

Act No. 140
Public Acts of 2008
Approved by the Governor
May 28, 2008
Filed with the Secretary of State
May 28, 2008
EFFECTIVE DATE: May 28, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Mayes, Accavitti, Agema, Ball, Bieda, Booher, Brandenburg, Brown, Byrnes, Byrum, Calley, Casperson, Caswell, Caul, Constan, Donigan, Emmons, Gillard, Gonzales, Griffin, Hammel, Hammon, Hansen, Hildenbrand, Hopgood, Horn, Huizenga, Hune, Rick Jones, Robert Jones, Lahti, Kathleen Law, LeBlanc, Lemmons, Marleau, McDowell, Meekhof, Moolenaar, Moore, Nitz, Pastor, Pearce, Rocca, Sak, Schuitmaker, Sheltroun, Simpson, Spade, Stakoe and Steil

ENROLLED HOUSE BILL No. 5509

AN ACT to amend 2003 PA 198, entitled "An act to provide insurance to farm produce producers against losses from the failure of grain dealers; to establish a farm produce insurance authority; to prescribe the powers and duties of the authority and its board; to establish a farm produce insurance fund; to provide for assessments on grain dealers; to prescribe certain powers and duties of certain state agencies and officers; to authorize the promulgation of rules; and to repeal acts and parts of acts," by amending sections 3, 13, and 15 (MCL 285.313, 285.323, and 285.325).

The People of the State of Michigan enact:

Sec. 3. As used in this act:

- (a) "Acknowledgment form" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (b) "Administrative expenses" means the costs described in section 9(2).
- (c) "Authority" means the farm produce insurance authority created in section 5.
- (d) "Board" means the board of directors of the authority described in section 7.
- (e) "Claimant" means a producer who makes a claim for reimbursement from the fund under section 15.
- (f) "Department" means the department of agriculture.
- (g) "Depositor" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (h) "Director" means the director of the department or his or her designee.
- (i) "Failure" of a licensee or grain dealer means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (j) "Farm produce" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (k) "Farm produce insurance program" or "program" means the program for reimbursement of claims described in this act.
- (l) "Financial institution" means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(m) "Financial loss" means 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.

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

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

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

(q) "Licensee" means that term as defined in section 2 of the grain dealers act, MCL 285.62.

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

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

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

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

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

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

(x) "Sale" means transfer of title.

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

(z) "Valid claim" means a claim arising from a failure of a licensee that occurs after the effective date of this act, is found valid by the department, and is approved by the board, less all credits and offsets associated with farm produce sold in this state by a producer to the licensee.

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

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

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

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

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

(5) A producer that receives a refund of a producer premium under subsection (1) is not entitled to participation in the program or to receive any payment under this act unless it reenters the farm produce insurance program by meeting all of the following conditions:

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

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

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

(6) A producer that reenters the farm produce insurance program under subsection (5) is eligible for reimbursement of claims under the program for any failure that occurs at least 90 days after reentry.

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

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

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

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

(i) The producer possesses written evidence of ownership of farm produce that discloses a storage obligation of a licensee that has failed, including, but not limited to, a warehouse receipt, acknowledgment form, or settlement sheet.

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

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

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

(3) A claimant that incurs a storage loss due to the failure of a licensee is entitled to payment under subsection (2) in an amount equal to 100% of the storage loss, less any producer premium that would have been due on the sale of the farm produce. The department shall determine the gross amount of the storage loss based upon local market prices on the date of failure. The department may consider any evidence submitted by the failed licensee or any claimants concerning the actual charges associated with stored farm produce.

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

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

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

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

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

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

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

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

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

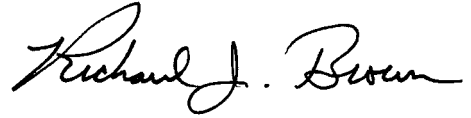
(b) Authorize payment of money from the fund when necessary to pay claimants for valid claims as provided in this section.

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

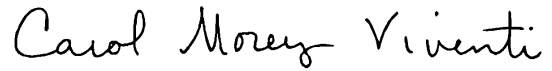
(d) If the amount in the fund and any amount the board borrows under subsection (9)(b) are insufficient to pay all valid claims, pay the amount available for payment proportionately among the valid claims approved by the board and pay the prorated amount to those claimants.

- (9) If the department determines that a failure of a licensee has occurred, the board may do any of the following:
- (a) Pursue any subrogation rights obtained from claimants under subsection (6).
 - (b) If the fund has insufficient money to pay the valid claims, borrow money as authorized under section 7(8)(j) for the payment of valid claims.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor