTION. 203D.13 GRAIN CREDIT SALE CONTRACT  
4 INDEMNITY FUND.

5 1. The grain credit sale contract indemnity fund is  
6 created in the state treasury as a separate account. The  
7 general fund of the state is not liable for claims presented  
8 against the grain credit sale contract indemnity fund under  
9 section 203D.15. The fund consists of a per-bushel fee on  
10 grain remitted by licensed grain dealers purchasing grain by  
11 credit sale contract and licensed warehouse operators  
12 receiving and storing credit sale contract purchased grain; an  
13 annual fee charged to and remitted by those licensed grain  
14 dealers and licensed warehouse operators; delinquency  
15 penalties; sums collected by the department by legal action on  
16 behalf of the fund; and interest, property, or securities  
17 acquired through the use of moneys in the fund. The fiscal  
18 year of the fund begins July 1. Fiscal quarters of the fund  
19 begin July 1, October 1, January 1, and April 1. The finances  
20 of the fund shall be calculated on an accrual basis in  
21 accordance with generally accepted accounting principles. The  
22 moneys collected under this section and deposited in the fund  
23 shall be used exclusively to indemnify depositors and sellers  
24 as provided in section 203D.15 and to pay the administrative  
25 costs of this chapter.

26 2. A per-bushel fee shall be assessed on all credit sale  
27 contract purchased grain. However, if the grain dealer  
28 provides documentation regarding the transaction satisfactory  
29 to the department, the following transactions shall be  
30 excluded from the fee:

31 a. Grain purchased from the United States government or  
32 any of its subdivisions or agencies.

33 b. Grain purchased from a person licensed as a grain  
34 dealer in any jurisdiction.

35 c. Grain purchased on or before twenty-nine days after the

1 date of delivery.

2 d. Grain deposited for purposes of storage, handling, or  
3 shipment, where the grain dealer or grain warehouse operator  
4 is not the owner or legal holder of the grain and is not  
5 lawfully entitled to possession of the grain.

6 The grain dealer shall forward the per-bushel fee to the  
7 department on a quarterly basis in the manner and using the  
8 forms prescribed by the department. A licensee is delinquent  
9 if the licensee fails to submit the full fee or quarterly  
10 forms when due, or if upon examination, an underpayment of the  
11 fee is found by the department. The grain dealer is subject  
12 to a penalty of ten dollars for each day the grain dealer is  
13 delinquent or an amount equal to the amount of the deficiency,  
14 whichever is less. However, a licensee who fails to submit  
15 the full fee or quarterly forms when due is subject to a  
16 minimum payment of ten dollars. The department may establish  
17 and apply a margin of error in determining whether a grain  
18 dealer is delinquent. If the per-bushel fee and any penalty  
19 due have not been received by the department within thirty  
20 days after notice by the department, the grain dealer's  
21 license shall be suspended. The per-bushel fee shall be  
22 collected only once on each bushel of grain.

23 3. a. All licensed grain dealers and licensed warehouse  
24 operators shall annually remit a fee to be deposited into the  
25 fund which is determined as follows:

- 26 (1) For class 1 grain dealers, five hundred dollars.  
27 (2) For class 2 grain dealers, two hundred fifty dollars.  
28 (3) For warehouse operators or participating federally  
29 licensed grain warehouses:

30 (a) For intended storage of bulk grain in any quantity  
31 less than twenty thousand bushels, forty-two dollars plus  
32 seven dollars for each two thousand bushels or fraction  
33 thereof in excess of twelve thousand bushels.

34 (b) For intended storage of bulk grain in any quantity not  
35 less than twenty thousand bushels and not more than fifty

1 thousand bushels, seventy dollars plus four and one-half  
2 dollars for each three thousand bushels or fraction thereof in  
3 excess of twenty thousand bushels.

4 (c) For intended storage of bulk grain in any quantity not  
5 less than fifty thousand bushels and not more than seventy  
6 thousand bushels, one hundred fifteen dollars plus four and  
7 one-half dollars for each four thousand bushels or fraction  
8 thereof in excess of fifty thousand bushels.

9 (d) For intended storage of bulk grain in any quantity not  
10 less than seventy thousand bushels, one hundred thirty-seven  
11 and one-half dollars plus two and three-quarters dollars for  
12 each five thousand bushels or fraction thereof in excess of  
13 seventy thousand bushels.

14 b. Payment of the required amount shall be made before the  
15 grain dealer's or warehouse operator's license is renewed.

16 4. If a licensee amends its license during the fiscal year  
17 for which an annual fee was paid, and the licensing entity  
18 remains the same, the licensee is required to pay a further  
19 fee only if the amendment changes the licensee's class from  
20 class 2 to class 1.

21 5. All disbursements from the fund shall be paid by the  
22 treasurer of state pursuant to vouchers authorized by the  
23 department.

24 6. The administrative costs of this subchapter shall be  
25 paid from the fund after approval of the costs by the board.

26 7. A grain dealer may choose to pass on the cost of a per-  
27 bushel fee to the sellers by an itemized discount noted on the  
28 settlement sheet. However, if the per-bushel fee is not in  
29 effect, no grain dealer shall make such a discount on the  
30 purchase of grain. A discount made nominally for the per-  
31 bushel fee while the fee is not in effect is grounds for  
32 license suspension and revocation under chapter 203.

33 Sec. 36. NEW SECTION. 203D.14 ADJUSTMENTS TO FEE.

34 1. The board shall review annually the debits of and  
35 credits to the grain credit sale contract indemnity fund and

1 shall make any adjustments in the per-bushel fee and the  
2 dealer-warehouse fee required under section 203D.13, that are  
3 necessary to maintain the fund within the limits established  
4 under this section. Not later than the first day of May of  
5 each year, the board shall determine the proposed amount of  
6 the per-bushel fee based on the expected volume of grain on  
7 which the fee is to be collected and that is likely to be  
8 handled under this subchapter, and shall also determine any  
9 adjustment to the dealer-warehouse fee. The board shall make  
10 any changes in the previous year's fees in accordance with  
11 chapter 17A. Changes in the fees shall become effective on  
12 the following first day of July. The per-bushel fee shall not  
13 exceed one-quarter cent per bushel on all credit sale contract  
14 purchased grain as defined in section 203D.1. Until the per-  
15 bushel fee is adjusted or waived as provided in this section,  
16 the per-bushel fee is one-quarter cent on all purchased credit  
17 sale contract grain.

18 2. If, at the end of any three-month period, the assets of  
19 the fund exceed six million dollars, less any encumbered  
20 balances or pending or unsettled claims, the per-bushel fee  
21 required under section 203D.13, subsection 2, and the dealer-  
22 warehouse fee required under section 203D.13, subsection 3,  
23 shall be waived and the fees are not assessable or owing. The  
24 board shall reinstate the fees if the assets of the fund, less  
25 any unencumbered balances or pending or unsettled claims, are  
26 three million dollars or less.

27 Sec. 37. NEW SECTION. 203D.15 CLAIMS AGAINST FUND.

28 1. A depositor or seller may file a claim with the  
29 department for indemnification of a loss from the grain credit  
30 sale contract indemnity fund. A claim shall be filed in the  
31 manner prescribed by the board. A claim shall not be filed  
32 prior to the incurrence date, which is the earlier of the  
33 following:

34 a. The revocation, termination, or cancellation of the  
35 license of the grain dealer or warehouse operator.

1 b. The filing of a petition in bankruptcy by a grain  
2 dealer or warehouse operator.

3 To be timely, a claim shall be filed within one hundred  
4 twenty days of the incurrence date.

5 2. The department shall cause notice of the opening of the  
6 claim period to be published once each week for two  
7 consecutive weeks in a newspaper of general circulation in  
8 each of the counties in which the licensee maintains a  
9 business location and in a newspaper of general circulation  
10 within the state. The notice shall state the name and address  
11 of the licensee and the claim incurrence date. The notice  
12 shall also state that any claims against the fund on account  
13 of the licensee shall be sent by ordinary mail to the  
14 department within one hundred twenty days after the incurrence  
15 date, and that the failure to make a timely claim relieves the  
16 fund from liability to the claimant. This notice may be  
17 incorporated by the department with a notice required by  
18 section 203.12 or 203C.14.

19 3. The board shall determine a claim to be eligible for  
20 payment from the fund if the board finds all of the following:

21 a. That the claim was timely filed.

22 b. That the incurrence date was on or after the effective  
23 date of this Act.

24 c. That the claimant qualifies as a depositor or seller.

25 d. That the claim derives from a covered transaction. For  
26 purposes of this paragraph, a claim derives from a covered  
27 transaction if the claimant is a seller who transferred title  
28 to the grain to the grain dealer by credit sale contract  
29 within six months of the incurrence date, or if the claimant  
30 is a depositor who stored credit sale contract purchased grain  
31 with the warehouse operator.

32 e. That there is adequate documentation to establish the  
33 existence of a claim and to determine the amount of the loss.

34 4. a. The board shall determine the dollar value of a  
35 claim incurred by a depositor holding a warehouse receipt or a

1 scale weight ticket for grain that the depositor delivered for  
2 storage to the licensed warehouse operator. Whenever  
3 possible, the value shall be calculated as determined in the  
4 credit sale contract as if the grain were priced on the  
5 incurrence date. If the board is unable to calculate a value  
6 pursuant to the credit sale contract, the board shall  
7 determine the value in the same manner as provided in  
8 paragraph "b".

9 b. If the department has been appointed by the court as  
10 receiver of the grain assets of the warehouse operator, the  
11 value shall be presumed to be as stated in the plan of  
12 disposition approved by the court. If the warehouse operator  
13 has filed a petition in bankruptcy, the value shall be  
14 presumed to be based upon the fair market price, free-on-board  
15 from the site of the warehouse operator, being paid to  
16 producers for grain by the grain terminal operator nearest the  
17 warehouse operator on the date the petition was filed. If  
18 there is neither a department receivership nor a bankruptcy  
19 filing, the value shall be presumed to be based upon the fair  
20 market price, free-on-board from the site of the warehouse  
21 operator, being paid to producers for grain by the grain  
22 terminal operator nearest the warehouse operator on the date  
23 of license revocation or cancellation. If more than one date  
24 applies to a claim, the board may choose between the two.  
25 However, the board may accept an alternative valuation of a  
26 claim upon a showing of just cause by the depositor or  
27 department. All depositors filing claims under this section  
28 shall be bound by the value determined by the board. The  
29 value of the loss is the outstanding balance on the validated  
30 claim at time of payment from the fund.

31 5. The board, through the department, shall provide for  
32 notice to each depositor and seller upon its determination of  
33 eligibility and value of loss. Within twenty days of the  
34 notice, the depositor or seller may request a hearing for the  
35 review of either determination. The request shall be made in

1 the manner provided by the board. The hearing and any further  
2 appeal shall be conducted as a contested case subject to  
3 chapter 17A. A depositor or seller whose claim has been  
4 refused by the board may appeal the refusal to either the  
5 district court of Polk county or the district court of the  
6 county in which the depositor or seller resides.

7 6. Upon a determination that the claim is eligible for  
8 payment, the board shall provide for payment of ninety percent  
9 of the loss, as determined under subsection 4, but not more  
10 than one hundred fifty thousand dollars per claimant. If at  
11 any time the board determines that there are insufficient  
12 funds to make payment of all claims, the board may order that  
13 payment be deferred on specified claims. The department, upon  
14 the board's instruction, shall hold those claims for payment  
15 until the board determines that the fund again contains  
16 sufficient assets.

17 7. In the event of payment of a loss under this section,  
18 the fund is subrogated to the extent of the amount of any  
19 payments to all rights, powers, privileges, and remedies of  
20 the depositor or seller against any person regarding the loss.  
21 The depositor or seller shall render all necessary assistance  
22 to aid the department and the board in securing the rights  
23 granted in this section. No action or claim initiated by a  
24 depositor or seller and pending at the time of payment from  
25 the fund shall be compromised or settled without the consent  
26 of the board.

27 Sec. 38. DIRECTIONS TO CODE EDITOR. The Code editor is  
28 directed to transfer sections 203D.4, 203D.5A, and 203D.7 to  
29 new sections in subchapter 1 of this chapter and renumber  
30 sections in the chapter as appropriate.

31 EXPLANATION

32 This bill provides for a grain credit sale contract  
33 indemnity fund in order to indemnify agricultural producers  
34 who sell grain under credit sale contract.

35 The term "credit sale contract" is defined to mean a

1 contract for the sale of grain pursuant to which the sale  
2 price is to be paid more than 30 days after the delivery of  
3 the grain to the buyer. It includes any contract that is  
4 titled as a credit sale contract, and includes but is not  
5 limited to those contracts commonly referred to as deferred-  
6 payment contracts, deferred-pricing contracts, and price-later  
7 contracts.

8 Generally, the bill's provisions are modeled upon  
9 provisions in Code chapters 203 (regulating grain dealers),  
10 203C (regulating warehouse operators), and 203D (establishing  
11 the grain depositors and sellers indemnity fund and providing  
12 for its administration by the department of agriculture and  
13 land stewardship and the Iowa grain indemnity fund board).

14 The bill amends provisions in various Code sections within  
15 these chapters in a manner that is consistent with the  
16 provisions applying to the grain depositors and sellers  
17 indemnity fund. In Code chapter 203, this includes provisions  
18 providing for notice, requiring participation in the indemnity  
19 funds, licensure, claims and notice of revocation,  
20 departmental liens, disclosure, cooperative agreements,  
21 confidentiality of records, and inspections. In Code chapter  
22 203C, this includes provisions relating to good cause for  
23 departmental action, the powers of the department acting as a  
24 receiver, financial responsibility for licensees,  
25 participation in the funds, departmental liens, claims and  
26 notice for revocation, the confidentiality of records, and  
27 inspections.

28 The remainder of the bill provides the mechanism for the  
29 indemnification of sellers or depositors who have executed  
30 credit sale contracts. For purposes of organization, the  
31 provisions are created as a new subchapter within Code chapter  
32 203D. The bill amends a number of provisions that provide for  
33 duties of the department and board required to administer both  
34 indemnity funds.

35 The bill provides that persons required to be licensed as

1 grain dealers or warehouse operators are required to comply  
2 with the provisions of new subchapter 3 and the grain credit  
3 sale contract indemnity fund, if the licensee purchases grain  
4 under credit sale contract or receives and stores purchased  
5 credit sale contract grain.

6 The bill establishes the fund as a separate account within  
7 the state treasury. Moneys in the fund derive from a per-  
8 bushel fee on grain remitted by licensed grain dealers  
9 purchasing grain by credit sale contract and licensed  
10 warehouse operators receiving and storing grain purchased by  
11 credit sale contract; an annual fee charged to and remitted by  
12 those licensed grain dealers and licensed warehouse operators;  
13 delinquency penalties; sums collected by the department by  
14 legal action on behalf of the fund; and interest, property, or  
15 securities acquired through the use of moneys in the fund.

16 The bill authorizes the board to review annually the debits  
17 of and credits to the fund and shall make any adjustments in  
18 the per-bushel and the dealer-warehouse fee required. The  
19 per-bushel fee cannot exceed \$.025 per bushel on all purchased  
20 credit sale contract grain. The bill provides that if at the  
21 end of any three-month period, the assets of the fund exceed  
22 \$6 million, less any encumbered balances or pending or  
23 unsettled claims, the per-bushel fee and the dealer-warehouse  
24 fee is waived. The board must reinstate the fees if the  
25 assets of the fund, less any unencumbered balances or pending  
26 or unsettled claims, are \$3 million or less.

27 The bill provides procedures for claims against the fund.  
28 A depositor or seller must file a claim for indemnification as  
29 required by the board based on the revocation, termination, or  
30 cancellation of the license of the licensee or a filing of a  
31 petition in bankruptcy. The bill provides for notice of the  
32 opening of a claim period and notice to potential claimants.  
33 The bill provides for a determination of eligibility and a  
34 value of the loss. Upon a determination that the claim is  
35 eligible for payment, the bill requires the board to provide

1 for payment of 90 percent of the loss, but not more than  
2 \$150,000 per claimant. If the board determines that there are  
3 insufficient moneys to make payment of all claims, the board  
4 may order that payment be deferred on specified claims. The  
5 bill provides for the subrogation of the fund to other  
6 liabilities incurred by a licensee.

7 The bill directs the Code editor to rearrange and renumber  
8 sections in Code chapter 203D as is appropriate to enhance its  
9 organization and readability.

10 Generally a licensee who violates a provision of the bill  
11 is guilty of a simple misdemeanor. With respect to a  
12 continuing violation, each day that the violation continues is  
13 a separate offense. A simple misdemeanor is punishable by  
14 confinement for no more than 30 days or a fine of at least \$50  
15 but not more than \$500, or by both.

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