

News from Senator

BOB DOLE



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SENATE APPROVES DOLE ELEVATOR BANKRUPTCY LEGISLATION

WASHINGTON -- The Senate yesterday passed a bill by Senator Bob Dole (R-Kan.) to help alleviate hardships created for farmers, elevator financiers and others in the agricultural community when grain elevators go bankrupt. Last week, the Senate also passed the bill in the form of an amendment to the farm bill. Yesterday's action increases chances for House passage of the measure, either independently or as part of the farm bill.

Over the past few years, in a number of states in the Midwest and Southeast, there has been a steady annual increase in the number of crop elevator bankruptcies. Perhaps the most serious result has been that farmers have, in most cases, been unable to obtain quick distribution of their crops held in storage in the defunct elevators. Farmers have seen thousands of bushels of grain, soybeans and other cash crops tied up in bankruptcy courts under circumstances making it difficult, if not impossible, for them to recover their crops, which had been deposited on storage contracts.

The Dole bill seeks to deal with this problem by providing for a mandatory timetable within which crop assets must be liquidated and the proceeds distributed to the owners of storage contract produce and secured creditors of the elevator. Under the bill, the distribution of proceeds must occur within 110 days of the filing of bankruptcy, unless unusual circumstances exist which justify a longer period of time. Distribution would be in two stages: first, to storage contract owners of farm produce, on a pro rata basis according to the type, quality and quantity of crop stored; and second, to secured creditors of the elevator who hold a security interest in crops owned by the elevator.

Farmers who have sold grain to federally licensed elevators (or those operating under a uniform grain storage contract with the Department of Agriculture) on deferred pricing or payment contracts would become secured creditors of the bankrupt elevator where the bankruptcy occurs within 60 days of the signing of the sale agreement between the elevator and the farmer, provided the bankruptcy occurred before they were paid for their crop. The same would be true of a farmer who had sold grain for immediate payment to such an elevator, but had not received the agreed upon payment. The secured creditor status is an improvement for these farmers over the present law, which places them in the category of unsecured, general creditors in the bankruptcy.

Some farmers have maintained that produce proceeds should not be attachable for any trustee fees and expenses, at least where storage contract crops are concerned. However, Dole stated that if such an approach were adopted, "it might well be impossible to find a trustee willing to do the work in an elevator bankruptcy case. In any event," he said, "in most of the big farm states, you have an agency set up to handle elevator failures; and in my bill, those agencies would be brought in to handle the liquidation in bankruptcy free of charge. Another advantage of this procedure is that these agencies are better equipped than a regular bankruptcy trustee to carry out the liquidation tasks, due to their experience with elevator insolvencies."

Concerns have also been expressed about provisions of the legislation that require the trustee to liquidate the crop assets, rather than return the produce directly to the farmer. On the mandatory liquidation, Dole said, "Every agency with which my staff has had discussions on this question has emphasized the importance, and efficiency, of following the practice of straight liquidation of farm produce and distribution of the proceeds, rather than attempting to distribute crops in kind. The reasons for this are fourfold: first, the problems of shrinkage and spoilage would require that an insolvent elevator be emptied and reloaded to accurately assess the quantity and quality of produce on hand; second, the inevitable administrative problems that result when some owners request distribution in kind, while others request distribution in cash; third, the problem of protecting the security and quality of produce which is held by the trustee pending any appeal of bankruptcy abandonment orders; and fourth, the increased administrative costs which result from these factors.

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"The language in my legislation requiring liquidation will enable us to avoid these difficulties. The value of the farmer's produce is not diminished by spoilage or theft; and under my bill, if a farmer's share is held up by an unsuccessful appeal, when the distribution finally does take place the farmer gets his share with interest, plus the difference between the original value of the produce as liquidated and any higher intermediate price which the crops would have obtained on the open market during the appeal."

Dole maintained that this would protect the farmer's market position in the crop, and noted that a farm producer could immediately repurchase his position in the crop at another elevator after distribution of proceeds if he felt market conditions warranted it.

"I am optimistic that this legislation will finally protect farmers from economic devastation when an elevator files for bankruptcy," he said.

The Dole legislation applies not only to grain elevators, but also to produce storage facilities that are designed to handle other farm goods, such as meat, poultry, dairy products, honey and cotton.

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