

SUBSTITUTE FOR
SENATE BILL NO. 888

A bill to amend 2003 PA 198, entitled
"Farm produce insurance act,"
by amending the title and sections 3, 7, 8, 9, 11, 13, 15, and 21
(MCL 285.313, 285.317, 285.318, 285.319, 285.321, 285.323, 285.325,
and 285.331), the title and sections 3, 7, 9, 15, and 21 as amended
by 2010 PA 300 and section 13 as amended by 2008 PA 140, and by
adding section 10.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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 certain producers of farm

1 products; **TO IMPOSE A FEE FOR REGULATION OF GRAIN DEALERS AND**
2 **ENFORCEMENT ACTIVITIES;** to prescribe certain powers and duties of
3 certain state agencies and officers; to authorize the promulgation
4 of rules; and to repeal acts and parts of acts.

5 Sec. 3. As used in this act:

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

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

10 (C) **"ADMINISTRATIVE PREMIUM" MEANS THE AMOUNT OF MONEY CHARGED**
11 **TO AND COLLECTED FROM A PRODUCER UNDER SECTION 10.**

12 (D) ~~(e)~~—"Authority" means the farm produce insurance authority
13 created in section 5.

14 (E) ~~(d)~~—"Board" means the board of directors of the authority
15 described in section 7.

16 (F) ~~(e)~~—"Claimant" means a producer who makes a claim for
17 reimbursement from the fund under section 15.

18 (G) ~~(f)~~—"Cooperative association" means that term as defined
19 in 12 USC 1141j.

20 (H) ~~(g)~~—"Department" means the department of agriculture **AND**
21 **RURAL DEVELOPMENT.**

22 (I) ~~(h)~~—"Depositor" means that term as defined in section 2 of
23 the grain dealers act, MCL 285.62.

24 (J) ~~(i)~~—"Director" means the director of the department or his
25 or her designee.

26 (K) ~~(j)~~—"Facility" means that term as defined in section 2 of
27 the grain dealers act, MCL 285.62.

1 (I) ~~(L)~~ "Failure" of a licensee or grain dealer means that term
2 as defined in section 2 of the grain dealers act, MCL 285.62.

3 (M) ~~(I)~~ "Farm produce" means that term as defined in section 2
4 of the grain dealers act, MCL 285.62.

5 (N) ~~(m)~~ "Farm produce insurance program" or "program" means
6 the program for reimbursement of claims described in this act.

7 (O) ~~(n)~~ "Financial institution" means that term as defined in
8 section 2 of the grain dealers act, MCL 285.62.

9 (P) ~~(o)~~ "Financial loss" means the loss to a producer who is
10 not paid in full for farm produce that the producer sold to a grain
11 dealer and delivered under the terms of the sales contract, after
12 deducting any outstanding charges against the farm produce.

13 (Q) ~~(p)~~ "Fund" means the farm produce insurance fund created
14 in section 9.

15 (R) ~~(q)~~ "Grain dealer" means that term as defined in section 2
16 of the grain dealers act, MCL 285.62.

17 (S) ~~(r)~~ "Grain dealers act" means the grain dealers act, 1939
18 PA 141, MCL 285.61 to 285.88.

19 (T) ~~(s)~~ "Licensee" means that term as defined in section 2 of
20 the grain dealers act, MCL 285.62.

21 (U) ~~(t)~~ "Net proceeds" means the sale price of farm produce,
22 less usual and customary charges and costs of sale of the farm
23 produce.

24 (V) ~~(u)~~ "Person" means an individual, corporation, limited
25 liability company, partnership, association, cooperative
26 association or other cooperative organization, or other legal
27 entity.

1 (W) ~~(v)~~—"Price later agreement" means that term as defined in
2 section 2 of the grain dealers act, MCL 285.62.

3 (X) ~~(w)~~—"Producer" means a person that owns, rents, leases, or
4 operates a farm on land and who has an interest in and receives all
5 or any part of the proceeds from the sale and delivery in Michigan
6 of farm produce produced from the land to a grain dealer licensed
7 under the grain dealers act.

8 (Y) ~~(x)~~—"Producer premium" means the amount of money charged
9 to and collected from a producer under section 11.

10 (Z) ~~(y)~~—"Producer security activities" means any action by the
11 director under section 22 of the grain dealers act, MCL 285.82, to
12 administer or enforce that act.

13 (AA) ~~(z)~~—"Sale" means transfer of title.

14 (BB) ~~(aa)~~—"Storage loss" means a loss to a depositor resulting
15 from the failure of a licensee that has not fully satisfied its
16 storage obligation to the depositor, net of any outstanding charges
17 against the farm produce.

18 (CC) ~~(bb)~~—"Valid claim" means a claim arising from a failure
19 of a licensee that occurs after the effective date of this act, is
20 found valid by the department, and is approved by the board, less
21 all credits and offsets associated with farm produce delivered and
22 sold in this state by a producer to the licensee or to a location
23 in this state designated in advance of the delivery.

24 (DD) ~~(cc)~~—"Warehouse receipt" means that term as defined in
25 section 2 of the grain dealers act, MCL 285.62.

26 Sec. 7. (1) A board of directors shall govern and administer
27 the authority. The board shall consist of the following 9-10

1 members:

2 (a) The director, or his or her designee, is a nonvoting
3 member and the chairperson and secretary of the board. This member
4 shall not receive per diem or other compensation or reimbursement
5 for expenses for serving on the board.

6 (b) One nonvoting member appointed by the governor with the
7 advice and consent of the senate, from recommendations received
8 from the largest Michigan organization representing the interests
9 of licensees in Michigan, as determined by the director.

10 (c) Three voting members appointed by the governor with the
11 advice and consent of the senate for staggered terms, from
12 recommendations received from the largest Michigan organization
13 representing general farm interests in Michigan, as determined by
14 the director. Only a producer is eligible for appointment under
15 this subdivision. For the first board, the governor shall appoint 1
16 voting member appointed under this subdivision for a term of 1
17 year, 1 voting member for a term of 2 years, and 1 voting member
18 for a term of 3 years.

19 (d) One voting member appointed by the governor with the
20 advice and consent of the senate, from recommendations received
21 from the largest Michigan organization exclusively representing the
22 interests of corn producers in Michigan, as determined by the
23 director. Only a producer is eligible for appointment under this
24 subdivision.

25 (e) One voting member appointed by the governor with the
26 advice and consent of the senate, from recommendations received
27 from the largest Michigan organization exclusively representing the

1 interests of soybean producers in Michigan, as determined by the
2 director. Only a producer is eligible for appointment under this
3 subdivision.

4 (f) One voting member appointed by the governor with the
5 consent and advice of the senate, from recommendations received
6 from the largest Michigan organization exclusively representing dry
7 bean producers in Michigan, as determined by the director. Only a
8 producer is eligible for appointment under this subdivision.

9 (g) One voting member appointed by the governor with the
10 advice and consent of the senate, from recommendations received
11 from the largest Michigan organization representing the interests
12 of agricultural lenders in Michigan, as determined by the director.

13 **(H) ONE VOTING MEMBER APPOINTED BY THE GOVERNOR WITH THE**
14 **CONSENT AND ADVICE OF THE SENATE, FROM RECOMMENDATIONS RECEIVED**
15 **FROM THE LARGEST MICHIGAN ORGANIZATION EXCLUSIVELY REPRESENTING**
16 **WHEAT PRODUCERS IN MICHIGAN, AS DETERMINED BY THE DIRECTOR. ONLY A**
17 **PRODUCER IS ELIGIBLE FOR APPOINTMENT UNDER THIS SUBDIVISION. FOR**
18 **THE FIRST APPOINTMENT UNDER THIS SUBDIVISION, THE GOVERNOR SHALL**
19 **APPOINT THE VOTING MEMBER FOR A TERM OF 2 YEARS.**

20 (2) Except as provided in subsection (1)(b) and (c) for the
21 first board, **AND EXCEPT AS PROVIDED IN SUBSECTION (1)(H),** each
22 member of the board appointed by the governor shall serve for a 3-
23 year term and may be reappointed for 1 or more additional terms.
24 The governor may remove a member appointed by the governor from the
25 board for good cause.

26 (3) The governor shall fill a vacancy on the board for an
27 unexpired term for the remainder of the term and in the same manner

1 as an original appointment. A vacancy does not impair the right of
2 a quorum to exercise all the rights and perform all the duties of
3 the board.

4 (4) ~~Four~~**FIVE** voting members constitute a quorum. The
5 affirmative vote of ~~4~~**5** or more voting members is necessary for an
6 action of the board other than adjournment of a meeting of the
7 board. An adjournment of a meeting of the board requires a vote of
8 a majority of voting members present at the meeting and voting.

9 (5) The board shall hold an annual meeting and at least 1
10 additional meeting each calendar year. The secretary of the board
11 shall provide written notice of each meeting to the members of the
12 board at least 5 days before the meeting.

13 (6) A member of the board may waive any notice required by
14 this section, before or after the date and time stated in the
15 notice, in writing and delivered, mailed, or electronically
16 transmitted to the authority for inclusion in the minutes or filing
17 with the records of the authority.

18 (7) A board member's attendance at a meeting waives any
19 objection to any of the following:

20 (a) No notice or a defective notice of a meeting, unless the
21 member at the beginning of the meeting objects to holding the
22 meeting or transacting business at the meeting.

23 (b) Consideration of any particular matter at a meeting that
24 is not within the purpose or purposes described in the notice,
25 unless the member objects to considering the matter when it is
26 presented.

27 (8) The board shall do all of the following:

1 (a) Elect from among its members a vice-chairperson and
2 treasurer.

3 (b) Create forms, and establish policies and procedures to
4 implement this act.

5 (c) Establish the amount of the producer premium under section
6 11 -

7 ~~—(d) Collect~~ **AND COLLECT** and deposit all producer premiums
8 ~~authorized under this act~~ into the fund.

9 **(D) ESTABLISH THE AMOUNT OF THE ADMINISTRATIVE PREMIUM UNDER**
10 **SECTION 10; COLLECT AND DEPOSIT ALL ADMINISTRATIVE PREMIUMS INTO**
11 **THE FUND; AND ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE**
12 **DIRECTOR THAT PROVIDES FOR REIMBURSEMENT OF THE DIRECTOR FOR**
13 **PRODUCER SECURITY ACTIVITIES FROM THE PROCEEDS OF THE**
14 **ADMINISTRATIVE PREMIUMS.**

15 (e) Take any legal action it considers necessary to compel a
16 failed licensee to repay the fund for any payment made from the
17 fund to a claimant for a valid claim against that licensee.

18 (f) Take any legal action it considers necessary to compel a
19 claimant to participate in any legal proceeding in relation to the
20 claim or the failure of a licensee.

21 (g) Within 5 business days of receiving notice of failure of a
22 licensee, publish notice of the failure in a manner described in
23 the grain dealers act.

24 (h) Request the services of the department or arrange for
25 legal services through the department of attorney general if the
26 board considered it necessary in the execution of its duties.

27 (i) Procure insurance against any loss in connection with its

1 operations, in amounts and from insurers as determined by the
2 board.

3 (j) Borrow money from a bank, an insurance company, an
4 investment company, or any other person, and pay or include in the
5 loan any financing charges or interest, consultant, advisory, or
6 legal fees, and other expenses the board determines are appropriate
7 in connection with the loan. Any loan contract must provide for a
8 term of not more than 40 years, allow prepayment without penalty,
9 and plainly state that the loan is not a debt of this state but the
10 sole obligation of the authority, payable solely from the fund or
11 from any appropriation from this state made to the authority for
12 repayment of the loan.

13 (k) Employ personnel as required in the judgment of the board
14 and fix and pay compensation from money available to the authority
15 from the administrative expenses account described in section 9(2).

16 (l) Make, execute, and carry out any contract, agreement, or
17 other instrument or document with a governmental department or
18 other person it determines is necessary or convenient to accomplish
19 the purposes of this act.

20 (m) If requested by the director and approved by the board,
21 make payment from the fund to compensate a claimant for a valid
22 claim.

23 (9) The board may do any of the following:

24 (a) Establish policies and procedures in connection with the
25 performance of the functions and duties of the authority.

26 (b) Adopt a policy establishing a code of ethics for its
27 employees and board members, consistent with 1973 PA 196, MCL

1 15.341 to 15.348.

2 (c) Accept gifts, devises, bequests, grants, loans,
3 appropriations, revenue sharing, other financing and assistance,
4 and any other aid from any source and deposit them in the fund and
5 agree to and comply with any conditions attached to them.

6 ~~—— (d) Enter into a memorandum of understanding with the director~~
7 ~~that provides for reimbursement of the director for producer~~
8 ~~security activities from the fund.~~

9 (10) A voting member may receive per diem compensation and
10 mileage reimbursement for attending meetings of the board or while
11 engaged in the performance of his or her duties on behalf of the
12 authority, in amounts established by the board, and may receive
13 reimbursement for other expenses approved by the board. The amounts
14 established by the board shall not exceed the maximum commission of
15 agriculture rates for per diem compensation and mileage
16 reimbursement. A voting member shall not receive any other
17 compensation for serving on the board or for services performed for
18 the authority.

19 (11) The department shall inspect the books and records of a
20 licensee during normal business hours to verify whether the
21 licensee is complying with the provisions of this act.

22 **(12) A LICENSEE SHALL MAKE ITS BOOKS AND RECORDS AVAILABLE TO**
23 **THE DEPARTMENT FOR THE INSPECTIONS AND VERIFICATIONS DESCRIBED IN**
24 **SECTIONS 10(6) AND 11(5). FINANCIAL INFORMATION SUBMITTED TO THE**
25 **DEPARTMENT OR THE AUTHORITY BY A LICENSEE FOR PURPOSES OF THIS**
26 **SUBSECTION AND SECTIONS 10(6) AND 11(5) IS CONFIDENTIAL AND IS NOT**
27 **SUBJECT TO THE DISCLOSURE REQUIREMENTS OF THE FREEDOM OF**

1 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, EXCEPT THAT
2 DISCLOSURE OF FINANCIAL INFORMATION MAY BE MADE IN ANY OF THE
3 FOLLOWING CIRCUMSTANCES:

4 (A) WITH THE WRITTEN CONSENT OF THE LICENSEE.

5 (B) PURSUANT TO A COURT PROCEEDING.

6 (C) THE DISCLOSURE IS MADE TO THE DIRECTOR OR AN AGENT OR
7 EMPLOYEE OF THE DEPARTMENT.

8 (D) THE DISCLOSURE IS MADE TO AN AGENT OR EMPLOYEE OF A STATE
9 OR THE FEDERAL GOVERNMENT AUTHORIZED BY LAW TO SEE OR REVIEW THE
10 INFORMATION.

11 (E) THE INFORMATION IS DISCLOSED IN THE FORM OF AN INFORMATION
12 SUMMARY OR PROFILE, OR AS PART OF A STATISTICAL STUDY THAT INCLUDES
13 DATA ON MORE THAN 1 GRAIN DEALER, THAT DOES NOT IDENTIFY THE GRAIN
14 DEALER TO WHICH ANY SPECIFIC INFORMATION APPLIES.

15 Sec. 8. (1) The board shall conduct its business at public
16 meetings held in compliance with the open meetings act, 1976 PA
17 267, MCL 15.261 to 15.275, and shall give public notice of a time,
18 date, and place of any meeting in the manner required by that act.

19 (2) Subject to section ~~11(6)~~, **7(12)**, any information submitted
20 to the board by any person that is not related to the amount of a
21 claim is confidential and is not subject to the disclosure
22 requirements of the freedom of information act, 1976 PA 442, MCL
23 15.231 to 15.246, except that disclosure of that information may be
24 made in any of the following circumstances:

25 (a) With the written consent of the person that submitted the
26 information.

27 (b) Pursuant to a court proceeding.

1 (c) The disclosure is made to the director or an agent or
2 employee of the department.

3 (d) The disclosure is made to an agent or employee of a state
4 or the federal government authorized by law to see or review the
5 information.

6 (e) The information is disclosed in the form of an information
7 summary or profile, or as part of a statistical study that includes
8 data on more than 1 person, that does not identify the person to
9 whom any specific information applies.

10 (f) The information sought relates solely to the amount of 1
11 or more claims paid from the fund.

12 Sec. 9. (1) The farm produce insurance fund is established
13 under the direction and control of the board. The fund shall
14 consist of **ADMINISTRATIVE PREMIUMS**, producer premiums, money from
15 any other source, and interest and earnings from ~~any other source~~.
16 **FUND INVESTMENTS**. The board shall direct payments from the fund
17 only for the following purposes:

18 (a) Payment of valid claims under section 15.

19 (b) Payment of **ADMINISTRATIVE PREMIUMS AND** producer premium
20 refunds under section 13.

21 (c) Payment of administrative expenses under subsection (2).

22 (d) Payment of legal fees and legal expenses under subsection
23 (3).

24 (e) Reimbursement of the director for producer security
25 activities.

26 (2) The board shall allocate money from the fund to a separate
27 administrative expenses account to pay administrative expenses and

1 to reimburse the director for producer security expenses. This
 2 allocation shall not exceed ~~\$250,000.00~~ **\$500,000.000** in any fiscal
 3 year. Administrative expenses under this subsection include the
 4 actual cost of processing refunds of **ADMINISTRATIVE PREMIUMS AND**
 5 producer premiums, enforcement, record keeping, ordinary management
 6 and investment fees connected with the operation of the fund,
 7 verification cost under section 11(5), and any other expenses
 8 approved by the board. Administrative expenses do not include legal
 9 fees and legal expenses described in subsection (3).

10 (3) For legal services requested by the board, the board shall
 11 pay for any legal services and legal expenses required by the
 12 authority, board, or fund from money in the fund. Legal services
 13 and expenses described in this subsection are not administrative
 14 expenses and shall not be paid from the administrative expenses
 15 account.

16 (4) **ALL OF THE FOLLOWING APPLY TO THE INVESTMENT OF ANY MONEY**
 17 **IN THE FUND THAT THE BOARD DETERMINES IS NOT NEEDED TO MEET THE**
 18 **IMMEDIATE CASH NEEDS OF THE FUND:**

19 (A) The treasurer of the board ~~shall act as~~ **IS** the investment
 20 officer of the fund ~~and shall invest or direct a financial~~
 21 ~~institution to invest the money in the fund that is not currently~~
 22 ~~needed to meet the obligations of the fund. The treasurer of the~~
 23 ~~board~~ **AND** shall invest or direct the investment of the money **IN THE**
 24 **FUND** only in the manner permitted in section 1 of 1943 PA 20, MCL
 25 ~~129.91. Interest and earnings shall be credited to the fund.~~ **A**
 26 **MANNER THAT COMPLIES WITH THIS SUBSECTION.**

27 (B) **THE MONEY SHALL ONLY BE INVESTED THROUGH A BANK TRUST**

1 DEPARTMENT OR A PROFESSIONAL INVESTMENT ADVISOR REGISTERED WITH THE
2 SECURITIES AND EXCHANGE COMMISSION UNDER THE INVESTMENT ADVISORS
3 ACT OF 1940, 15 USC 80B-1 TO 80B-21, AS DETERMINED BY THE BOARD.

4 (C) THE MONEY MAY ONLY BE INVESTED IN ANY OF THE FOLLOWING, AS
5 DETERMINED BY THE BOARD:

6 (i) UNITED STATES GOVERNMENT BONDS, UNITED STATES TREASURY
7 NOTES, OR OBLIGATIONS ISSUED BY UNITED STATES GOVERNMENT AGENCIES
8 OR UNITED STATES GOVERNMENT-SPONSORED ENTERPRISES.

9 (ii) DEPOSIT ACCOUNTS IN OR CERTIFICATES OF DEPOSIT ISSUED BY A
10 FINANCIAL INSTITUTION IF ALL OF THE FOLLOWING ARE MET:

11 (A) DEPOSITS IN THE FINANCIAL INSTITUTION ARE INSURED BY AN
12 AGENCY OF THE UNITED STATES GOVERNMENT.

13 (B) THE PRINCIPAL OFFICE OF THE FINANCIAL INSTITUTION IS
14 LOCATED IN THE UNITED STATES.

15 (C) EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (D), THE AMOUNT
16 HELD IN ANY 1 ACCOUNT DOES NOT EXCEED THE FEDERALLY INSURED AMOUNT
17 FOR THAT FINANCIAL INSTITUTION'S ACCOUNTS.

18 (D) THE AMOUNT HELD IN ANY 1 ACCOUNT IN A STATE OR NATIONALLY
19 CHARTERED BANK DOES NOT EXCEED \$500,000.00.

20 (iii) CORPORATE BONDS AND MUNICIPAL BONDS, IF ALL OF THE
21 FOLLOWING ARE MET:

22 (A) THE TOTAL INVESTMENT IN CORPORATE AND MUNICIPAL BONDS, AND
23 IN COMMON AND PREFERRED STOCKS UNDER SUBPARAGRAPH (iv), DOES NOT
24 EXCEED 45% OF THE AMOUNT OF THE FUND.

25 (B) THE BONDS ARE RATED INVESTMENT GRADE OR BETTER BY AT LEAST
26 1 NATIONALLY RECOGNIZED RATING SERVICE.

27 (C) THE AMOUNT INVESTED IN BONDS OF ANY 1 CORPORATION OR

1 MUNICIPALITY DOES NOT EXCEED MORE THAN 5% OF THE AMOUNT OF THE
2 FUND.

3 (iv) COMMON OR PREFERRED STOCK, OR A MUTUAL FUND OR BANK-POOLED
4 FUND THAT INVESTS IN COMMON OR PREFERRED STOCKS, IF ALL OF THE
5 FOLLOWING ARE MET:

6 (A) THE TOTAL INVESTMENT UNDER THIS SUBPARAGRAPH DOES NOT
7 EXCEED 11.25% OF THE AMOUNT OF THE FUND.

8 (B) THE COMMON OR PREFERRED STOCK IN WHICH THE FUND INVESTS,
9 OR THE STOCK HELD BY THE MUTUAL FUND OR BANK-POOLED FUND IN WHICH
10 THE FUND INVESTS, IS STOCK IN A PUBLICLY OWNED COMPANY THAT TRADES
11 ON A UNITED STATES REGULATED EXCHANGE.

12 (D) THE MONEY SHALL NOT BE INVESTED IN A MUTUAL FUND, UNLESS
13 THE MUTUAL FUND IS 1 OF THE FOLLOWING:

14 (i) A MUTUAL FUND DESCRIBED IN SUBDIVISION (C) (iv) .

15 (ii) A MONEY MARKET MUTUAL FUND, IF ALL OF THE FOLLOWING ARE
16 MET:

17 (A) THE INVESTMENT IS MONEY THE BOARD DETERMINES IS NEEDED TO
18 MEET SHORT-TERM OBLIGATIONS OF THE FUND.

19 (B) THE MONEY IS INVESTED FOR NOT MORE THAN 180 DAYS.

20 (C) THE MONEY MARKET MUTUAL FUND IS SUBJECT TO RULE 2A-7 OF
21 THE SECURITIES AND EXCHANGE COMMISSION, 17 CFR 270.2A-7.

22 (D) THE MONEY MARKET MUTUAL FUND INVESTS ONLY IN OBLIGATIONS
23 THAT ARE RATED IN THE HIGHEST RATING CLASSIFICATION ESTABLISHED BY
24 AT LEAST 2 STANDARD RATING SERVICES, OR IN OBLIGATIONS ISSUED BY
25 GOVERNMENT AGENCIES, OBLIGATIONS ISSUED BY GOVERNMENT-SPONSORED
26 ENTERPRISES, OR GOVERNMENT BILLS, BONDS, OR NOTES.

27 (5) THE BOARD SHALL ENSURE THAT THE BANK TRUST DEPARTMENT OR

1 PROFESSIONAL INVESTMENT ADVISOR DESCRIBED IN SUBSECTION (4) (A)
2 COMPLETES A COMPLIANCE REVIEW OF THE INVESTMENT PORTFOLIO ON A
3 QUARTERLY BASIS AND PROVIDES A COPY OF THE INVESTMENT REVIEW TO THE
4 FUND AND DEPARTMENT WITHIN 30 DAYS AFTER THE END OF EACH QUARTER.

5 (6) THE BOARD SHALL ENSURE THAT THE AUDIT REQUIRED UNDER
6 SECTION 17 INCLUDES A CERTIFICATION FROM THE CERTIFIED PUBLIC
7 ACCOUNTANT CONCERNING WHETHER THE FUND COMPLIED WITH THE
8 REQUIREMENTS OF SUBSECTION (4) IN THE AUDIT PERIOD. IF AN AUDIT
9 DOES NOT INCLUDE THIS CERTIFICATION, THE DIRECTOR BY ORDER MAY
10 RESTRICT OR ELIMINATE THE BOARD'S AUTHORITY TO INVEST IN CORPORATE
11 OR MUNICIPAL BONDS OR COMMON OR PREFERRED STOCKS UNDER SUBSECTION
12 (4).

13 (7) ~~(5)~~—The fund shall operate on a fiscal year established by
14 the board.

15 (8) AS USED IN SUBSECTION (4), "FINANCIAL INSTITUTION" MEANS A
16 STATE OR NATIONALLY CHARTERED BANK OR A STATE OR FEDERALLY
17 CHARTERED SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT
18 UNION.

19 SEC. 10. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
20 EACH PRODUCER SHALL PAY TO THE AUTHORITY AN ADMINISTRATIVE PREMIUM
21 IN AN AMOUNT DETERMINED BY THE BOARD UNDER SUBSECTION (2). WHEN THE
22 FARM PRODUCE IS SOLD TO A LICENSEE, THE LICENSEE SHALL DEDUCT THE
23 ADMINISTRATIVE PREMIUM FROM THE PROCEEDS OF SALE AND PAY THE
24 PREMIUM TO THE AUTHORITY ON BEHALF OF THE PRODUCER AS PROVIDED IN
25 SUBSECTION (4).

26 (2) FOR ANY CALENDAR YEAR BEGINNING IN 2013, THE BOARD MAY
27 ESTABLISH AN ADMINISTRATIVE PREMIUM DESCRIBED IN SUBSECTION (1).

1 ALL OF THE FOLLOWING APPLY TO THE AMOUNT OF AN ADMINISTRATIVE
2 PREMIUM ESTABLISHED BY THE BOARD FOR A CALENDAR YEAR.

3 (A) THE AMOUNT OF A PRODUCER'S PREMIUM SHALL BE CALCULATED AS
4 A PERCENTAGE OF THE NET PROCEEDS FROM ALL FARM PRODUCE SOLD BY THE
5 PRODUCER TO A LICENSEE IN THIS STATE.

6 (B) THE AMOUNT OF THE PREMIUM SHALL REFLECT THE BOARD'S
7 DETERMINATION OF THE AMOUNT OF MONEY THAT IS NECESSARY TO REIMBURSE
8 THE DIRECTOR FOR PRODUCER SECURITY ACTIVITIES.

9 (C) THE BOARD SHALL CONSIDER PAST AND PROJECTED COSTS OVER A
10 2-YEAR PERIOD IN ESTABLISHING THE AMOUNT OF THE PREMIUM.

11 (3) AN ADMINISTRATIVE PREMIUM IMPOSED UNDER THIS SECTION IS IN
12 ADDITION TO ANY OTHER FEES OR ASSESSMENTS REQUIRED BY LAW.

13 (4) WHEN PURCHASING FARM PRODUCE FROM A PRODUCER, A LICENSEE
14 OR ITS AGENT OR REPRESENTATIVE SHALL DEDUCT THE ADMINISTRATIVE
15 PREMIUM DESCRIBED IN SUBSECTION (1) FROM THE PROCEEDS OF SALE AND
16 NOTIFY THE PRODUCER OF THE AMOUNT OF THE DEDUCTION IN WRITING. THE
17 LICENSEE SHALL FORWARD THE ADMINISTRATIVE PREMIUM TO THE AUTHORITY
18 FOR DEPOSIT INTO THE FUND ON BEHALF OF THE PRODUCER WITHIN 30 DAYS
19 OF THE CLOSE OF EACH CALENDAR QUARTER.

20 (5) IF THE BOARD ESTABLISHES, ADJUSTS, OR ELIMINATES AN
21 ADMINISTRATIVE PREMIUM UNDER SUBSECTION (2) FOR A CALENDAR YEAR,
22 THE BOARD SHALL NOTIFY THE DEPARTMENT IN WRITING OF THAT ACTION AT
23 LEAST 120 DAYS BEFORE JANUARY 1 OF THAT CALENDAR YEAR, AND THE
24 DEPARTMENT BY FIRST-CLASS MAIL SHALL NOTIFY EACH LICENSEE OF THE
25 REQUIREMENTS OF SUBSECTION (4) AT LEAST 90 DAYS BEFORE JANUARY 1 OF
26 THAT CALENDAR YEAR.

27 (6) A LICENSEE SHALL CLEARLY INDICATE IN ITS BOOKS AND RECORDS

1 THE INDIVIDUAL ADMINISTRATIVE PREMIUMS COLLECTED BY THE LICENSEE
2 UNDER SUBSECTION (4) AND RETAIN THOSE BOOKS AND RECORDS FOR AT
3 LEAST 3 YEARS. A LICENSEE SHALL MAKE THE PORTION OF THE BOOKS AND
4 RECORDS OF THE LICENSEE REFLECTING THE ADMINISTRATIVE PREMIUMS
5 COLLECTED AVAILABLE FOR INSPECTION BY THE DIRECTOR DURING REGULAR
6 BUSINESS HOURS. THE DEPARTMENT SHALL TAKE STEPS REASONABLY
7 NECESSARY TO VERIFY THE ACCURACY OF THE PORTION OF THE LICENSEE'S
8 BOOKS AND RECORDS THAT REFLECT THE ADMINISTRATIVE PREMIUMS
9 COLLECTED.

10 Sec. 11. (1) Except as provided in this section, beginning
11 January 1, 2005, each producer shall pay to the authority a
12 producer premium of not more than 0.2% of the net proceeds from all
13 farm produce sold by the producer to a licensee in this state. If
14 the farm produce is sold to a licensee, the licensee shall deduct
15 the producer premium from the proceeds of sale and pay the premium
16 to the authority on behalf of the producer as provided in
17 subsection (3).

18 (2) A producer premium imposed under this section is in
19 addition to any other fees or assessments required by law.

20 (3) Beginning January 1, 2005, when purchasing farm produce
21 from a producer, a licensee or its agent or representative shall
22 deduct the producer premium described in subsection (1) from the
23 proceeds of sale and notify the producer of the amount of the
24 deduction in writing. The licensee shall forward the producer
25 premium to the authority for deposit into the fund on behalf of the
26 producer within 30 days of the close of each quarter of the fiscal
27 year.

1 (4) Until the authority has received \$5,000,000.00 in producer
2 premiums under this act from licensees, a licensee that forwards
3 producer premiums it has collected to the authority within the time
4 period described in ~~this~~ subsection (3) may retain 0.1% of the
5 producer premiums collected.

6 ~~—— (4) Before January 1, 2005, the department by first class mail~~
7 ~~shall notify each licensee of the requirements of subsection (3).~~

8 (5) A licensee shall clearly indicate in its books and records
9 the individual producer premiums collected by the licensee under
10 subsection (3) and retain those books and records for at least 3
11 years. A licensee shall make the portion of the books and records
12 of the licensee reflecting the **PRODUCER** premiums collected
13 available for inspection by the director during regular business
14 hours. The department shall take steps reasonably necessary to
15 verify the accuracy of the portion of the licensee's books and
16 records that reflect the **PRODUCER** premiums collected. The board
17 shall reimburse the department for the costs related to the
18 verification from the fund as an administrative expense under
19 section 9(2).

20 ~~—— (6) The director shall require that a licensee make its books~~
21 ~~and records available to the department for the inspection or~~
22 ~~verification described in subsection (5). Financial information~~
23 ~~submitted to the department or the authority by a licensee for~~
24 ~~purposes of this subsection and subsection (5) is confidential and~~
25 ~~is not subject to the disclosure requirements of the freedom of~~
26 ~~information act, 1976 PA 442, MCL 15.231 to 15.246, except that~~
27 ~~disclosure of financial information may be made in any of the~~

1 ~~following circumstances.~~

2 ~~—— (a) With the written consent of the licensee.~~

3 ~~—— (b) Pursuant to a court proceeding.~~

4 ~~—— (c) The disclosure is made to the director or an agent or~~
5 ~~employee of the department.~~

6 ~~—— (d) The disclosure is made to an agent or employee of a state~~
7 ~~or the federal government authorized by law to see or review the~~
8 ~~information.~~

9 ~~—— (e) The information is disclosed in the form of an information~~
10 ~~summary or profile, or as part of a statistical study that includes~~
11 ~~data on more than 1 grain dealer, that does not identify the grain~~
12 ~~dealer to whom any specific information applies.~~

13 (6) ~~(7)~~ At each annual meeting, the board shall certify the
14 amount of money in the fund at the end of the preceding fiscal
15 year. A producer shall continue to pay and a licensee shall
16 continue to collect producer premiums until the board certifies
17 that the fund, **EXCLUDING THE PROCEEDS OF ADMINISTRATIVE PREMIUMS**
18 **ASSESSED UNDER SECTION 10**, contained more than \$5,000,000.00 at the
19 end of the preceding fiscal year. In any fiscal year where the
20 board has certified that the fund, **EXCLUDING THE PROCEEDS OF**
21 **ADMINISTRATIVE PREMIUMS ASSESSED UNDER SECTION 10**, contained more
22 than \$5,000,000.00 at the end of the preceding fiscal year, a
23 producer is not required to pay and a licensee is not required to
24 collect producer premiums until 1 of the following occurs:

25 (a) The board certifies that the fund contained less than
26 \$3,000,000.00 at the end of the preceding fiscal year. In any year
27 where the board has certified that the fund contained less than

1 \$3,000,000.00 at the end of the preceding fiscal year, the
 2 obligation of each producer to pay and each licensee to collect
 3 producer premiums is reinstated.

4 (b) The obligation of each producer to pay and each licensee
 5 to collect producer premiums is reinstated in any fiscal year in
 6 which all of the following are met:

7 (i) The board certifies that the fund contained at least
 8 \$3,000,000.00 at the end of the preceding fiscal year.

9 (ii) The board is aware of a failure of a licensee.

10 (iii) As determined by the board, the amount required to satisfy
 11 valid claims equals or exceeds the amount of money in the fund.

12 Sec. 13. (1) Subject to subsection (7), a producer that has
 13 paid, either directly or collected by a licensee, a—AN

14 **ADMINISTRATIVE PREMIUM OR** producer premium may receive a refund of
 15 ~~the~~ **THAT ADMINISTRATIVE PREMIUM OR** producer premium from the fund
 16 by submitting a written demand for refund to the board, delivered
 17 personally or by first-class mail within 12 months after the
 18 producer paid the **ADMINISTRATIVE PREMIUM OR** producer premium, or
 19 within a longer period granted by the board if it determines that
 20 good cause for an extension exists.

21 (2) A producer shall submit a demand for refund **OF AN**
 22 **ADMINISTRATIVE PREMIUM OR PRODUCER PREMIUM** under subsection (1) on
 23 a demand for refund form developed by the board. The board shall
 24 make the form available to a licensee, producer, or member of the
 25 public upon request.

26 (3) If a producer is entitled to a refund of a—AN
 27 **ADMINISTRATIVE PREMIUM OR** producer premium under this section, the

1 board shall pay the refund within 60 days of its receipt of the
2 demand for refund.

3 (4) If **ADMINISTRATIVE PREMIUMS OR** producer premiums were
4 assessed in the immediately preceding calendar year, the board
5 shall by January 31 send a notice to each producer who requested a
6 refund of ~~a~~**AN ADMINISTRATIVE PREMIUM OR** producer premium in any
7 previous calendar year. The notice must inform the producer of the
8 deadline for and method of submitting a demand for refund to the
9 board under subsections (1) and (2) and the method for reentering
10 the program under subsection (5).

11 (5) A producer that receives a refund of ~~a~~**AN ADMINISTRATIVE**
12 **PREMIUM OR** producer premium under subsection (1) is not entitled to
13 participation in the program or to receive any payment under this
14 act unless it reenters the farm produce insurance program by
15 meeting all of the following conditions:

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

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

23 (c) The producer pays into the fund all previous
24 **ADMINISTRATIVE PREMIUMS AND** producer premiums refunded to the
25 producer, and interest on the refunds as determined by the board.

26 (6) A producer that reenters the farm produce insurance
27 program under subsection (5) is eligible for reimbursement of

1 claims under the program for any failure that occurs at least 90
2 days after reentry.

3 (7) A producer is not eligible for a refund of a ~~an~~
4 **ADMINISTRATIVE PREMIUM OR** producer premium under this section if
5 the producer has received reimbursement from the fund for a valid
6 claim within the preceding 36 months.

7 Sec. 15. (1) Subject to subsection (2), a producer that
8 satisfies any of the following conditions is eligible to make a
9 claim for reimbursement from the fund under this section:

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

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

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

25 (2) A producer is not eligible for reimbursement from the fund
26 for a claim submitted under this section if any of the following
27 apply:

1 (a) The producer previously requested a refund from the fund
2 under section 13 and the producer did not previously reenter the
3 program under section 13(5).

4 (b) The claim relates to delivery of farm produce to a
5 licensee that is a cooperative association, under the terms of an
6 agreement between the producer and the licensee that allocated
7 delivery rights and obligations proportionate to a capital
8 investment of the producer in the licensee.

9 (c) At the time the claim is submitted, excluding patronage
10 interests, the producer is the owner of at least 5% of the voting
11 shares, other than publicly traded shares, membership interests,
12 partnership interests, or other ownership interests of the licensee
13 whose failure is the basis of the claim. As used in this
14 subdivision, "patronage interests" means shares or membership,
15 partnership, or other ownership interests in a licensee that is a
16 cooperative association that are allocated and distributed to the
17 producer in proportion to that producer's patronage of the
18 cooperative association.

19 (d) At the time the claim is submitted, the producer is the
20 owner of at least 5% of the voting shares, other than publicly
21 traded shares, membership interests, partnership interests, or
22 other ownership interests of the parent corporation of the licensee
23 whose failure is the basis of the claim.

24 (e) Title to the farm produce that is the subject of the claim
25 was transferred by the producer more than 2 years before the date
26 the claim is submitted.

27 (f) If notice of the failure of the licensee was published in

1 a newspaper of general circulation in each county in which a
2 facility of the licensee was located, the claim is submitted more
3 than 1 year after that publication.

4 (3) If the department finds a claim made under subsection (1)
5 is valid and the board approves of the valid claim, the board shall
6 within 90 days of the board's approval pay the claimant the amount
7 described in subsection (4) or (5) from the fund as compensation
8 for the claim. The 90-day time period for payment may be extended
9 if the board and claimant agree in a writing that describes the
10 payment terms and schedule.

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

20 (5) A claimant that incurs a financial loss due to the failure
21 of a licensee is entitled to payment under subsection (3) in an
22 amount equal to 90% of the financial loss. For farm produce that is
23 sold in a transaction subject to the grain dealers act, the
24 department shall determine the amount of the financial loss based
25 on the value of the farm produce less any outstanding charges
26 against the farm produce. If the farm produce has not been priced,
27 the department shall establish the amount of the financial loss

1 using the local market on the date of failure less any usual and
2 customary charges associated with the sale of farm produce.

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

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

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

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

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

24 (d) The claimant did not take reasonable actions to mitigate
25 farm produce losses.

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

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

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

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

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

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

23 (a) Pursue any subrogation rights obtained from claimants
24 under subsection (6).

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

1 Sec. 21. (1) In addition to any other penalty or remedy
2 provided by law, a person that knowingly or intentionally commits
3 any of the following is guilty of a misdemeanor punishable by a
4 fine of not more than \$5,000.00 for each offense:

5 (a) Refusing or failing to collect **ANY ADMINISTRATIVE PREMIUMS**
6 **OR** producer premiums as required under this act.

7 (b) Refusing or failing to pay to the authority **ANY**
8 **ADMINISTRATIVE PREMIUMS OR** producer premiums collected under this
9 act.

10 (c) Making a false statement, representation, or
11 certification, or knowingly failing to make a required statement,
12 representation, or certification, in a record, report, or other
13 document the person files with the director, department, board, or
14 authority, or that the person is required to file with the
15 director, department, board, or authority, under this act.

16 (d) Resisting, preventing, impeding, or interfering with the
17 director, agents or employees of the department, the board, or
18 agents or employees of the authority or board in the performance of
19 their duties under this act.

20 (2) In addition to the criminal penalty described in
21 subsection (1), the court in an enforcement action for a violation
22 described in subsection (1)(a) or (b) shall order the grain dealer
23 to pay to the fund any **ADMINISTRATIVE PREMIUMS OR** producer premiums
24 collected by the grain dealer that it owes to the fund and may
25 order the grain dealer to pay interest on the amount the grain
26 dealer owes to the fund.

27 (3) **IF THE BOARD PREVAILS IN AN ACTION AGAINST A LICENSEE TO**

1 RECOVER ADMINISTRATIVE PREMIUMS OR PRODUCER PREMIUMS COLLECTED BY
2 OR ON BEHALF OF THE LICENSEE AND NOT FORWARDED TO THE FUND IN
3 VIOLATION OF SECTION 10(4) OR 11(3), THE COURT MAY AWARD TO THE
4 BOARD ALL COSTS AND EXPENSES IN BRINGING THE ACTION, INCLUDING, BUT
5 NOT LIMITED TO, REASONABLE ATTORNEY FEES, COURT COSTS, AND AUDIT
6 EXPENSES.