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FARM PRODUCE INSURANCE ACT

House Bill 4311 as enrolled
Public Act 198 of 2003

Sponsor: Rep. Tom Meyer

House Committee: Agriculture and Resource Management
Senate Committee: Agriculture, Forestry, and Tourism

Third Analysis (12-30-03)

THE APPARENT PROBLEM:

In 1988, after several farmers experienced huge financial losses following the financial failure of grain dealers, the legislature enacted the Michigan Agricultural Commodity Insurance Act (Public Act 366). The act provided for the establishment of the Michigan Agricultural Commodity Insurance Fund to insure agricultural commodities against losses due to the failure of a licensed grain dealer. The fund was to be financed by an assessment of 0.1 percent imposed and collected on the dollar value of the commodity sold, in order to finance payments for any grower who had not been paid in full for a commodity sold to a licensed grain dealer because the grain dealer's business had failed. The assessment was conditioned on its approval at a referendum among growers. However, the referendum has never taken place, and the fund has never been officially established. Given the fact that the 1988 act has never been implemented - notwithstanding the fact that grain dealers continue to fail, leaving many producers in financial crisis - some believe that a similar program should be directly established through legislation, and without subjecting the matter to a vote of the affected producers.

THE CONTENT OF THE BILL:

House Bill 4311 would repeal Public Act 366 of 1988 and, instead, create the Farm Produce Insurance Act. Under this new act:

• A new fund would be created, the Farm Produce Fund, to reimburse a participating producer (grower) for losses suffered due to nonpayment when a grain dealer "failed" after the producer had sold and delivered farm produce to the dealer.

• Each producer would pay a premium of up to 0.2 percent of net proceeds (two-tenths of one percent) sold by a producer to a licensed grain dealer, to be deducted from proceeds at the time of sale.

• A producer could get a refund of this premium upon request if, generally speaking, he or she agreed not to participate in the program and not to be eligible for any payment from the fund.

• The fund would be under the control of a new authority, the Farm Produce Insurance Authority, which would housed in but be independent of the Department of Agriculture and would be governed by a 10–member board made up of both state officials and representatives of agricultural interests.

The bill is described in more detail below.

Farm Produce Insurance Authority. The bill would create the Farm Produce Insurance Authority as a public body corporate within, though not a part of, the Department of Agriculture (MDA). A nine-member board would govern the authority, and would include the director of the department as a nonvoting member. The director of the department would serve as the chairperson and secretary of the board. In addition, the board would include eight voting members appointed by the governor, with the advice and consent of the Senate. The voting members would include one member recommended by the largest Michigan organization representing licensed grain dealers; three members recommended by the largest Michigan organization representing general farm interests, who would have to be farm producers; one member representing corn producers; one member representing soybean producers; one member representing dry bean producers; and one member representing agricultural lenders.

The board would hold an annual meeting and at least one other meeting during the course of the calendar year. The secretary of the board would be required to provide each member with written notice of the meeting at least five days prior to the meeting. However, a member of the board could waive any notice requirement, before or after the date and time stated in the notice, in writing and transmitted to the authority for inclusion in the minutes or filling with the records of the authority. A board member's attendance at a meeting would waive any objection to the absence of a notice or a defective notice, unless the member objects at the start of the meeting to holding the meeting or the transaction of business at the meeting, or consideration of any particular matter at a meeting that is not within the purpose described in the notice, unless the member objects when the matter is presented. The director of the department could remove an appointed member of the board for good cause.

The board's duties would include the following:

• Electing a vice-chairperson and treasurer from its members.

• Creating forms and establishing policies and procedures necessary to implement the act.

• Establishing the amount of the producer premium within the constraints of the act.

• Collecting and depositing all producer premiums authorized under the act into the fund.

• Taking any legal action that it considers necessary to compel a failed licensee to repay the fund for any payment made from the fund to a claimant for a valid claim against that licensee, or to compel a claimant to participate in any legal proceeding in relation to the claim or the failure of a licensee.

• Publishing notice of the failure of a licensed grain dealer (in the manner set forth in Grain Dealers Act), within five days of receiving notice of the failure.

• Requesting the services of the MDA or arranging for legal services through the attorney general whenever necessary in the execution of the board's duties.

• Procuring insurance against any loss in connection with its operations.

• Borrowing money and paying (or including in the loan financing) any charges, interest, or other fees and expenses that it deems to be appropriate in connection with a loan. A loan could not exceed a term of 40 years, and would have to allow for prepayment without penalty, and plainly state that the loan is not a debt of this state, but rather the sole obligation of the authority, payable solely from the fund or any appropriation to the authority for the repayment of the loan.

• Employing necessary personnel.

• Making, executing, and carrying out any contract, agreement, or other instrument or document with a governmental department or other person that the board determines is necessary or convenient to accomplish the purposes of the act.

• Making payment from the fund to compensate a claimant for a valid claim.

• In addition to the above listed required duties, the board could also do the following:

• Establish policies and procedures in connection with the performance and the functions and duties of the authority.

• Adopt a policy establishing a code of ethics for employees and board members that is consistent with Public Act 196 of 1973, which sets forth certain standards of conduct for public officers and employees.

• Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, and other financing and assistance, and any other aid from any source and deposit them into the fund and agree to comply with any conditions attached to them.

A board member or other individual acting on behalf of the authority would not be personally liable for damage or injury that results from the performance of his or her duties under the bill, unless the damage or injury was a result or gross negligence or malfeasance of that individual. Further, the bill specifies that the MDA would have to inspect the books and records of a licensee during normal business hours to verify whether the licensee is complying with the provisions of the bill.

The board would conduct its business at public meeting held in compliance with the Open Meetings Act, and would have to provide notice of its meeting in accordance with the that act. Any information submitted to the board by any person that is not related to the amount of a claim would be

confidential and not subject to disclosure under the Freedom of Information Act. However, confidentiality would not apply to the provision that subjects the books and records to inspection and verification by the MDA. In addition, information that would otherwise be confidential could be disclosed pursuant to a court proceeding; with the written consent of the person who submitted the information, if made to the director of the MDA or an employee of the MDA or another state or federal agency authorized to see or review such information; if such information is disclosed in an information study or part of a statistical summary that does not identify the person to whom any specific information applies; or if the information sought relates solely to the amount of a claim paid from the Farm Produce Insurance Fund.

Farm Produce Insurance Fund. The bill would establish the farm produce insurance fund under the direction and control of the board. The fund would consist of producer premiums, money from other sources, and interest and other earnings. The fund would only be used for the payment of valid claims, producer premium refunds, administrative expenses, and legal fees and expenses. The board could allocate up to $250,000 from the fund to a separate account for administrative expenses, which would explicitly exclude legal fees and legal expenses.

The board treasurer would invest or direct a financial institution to invest the money of the fund not needed to meet current obligations, in the manner set forth in section 1 of Public Act 20 of 1943, which pertains to the investment of funds of public corporations (see MCL 129.91). Any interest and earnings would be credited to the fund. Further, the board would establish the fiscal year in which the fund would operate.

At the board's annual meeting, it would certify the amount of money in the fund at the end of the preceding fiscal year. As with Public Act 366, producers would continue to pay (and licensees would continue to collect) premiums until the board certifies that the fund contained more than $5 million at the end of the preceding fiscal year. If the fund exceeds $5 million at the close of a fiscal year, premiums would not be required to be paid until either of the following occurs:

- The board certifies that the fund contained less than $3 million at the end of the preceding fiscal year.
- In any fiscal year in which the board certifies that the fund contained at least $3 million at the end of the previous fiscal year, the board is aware of a failure of a licensed grain dealer, and the board determines that the amount required to satisfy claims equals or exceeds the amount of money in the fund.

Producer Premiums. Beginning January 1, 2005, each producer would pay to the authority a producer premium of not more than 0.2 percent of the net proceeds from all farm produce - defined to mean dry edible beans, soybeans, small grains, cereal grains, or corn - that is sold by the producer to a licensed grain dealer. [Note: Under Public Act 366 of 1988, producers are assessed at a rate of 0.1 percent of the value of the commodity sold.] If the farm produce is sold to a licensed grain dealer, the licensee would be required to deduct the premium from the proceeds of the sale and pay the premium to the authority on behalf of the producer. The licensee would notify the producer in writing of the amount of the deduction. The licensee would submit the premium to the authority for deposit into the fund within 30 days of the close of each quarter of the fiscal year. The MDA would be required to notify the licensee in writing prior to January 1, 2005 of the licensee's duties regarding the collection of the premium. A producer that fails to pay a premium before the failure of a licensed grain dealer would not be entitled to any payment from the fund for any valid claim arising from that failure. Until the authority has received $5 million in producer premiums, a licensee that forwards the premiums within the time required could retain 0.1 percent of the premiums collected.

A licensed grain dealer would be required to clearly indicate in its books and records the individual producer premiums collected by the licensee and retain those books and records for at least three years. The portion of those books and records pertaining to producer premiums collected would have to be made available for inspection during regular business hours by the MDA director. The MDA director could take those actions that are reasonably necessary to verify the accuracy of the portion of the books and records pertaining to the producer premiums, including requiring the licensee to make its books available to the MDA. Financial information provided to MDA or the authority would be confidential and not subject to disclosure of the Freedom of Information Act except in the following instances:

- With the written consent of the licensee;
- Pursuant to a court proceeding;

• The disclosure is made to the MDA director or an agent or employee of the MDA.

• The disclosure is made to an agent or employee of a state or the federal government authorized by law to see or review the information;

• The information is disclosed as a summary or profile, or a part of a statistical study that includes data on more than one grain dealer, that does not identify the grain dealer to whom the specific information applies.

Refunds. A producer who has paid the premium (either directly or as collected by a licensed grain dealer) could receive a refund of the premium from the fund by submitting a demand, in writing, to the board. The demand would have to be delivered personally or via first-class mail within 12 months after the producer paid the premium, though the board could grant the producer a longer period of time in which to submit a demand for a refund if there exists good cause to do so. The demand would have to be submitted on a form, developed by the board and made available to a licensed grain dealer, producer, or member of the public. If a producer is eligible for a refund, the board would be required to pay the refund within 60 days. If the producers were assessed during the previous calendar year, the board would be required to send notice, prior to January 31, to each producer who requested a refund of the premium in any previous calendar year. The notice would inform the producer of the deadline for, and method of, submitting a demand for a refund and the method for reentering the program.
Any producer that receives a refund of a producer premium would not be entitled to participate in the program or receive any payment from the fund unless the producer submits a request for reentry; the board reviews and approves that request for reentry into the program; and the producer pays into the fund all previous producer funds that were refunded to the producer, along with any interest on the refund. Ninety days after reentry into the program, the producer would be eligible for any reimbursement of claims. Further, a producer would not be eligible to receive a refund if he or she received a reimbursement from the fund for a valid claim during the preceding 36 months.

Claims for Reimbursement. A producer would be permitted to submit a claim for reimbursement if he or she is a participant in the program at the time of the claim and possesses written evidence of ownership of the farm producer that discloses a storage obligation that the licensed grain dealer failed; has surrendered warehouse receipts as part of a sale of farm produce to a licensee that failed not more that 21 days after the surrender of the warehouse receipt and the producer was not fully paid for the farm produce; or possesses written evidence of the delivery and sale of farm produce or transfer of price later farm produce to a failed licensee. If the MDA determines that a claim is valid and the claim is approved by the board, the board would be required to pay the claimant within 90 days of the board's approval. The 90-day time period could be extended if the board and the claimant agree, in writing, to other payment terms and schedules. A claim for reimbursement would only be valid if it is made within one year after notice of the failure of the licensed grain dealer is published in each county in which a facility of the licensee is located.

Claimants would be reimbursed for any "storage loss" or "financial loss" that is due to the failure of a licensed grain dealer. Under the bill, "storage loss" would be defined to mean the loss to a depositor that results from the failure of a licensee who has not fully satisfied its storage obligation to the depositor, net any outstanding charges against the farm producer. A claimant would be reimbursed for 100 percent of the storage loss, less any producer premium that would have been due on the sale of the farm produce. The MDA would determine the gross amount of the storage loss based on the local market prices on the date of the failure. In addition, the MDA could consider any evidence submitted by the failed licensee or any claimants concerning the actual charges associated with the stored farm produce.
Under the bill, "financial loss" is defined to mean the loss to a producer who is not paid in full for farm produce that the producer sold to a grain dealer and delivered under the terms of the sales contract, after deducting any outstanding charges against the farm produce. A claimant would be reimbursed for 90 percent of the financial loss. For farm produce sold in a transaction subject to the Grain Dealers Act, the department would establish the amount of the financial loss using the local market on the date of failure, less any outstanding charges against the farm produce. For farm produce sold to a licensee that has not been priced, the department would establish the amount of the financial loss using the local market on the date of the failure, less any usual and customary charges associated with the sale of farm produce.

The board could require a claimant who receives payment to subrogate to the board or authority all of the claimant's rights to collect on any bond issued under the Grain Dealers Act or the United States

Warehouse Act, and the claimants rights to any other compensation arising from the failure of the licensee. If the claimant does subrogate his or her right, he or she would assign his or her interest in any judgment concerning the failure of the licensee to the board or authority. In addition, the board would deny payment of a claim if it determines that the claimant, as payee, has failed to present for payment a negotiable instrument issued as payment for farm produce within 90 days after it is tendered to the claimant as payment for farm produce purchased by the licensee; the claimant has engaged in practices that differ from those generally accepted marketing practices to the extent that the claimant's actions have substantially contributed to his or her loss; or the claimant has intentionally committed a fraud or violated the bill in connection with the claim.

If the department determines that licensee has failed, the board would be required to do the following:

- Determine the valid claims against the licensee and the amount of those claims;

- Authorize payment from the fund to pay claimants;

- Deposit into the fund any proceeds of the remaining farm produce assets of the failed licensee to repay the fund for money paid to the claimants, subject to any lien against those assets. However, from the proceeds of any farm produce assets, the board would not deposit into the fund an amount in excess of the sum of the principal amount of valid claims paid to claimants, plus interest from the date the claimant was paid to the date the remaining proceeds were received by the board.

- If the amount in the fund and any amount borrowed by the board do not cover the amount to be paid for all valid claims, pay the amount available for payment proportionately among the valid claims.

In addition to the above requirements, if the department determines that a licensed grain dealer has failed, the board could pursue any subrogation rights obtained from claimants or, if the fund does not sufficiently cover all valid claims, borrow money for the payment of claims.

Other Provisions. All expenditures from the fund would be audited by a certified public accountant at least annually. The CPA would present copies of the audit, within 30 days of completion, to the director of the MDA and other board members. In addition, the bill would not limit the authority of the MDA director or the MDA itself to take action against a licensed grain dealer under the Grain Dealers Act for a violation of that act or the corresponding rules of the MDA. Further, that a licensed grain dealer fulfilled its requirements under this bill would not be a defense to an action by the MDA director or the MDA against that licensee for a violation of the Grain Dealers Act.

Penalties. A person who knowingly or intentionally commits any of the following would be guilty of a misdemeanor punishable by a fine not exceeding $5,000 for each offense:

- Refusing or failing to collect the producer premiums.

- Refusing or failing to pay to the authority the producer premiums collected.

- Refusing or failing to make a required statement, representation, or certification, in a record, report, or other document the person files or is required to file with the MDA director, MDA, board, or authority.

- Resisting, preventing, impeding, or interfering with the MDA director, agents or employees of the MDA, the board, or agents or employees of the authority or board in the performance of their duties.

In addition to the above penalty for failing to pay or collect the producer premium, the court would be required to order the grain dealer to pay to the fund any premiums collected that it owes to the fund, and could order the grain dealer to pay interest on the amount owed to the fund.

BACKGROUND INFORMATION:

Grain Dealers Act. The Grain Dealers Act, Public Act 141 of 1939, regulates the storage, buying, and selling of farm produce, specifically dry edible beans, soybeans, corn, small grains, and cereal grains, and would function as a companion act to the bill described in this analysis. 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 the produce should the need arise. The protection of growers has been, and continues to be, one of the chief purposes of the act.

The act, initially known as the Farm Produce Storage Act, was enacted, in part, to protect farmers from certain anticompetitive, unprincipled, and substandard business practices on the part of grain elevator operators. In subsequent years, the act has

been amended with the purpose of maintaining the integrity of the industry and protecting the interests of growers. In 1976, Public Act 259 retitled the act the Grain Dealers Act, increased bonding requirements as a condition for licensure as a grain dealer, and provided grain dealers with greater flexibility - and, at the same time, increased protection to growers from financial loss - by permitting grain dealers to issue price later agreements, whereby the grain dealer takes possession of the farm produce without paying for it at the time, and reserving to the grower the ability to receive payment for the commodity at a date to be named later, which, presumably, will be higher than at the time of delivery (harvest time).

In 1979, Public Act 206 amended the Grain Dealers Act amid the bankruptcy of at least five grain dealers that resulted in more than $1 million in losses for growers. In order to offer greater protection to growers, the bill subjected grain dealers to prosecution on felony charges if they falsified daily position reports, and required greater documentation of transactions including the issuance of acknowledgement forms, warehouse receipts and price later agreements.

Last session, Public Act 80 (enrolled House Bill 5434) substantially revised the Grain Dealers Act, after a review of the act by the Department of Agriculture and certain agricultural organizations. It was believed that at the time that the act was a patchwork of amendments over the past several years, and needed updating to reflect current industry practices. Among other provisions, Public Act 80 increased the regulatory authority of the department; updated the language in the act pertaining to the issuance of price later agreements; and increased the assets required for licensure from $20,000 to (1) at least $1 million, (2) at least $50,000 and the grain dealer must have handled at most 500,000 bushels of farm produce, or (3) at least $50,000 and the allowable net assets are greater than or equal to 10 cents for each bushel handled during the previous fiscal year.

According to committee testimony, House Bill 4311 would serve as a complement to the Grain Dealers Act in those instances when a grain dealer fails by adding a second layer of protection to producers. Essentially, when a grain dealer fails, the provisions of the Grain Dealers Act would first apply. If a producer still is not made whole under that act, the provisions of the insurance program established under the Farm Produce Insurance Act would apply. Under the Grain Dealers Act, should a grain dealer be unable to financially satisfy claimants, become insolvent, or have his or her licensed revoked, denied, suspended, or voluntarily surrendered when he or she has any outstanding debts, the MDA director would liquidate and distribute the assets and any proceeds of the assets to satisfy any outstanding claims. The assets would first be distributed to any claimants, including lenders, who possess warehouse receipts. Assets would then be distributed to any claimants holding any acknowledgement forms or other written evidence of ownership (other than warehouse receipts). Finally assets would be distributed to any claimants who surrendered warehouse receipts to the grain dealer as part of a farm produce transaction, but were not fully paid within 21 days after surrender. Any remaining assets or proceeds would be distributed to claimants who possess price later agreements, followed by any claimants possessing acknowledgement forms or similar delivery contracts, or other written evidence, and who completed delivery and pricing within 30 days prior to the failure of the grain dealer. Any remaining assets or proceeds would be distributed to all other claimants who possess written evidence of the sale of the farm produce to the dealer. If any assets or proceeds remain, they would then be distributed to the grain dealer.

Indemnity programs in other states. According to the Michigan Farm Bureau, indemnity programs similar to that proposed in House Bill 4311 have been in established in 13 states, including Iowa, Illinois, Indiana, and Ohio, as well as the Canadian province of Ontario.

The Illinois program operates through two separate, though related, funds – the Grain Indemnity Trust Fund and the Illinois Grain Insurance Fund. The indemnity fund consists of the assets of failed grain warehouses and pays all claims. The insurance fund consists of assessments made against grain elevators, in lieu of their being bonded, and is intended to be a supplemental fund that pays out claims when there are insufficient funds in the indemnity fund. The maximum recovery under the insurance fund is $1 million per claimant.

In late 2001 and early 2002, the Illinois Department of Agriculture convened a task force to review the state's Grain Code, funding for the insurance program, and regulatory oversight by the department. The task force was convened amid the failure of a licensed grain dealer and warehouseman that was expected to generate claims that would exhaust the balance of the insurance fund and require additional money from the state to meet all of the claims. The

task force focused on four areas: governance of the insurance fund, beneficiaries of the fund, funding sources for the fund, and oversight of the grain industry. Given the fact that the insurance fund was to be exhausted, the area of particular concern of the task force was the funding source for the insurance fund. At the time, an assessment was collected on each licensed grain dealer and warehouseman until the fund balance exceeded $3 million. In order to repay the state's General Revenue Fund as soon as possible, the task force recommended a tiered assessment approach, depending on the balance of the fund: (1) when the fund balance is below zero at the end of any month, a double assessment would be instituted as soon as reasonably practical and remain in place for a period of 12 months; (2) when the fund is below $4 million on September 1 of any given year, a single assessment would be instituted for a period of one year, and continue until the fund exceeds $7 million on September 1 in any given year; and (3) once the fund balance exceeds $7 million and assessments have stopped, new assessments would not be instituted until the fund balance drops below $4 million. The task force also recommended that assessments be assessed on three groups: producers, licensed grain dealers, and licensed warehouses. Producers would pay an assessment equal to 0.05 percent of the value of grain sold to a licensed dealer. Licensed grain dealers and warehouses would pay assessments as outlined in the state Grain Code.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the annual expenses related to the administration of the authority would be limited to $250,000, and would be paid from the newly-created Farm Produce Insurance Fund. Financial obligations of the fund to pay claims authorized by the bill would be drawn from premiums received from producers. These claims obligations would be payable only from this fund. There would be no payments from other state restricted funds or from the state general fund. Further, there would be no fiscal impact on local government. (HFA analysis on an earlier, but similar, version of the bill, dated 5-27-03)

ARGUMENTS:

For:

Though the current indemnity program established under Public Act 366 has never been implemented, that in no way signifies that there is no actual need for this bill. According to committee testimony, over the last decade the failure of licensed grain dealers has resulted in a loss to producers totaling approximately $1 million. While the cumulative total of these losses does not appear to be very significant, the financial losses experienced by individual producers, particularly in light of the current state of the economy and the agricultural industry as a whole, can be destructive to a producer's farming operation. As such, the proposed Farm Producer Insurance Program would provide producers with a mechanism to continue their operations and avoid significant financial loss.

For:

Despite several amendments to the Grain Dealers Act to protect growers from the financial collapse of a grain dealer, there is a belief among those in the industry that further protections are necessary. The amendments to the Grain Dealer Act have included increased bond requirements, greater accounting of transactions, stronger oversight by the Department of Agriculture, and increased assets required for licensure. These amendments, however, attempt to provide assurances that a licensed grain dealer will not fail. Preventing failure continues to be a difficult task, however, and will never be fully accomplished. There remains a need to protect producers should a grain dealer fail.

Against:

Several questions have been raised about the administration of the act and the operations of the public-private hybrid partnership that is created to administer the act. First, there is concern regarding the location of the fund and the investment authority of that fund. As originally drafted, the bill stated that the fund would be established within the state treasury and invested by the state treasurer. However, under the substitute, the fund is established outside the purview of the state and is controlled by the board. It is believed that, in order to provide greater assurances that money in the fund is invested prudently, the fund should be established within the state treasury.

Second, it is believed that the program should be subject to a vote by the affected persons. Indeed, Public Act 366, which this bill would replace, provided for a referendum. The fact that the referendum has never been held says quite a bit. If the program is truly necessary and enjoys strong support among those in the industry, then why has the referendum never been held over 14 years? Further, it is believed that any attempt to establish the program without the referendum circumvents the

original act's intent and places a burden on producers.

Response:

With regard to the control of the fund, the bill states that the fund would have to be invested in the manner set forth in Public Act 20 of 1943, which provides for the investment of funds of public corporations (i.e. a county, city, village, township, port district, drainage district, special assessment district, or metropolitan district of this state, or a board, commission, or another authority or agency created by or under an act of the legislature of this state).

With regard to the administration of the program, it appears the intent is to model the program after the several agricultural commodities programs established under Public Act 232 of 1965, the Agricultural Commodities Marketing Act. Public Act 232 programs assist growers of certain commodities in research and marketing. The commodities programs appear to be relatively autonomous, with the Department of Agriculture ensuring that assessments are collected fairly and equitably, and providing enforcement authority. Presumably, the Department of Agriculture would serve in a similar capacity for the program established under House Bill 4311.

With regard to the financial control of the insurance fund, the bill is again patterned after Public Act 232. The commodity programs established under that act are financed through an assessment on producers of a particular commodity. Public Act 232 (MCL 290.658) states that any money, assets, or other items of value are <u>not</u> state money and shall be deposited in a financial institution in the state. It appears that there are no substantive differences between the bill and Public Act 232.

Finally, to the point that the bill requires participation among producers, the bill permits producers to receive a refund of the amount paid over the previous year. The bill states that any producer that receives a refund of a producer premium would not be entitled to participate in the program or receive any payment from the fund unless the producer is approved for reentry. (A producer would not be eligible to receive a refund if he or she had received a reimbursement from the fund for a valid claim during the preceding 36 months.) Furthermore, under Public Act 232, once a referendum is approved by the producers, an individual producer is required to pay the assessment and participate in the program, regardless of his or her opinion of the program. In that regard, the bill provides producers with greater flexibility to opt-out of that insurance program than similar programs established under Public Act 232.

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