House
Legislative
Analysis
Section

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REVISE GRAIN DEALER ACT

House Bill 5434 as enrolled
Public Act 80 of 2002
Final Analysis (4-24-02)

Sponsor: Rep. Tom Meyer
Committee: Agriculture and Resource Management

THE APPARENT PROBLEM:

The Grain Dealers Act, Public Act 141 of 1939, was enacted to help regulate the storage, buying, and selling of farm produce, specifically dry edible beans, soybeans, corn, small grains, and cereal grains. The act ensures that farmers who deliver their grain to market, but do not sell it immediately, are treated fairly and can be certain that they will be paid for their produce, or that they will be able to remove it should the need arise.

Since its inception, the act has been amended several times. However, these amendments are seen by many in the industry as a "patchwork" of sorts, and have not kept up with current industry practices and changes in the marketplace. Over the past several years, the Department of Agriculture (MDA), in conjunction with the Michigan Farm Bureau and the Michigan Agri-Business Association, has comprehensively reviewed the act. Legislation has been introduced as a result.

THE CONTENT OF THE BILL:

The Grain Dealers Act provides the Department of Agriculture (MDA) with oversight authority over the state's grain marketing system. House Bill 5434 would delete provisions pertaining to the establishment of an inspection service and personnel for licensed grain dealers. The bill would amend the powers and duties of the MDA and its director, and would add language pertaining to certain duties of insurance companies and sureties. In addition, the bill would provide administrative remedies, and revise language pertaining to the licensure and regulation of grain dealers, including the issuance of warehouse receipts, acknowledgement forms, and price later agreements.

Grain Dealer. Under the bill, a grain dealer would be defined to mean a person who is engaged in the business of receiving, buying, exchanging, selling, or storing farm produce in this state. This would include a farm produce trucker, grain merchandiser, or processor. However, a grain dealer would not include a person who solely engages in selling farm produce that he or she produces; buying farm produce in a cash sale to feed the his or her livestock or poultry; buying farm produce in a cash sale, if he or she handles less than 30,000 bushels of farm produce in the previous and current fiscal years; purchasing farm produce from a person other than the grower or producer in a cash sale; or contracting for land or services to produce seed for sowing or propagation.

Farm Produce Trucker. Under the bill, a farm produce trucker would be defined as someone who is in the business of hauling farm produce and issues price later agreements or acknowledgement forms, transfers, warehouse receipts, or who is responsible for payment to a depositor, though he or she does not own a facility used to receive, deposit, or store farm produce in bulk.

Grain Merchandiser. Under the bill, a grain merchandiser would be a person who receives, buys, exchanges, sells, or takes title to farm produce and who is responsible for payment to a depositor, though he or she does not operate a truck or a facility.

Processor. Also under the bill, a processor would be defined to mean a person who is engaged in the processing of farm produce and stores the produce for at least 24 hours.

Farm Produce. As defined in the bill, farm produce crops would be dry edible beans, soybeans, small grains, cereal grains, and corn. The bill would strike language in current law (MCL 285.62), in which farm produce also includes grass seeds, hay, and legume seeds. In addition, the bill would also delete language in current law stating that farm produce crops can be either in a raw or natural state and are

produced or grown for storage or purchase by a person.

Depositor. Under the bill, a depositor would be a person who delivers farm produce to a licensed grain dealer for storage, processing, shipment, or sale, and has title to the farm produce at the time of the delivery, or is someone who owns, or is a legal holder of, an acknowledgement form or warehouse receipt issued by a licensed grain dealer for farm produce.

Grain dealer's license. Under current law, any person seeking to act as a grain dealer is required to obtain a license. Failure to obtain a license is a misdemeanor. Each day operating as a grain dealer without a license is a separate misdemeanor.

Under the bill, the MDA could issue, renew, or amend a grain dealer's license. The MDA could refuse to issue or renew a license to a grain dealer, unless he or she has allowable net assets of more than $1 million; has allowable net assets of at least $50,000 and handled at most 500,000 bushels of farm produce in the dealer's most recent fiscal year; or has allowable assets of at least $50,000 and the allowable net assets are greater than or equal to 10 cents per bushel of farm produce handled in the most recent fiscal year. Should the dealer not meet any of the allowable net asset requirements, the MDA could issue or renew a license if the dealer provides the MDA with a negotiable bond issued by an authorized surety, or proof of establishment of a restricted amount in a financial institution, of which the department is the sole beneficiary, that is equal to the amount by which the dealer's allowable net assets failed to meet the amount required.

The bill would retain the authority granted in current law (MCL 285.66) to grain dealer licensees to receive farm produce for storage or processing, assess and collect storage or processing charges from stored or processed produce, issue warehouse receipts on stored produce, issue price later agreements, and issue acknowledgement forms. The bill would allow a licensee to collect handling charges in price later agreements. In addition, the bill would retain language in current law (MCL 285.66) stating that the license would be issued for one year, nontransferable, and prominently displayed. The bill would add a provision that would allow the MDA to issue a license for up to 21 months.

Application for a license. Under the Grain Dealers Act, a grain dealer is required to submit an application for a license to the director of the Department of Agriculture (MDA). The bill states that the MDA could determine the time when an application would be filed and the form of the application. In addition, the application would, at a minimum, include all of the following information:

- The name and ownership interest of each owner, stockholder, member, or partner of the grain dealer who owns at least 5 percent of the shares, other than publicly traded shares.

- The location and storage capacity of each facility.

- Proof of insurance for all farm produce stored.

- A statement that if the applicant, a manager employed by the applicant, or any other individual with management responsibilities was a principal in a grain dealer receivership or insolvency proceeding that resulted in losses to creditors or depositors or pled guilty or was convicted of any felony involving fraud, conversion, or embezzlement, or if the applicant's license under the U.S. Warehouse Act was revoked or canceled as a result of a violation of that act, the event has not occurred within the five years prior to the application for a license. If, however, any of these events have occurred, the statement would describe the nature of those events. If any of these events occurred, the department could refuse to issue or renew a license, or could require a fidelity bond in an amount and terms determined by the MDA.

- A statement of the total number of bushels of farm produce handled during the dealer's most recent completed fiscal year.

- A projection of the total number of bushels of farm produce the grain dealer expects to handle in the current fiscal year, if the dealer's most recent fiscal year was less than 12 months or the dealer materially changed the produce handling practice in that fiscal year.

- Copies of all warehouse receipt forms, price later agreement forms, and acknowledgement forms used by the grain dealer.

- A written appointment of a statutory agent upon whom process, notice, or demand may be served, if the dealer does not maintain an office in the state and does not have a resident agent in the state. The statutory agent would be an individual who resides in the state, or a corporation whose principal place of business is located in the state. If the identity or address of the agent changes while an application is

pending or after a license were issued, the dealer would have to notify the department of the new agent or address within three days.

- Copies of all of the grain dealer's facility lease agreements and bin charts.

Under current law, the MDA issues or denies a license within 15 days after the director receives the application. Under the bill, an application (accompanied by the license fee and a financial statement) would have to be approved within 30 days after its receipt. If the licensee seeks to renew a license, he or she would submit the application, license fee, and financial statement to the MDA at least 30 days prior to the expiration of the current license. Should an application be withdrawn before it is approved, the MDA would keep $50 of the license fee for processing the application. In addition, if a grain dealer were to submit an application, he or she would consent to an inspection and audit of his or her farm produce, financial records, and operations.

Financial statement. Current law (MCL 285.67) requires that a financial statement prepared by a certified public accountant or another accountant, who meets the requirements for accreditation, accompanies an application for a grain dealer's license. The financial statement includes a letter from the preparer to the applicant or producer regarding any qualifications, reservations, or departures that are applicable to the financial statement. The bill would require a financial statement, though it would delete the provision that requires a letter from the preparer.

The bill would require the financial statement to be a reviewed and audited financial statement prepared by a certified public accountant. In addition, the bill specifies that the financial statement would include the accountant's report, a balance sheet, an income statement, and notes and disclosures. The financial statement would also include the grain dealer's allowable net assets. Should the financial state indicate that the grain dealer had a current asset to current liability ratio of less than 1:1 for the previous fiscal year, the application would also include a plan and timetable to increase the ratio. Also, if the financial statement were a statement of the licensee's parent corporation or a consolidated statement of the parent corporation and the licensee, the application would include a declaration of liability authorized by the parent corporation, by which the corporation assumes all financial obligations incurred by the licensee.

License Fees. Current law (MCL 285.66) sets the license fee for a grain dealer license based on the bushel capacity of each facility; the fees range from $125 to $400. Under the bill, the license fee based on the bushel capacity of each facility would be:

- 100,000 or less: $150
- More than 100,000 and 200,000 or less: $225
- More than 200,000 and 300,000 or less: $300
- More than 300,000 and 400,000 or less: $375
- More than 400,000: $450

For vehicles owned by a farm produce trucker, the license fee for one vehicle would be $200, and $100 for each additional vehicle. The bill would also add a $450 fee for a grain merchandiser's license. The above fees would be for annual licenses. The fee for any license issued for more than one year would be increased proportionately. The fees could be adjusted every three years to reflect changes in the Detroit Consumer Price Index over the three-year period. However, the adjustment could not exceed 5 percent. Any adjusted fee would be rounded to the nearest dollar.

The bill would also create the grain dealers fees fund within the state treasury. All license fees and any administrative fines would be deposited by the MDA into the fund. Any money remaining in the fund at the close of the fiscal year would not revert to the general fund, but would remain in the fund.

Temporary Permit. The MDA could issue one temporary permit to an applicant, if he or she has applied for a grain dealer's license but needs additional time to comply with the requirements for obtaining a license. The temporary permit would expire on a date determined by the department (which could not be more than 30 days after the permit is issued), when a license is issued, or when the application for a license is denied, whichever occurs first. The department could grant one extension not exceeding 30 days. Any grain dealer granted a temporary permit would have the same rights and obligations as a licensee.

Discontinuation. Should a grain dealer intend to discontinue his or her business at or before the expiration of the license, the dealer would provide a notice of intent to discontinue to the MDA director, each person storing farm produce in a facility of the dealer, and to each known holder of a warehouse

receipt, acknowledgment form, or open storage or price later agreement. If the holder of a warehouse receipt, acknowledgement form, open storage agreement, or price later agreement were not known, the dealer would have to publish a notice in a newspaper of general circulation in each county in which a facility is located. The notification would be made at least 30 days prior to the date the dealer intends to discontinue his or her business.

If the dealer has provided notification and the MDA determines that there is sufficient farm produce to cover warehouse receipts and open storage agreements, a depositor could remove the farm produce from the dealer's facility prior to the expiration of the 30-day period. In addition, within 14 days of discontinuing his or her business, the dealer would have to provide a list of all farm produce liabilities assumed by a purchaser of the business, or any person other than the licensee, with the MDA.

Revocation and re-application. If the MDA revokes a grain dealer's license, he or she could apply for a new license if any of the following occur:

- The licensee is party to a merger, consolidation, conversion, or similar transaction. If the licensee's successor is a licensed grain dealer and executes a successor's agreement allowed by the MDA, the MDA could decide not to revoke the license.

- At least 50 percent of the shares, other than publicly traded shares, or other ownership interests in the licensee are sold, exchanged, or otherwise transferred. If the transferee is a licensed grain dealer and executes a successor's agreement allowed by the MDA, the MDA could decide not to revoke the license.

- The licensee ceases to pay its debts in the ordinary course of business, cannot pay its debts as they become due, or is insolvent per applicable bankruptcy or insolvency law.

- If the grain dealer has at least 100 stockholders, members, partners, or owners, and more than half of the grain dealer's board of directors or other governing body or board are replaced with different individuals.

- The name of the grain dealer is changed.

If any of the events occur, the grain dealer would file a notice with the MDA within one business day of the event.

Daily position report. Current law (MCL 285.63) requires that a grain dealer keep complete and accurate records of his or her business, including a daily position report. The daily position report must be submitted to the MDA not less than once per month, or more frequently as determined by the MDA director. Under current law, the daily position report must include the quantity of farm produce in inventory; the quantity of price later agreements and warehouse receipts in other dealers' facilities, and any outstanding warehouse receipts and price later agreements; the total amount of loans against grain inventory; all other farm produce obligations resulting in the balance position of farm produce; and the quantity of offsetting commitments, if a deficiency concerning price later agreements exists.

Under the bill, the grain dealer would submit the daily position report for the last business day of the previous fiscal year to the MDA during the first 10 business days of the dealer's fiscal month. The bill specifies that the reports would include *each type* of farm produce in inventory and the total *dollar* amount of loans against grain inventory. The bill also specifies that the reports would include the quantity of farm produce covered by outstanding warehouse receipts, open storage, and price later agreements, including any price later agreements and warehouse receipts for farm produce in other grain dealers' facilities, rather than including the quantity of price later agreements and warehouse receipts in other dealers' facilities and the quantity of outstanding price later agreements and warehouse receipts. In addition, the bill would add that the reports include the quantity of farm produce covered by collateral warehouse receipts.

Should the MDA determine that there is a deficiency in any warehouse receipt position, the MDA would notify the grain dealer and would require that the dealer cover the shortage or furnish a bond or security in an amount and on terms determined by the MDA. Should the grain dealer fail to do so, the MDA could seize the grain assets for the benefit of the claimants.

If, based on daily bid prices, there exists a price later agreement deficiency, the grain dealer would place in an escrow account cash, cash equivalents, or marketable securities equal to 80 percent of the deficiency and offsetting purchase commitments equal to 20 percent of the deficiency. The dealer would file with the MDA a copy of the escrow agreement, which would require that the escrow institution submit a monthly statement to the MDA.

A grain dealer who violated the requirements for the daily position reports, warehouse receipt deficiencies, or price later agreement deficiencies could be subject to a fine or a suspension or revocation of his or her license. If a grain dealer intentionally filed a false daily position report, he or she would have his or her license revoked, and would be subject to other penalties specified in the bill.

Records and accounts of transactions. In addition to maintaining daily position reports, a licensed grain dealer would also be required to keep a complete and accurate set of records and accounts of all transactions pertaining to the operation of each facility. These records would include, though would not be limited to, records of all farm produce received or withdrawn from a facility; all unissued warehouse receipts and acknowledgement forms; copies of all contracts; and any warehouse receipts and acknowledgement forms returned to and settled by the licensee.

Copies of warehouse receipts, acknowledgment forms, or any other document indicating ownership of farm produce or liability as a grain dealer would be kept for the time period while that document is outstanding. If a document were canceled, a copy would be kept for at least three years after the cancellation date. Any other documents would be kept for at least three years. Any records kept by the licensee pursuant to the act would be kept separate from records that the licensee maintains for any other business he or she conducts. A grain dealer who intentionally maintained false or misleading records would be subject to a penalty as specified in the bill.

Confidentiality. Under current law (MCL 285.63), all financial information and daily position report information submitted to the MDA by applicants or licensees is confidential and not subject to public disclosure under the Freedom of Information Act. The bill would retain this confidentiality. The bill, however, would allow for public disclosure of any information: with the written consent of the applicant or licensee; pursuant to a court proceeding; when the disclosure is made to an agent or employee of the MDA; or when the disclosure is made to an agent or employee of a state or federal government authorized by law to review such information. The MDA could disclose otherwise confidential information through an information summary or profile or as part of a statistical study that includes data on more than one grain dealer that does not identify the dealer to whom any specific information applies.

Temporary Facility. Under the bill, a temporary facility would mean a facility that does not have a receiving point and is used by a licensee to store farm produce. Any grain dealer who uses a temporary facility would report to the MDA on the daily position report the address and bushel capacity of the facility for any period that the facility was in use. The dealer would have to provide to the MDA a copy of the lease agreement and bin charts, if any, for the facility, if the dealer had not previously done so. A grain dealer using a temporary facility would pay an additional license fee based on the bushel capacity of the facility. The fee would be paid to the MDA along with the position report for the first month the dealer uses the facility.

Price Later Agreements. The bill would amend the definition of a "price later agreement" to mean a written or electronically transmitted agreement between a depositor and a grain dealer where the dealer receives title to farm produce and the depositor retains the option to price the produce after delivery, based on the conditions in the agreement. Under the bill, if there were no other disposition within 30 days after the delivery of the farm produce, the farm produce transaction would become a price later agreement. Title of the farm produce would be transferred to the grain dealer when the agreement was executed. In addition, the grain dealer would maintain a file of noncanceled agreements made available for inspection during normal business hours by the MDA. Included in these records would be an account of any information required by the MDA director to document the dealer's obligation to a depositor. Also, a grain dealer would include a charge for storage in any transaction that includes a price later agreement.

Similar to current law (MCL 285.69a), each price later agreement would include the date of receipt of the farm produce; the net weight, type, and grade factors of the produce; the grain dealer's handling charge rates and the calculation of the depositor's charges; the signature of the grain dealer, or his or her authorized agent; and the name, address, and signature of the depositor, or the name and signature of his or her authorized agent. Signatures would not be required if the price later agreement were a farm produce transaction which had no other disposition within 30 days of delivery. The bill also would require that the agreement include an expiration date (at which time, the grain dealer would renegotiate or settle the market price). A person could not knowingly deposit farm produce under an agreement without disclosing any lien on or lack of title to the

farm produce. A price later agreement could not be converted to a warehouse receipt.

Warehouse Receipts. The bill would amend the definition of "warehouse receipt" to mean a written or electronically transmitted receipt issued by a grain dealer to a depositor at the time the grain dealer accepts farm produce for storage. The warehouse receipt would be negotiable if it states that the grain dealer will deliver the farm produce to the bearer of the receipts or to the order of a person named in the receipt. Any receipt that does not have the required statement for a negotiable receipt would be considered nonnegotiable.

Under current law (MCL 285.69) a grain dealer is required to issue a warehouse receipt within 30 days after the delivery of farm produce for storage to the owner of the farm produce stored. The bill specifies that, if the licensee and depositor agree, the licensee would issue a warehouse receipt for any farm produce stored. The bill retains provisions that would require that the receipt include the location of the warehouse; the date the receipt was issued; the words "not negotiable", "nonnegotiable", or "negotiable", as appropriate, which would be conspicuously placed on the receipt; and that each warehouse receipt would be serially numbered and issued accordingly.

Under the bill, the receipt would include the rate of storage and the calculation of the depositor's storage charge. The bill also retains language that would require the receipt to be signed by the grain dealer or his or her authorized agent. The bill would also require the warehouse receipt to include an expiration date (at which time, the dealer and the holder would renegotiate the terms of storage or settle the market price), and a statement that the receipt is issued subject to the act and any rules promulgated pursuant to the act.

The bill also retains language that requires that the receipt would include a statement of the amounts of advances made or liability incurred for which the grain dealer claims a lien, but would strike language from the current law that allows, instead of a lien, a statement that advances have been made or liabilities incurred and the purposes of the advances or liabilities. The bill also specifies that if, when the receipt is issued, the grain dealer did not know the exact amount of advances or liabilities, the receipt would include a statement of the fact that advances have been made or liabilities were incurred.

The bill would strike language from the act that requires that the receipt include a statement as to whether the farm produce stored is to be stored separately or commingled as fungible goods. However, the bill would require a warehouse receipt issued for farm produce identified and stored separately to describe the storage location of the produce. The bill would also strike language requiring that an exact copy of the receipt be available for examination at the facility for two years after the receipt's cancellation or expiration.

The bill states that the holder of a warehouse receipt would have legal title to the farm produce held under the receipt. In addition, under the bill a person could not issue a warehouse receipt except on a form approved by the MDA director; falsely make, alter, forge, or counterfeit a receipt; or knowingly deposit farm produce without disclosing any lien or lack of title.

If the grain dealer delivered only a portion of the produce under a receipt, the original warehouse receipt would then be canceled, and the dealer would issue a new receipt for the balance of the produce remaining in storage. In addition to the required contents of a warehouse receipt, the new receipt would also contain the number and date of the original receipt. Under the bill, the licensee could issue a collateral warehouse receipt only against farm produce owned and unencumbered by the licensee at the time the receipt was issued. In addition, a grain dealer would issue a receipt for any farm produce held in a grain bank or feed bank.

Acknowledgement Forms. The bill defines an "acknowledgement form" to mean a scale weight ticket, load slip, or any other evidence of deposit issued by a grain dealer or his or her authorized representative to a depositor that identifies the farm produce being transferred from the possession of the depositor to the possession of the grain dealer. Under the bill, a grain dealer would acknowledge receipt of farm produce by issuing an acknowledgement form to the depositor, at the time the produce is delivered to the grain dealer. Should the acknowledgement form be used as a price later agreement, the depositor (or his or her authorized agent) would sign the form and the depositor and grain dealer would not be parties to a prior price later agreement.

Similar to current law (MCL 285.71a) the acknowledgement form would contain the name and address of the grain dealer; the date of transfer; and the weight and type of farm produce. The bill also adds that the form would contain a statement that

unless the parties agree to another disposition within 30 days of the delivery to the dealer, the transaction would be a price later agreement. The bill would also retain similar language in the current law pertaining to the issuance of a temporary acknowledgement form. The bill specifies that the grain dealer would issue a temporary acknowledgement form if a depositor obtains produce from a location other than the facility of the grain dealer, and the produce is not being delivered to the facility of the dealer. However, current law states that a temporary acknowledgement form is issued if the *grain dealer*, not the depositor, obtains farm produce.

Unless any of the following occurred, produce delivered to a dealer would be in open storage, and the responsibilities of the dealer and the depositor under an acknowledgement form as if a nonnegotiable warehouse receipt were issued:

- The form satisfies the requirements for a price later agreement and is signed by the dealer and the depositor or their authorized agents.

- The produce is sold for a set price at the time the produce is delivered to the dealer, or a disposition occurs.

In addition, the bill states that the grain dealer would record the disposition of the farm produce on the acknowledgement form unless he or she provides other settlement documentation pertaining to the form. Also, if a depositor were to deposit produce at a facility of another grain dealer, that grain dealer would issue the acknowledgement form.

Substitute Warehouse Receipts or Acknowledgement Forms. Under the bill, if there were an outstanding warehouse receipt or acknowledgement form, the grain dealer would not issue another warehouse receipt or acknowledgement form for all or part of that produce. However, the bill allows for the issuance of a substitute warehouse receipt or acknowledgement form if the warehouse receipt were lost, stolen, or destroyed. The substitute receipt or form would have the same legal effect as the original. The substitute would include the date and number of the original receipt; a notarized statement by the holder that the original was lost, stolen, or destroyed; and a notarized statement by the holder and grain dealer that the substitute was issued to replace the original. If a negotiable warehouse receipt were lost, stolen, or destroyed, the holder would provide the grain dealer with a lost instrument bond equal to two times the current market value of the farm produce covered by that warehouse receipt.

Certificate of Insurance. Similar to current law (MCL 285.72), the bill would require a grain dealer to insure the farm produce stored in his or her facilities for the full market value against loss by fire, explosion, lightning, or windstorm. Current law protects against fire, inherent explosion, and tornado. The bill also retains language that allows the MDA to deny, revoke, or suspend a license for failing to obtain insurance.

Under the bill, if farm produce were destroyed due to fire, explosion, lightning, or windstorm, a depositor could demand reimbursement. The depositor would provide a warehouse receipt or other document claiming ownership to the farm produce. The depositor would then be reimbursed for the market value of the produce less any charges or advances to the depositor. The grain dealer would be required to reimburse all eligible depositors within 10 days after he or she receives payment from his or her insurer. Failure to do this could be sufficient cause for the MDA to deny, suspend, or revoke a license.

If the MDA determined that the insurance policy was insufficient, the MDA would require the licensee to obtain additional insurance as required by the act. In addition, an insurance company could not cancel or choose not to renew a policy, including insurance provided by binder, unless it notified the MDA of its intent to cancel or not renew the policy more than 15 days prior to the date the policy would be canceled or not renewed.

Commingling of farm produce. Under the bill, unless a licensee and a depositor have executed a written agreement requiring that the depositor's farm produce remain separate from other produce, a licensee could commingle a depositor's farm produce with other fungible farm produce. Current law (MCL 285.73) allows a licensee to commingle farm produce if he or she is authorized by an agreement or custom.

Bond Requirement. The bill requires that before a license is issued to a grain dealer, other than a grain merchandiser, the dealer would provide a bond to the department that secures the dealers warehouse receipts and open storage transactions. The bond would be for $15,000 for the first 10,000 bushels of storage capacity used for open storage and storage under warehouse receipts, and $5,000 for each additional 10,000 bushel capacity or fraction of that capacity. This requirement is consistent with the current law (MCL 285.67a).

Under the bill, a grain merchandiser or farm produce trucker would provide a bond to the MDA for

$100,000. Current law states that the bond amount for a grain dealer who does not own a farm produce storage or handling facility or does not own a vehicle used to transport farm produce (a grain merchandiser, as defined by the bill) must be $50,000.
Similar to current law (MCL 285.67a), under the bill a grain dealer who owns at least two facilities and is required to provide a bond could furnish separate bonds for each facility or a blanket surety bond to fulfill his or her bonding obligation. The amount of the blanket surety bond would be the lesser of the cumulative amount to furnish a bond for each facility, or $400,000. The blanket surety bond would contain the address and storage capacity of each facility. (This would not apply to a grain merchandiser.) In addition, any holder of a collateral warehouse receipt or warehouse receipt in the name of the grain dealer could not recover against a bond.

The bond for a grain dealer would secure the faithful performance of any obligations under all warehouse receipts and open storage agreements. For a grain merchandiser or farm produce trucker, the bond would secure the faithful performance on any obligations under any farm produce transactions. For both dealers and merchandisers, the bonds would apply to any obligations outstanding on or after the effective date of the bond and outstanding at the time the license is revoked or the bond is canceled, whichever occurs first. In either case, the bonds would secure the performance of any obligations regardless of whether or not the grain dealer, grain merchandiser, or farm produce trucker is licensed.

In both instances, the total aggregate liability of a surety would be limited to the amount of the bond, regardless of the number of claimants involved. The liability of a surety would not accumulate for any successive license period. In addition, any person required to provide a bond to the MDA could provide the MDA with a certificate of deposit (CD) or other security acceptable to the MDA in lieu of all or part of the bond, payable to the MDA. The principal amount of the CD or the amount of the bond and the principal amount of the CD would be the same amount as the bond. The interest on the CD or other security would be payable to the applicant or other purchaser of the CD or other security. The CD or other security would remain on deposit until it is released, canceled, or discharged.

If the MDA determined that a bond was insufficient, it would require that the dealer or merchandiser provide an additional bond in an amount determined by the MDA. In addition, a grain dealer or merchandiser could not cancel a bond without the consent of the MDA and the MDA's prior approval of a substitute bond.

A surety on a bond could not cancel the bond unless it notified the MDA more than 60 days before its cancellation. If the MDA received a notification from a surety, the MDA would then promptly notify the grain dealer or grain merchandiser that provided the bond. A grain dealer (other than a merchandiser or farm produce trucker) who failed to provide a new bond within 60 days after the surety notified the MDA could have his or her license suspended of revoked. A grain merchandiser would be required to provide a new bond within 60 days.

Duties of the MDA Director. The bill provides additional duties and powers for the director of the MDA in order to administer and enforce the act. The MDA would be required to:

- Audit and investigate a grain dealer's business operations, including investigating any complaints pertaining to a grain dealer's operations.

- Administer oaths and issue subpoenas to compel a person to attend or testify or produce any records connected to an investigation or hearing under the act.

- Prescribe and approve all forms, following any requirements pursuant to the act, including forms for warehouse receipts, acknowledgement forms, and applications.

- Employ investigative personnel.

In addition, the director could deny, suspend, or revoke a grain dealer's license if he or she finds that the licensee (or applicant) had engaged in any fraudulent activities; violated or attempted to violate the act; failed to maintain insurance coverage; failed to maintain accurate and complete records; failed to pay the license fee; refused to allow any authorized representative of the MDA to examine his or her records, accounts, inventories, or facilities during regular business hours; failed to possess a sufficient amount of farm produce to cover any outstanding warehouse receipts or acknowledgement forms; issued a warehouse receipt in violation of the act; failed to maintain the net allowable assets; failed to submit a financial statement; or failed to secure his or her obligations for price later agreements. If the director restricted, suspended, or revoked a license, he or she would post a notice to that effect on the property of the grain dealer. The notice could not be removed except upon the director's authorization.

If a grain dealer's license were suspended or revoked, he or she could terminate any storage, processing, shipping, or handling arrangements and collect outstanding charges. The director would notify all known warehouse receipt holders and unpaid depositors. If a grain dealer's license were suspended, he or she could, under the direction of the director, operate his or her facilities, but would not be able to receive any farm produce during the suspension.

During a license suspension or revocation hearing, the director could seize and protect the assets of the licensee by any legal, civil, or criminal proceeding necessary. Should the director revoke a license, he or she could liquidate the grain dealer's assets.

Liquidation and Distribution of Assets. Should a grain dealer be unable to financial satisfy claimants, become insolvent, or have his or her license revoked, denied, suspended, or voluntarily surrendered when he or she has any outstanding debts, the MDA director would liquidate and distribute the assets and any proceeds of the assets to satisfy any outstanding claims. The assets would first be distributed to any claimants, including lenders, who possess warehouse receipts. Assets would then be distributed to any claimants holding any acknowledgement forms or other written evidence of ownership (other than warehouse receipts). Finally, assets would be distributed to any claimants who surrendered warehouse receipts to the grain dealer as part of a farm produce transaction, but were not fully paid within 21 days after the surrender.

Any remaining assets or proceeds would be distributed to claimants who possess price later agreements, followed by any claimant possessing acknowledgement forms or similar delivery contracts, or other written evidence and who completed delivery and pricing within 30 days prior to the failure of the grain dealer. Any remaining assets or proceeds would be distributed to all other claimants who possess written evidence of the sale of farm produce to the grain dealer. If any assets or proceeds remain, they would then be distributed to the grain dealer. However, the director could reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.

Penalties. Unless otherwise stated, a person who violates the act would be guilty of a misdemeanor and would also be liable for all damages. In addition, the court could order restitution to an injured party. A grain dealer who violates the act or any rule promulgated under the act would be guilty of a misdemeanor and would be fined not more than $5,000 for each violation. A grain dealer who intentionally violates the act or any rule would be guilty of a misdemeanor and fined not more than $10,000.

Current law (MCL 285.62) also provides penalties for any person engaged in certain activities. Under current law, these prohibited activities are felonies punishable by a fine not exceeding $10,000 or imprisonment not more than 5 years, or both. The bill retains these prohibitions, but would increase the maximum allowable fine to $20,000. These prohibited activities are:

- Intentionally altering or destroying a warehouse receipt or price later agreement or a record of a warehouse receipt or price later agreement.

- Intentionally falsifying a position sheet, or issuing a warehouse receipt if the farm produce is not in the facility stated on the warehouse receipt.

- With the intent to defraud, issuing a second or other warehouse receipt or agreement for farm produce if a valid receipt or agreement is outstanding and in force.

- Selling, pledging, mortgaging, encumbering or transferring farm produce in violation of the act or permitting the sale, pledge, mortgage, encumbrance or transfer of farm produce in violation of the act, while a valid warehouse receipt is outstanding and in force without the consent of the holder of the receipt, or knowingly receiving farm produce from a person engaged in these activities in violation of the act.

- Intentionally filing a false daily violation report.

- Intentionally maintaining false or misleading records and accounts.

The penalties provided for violating the act would not apply to a state or federal official while performing his or her official duties in administering the laws, rules, or regulations of the state or federal government. In addition, the MDA director could bring an action in a state court in the appropriate county or in Ingham County to enjoin the violation or threatened violation of the act or any rule promulgated pursuant to the act.

Administrative Fines. In addition to the above penalties, the bill also prescribes administrative fines for any person who violates the act or any rule promulgated pursuant to the act. In addition to any

investigative costs and the costs of any economic benefit associated with the violation, a person violating the act or any rule would be subject to the following administrative fines:

- First violation: A fine between $50 and $1,000.

- Second violation within two years of the first violation: A fine between $100 and $5,000.

- Third violation within two years of the first violation: A fine between $500 and $10,000.

The director would conduct an investigative hearing, at the request of a person assessed an administrative fine, pursuant to the Administrative Procedures Act. If the director found that a person violated the act, despite the exercise of due care, the director could issue a warning, instead of a fine. Should a person fail to pay an administrative fine, the attorney general could bring an action in court to recover the fine. In addition, if a person assessed an administrative fine did not pay, the director could revoke the person's license. Any fines collected would be retained by the department and would be used to administer the act.

Repealed Sections. The bill would repeal sections in the Grain Dealers Act pertaining to furnishing copies of the act (Sec. 6a); failure to pay the assessment pursuant to the Michigan Agricultural Commodity Act (Sec. 6b); application form and filing, bonds, prerequisites for issuing price later agreements, irrevocable letter of credit, security interests in farm produce, and security agreements (Sec. 7a); price later agreements (Sec. 7a); acknowledgement forms (Sec. 11a); and violations as misdemeanors (Sec. 22a). However, most of the subject matter of the repealed sections would be addressed in the bill, with the exception of failure to pay the assessment, irrevocable letter of credit, security interests, and security agreements.

MCL 285.62 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would increase state revenues. Based on current actual revenue collected, the estimated revenue increase would be $14,000. However, since the actual revenue impact is based on grain dealer volume, it is difficult to predict.

Additional revenue from fees in future years would also be realized as the bill allows the Michigan Department of Agriculture (MDA) to adjust the fee schedule every three years to reflect the cumulative annual percentage change in the Detroit Consumer Price Index.

In addition to the fee revenue, the bill would result in an increase in administrative fine revenue. These fines would be applied as provided by law, and the amount of fine revenue would be dependent upon the number of violations and the economic benefit associated with a violation.

Revenue generated from the above is to be deposited in the Grain Dealers Fees Fund to support the grain dealers appropriations.

The bill would increase the maximum criminal fine from $10,000 to $20,000 for certain violations of the act. This will result in additional revenue for local libraries. However, the amount will be dependent upon the number of fines levied. (4-24-02)

ARGUMENTS:

For:

The bill would update the Grain Dealers Act to reflect current industry practices and changes in the marketplace. When the act was first enacted in 1939, the major focus was on the storage of grain. Under this practice, a farmer delivers his or her grain to a grain dealer. The dealer then issues a warehouse receipt to the farmer, who retains title of the grain. In recent years, space in grain elevators to store grain in such a manner has become increasingly limited. As a result, the number of warehouse receipts issued for grain is not as prevalent as it once was.

Today, the vast majority of transactions are price later agreements. Under a price later agreement, a farmer delivers grain to the dealer, who then obtains title to the grain. The grain dealer is now financially obligated to the farmer for the grain. However, the dealer has control over the grain. The agreement allows the farmer to price the grain at a later date. The bill would update language pertaining to price later agreements to coincide with current industry practices, by providing clear authority on price later agreements. Under the bill, an acknowledgement form (issued by the grain dealer to the farmer when the dealer receives the farm produce) would contain a statement that unless the parties agree to another disposition within 30 days, the transaction would become a price later agreement. In addition, the bill states that the grain would be open storage unless, among other requirements, the acknowledgement form satisfies requirements applicable to a price later

agreement and is signed by the farmer and the grain dealer, or their authorized agents. Furthermore, the bill specifies that under a price later agreement, title of the farm produce is transferred to the grain dealer.

The bill would also bring Michigan in line with area states regarding grain in open storage. Under current practices, Michigan has unsettled grain. Open storage and unsettled grain refer to the period of time after a farmer delivers grain, and no disposition has occurred. When grain is unsettled, it is unclear who exactly has title to that grain, the farmer or the grain dealer. The bill would specify that farm produce delivered to a grain dealer would be in open storage. When this occurs, the farmer retains title to the farm produce until another disposition occurs.

For:

The bill increases the security for producers by increasing the assets required for licensure. This is a means to ensure that the grain dealer will remain solvent and, as a result, protect the farmers. There has been some concern that the current $20,000 asset requirement for licensure does not provide enough assurances for farmers. Under the bill, the required assets would be one of the following: at least $1,000,000; at least $50,000 and the grain dealer must have handled at most 500,000 bushels of farm produce; or at least $50,000 and the allowable net assets are greater than or equal to 10 cents for each bushel handled during the previous fiscal year.

For:

The bill also increases the regulatory authority of the MDA. Current law allows the MDA to either revoke or suspend a license. The bill gives the MDA a middle ground in determining penalties for noncompliance by allowing the MDA to issue administrative fines ranging from $50 to $10,000. In addition, the bill would allow the director of the MDA to administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and the production of any records in conjunction with any investigation pertaining to the act.

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.