



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



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4311 (Substitute S-2)  
Sponsor: Representative Tom Meyer  
House Committee: Agriculture and Resource Management  
Senate Committee: Agriculture, Forestry and Tourism

Date Completed: 10-15-03

### CONTENT

**The bill would create the "Farm Produce Insurance Act" to establish a program in which producers of dry beans, grains, or corn would contribute a percentage of their proceeds to a new fund, and could recover from the fund for losses due to a grain dealer's financial failure. The bill would do the following:**

- **Create the Farm Produce Insurance Fund to provide for reimbursement to a participating producer for losses suffered when a grain dealer declared insolvency, or was otherwise unable to pay its claimants.**
- **Establish the Farm Produce Insurance Authority to direct and control the Fund.**
- **Provide for the Authority to be governed by a 10-member board representing grain dealers, producers, and agricultural lenders.**
- **Require participating producers to pay a premium of up to two-tenths of one percent (0.2%) of net proceeds sold by a producer to a licensed grain dealer, to be deducted from proceeds at the time of sale.**
- **Provide for a refund of this premium to a producer who agreed not to participate in the program.**
- **Require the board to take action when it determined that a grain dealer had "failed" financially.**
- **Provide that violators of the bill would be guilty of a misdemeanor, punishable by a maximum fine of \$5,000.**
- **Repeal the Michigan Agricultural Commodity Insurance Act, which provides 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.**

### Definitions

A "producer" would be a person who owns, rents, leases, or operates a farm on land, and who has an interest in and receives all or any part of the proceeds from the sale in Michigan of farm produce produced from the land to a grain dealer licensed under the Grain Dealers Act. "Farm produce" would mean that term as defined in the Grain Dealers Act: dry edible beans, soybeans, small grains, cereal grains, and/or corn.

"Grain dealer" would be defined as it is in the Grain Dealers Act: a person engaged in the business of receiving, buying, exchanging, selling, or storing farm produce in the State. The term includes a farm produce trucker, grain merchandiser, or processor. It does not include a person solely engaged in any of the following: selling farm produce produced by the person; buying farm produce in a cash sale to feed the person's livestock or poultry; buying farm produce in a cash sale, if the person handled less than 30,000 bushels of farm produce in the person's preceding fiscal year and in the person's current fiscal year; purchasing farm produce from a person other than the grower or producer of the farm produce in a cash sale; or contracting for land or services to produce seed for sowing or propagation.

### Farm Produce Insurance Authority

The bill would create the Farm Produce Insurance Authority as a public body within,

but not a part of, the Michigan Department of Agriculture (MDA). The Authority would have to exercise its prescribed statutory powers, duties, and functions independently of the Director of the Department, the MDA, and the Commission of Agriculture. The budgeting, procurement, and related functions of the Authority would have to be performed under the direction and supervision of its board of directors.

### Board

Membership. A board of directors would govern and administer the Authority, and consist of the MDA Director, or his or her designee, who would be the chairperson and secretary of the board, plus the following nine members appointed by the Governor with advice and consent of the Senate:

- Two members appointed upon the recommendation of the largest Michigan organization representing the interests of grain dealers. For the first board, the Governor would have to appoint one member for a one-year term, and the other for a two-year term.
- Three members representing general farm interests, who would have to be farm producers. For the first board, the Governor would have to appoint one member for a one-year term, one for a two-year term, and one for a three-year term.
- Three members representing corn producers, soybean producers, dry bean producers. The members would have to be producers.
- One member representing agricultural lenders appointed upon recommendation of the largest Michigan organization representing agricultural lenders.

All members except the MDA Director would be voting members.

Terms; Vacancies. Except as provided above for the first board, each voting member would serve for a three-year term and could be reappointed for one or more additional terms. The Governor could remove a voting member from the board for good cause. The Governor would have to fill a vacancy on the board for the remainder of an unexpired term, and in the same manner as an original appointment. A vacancy would not impair the right of a

quorum to exercise all the rights and perform all the duties of the board.

Meetings. The board would have to hold an annual meeting and at least one additional meeting each calendar year. The secretary of the board would have to provide written notice of each meeting to the members at least five days before the meeting.

Five voting members would constitute a quorum. The affirmative vote of five or more voting members would be necessary for an action of the board other than adjournment of a meeting.

The board would be subject to the Open Meetings Act.

Freedom of Information Act (FOIA). Any information submitted to the board that was not related to the amount of a claim would be confidential and not subject to FOIA. This information could be disclosed, however, in any of the following circumstances:

- The person who submitted the information gave his or her written consent.
- The disclosure was pursuant to a court proceeding.
- The disclosure was made to the Director or an agent or employee of the MDA.
- Disclosure was made to an agent or employee of a state or the Federal government authorized by law to see or review the information.
- The information was disclosed in the form of an information summary or profile, or as part of a statistical study that included data on more than one person, that did not identify the person to whom any specific information applied.
- The information related solely to the amount of one or more claims paid from the Fund.

Notice; Attendance. A member of the board could waive any notice required, 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 Authority records. A board member's attendance at a meeting would waive any objection to no notice or a defective notice of a meeting, unless the member at the beginning of the meeting objected to holding the meeting or transacting

business at the meeting; or objection to consideration of any particular matter at a meeting that was not within the purpose or purposes described in the notice, unless the member objected to considering the matter when it was presented.

Board Duties. The board would be required to do all of the following:

- Elect a vice-chairperson and a treasurer from among its members.
- Create forms, and establish policies and procedures to implement the bill.
- Establish the amount of the producer premium (which could not exceed 0.2% of a producer's net proceeds from farm produce sold to a grain dealer).
- Collect and deposit all producer premiums into the Farm Produce Insurance Fund.
- Take any legal action it considered necessary to compel a failed licensee to repay the Fund for any payment made from it to a claimant for a valid claim against that licensee. (A "licensee" would mean a grain dealer licensed under the Grain Dealers Act. "Failure" of a licensee would mean the inability of a licensee or grain dealer financially to satisfy claimants, or a public declaration of insolvency by a licensee or grain dealer.)
- Take any legal action it considered necessary to compel a claimant to participate in any legal proceeding in relation to the claim or the failure of a licensee.
- Within five business days of receiving notice of failure of a licensee, publish notice of the failure in a manner described in the Grain Dealers Act.
- Request the services of the MDA, or arrange for legal services through the Department of Attorney General, if the Board considered it necessary in the execution of its duties.
- Procure insurance against any loss in connection with its operations, in amounts and from insurers as determined by the Board.
- 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, interest, and expenses the board determined would be appropriate in connection with the loan. (Any loan contract would have to provide for a term of not more than 40 years, allow prepayment without penalty, and plainly state the loan was not a debt of the State,

but the sole obligation of the Authority, payable solely from the Fund or from any appropriation from the State made to the Authority for repayment of the loan.)

- 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 below).
- Make, execute, and carry out any contract, agreement, or other instrument or document with a governmental department or other person it determined necessary or convenient to accomplish the purposes of the bill.
- If requested by the Director and approved by the board, make payment from the Fund to compensate a claimant for a valid claim (as defined below).

Permissible Activities. The board could do any of the following: establish policies and procedures in connection with the performance of the functions and duties of the Authority; adopt a policy establishing a code of ethics for its employees and board members, consistent with Public Act 196 of 1973 (standards of conduct for public officers and employees); and 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.

Compensation. A voting member could 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 could receive reimbursement for other expenses approved by the board. The amounts established by the board could not exceed the maximum Agriculture Commission rates for per diem compensation and mileage reimbursement. A voting member would be prohibited from receiving any other compensation for serving on the board or for services performed for the Authority.

The MDA Director would be prohibited from receiving per diem or other compensation or reimbursement for expenses for serving on the board.

## Fund

Source & Purposes. The bill would establish the Farm Produce Insurance Fund under the direction and control of the board. The Fund would consist of producer premiums, money from any other source, and interest and earnings from any other source.

The board could direct payments from the Fund only for the following purposes: payment of valid claims; payment of administrative expenses; payment of legal fees and legal expenses; and payment of producer premium refunds (all of which are described below).

A "valid claim" would be a claim arising from a failure of a licensee that occurred after the bill's effective date, was found valid by the MDA, and was approved by the board, less all credits and offsets associated with produce sold by a producer to the licensee.

The board would have to allocate money from the Fund to a separate administrative expenses account, not to exceed \$250,000 in any fiscal year. Administrative expenses would include the actual cost of processing refunds of producer premiums, enforcement, record-keeping, ordinary management and investment fees connected with the operation of the Fund, verification costs (described below), and any other expenses approved by the board. Administrative costs would not include legal fees and legal expenses.

The board would have to pay for any legal services and legal expense required by the Authority, board, or Fund from money in the Fund. These legal services and expenses would not be considered administrative expenses, and could not be paid from the administrative expenses account.

Investments. The treasurer of the board would have to act as the investment officer of the Fund, and would have to invest or direct a financial institution to invest money not currently needed to met the Fund's obligations. The treasurer could invest or direct the investments only in the manner permitted under Public Act 20 of 1943 (investment of surplus funds of political subdivisions). Interest and earnings would have to be credited to the Fund.

Use of Fund; Independent Audit. Section 17 of the proposed Act provides that the board

could use money in the fund only for a purpose described above. The bill states that Section 17 would not be severable from the whole of the Act, and if any portion of this section were held invalid, "...it is the manifest intent of the legislature that this act as a whole shall be held invalid and the money remaining in the fund distributed to producers in proportion to the amount of producer premiums each producer has paid to the authority."

Section 17 also would require all expenditures from the Fund to be audited by a certified public accountant (CPA) at least annually. Within 30 days of the audit's completion, the CPA would be required to give copies of the audit to the Director and the other board members. The board would have to publish an activity and financial report annually and make it available to the public on request.

## Producer Premiums

Maximum Amount. Except as otherwise provided by the bill, beginning January 1, 2005, each producer would have to 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 the State. If the farm produce were sold to a licensee, the licensee would have to deduct the producer premium from the proceeds of sale, and pay the premium to the Authority on behalf of the producer, as required by the bill. A producer premium would be in addition to any other fees or assessments required by law.

Licensee Obligations. Beginning January 1, 2005, when purchasing farm produce from a producer, a licensee (or its agent or representative) would have to deduct the producer premium from the proceeds of sale and notify the producer of the amount of the deduction in writing. The licensee would have to forward the 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. (The fiscal year would be established by the board.) Until the Authority had received \$5 million in premiums from licensees, a licensee that forwarded premiums to the Authority each quarter could retain 0.1% of the premiums collected. The MDA would have to notify each licensee of these requirements before January 1, 2005, by first-class mail.

Certification of Funds. At each annual meeting, the board would have to certify the amount of money in the Fund at the end of the preceding fiscal year. A producer would have to continue to pay and a licensee would have to continue to collect producer premiums until the board certified that the Fund contained more than \$5 million at the end of the preceding fiscal year. In any fiscal year in which this was the case, a producer would not be required to pay and a licensee would not be required to collect producer premiums until one of the following occurred: 1) The board certified that the Fund contained less than \$3 million at the end of the preceding fiscal year, in which case the obligations of producers and licensees to pay and collect producer premiums would be reinstated; or 2) the obligations of each producer and each licensee to pay and collect were reinstated in any fiscal year in which all of the following conditions were met: the board certified that the Fund contained at least \$3 million at the end of the preceding fiscal year; the board was aware of a failure of a licensee; and, as determined by the board, the amount required to satisfy valid claims equaled or exceeded the amount of money in the Fund.

Licensee Records. A licensee would have to indicate clearly in its books and records the individual producer premiums collected, and retain those books and records for at least three years. A licensee would have to make the portion of the books and records reflecting the premiums collected available for inspection by the MDA Director during regular business hours. The MDA would have to take steps reasonably necessary to verify the accuracy of the portion of the licensee's books and records that reflected the premiums collected. The board would have to reimburse the Department for the costs related to the verification from the Fund as an administrative expense.

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 was complying with the bill.

The Director would have to require that a licensee makes its books and records available to the Department for the required inspection or verification. Financial information submitted to the Department or the Authority by a licensee for these purposes would be confidential and not subject to the Freedom of

Information Act. Financial information could be disclosed, however, under any of the circumstances in which information submitted to the board could be disclosed.

#### Premium Refunds

A producer who had paid, either directly or through a licensee, a producer premium could receive a refund of the premium from the Fund. The producer would have to submit a written demand to the board, delivered personally or by first-class mail within 12 months after the producer paid the premium, or within a longer period granted by the board if it had determined that good cause for an extension existed. The producer would have to submit a demand for refund on a form developed by the board. The board would have to make the form available to a licensee, producer, or member of the public on request.

If the producer were entitled to a refund, the Board would have to pay the refund within 60 days of receipt.

If producer premiums were assessed in the immediately preceding calendar year, the board would be required, by January 31, to send a notice to each producer who requested a refund in any previous calendar year. The notice would have to inform the producer of the deadline for and method of submitting a demand for refund and the method for reentering the program.

A producer who received a refund of a producer premium would not be entitled to participation in the program, or to receive any payment, unless it reentered the farm produce insurance program by meeting all of the following conditions:

- The producer submitted a request for reentry into the program to the board. The producer would have to submit the request in the form required by the board, and deliver it by hand or by certified mail, return receipt requested.
- The board reviewed the producer's request for reentry and approved it.
- The producer paid into the Fund all previous producer premiums refunded to the producer, and interest on the refunds as determined by the board.

Beginning 90 days after the reentry, a producer that reentered the farm produce insurance program would be eligible for

reimbursement of claims under the program. A producer would not be eligible for a refund of a producer premium if the producer had received reimbursement from the Fund for a valid claim within the preceding 36 months.

### Claim for Reimbursement

Qualifications. A producer who was a participant at the time he or she submitted a claim, and who satisfied one of the following conditions, could submit a claim for reimbursement from the Fund:

- The producer possessed written evidence of ownership of farm produce that disclosed a storage obligation of a licensee that had failed, including, a warehouse receipt, acknowledgment form, or settlement sheet.
- The producer had 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 was not fully paid for the farm produce.
- The producer possessed written evidence of the delivery and sale of farm produce or transfer of price later farm produce to a failed licensee, including 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.

("Warehouse receipt" would mean a written or electronically transmitted receipt issued by a grain dealer to a depositor at the time the grain dealer accepted farm produce for storage. A warehouse receipt would be one of the following: a negotiable warehouse receipt if it stated that the grain dealer would deliver the produce to the bearer of the receipt, or to the order of a person named in the receipt; or a nonnegotiable warehouse receipt. "Price later agreement" would mean a written or electronically transmitted agreement between a depositor and a grain dealer in which the grain dealer received title to farm produce and the depositor retained the option to price the farm produce after delivery based on conditions in the agreement.)

Board Approval; Timeline. If the MDA found that a claim for reimbursement was valid and the board approved of the valid claim, the board would have 90 days to pay the claimant from the Fund as compensation for the claim. The 90-day time period for payment could be

extended if the board and claimant agreed in writing on the payment terms and schedule. A claim would be valid only if it were made within one year after notice of the licensee's failure were published in a newspaper of general circulation in each county in which a facility of the licensee was located.

Storage Loss. A claimant that incurred a storage loss due to the failure of a licensee would be entitled to payment in an amount equal to 100% of the storage loss, less any producer premium that would have been due on the sale of the farm produce. ("Storage loss" would mean a loss to a depositor resulting from the failure of a licensee that had not fully satisfied its storage obligation to the depositor, net of any outstanding charges against the farm produce.) The MDA would have to determine the gross amount of the storage loss, based on local market prices on the date of failure. The MDA could consider any evidence submitted by the failed licensee or any claimants concerning the actual charges associated with stored farm produce.

Financial Loss. A claimant that incurred a financial loss due to the failure of a licensee would be entitled to a payment in an amount equal to 90% of the financial loss. ("Financial loss" would mean the loss to a producer who was 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.) For farm produce sold in a transaction subject to the Grain Dealers Act, the MDA would have to determine the amount of the financial loss, based on the value of the farm produce, less any outstanding charges against the produce. If the farm produce had not been priced, the Department would have to 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 the produce.

Subrogation. The board could require a claimant paid 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, and the claimant's rights to any other compensation arising from the failure of the licensee. If required to subrogate, the claimant would have to assign the claimant's interest in any judgment concerning the failure to the board or Authority.

Denial of Claims. The board would have to deny the payment of a valid claim if it determined that any of the following conditions were present:

- The claimant as payee failed to present for payment a negotiable instrument issued as payment for farm produce within 90 days after the date the negotiable instrument was tendered to the claimant as payment for farm produce purchased by the licensee.
- The claimant had engaged in marketing practices that had substantially contributed to the claimant's loss. The Authority could consider whether the marketing practices were generally accepted marketing practices in the State in making its determination.
- The claimant had intentionally committed a fraud or violated the proposed Act in connection with the claim.

#### Failure of Licensees

If the MDA determined that a failure of a licensee had occurred, the Board would have to do all of the following:

- Determine the valid claims against the licensee and the amount of the valid claims.
- Authorize payment of money from the Fund when necessary to pay claimants for valid claims.
- 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 possessed under applicable law. The board would have to 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 the board received the remaining farm produce assets, at a per annum rate equal to the auction rate of 91-day discount Treasury bills on the date the claimant was paid.
- If the amount in the Fund and any amount the board borrowed were 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.

Additionally, the board could pursue any subrogation rights obtained from claimants; and, if the Fund had insufficient money to pay the valid claims, borrow money as authorized under the bill for the payment of valid claims.

#### Penalties

A person who knowingly or intentionally committed any of the following would be guilty of a misdemeanor punishable by a maximum fine of \$5,000 for each of the following offenses:

- Refusing or failing to collect producer premiums.
- Refusing or failing to pay to the Authority producer premiums collected under the bill.
- Making a false statement, representation, or certification, or knowingly failing to make a required statement, representation, or certification, in a record, report, or other document the person filed with the Director, Department, board, or Authority, or that the person was required to file with the Director, Department, board, or Authority under the bill.
- Resisting, preventing, impeding, or interfering with the Director, agents, or employees of the Department, the board, or agents or employees of the Authority or the board in the performance of their duties under the bill.

In addition to this criminal penalty, the court, in an enforcement action for the first two violations described above, would have to order the grain dealer to pay to the Fund any producer premiums collected by the grain dealer that it owed to the Fund, and could order the grain dealer to pay interest on the amount the grain dealer owed to the Fund.

It would not be a defense to an action by the Director or the Department against a licensee under the Grain Dealers Act for a violation of that Act that the grain dealer had fulfilled its obligations under the proposed Act.

The bill states that it would not limit the authority of the Director or Department to take action against a licensee under the Grain Dealers Act for a violation of that Act or the rules of the Department.

Legislative Analyst: Claire Layman

## **FISCAL IMPACT**

House Bill 4311 (S-2) would have no net fiscal impact on the State. The bill would create the Farm Produce Insurance Fund to be administered by the Farm Produce Insurance Authority board; however, this Fund would not be created in the State Treasury. Under the bill, the Fund would receive producer premiums, money from other sources, and investment earnings. The Fund would be used to pay claims, refunds, and administrative expenses. Administrative expenses would be capped at \$250,000, presumably per fiscal year. This cap would not apply to legal expenses incurred by the Authority.

Under the bill, the Michigan Department of Agriculture would be responsible for notifying licensed grain dealers about their duties regarding the collection of premiums. The Department also would be responsible for verifying the accuracy of the books and records of licensed grain dealers pertaining to producer premiums. The bill would allow the board to employ necessary personnel. The Michigan Department of Agriculture, Grain Dealer Audit Section would be eligible to receive reimbursement from this Fund to cover any costs associated with services provided to the Authority. Currently, the Grain Dealer Audit Section is responsible for auditing licensed grain dealers in the State, every 12 to 18 months. Because of the existing presence of Grain Dealer Audit Section personnel at licensed grain dealers, it is likely that the Authority would contract with the Department of Agriculture to carry out some of its responsibilities under the bill. It is estimated that there would be no net fiscal impact on the Department of Agriculture, as its costs would be covered by the \$250,000 available to the Authority for administrative expenses.

All expenditures from the Fund would have to be audited by a certified accountant annually, at a minimum. The board would have to publish an annual financial report and make it available to the public.

Public libraries would receive additional penal fine revenue from the proposed misdemeanor penalties. For select violations, the court would be required to order a grain dealer to pay to the Fund any premiums collected by the dealer that it owed to the Fund, with interest, if applicable.

Fiscal Analyst: Craig Thiel

S0304\4311sb

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.