

# SENATE BILL No. 899

April 19, 2016, Introduced by Senators STAMAS, HUNE, BRANDENBURG, HORN, HANSEN and SCHMIDT and referred to the Committee on Commerce.

A bill to amend 1939 PA 141, entitled  
"Grain dealers act,"  
by amending sections 3 and 9 (MCL 285.63 and 285.69), as amended by  
2002 PA 80, and by adding section 26a; and to repeal acts and parts  
of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3. (1) A person shall not act or offer to act as a grain  
2 dealer in this state without a license from the department issued  
3 under this act.

4       (2) A grain dealer shall not process or store farm produce,  
5 issue a warehouse receipt, charge or collect a fee for storage of  
6 farm produce, issue a price later agreement, or issue an  
7 acknowledgment of receipt for delivery of farm produce except in  
8 compliance with this act.

9       (3) Subject to subsection (4), the department may refuse to

1 issue or renew a license to a grain dealer unless the grain dealer  
2 meets at least 1 of the following at the time the grain dealer  
3 submits the application:

4 ~~—— (a) Has allowable net assets of more than \$1,000,000.00.~~

5 (A) ~~(b)~~ Has allowable net assets of \$50,000.00 or more and  
6 handled 500,000 or fewer bushels of farm produce in the grain  
7 dealer's most recent fiscal year.

8 (B) ~~(c)~~ Has allowable net assets of \$50,000.00 or more, and  
9 the allowable net assets equal or exceed the product of 10 cents  
10 multiplied by the number of bushels of farm produce handled by the  
11 grain dealer in the grain dealer's most recent completed fiscal  
12 year.

13 (4) If a grain dealer fails to meet any of the allowable net  
14 asset requirements under subsection (3), the department may issue  
15 or renew the license if the grain dealer provides the department  
16 with a negotiable bond issued by a surety authorized to conduct  
17 business in this state, or proof of establishment of a restricted  
18 account in a financial institution that conducts business in this  
19 state, acceptable to the department and of which the department is  
20 the sole beneficiary, that is in an amount equal to the amount by  
21 which the grain dealer's allowable net assets failed to meet the  
22 allowable net asset requirement applicable under subsection (3).

23 (5) A person ~~who~~ **THAT** acts or offers to act as a grain dealer  
24 without a license is guilty of a misdemeanor. Each day that the  
25 person acts or offers to act as a grain dealer without a license is  
26 a separate misdemeanor.

27 (6) If the director has probable cause to believe that a

1 person is acting or offering to act as a grain dealer without a  
2 license, the director may review the books and records relating to  
3 the operations of the person.

4 (7) ~~Upon~~ **ON THE** application of the department, a court in this  
5 state shall issue a temporary or permanent injunction ~~enjoining~~  
6 **THAT ENJOINS** a person from acting as a grain dealer without a  
7 license, issuing a warehouse receipt or price later agreement  
8 without a license, or interfering with an employee of the  
9 department or a receiver appointed under this act that is  
10 performing his or her duties under this act.

11 Sec. 9. (1) A grain dealer shall include with an application  
12 for a license or renewal a financial statement for the grain  
13 dealer's most recent completed fiscal year. The financial statement  
14 shall be a reviewed or audited financial statement, prepared by a  
15 certified public accountant in accordance with generally accepted  
16 accounting principles. The end of the grain dealer's most recent  
17 completed fiscal year shall be within 6 months of the expiration  
18 date of the grain dealer's current license. The financial statement  
19 shall include at least all of the following:

20 (a) An accountant's report, a balance sheet, an income  
21 statement, and notes and disclosures.

22 (b) A statement of the grain dealer's allowable net assets for  
23 purposes of section 3.

24 **(C) A STATEMENT FROM THE CERTIFIED PUBLIC ACCOUNTANT THAT HE**  
25 **OR SHE ACKNOWLEDGES THAT THE DEPARTMENT IS RELYING ON THE FINANCIAL**  
26 **STATEMENT IN DETERMINING WHETHER THE GRAIN DEALER MEETS THE**  
27 **ALLOWABLE NET ASSET REQUIREMENT UNDER SECTION 3(3).**

1           (2) If a financial statement described in subsection (1)  
2 discloses that the grain dealer during the preceding fiscal year  
3 had a current asset to current liability ratio of less than 1 to 1,  
4 the licensee shall include with the application a plan and  
5 timetable to increase the current asset to current liability ratio  
6 to 1 to 1 or more.

7           (3) If a financial statement described in subsection (1) is a  
8 financial statement of the licensee's parent corporation or a  
9 consolidated financial statement of the licensee and its parent  
10 corporation, the application shall include a declaration of  
11 liability signed by an authorized representative of the parent  
12 corporation, by which the parent corporation assumes all financial  
13 obligations incurred by the licensee during the term of the  
14 license.

15           **SEC. 26A. (1) EACH OF THE FOLLOWING HAS A LIEN ON ALL OF THE**  
16 **FARM PRODUCE ASSETS OF A GRAIN DEALER:**

17           **(A) A LENDER OR OTHER CLAIMANT THAT POSSESSES A WAREHOUSE**  
18 **RECEIPT THAT COVERS FARM PRODUCE OWNED OR STORED BY THE GRAIN**  
19 **DEALER.**

20           **(B) A CLAIMANT THAT POSSESSES A WRITTEN ACKNOWLEDGEMENT OR**  
21 **OTHER WRITTEN EVIDENCE OF OWNERSHIP OF FARM PRODUCE, OTHER THAN A**  
22 **WAREHOUSE RECEIPT, THAT ESTABLISHES THAT THE GRAIN DEALER HAS A**  
23 **STORAGE OBLIGATION FOR THE FARM PRODUCE.**

24           **(C) A CLAIMANT THAT SURRENDERED A WAREHOUSE RECEIPT AS PART OF**  
25 **A FARM PRODUCE SALES TRANSACTION, IF THE CLAIMANT WAS NOT PAID IN**  
26 **FULL FOR THE FARM PRODUCE AND THE GRAIN DEALER FAILED WITHIN 21**  
27 **DAYS AFTER THE SURRENDER OF THE WAREHOUSE RECEIPT.**

1 (D) A CLAIMANT THAT POSSESSES ANY OTHER WRITTEN EVIDENCE OF  
2 THE SALE OF FARM PRODUCE TO THE GRAIN DEALER FOR WHICH THE CLAIMANT  
3 WAS NOT PAID IN FULL.

4 (2) ALL OF THE FOLLOWING APPLY TO A LIEN THAT EXISTS UNDER  
5 SUBSECTION (1):

6 (A) THE LIEN SECURES ALL CLAIMS DESCRIBED IN SUBSECTION (3)  
7 AND ATTACHES TO THE FARM PRODUCE ASSETS OF THE GRAIN DEALER.

8 (B) THE LIEN TAKES EFFECT AT THE TIME THE FARM PRODUCE IS  
9 DELIVERED TO THE GRAIN DEALER FOR SALE OR STORAGE UNDER A BAILMENT  
10 AGREEMENT OR AT THE TIME MONEY IS ADVANCED BY THE LENDER.

11 (C) THE LIEN TERMINATES AT THE TIME THE LIABILITY OF THE GRAIN  
12 DEALER TO THE CLAIMANT IS DISCHARGED. HOWEVER, THE PRIORITY OF EACH  
13 LIEN AMONG THE RESPECTIVE CLAIMANTS DOES NOT RELATE TO THE DATE THE  
14 CLAIM ARISES BUT IS SUBJECT TO THE PRIORITIES DESCRIBED IN  
15 SUBSECTION (3).

16 (D) IN THE EVENT OF A FAILURE OF A GRAIN DEALER, THE LIEN  
17 CLAIMS OF ALL CLAIMANTS OF THAT GRAIN DEALER ARE CONSIDERED  
18 ASSIGNED BY OPERATION OF THIS SECTION TO THE DEPARTMENT, AND IN THE  
19 EVENT OF A FAILURE AND SUBSEQUENT LIQUIDATION, THE LIEN ATTACHES TO  
20 ASSETS OR PROCEEDS OF ASSETS THAT ARE EITHER RECEIVED OR LIQUIDATED  
21 BY THE DEPARTMENT.

22 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), AND SUBJECT TO  
23 SUBSECTION (6), IN THE EVENT OF A FAILURE OF A GRAIN DEALER, THE  
24 DIRECTOR SHALL ENFORCE THE CLAIMS OF EACH LIENHOLDER UNDER THIS  
25 SECTION AGAINST THE FARM PRODUCE ASSETS OF THE GRAIN DEALER AND  
26 ALLOCATE THE PROCEEDS AS FOLLOWS:

27 (A) THE DIRECTOR SHALL GIVE FIRST PRIORITY TO ALLOCATING THE

1 PROCEEDS EQUALLY TO CLAIMANTS DESCRIBED IN SUBSECTION (1) (A), (B),  
2 AND (C).

3 (B) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS  
4 DESCRIBED IN SUBDIVISION (A), THE DIRECTOR SHALL GIVE SECOND  
5 PRIORITY TO ALLOCATING THE REMAINING PROCEEDS FIRST TO CLAIMANTS  
6 THAT POSSESS SECURED PRICE LATER AGREEMENTS AND THEN TO ALL  
7 REMAINING CLAIMANTS THAT POSSESS PRICE LATER AGREEMENTS.

8 (C) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS  
9 DESCRIBED IN SUBDIVISIONS (A) AND (B), THE DIRECTOR SHALL GIVE  
10 THIRD PRIORITY TO ALLOCATING THE REMAINING PROCEEDS TO CLAIMANTS  
11 THAT POSSESS ACKNOWLEDGMENT FORMS, SIMILAR FARM PRODUCE DELIVERY  
12 CONTRACTS, OR OTHER WRITTEN EVIDENCE OF THE SALE OF FARM PRODUCE  
13 AND THAT COMPLETED DELIVERY AND PRICING OF THE FARM PRODUCE IN THE  
14 30-DAY PERIOD PRECEDING THE DATE OF THE FAILURE OF THE GRAIN  
15 DEALER.

16 (D) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS  
17 DESCRIBED IN SUBDIVISIONS (A) TO (C), THE DIRECTOR SHALL GIVE  
18 FOURTH PRIORITY TO ALLOCATING THE REMAINING PROCEEDS ON A PRO RATA  
19 BASIS TO ALL OTHER CLAIMANTS THAT POSSESS WRITTEN EVIDENCE OF THE  
20 SALE OF FARM PRODUCE TO THE GRAIN DEALER.

21 (E) IF ANY PROCEEDS REMAIN AFTER SATISFYING THE CLAIMS  
22 DESCRIBED IN SUBDIVISIONS (A) TO (D), THE DIRECTOR SHALL DISTRIBUTE  
23 THOSE PROCEEDS TO THE GRAIN DEALER.

24 (4) IN THE EVENT THAT AN ADVERSARY PROCEEDING IS COMMENCED TO  
25 RECOVER FARM PRODUCE ASSETS ON WHICH A LIEN DESCRIBED IN THIS  
26 SECTION IS ATTACHED AND THE DEPARTMENT DECLINES TO ENTER THE  
27 PROCEEDING, THE DIRECTOR, IF HE OR SHE RECEIVES AN APPLICATION FROM

1 A CLAIMANT THAT HOLDS A LIEN UNDER THIS SECTION, SHALL ASSIGN TO  
2 THE CLAIMANT THE APPLICABLE LIEN TO PERMIT THE CLAIMANT TO PURSUE  
3 THE CLAIMANT'S LIEN IN THE ADVERSARY PROCEEDING, TO THE EXTENT THAT  
4 ASSIGNMENT WILL NOT DELAY THE RESOLUTION OF THE PROCEEDING, THE  
5 PROMPT LIQUIDATION OF THE ASSETS, OR THE ULTIMATE DISTRIBUTION OF  
6 THE ASSETS OF ALL CLAIMANTS.

7 (5) IN THE EVENT OF THE FAILURE OF A GRAIN DEALER, THE  
8 DEPARTMENT SHALL LIQUIDATE THE FARM PRODUCE ASSETS OF THE GRAIN  
9 DEALER TO SATISFY VALID CLAIMS OF CLAIMANTS DESCRIBED IN SUBSECTION  
10 (3) BY TAKING POSSESSION OF ALL FARM PRODUCE IN THE GRAIN DEALER  
11 FACILITY, DISTRIBUTING OR SELLING THE FARM PRODUCE, AND  
12 DISTRIBUTING THE PROCEEDS UNDER SUBSECTION (3). IF A SHORTAGE  
13 EXISTS, THE DEPARTMENT SHALL DISTRIBUTE THE COMMODITIES OR THE  
14 PROCEEDS FROM THE SALE OF THE FARM PRODUCE ON A PRORATED BASIS TO  
15 THE DEPOSITORS.

16 (6) THE DIRECTOR MAY REDUCE THE AMOUNT OF A CLAIM DESCRIBED IN  
17 THIS SECTION TO REFLECT THE LIABILITIES OWED TO THE GRAIN DEALER BY  
18 THE CLAIMANT.

19 Enacting section 1. Section 26 of the grain dealers act, 1939  
20 PA 141, MCL 285.86, is repealed.

21 Enacting section 2. This amendatory act takes effect 90 days  
22 after the date it is enacted into law.