

## REPORTING VIOLATIONS UNDER THE GRAIN DEALERS ACT

House Bill 4310 as introduced  
First Analysis (4-30-03)

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. The act was substantially updated by Public Act 80 of 2002 to reflect current industry practices, particularly regarding warehouse receipts and price later agreements. Among other changes, Public Act 80 revised the penalties for a violation of the act and allowed the Department of Agriculture to levy administrative fines. It has been recommended as a means of enhancing enforcement of the act that the identities of individuals who submit information regarding a violation of the act not be disclosed.

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

The bill would amend the Grain Dealers Act to state that the identity of an individual who submits information regarding an alleged or threatened violation of the act by a grain dealer would be confidential and not subject to the disclosure requirements of the Freedom of Information Act. However, the individual's identity could be disclosed with the written consent of the individual, pursuant to a court proceeding, to the director of the Department of Agriculture or an employee or agent of the department, or to an employee or agent of a state or the federal government that is authorized by law to see the individual's identity.

MCL 285.85

### ***BACKGROUND INFORMATION:***

Under current law, unless otherwise stated, a person who violates the act is guilty of a misdemeanor and

liable for all damages, and may be ordered to pay restitution to an injured party. A grain dealer who violates the act or any rule promulgated in accordance with the act is guilty of a misdemeanor subject to a maximum fine of \$5,000, unless such a violation was intentional, in which case the maximum fine is \$10,000. In addition, the act provides penalties for any person engaged in certain prohibited activities. These activities are considered to be felonies punishable by a fine up to \$20,000 or imprisonment of up to five years, or both, and are as follows:

- 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 second 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.

In addition to the above penalties, the act also prescribes administrative fines for any person who violates the act or any promulgated rule. 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 is subject to a fine between \$50 and \$1,000 for the first violation, a fine between \$100 and \$5,000 for the second violation if within two years of the first violation, and a fine between \$500 and \$10,000 for the third violation if within two years of the first violation.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency the bill would have no fiscal impact on the state or local units of government. (4-28-03)

### ***ARGUMENTS:***

#### ***For:***

Exempting the identity of an individual who submits information regarding an alleged or threatened violation of the act by a grain dealer from the disclosure requirements of the Freedom of Information Act is necessary for the enforcement of the Grain Dealers Act. For the sake of their businesses, many individuals will not voluntarily submit such information if their identity can be revealed. In addition, a person who withholds such information could unwittingly violate the act, depending on the circumstances. The apprehension on the part of these people to voluntarily submit information greatly hinders the ability of the department to enforce the act and maintain the integrity of the industry. Therefore, exempting the individual's identity is seen as a way to ensure full compliance with the act. Further, by providing for disclosure of the individual's identity in certain instances, the bill ensures that such information is disclosed when necessary for the enforcement purposes.

#### ***Response:***

To better protect the identity of an individual, the language regarding disclosure of that person's identity should be more restrictive, such as limiting disclosure to employees of the department directly involved with the administration and enforcement of the act or the investigation of an alleged violation. As written the bill permits the person's identity to be disclosed to any employee or agent of the department, even those with seemingly no direct connection to the Grain Dealers Act. Further, to prevent such information from being improperly disclosed, the bill should be amended to include certain penalties for those situations when a person improperly discloses a person's identity.

#### ***Rebuttal:***

The language found in the bill is the same as that currently in the Grain Dealers Act to protect the confidentiality of financial information and daily position report information.

### ***POSITIONS:***

The Department of Agriculture supports the bill. (4-29-03)

The Michigan Agri-Business Association supports the bill. (4-29-03)

The Michigan Farm Bureau supports the bill. (4-29-03)

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.