

Act No. 198
Public Acts of 2003
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Reps. Meyer, Sheltroun, Caswell, Julian, Rivet, Newell, Ehardt, Stahl, Shackleton and Nitz

ENROLLED HOUSE BILL No. 4311

AN ACT to provide insurance to farm produce producers against losses from the failure of grain dealers; to establish a farm produce insurance authority; to prescribe the powers and duties of the authority and its board; to establish a farm produce insurance fund; to provide for assessments on grain dealers; to prescribe certain powers and duties of certain state agencies and officers; to authorize the promulgation of rules; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “farm produce insurance act”.

Sec. 3. As used in this act:

- (a) “Acknowledgment form” means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (b) “Administrative expenses” means the costs described in section 9(2).
- (c) “Authority” means the farm produce insurance authority created in section 5.
- (d) “Board” means the board of directors of the authority described in section 7.
- (e) “Claimant” means a producer who makes a claim for reimbursement from the fund under section 15.
- (f) “Department” means the department of agriculture.
- (g) “Depositor” means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (h) “Director” means the director of the department or his or her designee.
- (i) “Failure” of a licensee or grain dealer means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (j) “Farm produce” means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (k) “Farm produce insurance program” or “program” means the program for reimbursement of claims described in this act.
- (l) “Financial institution” means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (m) “Financial loss” means 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.
- (n) “Fund” means the farm produce insurance fund created in section 9.
- (o) “Grain dealer” means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (p) “Grain dealers act” means the grain dealers act, 1939 PA 141, MCL 285.61 to 285.88.
- (q) “Licensee” means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(r) "Net proceeds" means the sale price of farm produce, less usual and customary charges and costs of sale of the farm produce.

(s) "Participant" means a producer that has contributed to the fund and never requested a refund from the fund or a producer who has reentered the program under section 13(5).

(t) "Person" means an individual, corporation, limited liability company, partnership, association, cooperative organization, or other legal entity.

(u) "Price later agreement" means that term as defined in section 2 of the grain dealers act, MCL 285.62.

(v) "Producer" means a person that 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.

(w) "Producer premium" means the amount of money charged to and collected from a producer under section 11.

(x) "Sale" means transfer of title.

(y) "Storage loss" means a loss to a depositor resulting from the failure of a licensee that has not fully satisfied its storage obligation to the depositor, net of any outstanding charges against the farm produce.

(z) "Valid claim" means a claim arising from a failure of a licensee that occurs after the effective date of this act, is found valid by the department, and is approved by the board, less all credits and offsets associated with farm produce sold by a producer to the licensee.

(aa) "Warehouse receipt" means that term as defined in section 2 of the grain dealers act, MCL 285.62.

Sec. 5. The farm produce insurance authority is created as a public body corporate and politic. The authority is within, but not a part of, the department. The authority shall exercise its prescribed statutory powers, duties, and functions independently of the director, the department, and the commission of agriculture. The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the board.

Sec. 7. (1) A board of directors shall govern and administer the authority. The board shall consist of the following 9 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 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.

(2) Except as provided in subsection (1)(b) and (c) for the first board, 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) Four voting members constitute a quorum. The affirmative vote of 4 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.

(d) Collect and deposit all producer premiums authorized under this act into the fund.

(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.

Sec. 8. (1) The board shall conduct its business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall give public notice of a time, date, and place of any meeting in the manner required by that act.

(2) Subject to section 11(6), any information submitted to the board by any person that is not related to the amount of a claim 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 that information may be made in any of the following circumstances:

(a) With the written consent of the person that submitted the information.

(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 person, that does not identify the person to whom any specific information applies.

(f) The information sought relates solely to the amount of 1 or more claims paid from the fund.

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

(a) Payment of valid claims under section 15.

(b) Payment of 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).

(2) The board shall allocate money from the fund to a separate administrative expenses account to pay administrative expenses. This allocation shall not exceed \$250,000.00 in any fiscal year. Administrative expenses under this subsection 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 cost under section 11(5), 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) The treasurer of the board shall act as the investment officer of the fund and shall invest or direct a financial institution to invest the money in the fund that is not currently needed to meet the obligations of the fund. The treasurer of the board shall invest or direct the investment of the money only in the manner permitted in section 1 of 1943 PA 20, MCL 129.91. Interest and earnings shall be credited to the fund.

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

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. 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 this subsection may retain 0.1% of the producer premiums collected.

(4) Before January 1, 2005, the department by first-class mail shall notify each licensee of the requirements of subsection (3).

(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 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 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).

(6) The director shall require that a licensee make its books and records available to the department for the inspection or verification described in subsection (5). Financial information submitted to the department or the authority by a licensee for purposes of this subsection and subsection (5) 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 whom any specific information applies.

(7) 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 contained more than \$5,000,000.00 at the end of the preceding fiscal year. In any fiscal year where the board has certified that the fund contained more than \$5,000,000.00 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. 13. (1) Subject to subsection (7), a producer that has paid, either directly or collected by a licensee, a producer premium may receive a refund of the producer premium from the fund by submitting a written demand for refund to the board, delivered personally or by first-class mail within 12 months after the producer paid the producer premium, or within a longer period granted by the board if it determines that good cause for an extension exists.

(2) A producer shall submit a demand for refund under subsection (1) on a demand for refund form developed by the board. The board shall make the form available to a licensee, producer, or member of the public upon request.

(3) If a producer is entitled to a refund of a producer premium under this section, the board shall pay the refund within 60 days of its receipt of the demand for refund.

(4) If producer premiums were assessed in the immediately preceding calendar year, the board shall by January 31 send a notice to each producer who requested a refund of a producer premium in any previous calendar year. The notice must inform the producer of the deadline for and method of submitting a demand for refund to the board under subsections (1) and (2) and the method for reentering the program under subsection (5).

(5) A producer that receives a refund of a producer premium under subsection (1) is not entitled to participation in the program or to receive any payment under this act unless it reenters the farm produce insurance program by meeting all of the following conditions:

(a) The producer submits a request for reentry into the farm produce insurance program to the board. The producer shall submit the request in the form required by the board and shall deliver the request to the board by hand or by certified mail, return receipt requested.

(b) The board reviews the producer's request for reentry and approves the request.

(c) The producer pays into the fund all previous producer premiums refunded to the producer, and interest on the refunds as determined by the board.

(6) Beginning 90 days after the reentry, a producer that reenters the farm produce insurance program under subsection (5) is eligible for reimbursement of claims under the program.

(7) A producer is not eligible for a refund of a producer premium under this section if the producer has received reimbursement from the fund for a valid claim within the preceding 36 months.

Sec. 15. (1) A producer that meets both of the following may submit a claim for reimbursement from the fund under this section:

(a) The producer is a participant at the time the producer submits the claim.

(b) The producer satisfies 1 of the following conditions:

(i) 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.

(ii) 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.

(iii) 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) 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 (3) or (4) 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.

(3) A claimant that incurs a storage loss due to the failure of a licensee is entitled to payment under subsection (2) 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. The department shall determine the gross amount of the storage loss based upon 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.

(4) A claimant that incurs a financial loss due to the failure of a licensee is entitled to payment under subsection (2) 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.

(5) A claim under subsection (2) of this section is valid only if it is made within 1 year after notice of the failure of the licensee is published in a newspaper of general circulation in each county in which a facility of the licensee is located.

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

(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.

Sec. 17. (1) The board shall use money in the fund only for a purpose described in section 9(1). This section is not severable from the whole of this act, and if any portion of this section is 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.

(2) All expenditures from the fund shall be audited by a certified public accountant at least annually. Within 30 days after completion of the audit, the certified public accountant shall give copies of the audit to the director and the other members of the board. The board shall publish an activity and financial report annually and make it available to the public on request.

Sec. 19. (1) This act does not limit the authority of the director or department to take action against a licensee under the grain dealers act for a violation of the grain dealers act or the rules of the department.

(2) It is not a defense to an action by the director or department against a licensee under the grain dealers act for a violation of that act that the grain dealer has fulfilled its obligations under this act.

Sec. 21. (1) A person that knowingly or intentionally commits any of the following is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 for each offense:

(a) Refusing or failing to collect producer premiums as required under this act.

(b) Refusing or failing to pay to the authority producer premiums collected under this act.

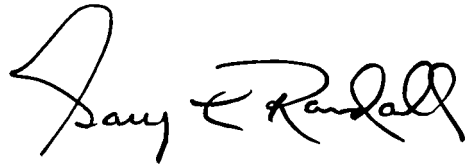
(c) Making a false statement, representation, or certification, or knowingly failing to make a required statement, representation, or certification, in a record, report, or other document the person files with the director, department, board, or authority, or that the person is required to file with the director, department, board, or authority, under this act.

(d) Resisting, preventing, impeding, or interfering with the director, agents or employees of the department, the board, or agents or employees of the authority or board in the performance of their duties under this act.

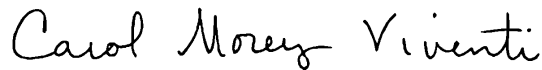
(2) In addition to the criminal penalty described in subsection (1), the court in an enforcement action for a violation described in subsection (1)(a) or (b) shall order the grain dealer to pay to the fund any producer premiums collected by the grain dealer that it owes to the fund and may order the grain dealer to pay interest on the amount the grain dealer owes to the fund.

Enacting section 1. The Michigan agricultural commodity insurance act, 1988 PA 366, MCL 285.211 to 285.219, is repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor