

IN THE SENATE

SENATE BILL NO. 1392

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO AGRICULTURE; AMENDING SECTION 22-5125, IDAHO CODE, TO PROVIDE A
2 PROCEDURE FOR THE REVIEW AND DETERMINATION OF PRODUCER CLAIMS RELATING
3 TO THE SEED INDEMNITY FUND; AND AMENDING SECTION 69-262, IDAHO CODE, TO
4 PROVIDE A PROCEDURE FOR THE REVIEW AND DETERMINATION OF PRODUCER CLAIMS
5 RELATING TO THE COMMODITY INDEMNITY FUND.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 22-5125, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 22-5125. PROOF OF CLAIMS -- PROCEDURE -- HEARING. After the director
11 has declared a failure, the department shall process the claims of producers
12 having paid or owing assessments who: (a) produce written evidence of trans-
13 fer together with the amounts of their unpaid claims, and (b) have "stored
14 for withdrawal" and provide written evidence of deposit.

15 (1) The department shall give written notice to and provide a reason-
16 able time of not less than thirty (30) days and not more than sixty (60) days
17 for producers to file their written verified claims, including any written
18 evidence, with the department.

19 (2) The department shall investigate each claim and prepare a staff re-
20 port and recommendation as to the validity and amount of each claim. The
21 department shall provide a copy of the staff report and recommendation to
22 the seed indemnity fund advisory committee, and make available for review
23 by the advisory committee any documentation upon which the department re-
24 lied in preparing the staff report and recommendation. No later than two (2)
25 weeks following issuance of the staff report and recommendation, the advi-
26 sory committee shall provide the director with the committee's written com-
27 ments regarding the staff report, recommendation and payment of claims from
28 the fund.

29 (3) Following the receipt of the staff report, recommendation and the
30 seed indemnity fund advisory committee's written comments, if any, the di-
31 rector shall issue a determination regarding the validity and amount of each
32 claim.

33 (4) The director shall notify in writing each claimant, the seed buyer
34 and the advisory committee of the department's determination as to the va-
35 lidity and amount of each claim. A claimant or seed buyer may request a
36 hearing on the department's determination within twenty (20) days of receipt
37 of written notification of the determination pursuant to chapter 52, title
38 67, Idaho Code. Upon determining the amount and validity of the claim, the
39 director shall pay to the claimant an amount equal to ninety percent (90%)
40 of the approved claim from the seed indemnity fund. Prior to any payment
41 from the fund to a claimant, the claimant shall be required to subrogate and
42 assign to the department his right to any recovery from any other source.

1 The claimant shall be entitled to seek recovery of the remaining ten percent
2 (10%), which was not assigned to the department. The procedure to determine
3 the value of any claim will be established by rules.

4 (35) In the event of a shortage or inability to meet financial obli-
5 gations, the department shall determine each producer's pro rata share of
6 available seed crops and any deficiency shall be the claims of the producers.
7 Each type of seed crop shall be treated separately for the purpose of deter-
8 mining shortages.

9 (46) The director shall not approve or pay any claim based on losses re-
10 sulting from transactions with persons unlicensed pursuant to this chapter.
11 The director shall not approve or pay any claim made on the seed indemnity
12 fund if the claim is for the payment of interest, attorney's fees, ancillary
13 costs, or punitive damages. The director shall not approve or pay any claim
14 based on losses resulting from uninsurable perils.

15 (57) If a producer's claim reveals that the assessment has not been paid
16 or collected, and the claim is otherwise valid, the amount of the assessment
17 shall be deducted from the claim payment.

18 SECTION 2. That Section 69-262, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 69-262. PROOF OF CLAIMS -- PROCEDURE -- HEARING -- INSPECTION OF
21 WAREHOUSE. In the event a warehouse or dealer fails, as defined in section
22 69-202(8), Idaho Code, the department shall process the claims of producers
23 who have paid or owe assessments as required by this chapter. Claims against
24 a failed warehouse or dealer shall include written evidence disclosing a
25 storage obligation or a sale or delivery of commodities.

26 (1) The department shall give notice and provide a reasonable time of
27 not less than thirty (30) days and not more than sixty (60) days to producers
28 to file their written verified claims, including any written evidence, with
29 the department.

30 (2) The department shall investigate each claim and prepare a staff re-
31 port and recommendation as to the validity and amount of each claim. The de-
32 partment shall provide a copy of the staff report and recommendation to the
33 commodity indemnity fund advisory committee, and make available for review
34 by the advisory committee any documentation upon which the department re-
35 lied in preparing the staff report and recommendation. No later than two (2)
36 weeks following issuance of the staff report and recommendation, the advi-
37 sory committee shall provide the director with the committee's written com-
38 ments regarding the staff report, recommendation and payment of claims from
39 the fund.

40 (3) Following the receipt of the staff report, recommendation and the
41 commodity indemnity fund advisory committee's written comments, if any, the
42 director shall issue a determination regarding the validity and amount of
43 each claim.

44 (4) The director shall notify each claimant, the warehouseman or
45 dealer, and the advisory committee of the department's determination as to
46 the validity and amount of each claimant's claim. A claimant or warehouseman
47 or dealer may request a hearing on the department's determination within
48 twenty (20) days of receipt of written notification and a hearing shall be
49 held by the department pursuant to chapter 52, title 67, Idaho Code. Upon

1 determining the amount and validity of the claim, the director shall pay to
2 the claimant an amount equal to ninety percent (90%) of the approved claim
3 from the commodity indemnity fund. Prior to any payment from the fund to a
4 claimant, the claimant shall be required to subrogate and assign his right
5 to recover from any other source. The department may then pay up to ninety
6 percent (90%) of the approved claim to the claimant. The department shall
7 have a priority claim for that amount. The claimant shall be entitled to
8 seek recovery of the remaining ten percent (10%) which was not originally
9 assigned to the department. For the purpose of determining the amount of the
10 producer's claim, the value of a producer's commodity shall be the lesser of:
11 (a) the value of the commodity on the date the director declared the ware-
12 house or dealer to have failed or to have failed to comply with the provisions
13 of this chapter or rules promulgated thereunder; (b) the contract price as
14 listed on a valid contract; or (c) the value of the commodity represented on
15 the contract on the date the contract was signed. The value shall be deter-
16 mined by a survey of the available market price reports or markets of similar
17 facilities within the same geographic location as the failed facility.

18 (35) The department may inspect and audit a failed warehouseman or
19 dealer. In the event of a shortage, the department shall determine each
20 producer's pro rata share of available commodities and the deficiency shall
21 be considered as a claim of the producer. Each type of commodity shall be
22 treated separately for the purpose of determining shortages.

23 (46) The director shall not approve or pay any claim made on the com-
24 modity indemnity fund if the claim is based on losses resulting from the de-
25 posit, sale or storage of commodities in an unlicensed warehouse or dealer.

26 (57) The fund shall not be liable for claims filed against a warehouse
27 or dealer in good standing who has voluntarily relinquished their license if
28 such claims are not filed with the department within six (6) months of the
29 closing.

30 (68) The fund shall not be liable for claims that result from losses due
31 to uninsurable physical perils.