

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 899**

A bill to amend 1939 PA 141, entitled
"Grain dealers 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:

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

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

9 (3) Subject to subsection (4), the department may refuse to
10 issue or renew a license to a grain dealer unless the grain dealer

1 meets at least 1 of the following at the time the grain dealer
2 submits the application:

3 ~~—— (a) Has allowable net assets of more than \$1,000,000.00.~~

4 (A) ~~(b)~~ Has allowable net assets of ~~\$50,000.00~~ **\$100,000.00** or
5 more and handled ~~500,000~~ **1,000,000** or fewer bushels of farm produce
6 in the grain dealer's most recent fiscal year.

7 (B) ~~(c)~~ Has allowable net assets of ~~\$50,000.00~~ **\$100,000.00** or
8 more, and the allowable net assets equal or exceed the product of
9 10 cents multiplied by the number of bushels of farm produce
10 handled by the grain dealer in the grain dealer's most recent
11 completed fiscal year.

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

22 (5) A person ~~who~~ **THAT** acts or offers to act as a grain dealer
23 without a license is guilty of a misdemeanor. Each day that the
24 person acts or offers to act as a grain dealer without a license is
25 a separate misdemeanor.

26 (6) If the director has probable cause to believe that a
27 person is acting or offering to act as a grain dealer without a

1 license, the director may review the books and records relating to
2 the operations of the person.

3 (7) ~~Upon~~ **ON THE** application of the department, a court in this
4 state shall issue a temporary or permanent injunction ~~enjoining~~
5 **THAT ENJOINS** a person from acting as a grain dealer without a
6 license, issuing a warehouse receipt or price later agreement
7 without a license, or interfering with an employee of the
8 department or a receiver appointed under this act that is
9 performing his or her duties under this act.

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

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

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

23 **(C) A STATEMENT FROM THE CERTIFIED PUBLIC ACCOUNTANT THAT HE**
24 **OR SHE ACKNOWLEDGES THAT THE DEPARTMENT IS RELYING ON THE FINANCIAL**
25 **STATEMENT IN DETERMINING WHETHER THE GRAIN DEALER MEETS THE**
26 **ALLOWABLE NET ASSET REQUIREMENT UNDER SECTION 3(3).**

27 (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

1 THE SALE OF FARM PRODUCE TO THE GRAIN DEALER FOR WHICH THE CLAIMANT
2 WAS NOT PAID IN FULL.

3 (2) ALL OF THE FOLLOWING APPLY TO A LIEN THAT EXISTS UNDER
4 SUBSECTION (1):

5 (A) THE LIEN SECURES ALL CLAIMS DESCRIBED IN SUBSECTION (3)
6 AND ATTACHES TO THE FARM PRODUCE ASSETS OF THE GRAIN DEALER.

7 (B) THE LIEN TAKES EFFECT AT THE TIME THE FARM PRODUCE IS
8 DELIVERED TO THE GRAIN DEALER FOR SALE OR STORAGE UNDER A BAILMENT
9 AGREEMENT OR AT THE TIME MONEY IS ADVANCED BY THE LENDER.

10 (C) THE LIEN TERMINATES AT THE TIME THE LIABILITY OF THE GRAIN
11 DEALER TO THE CLAIMANT IS DISCHARGED. HOWEVER, THE PRIORITY OF EACH
12 LIEN AMONG THE RESPECTIVE CLAIMANTS DOES NOT RELATE TO THE DATE THE
13 CLAIM ARISES BUT IS SUBJECT TO THE PRIORITIES DESCRIBED IN
14 SUBSECTION (3).

15 (D) IN THE EVENT OF A FAILURE OF A GRAIN DEALER, THE LIEN
16 CLAIMS OF ALL CLAIMANTS OF THAT GRAIN DEALER ARE CONSIDERED
17 ASSIGNED BY OPERATION OF THIS SECTION TO THE DEPARTMENT, AND IN THE
18 EVENT OF A FAILURE AND SUBSEQUENT LIQUIDATION, THE LIEN ATTACHES TO
19 ASSETS OR PROCEEDS OF ASSETS THAT ARE EITHER RECEIVED OR LIQUIDATED
20 BY THE DEPARTMENT.

21 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), AND SUBJECT TO
22 SUBSECTION (6), IN THE EVENT OF A FAILURE OF A GRAIN DEALER, THE
23 DIRECTOR SHALL ENFORCE THE CLAIMS OF EACH LIENHOLDER UNDER THIS
24 SECTION AGAINST THE FARM PRODUCE ASSETS OF THE GRAIN DEALER AND
25 ALLOCATE THE PROCEEDS AS FOLLOWS:

26 (A) THE DIRECTOR SHALL GIVE FIRST PRIORITY TO ALLOCATING THE
27 PROCEEDS EQUALLY TO CLAIMANTS DESCRIBED IN SUBSECTION (1) (A), (B),

1 AND (C) .

2 (B) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS
3 DESCRIBED IN SUBDIVISION (A) , THE DIRECTOR SHALL GIVE SECOND
4 PRIORITY TO ALLOCATING THE REMAINING PROCEEDS FIRST TO CLAIMANTS
5 THAT POSSESS SECURED PRICE LATER AGREEMENTS AND THEN TO ALL
6 REMAINING CLAIMANTS THAT POSSESS PRICE LATER AGREEMENTS.

7 (C) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS
8 DESCRIBED IN SUBDIVISIONS (A) AND (B) , THE DIRECTOR SHALL GIVE
9 THIRD PRIORITY TO ALLOCATING THE REMAINING PROCEEDS TO CLAIMANTS
10 THAT POSSESS ACKNOWLEDGMENT FORMS, SIMILAR FARM PRODUCE DELIVERY
11 CONTRACTS, OR OTHER WRITTEN EVIDENCE OF THE SALE OF FARM PRODUCE
12 AND THAT COMPLETED DELIVERY AND PRICING OF THE FARM PRODUCE IN THE
13 30-DAY PERIOD PRECEDING THE DATE OF THE FAILURE OF THE GRAIN
14 DEALER.

15 (D) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS
16 DESCRIBED IN SUBDIVISIONS (A) TO (C) , THE DIRECTOR SHALL GIVE
17 FOURTH PRIORITY TO ALLOCATING THE REMAINING PROCEEDS ON A PRO RATA
18 BASIS TO ALL OTHER CLAIMANTS THAT POSSESS WRITTEN EVIDENCE OF THE
19 SALE OF FARM PRODUCE TO THE GRAIN DEALER.

20 (E) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS
21 DESCRIBED IN SUBDIVISIONS (A) TO (D) , THE DIRECTOR SHALL DISTRIBUTE
22 THOSE PROCEEDS JOINTLY TO THE GRAIN DEALER AND ANY SECURED PARTIES.

23 (4) IN THE EVENT THAT AN ADVERSARY PROCEEDING IS COMMENCED TO
24 RECOVER FARM PRODUCE ASSETS ON WHICH A LIEN DESCRIBED IN THIS
25 SECTION IS ATTACHED AND THE DEPARTMENT DECLINES TO ENTER THE
26 PROCEEDING, THE DIRECTOR, IF HE OR SHE RECEIVES AN APPLICATION FROM
27 A CLAIMANT THAT HOLDS A LIEN UNDER THIS SECTION, SHALL ASSIGN TO

1 THE CLAIMANT THE APPLICABLE LIEN TO PERMIT THE CLAIMANT TO PURSUE
2 THE CLAIMANT'S LIEN IN THE ADVERSARY PROCEEDING, TO THE EXTENT THAT
3 ASSIGNMENT WILL NOT DELAY THE RESOLUTION OF THE PROCEEDING, THE
4 PROMPT LIQUIDATION OF THE ASSETS, OR THE ULTIMATE DISTRIBUTION OF
5 THE ASSETS OF ALL CLAIMANTS.

6 (5) IN THE EVENT OF THE FAILURE OF A GRAIN DEALER, THE
7 DEPARTMENT SHALL LIQUIDATE THE FARM PRODUCE ASSETS OF THE GRAIN
8 DEALER TO SATISFY VALID CLAIMS OF CLAIMANTS DESCRIBED IN SUBSECTION
9 (3) BY TAKING POSSESSION OF ALL FARM PRODUCE IN THE GRAIN DEALER
10 FACILITY, DISTRIBUTING OR SELLING THE FARM PRODUCE, AND
11 DISTRIBUTING THE PROCEEDS UNDER SUBSECTION (3).

12 (6) THE DIRECTOR MAY REDUCE THE AMOUNT OF A CLAIM DESCRIBED IN
13 THIS SECTION TO REFLECT THE LIABILITIES OWED TO THE GRAIN DEALER BY
14 THE CLAIMANT.

15 (7) A LIEN THAT EXISTS UNDER SUBSECTION (1) HAS PRIORITY OVER
16 A CONFLICTING SECURITY INTEREST IN OR AGRICULTURAL LIEN ON THE SAME
17 COLLATERAL, EXCEPT THAT A CONFLICTING SECURITY INTEREST OR
18 AGRICULTURAL LIEN ON THE COLLATERAL THAT IS PERFECTED ON THE
19 EFFECTIVE DATE OF THIS SECTION HAS PRIORITY OVER A LIEN THAT EXISTS
20 UNDER SUBSECTION (1) FOR A PERIOD OF 1 YEAR AFTER THE EFFECTIVE
21 DATE OF THIS SECTION.

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

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