

# HOUSE BILL No. 5509

December 4, 2007, Introduced by Rep. Mayes and referred to the Committee on Agriculture.

A bill to amend 2003 PA 198, entitled  
"Farm produce insurance act,"  
by amending sections 3, 13, and 15 (MCL 285.313, 285.323, and  
285.325).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3. As used in this act:

2       (a) "Acknowledgment form" means that term as defined in  
3       section 2 of the grain dealers act, MCL 285.62.

4       (b) "Administrative expenses" means the costs described in  
5       section 9(2).

6       (c) "Authority" means the farm produce insurance authority  
7       created in section 5.

8       (d) "Board" means the board of directors of the authority

1 described in section 7.

2 (e) "Claimant" means a producer who makes a claim for  
3 reimbursement from the fund under section 15.

4 (f) "Department" means the department of agriculture.

5 (g) "Depositor" means that term as defined in section 2 of the  
6 grain dealers act, MCL 285.62.

7 (h) "Director" means the director of the department or his or  
8 her designee.

9 (i) "Failure" of a licensee or grain dealer means that term as  
10 defined in section 2 of the grain dealers act, MCL 285.62.

11 (j) "Farm produce" means that term as defined in section 2 of  
12 the grain dealers act, MCL 285.62.

13 (k) "Farm produce insurance program" or "program" means the  
14 program for reimbursement of claims described in this act.

15 (l) "Financial institution" means that term as defined in  
16 section 2 of the grain dealers act, MCL 285.62.

17 (m) "Financial loss" means the loss to a producer who is not  
18 paid in full for farm produce that the producer sold to a grain  
19 dealer and delivered under the terms of the sales contract, after  
20 deducting any outstanding charges against the farm produce.

21 (n) "Fund" means the farm produce insurance fund created in  
22 section 9.

23 (o) "Grain dealer" means that term as defined in section 2 of  
24 the grain dealers act, MCL 285.62.

25 (p) "Grain dealers act" means the grain dealers act, 1939 PA  
26 141, MCL 285.61 to 285.88.

27 (q) "Licensee" means that term as defined in section 2 of the

1 grain dealers act, MCL 285.62.

2 (r) "Net proceeds" means the sale price of farm produce, less  
3 usual and customary charges and costs of sale of the farm produce.

4 (s) "Participant" means a producer that has ~~contributed to the~~  
5 ~~fund and~~ never requested a refund from the fund or a producer who  
6 has reentered the program under section 13(5).

7 (t) "Person" means an individual, corporation, limited  
8 liability company, partnership, association, cooperative  
9 organization, or other legal entity.

10 (u) "Price later agreement" means that term as defined in  
11 section 2 of the grain dealers act, MCL 285.62.

12 (v) "Producer" means a person that owns, rents, leases, or  
13 operates a farm on land and who has an interest in and receives all  
14 or any part of the proceeds from the sale in Michigan of farm  
15 produce produced from the land to a grain dealer licensed under the  
16 grain dealers act.

17 (w) "Producer premium" means the amount of money charged to  
18 and collected from a producer under section 11.

19 (x) "Sale" means transfer of title.

20 (y) "Storage loss" means a loss to a depositor resulting from  
21 the failure of a licensee that has not fully satisfied its storage  
22 obligation to the depositor, net of any outstanding charges against  
23 the farm produce.

24 (z) "Valid claim" means a claim arising from a failure of a  
25 licensee that occurs after the effective date of this act, is found  
26 valid by the department, and is approved by the board, less all  
27 credits and offsets associated with farm produce sold **IN THIS STATE**

1 by a producer to the licensee.

2 (aa) "Warehouse receipt" means that term as defined in section  
3 2 of the grain dealers act, MCL 285.62.

4 Sec. 13. (1) Subject to subsection (7), a producer that has  
5 paid, either directly or collected by a licensee, a producer  
6 premium may receive a refund of the producer premium from the fund  
7 by submitting a written demand for refund to the board, delivered  
8 personally or by first-class mail within 12 months after the  
9 producer paid the producer premium, or within a longer period  
10 granted by the board if it determines that good cause for an  
11 extension exists.

12 (2) A producer shall submit a demand for refund under  
13 subsection (1) on a demand for refund form developed by the board.  
14 The board shall make the form available to a licensee, producer, or  
15 member of the public upon request.

16 (3) If a producer is entitled to a refund of a producer  
17 premium under this section, the board shall pay the refund within  
18 60 days of its receipt of the demand for refund.

19 (4) If producer premiums were assessed in the immediately  
20 preceding calendar year, the board shall by January 31 send a  
21 notice to each producer who requested a refund of a producer  
22 premium in any previous calendar year. The notice must inform the  
23 producer of the deadline for and method of submitting a demand for  
24 refund to the board under subsections (1) and (2) and the method  
25 for reentering the program under subsection (5).

26 (5) A producer that receives a refund of a producer premium  
27 under subsection (1) is not entitled to participation in the

1 program or to receive any payment under this act unless it reenters  
2 the farm produce insurance program by meeting all of the following  
3 conditions:

4 (a) The producer submits a request for reentry into the farm  
5 produce insurance program to the board. The producer shall submit  
6 the request in the form required by the board and shall deliver the  
7 request to the board by hand or by certified mail, return receipt  
8 requested.

9 (b) The board reviews the producer's request for reentry and  
10 approves the request.

11 (c) The producer pays into the fund all previous producer  
12 premiums refunded to the producer, and interest on the refunds as  
13 determined by the board.

14 (6) ~~Beginning 90 days after the reentry, a~~ **A** producer that  
15 reenters the farm produce insurance program under subsection (5) is  
16 eligible for reimbursement of claims under the program **FOR ANY**  
17 **FAILURE THAT OCCURS AT LEAST 90 DAYS AFTER REENTRY.**

18 (7) A producer is not eligible for a refund of a producer  
19 premium under this section if the producer has received  
20 reimbursement from the fund for a valid claim within the preceding  
21 36 months.

22 Sec. 15. (1) A producer that meets both of the following may  
23 submit a claim for reimbursement from the fund under this section:

24 (a) The producer is a participant at the time the producer  
25 submits the claim.

26 (b) The producer satisfies 1 of the following conditions:

27 (i) The producer possesses written evidence of ownership of

1 farm produce that discloses a storage obligation of a licensee that  
2 has failed, including, but not limited to, a warehouse receipt,  
3 acknowledgment form, or settlement sheet.

4 (ii) The producer has surrendered warehouse receipts as part of  
5 a sale of farm produce to a licensee that failed not more than 21  
6 days after the surrender of the warehouse receipts and the producer  
7 surrendering the warehouse receipts was not fully paid for the farm  
8 produce.

9 (iii) The producer possesses written evidence of the delivery  
10 and sale of farm produce or transfer of price later farm produce to  
11 a failed licensee, including, but not limited to, an acknowledgment  
12 form, settlement sheet, price later agreement, or similar farm  
13 produce delivery contract, but the grain dealer did not pay the  
14 producer in full for the farm produce.

15 (2) If the department finds a claim made under subsection (1)  
16 is valid and the board approves of the valid claim, the board shall  
17 within 90 days of the board's approval pay the claimant the amount  
18 described in subsection (3) or (4) from the fund as compensation  
19 for the claim. The 90-day time period for payment may be extended  
20 if the board and claimant agree in a writing that describes the  
21 payment terms and schedule.

22 (3) A claimant that incurs a storage loss due to the failure  
23 of a licensee is entitled to payment under subsection (2) in an  
24 amount equal to 100% of the storage loss, less any producer premium  
25 that would have been due on the sale of the farm produce. The  
26 department shall determine the gross amount of the storage loss  
27 based upon local market prices on the date of failure. The

1 department may consider any evidence submitted by the failed  
2 licensee or any claimants concerning the actual charges associated  
3 with stored farm produce.

4 (4) A claimant that incurs a financial loss due to the failure  
5 of a licensee is entitled to payment under subsection (2) in an  
6 amount equal to 90% of the financial loss. For farm produce that is  
7 sold in a transaction subject to the grain dealers act, the  
8 department shall determine the amount of the financial loss based  
9 on the value of the farm produce less any outstanding charges  
10 against the farm produce. If the farm produce has not been priced,  
11 the department shall establish the amount of the financial loss  
12 using the local market on the date of failure less any usual and  
13 customary charges associated with the sale of farm produce.

14 (5) A claim under subsection (2) of this section is valid only  
15 if it is made within 1 year after notice of the failure of the  
16 licensee is published in a newspaper of general circulation in each  
17 county in which a facility of the licensee is located.

18 (6) The board may require a claimant paid under this section  
19 for a valid claim to subrogate to the board or authority all the  
20 claimant's rights to collect on any bond issued under the grain  
21 dealers act or the United States warehouse act, 7 USC 241 to ~~273~~  
22 **256**, and the claimant's rights to any other compensation arising  
23 from the failure of the licensee. If required to subrogate under  
24 this subsection, the claimant shall assign the claimant's interest  
25 in any judgment concerning the failure to the board or authority.

26 (7) The board shall deny the payment of a valid claim under  
27 this section if the board determines any of the following are met:

1 (a) The claimant as payee fails to present for payment a  
2 negotiable instrument issued as payment for farm produce within 90  
3 days after the date the negotiable instrument is tendered to the  
4 claimant as payment for farm produce purchased by the licensee.

5 (b) The claimant has engaged in marketing practices that have  
6 ~~substantially~~ contributed to the claimant's loss. The authority may  
7 consider whether the marketing practices are generally accepted  
8 marketing practices in this state in making its determination.

9 (c) The claimant has intentionally committed a fraud or  
10 violated this act in connection with the claim.

11 (8) If the department determines that a failure of a licensee  
12 has occurred, the board shall do all of the following:

13 (a) Determine the valid claims against the licensee and the  
14 amount of the valid claims.

15 (b) Authorize payment of money from the fund when necessary to  
16 pay claimants for valid claims as provided in this section.

17 (c) Deposit into the fund any proceeds of the remaining farm  
18 produce assets of a failed licensee to repay the fund for money  
19 paid to claimants, subject to any priority lien right a holder of a  
20 mortgage, security interest, or other encumbrance may possess under  
21 any applicable law. The board shall not deposit into the fund an  
22 amount in excess of the sum of the principal amount of valid claims  
23 paid to claimants, plus interest for the period from the date a  
24 claimant was paid for a valid claim to the date that the remaining  
25 farm produce assets were received by the board under this  
26 subsection, at a per annum rate equal to the auction rate of 91-day  
27 discount treasury bills on the date the claimant was paid.



1           (d) If the amount in the fund and any amount the board borrows  
2 under subsection (9)(b) are insufficient to pay all valid claims,  
3 pay the amount available for payment proportionately among the  
4 valid claims approved by the board and pay the prorated amount to  
5 those claimants.

6           (9) If the department determines that a failure of a licensee  
7 has occurred, the board may do any of the following:

8           (a) Pursue any subrogation rights obtained from claimants  
9 under subsection (6).

10          (b) If the fund has insufficient money to pay the valid  
11 claims, borrow money as authorized under section 7(8)(j) for the  
12 payment of valid claims.