

Act No. 263  
Public Acts of 2016  
Approved by the Governor  
June 27, 2016  
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June 28, 2016  
EFFECTIVE DATE: September 26, 2016

**STATE OF MICHIGAN  
98TH LEGISLATURE  
REGULAR SESSION OF 2016**

Introduced by Senators Stamas, Hune, Brandenburg, Horn, Hansen and Schmidt

# **ENROLLED SENATE BILL No. 899**

AN ACT to amend 1939 PA 141, entitled "An act 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, acknowledgment forms, and price later agreements and their use and priority; to provide for the creation of security interests; to provide for certain powers and duties of the department of agriculture and its director; to impose certain duties on insurance companies and sureties; and to provide administrative remedies and penalties for the violation of this act," by amending sections 3 and 9 (MCL 285.63 and 285.69), as amended by 2002 PA 80, and by adding section 26a; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Sec. 3. (1) A person shall not act or offer to act as a grain dealer in this state without a license from the department issued under this act.

(2) A grain dealer shall not process or store farm produce, issue a warehouse receipt, charge or collect a fee for storage of farm produce, issue a price later agreement, or issue an acknowledgment of receipt for delivery of farm produce except in compliance with this act.

(3) Subject to subsection (4), the department may refuse to issue or renew a license to a grain dealer unless the grain dealer meets at least 1 of the following at the time the grain dealer submits the application:

(a) Has allowable net assets of \$100,000.00 or more and handled 1,000,000 or fewer bushels of farm produce in the grain dealer's most recent fiscal year.

(b) Has allowable net assets of \$100,000.00 or more, and the allowable net assets equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the grain dealer's most recent completed fiscal year.

(4) If a grain dealer fails to meet any of the allowable net asset requirements under subsection (3), the department may issue or renew the license if the grain dealer provides the department with a negotiable bond issued by a surety authorized to conduct business in this state, or proof of establishment of a restricted account in a financial institution that conducts business in this state, acceptable to the department and of which the department is the sole beneficiary, that is in an amount equal to the amount by which the grain dealer's allowable net assets failed to meet the allowable net asset requirement applicable under subsection (3).

(5) A person that acts or offers to act as a grain dealer without a license is guilty of a misdemeanor. Each day that the person acts or offers to act as a grain dealer without a license is a separate misdemeanor.

(6) If the director has probable cause to believe that a person is acting or offering to act as a grain dealer without a license, the director may review the books and records relating to the operations of the person.

(7) On the application of the department, a court in this state shall issue a temporary or permanent injunction that enjoins a person from acting as a grain dealer without a license, issuing a warehouse receipt or price later agreement without a license, or interfering with an employee of the department or a receiver appointed under this act that is performing his or her duties under this act.

Sec. 9. (1) A grain dealer shall include with an application for a license or renewal a financial statement for the grain dealer's most recent completed fiscal year. The financial statement shall be a reviewed or audited financial statement, prepared by a certified public accountant in accordance with generally accepted accounting principles. The end of the grain dealer's most recent completed fiscal year shall be within 6 months of the expiration date of the grain dealer's current license. The financial statement shall include at least all of the following:

(a) An accountant's report, a balance sheet, an income statement, and notes and disclosures.

(b) A statement of the grain dealer's allowable net assets for purposes of section 3.

(c) A statement from the certified public accountant that he or she acknowledges that the department is relying on the financial statement in determining whether the grain dealer meets the allowable net asset requirement under section 3(3).

(2) If a financial statement described in subsection (1) discloses that the grain dealer during the preceding fiscal year had a current asset to current liability ratio of less than 1 to 1, the licensee shall include with the application a plan and timetable to increase the current asset to current liability ratio to 1 to 1 or more.

(3) If a financial statement described in subsection (1) is a financial statement of the licensee's parent corporation or a consolidated financial statement of the licensee and its parent corporation, the application shall include a declaration of liability signed by an authorized representative of the parent corporation, by which the parent corporation assumes all financial obligations incurred by the licensee during the term of the license.

Sec. 26a. (1) Each of the following has a lien on all of the farm produce assets of a grain dealer:

(a) A lender or other claimant that possesses a warehouse receipt that covers farm produce owned or stored by the grain dealer.

(b) A claimant that possesses a written acknowledgement or other written evidence of ownership of farm produce, other than a warehouse receipt, that establishes that the grain dealer has a storage obligation for the farm produce.

(c) A claimant that surrendered a warehouse receipt as part of a farm produce sales transaction, if the claimant was not paid in full for the farm produce and the grain dealer failed within 21 days after the surrender of the warehouse receipt.

(d) A claimant that possesses any other written evidence of the sale of farm produce to the grain dealer for which the claimant was not paid in full.

(2) All of the following apply to a lien that exists under subsection (1):

(a) The lien secures all claims described in subsection (3) and attaches to the farm produce assets of the grain dealer.

(b) The lien takes effect at the time the farm produce is delivered to the grain dealer for sale or storage under a bailment agreement or at the time money is advanced by the lender.

(c) The lien terminates at the time the liability of the grain dealer to the claimant is discharged. However, the priority of each lien among the respective claimants does not relate to the date the claim arises but is subject to the priorities described in subsection (3).

(d) In the event of a failure of a grain dealer, the lien claims of all claimants of that grain dealer are considered assigned by operation of this section to the department, and in the event of a failure and subsequent liquidation, the lien attaches to assets or proceeds of assets that are either received or liquidated by the department.

(3) Except as provided in subsection (4), and subject to subsection (6), in the event of a failure of a grain dealer, the director shall enforce the claims of each lienholder under this section against the farm produce assets of the grain dealer and allocate the proceeds as follows:

(a) The director shall give first priority to allocating the proceeds equally to claimants described in subsection (1)(a), (b), and (c).

(b) If any proceeds remain after satisfying the claims described in subdivision (a), the director shall give second priority to allocating the remaining proceeds first to claimants that possess secured price later agreements and then to all remaining claimants that possess price later agreements.

(c) If any proceeds remain after satisfying the claims described in subdivisions (a) and (b), the director shall give third priority to allocating the remaining proceeds to claimants that possess acknowledgment forms, similar farm produce delivery contracts, or other written evidence of the sale of farm produce and that completed delivery and pricing of the farm produce in the 30-day period preceding the date of the failure of the grain dealer.

(d) If any proceeds remain after satisfying the claims described in subdivisions (a) to (c), the director shall give fourth priority to allocating the remaining proceeds on a pro rata basis to all other claimants that possess written evidence of the sale of farm produce to the grain dealer.

(e) If any proceeds remain after satisfying the claims described in subdivisions (a) to (d), the director shall distribute those proceeds jointly to the grain dealer and any secured parties.

(4) In the event that an adversary proceeding is commenced to recover farm produce assets on which a lien described in this section is attached and the department declines to enter the proceeding, the director, if he or she receives an application from a claimant that holds a lien under this section, shall assign to the claimant the applicable lien to permit the claimant to pursue the claimant's lien in the adversary proceeding, to the extent that assignment will not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets of all claimants.

(5) In the event of the failure of a grain dealer, the department shall liquidate the farm produce assets of the grain dealer to satisfy valid claims of claimants described in subsection (3) by taking possession of all farm produce in the grain dealer facility, distributing or selling the farm produce, and distributing the proceeds under subsection (3).

(6) The director may reduce the amount of a claim described in this section to reflect the liabilities owed to the grain dealer by the claimant.

(7) A lien that exists under subsection (1) has priority over a conflicting security interest in or agricultural lien on the same collateral, except that a conflicting security interest or agricultural lien on the collateral that is perfected on the effective date of this section has priority over a lien that exists under subsection (1) for a period of 1 year after the effective date of this section.

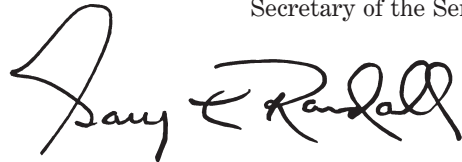
Enacting section 1. Section 26 of the grain dealers act, 1939 PA 141, MCL 285.86, is repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor