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## LICENSE PRODUCE "TRUCKERS"

House Bill 4333 (Substitute H-2)  
First Analysis (3-21-95)

Sponsor: Rep. Gary L. Randall  
Committee: Agriculture and Forestry

### ***THE APPARENT PROBLEM:***

The Grain Dealers Act provides farmers and other produce growers protection against fraudulent or financially insecure grain dealers by requiring dealers to keep records of their operations, imposing strict financial requirements on dealers who issue what are known as "price later agreements," and providing for oversight of dealers by the Department of Agriculture. Under a price later agreement, a dealer takes actual title to produce without payment upon delivery, with the stipulation that the producer will be paid at a later date when market prices, hopefully, will be higher than they are at delivery (since, at harvest time, prices usually are at their lowest). Among other things, the act generally requires dealers to meet at least one of various criteria involving their financial security relative to the produce in which they deal, including the requirement to maintain net assets of at least \$20,000, and to be bonded or provide an irrevocable letter of credit for at least \$50,000. Also, dealers must pay to the department a license fee based upon the total bushel capacity of a facility or upon the number of vehicles used to transport produce to places other than one of its storage facilities. Needless to say, the act ensures that, before persons are licensed to act as grain dealers, they must be financially secure. Some people, however, apparently act as grain dealers in a limited way by purchasing farm produce from a producer in a cash transaction and transporting it (perhaps with their own vehicle) elsewhere to be sold. Unfortunately, though such persons may deal in relatively small grain transactions and pay cash up front, they are still subject to the act's stringent financial preconditions. To accommodate such smaller, "cash-transaction" grain dealers, it has been suggested that the act be amended to create a new category of licensee, known as a "trucker," who would simply be required to pay a minimal license fee and keep records of his or her operations, and would be subject to periodic reviews by the department, in order to operate in this capacity.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Grain Dealers Act (MCL 285.62 et al.) to provide for the licensure and regulation of "truckers," who would be defined as persons who purchased, sold, exchanged, transported, or received farm produce pursuant to a cash transaction. To be licensed as a trucker, a person would have to pay to the Department of Agriculture a license fee of \$150 and would be subject to periodic reviews of his or her operating records by the department. The bill also would revise provisions that currently apply to "price later agreements," which are contracts under which grain dealers take title to farm produce for a sale price which is not fixed at the time of delivery.

Licensure of truckers. The bill would require the agriculture department director to prepare and, upon accepting a completed application and payment of the license fee, issue a trucker license to an applicant. The license would be good for one year and would have to be renewed annually; it could be suspended or revoked for cause by the director, would have to carry a serial identification number, would be nontransferable, and would have to be made available upon request to a producer or grower. In addition, the director could suspend, revoke, or deny a trucker license if, at any time during the preceding license period, the department had determined after notice and opportunity for a hearing that the trucker had not paid a valid claim. (Truckers would be subject to the same procedures governing the holding of a public hearing on an alleged violation, pursuant to the Administrative Procedures Act, as currently apply to grain dealers.)

As a condition to renewing or continuing a license of a trucker determined to have not paid a valid claim, the department could require him or her to supply a bond in an amount and under conditions determined appropriate by the department. Someone licensed as a trucker would be considered a handler or distributor under the Agricultural

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Commodities Marketing Act, and would have to comply with any check-off requirements imposed by a commodity committee pursuant to a marketing agreement or program.

**Recordkeeping.** Under the bill, a trucker would have to keep complete and accurate records of his or her operations, and the director of the agriculture department could, during business hours, request a review of them. Any financial information submitted pursuant to a review would be confidential and not be subject to public disclosure under the Freedom of Information Act.

**Penalties.** A person could not act or offer to act as a trucker or grain dealer without being licensed as one, and someone who acted or offered to act as a trucker or grain dealer without proper licensure, or who was not exempt from licensure, would be guilty of a misdemeanor. Each day a person operated as a trucker or grain dealer in violation of licensing requirements would be a separate and distinct misdemeanor.

**Price later agreement.** The act currently specifies that, for farm produce received by a grain dealer other than by a bailment or cash sale, the dealer must provide the grower or owner of the produce with a price later agreement not later than 30 days after receiving the produce. This written agreement must include various information and must be signed by both parties. Under the bill, a price later agreement that was not signed by the grower or producer within 30 days after produce had been delivered, absent any other written agreement to the contrary, would be considered acceptance of the agreement. Further, the price later agreement form would have to include a statement in boldfaced type which substantially conformed to the following:

*"If this price later agreement is not signed by the grower or producer within 30 days after the date of delivery of the farm produce and absent any other written agreement to the contrary, this agreement is considered accepted."*

#### **FISCAL IMPLICATIONS:**

The House Fiscal Agency says the bill would result in a minimal revenue decrease for the state, the amount of which could not be determined, as it would alter the current fee structure that applies to some persons licensed as grain dealers. (3-15-95)

#### **ARGUMENTS:**

##### **For:**

The bill would create a new category of licensee under the Grain Dealers Act to make it possible for persons who deal in relatively small amounts of grain and other farm produce, and who deal solely in cash transactions, to operate essentially as grain dealers but without having to meet the numerous financial and bonding requirements imposed on them by the act. This type of small grain dealer, for instance, generally uses a vehicle he or she owns to transport the commodities in which he or she deals; hence, the bill would refer to such a person as a "trucker." Someone who operates in this capacity, however, currently must show a net worth of \$20,000, meet various other "asset" requirements, and be bonded for at least \$50,000 just to obtain licensure as a grain dealer. Under the bill, to operate as a trucker merely would require a person to pay to the Department of Agriculture a licensing fee of \$150 and keep complete and accurate records of his or her operations. The department also would be authorized to request a review of a trucker's records anytime during normal business hours, and could suspend, revoke, or deny a license to someone whom it determined had failed to pay a valid claim to a producer or grower. The bill also would make it a misdemeanor for someone to act or offer to act as a grain dealer or trucker without proper licensure. Thus, the bill would allow smaller grain dealers who deal only in cash transactions with growers and producers the opportunity to fill this niche in the agricultural commodities market, while ensuring they also were adequately regulated by the department.

##### **For:**

At present, the act requires a grain dealer who receives farm produce via a non-cash transaction to provide the grower or owner, within 30 days of receiving the produce, a price later agreement, which must contain certain identifying information regarding the parties, the produce, and the transaction itself; also, the agreement is supposed to be signed by both parties. In some cases, however, produce purchased under a price later agreement is delivered to a grain dealer by a hired hand of the producer or owner, and signed by the dealer, with the understanding that the producer/owner will sign the agreement later (presumably within 30 days of the exchange). Apparently, though, situations have arisen where a producer or owner has failed to sign

the agreement within the 30-day period, or sometimes at all, which has resulted in grain dealers being cited by the department for being in violation of the act. To solve the problem, the bill specifies that if a grower/producer did not sign a price later agreement within 30 days after the produce was delivered, barring another written agreement to the contrary, the grower/producer would be considered to have accepted the agreement. And to ensure growers and producers were aware of this provision, the bill would require a price later agreement to contain a prominent statement alerting them that their failure to sign the agreement within 30 days of delivery would constitute acceptance of its terms.

***POSITIONS:***

The Michigan Farm Bureau supports the bill. (3-15-95)

The Department of Agriculture has no position on the bill. (3-21-95)

The Michigan Agribusiness Association has no position on the bill. (3-16-95)