

GRAIN DEALERS

Phone: (517) 373-8080
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Senate Bill 899 (proposed substitute H-1)

Sponsor: Sen. Jim Stamas

House Committee: Commerce

Senate Committee: Agriculture

Complete to 5-31-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 899 mainly revises the way in which assets are handled after a grain dealer fails. It would also amend criteria relating to the approval or transfer of a grain dealer license by the Department of Agriculture and Rural Development (MDARD). The bill would amend Sections 3 and 9 of the Grain Dealers Act; and repeal Section 26 while replacing it with a new Section 26a. The bill would take effect 90 days after being enacted into law.

Allowable net assets

Presently, as part of the application process for the renewal or transfer of a grain dealer license, a grain dealer, one of the following must be true of the dealer:

- Has allowable net assets of more than \$1million.
- Has allowable net assets of \$50,000 or more and handled 500,000 or fewer bushels of farm produce in the grain dealer's most recent fiscal year.
- Has allowable net assets of \$50,000 or more, and the allowable net assets equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the grain dealer's most recent completed fiscal year.

Senate Bill 899 would change these requirements to read:

- Has allowable net assets of \$100,000 or more and handled one million or fewer bushels of farm produce in the grain dealer's most recent fiscal year.
- Has allowable net assets of \$100,000 or more, and the allowable net assets equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the grain dealer's most recent completed fiscal year.

The \$1 million allowable net assets provision would be removed.

Statement from CPA

The bill also would add a requirement that a statement from a certified public accountant accompany the currently required financial statement for the grain dealer's most recent fiscal year. This statement must acknowledge that MDARD is relying on the financial statement in determining whether the grain dealer meets the allowable net asset requirements.

Failure of grain dealer/Priority of liens

The new Section 26a states that in the event of the failure of a grain dealer, MDARD would liquidate the farm produce assets of the grain dealer to satisfy valid claims of claimants by taking possession of all farm produce in the grain dealer facility, distributing or selling the farm produce, and distributing the proceeds in order of priority.

If a shortage exists, MDARD would distribute the commodities or the proceeds from the sale of the farm produce on a prorated basis to the depositors. The director could reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.

The new Section 26a would establish which entities have a lien on all farm produce assets of a grain dealer:

1. A lender or other claimant that possesses a warehouse receipt that covers farm produce owned or stored by the grain dealer.
2. A claimant that possesses a written acknowledgement or other written evidence of ownership of farm produce, other than a warehouse receipt, that establishes that the grain dealer has a storage obligation for the farm produce.
3. A claimant that surrendered a warehouse receipt as part of a farm produce sales transaction, if the claimant was not paid in full for the farm produce and the grain dealer failed within 21 days after the surrender of the warehouse receipt.
4. A claimant that possesses any other written evidence of the sale of farm produce to the grain dealer for which the claimant was not paid in full.

All of the following would apply to such a lien:

- The lien secures all claims described in the following paragraph and attaches to the farm produce assets of the grain dealer.
- The lien takes effect at the time the farm produce is delivered to the grain dealer for sale or storage under a bailment agreement or at the time money is advanced by the lender.
- The lien terminates at the time the liability of the grain dealer to the claimant is discharged. However, the priority of each lien among the respective claimants does not relate to the date the claim arises but is subject to the priorities described in the following paragraph.
- In the event of a failure of a grain dealer, the lien claims of all claimants of that grain dealer are considered assigned by operation of Section 26a to the department, and in the event of a failure and subsequent liquidation, the lien attaches to assets or proceeds of assets that are either received or liquidated by MDARD.

Except as otherwise provided, in the event of a failure of a grain dealer, the director of MDARD would enforce the claims of each lienholder under Section 26a against the farm produce assets of the grain dealer and allocate the proceeds as follows:

- The director would have to give first priority to allocating the proceeds equally to claimants 1-3, as numbered above.
- If any proceeds remain after satisfying those claims, the director would give second priority to allocating the remaining proceeds first to claimants that possess secured

price later agreements, and then to all remaining claimants that possess price later agreements.

- If any proceeds remain after satisfying second priority claims, third priority would go to allocating the remaining proceeds to claimants that possess acknowledgment forms, similar farm produce delivery contracts, or other written evidence of the sale of farm produce and that completed delivery and pricing of the farm produce in the 30-day period preceding the date of the failure of the grain dealer.
- If proceeds remain after third priority claims have been satisfied, fourth priority to allocating the remaining proceeds on a pro rata basis to all other claimants that possess written evidence of the sale of farm produce to the grain dealer.
- After satisfying all previous claims, if any proceeds remain they would be distributed to the grain dealer.

In the event that an adversary proceeding is commenced to recover farm produce assets on which a lien described in this section is attached and the department declines to enter the proceeding, the director, upon receiving an application from a claimant that holds a lien under this section, shall assign to the claimant the applicable lien to permit the claimant to pursue the claimant's lien in the adversary proceeding, to the extent that assignment will not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets of all claimants.

BACKGROUND:

Presently, when a grain dealer fails, Section 26 (the section which would be repealed by the bill) states that the director of MDARD shall take possession of, liquidate, and distribute the assets and proceeds of the assets to satisfy claims in the following order:

- 1) All of the following on a pro rata basis, if any:
 - Claimants, including lenders, who possess warehouse receipts for farm produce stored by the grain dealer.
 - Claimants who possess acknowledgment forms or other written evidence of ownership other than warehouse receipts that disclose a storage obligation of the grain dealer.
 - Claimants who surrendered warehouse receipts to the grain dealer as part of a farm produce transaction but were not fully paid for the farm produce within 21 days after the surrender.
- 2) If assets or proceeds of assets remain after satisfying all claims described above, the remaining assets or proceeds of assets shall be distributed pro rata to claimants who possess price later agreements.
- 3) If assets or proceeds of assets remain after satisfying all claims made under the previous two claimant categories, the remaining assets or proceeds of assets shall be distributed pro rata to claimants who possess acknowledgment forms, similar forms of farm produce delivery contracts, or other written evidence of the sale of farm produce and who completed delivery and pricing of the farm produce within 30 days prior to the failure of the grain dealer.

- 4) If assets or proceeds of assets remain after satisfying all previous claims, the remaining assets or proceeds of assets shall be distributed pro rata to all other claimants who possess written evidence of the sale of farm produce to the grain dealer.
- 5) Finally, if assets or proceeds of assets remain after satisfying all claims described above, the remaining assets or proceeds of assets shall be distributed to the grain dealer.

The director has the ability to reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Josh Roesner
Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.