



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 899 (as introduced 4-19-16)  
Sponsor: Senator Jim Stamas  
Committee: Commerce

Date Completed: 5-3-16

### **CONTENT**

**The bill would amend the Grain Dealers Act to do the following:**

- **Eliminate a requirement that a grain dealer have allowable net assets of more than \$1.0 million (unless the grain dealer meets other net asset criteria) in order to be licensed.**
- **Specify that certain claimants would have a lien on all of the farm produce assets of a grain dealer.**
- **Specify the priority of lienholders receiving proceeds from the sale of a failed grain dealer's farm produce assets.**
- **Require the Department of Agriculture and Rural Development to liquidate a failed grain dealer's farm produce assets to satisfy valid claims.**
- **Allow the Director of the Department to reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.**

**The bill also would repeal Section 26 of the Act, which governs the distribution of the assets of a failed grain dealer.**

The bill would take effect 90 days after its enactment.

#### **Allowable Net Asset Requirements; Licensure**

The Act prohibits a person from acting or offering to act as a grain dealer without a license from the Department. The Department may refuse to issue or renew such a license unless the grain dealer meets at least one of the following at the time the grain dealer submits the application:

- Has allowable net assets of more than \$1.0 million.
- 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 that equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the dealer's most completed fiscal year.

Under the bill, having allowable net assets of more than \$1.0 million would no longer be a criterion for licensure.

A grain dealer must include with an application for a license or renewal a financial statement for its most recent completed fiscal year. The financial statement must be a reviewed or audited statement, and must include at least the following: a) an accountant's report, a

balance sheet, an income statement, and notes and disclosures; and b) a statement of the grain dealer's allowable net assets. The bill would require a financial statement to include a statement from the certified public accountant that he or she acknowledged that the Department was relying on the financial statement in determining whether the grain dealer met the Act's allowable net asset requirement.

#### Farm Produce Assets Lien

Under the bill, each of the following would have a lien on all of the farm produce assets of a grain dealer:

- A lender or other claimant that possessed a warehouse receipt that covered farm produce owned or stored by the grain dealer.
- A claimant that possessed a written acknowledgment or other written evidence of ownership of farm produce, other than a warehouse receipt, that established that the grain dealer had a storage obligation for the farm produce.
- A claimant that surrendered a warehouse receipt as part of a farm produce sales transaction, if the claimant were not paid in full for the farm produce and the grain dealer failed within 21 days after the surrender of the warehouse receipt.
- A claimant that possessed 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 a lien described above: a) the lien would secure each lienholder's claims against, and would attach to, the grain dealer's farm produce assets; b) the lien would take effect at the time the farm produce was delivered to the grain dealer for sale or storage under a bailment agreement or at the time money was advanced by the lender; c) the lien would terminate at the time the grain dealer's liability to the claimant was discharged; however, the priority of each lien among the respective claimants would not relate to the date the claim arose but would be subject to the priorities described below; and d) in the event a grain dealer failed, the lien claims of all claimants of that grain dealer would be assigned to the Department, and in the event of a failure and subsequent liquidation, the lien would attach to assets or proceeds of assets that were received or liquidated.

#### Liquidation of Failed Grain Dealer's Assets; Lienholder Priority

The bill would repeal Section 26 of the Act. Section 26 allows the Director to take possession of, liquidate, and distribute the assets and proceeds of a failed grain dealer's assets to satisfy claims. Section 26 also specifies the distribution of assets from the liquidation.

Under the bill, except as otherwise provided, in the event a grain dealer failed, the Director would have to enforce each lienholder's claims against the grain dealer's farm produce assets and allocate the proceeds as described below.

The Director would have to give first priority to allocating the proceeds equally to claimants that possessed a warehouse receipt or written acknowledgement of ownership of farm produce, or that surrendered a warehouse receipt as part of a farm produce sales transaction. If any proceeds remained after satisfying those claims, the Director would have to give second priority to allocating the remaining proceeds first to claimants that possessed secured price later agreements and then to all remaining claimants that possessed price later agreements.

If any proceeds remained after satisfying the claims described above, the Director would have to give third priority to allocating the remaining proceeds to claimants that possessed 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 the grain dealer failed. If any proceeds remained, the Director would have to give fourth priority to allocating the remaining proceeds on a pro rata

basis to all other claimants that possessed written evidence of the sale of farm produce to the grain dealer.

If all of the above claims were satisfied, any remaining proceeds would have to be distributed to the grain dealer.

If an adversary proceeding were commenced to recover farm produce assets on which a lien was attached and the Department declined to enter the proceeding, the Director, if he or she received an application from a claimant that held a lien, would have to assign to the claimant the applicable lien to permit it to pursue the lien in the proceeding. The lien would have to be assigned to the extent that assignment would not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets of all claimants.

In the event of the failure of a grain dealer, the Department would have to liquidate the grain dealer's farm produce assets to satisfy valid claims by taking possession of all farm produce in the dealer's facility, distributing or selling them, and distributing the proceeds as described above. If a shortage existed, the Department would have to distribute the commodities or the proceeds on a prorated basis to the depositors. (Under the Act, "depositor" means: a) a person who delivers farm produce to a licensed grain dealer for storage, processing, shipment, or sale and has title to the farm produce at the time of delivery; or b) a person who owns or is legal holder of an acknowledgment form or warehouse receipt issued by a licensed grain dealer for farm produce.)

The Director could reduce the amount of a claim to reflect the liabilities owed to the grain dealer by the claimant.

MCL 285.63 & 285.69

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

S1516\sb899sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.