

House Bill 4311
Sponsor: Rep. Tom Meyer
Committee: Agriculture and Resource
Management

Complete to 3-12-03

A SUMMARY OF HOUSE BILL 4311 AS INTRODUCED 3-11-03

Public Act 366 of 1988 provided for the establishment of the Michigan Agricultural Commodity Insurance Fund to insure agricultural commodities against losses due to the failure of a licensed grain dealer. House Bill 4311 would repeal Public Act 366 and, instead, create the Farm Produce Insurance Act.

Farm Produce Insurance Authority. The bill would create the Farm Produce Insurance Authority as a public body corporate within, though not a part of, the Department of Agriculture (MDA). A 12-member board would govern the authority, and would include the director of the department, the attorney general, and the state treasurer as nonvoting members. In addition, the board would include nine voting members appointed by the director. They would include two members recommended by the largest Michigan organization representing licensed grain dealers; three members recommended by the largest Michigan organization representing general farm interests, who would have to be farm producers; one member representing corn producers; one member representing soybean producers; one member representing dry bean producers; and one member representing agricultural lenders. The board would hold an annual meeting and at least one other meeting during the course of the calendar year. The secretary of the board would be required to provide each member with written notice of the meeting at least five days prior to the meeting. However, a member of the board could waive any notice requirement, before or after the date and time stated in the notice, in writing and transmitted to the authority for inclusion in the minutes or filing with the records of the authority. A board member's attendance at a meeting would waive any objection to the absence of a notice or a defective notice, unless the member objects at the start of the meeting to holding the meeting or the transaction of business at the meeting, or consideration of any particular matter at a meeting that is not within the purpose described in the notice, unless the member objects when the matter is presented.

The board's duties would include the following:

- Creating forms and establishing policies and procedures necessary to implement the act.
- Collecting and depositing all producer premiums authorized under the act into the fund.
- Taking any legal action that 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, or to compel a claimant to participate in any legal proceeding in relation to the claim or the failure of a licensee.

- Publishing notice of the failure of a licensed grain dealer (in the manner set forth in Grain Dealers Act), within five days of receiving notice of the failure.
- Requesting the services of the MDA and the attorney general, whenever necessary, in the execution of the board's duties.
- Procuring insurance against any loss in connection with its operations.
- Borrowing money and paying (or including in the loan financing) any charges, interest, or other fees and expenses that it deems to be appropriate in connection with a loan. A loan could not exceed a term of 40 years, and would have to allow for prepayment without penalty, and plainly state that the loan is not a debt of this state, but rather the sole obligation of the authority, payable solely from the fund or any appropriation to the authority for the repayment of the loan.
- Employing necessary personnel.
- Making, executing, and carrying out any contract, agreement, or other instrument or document with a governmental department or other person that the board determines is necessary or convenient to accomplish the purposes of the act.
- Making payment from the fund to compensate a claimant for a valid claim.

In addition to the above listed required duties, the board could also do the following:

- Establish policies and procedures in connection with the performance and the functions and duties of the authority.
- Engage the services of a person other than the attorney general to collect money owed to the fund or to litigate claims regarding money owed to the fund.
- Adopt a policy establishing a code of ethics for employees and board members that is consistent with Public Act 196 of 1973, which sets forth certain standards of conduct for public officers and employees.
- Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, and other financing and assistance, and any other aid from any source and deposit them into the fund and agree to comply with any conditions attached to them.

A board member or other individual acting on behalf of the authority would not be personally liable for damage or injury that results from the performance of his or her duties under the bill, unless the damage or injury was a result of gross negligence or malfeasance of that individual. Further, the bill specifies that a representative of the board or the MDA could inspect the books and records of a licensee during normal business hours to verify whether the licensee is complying with the provisions of the bill.

Farm Produce Insurance Fund. The bill would establish the farm produce insurance fund within the Department of Treasury. The fund would consist of producer premiums, money from other sources, and interest and other earnings. The fund would only be used for the payment of

valid claims, producer premium refunds, administrative expenses, and legal fees and expenses. The board could allocate up to \$250,000 from the fund to a separate account for administrative expenses, which would explicitly exclude legal fees and legal expenses.

The state would invest or direct a financial institution to invest the money in the fund that is not necessary to meet current obligations. Any interest and earnings would be credited to the fund, and any money remaining in the fund at the close of the fiscal year would remain in the fund and not lapse into the general fund. Money in the fund would only be used for those purposes set forth in the bill, and would not be transferred to any other fund or appropriated for any other purpose. Further, the board would establish the fiscal year in which the fund would operate.

At the board's annual meeting, it would certify the amount of money in the fund at the end of the preceding fiscal year. Like Public Act 366, producers would continue to pay (and licensees would continue to collect) premiums until the board certifies that the fund contained more than \$5 million at the end of the preceding fiscal year. If the fund exceeds \$5 million at the close of a fiscal year, premiums would not be required to be paid until either of the following occurs:

- The board certifies that the fund contained less than \$3 million at the end of the preceding fiscal year.
- In any fiscal year in which the board certifies that the fund contained at least \$3 million at the end of the previous fiscal year, the board is aware of a failure of a licensed grain dealer, and the board determines that the amount required to satisfy claims equals or exceeds the amount of money in the fund.

Producer Premiums. Beginning January 1, 2004, each producer would pay to the authority a producer premium of not more than 0.2 percent of the net proceeds from all farm produce - defined to mean dry edible beans, soybeans, small grains, cereal grains, or corn - that is sold by the producer to a licensed grain dealer. [Note: Under Public Act 366 of 1988, producers are assessed at a rate of 0.1 percent of the value of the commodity sold.] If the farm produce is sold to a licensed grain dealer, the licensee would be required to deduct the premium from the proceeds of the sale and pay the premium to the authority on behalf of the producer. The licensee would notify the producer in writing of the amount of the deduction. The licensee would submit the premium to the authority for deposit into the fund within 30 days of the close of each quarter of the fiscal year. The MDA would be required to notify the licensee in writing prior to January 1, 2004 of the licensee's duties regarding the collection of the premium. A producer that fails to pay a premium before the failure of a licensed grain dealer would not be entitled to any payment from the fund for any valid claim arising from that failure.

A licensed grain dealer would be required to clearly indicate in its books and records the individual producer premiums collected by the licensee, and retain those books and records for at least three years. The portion of those books and records pertaining to producer premiums collected would be required to be made available for inspection during regular business hours by the authority, its agents, or the MDA director. The MDA director or an independent auditor could take those actions that are reasonably necessary to verify the accuracy of the portion of the

books and records pertaining to the producer premiums, including requiring the licensee to make its books available to the MDA or an independent auditor. Financial information provided to MDA or the authority would be confidential and not subject to disclosure of the Freedom of Information Act except in the following instances:

- With the written consent of the licensee;
- Pursuant to a court proceeding;
- The disclosure is made to the MDA director or an agent or employee of the MDA.
- 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;
- The information is disclosed as a summary or profile, or a part of a statistical study that includes data on more than one grain dealer, that does not identify the grain dealer to whom the specific information applies.

Refunds. A producer who has paid the premium (either directly or as collected by a licensed grain dealer) could receive a refund of the premium from the fund by submitting a demand, in writing, to the board. The demand would have to be delivered personally or via first-class mail within 12 months after the producer paid the premium, though the board could grant the producer a longer period of time in which to submit a demand for a refund if there exists good cause to do so. The demand would have to be submitted on a form, developed by the board and made available to a licensed grain dealer, producer, or member of the public. If a producer is eligible for a refund, the board would be required to pay the refund within 60 days. Any producer that receives a refund of a producer premium would not be entitled to any payment from the fund. If the producers were assessed during the previous calendar year, the board would be required to send notice, prior to January 31, to each producer who requested a refund of the premium in any previous calendar year. The notice would inform the producer of the deadline for, and method of, submitting a demand for a refund and the method for reentering the program.

A producer that received a refund would be permitted to reenter the farm insurance program if the producer submits a request for reentry; the board reviews and approves that request for reentry into the program; and the producer pays into the fund all previous producer funds that were refunded to the producer, along with any interest on the refund. Ninety days after reentry into the program, the producer would be protected by the program on a pro rata basis to the extent of the refund and interest paid, from the time they are paid to the fund. Further, a producer would not be eligible to receive a refund if he or she received a reimbursement from the fund for a valid claim during the preceding 36 months.

Claims for Reimbursement. A producer would be permitted to submit a claim for reimbursement if he or she is a participant in the program at the time of the claim, and possesses written evidence of ownership of the farm producer that discloses a storage obligation that the licensed grain dealer failed; 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 receipt and the producer was not fully paid for the farm producer; or possesses written evidence of the delivery

and sale of farm produce or transfer of price later farm produce to a failed licensee. If the MDA determines that a claim is valid and the claim is approved by the board, the board would be required to pay the claimant within 90 days of the board's approval. The 90-day time period could be extended if the board and the claimant agree, in writing, to other payment terms and schedules. A claim for reimbursement would only be valid if it is made within one year after notice of the failure of the licensed grain dealer is published in each county in which a facility of the licensee is located.

Claimants would be reimbursed for any "storage loss" or "financial loss" that is due to the failure of a licensed grain dealer. Under the bill, "storage loss" would be defined to mean the loss to a depositor that results from the failure of a licensee who has not fully satisfied its storage obligation to the depositor, net any outstanding charges against the farm producer. A claimant would be reimbursed for 100 percent of the storage loss, less any producer premium that would have been due on the sale of the farm produce. The MDA would determine the gross amount of the storage loss based on the local market prices on the date of the failure. In addition, the MDA could consider any evidence submitted by the failed licensee or any claimants concerning the actual charges associated with the stored farm produce.

Under the bill, "financial loss" is defined to mean the loss to a producer who is not paid in full for farm produce that the producer sold to a grain dealer and delivered under the terms of the sales contract, after deducting any outstanding charges against the farm produce. A claimant would be reimbursed for 90 percent of the financial loss. For farm produce sold to a licensee that has been priced, the department would establish the amount of the financial loss using the local market on the date of failure, less any outstanding charges against the farm produce. For farm produce sold to a licensee that has not been priced, the department would establish the amount of the financial loss using the local market on the date of the failure, less any usual and customary charges associated with the sale of farm produce.

The board could require a claimant who receives payment to subrogate to the board or authority all of the claimant's rights to collect on any bond issued under the Grain Dealers Act or the United States Warehouse Act, and the claimants rights to any other compensation arising from the failure of the licensee. If the claimant does subrogate his or her right, he or she would assign his or her interest in any judgment concerning the failure of the licensee to the board or authority. In addition, the board would deny payment of a claim if it determines that the claimant, as payee, has failed to present for payment a negotiable instrument issued as payment for farm produce within 90 days after it is tendered to the claimant as payment for farm produce purchased by the licensee; the claimant has engaged in practices that differ from those generally accepted marketing practices to the extent that the claimant's actions have substantially contributed to his or her loss; or the claimant has intentionally committed a fraud or violated the bill in connection with the claim.

If the department determines that licensee has failed, the board would be required to do the following:

- Determine the valid claims against the licensee and the amount of those claims;
- Authorize payment from the fund to pay claimants;

- Deposit into the fund any proceeds of the remaining farm produce assets of the failed licensee to repay the fund for money paid to the claimants, subject to any lien against those assets. However, from the proceeds of any farm produce assets, the board would not deposit into the fund an amount in excess of the sum of the principal amount of valid claims paid to claimants, plus interest from the date the claimant was paid to the date the remaining proceeds were received by the board.

- If the amount in the fund and any amount borrowed by the board do not cover the amount to be paid for all valid claims, pay the amount available for payment proportionately among the valid claims.

In addition to the above requirements, if the department determines that a licensed grain dealer has failed, the board could pursue any subrogation rights obtained from claimants or, if the fund does not sufficiently cover all valid claims, borrow money for the payment of claims.

Other Provisions. The MDA, the board, or the authority could promulgate rules necessary to implement and administer the bill and exercise the powers expressly granted in the bill in accordance with the Administrative Procedures Act. In addition, the bill would not limit the authority of the MDA director or the MDA itself to take action against a licensed grain dealer under the Grain Dealers Act for a violation of that act or the corresponding rules of the MDA. Further, that a licensed grain dealer fulfilled its requirements under this bill would not be a defense to an action by the MDA director or the MDA against that licensee for a violation of the Grain Dealers Act.

Penalties. A person who commits any of the following would be guilty of a misdemeanor punishable by a fine not exceeding \$5,000 for each offense:

- Knowingly or intentionally refusing or failing to collect the producer premiums.
- Knowingly or intentionally refusing or failing to pay to the authority the producer premiums collected.
- Knowingly or intentionally refusing or failing to make a required statement, representation, or certification, in a record, report, or other document the person files or is required to file with the MDA director, MDA, board, or authority.
- Willfully or knowingly resisting, preventing, impeding, or interfering with the MDA director, agents or employees of the MDA, the board, or agents or employees of the authority or board in the performance of their duties.

In addition to the above penalty for failing to pay or collect the producer premium, the court would be required to order the grain dealer to pay to the fund any premiums collected that it owes to the fund, and could order the grain dealer to pay interest on the amount owed to the fund.

Analyst: M. Wolf

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