



**House
Legislative
Analysis
Section**

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REGULATE GRAIN HAULERS

House Bill 4333 as enrolled
Public Act 311 of 1996
Second Analysis (8-20-96)

Sponsor: Rep. Gary L. Randall
House Committee: Agriculture & Forestry
Senate Committee: Agriculture & 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 or cash-like transaction (i.e., using a check) 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 persons who deal in smaller grain transactions involving cash or checks, some have proposed adding to the act a new type of registrant, known as a "grain hauler," who would simply be required to pay a minimal registration fee and keep a record of the transactions 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 registration of "grain haulers," who would be defined as persons whose primary source of income and primary occupation involved farming and who purchased, sold, exchanged, or received farm produce upon payment in cash or check as an incidental activity. The act currently exempts certain persons from grain dealer licensure requirements; the bill would add grain haulers to the list. To be registered as a grain hauler, a person would have to pay to the Department of Agriculture a fee of \$50. 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.

Registration of grain haulers. The bill would require the director of the Department of Agriculture to prepare and, upon accepting a completed application and payment of the registration fee, issue a grain hauler registration to an applicant. In addition, someone who applied for registration would have to annually submit an affidavit stating that farming was his or her "intended primary occupation" and that grain hauling was an incidental activity. The registration would be good for one year and could be renewed annually; it could be suspended or revoked for cause by the director, would be nontransferable, and would have to be made available upon request to a producer or grower. Also, the director could suspend, revoke, or deny a registration after being notified of an alleged violation and providing an opportunity for a public hearing on the violations pursuant to the Administrative Procedures Act.

Recordkeeping. Under the bill, a grain hauler would have to make a record, on forms provided by the director, of the specific type of farm produce subject to the cash sale, the amount of the produce, and the date of the cash sale. Both the grain hauler and the seller of

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farm produce would have to sign the form and each would have to retain a signed copy of it. The grain hauler would have to keep the copy for at least two years and would have to make it available to the department upon request. The form would have to include a statement in boldfaced type that substantially conformed 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."

Penalties. A person could not act or offer to act as a grain hauler without being registered as one, and someone who acted or offered to act as a grain hauler or grain dealer without being registered or licensed, or who was not exempt from registration/licensure, would be guilty of a misdemeanor. Each day of operation in violation of the act would be a separate and distinct misdemeanor. In addition, a grain hauler who failed or neglected to present a seller of farm produce with the completed record form or who failed to pay for any type of farm produce by cash or check at the time of delivery would be guilty of a misdemeanor, and could be fined anywhere from \$2,000 to \$5,000 or jailed up to 90 days, or both. A court would have to order restitution from someone convicted under these provisions.

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 completed and signed by a grain dealer and provided to the grower or owner by certified mail with his or her signature on the mail return receipt would be considered delivery of the price later agreement to the grower or owner. 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 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."

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. (8-19-96)

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 "grain hauler." 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 grain hauler merely would require a person to pay to the Department of Agriculture a registration fee of \$50 and keep records of the type and amount of farm produce sold and the date of the sale. The bill also would make it a misdemeanor for someone to act or offer to act as a grain dealer or grain hauler without proper licensure. Thus, the bill would allow those who deal only in cash or cash-like transactions with growers and producers the opportunity to fill this niche in the agricultural commodities market at a very minimal cost to them and without extensive oversight 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, situations have arisen where a producer or owner has failed to sign the agreement, which has resulted in grain dealers being cited by the department for being in violation of the act. To solve the problem, the bill would clarify that a price later agreement would be considered delivered to the grower or owner of the produce if it was completed and signed by a grain dealer and provided to the grower or owner by certified mail with his or her signature on the mail return receipt. Also, the agreement would have to

include a bold-faced statement indicating that if it was not signed by the grower/owner within ten days after it was delivered, barring an agreement to the contrary, it would be considered accepted.

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