

Act No. 311
Public Acts of 1996
Approved by the Governor
June 21, 1996
Filed with the Secretary of State
June 24, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Randall, Gnodtke, Alley, Gernaat, Geiger, Horton, McBryde and DeMars

ENROLLED HOUSE BILL No. 4333

AN ACT to amend sections 2, 3, 5, 6, 9a, and 18 of Act No. 141 of the Public Acts of 1939, entitled as amended "An act to permit the director of the department of agriculture of this state to regulate the storage, warehousing, buying, and selling of farm produce within this state; to provide for the licensing, regulation, and bonding of grain dealers; to provide for warehouse receipts and price later agreements and their priority; to provide for the creation of security interests; to provide for the establishment of an inspection service and personnel for licensed grain dealers; and to provide penalties for the violation of this act," sections 2 and 6 as amended by Act No. 238 of the Public Acts of 1992, section 3 as amended by Act No. 169 of the Public Acts of 1984, and section 5 as amended by Act No. 33 of the Public Acts of 1982, being sections 285.62, 285.63, 285.65, 285.66, 285.69a, and 285.78 of the Michigan Compiled Laws; and to add section 21.

The People of the State of Michigan enact:

Section 1. Sections 2, 3, 5, 6, 9a, and 18 of Act No. 141 of the Public Acts of 1939, sections 2 and 6 as amended by Act No. 238 of the Public Acts of 1992, section 3 as amended by Act No. 169 of the Public Acts of 1984, and section 5 as amended by Act No. 33 of the Public Acts of 1982, being sections 285.62, 285.63, 285.65, 285.66, 285.69a, and 285.78 of the Michigan Compiled Laws, are amended and section 21 is added to read as follows:

Sec. 2. As used in this act:

(a) "Farm produce" means individually and collectively, dry edible beans, soy beans, small grains, cereal grains, corn, grass seeds, hay, and legume seeds in a raw or natural state, produced or grown for storage or purchase by a person.

(b) "Person" means a person, partnership, firm, corporation, association, cooperative organization, or other legal entity operating within this state that buys, exchanges, or sells farm produce grown, stored, handled, or shipped either into or out of this state.

(c) "Grain dealer" means a person engaged in the business of receiving, buying, exchanging, selling, or storing farm produce. Grain dealer does not include the following:

(i) A grower or producer selling farm produce that the grower or producer actually produces.

(ii) A person who buys farm produce pursuant to a cash sale as a feeder of the person's own livestock or poultry.

(iii) A retailer who sells farm produce if the sales are an incidental portion of the retailer's business.

(iv) Grain hauler.

(v) A person who does all of the following:

(A) Purchases farm produce from a nongrower.

(B) Purchases farm produce pursuant to a cash sale.

- (C) Does not take possession of the farm produce.
- (D) Is not required to offer warehouse receipts, price later agreements, or scale tickets.
- (d) "Director" means the director of the state department of agriculture and the director's authorized agents and representatives.
- (e) "Price later agreement" means a written agreement by which a grain dealer takes title to farm produce for a sale price which is not fixed at the time of delivery.
- (f) "Acknowledgment form" means a written receipt issued by a grain dealer or his or her authorized representative to a farm produce owner which identifies the farm produce being transferred from the physical jurisdiction of the owner to the grain dealer. "Scale ticket" is synonymous with acknowledgment form if used to describe weighed quantities of farm produce.
- (g) "Cash sale" means farm produce whose title is transferred only after a price is decided upon not later than the time of delivery and in which payment is made to the grower or producer by check or cash.
- (h) "Grain bank" or "feed bank" means the storage of farm produce on a warehouse receipt intended to be, periodically, partially withdrawn by the owner.
- (i) "Warehouse receipt" means a written acknowledgment issued by the grain dealer to a farm produce owner upon acceptance of the farm produce for storage in the grain dealer's facility.
- (j) "Financial institution" means a commercial bank whose deposits are insured by the federal deposit insurance corporation or a national bank for cooperatives subject to the farm credit act of 1971, Public Law 92-181, 85 Stat. 583.
- (k) "Grain hauler" means a person whose primary source of income and whose primary occupation involve farming and who purchases, sells, exchanges, or receives farm produce upon payment in cash or check as an incidental activity. Grain hauler does not include:
 - (i) A grower or producer selling farm produce that the grower or producer actually produces.
 - (ii) A person who buys farm produce as a feeder of the person's own livestock or poultry.
 - (iii) A retailer who sells farm produce if the sales are an incidental portion of the retailer's business.
 - (iv) A person who does all of the following:
 - (A) Purchases farm produce from a nongrower.
 - (B) Does not take possession of the farm produce.
 - (C) Is not required to offer warehouse receipts, price later agreements, or scale tickets.

Sec. 3. (1) The director shall enforce this act by the use of personnel including a certified public accountant or an individual with accounting background and specialized investigative training and experience, rules, and procedures as are necessary to carry out the intent of this act, including the inspection of grain dealers' records, taking of inventories, and measurements.

(2) A grain dealer shall keep complete and accurate records of his or her business, including a daily position report. The daily position report shall be submitted to the department not less than once each month, at a time determined by the department by rule. The director may require a dealer to submit reports more frequently. All financial information and daily position report information submitted to the department by applicants and or licensees in compliance with the requirements set forth in this act is confidential, and is not subject to public disclosure as provided for in the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

- (3) The daily position report shall include all of the following, on a form approved by the director:
 - (a) The quantity of farm produce in inventory.
 - (b) The quantity of price later agreements and warehouse receipts in other dealers' facilities, and outstanding warehouse receipts and price later agreements.
 - (c) The total amount of loans against grain inventory.
 - (d) All other farm produce obligations resulting in the balance position of farm produce.
 - (e) If a deficiency concerning price later agreements exists, the quantity of offsetting purchase commitments shall be stated on the form.
- (4) If a deficiency concerning price later agreements exists, the grain dealer shall secure offsetting purchase commitments.
- (5) Periodically, the books, records, and accounts of a grain dealer shall be examined.
- (6) The rules shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(7) The department shall regularly consult with representatives of producers, grain dealers, and their trade associations to assist in the implementation of this act.

(8) On forms provided by the director, a grain hauler shall make a record of the specific type of farm produce subject to the cash sale, the amount of the farm produce, and the date of the cash sale. The form shall be signed by both the grain hauler and the seller of the farm produce, and each party shall retain a signed copy of the form. The grain hauler is required to retain a copy of the signed form for at least 2 years and is required to make it available to the department of agriculture upon request. The form shall include a statement in boldfaced type substantially conforming to the following: "The cash sale with this grain hauler is not regulated by the Michigan grain dealers act and the protection provided for a seller of farm produce under the grain dealers act does not apply to this cash sale."

Sec. 5. (1) A person shall not act or offer to act as a grain dealer without annually securing a license from the director. The director shall not issue a license to a grain dealer unless the grain dealer has allowable net assets of not less than \$20,000.00.

(2) A person shall not act or offer to act as a grain hauler without being registered as a grain hauler under section 6.

(3) A person acting or offering to act as a grain dealer or grain hauler without being licensed or registered as required under this act or without being exempt from licensure or registration under this act is guilty of a misdemeanor. Each day of operation in violation of this act is a separate and distinct misdemeanor.

Sec. 6. (1) The director shall prepare and, upon acceptance of a completed application and payment of the license fee provided in subsection (2), issue a grain dealer's license to the applicant. The license shall be of 1 year's duration and is renewable annually. A grain dealer's license is subject to suspension or revocation for cause by the director, shall carry a serial identification number, is nontransferable, and shall be prominently displayed on the location or vehicle of the holder of the license. A separate license is required for each business location of the grain dealer. If the grain dealer receives farm produce and later disposes of it without depositing that farm produce at a licensed business location of the grain dealer, the grain dealer shall secure a grain dealer's license for each vehicle used in such business transactions. The grain dealer's license shall grant authority to the holder to do the following under the rules promulgated by the director under this act:

(a) Receive farm produce for storage if the holder is in compliance with the bonding or letter of credit requirements imposed in section 7a.

(b) Assess and collect storage charges on the stored farm produce.

(c) Issue warehouse receipts on the stored farm produce.

(d) Issue price later agreements.

(e) Issue acknowledgment forms regarding farm produce.

(2) The license fee for a grain dealer's license shall be based upon the following schedule:

(a) For a facility having a total bushel capacity of:

(i) Not more than 50,000 \$ 125.00

(ii) More than 50,000, and less than or equal to 100,000 \$ 150.00

(iii) More than 100,000, and less than or equal to 200,000 \$ 200.00

(iv) More than 200,000, and less than or equal to 300,000 \$ 270.00

(v) More than 300,000, and less than or equal to 400,000 \$ 325.00

(vi) More than 400,000, and less than or equal to 500,000 \$ 375.00

(vii) More than 500,000 \$ 400.00

(b) For 1 vehicle \$ 200.00

(c) For each additional vehicle \$ 50.00.

(3) The director shall prepare and, upon acceptance of a completed application and payment of the \$50.00 registration fee, issue a grain hauler registration to the applicant. The registration shall be of 1 year in duration and is renewable annually. The applicant for a grain hauler registration also annually shall submit an affidavit stating that farming is the intended primary occupation and that grain hauling is an incidental activity. A grain hauler registration is subject to suspension or revocation for cause by the director, is nontransferable, and shall be made available for viewing to a grower or producer upon request.

Sec. 9a. (1) If farm produce which is received by a grain dealer is not received pursuant to a bailment or a cash sale, the grain dealer, not more than 30 days after receipt, shall provide the grower or owner of the farm produce with a price later agreement. The price later agreement shall contain the following:

(a) The class and grade of the farm produce received, the quantity received, and the date of receipt.

(b) Charges for handling, if any.

(c) The signature, name, and address of the grower or owner and the signature of the grain dealer or his or her authorized agent.

(d) A serial number.

(2) An exact copy of each price later agreement including any signed certified mail receipt shall be available for examination in the dealer's facility of issuance for 1 year after cancellation or expiration. All price later agreement forms shall be serially numbered and issued in numerical sequence. All voided forms shall be held as if used.

(3) A price later agreement completed and signed by a grain dealer and provided to the grower or owner by certified mail with the signature of the grower or owner on the mail return receipt is considered delivery of the price later agreement to the grower or owner. The price later agreement form shall include a statement in boldfaced type substantially conforming to the following: "If this price later agreement is not signed by the grower or owner within 10 days after the date of delivery of the price later agreement and absent any other written agreement to the contrary, this agreement is considered accepted."

Sec. 18. (1) The director may revoke, suspend, or deny the license of a grain dealer or the registration of a grain hauler after notification of an alleged violation and providing an opportunity for public hearing on those violations to the grain dealer or grain hauler pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Within 15 days after the conclusion of the hearing, the department shall render a decision as to suspension, revocation, or denial of the license of the grain dealer or the registration of a grain hauler.

Sec. 21. (1) A grain hauler who fails or neglects to present a seller of farm produce with the completed record form described in section 3(8) or who fails to pay for any type of farm produce by cash or check at the time of delivery is guilty of a misdemeanor punishable by a fine of not less than \$2,000.00 and not more than \$5,000.00 or imprisonment for not more than 90 days, or both.

(2) The court shall order restitution from a person convicted under this section.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.

