SENATE BILL No. 900

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

A bill to amend 2003 PA 198, entitled

"Farm produce insurance act,"

by amending sections 7, 9, 11, and 15 (MCL 285.317, 285.319, 285.321, and 285.325), as amended by 2012 PA 149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7. (1) A board of directors shall govern and administer the authority. The board shall consist of the following 10 members:

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

(b) One nonvoting member appointed by the governor with the advice and consent of the senate, from recommendations received

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from the largest Michigan organization representing the interests of licensees in Michigan, as determined by the director.

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

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

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

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

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

(h) One voting member appointed by the governor with the consent and advice of the senate, from recommendations received from the largest Michigan organization exclusively representing wheat producers in Michigan, as determined by the director. Only a producer is eligible for appointment under this subdivision. For the first appointment under this subdivision, the governor shall appoint the voting member for a term of 2 years.

(2) Except as provided in subsection (1)(b) and (c) for the first board, and except as provided in subsection (1)(h), each member of the board appointed by the governor shall serve for a 3-year term and may be reappointed for 1 or more additional terms. The governor may remove a member appointed by the governor from the board for good cause.

(3) The governor shall fill a vacancy on the board for an unexpired term for the remainder of the term and in the same manner as an original appointment. A vacancy does not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(4) Five voting members constitute a quorum. The affirmative vote of 5 or more voting members is necessary for an action of the board other than adjournment of a meeting of the board. An adjournment of a meeting of the board requires a vote of a majority

of voting members present at the meeting and voting.

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

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

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

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

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

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

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

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

(c) Establish the amount of the producer premium under section 11 and collect and deposit all producer premiums into the fund.

(d) Establish the amount of the administrative premium under section 10; collect and deposit all administrative premiums into the fund; and enter into a memorandum of understanding with the director that provides for reimbursement of the director for producer security activities from the proceeds of the administrative premiums.

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

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

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

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

(i) Procure insurance against any loss in connection with its operations, in amounts and from insurers as determined by the board.

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

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

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

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

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

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

(b) Adopt a policy establishing a code of ethics for its employees and board members, consistent with 1973 PA 196, MCL 15.341 to 15.348.

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

(10) A voting member may receive per diem compensation and mileage reimbursement for attending meetings of the board or while engaged in the performance of his or her duties on behalf of the authority, in amounts established by the board, and may receive

reimbursement for other expenses approved by the board. The amounts established by the board shall not exceed the maximum commission of agriculture rates for per diem compensation and mileage reimbursement. A voting member shall not receive any other compensation for serving on the board or for services performed for the authority.

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

(12) A licensee shall make its books and records available to the department for the inspections and verifications described in sections 10(6) and ~~11(5).~~ **11(4).** Financial information submitted to the department or the authority by a licensee for purposes of this subsection and sections 10(6) and ~~11(5)~~ **11(4)** is confidential and is not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that disclosure of financial information may be made in any of the following circumstances:

(a) With the written consent of the licensee.

(b) Pursuant to a court proceeding.

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

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

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

Sec. 9. (1) The farm produce insurance fund is established under the direction and control of the board. The fund shall consist of administrative premiums, producer premiums, money from any other source, and interest and earnings from fund investments. The board shall direct payments from the fund only for the following purposes:

(a) Payment of valid claims under section 15.

(b) Payment of administrative premiums and producer premium refunds under section 13.

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

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

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

(2) The board shall allocate money from the fund to a separate administrative expenses account to pay administrative expenses and to reimburse the director for producer security expenses. This allocation shall not exceed $500,000.00 in any fiscal year. Administrative expenses under this subsection include the actual cost of processing refunds of administrative premiums and producer premiums, enforcement, record keeping, ordinary management and investment fees connected with the operation of the fund, verification cost under section ~~11(5),~~ **11(4),** and any other expenses approved by the board. Administrative expenses do not include legal fees and legal expenses described in subsection (3).

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

(4) All of the following apply to the investment of any money in the fund that the board determines is not needed to meet the immediate cash needs of the fund:

(a) The treasurer of the board is the investment officer of the fund and shall invest or direct the investment of the money in the fund only in a manner that complies with this subsection.

(b) The money shall only be invested through a bank trust department or a professional investment advisor registered with the securities and exchange commission under the investment advisors act of 1940, 15 USC 80b-1 to 80b-21, as determined by the board.

(c) The money may only be invested in any of the following, as determined by the board:

(*i*) United States government bonds, United States treasury notes, or obligations issued by United States government agencies or United States government-sponsored enterprises.

(*ii*) Deposit accounts in or certificates of deposit issued by a financial institution if all of the following are met:

(A) Deposits in the financial institution are insured by an agency of the United States government.

(B) The principal office of the financial institution is located in the United States.

(C) Except as provided in sub-subparagraph (D), the amount held in any 1 account does not exceed the federally insured amount for that financial institution's accounts.

(D) The amount held in any 1 account in a state or nationally chartered bank does not exceed $500,000.00.

(*iii*) Corporate bonds and municipal bonds, if all of the following are met:

(A) The total investment in corporate and municipal bonds, and in common and preferred stocks under subparagraph (*iv*), does not exceed 45% of the amount of the fund.

(B) The bonds are rated investment grade or better by at least 1 nationally recognized rating service.

(C) The amount invested in bonds of any 1 corporation or municipality does not exceed more than 5% of the amount of the fund.

(*iv*) Common or preferred stock, or a mutual fund or bank-pooled fund that invests in common or preferred stocks, if all of the following are met:

(A) The total investment under this subparagraph does not exceed 11.25% of the amount of the fund.

(B) The common or preferred stock in which the fund invests, or the stock held by the mutual fund or bank-pooled fund in which the fund invests, is stock in a publicly owned company that trades on a United States regulated exchange.

(d) The money shall not be invested in a mutual fund, unless the mutual fund is 1 of the following:

(*i*) A mutual fund described in subdivision (c)(*iv*).

(*ii*) A money market mutual fund, if all of the following are met:

(A) The investment is money the board determines is needed to meet short-term obligations of the fund.

(B) The money is invested for not more than 180 days.

(C) The money market mutual fund is subject to rule 2a-7 of the securities and exchange commission, 17 CFR 270.2a-7.

(D) The money market mutual fund invests only in obligations that are rated in the highest rating classification established by at least 2 standard rating services, or in obligations issued by government agencies, obligations issued by government-sponsored enterprises, or government bills, bonds, or notes.

(5) The board shall ensure that the bank trust department or professional investment advisor described in subsection (4)(a) completes a compliance review of the investment portfolio on a quarterly basis and provides a copy of the investment review to the fund and department within 30 days after the end of each quarter.

(6) The board shall ensure that the audit required under section 17 includes a certification from the certified public accountant concerning whether the fund complied with the requirements of subsection (4) in the audit period. If an audit does not include this certification, the director by order may restrict or eliminate the board's authority to invest in corporate or municipal bonds or common or preferred stocks under subsection (4).

(7) The fund shall operate on a fiscal year established by the board.

(8) As used in subsection (4), "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.

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

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

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

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

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

(5) ~~(6)~~ At each annual meeting, the board shall certify the amount of money in the fund at the end of the preceding fiscal year. A producer shall continue to pay and a licensee shall continue to collect producer premiums until the board certifies that the fund, excluding the proceeds of administrative premiums assessed under section 10, contained more than ~~$5,000,000.00~~ **$10,000,000.00** at the end of the preceding fiscal year. In any fiscal year where the board has certified that the fund, excluding the proceeds of administrative premiums assessed under section 10, contained more than ~~$5,000,000.00~~ **$10,000,000.00** at the end of the preceding fiscal year, a producer is not required to pay and a licensee is not required to collect producer premiums until 1 of the following occurs:

(a) The board certifies that the fund contained less than $3,000,000.00 at the end of the preceding fiscal year. In any year where the board has certified that the fund contained less than $3,000,000.00 at the end of the preceding fiscal year, the obligation of each producer to pay and each licensee to collect producer premiums is reinstated.

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

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

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

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

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

(a) 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.

(b) 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.

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

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

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

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

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

(e) Title to the farm produce that is the subject of the claim was transferred by the producer more than ~~2 years~~ **18 MONTHS** before the date the claim is submitted.

(f) If notice of the failure of the licensee was published in a newspaper of general circulation in each county in which a facility of the licensee was located, the claim is submitted more than 1 year after that publication.

(3) 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 (4) or (5) 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.

(4) A claimant that incurs a storage loss due to the failure of a licensee is entitled to payment under subsection (3) in an amount equal to 100% of the storage loss, less any administrative premium or 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~~ **ON** 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.

(5) A claimant that incurs a financial loss due to the failure

of a licensee is entitled to payment under subsection (3) 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.

(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 or management practices that have contributed to the claimant's loss. The authority may consider whether the marketing or management practices are generally accepted marketing or management 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.

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

(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.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.