

## Chapter 285

### AGRICULTURE

#### DEPARTMENT OF AGRICULTURE

##### Act 13 of 1921

AN ACT to promote the agricultural interests of the state of Michigan; to create a state department of agriculture; to define the powers and duties thereof; to provide for the transfer to and vesting in said department of powers and duties now vested by law in certain other state boards, commissions and officers, and to abolish certain boards, commissions and officers the powers and duties of which are hereby transferred.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921

*The People of the State of Michigan enact:*

#### **285.1 Department of agriculture; commission; director; assistants and employees; term, compensation, offices.**

##### Sec. 1.

There is hereby created a state department of agriculture which shall possess the powers and perform the duties hereinafter granted and conferred. The general administration of said powers and duties shall be vested in a bipartisan commission of agriculture which shall be composed of 5 members appointed by the governor, subject to confirmation by the senate: Provided, That 1 member of said commission shall be a resident of the Upper Peninsula. The members of said commission shall be selected with special reference to their training and experience along the line of 1 or more of the principal lines of activities vested in the department of agriculture and their ability and fitness to deal therewith. The term of office of each member of the commission shall be 6 years: Provided, That of those first appointed 2 shall be appointed for 2 years, 2 for 4 years and 1 for 6 years. The governor shall fill any vacancy occurring in the membership of the commission and may remove any member of the commission for cause after a hearing. Each member of this commission shall hold his office until the appointment and qualification of his successor. The commission, after having qualified, shall within 30 days and annually thereafter meet at its office in Lansing and organize by electing a chairman and a secretary. Three members of said commission shall constitute a quorum for the transaction of business. Meetings may be called by the chairman and shall be called on request of a majority of the members of the commission and may be held as often as necessary and at other places than the commissioners' offices at Lansing: Provided, That 1 meeting shall be held each month. The commission shall appoint and employ a director of agriculture who shall continue in office at the pleasure of the commission and who shall receive such annual salary as shall be appropriated by the legislature. He may appoint, with the approval of the commission, such assistants and employees as may be necessary to perform the duties hereby imposed, the number of such assistants and employees, and the compensation payable to all persons so appointed and employed, being within the appropriation made therefor by the legislature. The members of the commission shall receive compensation of \$20.00 per day when in actual performance of duties: Provided, That no commissioner shall receive more than \$400.00 in any fiscal year as compensation. The salaries of all officers and employees hereby authorized, and the necessary expenses thereof while traveling in performing any of their duties, shall be paid in the same manner as the salaries and expenses of other state officers and employees are paid. The board of auditors shall provide suitable offices at Lansing and proper office equipment for the use of said department. Each member of the commission and the director of agriculture shall qualify by taking and subscribing to the constitutional oath of office, and filing same in the office of the secretary of state.

Whenever, in any law of the state reference is made to the commissioner of agriculture, reference shall be deemed to be made to the director of agriculture.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921 ;-- CL 1929, 5001 ;-- Am. 1933, Act 51, Imd. Eff. Apr. 14, 1933 ;-- Am. 1945, Act 344, Eff. Sept. 6, 1945 ;-- Am. 1947, Act 104, Imd. Eff. May 20, 1947 ;-- CL 1948, 285.1 ;-- Am. 1952, Act 217, Eff. Sept. 18, 1952 ;-- Am. 1957, Act 113, Imd. Eff. May 24, 1957

**285.2 Transfer of powers and duties to department of agriculture; abolition of agencies and officers; transfer of records, files, and papers; pending proceedings.**

Sec. 2.

The department of agriculture shall exercise the powers and perform the duties now vested by law in the department of animal industry, the state food and drug commissioner, the state veterinary board, the immigration commission, the commissioner of immigration, the market director, the Michigan weather service, and the Michigan agricultural fair commission. The departments, boards, commissions, and officers, except the Michigan weather service, whose powers and duties are transferred to the department of agriculture under this section are abolished as of June 30, 1921. All records, files, and papers of any nature pertaining to the functions of a transferred department, board, commission, or officer shall be turned over to the department of agriculture. Any hearing or other proceeding pending before any board or officer whose tenure is terminated under this section shall not be abated, but shall be considered to be transferred to the department of agriculture and shall be carried on and determined by the director of the department of agriculture in accordance with the provisions of the law governing the hearing or proceeding.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921 ;-- Am. 1923, Act 34, Eff. Aug. 30, 1923 ;-- CL 1929, 5002 ;-- CL 1948, 285.2 ;-- Am. 1980, Act 314, Imd. Eff. Dec. 5, 1980

**285.3 Transfer of additional powers and duties to department of agriculture; abolition of offices; records, files, and data.**

Sec. 3.

In addition to the powers and duties transferred to the department of agriculture under section 2, the powers and duties of the state board of agriculture with reference to the inspection and regulation of orchards, vineyards, nurseries, and apiaries; the testing of agricultural seeds; the analysis of commercial fertilizers; the testing and examination of insecticides; the analysis and testing of commercial stock foods; the investigation and improvement of marketing conditions; and the publication of Michigan weather service summaries are also transferred to the department of agriculture. The offices of state inspector of orchards and nurseries, and inspector of apiaries are abolished. The powers and duties pertaining to those offices are transferred to the department of agriculture. All records and files pertaining to either of those offices, or to any of the powers and duties transferred under this section, are a part of the records and files of the department of agriculture and shall be preserved accordingly. All duties of the secretary of state imposed by law regarding the collection and publication of statistics relating to agriculture and agricultural interests within the state and the Michigan weather service are also transferred to the department of agriculture. All records and data of the secretary of state regarding agriculture and agricultural interests, and the publication of a summary of the observations of the director of the Michigan weather service shall be delivered to the department of agriculture by the secretary of state. The secretary of state is relieved from further performance of those duties.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921 ;-- CL 1929, 5003 ;-- CL 1948, 285.3 ;-- Am. 1980, Act 314, Imd. Eff. Dec. 5, 1980

**285.4 Repealed. 2000, Act 39, Imd. Eff. Mar. 24, 2000.**

**Compiler's Notes:** The repealed section pertained to control of fair lands.

**285.5 Promotion of agricultural interests; cooperation with state and federal agricultural agencies; fostering**

**trade; preventing fraudulent land sales; supervisory control.**

Sec. 5.

The state department of agriculture shall foster and promote in every possible way the agricultural interests of this state; shall cooperate with agricultural agencies in the different counties of the state and of the federal government; shall foster direct trading between the producer and consumer; and shall prevent, and assist in preventing, by all available means authorized by law, the sale of unimproved lands and lands not suitable for agricultural development within the state by fraud, misrepresentation, or deceit and the publication of false or misleading statements or advertising matter designed to effect such sales. The powers and duties imposed by this act on the state department of agriculture shall be exercised and performed under the supervisory control of the state administrative board.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921 ;-- CL 1929, 5005 ;-- CL 1948, 285.5 ;-- Am. 1974, Act 59, Imd. Eff. Apr. 1, 1974

**285.6 Effective date; repeal.**

Sec. 6.

This act, other than sections 1 and 4, shall be in force and effect on and after the first day of July, 1921. All acts and parts of acts in any way contravening the provisions of this act shall be deemed to be superseded and repealed as of said date.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921 ;-- CL 1929, 5006 ;-- CL 1948, 285.6

**285.7 Declaration of necessity.**

Sec. 7.

This act is hereby declared to be immediately necessary for the preservation of the public peace, health and safety.

**History:** 1921, Act 13, Imd. Eff. Mar. 22, 1921 ;-- CL 1929, 5007 ;-- CL 1948, 285.7

## **EXECUTIVE REORGANIZATION ORDER**

**E.R.O. No. 2011-2**

**285.11 Renaming of department of agriculture to department of agriculture and rural development; renaming of commission of agriculture to commission of agriculture and rural development; rescission of certain parts of E.O. No. 2009-54.**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration; and

WHEREAS, Section 8 of Article V of the Michigan Constitution of 1963 provides that each principal department of state government shall be under the supervision of the Governor, unless otherwise provided in the Constitution; and

WHEREAS, appropriate organization of the Department of Agriculture and the Commission of Agriculture will help assure the protection, promotion, and preservation of the food, agricultural, conservation, and economic interests of the People of the State of Michigan; and

WHEREAS, rural development is integral to the growth of Michigan's rural housing and infrastructure, the agricultural and food processing industries, and the overall economy of the state; and

WHEREAS, certain modifications in Executive Order 2009-54 are necessary; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW THEREFORE, I, Richard D. Snyder, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

#### I. DEFINITIONS

As used in this Order:

A. "Commission of Agriculture" means the commission created under Section 1 of 1921 PA 13, MCL 285.1, and continued under Section 179 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.279.

B. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

C. "Department of Natural Resources" means the principal department by that name created by Executive Order 2011-1.

D. "Natural Resources Commission" means the commission created under Section 1 of 1921 PA 17, MCL 299.1, continued under Section 254 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.354, transferred to the Department of Natural Resources under Executive Order 1991-22, MCL 299.13, continued under Section 501 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.501, renamed the Natural Resources Commission by Executive Order 2009-45, and transferred to the Department of Natural Resources by Executive Order 2011-1.

#### II. DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT; and the COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT

A. The Department of Agriculture is renamed the Department of Agriculture and Rural Development; the Commission of Agriculture is renamed the Commission of Agriculture and Rural Development.

B. The Department of Agriculture and Rural Development and the Commission of Agriculture and Rural Development shall utilize their statutory powers and authority to further the goal of developing the rural areas of this state.

C. The following parts of Executive Order 2009-54 concerning the Commission of Agriculture and Rural Development are rescinded:

1. Section II(A)(2);
2. Section II(A)(5);
3. Section II(A)(17);
4. Section II(B)(7), II(B)(8), and II(B)(9); and
5. Section II(C)(15).

#### III. DEPARTMENT OF NATURAL RESOURCES AND NATURAL RESOURCES COMMISSION

A. The following parts of Executive Order 2009-54 concerning the Department of Natural Resources and the Natural Resources Commission are rescinded:

1. Section III(A)(2);
2. Section III(A)(4); and
3. Section III(B) (The Michigan Snowmobile and Trails Advisory Council having been established by 2010 PA 46).

This Executive Order shall become effective on March 13, 2011, consistent with Section 2 of Article V of the Michigan Constitution of 1963.

**History:** 2011, E.R.O. No. 2011-2, Eff. Mar. 13, 2011

**Compiler's Notes:** Executive Reorganization Order No. 2011-2 was promulgated January 11, 2011 as Executive Order No. 2011-2, Eff. March 13, 2011.

## CROP AND STOCK REPORTS

### Act 33 of 1881

285.21-285.22 Repealed. 2018, Act 290, Eff. Sept. 27, 2018.

## MARKET CONDITIONS

### Act 91 of 1915

AN ACT to provide for the investigation and improvement of marketing conditions and establishing the office of market director and prescribing the duties and powers thereof; and to prescribe penalties for the violation of the provisions of this act.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- Am. 1937, Act 322, Eff. Oct. 29, 1937

*The People of the State of Michigan enact:*

#### **285.31 Investigation of market conditions; director and employees.**

##### Sec. 1.

That the state board of agriculture is hereby authorized to undertake the investigation and improvement of market conditions for Michigan products and appoint a competent and experienced person as director of markets and such other competent and experienced persons as may be necessary to carry out the intent of this act. The state board of agriculture shall direct and control the purposes of this act and fix the compensation of directors and employees.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7918 ;-- CL 1929, 5033 ;-- CL 1948, 285.31

**Compiler's Notes:** The office of market director was abolished and the powers and duties thereof transferred to the state department of agriculture. See MCL 285.2.

#### **285.32 Director; duties, powers, assistance to cooperative associations.**

##### Sec. 2.

The director of markets shall investigate production and marketing farm products and for the exercise of such authority shall have the power to summon witnesses, issue subpoenas, compel attendance of witnesses and the production of evidence. The director of markets shall assist in organization of cooperative and other associations for improving the relations and services among producers, distributors and consumers and afford them such services under adequate rules and regulations as relate to standardizing, grading, packing, handling, storage and sale of products within the state of Michigan not contrary to law, and enforce such rules and regulations by actions or proceedings in any court of competent jurisdiction.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7919 ;-- CL 1929, 5034 ;-- CL 1948, 285.32

**Admin Rule:** R 285.523.1 et seq. and R 285.537.1 et seq. of the Michigan Administrative Code.

**285.32a "Farm product" defined; permissive grading system; compliance with MCL 289.701 et seq. and MCL 290.601 et seq.**

Sec. 2a.

(1) For purposes of this section and sections 2b and 2c, "farm product" means fresh fruit or vegetables.

(2) The director of markets shall not impose any mandatory system of grading on a farm product subject to this act. However, a person producing, distributing, or selling a farm product may identify a farm product as conforming to a grade or grading system if either of the following conditions are met:

(a) The grade or grading system conforms with either of the following:

(i) The standards established by the secretary of the United States Department of Agriculture.

(ii) The standards described in section 2b.

(b) The grade or grading system used by the person has been approved by the department of agriculture as at least comparable to the grading system described in section 2b and has been registered with the department.

(3) The permissive grading system provided by this section and sections 2b and 2c does not apply to table stock potatoes subject to Act No. 220 of the Public Acts of 1929, as amended, being sections 290.151 to 290.162 of the Michigan Compiled Laws.

(4) A person who identifies a farm product according to the permissive grading system provided in this section and sections 2b and 2c shall comply, in addition, with all of the applicable labeling requirements of the Michigan food law of 1968, Act No. 39 of the Public Acts of 1968, being sections 289.701 to 289.727 of the Michigan Compiled Laws, and the weights and measures act of 1964, Act No. 283 of the Public Acts of 1964, being sections 290.601 to 290.634 of the Michigan Compiled Laws.

**History:** Add. 1985, Act 83, Imd. Eff. July 5, 1985

**285.32b Identification of farm product as meeting certain grade; use of specific market name or logo; identification of tomatoes; definitions.**

Sec. 2b.

(1) A person producing, distributing, or selling a farm product may identify that farm product as meeting 1 of the following grades if the product actually conforms to the standards of that grade:

(a) "Fresh market #1" means that the farm product is part of a lot that reflects the overall quality of the entire crop and that meets all of the following:

(i) Is free from mold, decay, breakdown, sunscald, worms, or wormholes.

(ii) Is not misshapen.

(iii) Is free from serious damage by mechanical devices, disease, insects, freezing, or other causes seriously affecting the edible or shipping quality of the product.

(iv) Contains not more than a total of 10% of all of the defects described in subparagraphs (i) to (iii), and contains not more than 2% of the defect described in subparagraph (i).

(v) Contains not more than 5% of the farm products that are smaller than the minimum size marked on the container or otherwise specified.

(b) "Fresh market #2" means that the farm product is part of a lot that meets the same standards as the "fresh market #1" grade, but from which superior quality farm products have been picked out.

(2) A specific market name or logo may be used in conjunction with the grades described in subsection (1)(a) and (b) of this section if the market name has been registered with the department of agriculture as required by section 2a as part of the grade or grading system.

(3) A person producing, distributing, or selling tomatoes may identify the tomatoes as meeting 1 of the following grades if the tomatoes actually conform to the standards of that grade:

(a) "Michigan No. 1" means tomatoes grown in this state of similar varietal characteristics which are mature but not overripe or soft; which are fairly well formed, free from decay, freezing injury, and from damage caused by dirt, bruises, cuts, sunscald, sunburn, puffiness, scars, catfaces, growth cracks, insects, hail, and free from visible disease at shipping point. In order to allow for variations incident to proper grading and handling, not more than 10%, by count, of the tomatoes in any lot may be below the requirements of this grade but not more than 1/10 of this amount, or 1%, shall be allowed for soft ripe tomatoes or tomatoes affected by decay. However, when a tolerance of 10% is provided, individual containers in the lot shall not exceed 1-1/2 times the tolerance, and when a tolerance of less than 10% is provided, individual containers shall not contain more than double the tolerance.

(b) "Michigan No. 2" means tomatoes grown in this state of similar varietal characteristics which are mature but not overripe or soft; not badly misshapen; free from decay, unhealed cuts, freezing injury, and from serious damage caused by bruises, sunscald, sunburn, catfaces, growth cracks, scars, disease, hail, or mechanical or other means; puffiness; or insects. In order to allow for variations other than size incident to proper grading and handling, not more than a total of 10%, by count, of the tomatoes in any lot may be below the requirements of this grade but not more than 1/10 of this amount, or 1%, shall be allowed for soft ripe tomatoes or tomatoes affected by decay.

(4) As used in subsection (3):

(a) "Badly misshapen" means that the tomato is so badly deformed that its appearance is seriously affected.

(b) "Damage" means any injury which materially affects the appearance or the edible or shipping quality. The following shall be considered as damage:

(i) Cuts that are not shallow, not well healed, or more than 1/2 inch in length.

(ii) Puffy tomatoes. These tomatoes are usually angular and flat-sided. They are damaged if open space in 1 or more locules materially affects the appearance when the tomato is cut through the center at right angles to a line running from the stem to the blossom end.

(iii) Scars, except catfaces, when aggregating more than 3/4 inch in diameter.

(iv) Catfaces, when scars are rough or deep, when channels are very deep or wide, or, if the catface is fairly smooth, with an area greater than that of a circle 3/4 inch in diameter.

(v) Growth cracks radiating from or concentric to stem scar when not well healed, or when individual radial cracks are more than 1/2 inch in length not to exceed an aggregate length of all radial cracks of 1-1/2 inch, measured from the stem scar. Concentric cracks permitted that do not affect the appearance of the tomato to a greater extent than the maximum radial cracks permitted.

(c) "Fairly well formed" means that the tomato is not decidedly kidney shaped, lopsided, elongated, angular, or otherwise deformed.

(d) "Mature" means that the contents of the seed cavities have begun to develop a jelly or glue-like consistency and the seeds are well developed.

(e) "Serious damage" means any injury that seriously affects the appearance, edible or shipping quality, or that cannot be removed in the ordinary process of trimming without a loss of more than 20%, by weight, of the tomato in excess of that which would occur if the tomato were perfect. The following shall be considered as "serious damage":

(i) Soft ripe tomatoes or tomatoes affected by decay.

(ii) Fresh holes or cuts through the tomato wall.

(iii) Tomatoes showing any effects of freezing.

(iv) Puffiness that causes the tomato to be distinctly light in weight.

(v) Tomatoes actually infested with worms.

(vi) Catfaces that are irregular, dark leathery scars at the blossom end of the tomato. These scars seriously damage the tomato when they are fairly smooth and greater in area than a circle 1 inch in diameter, or when rough or deep, or when channels extend deeply into the tomato.

(vii) Growth cracks that are ruptures or cracks radiating from the stem scar, or cracks concentric to the stem scar. These growth cracks seriously damage the tomato when they are not well healed, or when they are more than 1 inch in length, not to exceed 3 cracks to the tomato, except that very narrow well healed cracks concentric to the stem scar shall not be considered as serious damage unless they are so numerous as to seriously damage the appearance of the tomato.

(f) "Similar varietal characteristics" means that the tomatoes are alike as to firmness of flesh and shade of color, i.e., that soft-fleshed early maturing varieties are not mixed with firm-fleshed mid-season or late varieties, and that bright red varieties are not mixed with varieties having a purplish tinge.

**History:** Add. 1985, Act 83, Imd. Eff. July 5, 1985

## **285.32c Representations on face of container; overfacing container as violation of act.**

Sec. 2c.

The shown face of a container of farm products shall represent accurately the size, shape, color, and overall quality of the remaining contents of the container. Overfacing a container of farm products is a violation of this act.

**History:** Add. 1985, Act 83, Imd. Eff. July 5, 1985



### **285.33 Director; information to producers.**

#### **Sec. 3.**

The director of markets shall give information to Michigan producers on the market conditions in the various states of the union.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7920 ;-- CL 1929, 5035 ;-- CL 1948, 285.33

### **285.34 Director; cooperation with United States; auction markets.**

#### **Sec. 4.**

The director of markets is hereby authorized to cooperate with the United States department of agriculture through any of its agents or employees, and also with any of the joint agents or agencies of the United States and those employed or controlled by the state board of agriculture in market and food investigations, organization, standardizing, grading, packing, handling, storage and sale of products, and to provide for auction markets and licensed auctioneers within the state of Michigan, or otherwise in such manner as may be deemed advisable under established rules of safe-guarding the distribution of farm products and fix reasonable charges or fees for services rendered in the sale of products.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7921 ;-- CL 1929, 5036 ;-- CL 1948, 285.34

### **285.35 Director; schedule of fees, basis, deposit to general fund.**

#### **Sec. 5.**

The director of markets shall adopt and may amend from time to time schedules of fees to be charged for standardizing and standard labels for inspection at receiving, shipping or distributing centers or such other services as may be rendered under this act. All such fees shall be made with a view to the minimum cost and to make this department self-sustaining. All fees shall be turned into the state treasury and any accumulated balance as of June 30, 1949, shall be credited to the general fund.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7922 ;-- CL 1929, 5037 ;-- Am. 1937, Act 322, Eff. Oct. 29, 1937 ;-- CL 1948, 285.35 ;-- Am. 1949, Act 130, Imd. Eff. May 20, 1949

### **285.36 Director; bulletins, contents, publication.**

#### **Sec. 6.**

The director of markets shall publish bulletins setting forth market conditions and prices as far as possible and advising as to the available supplies of products, the approved methods of standards and grades and best means of marketing. He may at his discretion publish the names of producers, distributors and consumers, and advices as to marketing.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7923 ;-- CL 1929, 5038 ;-- CL 1948, 285.36



### **285.37 Director; transportation delays, report; violation of laws; food spoilage; prevention of waste.**

#### **Sec. 7.**

The director of markets in addition to his other duties, shall investigate and report to the state railway commission delays and inadequacies of transportation of food supplies. He shall also report to the attorney general the violation of laws in restraint of trade or unlawful combinations to fix prices of food stuffs. When food stuffs are liable to spoil for lack of ready market, he may take such steps as are advisable to benefit the producer and consumer and in preventing waste: Provided, however, That this provision shall not apply to fruits and vegetables already marketed.

**History:** 1915, Act 91, Eff. Aug. 24, 1915 ;-- CL 1915, 7924 ;-- CL 1929, 5039 ;-- CL 1948, 285.37

**Compiler's Notes:** The state railway commission, referred to in this section, was abolished and its powers and duties transferred to public utilities commission by MCL 460.53. The public utilities commission was subsequently abolished and its powers and duties transferred to the public service commission by MCL 460.4.

### **285.38 Commissioner of agriculture; inspection, certificates; exception.**

#### **Sec. 8.**

The commissioner of agriculture, in person or by some person authorized by him, shall have free access to any place or conveyance wherein farm products are being marketed, transported or held for commercial purposes. The commissioner of agriculture, in person or by some person authorized by him, shall have power to open any bag, crate or other container of such farm products and examine the contents thereof, and may, upon tendering the market price, take samples therefrom. The commissioner of agriculture may employ inspectors to inspect farm products in accordance with established official grades or standards for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of such inspection and executed by the inspector shall state the date and place of inspection, the grade, condition and approximate quality of the farm products inspected and any other pertinent facts that the commissioner may require. Such a certificate and all federal certificates relative to the condition or quality of such farm products shall be prima facie evidence in all courts of the state of the facts required to be stated therein: Provided, however, That the provisions of this act shall not apply to the grower in the sale of farm products grown by himself when made direct to the consumer.

**History:** Add. 1937, Act 322, Eff. Oct. 29, 1937 ;-- CL 1948, 285.38

**Former Law:** See CL 1915, Å§ 7925; CL 1929, Å§ 5040.

### **285.39 Violation of act; misdemeanor.**

#### **Sec. 9.**

Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

**History:** Add. 1937, Act 322, Eff. Oct. 29, 1937 ;-- CL 1948, 285.39

## **PROMOTION OF AGRICULTURAL INTERESTS; FARM BUREAU; AGRICULTURAL AGENT**

## Act 315 of 1919

AN ACT to promote the agricultural interests of the various counties of this state and to repeal Act No. 3 of the Public Acts of 1912, second extra session, and Act No. 67 of the Public Acts of 1913.

**History:** 1919, Act 315, Eff. Aug. 14, 1919

*The People of the State of Michigan enact:*

### **285.51 Agricultural interest, promotion; farm bureau, tax; county agent and assistants, approval, compensation.**

#### Sec. 1.

In order to promote the agricultural interests of the various counties of this state and to provide for agricultural extension work, each county of the state through its board of supervisors is hereby authorized and empowered to cooperate to said end with the Michigan agricultural college and with any department or bureau of the United States government; and may enter into agreements with reference thereto. The board of supervisors in any county may appropriate money, or raise money by taxation, for the purpose hereof, and may establish a farm bureau to act as the representative of the board and of the county in all such cooperative work. Subject to the approval of the state board of agriculture or of the proper representatives thereof, the board may appoint a county agricultural agent and necessary assistants, whose duty it shall be to aid in carrying out the purpose of this act. The compensation and expenses of any person so employed, or such portion thereof as shall under the terms of any agreement between the county and the Michigan agricultural college or any department or bureau of the federal government, be payable by the county, shall be fixed and provided for by the board.

**History:** 1919, Act 315, Eff. Aug. 14, 1919 ;-- CL 1929, 5041 ;-- CL 1948, 285.51

**Admin Rule:** R 285.523.1 et seq. of the Michigan Administrative Code.

## GRAIN DEALERS ACT

### Act 141 of 1939

AN ACT to regulate the storage, warehousing, buying, and selling of farm produce within this state; to provide for the licensing, regulation, and bonding of grain dealers; to provide for warehouse receipts, acknowledgment forms, and price later agreements and their use and priority; to provide for the creation of security interests; to provide for certain powers and duties of the department of agriculture and its director; to impose certain duties on insurance companies and sureties; and to provide administrative remedies and penalties for the violation of this act.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- Am. 1962, Act 159, Eff. Mar. 28, 1963 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1984, Act 169, Imd. Eff. June 29, 1984 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

*The People of the State of Michigan enact:*

### **285.61 Short title.**

#### Sec. 1.

This act shall be known as the "grain dealers act".

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.61 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976

## 285.62 Definitions.

### Sec. 2.

As used in this act:

(a) "Acknowledgment form" means a scale weight ticket, a load slip, or any other evidence of deposit issued by a grain dealer or his or her authorized representative to a depositor that identifies the farm produce being transferred from the possession of the depositor to the possession of the grain dealer.

(b) "Allowable net assets" does not include intangible assets or assets that the department or a certified public accountant determines have no monetary value.

(c) "Cash sale" means a sale in which the title to farm produce is transferred only after a price is decided upon before or at the time of delivery and payment for the farm produce meets 1 of the following:

(i) Payment of the price is made to the depositor in cash or by check, money order, wire transfer, or draft within 10 days of delivery.

(ii) Payment of the price is made by placing the amount of the price in the depositor's account and a credit statement is sent to the depositor within 10 days of delivery.

(d) "Claimant" means a person to whom a grain dealer owes a financial obligation for farm produce or who is entitled to the farm produce delivered to the grain dealer or the proceeds of the farm produce.

(e) "Collateral warehouse receipt" means a warehouse receipt issued to a financial institution by a grain dealer for unencumbered grain owned by that grain dealer.

(f) "Department" means the department of agriculture.

(g) "Depositor" means either of the following:

(i) A person who delivers farm produce to a licensed grain dealer for storage, processing, shipment, or sale and has title to the farm produce at the time of delivery.

(ii) A person who owns or who is legal holder of an acknowledgment form or warehouse receipt issued by a licensed grain dealer for farm produce.

(h) "Director" means the director of the department or his or her designee.

(i) In a farm produce transaction, "disposition" means a cash sale or other transfer of farm produce or placement of farm produce on a warehouse receipt or price later agreement.

(j) "Facility" means an edifice, silo, tank, bin, crib, interstice, or protected enclosed structure, or more than 1 edifice, silo, tank, bin, crib, interstice, or protected enclosed structure located contiguous to each other, used to receive, deposit, or store farm produce in bulk.

(k) "Failure" of a licensee or grain dealer means any of the following:

(i) Inability of a licensee or grain dealer to financially satisfy claimants.

(ii) A public declaration of insolvency by a licensee or grain dealer.

(l) "Farm produce" means 1 or more of dry edible beans, soybeans, small grains, cereal grains, or corn.

(m) "Farm produce handled" means the number of bushels or hundredweight of farm produce that a licensee receives or is otherwise obligated for in a fiscal period.

(n) "Farm produce handling" means any of the following:

(i) Engaging or participating in the business of purchasing farm produce.

(ii) Operating a grain elevator for the receiving, storing, shipping, or processing of farm produce.

(iii) Receiving farm produce into a facility under a price later agreement.

(o) "Farm produce trucker" means a person engaged in the business of hauling farm produce that issues price later agreements or acknowledgment forms, transfers warehouse receipts, or is responsible for payment to a depositor, but that does not own a facility.

(p) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state, or a national bank for cooperatives subject to the farm credit act of 1971, Public Law 92-181, 85 Stat. 583.

(q) "Grain bank" or "feed bank" means farm produce stored on a nonnegotiable warehouse receipt that the owner intends to periodically, partially withdraw.

(r) "Grain dealer" means a person engaged in the business of receiving, buying, exchanging, selling, or storing farm produce in this state. The term includes a farm produce trucker, grain merchandiser, or processor. The term does not include a person solely engaged in 1 of the following:

(i) Selling farm produce produced by the person.

(ii) Buying farm produce in a cash sale to feed the person's livestock or poultry.

(iii) 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, buying farm produce in a cash sale.

(iv) Purchasing farm produce from a person other than the grower or producer of the farm produce in a cash sale.

(v) Contracting for land or services to produce seed for sowing or propagation.

(s) "Grain merchandiser" means a person engaged in the business of receiving, buying, exchanging, selling, or taking title to farm produce and who is responsible for payment to a depositor but does not operate a truck or a facility.

(t) "License" means a license issued by the department to a grain dealer in the manner provided under this act. The term includes a permit issued under section 6.

(u) "Licensee" means a grain dealer licensed under this act.

(v) "Open storage" means the storage of farm produce for 30 days or less under an acknowledgment form that does not contain a designation of a specific transaction type.

(w) "Operating within this state" includes the transfer of physical possession or title of farm produce from an owner to a person within the boundaries of this state.

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

(y) "Price later agreement" means a written or electronically transmitted agreement between a depositor and a grain dealer where the grain dealer receives title to farm produce and the depositor retains the option to price the farm produce after delivery based on conditions in the agreement.

(z) "Processing" means drying, cleaning, packaging, or otherwise changing the physical characteristics of farm produce.

(aa) "Processor" means a person engaged in processing farm produce and storing the farm produce for a period of 24 hours or more.

(bb) "Receiving point" means a facility where farm produce is received, weighed, and stored and an acknowledgment form is issued.

(cc) With respect to a financial statement, "reviewed" means performing inquiry and analytical procedures that provide an accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statement for it to conform with generally accepted accounting principles.

(dd) "Revocation" means the removal of a grain dealer's license under this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The term does not include a suspension of a grain dealer's license under this act.

(ee) "Shortage" means that a grain dealer does not have a sufficient amount of farm produce by class and quality to cover the grain dealer's outstanding warehouse receipt obligations for that farm produce.

(ff) "Storage" means the deposit of farm produce in trust with a grain dealer by a depositor.

(gg) "Temporary facility" means a facility that does not have a receiving point and is used by a licensee to store farm produce.

(hh) "Warehouse receipt" means a written or electronically transmitted receipt issued by a grain dealer to a depositor at the time the grain dealer accepts farm produce for storage. A warehouse receipt is 1 of the following:

(i) A negotiable warehouse receipt if it states that the grain dealer will deliver the farm produce to the bearer of the receipt or to the order of a person named in the receipt.

(ii) A nonnegotiable warehouse receipt if it does not satisfy subparagraph (i).

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.62 ;-- Am. 1963, Act 180, Eff. Sept. 6, 1963 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1978, Act 154, Imd. Eff. May 22, 1978 ;-- Am. 1979, Act 206, Imd. Eff. Jan. 8, 1980 ;-- Am. 1982, Act 33, Eff. Sept. 12, 1982 ;-- Am. 1988, Act 365, Imd. Eff. Dec. 21, 1988 ;-- Am. 1992, Act 238, Imd. Eff. Nov. 12, 1992 ;-- Am. 1996, Act 311, Imd. Eff. June 24, 1996 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

**Compiler's Notes:** Section 2 of Act 33 of 1982 provides: "This amendatory act shall take effect 6 months after it has been enacted into law and shall apply only to licenses issued or renewed after the effective date."

### **285.63 Grain dealer; license required; issuance; prohibited conduct; allowable net asset requirements; surety bond; acting as grain dealer without license; misdemeanor; review of books and records; injunction.**

#### **Sec. 3.**

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

(2) A grain dealer shall not process or store farm produce, issue a warehouse receipt, charge or collect a fee for storage of farm produce, issue a price later agreement, or issue an acknowledgment of receipt for delivery of farm

produce except in compliance with this act.

(3) Subject to subsection (4), the department may refuse to issue or renew a license to a grain dealer unless the grain dealer meets at least 1 of the following at the time the grain dealer submits the application:

(a) Has allowable net assets of \$100,000.00 or more and handled 1,000,000 or fewer bushels of farm produce in the grain dealer's most recent fiscal year.

(b) Has allowable net assets of \$100,000.00 or more, and the allowable net assets equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the grain dealer's most recent completed fiscal year.

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

(5) A person that acts or offers to act as a grain dealer without a license is guilty of a misdemeanor. Each day that the person acts or offers to act as a grain dealer without a license is a separate misdemeanor.

(6) If the director has probable cause to believe that a person is acting or offering to act as a grain dealer without a license, the director may review the books and records relating to the operations of the person.

(7) On the application of the department, a court in this state shall issue a temporary or permanent injunction that enjoins a person from acting as a grain dealer without a license, issuing a warehouse receipt or price later agreement without a license, or interfering with an employee of the department or a receiver appointed under this act that is performing his or her duties under this act.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.63 ;-- Am. 1962, Act 159, Eff. Mar. 28, 1963 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1979, Act 206, Imd. Eff. Jan. 8, 1980 ;-- Am. 1982, Act 33, Eff. Sept. 12, 1982 ;-- Am. 1984, Act 169, Imd. Eff. June 29, 1984 ;-- Am. 1996, Act 311, Imd. Eff. June 24, 1996 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003 ;-- Am. 2016, Act 263, Eff. Sept. 26, 2016

**Compiler's Notes:** Section 2 of Act 33 of 1982 provides: "This amendatory act shall take effect 6 months after it has been enacted into law and shall apply only to licenses issued or renewed after the effective date."

**Admin Rule:** R 285.560.1 et seq. of the Michigan Administrative Code.

## **285.64 License; conduct; term; display; term of new license.**

### **Sec. 4.**

(1) The department may issue, amend, or renew a license if the department determines that the applicant has complied with this act and rules promulgated under this act.

(2) A licensee may receive farm produce for storage or processing, assess and collect storage or processing charges on farm produce stored or processed, issue warehouse receipts on stored farm produce, issue price later agreements, collect handling charges on price later agreements, and issue acknowledgment forms.

(3) Except as provided in subsection (4), a license is issued for a term of 1 year. A license is not transferable by the licensee. A licensee shall prominently display his or her license on the vehicle of a licensee who is a farm produce trucker or at the principal place of business of a licensee who is a grain merchandiser or at a facility, as applicable.

(4) The department may, in its discretion, issue a new license for a term of up to 21 months.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.64 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

## **285.65 Revocation of license; application for new license; events; notice of event.**

### **Sec. 5.**

(1) The department may revoke a grain dealer's license, but the grain dealer may apply for a new license, if any of the following events occur:

(a) The licensee is a party to a merger, consolidation, conversion, or similar transaction. The department may decide not to revoke the license if the successor to the licensee is licensed under this act and executes a successor's agreement acceptable to the department.

(b) Fifty percent or more of the shares, other than publicly traded shares, or other ownership interests in the licensee are sold, exchanged, or otherwise transferred. The department may decide not to revoke the license if the transferee is licensed under this act and executes a successor's agreement acceptable to the department.

(c) Fifty percent or more of the property and assets of the licensee are sold, leased, exchanged, or otherwise transferred. The department may waive this requirement if the transferee is licensed under this act and executes a successor's agreement acceptable to the department.

(d) The licensee ceases to pay its debts in the ordinary course of business, cannot pay its debts as they become due, or is insolvent under an applicable bankruptcy or insolvency law.

(e) If the grain dealer has 100 or more stockholders, members, partners, or owners, as applicable, more than 1/2 of the grain dealer's board of directors or other governing body or board are replaced with different individuals.

(f) The name of the grain dealer is changed.

(2) If an event described in subsection (1) occurs, the grain dealer shall file a notice of the event with the department within 1 business day of the event.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.65 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1982, Act 33, Eff. Sept. 12, 1982 ;-- Am. 1996, Act 311, Imd. Eff. June 24, 1996 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

**Compiler's Notes:** Section 2 of Act 33 of 1982 provides: "This amendatory act shall take effect 6 months after it has been enacted into law and shall apply only to licenses issued or renewed after the effective date."

## **285.66 Temporary permit.**

### **Sec. 6.**

(1) If a grain dealer has applied for a license but needs additional time to comply with the requirements of this act for issuance of a license, the department may issue 1 temporary permit to the applicant. A permit issued under this section expires on the expiration date set by the department, which may not be more than 60 days after the permit is issued, when a license is issued, or when the application for license is denied, whichever occurs first. The department may grant 2 extensions of not more than 30 days of a permit issued under this section.

(2) A grain dealer who has been granted a permit under this section has the same rights and obligations of a licensee under this act.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.66 ;-- Am. 1955, Act 179, Eff. Oct. 14, 1955 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1982, Act 33, Eff. Sept. 12, 1982 ;-- Am. 1992, Act 238, Imd. Eff. Nov. 12, 1992 ;-- Am. 1996, Act 311, Imd. Eff. June 24, 1996 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003 ;-- Am. 2023, Act 197, Imd. Eff. Nov. 7, 2023

**Compiler's Notes:** Section 2 of Act 33 of 1982 provides: "This amendatory act shall take effect 6 months after it has been enacted into law and shall apply only to licenses issued or renewed after the effective date."

## **285.66a, 285.66b Repealed. 2002, Act 80, Eff. Mar. 31, 2003.**

**Compiler's Notes:** The repealed sections pertained to furnishing copies of act and failure to pay assessments.

## **285.67 Grain dealer's license; application; form; contents; receipt of completed application; issuance of license within certain time period; submission; report.**

### **Sec. 7.**



(1) A grain dealer shall file an application for a new license or for renewal or amendment of a license with the department. The department may determine the time when an application is filed and the form of the application. A complete application must include all of the following:

(a) The name and ownership interest of each owner, stockholder, member, or partner of the grain dealer who owns at least 5% of the shares, other than publicly traded shares, or other ownership interests of the grain dealer, or for a grain dealer described in section 9(3), at least 5% of the shares, other than publicly traded shares, or other ownership interests of the parent corporation.

(b) The location and storage capacity of each facility of the grain dealer.

(c) Proof of insurance for all farm produce stored at each facility of the grain dealer.

(d) A statement that none of the events described in section 10 have occurred within the 5 years preceding the date of the license application, or if any of those events have occurred, a description of those events.

(e) A statement of the total bushels of farm produce handled by the grain dealer during the grain dealer's most recent completed fiscal year.

(f) If the grain dealer's most recent completed fiscal year was for a period of less than 12 months or the grain dealer materially changed its farm produce handling practices in that fiscal year, a projection of the total bushels of farm produce the grain dealer expects to handle in the current fiscal year.

(g) Copies of all warehouse receipt forms, price later agreement forms, and acknowledgment forms used by the grain dealer.

(h) Copies of all of the grain dealer's facility lease agreements and bin charts.

(i) If the grain dealer does not maintain an office in this state and does not have a resident agent in this state, the application must include a written appointment of a statutory agent upon whom process, notice, or demand may be served. The statutory agent must be an individual residing in this state or a corporation whose principal place of business is located in this state. If the identity or address of the statutory agent changes while the application is pending or after a license is issued, the grain dealer shall within 3 days file with the department a written appointment of the new statutory agent or written notice of the new address, as applicable.

(j) The license fee described in section 8.

(k) The financial statement described in section 9.

(2) If an application described in subsection (1) is considered incomplete by the department, the department shall notify the applicant in writing or electronically not more than 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 60-day time period described in subsection (6) is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The tolling of the 60-day time period under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, must be placed in sequence with other complete applications received at that same time.

(3) For a license renewal, a licensee shall submit the complete application to the department not less than 30 days before the expiration of the current license term unless the department issues a temporary permit to the licensee under section 6.

(4) If an application is withdrawn before a license or renewal is approved, the department shall retain \$50.00 for processing and return the remainder of the license fee to the grain dealer.

(5) By submitting an application, a grain dealer consents to inspection and auditing of its farm produce and financial records and its operations by the department. The grain dealer shall make the records available to the department in this state if the department makes a request to inspect or audit the records.

(6) The department shall issue or deny an initial or renewal license not more than 60 days after the department receives a complete application from an applicant.

(7) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The department shall not discriminate against an applicant in the processing of the application based on the fact that the license fee was refunded or discounted under this subsection.

(8) The director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with agricultural issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 60-day time period described in subsection (6).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees and registrants under subsection (7).

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.67 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1978, Act 154,



Imd. Eff. May 22, 1978 ;-- Am. 1982, Act 33, Eff. Sept. 12, 1982 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003 ;-- Am. 2004, Act 274, Imd. Eff. July 23, 2004 ;-- Am. 2023, Act 190, Imd. Eff. Nov. 7, 2023

**Compiler's Notes:** Section 2 of Act 33 of 1982 provides: "This amendatory act shall take effect 6 months after it has been enacted into law and shall apply only to licenses issued or renewed after the effective date."

#### **285.67a Repealed. 2002, Act 80, Eff. Mar. 31, 2003.**

**Compiler's Notes:** The repealed section pertained to application requirements for grain dealer's license.

#### **285.68 License fee; grain dealer's fees fund; duration of license; fee schedule adjustment; "Detroit consumer price index" defined.**

Sec. 8.

(1) A grain dealer shall pay a license fee to the department with an application for a license or renewal of a license. The license fee is the sum of all of the following that apply to the grain dealer:

(a) For each receiving point of the grain dealer that has total bushel capacity of:

- |   |             |
|---|-------------|
| (i) 100,000 or less                         | \$ 500.00   |
| (ii) More than 100,000 and 200,000 or less  | \$ 625.00   |
| (iii) More than 200,000 and 300,000 or less | \$ 750.00   |
| (iv) More than 300,000 and 400,000 or less  | \$ 875.00   |
| (v) More than 400,000                       | \$ 1,000.00 |

(b) For vehicles owned by a farm produce trucker:

- |                                  |           |
|----------------------------------|-----------|
| (i) For 1 vehicle                | \$ 500.00 |
| (ii) For each additional vehicle | \$ 200.00 |

(c) For a grain merchandiser's license \$ 1,000.00

(2) The grain dealer's fees fund is created in the state treasury. The department shall deposit license fees and administrative fines received under this act in the grain dealer's fees fund, to be used pursuant to legislative appropriation by the director in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining in the grain dealer's fees fund shall not revert or be credited to the general fund at the close of the fiscal year but shall remain in the grain dealer's fees fund. The department shall be the administrator of the fund for audit purposes.

(3) A license fee determined under subsection (1) is the fee for a 1-year license. If the department has issued a license for a period of longer than 1 year under section 4(4), it shall require a license fee increased on a proportionate basis to reflect the longer term of the license.

(4) Every year, the department may adjust the fee schedule in subsection (1) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index over the 1-year period. An adjustment under this subsection shall not exceed 5% even if the amount determined by the state treasurer to reflect the cumulative annual percentage change over the 1-year period is more than 5%. A fee adjusted under this subsection shall be rounded to the nearest \$5.00 increment. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.68 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003 ;-- Am. 2010, Act 264, Imd. Eff. Dec. 14, 2010 ;-- Am. 2012, Act 148, Imd. Eff. May 30, 2012

## **285.69 Application for license or renewal; financial statement.**

### **Sec. 9.**

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

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

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

(c) A statement from the certified public accountant that he or she acknowledges that the department is relying on the financial statement in determining whether the grain dealer meets the allowable net asset requirement under section 3(3).

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

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

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.69 ;-- Am. 1963, Act 180, Eff. Sept. 6, 1963 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1979, Act 206, Imd. Eff. Jan. 8, 1980 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003 ;-- Am. 2016, Act 263, Eff. Sept. 26, 2016

## **285.69a Repealed. 2002, Act 80, Eff. Mar. 31, 2003.**

**Compiler's Notes:** The repealed section pertained to price later agreements.

## **285.70 Revocation or refusal to issue or renew license; hearing; conditions.**

### **Sec. 10.**

After a hearing conducted in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may revoke or refuse to issue or renew a license, or require a fidelity bond in an amount and on terms determined by the department, if any of the following occurred within the 5 years preceding the date of the license application:

(a) The applicant, a manager employed by the applicant, or any other individual with management responsibilities for the farm produce handling business of the applicant was a principal in a grain dealer receivership or insolvency proceeding that resulted in losses to creditors or depositors.

(b) The applicant, a manager employed by the applicant, or any other individual with management responsibilities for the farm produce handling business of the applicant pled guilty or was convicted of any felony involving fraud, conversion, or embezzlement.

(c) The applicant's license under the United States warehouse act, 39 Stat. 486, 7 U.S.C. 241 to 273, was revoked or canceled due to a violation of that act.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.70 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.71 Temporary facility.**

Sec. 11.

(1) A grain dealer who uses a temporary facility shall report to the department on the daily position report required under section 15 the address and bushel capacity of the temporary facility for any period that the temporary facility is in use. The grain dealer shall provide the department with a copy of the lease agreement and bin charts, if any, for the temporary facility if the grain dealer has not previously provided them.

(2) A grain dealer using a temporary facility shall pay an additional license fee, calculated under section 8, based on the bushel capacity of the temporary facility. The grain dealer shall pay the additional license fee to the department with the position report for the first month the grain dealer uses the temporary facility.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.71 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1979, Act 206, Imd. Eff. Jan. 8, 1980 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.71a Repealed. 2002, Act 80, Eff. Mar. 31, 2003.**

**Compiler's Notes:** The repealed section pertained to acknowledgment of farm produce.

### **285.72 Destruction or damage of farm produce; certificate of insurance required; reimbursement to depositors; notice of cancellation or nonrenewal of insurance.**

Sec. 12.

(1) A licensee shall maintain on file with the department a current certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in this state. The policy shall insure in the name of the grain dealer all farm produce in the facilities of the grain dealer for the full market value of the farm produce against loss by fire, explosion, lightning, and windstorm. In addition to any other remedy available under this act, the department may deny, revoke, or suspend a license for a violation of this subsection.

(2) If fire, explosion, lightning, or windstorm destroys or damages any farm produce in a facility operated by a licensee, and the depositor of the farm produce demands reimbursement and provides the licensee with a warehouse receipt or other evidence of ownership of the farm produce, the licensee shall reimburse the depositor of the farm produce for the market price of the farm produce minus any charges or advances to the depositor. As used in this subsection, "market price" means the average price paid for farm produce of the same type, grade, and quality on the date of the loss at the location of the facility.

(3) A grain dealer shall reimburse all depositors whose farm produce is destroyed or damaged by fire, explosion, lightning, or windstorm, within 10 days after the licensee receives payment from an insurer under a policy described in subsection (1). In addition to any other remedy available under this act, the department may deny, revoke, or suspend a license for a violation of this subsection.

(4) If the department determines that a licensee's insurance is insufficient, even if the insurance was previously acceptable to the department, the department shall require that the licensee obtain additional insurance that conforms to the requirements of this act.

(5) An insurance company may not cancel or nonrenew insurance required by this act, including insurance provided by binder, unless it sends a notice of intent to cancel or nonrenew to the department by certified or registered mail more than 15 days before the cancellation or nonrenewal of the insurance is effective.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.72 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.73 Availability of books and records; confidentiality; disclosure.**

Sec. 13.

- (1) The director may require that a grain dealer make its books and records available for audit or inspection.
- (2) Except as provided in subsection (3), financial information and daily position report information submitted to the department by an applicant or licensee for purposes of this act are confidential and are 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 or daily position report information may be made in any of the following circumstances:
  - (a) With the written consent of the applicant or licensee.
  - (b) Pursuant to a court proceeding.
  - (c) The disclosure is made to 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.
- (3) The department may disclose information described in subsection (2) 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.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.73 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

**285.74 Commingling produce; limitations on transactions; warehouse receipt or acknowledgment; standard of care; failure of depositor to remove or sell farm produce; limitation on loan balance.**

Sec. 14.

- (1) Upon request, the department shall provide to each grain dealer a current copy of this act, any rules promulgated under this act, and any amendments to the act or rules.
- (2) A licensee may commingle a depositor's farm produce with other fungible farm produce, unless the licensee and depositor have executed a written agreement that requires the licensee to keep the depositor's farm produce separate from other farm produce and available for identification and delivery to or as directed by the depositor.
- (3) A licensee that elects to limit the types of farm produce transactions it offers shall post a list of the types of farm produce transactions it offers at a readily visible location in each office or at each scale of the licensee.
- (4) If a warehouse receipt or acknowledgment form issued under this act is outstanding by the grain dealer who issued it, the grain dealer shall not issue another warehouse receipt or acknowledgment form for all or any part of that farm produce except as provided in this subsection. If a warehouse receipt or acknowledgment form is lost, stolen, or destroyed, the holder of the warehouse receipt or acknowledgment form is entitled to a substitute warehouse receipt or acknowledgment form. If a substitute warehouse receipt or acknowledgment form is issued under this subsection, it has the same legal effect as the original warehouse receipt or acknowledgment form and the issuance of the substitute cancels the original warehouse receipt or acknowledgment form. A substitute warehouse receipt or acknowledgment form shall state the number and date of the original warehouse receipt or acknowledgment form; shall contain a notarized statement by the holder that the original was lost, stolen, or destroyed; and shall contain a notarized statement of the holder and grain dealer that the substitute warehouse receipt or acknowledgment form contains the same terms as and is issued to replace the original warehouse receipt or acknowledgment form. If the lost, stolen, or destroyed instrument is a negotiable warehouse receipt, the holder shall provide the grain dealer with a lost instrument bond in an amount equal to 2 times the current market value of the farm produce covered by that warehouse receipt, in a form prescribed by the department from a surety authorized to conduct business in this state.
- (5) A grain dealer shall exercise due care as the custodian of the farm produce in his or her custody.
- (6) If a depositor fails to remove or sell farm produce in accordance with the written terms of the depositor's agreement with the licensee, the licensee may sell the farm produce in accordance with the written terms of the depositor's agreement.
- (7) A grain dealer may not borrow money or hold an outstanding loan balance secured by farm produce inventory in an amount greater than the net positive accumulated dollar value of farm produce, as reported on its daily position report, at any point in time.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.74 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

## **285.75 Daily position report.**

### **Sec. 15.**

(1) A grain dealer shall keep a complete and accurate daily position report. The grain dealer shall submit the daily position report for the last business day of the preceding fiscal month to the department during the first 10 business days of the grain dealer's fiscal month.

(2) A daily position report shall include all of the following information about the grain dealer's operations, as of the last business day of the preceding fiscal month, on a form approved by the director:

(a) The quantity of each type of farm produce in inventory.

(b) The quantity of farm produce covered by outstanding warehouse receipts, open storage, and price later agreements, including price later agreements and warehouse receipts for farm produce in other grain dealers' facilities.

(c) The quantity of farm produce covered by collateral warehouse receipts.

(d) The total dollar amounts of loans against grain inventory.

(e) A description and quantity of any other farm produce obligations resulting in the grain dealer's balance position of farm produce.

(f) If a deficiency concerning price later agreements exists, the quantity of offsetting purchase commitments.

(3) If the department determines that there is a deficiency in any warehouse receipt position, the department shall notify the grain dealer and require that the grain dealer cover the shortage or furnish bond or security in an amount and on terms required by the department. If the grain dealer fails to comply, the department may seize grain assets for the benefit of claimants.

(4) If a net deficiency concerning price later agreements exists, based upon daily bid prices, the grain dealer shall cover the deficiency by placing in an escrow account cash, cash equivalents, or marketable securities equal to 80% of the deficiency and offsetting purchase commitments equal to at least 20% of the deficiency. The grain dealer shall file a copy of the escrow agreement with the department. The escrow agreement shall require that the escrow institution submit a monthly statement for the escrow account to the department.

(5) A violation of this section by a grain dealer may result in a fine or suspension or revocation of the grain dealer's license under section 22. If the violation is the intentional filing of a false daily position report, in addition to license revocation, the grain dealer is subject to the penalty described in section 23 for each violation.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.75 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

## **285.76 Records and accounts.**

### **Sec. 16.**

(1) A licensee shall keep a complete and accurate set of records and accounts of all transactions pertaining to the operation of each facility, including, but not limited to, records and accounts of all farm produce received in or withdrawn from a facility, of all unissued warehouse receipts and acknowledgment forms in the grain dealer's possession, and of all issued warehouse receipts and acknowledgment forms, copies of all contracts, and any warehouse receipts and acknowledgment forms returned to and settled by the licensee. A grain dealer shall retain a paper copy or a copy stored in electronic or other form of a warehouse receipt, acknowledgment form, or other document evidencing ownership of any farm produce or liability as a grain dealer for at least the period that the document is outstanding, and if the document has been canceled, for a period of not less than 3 years from the date of cancellation. A grain dealer shall retain any other records and the accounts for at least 7 years.

(2) A licensee shall keep its records and accounts concerning its farm produce handling business separate and distinct from the records and accounts of any other business conducted by the licensee.

(3) The department may examine the records and accounts pertaining to the grain dealer's farm produce handling business at any time during normal business hours.

(4) A grain dealer shall not intentionally maintain false or misleading books and records. A grain dealer who violates this subsection is subject to the penalty described in section 23.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.76 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.77 Notice of intent to discontinue business.**

Sec. 17.

(1) If a grain dealer intends to discontinue his or her farm produce handling business at or before the expiration of his or her license, at least 30 days before the date the grain dealer intends to discontinue the business, the grain dealer shall by registered or certified mail provide notice of intent to discontinue business to the director, each person storing farm produce in a facility of the grain dealer, and each known holder of a warehouse receipt, acknowledgment form, or open storage or price later agreement issued by the grain dealer. If the holder of a warehouse receipt, acknowledgment form, or open storage or price later agreement is not known, the grain dealer shall publish the notice in a newspaper of general circulation in each county in which a facility is located.

(2) If a grain dealer has provided or published a notice of intent to discontinue business under subsection (1) and the department determines that there is sufficient farm produce to cover warehouse receipts and open storage arrangements, a depositor of farm produce under a warehouse receipt or open storage arrangement in a facility of the grain dealer may remove or direct the removal of the farm produce from the facility before the expiration of the 30-day period described in subsection (1).

(3) Within 14 days of discontinuing his or her farm produce handling business, the grain dealer shall file a list of all farm produce liabilities assumed by a purchaser of the business, or any person other than the licensee, with the department.

**History:** Add. 2002, Act 80, Eff. Mar. 31, 2003

**Compiler's Notes:** Former MCL 285.77, which pertained to furnishing monthly statement to commissioner of agriculture, was repealed by Act 179 of 1955, Eff. Oct. 14, 1955.

### **285.78 Receipt of farm produce; acknowledgment form.**

Sec. 18.

(1) A grain dealer shall acknowledge receipt of farm produce by issuing an acknowledgment form to the depositor. The depositor or his or her authorized agent must sign the acknowledgment form if it will be used as a price later agreement, and the depositor and grain dealer are not parties to a prior written agreement governing title and delivery of the farm produce. The grain dealer shall provide a copy of the acknowledgment form to the depositor at the time the farm produce is delivered to the grain dealer.

(2) An acknowledgment form must contain all of the following:

(a) The name and address of the grain dealer.

(b) The date of transfer, weight, and type of farm produce deposited.

(c) A statement that unless the parties agree to another disposition within 30 days of the delivery to the grain dealer, the farm produce transaction is a price later agreement transaction.

(3) Farm produce delivered to a grain dealer is in open storage, and the responsibilities of the grain dealer and depositor under an acknowledgment form are the same as if a nonnegotiable warehouse receipt had been issued for the farm produce, unless 1 of the following occurs:

(a) The acknowledgment form satisfies the requirements applicable to a price later agreement and is signed by the depositor and grain dealer or their authorized agents.

(b) The farm produce is sold for a set price at the time of delivery to the grain dealer or another disposition occurs.

(4) If a grain dealer obtains farm produce from a depositor and the farm produce is not being delivered to a facility of the grain dealer, the grain dealer shall issue a temporary acknowledgment form identifying the estimated quantity, type of farm produce, grain dealer's name and address, and the name of the driver of the transporting vehicle.

(5) A grain dealer shall record the disposition of the farm produce on the acknowledgment form unless he or she provides other settlement documentation referencing the acknowledgment form.

(6) If a depositor deposits farm produce at a facility in the name of another grain dealer, the grain dealer in



whose name the farm produce is deposited shall issue the acknowledgment form for the farm produce.

(7) If a grain dealer's license is revoked or terminated, the grain dealer shall deliver all unused acknowledgment forms to the department.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.78 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1996, Act 311, Imd. Eff. June 24, 1996 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.79 Suspension or revocation of grain dealer's license; reservation of rights; weighing and inspecting produce.**

Sec. 19.

(1) A grain dealer shall post at each facility a notice that states that the grain dealer reserves the right to terminate storage, processing, shipping, and handling arrangements and collect outstanding charges if the grain dealer's license is suspended or revoked.

(2) A licensee receiving farm produce for deposit shall weigh and inspect the farm produce.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.79 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.80 Warehouse receipt.**

Sec. 20.

(1) If the licensee and depositor agree, a licensee shall issue a warehouse receipt for any farm produce received from a depositor for storage.

(2) If a grain dealer issues a warehouse receipt for a deposit, the warehouse receipt must be on a form approved by the department that includes spaces for inserting all of the following information and statements, as applicable:

(a) The location of the facility.

(b) The date the warehouse receipt is issued.

(c) The grain dealer's storage rate and the calculation of the depositor's storage charge.

(d) The net weight and grade factors of the farm produce.

(e) Whether the warehouse receipt is negotiable or nonnegotiable, which shall be conspicuously printed on the form.

(f) The signature of the grain dealer or his or her authorized agent.

(g) An expiration date. At the expiration date, the grain dealer and holder shall renegotiate the terms of storage or settle at market price.

(h) A statement of the amount of advances made or liability incurred for which the grain dealer claims a lien. If the exact amount of advances made or liabilities incurred at the time of issuance of the warehouse receipt is unknown to the grain dealer, the warehouse receipt shall include a statement of the fact that advances have been made or liabilities incurred.

(i) A statement that the warehouse receipt is issued subject to this act and rules promulgated under this act.

(3) The holder of a warehouse receipt has legal title to farm produce held under the warehouse receipt.

(4) A grain dealer shall sequentially number its warehouse receipts and issue them in numerical sequence and retain any voided warehouse receipts.

(5) If a grain dealer's license is revoked or terminated, the grain dealer shall deliver all unused warehouse receipts to the department.

(6) A person shall not do any of the following:

(a) Issue a warehouse receipt for farm produce except on a form approved by the director under this section.

(b) Falsely make, alter, forge, or counterfeit a warehouse receipt.

(c) Knowingly deposit farm produce under a warehouse receipt without disclosing any lien or lack of title.

(7) If a grain dealer delivers from storage a portion of the farm produce for which he or she has issued a negotiable warehouse receipt, the grain dealer shall cancel the original warehouse receipt and issue a new warehouse receipt for the remainder of the farm produce still in storage. The new warehouse receipt shall contain



the number and date of the original warehouse receipt in addition to meeting the other requirements of this section.

(8) A warehouse receipt issued for farm produce identified and stored separately shall describe the storage location of the farm produce.

(9) A licensee may issue a collateral warehouse receipt only against farm produce owned and unencumbered by the licensee at the time of issuance.

(10) A grain dealer shall place farm produce held in a grain bank or feed bank on a warehouse receipt.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.80 ;-- Am. 1949, Act 133, Imd. Eff. May 20, 1949 ;-- Am. 1955, Act 179, Eff. Oct. 14, 1955 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

### **285.81 Price later agreement.**

#### **Sec. 21.**

(1) If there is no other disposition within 30 days after the delivery of farm produce to a grain dealer, the farm produce transaction is a price later agreement transaction.

(2) Title of farm produce subject to a price later agreement is transferred to the grain dealer at the time the price later agreement is executed.

(3) A grain dealer shall maintain a separate file in numerical sequence of noncanceled price later agreements that is available for inspection during normal business hours by the department. The grain dealer shall include in the records an account of any information required by the director to document the grain dealer's obligation to a depositor under a price later agreement.

(4) A grain dealer shall not include a charge for storage in any transaction that includes a price later agreement.

(5) The form and content of a price later agreement shall be approved by the department. Each price later agreement must contain blank lines or spaces for inserting all of the following information, statements, and provisions, as applicable:

(a) The date of receipt of the farm produce.

(b) The grain dealer's handling charge rates and the calculation of the depositor's charges.

(c) The net weight, type, and grade factors of the farm produce.

(d) The signature of the grain dealer or his or her authorized agent.

(e) The name and address of the depositor.

(f) The signature of the depositor or, if signed by an authorized agent of the depositor, the name and signature of the depositor's authorized agent. This subdivision does not apply to a transaction described in subsection (1).

(g) An expiration date.

(h) A statement that the price later agreement is issued subject to this act and rules promulgated under this act.

(6) A person shall not knowingly deposit farm produce under a price later agreement without disclosing any lien on or lack of title to the farm produce.

(7) A price later agreement shall not be converted to a warehouse receipt.

(8) At the expiration date of a price later agreement, a grain dealer shall settle at market price or renegotiate.

**History:** Add. 1996, Act 311, Imd. Eff. June 24, 1996 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

**Compiler's Notes:** Former MCL 285.81, which provided exemption for warehouseman operating under certain other acts, was repealed by Act 179 of 1955, Eff. Oct. 14, 1955.

### **285.82 Administration and enforcement of act; rules; powers and duties of director.**

#### **Sec. 22.**

(1) The director shall administer and enforce this act. In addition to any other powers conferred by this act, the director may do any of the following:

(a) Audit and investigate the receiving, storing, processing, buying, selling, and handling of farm produce and any complaints concerning the receiving, storing, processing, buying, selling, and handling of farm produce.

(b) Require a grain dealer to terminate receiving, storing, processing, buying, selling, or other farm produce handling upon revocation, suspension, or summary suspension of his or her license.

(c) Administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and the production of records in connection with any investigation or hearing under this act.

(d) Prescribe and approve all forms, within the limitations set forth in this act, including the forms of warehouse receipts, acknowledgment forms, and applications for licenses.

(e) Employ investigatory personnel, including, but not limited to, a certified public accountant or an individual with accounting background and specialized investigative training and experience.

(2) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act.

(3) The director may revoke or suspend the license of a grain dealer or deny a license to a grain dealer if the director finds that the licensee has done any of the following:

(a) Engaged in fraudulent or deceptive practices.

(b) Violated or attempted to violate this act or rules promulgated under this act.

(c) Failed to maintain insurance coverage required by this act.

(d) Failed to maintain accurate and complete records as required by this act.

(e) Failed to pay a fee required by this act.

(f) Refused to allow any authorized representative of the department to examine the applicant's or licensee's accounting records, accounts, farm produce inventories, or facilities during regular business hours.

(g) Failed to possess sufficient farm produce to cover the outstanding warehouse receipts or acknowledgment forms issued or assumed by the applicant or licensee.

(h) Issued a warehouse receipt in violation of this act or any rules adopted under this act.

(i) Failed to maintain the net allowable assets required by this act.

(j) Failed to submit a financial statement in compliance with this act.

(k) Failed to secure his or her obligations for price later agreements.

(4) In a proceeding to suspend or revoke a license pursuant to subsection (3), the director shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The director may order a summary suspension of a license pursuant to section 92(2) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(5) The director shall post a notice on the property of a grain dealer whose license has been restricted, suspended, or revoked that states the limitations or restrictions imposed on the grain dealer. The notice shall not be removed from the property without written authorization from the director.

(6) If a grain dealer's license is suspended or revoked, the grain dealer may terminate storage, processing, shipping, or handling arrangements and collect outstanding charges.

(7) If a grain dealer's license is suspended or revoked, the director shall notify all known warehouse receipt holders and unpaid depositors of the grain dealer.

(8) If the director revokes a license under this section or a license expires, the grain dealer shall terminate all arrangements for farm produce handling in any facility of the grain dealer covered by the license in the manner prescribed by the director. Under the direction or supervision of the director, the grain dealer may liquidate farm produce previously received by the grain dealer.

(9) If the director suspends a grain dealer's license under this act, the grain dealer may under direction or supervision of the director operate the grain dealer's facilities, but shall not receive any farm produce for handling during the term of the suspension.

(10) During a license suspension or revocation proceeding, on behalf of this state and for the protection of holders of warehouse receipts or open storage or price later agreements of the licensee, the director may seize and protect the assets of the licensee by any legal, civil, or criminal proceedings necessary. If the grain dealer's license is revoked, the director may liquidate the grain dealer's warehouse receipts, open storage and price later agreements, and other assets. The director shall distribute the proceeds, first to the holders of warehouse receipts and open storage agreements, then to the secured holders of price later agreements, and then to all remaining holders of price later agreements. The director shall return any remaining proceeds to the grain dealer.

**History:** 1939, Act 141, Eff. Sept. 29, 1939 ;-- CL 1948, 285.82 ;-- Am. 1976, Act 259, Imd. Eff. Aug. 12, 1976 ;-- Am. 1979, Act 206, Imd. Eff. Jan. 8, 1980 ;-- Am. 2002, Act 80, Eff. Mar. 31, 2003

## **285.82a Repealed. 2002, Act 80, Eff. Mar. 31, 2003.**

**Compiler's Notes:** The repealed section pertained to misdemeanor violations.

### **285.83 Violation of act or rule; prohibited conduct; penalty.**

Sec. 23.

(1) Unless otherwise provided in this act, a person who violates this act is guilty of a misdemeanor and is also liable for all damages sustained by a depositor for farm produce handled in violation of this act. In an enforcement action, a court may order restitution to a party injured by the handling of farm produce in violation of this act in addition to any other penalty provided by law.

(2) A grain dealer who violates this act or a rule promulgated under this act is guilty of a misdemeanor and shall be fined not more than \$5,000.00 for each offense.

(3) A grain dealer who intentionally violates this act or a rule promulgated under this act is guilty of a misdemeanor and shall be fined not more than \$10,000.00 for each offense. The court may allow the department to recover reasonable costs of investigation incurred in a prosecution resulting in a conviction for a violation described in this subsection.

(4) A person who does any of the following is guilty of a felony punishable by a fine of not more than \$20,000.00 or by imprisonment for not more than 5 years, or both:

(a) Intentionally alters or destroys a warehouse receipt or price later agreement or a record of warehouse receipts or price later agreements required by this act.

(b) Intentionally falsifies a position sheet, or issues a warehouse receipt if the farm produce or commodities enumerated in the warehouse receipt is not in fact in the facility stated in the warehouse receipt.

(c) With intent to defraud, issues a second or other warehouse receipt or agreement for farm produce if a valid warehouse receipt or agreement is outstanding and in force for the farm produce.

(d) While a valid warehouse receipt is outstanding and in force and without the consent of the holder of the warehouse receipt, sells, pledges, mortgages, encumbers, or transfers farm produce in violation of this act or permits the sale, pledge, mortgage, encumbrance, or transfer of farm produce in violation of this act.

(e) Knowingly receives farm produce from a person in violation of subdivision (d).

(f) Intentionally files a false daily violation report.

(g) Intentionally maintains false or misleading records and accounts required under section 16.

**History:** Add. 2002, Act 80, Eff. Mar. 31, 2003

### **285.84 Violation of act or rule; administrative fines; warning; action by attorney general; license revocation; disposition of fine, costs, and recovery.**

Sec. 24.

(1) In addition to any other penalty provided by law, a person who individually, or by the action of his or her agent or employee, or as the employee or agent of another, violates this act or a rule promulgated under this act is subject to 1 of the following administrative fines:

(a) For a first violation, a fine of not less than \$50.00 or more than \$1,000.00, plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

(b) For a second violation within 2 years from the date of the first violation, a fine of not less than \$100.00 or more than \$5,000.00, plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

(c) For a third violation within 2 years from the date of the first violation, a fine of not less than \$500.00 or more than \$10,000.00, plus actual costs of the investigation and the amount of any economic benefit associated with the violation.

(2) Upon the request of a person to whom the director has assessed an administrative fine under subsection (1), the director shall conduct a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) If the director finds that a violation of this act has occurred despite the exercise of due care, the director may issue a warning instead of imposing an administrative fine under subsection (1).

(4) The director may advise the attorney general of the failure of a person to pay an administrative fine imposed under subsection (1), and the attorney general may bring an action in a court of competent jurisdiction to recover the fine.

(5) The director may revoke the license of a licensee who does not pay an administrative fine imposed under subsection (1).

(6) An administrative fine, costs, and the recovery of any economic benefit associated with a violation collected by the department under this section shall be retained by the department and used pursuant to legislative appropriation for the administration of this act.

**History:** Add. 2002, Act 80, Eff. Mar. 31, 2003

**285.85 Injunction; applicability of penalties to public officials; civil or criminal liability; hearing; local ordinance, regulation, or resolution; preemption; confidentiality; exceptions.**

Sec. 25.

(1) The director may bring an action to enjoin the violation or threatened violation of this act or a rule promulgated under this act in a state court in the county in which the violation occurs or is threatened to occur or in Ingham county.

(2) The penalties provided for a violation of this act do not apply to a public official of this state or the federal government engaged in the performance of his or her official duties in administering the laws, rules, or regulations of this state or the federal government.

(3) Enactment of this amendatory act does not terminate or in any way modify any civil or criminal liability under this act in existence on or before the effective date of the amendatory act adding this section.

(4) A person aggrieved by an order of the director issued under this act may request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) Beginning on the effective date of the amendatory act that added this section, this act preempts and supersedes any local ordinance, regulation, or resolution that imposes conflicting, different, or additional standards or requirements on grain dealers than those contained in this act. A local unit of government shall not adopt or enforce an ordinance, regulation, or resolution that imposes conflicting, different, or additional standards or requirements on grain dealers than those contained in this act.

(6) The identity of an individual submitting information regarding an alleged violation or threatened violation of this act by a grain dealer 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 the identity of the individual may be disclosed in any of the following circumstances:

(a) With the written consent of the individual.

(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 the identity of the individual.

**History:** Add. 2002, Act 80, Eff. Mar. 31, 2003 ;-- Am. 2003, Act 26, Imd. Eff. June 26, 2003

**285.86 Repealed. 2016, Act 263, Eff. Sept. 26, 2016.**

**Compiler's Notes:** The repealed section pertained to possession, liquidation, and distribution of assets.

**285.86a Lien; claimant; provisions; enforcement of claims; assignment of applicable lien to claimant in adversary proceeding; liquidation of farm produce assets; reduction of amount of claim; priority of lien.**

Sec. 26a.

- (1) Each of the following has a lien on all of the farm produce assets of a grain dealer:
- (a) A lender or other claimant that possesses a warehouse receipt that covers farm produce owned or stored by the grain dealer.
  - (b) A claimant that possesses a written acknowledgement or other written evidence of ownership of farm produce, other than a warehouse receipt, that establishes that the grain dealer has a storage obligation for the farm produce.
  - (c) A claimant that surrendered a warehouse receipt as part of a farm produce sales transaction, if the claimant was not paid in full for the farm produce and the grain dealer failed within 21 days after the surrender of the warehouse receipt.
  - (d) A claimant that possesses any other written evidence of the sale of farm produce to the grain dealer for which the claimant was not paid in full.
- (2) All of the following apply to a lien that exists under subsection (1):
- (a) The lien secures all claims described in subsection (3) and attaches to the farm produce assets of the grain dealer.
  - (b) The lien takes effect at the time the farm produce is delivered to the grain dealer for sale or storage under a bailment agreement or at the time money is advanced by the lender.
  - (c) The lien terminates at the time the liability of the grain dealer to the claimant is discharged. However, the priority of each lien among the respective claimants does not relate to the date the claim arises but is subject to the priorities described in subsection (3).
  - (d) In the event of a failure of a grain dealer, the lien claims of all claimants of that grain dealer are considered assigned by operation of this section to the department, and in the event of a failure and subsequent liquidation, the lien attaches to assets or proceeds of assets that are either received or liquidated by the department.
- (3) Except as provided in subsection (4), and subject to subsection (6), in the event of a failure of a grain dealer, the director shall enforce the claims of each lienholder under this section against the farm produce assets of the grain dealer and allocate the proceeds as follows:
- (a) The director shall give first priority to allocating the proceeds equally to claimants described in subsection (1) (a), (b), and (c).
  - (b) If any proceeds remain after satisfying the claims described in subdivision (a), the director shall give second priority to allocating the remaining proceeds first to claimants that possess secured price later agreements and then to all remaining claimants that possess price later agreements.
  - (c) If any proceeds remain after satisfying the claims described in subdivisions (a) and (b), the director shall give third priority to allocating the remaining proceeds to claimants that possess acknowledgment forms, similar farm produce delivery contracts, or other written evidence of the sale of farm produce and that completed delivery and pricing of the farm produce in the 30-day period preceding the date of the failure of the grain dealer.
  - (d) If any proceeds remain after satisfying the claims described in subdivisions (a) to (c), the director shall give fourth priority to allocating the remaining proceeds on a pro rata basis to all other claimants that possess written evidence of the sale of farm produce to the grain dealer.
  - (e) If any proceeds remain after satisfying the claims described in subdivisions (a) to (d), the director shall distribute those proceeds jointly to the grain dealer and any secured parties.
- (4) In the event that an adversary proceeding is commenced to recover farm produce assets on which a lien described in this section is attached and the department declines to enter the proceeding, the director, if he or she receives an application from a claimant that holds a lien under this section, shall assign to the claimant the applicable lien to permit the claimant to pursue the claimant's lien in the adversary proceeding, to the extent that assignment will not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets of all claimants.
- (5) In the event of a failure of a grain dealer, the department shall liquidate the farm produce assets of the grain dealer to satisfy valid claims of claimants described in subsection (3) by taking possession of all farm produce in the grain dealer facility, distributing or selling the farm produce, and distributing the proceeds under subsection (3).
- (6) The director may reduce the amount of a claim described in this section to reflect the liabilities owed to the grain dealer by the claimant.
- (7) A lien that exists under subsection (1) has priority over a conflicting security interest in or agricultural lien on the same collateral, except that a conflicting security interest or agricultural lien on the collateral that is perfected on the effective date of this section has priority over a lien that exists under subsection (1) for a period of 1 year after the effective date of this section.

**History:** Add. 2016, Act 263, Eff. Sept. 26, 2016

**285.87 Repealed. 2012, Act 148, Imd. Eff. May 30, 2012.**

**Compiler's Notes:** The repealed section pertained to surety bond to be provided by grain dealer before issuance of license.

**285.88 Grain merchandiser or farm produce trucker; surety bond; requirements.**

Sec. 28.

(1) Before a license is issued to a grain merchandiser or farm produce trucker, the grain merchandiser or farm produce trucker shall provide a bond to the department in the amount of \$100,000.00.

(2) A bond provided under this section shall name the department as payee, be executed by the applicant as principal, and be issued by a surety authorized to conduct business in this state. The department shall prescribe the form and terms and conditions of the bond.

(3) A bond provided under this section shall secure the faithful performance of the grain merchandiser or farm produce trucker of his or her obligations in any farm produce transaction outstanding on or after the effective date of the bond and outstanding at the time the license of the grain merchandiser or farm produce trucker is revoked or the bond is canceled as provided in this act, whichever occurs first. The bond shall secure the faithful performance by the grain merchandiser or farm produce trucker of those obligations whether the grain merchandiser or farm produce trucker is licensed or not.

(4) The total aggregate liability of a surety under a bond provided under this section is limited to the amount of the bond without regard to the number of claimants involved in a transaction in which a claim on the bond is made. The liability of a surety on a bond provided under this section shall not accumulate for any successive license period.

(5) A grain merchandiser or farm produce trucker required to provide a bond to the department under this section may at his or her option provide the department with a certificate of deposit or other security acceptable to the department in lieu of all or part of the bond, payable to the department as trustee. The principal amount of the certificate of deposit or other security provided, or the aggregate amount of the bond provided and the principal amount of the certificate of deposit or other security provided, shall be the same as the amount of the bond otherwise required under this section. The interest on the certificate of deposit or other security provided under this subsection shall be made payable to the grain merchandiser or farm produce trucker or other purchaser of the certificate of deposit or other security. The certificate of deposit or other security shall remain on deposit until it is released, canceled, or discharged as provided for by rule of the department. The provisions of this section that apply to a bond required under this section apply to a certificate of deposit or other security provided under this subsection.

(6) If the department determines that a bond previously provided under this section is insufficient, the department shall require that the grain merchandiser or farm produce trucker provide an additional bond. The additional bond shall be in an amount determined by the department and conform with all other requirements of this section.

(7) A grain merchandiser or farm produce trucker shall not cancel a bond required by this section without the consent of the department and the department's prior approval of a substitute bond.

(8) The surety on a bond required by this section may not cancel the bond unless it sends a notice of intent to cancel to the department more than 60 days before it cancels the bond. If the department receives a notice from a surety under this subsection, it shall promptly notify the grain merchandiser or farm produce trucker that provided the bond. The department shall revoke the license of a grain merchandiser or farm produce trucker who fails to provide a new bond within 60 days after the department receives notice of intent to cancel from a surety.

**History:** Add. 2002, Act 80, Eff. Mar. 31, 2003

**285.89 Rescission of R 285.560.**

Sec. 29.

R 285.560 of the Michigan administrative code is rescinded.



**History:** Add. 2012, Act 96, Imd. Eff. Apr. 12, 2012

## **REGISTRATION OF NAMES OF FARMS**

### **Act 35 of 1941**

285.101-285.108 Repealed. 2012, Act 90, Imd. Eff. Apr. 12, 2012.

## **AGRICULTURAL FAIR COMMISSION**

### **Act 294 of 1915**

285.122-285.128 Repealed. 2002, Act 354, Imd. Eff. May 23, 2002.

## **UPPER PENINSULA STATE FAIR**

### **Act 89 of 1927**

AN ACT to promote the agricultural and industrial interests in the Upper Peninsula of Michigan; to create a board of managers for a state fair in the Upper Peninsula; to define the powers and duties thereof; to provide immunity from personal liability for members of the board of managers and its chief administrative officer for action taken in their official capacity; to provide for the transferring to and vesting in the state of Michigan or the people thereof, the title and control of all lands and other property that now is or hereafter may be owned or acquired in the Upper Peninsula for the purpose of holding and conducting an agricultural and industrial state fair; to authorize the leasing or licensed use of facilities for certain purposes, including bingo; to permit and regulate games of skill at the Upper Peninsula state fair; and to provide for an appropriation therefor.

**History:** 1927, Act 89, Imd. Eff. Apr. 30, 1927 ;-- Am. 1973, Act 100, Imd. Eff. Aug. 8, 1973 ;-- Am. 1975, Act 139, Imd. Eff. July 3, 1975

*The People of the State of Michigan enact:*

**285.141 Upper Peninsula state fair; board of managers; creation; appointment and terms of members; vacancies; compensation and expenses; chairman; appointment and salaries of secretary and treasurer; rules.**

Sec. 1.

There is created a board of managers of the Upper Peninsula state fair, which board shall consist of 5 members to be appointed by the governor by and with the advice and consent of the senate. Upon the expiration of these terms, successors shall be appointed in a similar manner for terms of 5 years each, expiring on September 30, and shall serve until their successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance. The per diem compensation of the board of managers and the schedule for reimbursement of expenses shall be established annually by the legislature. The compensation and expenses shall be paid out of the general fund of the Upper Peninsula state fair. The board of managers shall at their first meeting select from 1 of their number a chairperson who shall serve for 2 years and shall also appoint a secretary and treasurer who may or who may not be members of the board of managers, and may adopt rules governing its organization and procedure and fix the salaries of its secretary and treasurer.



**History:** 1927, Act 89, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 5644 ;-- Am. 1939, Act 260, Imd. Eff. June 15, 1939 ;-- CL 1948, 285.141 ;-- Am. 1951, Act 67, Imd. Eff. May 25, 1951 ;-- Am. 1975, Act 62, Imd. Eff. May 20, 1975 ;-- Am. 1980, Act 183, Imd. Eff. July 2, 1980  
**Admin Rule:** R 285.1101 et seq. of the Michigan Administrative Code.

**285.142 Upper Peninsula state fair; board of managers; grants and conveyances; conditions; leasing or conceding fairgrounds or buildings; consideration; duration and termination of lease; prohibition; purpose and arrangement of state fair; disposition of proceeds; report of receipts and expenditures; office of board secretary.**

**Sec. 2.**

(1) The control of all lands or other property that is vested in this state for the purpose of holding and conducting an agricultural and industrial state fair in the Upper Peninsula is hereby placed in the board of managers. The board of managers may accept on behalf of the state grants and conveyances of property for those purposes or for other purposes within the scope of this act and consent to the conditions for the use thereof as may be agreed upon. All grants and conveyances shall be taken in the name of the people of the state of Michigan.

(2) The board of managers may lease or concede the Upper Peninsula state fairgrounds or any portions thereof and any building or buildings on the grounds for a period of not more than 1 year for a consideration as may be established by the board of managers.

(3) The board of managers may also grant leases for a portion or portions of the state fairgrounds to organizations or local governmental units, conditional upon construction and improvements to be financed by the lessees for terms not to exceed 20 years.

(4) A lease made under this section shall terminate upon sale of the Upper Peninsula state fairgrounds by the state.

(5) The use of the Upper Peninsula state fairgrounds or any portion thereof or of any or all of the buildings on the grounds shall not interfere with the preparation for or holding of the annual Upper Peninsula state fair.

(6) An annual state fair at the city of Escanaba which shall have for its main purpose the exploiting and encouragement of improved methods in agricultural and industrial pursuits is hereby authorized. The arrangement of the fairs and the actual conducting thereof shall be under the immediate charge of the board of managers. The board of managers may employ any suitable and proper person, firm, corporation, or organized bureau to advise and assist in the arrangement and conduct of the fair, but under the management and control of the board of managers.

(7) The proceeds of the Upper Peninsula state fair and all other moneys which come into the possession of the board of managers under the provisions of this act shall be credited to the general fund of the state. The secretary of the board of managers on or before January 1 each year shall file with the governor, the president of the senate, and the speaker of the house, a detailed report of the receipts and expenditures of the board. The secretary of the board of managers shall maintain an office in the city of Escanaba.

**History:** 1927, Act 89, Imd. Eff. Apr. 30, 1927 ;-- CL 1929, 5645 ;-- Am. 1939, Act 260, Imd. Eff. June 15, 1939 ;-- CL 1948, 285.142 ;-- Am. 1953, Act 73, Imd. Eff. May 15, 1953 ;-- Am. 1976, Act 168, Imd. Eff. June 25, 1976

**285.143 Bingo; lease of facilities.**

**Sec. 3.**

The board of managers may lease its facilities as a location within or at which an organization qualified and licensed under Act No. 382 of the Public Acts of 1972, as amended, being sections 432.101 to 432.120 of the Michigan Compiled Laws, may conduct bingo.

**History:** Add. 1973, Act 100, Imd. Eff. Aug. 8, 1973 ;-- Am. 1975, Act 139, Imd. Eff. July 3, 1975

**285.144 Games of skill; licensing agreements with concessionaires; criteria; rules; revocation of licensing agreement; liability; payment of judgment.**

Sec. 4.

(1) In staging the annual Upper Peninsula state fair, the board of managers may enter into licensing agreements with concessionaires permitting games of skill which shall be conducted in accordance with the following criteria:

- (a) Winning the game of skill does not require great skill on the part of the participant.
- (b) The game does not constitute a fraud upon the participants.
- (c) The game is not similar to games of chance in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the participant including but not limited to games such as roulette, beano, cards, dice or wheels of fortune nor is the game one which includes any mechanical or physical devices which directly or indirectly impedes, impairs or thwarts the skill of the player.
- (d) If the game is a group or contest participation game, each participant shall be in attendance at the time the game is played and shall actively participate throughout the entire game by personally designating his or her target, goal, or desired objective. A winner shall be determined by the skill of 1 or more of the participants in the group or contest game, and each participant shall be randomly selected, and a distribution of prizes shall be made in the presence of each participant at the time the game is played.
- (e) The prize shall have a nominal value and shall not be redeemable or convertible into cash, directly or indirectly.

(2) The board of managers may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, and consistent with the criteria established in subsection (1) to regulate the conducting of games of skill during the annual Upper Peninsula state fair and to protect the public from unauthorized or dishonest practices in conducting those games.

(3) The board of managers may, without holding a hearing, revoke the licensing agreement of a concessionaire when the board of managers or the Upper Peninsula state fair secretary-manager finds that the public is being defrauded or that a criteria established in subsection (1) or by rule is being ignored or violated. Members of the board of managers and the Upper Peninsula state fair secretary-manager shall be personally liable for an action they take in their official capacity in regard to licensing agreements entered into pursuant to this section. If there is a judgment against them, the state shall pay a judgment against a member or the secretary-manager, who shall not be required to reimburse the state.

**History:** Add. 1973, Act 100, Imd. Eff. Aug. 8, 1973 ;-- Am. 1975, Act 139, Imd. Eff. July 3, 1975

**Admin Rule:** R 285.1101 et seq. of the Michigan Administrative Code.

**285.145 Games of skill; MCL 750.301 to 750.315 inapplicable.**

Sec. 5.

Sections 301 to 315 of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.301 to 750.315 of the Michigan Compiled Laws, shall not apply to a person who conducts or participates in a game of skill pursuant to this act or the rules promulgated under section 4.

**History:** Add. 1973, Act 100, Imd. Eff. Aug. 8, 1973

**285.146 Rescission of R 285.1101 to R 285.1907.**

Sec. 6.

R 285.1101 to R 285.1907 of the Michigan administrative code are rescinded.

**History:** Add. 2012, Act 94, Imd. Eff. Apr. 12, 2012

## NATIONAL AND HOME GUARD USE OF DETROIT STATE FAIRGROUNDS PROPERTY

### Act 80 of 1941

AN ACT to authorize the use of buildings on the state fairground property in the city of Detroit by the national guard and the home guard.

**History:** 1941, Act 80, Imd. Eff. May 16, 1941

*The People of the State of Michigan enact:*

#### **285.151 State fair grounds; occupancy by national or home guard; authorization.**

##### Sec. 1.

The state administrative board is hereby authorized to permit the national guard and/or home guard to use any of the buildings of the state situated on the state fairground property in the city of Detroit: Provided, That such use shall not interfere with the holding of the annual state fair.

**History:** 1941, Act 80, Imd. Eff. May 16, 1941 ;-- CL 1948, 285.151

## MICHIGAN EXPOSITION AND FAIRGROUNDS AUTHORITY ACT

### Act 361 of 1978

AN ACT to provide for the control and management of certain state exposition centers and fairgrounds; to create a state exposition center and fairgrounds authority and board within the department of management and budget; to prescribe the authority's and board's powers and duties; to provide for the appointment of a state exposition center and fairgrounds manager and to prescribe the manager's powers and duties; to designate the method of financing state exposition centers and fairgrounds; to create certain funds; to provide for appropriations; and to repeal acts and parts of acts.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- 2004, Act 468, Imd. Eff. Dec. 28, 2004

*The People of the State of Michigan enact:*

#### **285.161 Short title.**

##### Sec. 1.

This act shall be known and may be cited as the "Michigan exposition and fairgrounds authority act".

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

**Compiler's Notes:** For transfer of authority, powers, duties, functions, and responsibilities, including functions of budgeting, procurement, and management-related functions, of the State Exposition and Fairgrounds Office from the Office of the Director of the Department of Natural Resources to the Director of the Department of Commerce, see E.R.O. No. 1993-14, compiled at MCL 285.190 of the Michigan Compiled Laws. For transfer of authority, powers, duties, functions, and responsibilities, including functions of budgeting, procurement, and management-related functions, of the Director of the Department of Natural Resources and the Department of Natural Resources to the

### **285.162 Definitions.**

#### **Sec. 2.**

As used in this act:

- (a) "Authority" means the state exposition and fairgrounds authority created in section 9.
- (b) "Authority board" means the board for the authority appointed under section 9.
- (c) "Department" means the department of management and budget.
- (d) "Director" means the director of the department.
- (e) "Fund" means the state exposition and fairgrounds fund created in section 14a.
- (f) "Manager" means the manager of the authority appointed under section 4.
- (g) "Type I transfer" means that term as defined in section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

### **285.163 Fairs and uses of fairgrounds to which act inapplicable.**

#### **Sec. 3.**

- (1) This act does not apply to the Upper Peninsula state fair conducted under 1927 PA 89, MCL 285.141 to 285.145.
- (2) This act does not apply to a fair conducted by a county of this state, or to a fair conducted under the official authorization of the county board of commissioners or other duly constituted county regional authority.
- (3) This act shall not apply to uses of fairgrounds permitted under 1941 PA 80, MCL 285.151.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

### **285.164 Michigan exposition and fairgrounds authority; creation; administration; transfer of certain powers and duties to the authority by type I transfer.**

#### **Sec. 4.**

- (1) The Michigan exposition and fairgrounds authority is created as a public body corporate within the department. The authority shall be administered under the supervision of the department but shall exercise its prescribed statutory power, duties, and functions independently of the department.
- (2) The activities, powers, duties, functions, responsibilities, and rule-making authority of the department of agriculture related to the management of the state exposition and fairgrounds are transferred by type I transfer to the authority.
- (3) All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the department of agriculture for the activities, powers, duties, functions, and responsibilities are transferred to the authority. The state budget director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year ending September 30, 2005.
- (4) The governor shall appoint a manager of the authority subject to the advice and consent of the senate, who is exempt from the classified state civil service. The manager shall serve at the pleasure of the governor. The manager shall administer the business operations of the state fair and the authority as provided in this act. The manager shall receive compensation determined annually by the authority. The person serving as manager on February 28, 2005

shall continue to serve at the pleasure of the governor.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

**Compiler's Notes:** For transfer of position of manager of Michigan exposition and fairgrounds authority to department of management and budget, and abolishment of the position, see E.R.O. No. 2009-2, compiled at MCL 285.191. For transfer of Michigan exposition and fairgrounds authority to department of management and budget, and abolishment of the authority, see E.R.O. No. 2009-2, compiled at MCL 285.191.

#### **285.165 Control vested in authority.**

##### **Sec. 5.**

The control of all land and other property held or acquired by this state or its people for the purpose of holding and conducting agricultural and industrial fairs and exhibitions is vested in the authority.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

#### **285.166 Powers and duties of authority.**

##### **Sec. 6.**

(1) The authority shall do all of the following:

(a) Conduct an annual state fair and other exhibits or events for the purpose of promoting all phases of the economy of this state. This fair and the exhibits or events shall encourage and demonstrate agricultural, industrial, commercial, educational, entertainment, tourism, technological, cultural, and recreational pursuits.

(b) Lease the state exposition and fairgrounds, a portion of the state exposition and fairgrounds, or a building on the state exposition and fairgrounds for purposes considered by the authority to be consistent with the staging of the state fair and other exhibits or events. The authority may determine and impose rental charges and other fees for the use or lease of the buildings and grounds or a portion of the buildings and grounds. The authority may lease properties to private and public organizations for a period not to exceed 30 years for consideration established by the authority. The authority may grant leases for all or a portion of the state exposition and fairgrounds to private and public organizations, conditional upon construction and improvements according to plans approved by the authority to be financed by the lessees, for terms not to exceed 30 years. The authority may grant an extension of the lease term for not more than an additional 20 years. The use of the state exposition and fairgrounds, a portion of the state exposition and fairgrounds, or a building on the state exposition and fairgrounds shall not interfere with the preparation for or holding of the state fair and other exhibits or events. Land, a building, or other property that is leased under this subdivision to a for-profit business shall be leased at fair market value. All leases and contracts entered into under this act remain valid until the expiration of the term of the lease or contract.

(c) Enter into contracts, subject to the requirements of the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, to conduct the annual state fair, exhibits, or other events, at the state exposition and fairgrounds that enhance agricultural, industrial, commercial, recreational, educational, entertainment, tourism, technological, or cultural pursuits or government services to citizens.

(2) The authority may enter into cooperative agreements, contracts, or other agreements with 1 or more governmental entities to use the personnel, services, or facilities of the governmental entity to assist the authority with carrying out its duties under this act and as otherwise provided by law.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

#### **285.167 Annual report; annual audit; rules.**

Sec. 7.

(1) The authority annually shall present a report to the governor, the legislature, and the department describing the receipts or expenditures through appropriation, gift, grant, or conveyance that have a material bearing on the operation of the state fair or the state exposition and fairgrounds.

(2) The authority shall be subject to annual post audits of its financial transactions and accounts and to performance post audits by the auditor general.

(3) The authority may promulgate rules governing the conduct of the annual state fair and state exposition and fairgrounds and the development and administration of the state exposition and fairgrounds as a commercial, agricultural, recreational, and multipurpose facility, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Any rules in effect on the effective date of the amendatory act that added this sentence shall remain in effect until rescinded by the authority.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

**Admin Rule:** R 291.301 et seq. of the Michigan Administrative Code.

**285.168 Powers and duties of manager.**

Sec. 8.

The manager shall do all of the following:

- (a) Be directly responsible to the authority.
- (b) Be the chief administrative officer for the management and operation of the state exposition and fairgrounds, and may enter into contracts and leases, subject to the requirements of the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, as authorized by rule promulgated under this act.
- (c) Have as a primary work station the site of the state exposition and fairgrounds.
- (d) Serve as an appointing authority for any necessary personnel associated with the management and operation of the state exposition and fairgrounds.
- (e) Be responsible for the financial operation of the state exposition and fairgrounds.
- (f) Develop ideas and programs that enhance the operation and functioning of the state exposition and fairgrounds.
- (g) Be responsible for the preparation of the annual budget for the state exposition and fairgrounds for presentation to the department.
- (h) Develop and present to the authority board for its approval each of the following:
  - (i) A financial plan submitted annually.
  - (ii) A rolling 5-year operations plan submitted annually.
  - (iii) A facility and utility renovation plan, updated as determined by the manager or as requested by the authority board.
  - (iv) A long-range master plan for authority facilities and the state exposition and fairgrounds, updated as determined by the manager or as requested by the authority board.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

**285.169 State exposition and fairgrounds authority; board; membership; exercising duties of office; vacancy; discharge of duties; conduct of business; quorum; compensation and expenses; officers; meetings.**

Sec. 9.

(1) A state exposition and fairgrounds authority shall be governed by the 11-member authority board appointed under this section. The authority board shall consist of the following members:

- (a) The director or a designated representative as an ex officio voting member.
- (b) The director of the department of agriculture or a designated representative as an ex officio voting member.
- (c) Nine members, not more than 5 of whom shall be members of the same political party, appointed by the governor by and with the consent of the senate. The term of office of each member in this subdivision shall be 3



years except that, of the members first appointed, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years. The former state exposition and fairgrounds council existing before March 1, 2005 is abolished. The governor shall appoint the 9 appointed members to serve on the authority board, and the terms of those members shall begin on March 1, 2005. Members of the former council are eligible for appointment to the authority board if otherwise qualified. It is the intent of the legislature that the members of the authority board represent all geographic areas of the state. The 9 appointed members shall be chosen from the following categories:

- (i) Three members representing agricultural interests.
- (ii) One member representing the tourism industry in Michigan.
- (iii) Two members of the general public.
- (iv) One member representing organized labor.
- (v) One member representing the business community.
- (vi) One member representing county fairs.

(2) Upon appointment to the authority board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the authority board shall enter the office and exercise the duties of the office.

(3) Regardless of the cause of a vacancy on the authority board, the governor shall fill a vacancy in the office of a member of the authority board by appointment by and with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term. A member of the authority board shall hold office until a successor has been appointed and has qualified.

(4) Members of the authority board and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the authority board or an officer, employee, or agent of the authority board shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the authority board or an officer, employee, or agent of the authority board, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the authority board, or upon financial statements of the authority represented to the member of the authority board, officer, employee, or agent to be correct by the officer of the authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the authority.

(5) The authority board may adopt bylaws and policies and procedures for conducting its business. Six members of the authority board constitute a quorum for the transaction of business. An action of the authority board requires a concurring vote by 6 members of the authority board.

(6) Authority board members shall serve without compensation and shall receive reimbursement for actual and necessary expenses.

(7) The governor shall designate a member of the authority board to serve as its chairperson, who shall serve as chairperson at the pleasure of the governor. The authority board shall annually select other officers from its membership.

(8) The director and the director of the department of agriculture shall not serve as officers of the authority board.

(9) The authority board shall meet not less than 4 times per year.

(10) At least 1 meeting of the authority board shall be dedicated to soliciting input from the local neighborhood advisory council established under section 15b, the surrounding communities, and local units of government.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

### **285.170 Conducting business at public meeting; notice; availability of writings to public; employment of experts and officers; contracts with department.**

Sec. 10.

(1) The business that the authority board may perform shall be conducted at a public meeting of the authority board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A writing prepared, owned, used, in the possession of, or retained by the authority board or department in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The authority may employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs consistent with requirements established by the civil service commission, but an employee shall not be paid a higher salary than the manager. The authority board may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(4) The authority may contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

#### **285.171 Powers and duties of authority board.**

##### **Sec. 11.**

Except as otherwise provided in this act, the authority board shall do all things necessary or convenient to implement the purposes, objectives, and provisions of this act, and the purposes, objectives, and powers delegated to the authority by other laws or executive orders, including, but not limited to, all of the following:

- (a) Review and approve policies, including dates for the fair and the budget.
- (b) Develop and submit to the department, the legislature, and the governor on a yearly basis a rolling 5-year operational plan and construction plan, including a master plan for the use of buildings and the grounds.
- (c) Report to the director, the legislature, and the governor on the operating budget, capital improvements, programs, exhibits, and other matters relevant to the state exposition and fairgrounds.
- (d) Approve or authorize the manager to approve utilization of the state exposition and fairgrounds, including its use as the site for the annual state fair, and on any other matter which the authority may regard as appropriate.
- (e) Promote, encourage, and assist the manager in conducting exhibits or other events at the state exposition and fairgrounds that enhance agricultural, industrial, commercial, recreational, educational, or cultural pursuits or government service to citizens.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

#### **285.172 Annual state fair; licensing agreements with concessionaires permitting games of skill; criteria; rules; grounds for revocation of licensing agreement; hearing; rules and facilities for bingo or millionaire party.**

##### **Sec. 12.**

(1) In staging the annual state fair, the authority may enter into licensing agreements with concessionaires permitting games of skill which shall be conducted in accordance with the following criteria:

- (a) Winning the game of skill does not require great skill on the part of the participant.
- (b) The game does not constitute a fraud upon the participants.
- (c) The game is not similar to games of chance in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the participant including games such as roulette, beano, cards, dice, or wheels of fortune and the game does not include a mechanical or physical device that directly or indirectly impedes, impairs, or thwarts the skill of the player.

(d) If the game is a group or contest participation game, each participant shall be in attendance at the time the game is played and shall actively participate throughout the entire game by personally designating his or her target, goal, or desired objective. A winner shall be determined by the skill of 1 or more of the participants in the group or contest game, and each participant shall be randomly selected. The distribution of prizes shall be made in the presence of each participant at the time the game is played.

- (e) The prize has nominal value and is not redeemable or convertible into cash, directly or indirectly.
- (2) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306,

MCL 24.201 to 24.328, consistent with the criteria established in subsection (1) to regulate the conduct of games of skill during the annual state fair and to protect the public from unauthorized or dishonest practices in conducting those games.

(3) The department may, after an administrative hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, revoke the licensing agreement of a concessionaire if the department determines that the public is being defrauded, or that this act or a rule promulgated pursuant to this act is being violated.

(4) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to permit the operation of a bingo or a millionaire party permitted and licensed under the Traxler-McCauley-Law-Bowman bingo act, 1972 PA 382, MCL 432.101 to 432.120. The authority may lease facilities as a location within or at which an organization qualified and licensed under that act may conduct bingo or a millionaire party.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

### **285.173 Inapplicability of MCL 750.301 to 750.315a; leasing facilities for bingo.**

Sec. 13.

(1) Sections 301 to 315a of the Michigan penal code, 1931 PA 328, MCL 750.301 to 750.315a, do not apply to a person who conducts or participates in a game of skill pursuant to section 12 or the rules promulgated under that section.

(2) The department may lease its facilities as a location within or at which an organization qualified and licensed under the Traxler-McCauley-Law-Bowman bingo act, 1972 PA 382, MCL 432.101 to 432.120, may conduct bingo.

**History:** 1978, Act 361, Imd. Eff. July 22, 1978 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

### **285.174 Repealed. 2000, Act 39, Imd. Eff. Mar. 24, 2000.**

**Compiler's Notes:** The repealed section pertained to transfer of employees.

### **285.174a State exposition and fairgrounds fund; creation; disposition; annual report; expenditure.**

Sec. 14a.

(1) The state exposition and fairgrounds fund is created within the state treasury. The fund shall be administered by the authority.

(2) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer may receive money or other assets from any source for deposit into the fund. Money generated from the operation of activities authorized by this act shall be deposited into the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The authority shall submit an annual report to the legislature and the department showing the amount of money received under this act and how that money was spent.

(5) The money in the fund shall be expended pursuant to appropriation of the legislature by the authority in the following order of priority:

(a) Providing for an annual state fair.

- (b) Maintaining the state exposition and fairgrounds.
- (c) Any other purpose authorized under this act.

**History:** Add. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

**285.175 Payments to exhibitors and vendors; appropriation; amount to Lake Superior state university for grant.**

Sec. 15.

(1) For the fiscal year ending September 30, 2004, there is appropriated \$625,000.00 from the state exposition and fairgrounds fund for Michigan state fair payment of premiums to exhibitors and for payments due to vendors and others regarding outstanding invoices for the annual state fair held in calendar year 2004. Payment for premiums to exhibitors shall be made before payment to vendors and others.

(2) For the fiscal year ending September 30, 2005, there is appropriated \$192,700.00 from the general fund to Lake Superior State University for an infrastructure, technology, equipment, and maintenance grant.

**History:** Add. 2004, Act 468, Imd. Eff. Dec. 28, 2004

**Compiler's Notes:** Former MCL 285.175, which pertained to transfer of state fair revolving fund, was repealed by Act 39 of 2000, Imd. Eff. Mar. 4, 2000.

**285.175a Demolition of building or structure.**

Sec. 15a.

The authority may demolish or permit the demolition of any building or structure on the state exposition and fairgrounds that is determined by the authority to be unsuitable for uses consistent with the holding of the state fair.

**History:** Add. 2000, Act 39, Imd. Eff. Mar. 24, 2000 ;-- Am. 2004, Act 468, Eff. Mar. 1, 2005

**285.175b Publication of newsletter; posting minutes on website; establishment of local neighborhood advisory council.**

Sec. 15b.

(1) The authority shall develop a newsletter to be published not less often than twice per calendar year for residents of the surrounding area of the state exposition and fairgrounds. The authority shall make the newsletter available electronically on its website and, if requested, by mail.

(2) The minutes of the meeting of the authority board shall be posted on the authority's website.

(3) The authority shall establish a local neighborhood advisory council for the purpose of public input on the authority's activities.

**History:** Add. 2004, Act 468, Eff. Mar. 1, 2005

**285.176 Repealed. 2000, Act 39, Imd. Eff. Mar. 24, 2000.**

## EXECUTIVE REORGANIZATION ORDER

**E.R.O. No. 1993-14**

**285.190 Transfer of powers and duties of state exposition and fairgrounds office and of the director of the department of natural resources and the department of natural resources under the Michigan exposition and fairgrounds act from the office of director, department of natural resources, to the director of the department of commerce; transfer of the state exposition and fairgrounds council to the department of commerce by a type II transfer.**

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Michigan Exposition and Fairgrounds Act, Act No. 361 of the Public Acts of 1978, being Section 285.161 et seq. of the Michigan Compiled Laws (the "Michigan Exposition and Fairgrounds Act"), among other things, established the State Exposition and Fairgrounds Office in the Office of the Director of the Department of Natural Resources; vested certain functions, duties and responsibilities in the Director of the Department of Natural Resources and in the Department of Natural Resources; created the position of Manager of the State Exposition and Fairgrounds and created a State Exposition and Fairgrounds Council in the Department of Natural Resources; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the State Exposition and Fairgrounds Office created under the Michigan Exposition and Fairgrounds Act, are hereby transferred from the Office of the Director of the Department of Natural Resources to the Director of the Department of Commerce, as head of the Department of Commerce.

2. All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Director of the Department of Natural Resources and the Department of Natural Resources, created under the Michigan Exposition and Fairgrounds Act, are hereby transferred to the Director of the Department of Commerce.

3. The State Exposition and Fairgrounds Council is hereby transferred to the Department of Commerce by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. It is the intent of this Executive Order that the administrative functions are allocated to the State Fair Manager, under the supervision of the Director of the Department of Commerce. Policy-making and advisory functions are allocated to the State Exposition and Fairgrounds Council as specified in Section 11 of Act No. 361 of the Public Acts of 1978.

5. The Manager of the State Exposition and Fairgrounds shall be directly responsible to the Director of the Department of Commerce and shall perform the functions assigned to the Manager under Section 8 of the Michigan Exposition and Fairgrounds Act under the direction and supervision of the Director of the Department of Commerce.

6. The Director of the Department of Commerce shall administer the functions assigned to the Director in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

7. The Director of the Department of Commerce shall provide executive direction and supervision for the implementation of the transfers.

8. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the director of the Department of Natural Resources, the Department of Natural Resources, the State Exposition and Fairgrounds Office and the State Exposition and Fairgrounds Council for the functions transferred to the Department of Commerce by this Order are hereby transferred to the Department of Commerce.

9. The Director of the Department of Natural Resources, the Director of the Department of Commerce and the Manager of the State Exposition and Fairgrounds shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Director of the Department of Natural Resources, the Department of Natural Resources, the State Exposition and Fairgrounds Council and the Manager of the State Exposition and Fairgrounds.

10. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

11. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

12. In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

**History:** 1993 E.R.O. No. 1993-14, Eff. Feb. 13, 1994

## EXECUTIVE REORGANIZATION ORDER

### E.R.O. No. 2009-2

**285.191 Transfer of position of manager of Michigan exposition and fairgrounds authority to department of management and budget by type III transfer; transfer of Michigan exposition and fairgrounds authority to department of management and budget by type III transfer; transfer of board of managers of Upper Peninsula state fair to department of management and budget by type III transfer.**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, reductions in state revenue and on-going fiscal constraints inhibit the ability to provide taxpayer-funded assistance to the state fairs operated in the Upper Peninsula and in the City of Detroit;

WHEREAS, with the end of state-support for the state fairs, the remaining legally mandated duties and functions relating to the state fairs can be performed by the Department of Management and Budget;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

#### I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1 and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

C. "Michigan Exposition and Fairgrounds Authority" means the public body created within the Department of



Management and Budget under Section 4 of the Michigan Exposition and Fairgrounds Authority Act, 1978 PA 361, MCL 285.164.

D. "Board of Managers of the Upper Peninsula State Fair" means the board created under Section 1 of 1927 PA 89, MCL 285.141, and transferred to the Department of Agriculture under Section 186 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.286.

E. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

F. "Type III transfer" means that term as defined under Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

## **II. TRANSFER OF FUNCTIONS OF MICHIGAN EXPOSITION AND FAIRGROUNDS AUTHORITY**

A. The position of Manager of the Michigan Exposition and Fairgrounds Authority is transferred by Type III transfer to the Department of Management and Budget.

B. The position of Manager of the Michigan Exposition and Fairgrounds Authority is abolished.

C. The Michigan Exposition and Fairgrounds Authority is transferred by Type III transfer to the Department of Management and Budget.

D. The Michigan Exposition and Fairgrounds Authority is abolished.

## **III. TRANSFER OF FUNCTIONS OF BOARD OF MANAGERS OF UPPER PENINSULA STATE FAIR**

A. The Board of Managers of the Upper Peninsula State Fair is transferred by Type III transfer to the Department of Management and Budget.

B. The Board of Managers of the Upper Peninsula State Fair is abolished.

C. Any and all remaining authority, powers, duties, functions, responsibilities, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Agriculture under 1927 PA 89, MCL 285.141 to 285.145, are transferred to the Department of Management and Budget.

## **IV. IMPLEMENTATION OF TRANSFERS**

A. The Director of the Department of Management and Budget shall provide executive direction and supervision for the implementation of the transfers under this Order and shall make internal organization changes as necessary to effectuate the transfers.

B. The authority, powers, duties, functions, and responsibilities transferred to the Department of Management and Budget under this Order shall be administered in such ways as to promote efficient administration.

C. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available for the activities, powers, duties, functions, and responsibilities transferred to the Department of Management and Budget under this Order are transferred to the Department of Management and Budget.

## **V. MISCELLANEOUS**

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

B. All rules, orders, contracts, and agreements relating to the transfers under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

C. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective October 1, 2009 at 12:01 a.m.

**History:** 2009, E.R.O. No. 2009-2, Eff. Oct. 1, 2009

## PROMOTING AGRICULTURAL INTERESTS OF TOWNSHIPS

### Act 197 of 1956

AN ACT to promote the agricultural interests of the various townships of this state; to provide referenda; and to prescribe and provide remedies.

**History:** 1956, Act 197, Eff. Aug. 11, 1956 ;-- Am. 1998, Act 175, Eff. Mar. 23, 1999

*The People of the State of Michigan enact:*

#### **285.201 Agricultural interests; promotion in townships; extension work agreements, areas, appropriations, special tax.**

##### Sec. 1.

In order to promote agricultural interests of the various townships of this state and to provide for agricultural extension work for such townships, each township of this state through its township board is hereby authorized and empowered to cooperate to said end with the Michigan state university of agriculture and applied science; and may enter into agreements with reference thereto. The township board in any county may appropriate money, or raise money by taxation, for the purpose hereof. Two or more township boards may act jointly; and a township board may describe an extension area within any township and may levy a special tax from said area to carry out the provisions of this act.

**History:** 1956, Act 197, Eff. Aug. 11, 1956

#### **285.202 Agricultural interests; promotion in townships; referendum in township.**

##### Sec. 2.

The provisions of this act shall not become operative in any township of this state to which it may apply unless and until it is submitted to a vote of the qualified electors thereof and ratified by a majority of said electors voting thereon. The question of the adoption of the provisions of this act may be submitted to the voters of the township at any general or special election, after the passage of the act, by resolution of the township board; and like notice of the submission of the same shall be given as is required by law in the case of elections to elect township officers, and shall be submitted in substantially the following form:

"Shall the provisions of Act No. .... (here insert number of this act) of the Public Acts of 1956 (here state question to be submitted to electors) be adopted by this township?

Yes ( )

No ( )."

If a majority of the electors voting on such proposition in any township, as determined by the canvass of votes cast, shall vote in favor thereof, from and after such determination, the provisions of this act shall be in force.

The township board shall submit such proposition to the electors at the next general or special election whenever petitions for such submission, signed by 10% of the registered electors of the township as shown by the registration rolls, shall be filed with the township clerk.

**History:** 1956, Act 197, Eff. Aug. 11, 1956

#### **285.202a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.**

Sec. 2a.

A petition under section 2 or 3, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

**History:** Add. 1998, Act 175, Eff. Mar. 23, 1999

### **285.203 Agricultural interests; promotion in townships; discontinuance, referendum.**

Sec. 3.

Any township, which has elected to come under the provisions of this act, may terminate the effect thereof, whenever a majority of the qualified electors of the township, voting upon the question, shall vote in favor of the following proposition:

"Shall the provisions of Act No. .... of the Public Acts of 1956, now effective within this township, be no longer operative herein?

Yes ( )

No ( )."

Said question shall be submitted at any general township election, or at a special election called therefor, whenever petitions therefor, signed by a number of qualified electors, equal to 10% of the total number of registered electors, shown by the registration rolls of the township, shall be filed with the township clerk.

**History:** 1956, Act 197, Eff. Aug. 11, 1956

## **MICHIGAN AGRICULTURAL COMMODITY INSURANCE ACT**

### **Act 366 of 1988**

285.211-285.219 Repealed. 2003, Act 198, Imd. Eff. Nov. 10, 2003.

## **AGRICULTURAL TOURISM ADVISORY COMMISSION**

### **Act 46 of 2005**

285.221-285.225 Repealed. 2005, Act 46, Eff. June 16, 2007.

## **MICHIGAN FAMILY FARM DEVELOPMENT ACT**

### **Act 220 of 1982**

AN ACT to create a Michigan family farm development authority; to define the powers and duties of the authority; to authorize the making and purchase of loans, deferred payment loans, and grants to certain qualified beginning farmers; to provide tax exemptions; to provide for the issuance and purchase of notes and bonds; to provide for the establishment of funds; and to prescribe criminal penalties.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

*The People of the State of Michigan enact:*

**285.251 Short title.**

Sec. 1.

This act shall be known and may be cited as the "Michigan family farm development act".

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.252 Definitions; rules.**

Sec. 2.

(1) As used in this act:

(a) "Agricultural land" means land suitable for use in farming.

(b) "Agricultural improvements" means any improvements, buildings, structures, or fixtures suitable for use in farming which are located on agricultural land. Agricultural improvements includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

(c) "Authority" means the Michigan family farm development authority established in section 3.

(d) "Beginning farmer" means an individual with a low or moderate net worth who engages in farming or wishes to engage in farming.

(e) "Bonds" means bonds issued by the authority pursuant to this act.

(f) "Depreciable agricultural property" means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the internal revenue code.

(g) "Farming" means the cultivation of land for the production of agricultural crops and includes the production of poultry and poultry products, the production of livestock including breeding and grazing, the production of grains and feeds, the production of forages and sod, the production of dairy products, the production of fruits and vegetables, the production of timber and timber products, the production of seeds and grasses, and the production of equine.

(h) "Low or moderate net worth" means an aggregate net worth of an individual and the individual's spouse and children, if any, of less than \$250,000.00.

(i) "Mortgage" means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions and encumbrances acceptable to the authority, including any other mortgage liens of equal standing with or subordinate to the mortgage loan retained by a seller or conveyed to a mortgage lender, on a fee interest in agricultural land and agricultural improvements.

(j) "Mortgage lender" means a state or national bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including the federal land bank or any of its local associations, or any other financial institution or entity authorized to make mortgage loans in this state.

(k) "Mortgage loan" means a financial obligation secured by a mortgage.

(l) "Net worth" means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's net worth.

(m) "Note" means a note issued by the authority pursuant to this act.

(n) "Secured loan" means a financial obligation secured by a lien on an interest in depreciable agricultural property.

(2) The authority may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to establish further definitions applicable to this act and clarification of the definitions in this section, as necessary to assure eligibility for funds, insurance, or guarantees available under federal law, and to carry out the purposes of this act.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.253 Michigan family farm development authority; creation; purpose; appointment, qualifications, and terms of members; expenses; certificate of appointment or reappointment; powers; actions by authority; quorum; findings of fact; conducting business at public meeting; notice of meeting; chairperson and vice-chairperson; officers, agents, and employees; delegation of powers and duties.**

**Sec. 3.**

(1) The Michigan family farm development authority is created within the department of agriculture. The authority is created to establish and administer programs which assist beginning farmers in purchasing agricultural land, agricultural improvements, and depreciable agricultural property for the purpose of farming. The authority shall consist of the director of the department of agriculture, the director of the department of commerce, the state treasurer, and 4 public persons, 3 of which are practicing farmers and 1 who is a director or a member of the board of directors of a state or federally regulated financial institution and who has experience in agricultural financing, appointed by the governor with the advice and consent of the senate. Not more than 2 of the public persons appointed shall be members of the same political party. Of the members first appointed by the governor, 2 shall be designated to serve for a term of 3 years and 2 for a term of 4 years from the dates of their appointments. Upon completion of each term, a person shall be appointed for a term of 4 years, except that a vacancy shall be filled for the unexpired term. A member of the authority shall not receive compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the member's duties. A member shall hold office until a successor has been appointed and has qualified. A certificate of appointment or reappointment of a member shall be filed with the authority and this certificate shall be conclusive evidence of the proper appointment of that member.

(2) The powers of the authority shall be vested in the members in office. Four members of the authority shall constitute a quorum for the purpose of conducting the authority's business, for exercising the authority's powers, and for other purposes. Action may be taken by the authority upon a vote of a majority of the quorum of the authority, unless the bylaws of the authority require a larger number. In the absence of fraud, a determination of the authority with respect to findings of fact made by the authority acting within the scope of its powers shall be conclusive, except with respect to the approval of the municipal finance commission as required by law. Meetings of the members of the authority may be held anywhere in this state. The business which the authority may perform shall be conducted at a public meeting of the authority held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(3) The authority shall elect a chairperson and vice-chairperson. The authority shall employ an executive director, legal and technical experts, and other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation. The authority may delegate to 1 or more agents or employees those powers or duties the authority considers proper.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.254 Performance of duties, implementation of powers, and selection of programs and projects; principles.**

**Sec. 4.**

In the performance of its duties, the implementation of its powers, and the selection of specific programs and projects to receive its assistance, the authority shall comply with all of the following principles:

(a) The authority shall not become an owner of agricultural land, agricultural improvements, or depreciable agricultural property, except that the authority may own agricultural land, agricultural improvements, or depreciable agricultural property on a temporary basis if necessary to implement its programs, to protect its investments by means of foreclosure or other means, or to facilitate transfer of agricultural land, agricultural

improvements, and depreciable agricultural property for the use of beginning farmers.

(b) The authority shall exercise diligence and care in the selection of projects to receive its assistance and shall apply customary and acceptable business and lending standards in the selection and subsequent implementation of those projects. The authority may delegate primary responsibility for determination and implementation of the projects to an agency of the federal government if that agency assumes an obligation to repay the loan, either directly or by insurance or guarantee.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

## **285.255 Powers of authority generally.**

### **Sec. 5.**

The authority shall possess all powers necessary or convenient to carry out this act, including all the following powers and other powers granted by other provisions of this act:

(a) To sue and to be sued; to have a seal and to alter the seal at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to hold and possess real and personal property; and to make, amend, and repeal bylaws and rules.

(b) To undertake and carry out, in cooperation with other state agencies and local units of government, studies and analyses of family farms and beginning farmers within this state and ways of meeting the needs of family farms and beginning farmers, including data with respect to population and family groups and the distribution of population and family groups according to income, the amount and quality of available agricultural land and its distribution, and other factors affecting family farms and beginning farmers and the meeting of the needs of family farms and beginning farmers; to make the results of those studies and analyses available to the public and the agricultural industry; to engage in research; and disseminate information on farming.

(c) To agree and comply with conditions attached to federal financial assistance.

(d) To establish and collect fees and charges in connection with the sale of the authority's publications and the authority's loans, commitments, and servicing, including the reimbursement of costs of financing by the authority and service charges; and to use any accumulated fees, charges, and interest income for achieving any of the corporate purposes of the authority, to the extent that the fees, charges, and interest income are not pledged to the repayment of bonds and notes of the authority or the interest on those bonds and notes.

(e) To make loans, which are unsecured or the repayments of which are secured by mortgages, security interests, or other forms of security; to participate in making of unsecured or secured loans and undertake commitments to make unsecured or secured loans; to sell mortgages and security interests at public or private sale; to modify or alter mortgages and security interests; to foreclose on a mortgage, security interest, or other form of security; to commence an action to protect or enforce a right conferred upon the authority by law, mortgage, security agreement, contract, or other agreement; to bid for and purchase property which was the subject of the mortgage, security interest, or other form of security, at a foreclosure or at any other sale, and to acquire or take possession of the property. Upon acquiring or taking possession of the property, the authority may complete, administer, and pay the principal and interest of obligations incurred in connection with the property, and may dispose of and otherwise deal with the property in any manner necessary or desirable to protect the interests of the authority in the property. Property acquired by the authority through foreclosure shall be offered by the authority for sale within 6 months after the authority has a right to possession of the property and shall be sold by the authority only for farming or other agricultural purposes.

(f) To set standards for family farms or beginning farmers which receive loans under this act and to provide for inspections to determine compliance with those standards.

(g) To accept gifts, grants, loans, appropriations, or other aid from the federal, state, or local government, from a subdivision, agency, or instrumentality of a federal, state, or local government, or from a person, corporation, firm, or other organization.

(h) As provided in section 4(a), to acquire or contract to acquire from a person, firm, corporation, municipality, or federal or state agency, by grant, purchase, or otherwise, leaseholds or real or personal property, or any interest in a leasehold or real or personal property; to own, hold, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber any interest in a leasehold or real or personal property. This act shall not impede the operation and effect of local zoning, building, and housing ordinances; ordinances relating to subdivision control, land development, or fire prevention; or other ordinances having to do with agricultural land, farming, or the development of farming.

(i) To procure insurance against any loss in connection with the property and other assets of the authority.



(j) To invest, at the discretion of the authority, funds held in reserve or sinking funds, or money not required for immediate use or disbursement in obligations of this state or of the United States, in obligations the principal and interest of which are guaranteed by this state or the United States, or in other obligations as may be approved by the state treasurer.

(k) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act. Rules shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, except that in addition to the notice requirements of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, the authority shall furnish to each member of the legislature a copy of notice of a public hearing on proposed rules or proposed rule changes at least 10 days before the public hearing.

(l) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**Admin Rule:** R 285.2101 et seq. of the Michigan Administrative Code.

### **285.256 Annual report.**

#### **Sec. 6.**

(1) The authority shall submit to the governor, the speaker of the house of representatives, and the majority leader of the senate not later than January 15 of each year, a complete report on the activities of the authority. The report shall include all of the following:

(a) A description of its operations and accomplishments.

(b) An accounting of its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

(c) An accounting of its assets and liabilities at the end of its fiscal year and the status of reserve, special, and other funds.

(d) A schedule of the bonds and notes outstanding at the end of its fiscal year and a statement of the amounts redeemed and issued during its fiscal year.

(e) A statement of its proposed and projected activities.

(f) Recommendations to the legislature.

(g) An analysis of beginning farmer needs in the state.

(2) The annual report shall identify the performance goals of the authority and clearly indicate the progress made to attain those goals during the reporting period. If possible, results shall be expressed in terms of number of loans and acres of agricultural land.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

### **285.257 Use of surplus money.**

#### **Sec. 7.**

Money declared by the authority to be surplus money which is not required to service bonds and notes, to pay administrative expenses of the authority, or to accumulate necessary operating or loss reserves shall be used by the authority to provide loans, grants, subsidies, and services to beginning farmers through any of the programs initiated by the authority pursuant to this act.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

## **285.258 Combining program with other state or federal programs.**

Sec. 8.

A program authorized by this act may be combined with any other state or federal program in order to facilitate the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property by beginning farmers.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

## **285.259 Beginning farmer loan program; development; exercise of powers by authority; participation in federal and state programs; requirements for providing loan to beginning farmer; acceleration of loan; assumption of mortgage; transfer of interest; participation interest in mortgage loan.**

Sec. 9.

(1) The authority shall develop a beginning farmer loan program to facilitate the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property by beginning farmers. The authority shall exercise the powers granted to it in this act to fulfill the goal of providing financial assistance to beginning farmers in the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property. The authority may participate in and cooperate with programs of the farmers home administration, federal land bank, or other agency or instrumentality of the federal government, or with any program of another state agency in the administration of the beginning farmer loan program and in the making or purchasing of mortgage or secured loans pursuant to this act.

(2) The authority shall provide in a beginning farmer loan program that a mortgage or secured loan to or on behalf of a beginning farmer shall be provided only if all of the following are satisfied:

(a) The beginning farmer is a resident of this state.

(b) The agricultural land, agricultural improvements, or depreciable agricultural property the beginning farmer proposes to purchase will be located in this state.

(c) The beginning farmer has sufficient education, training, ability, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. The authority shall give preference to beginning farmers that have on-farm experience.

(d) The authority is financing the acquisition by that beginning farmer of agricultural land and agricultural improvements totaling not more than \$400,000.00 in value or of depreciable agricultural property totaling not more than \$125,000.00 in value.

(e) If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery, or livestock to commence or continue farming. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land to commence or continue farming.

(f) The beginning farmer has a low or moderate net worth.

(g) If the loan is for the acquisition of agricultural land, the beginning farmer executes, at the time of closing on the loan, an application for enrollment of the land in part 361 (farmland and open space preservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.36101 to 324.36117 of the Michigan Compiled Laws.

(h) The agricultural land and agricultural improvements will only be used for farming by the beginning farmer or his or her family.

(i) The beginning farmer has not previously received financing under the program for the acquisition of property similar in nature to the property for which the loan is sought, except that this restriction shall not apply if the amount previously received plus the amount of the loan sought does not exceed \$400,000.00 in the case of agricultural land and improvements or \$125,000.00 in the case of depreciable agricultural property.

(j) Other criteria as the authority prescribes by rule.

(3) The authority may include in a mortgage or secured loan made or purchased pursuant to this act a provision that allows the authority, at its option, to accelerate and declare immediately due and payable all sums secured by the authority's lien or security interest if all or a part of the agricultural land, agricultural improvements, or depreciable agricultural property securing the loan is leased, sold, or otherwise transferred. The authority may provide by rule the standards for permitted assumptions of a mortgage or for the lease, sale, or other transfer of an interest in the agricultural land, agricultural improvement, or depreciable agricultural property. However, the authority shall include in a mortgage or secured loan a provision that allows the authority to raise the interest rate

of the loan to the prevailing market rate if the mortgage or secured loan is assumed by a farmer who is already established in that field at the time of the assumption of the loan.

(4) The authority may participate in any interest in a mortgage loan made or purchased pursuant to this act with a mortgage lender. The participation interest may be on a parity with the interest in the mortgage loan retained by the authority, equally and ratably secured by the mortgage securing the mortgage loan.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 1996, Act 61, Imd. Eff. Feb. 26, 1996

#### **285.260 Making, purchasing, or participating in loans, grants, or deferred payment loans to beginning farmers; secured or unsecured loans and grants; insurance; interest rate; terms and conditions; rules.**

##### **Sec. 10.**

(1) The authority may make, purchase, or participate in loans, grants, or deferred payment loans to beginning farmers to finance the acquisition of agricultural land, agricultural improvements, and depreciable agricultural property.

(2) A loan under this section may be secured or unsecured as determined by the authority. If the loan is unsecured, it shall be accepted for insurance under the national housing act, 12 U.S.C. 1701 to 1750g, or another federal or private insurance program providing coverage at least equal to that provided by that act. A loan under this section shall bear interest at a rate and be repaid in the period, not exceeding 20 years, as may be determined by the authority and under additional terms and conditions as may be determined by the authority.

(3) A deferred payment loan or grant may be secured or unsecured as determined by the authority, and shall be made under additional terms and conditions determined by the authority.

(4) In recognition of the need for loans, grants, and deferred payment loans in all geographic areas of the state, the authority shall promulgate rules which provide for the availability of loans, grants, and deferred payment loans on an equitable basis to qualified applicants in all geographic areas of this state.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.261 Loans to mortgage lenders; requirements and conditions.**

##### **Sec. 11.**

(1) The authority may make and contract to make loans to mortgage lenders on terms and conditions it determines are reasonably related to protecting the security of the authority's investment and to implementing the purposes of this act. Mortgage lenders are authorized to borrow from the authority pursuant to this section and the rules promulgated by the authority.

(2) The authority shall require as a condition of a loan to a mortgage lender that the mortgage lender, within a reasonable period after receipt of the loan proceeds as the authority prescribes by rule, enter into written commitments to make and, within a reasonable period thereafter as the authority prescribes by rule, disburse the loan proceeds in new mortgage or secured loans to beginning farmers in an aggregate principal amount of not less than the amount of the loan. New mortgage or secured loans shall have terms and conditions as the authority prescribes by rules which are reasonably related to implementing the purposes of this act. The authority shall require a mortgage lender to which the authority has made a loan to submit evidence satisfactory to the authority that the mortgage lender has made new mortgage or secured loans to beginning farmers as required by this section. To assure compliance with this section, the authority may, through its members, employees, or agents, inspect the books and records of a mortgage lender. The authority may also require, as a condition of a loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority.

(3) The authority shall require that a mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority evidence of its indebtedness to the authority which shall constitute a general obligation of the mortgage lender and shall bear a date, mature at a time, be subject to prepayment, and contain other provisions consistent with this section and reasonably related to protecting the security of the authority's investment, as the authority determines.

(4) The interest rate and other terms of loans to mortgage lenders made from the proceeds of an issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest on them as they become due. In addition, the authority may require that loans to mortgage lenders are additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security by special escrow funds or other forms of guarantee and in amounts and forms as the authority by resolution determines to be necessary to assure the payment of the loans and the interest as they become due. Collateral security shall consist of any of the following:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Investment quality obligations approved by the authority.

(5) The authority may require that collateral for loans be deposited with a bank, trust company, or other financial institution acceptable to the authority located in this state and designated by the authority as custodian. In the absence of that requirement, each mortgage lender shall enter into an agreement with the authority containing provisions the authority considers necessary to adequately identify and maintain the collateral, service the collateral, and require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition of the collateral and the income from the collateral. The authority may also establish additional requirements it considers necessary with respect to the pledging, assigning, setting aside, or holding of collateral and the making of substitutions for it or additions to it and the disposition of income and receipts from the collateral.

(6) The authority may require as a condition of a loan to a mortgage lender any representations and warranties it determines are necessary to secure the loans and carry out the purposes of this section.

(7) The authority may require the beginning farmer to satisfy conditions and requirements normally imposed by mortgage lenders in making similar loans, including the purchase of capital stock in the federal land bank.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

### **285.262 Purchasing mortgage or secured loans from mortgage lenders; commitment to purchase; requirements and conditions.**

#### **Sec. 12.**

(1) The authority may purchase and make advance commitments to purchase mortgage or secured loans from mortgage lenders at prices and upon terms and conditions the authority determines. However, the total purchase price for all mortgage or secured loans which the authority commits to purchase from a mortgage lender at any 1 time shall not exceed the total of the unpaid principal balances of the mortgage or secured loans purchased. Mortgage lenders are authorized to sell mortgage or secured loans to the authority in accordance with the provisions of this section and the rules promulgated by the authority.

(2) The authority shall require as a condition of purchase of mortgage or secured loans from mortgage lenders that the mortgage lenders certify that the mortgage or secured loans purchased are loans made to beginning farmers. Mortgage or secured loans to be made by mortgage lenders shall have terms and conditions as the authority prescribes by rule. The authority may make a commitment to purchase mortgage or secured loans from mortgage lenders in advance of the time the loans are made by mortgage lenders. The authority shall require as a condition of a commitment that mortgage lenders certify in writing that all mortgage or secured loans represented by the commitment will be made to beginning farmers and that the mortgage lender will comply with other authority specifications.

(3) The authority shall require a mortgage lender from which the authority has purchased loans to submit evidence satisfactory to the authority that the mortgage lender has made mortgage or secured loans to beginning farmers as required by this section. To assure compliance with this section, the authority may, through its members, employees, or agents, inspect the books and records of a mortgage lender. The authority may also require, as a condition of the purchase of mortgage or secured loans from a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority.

(4) The authority may require as a condition of purchase of a mortgage or secured loan from a mortgage lender

that the mortgage lender make representations and warranties as required by the authority. A mortgage lender is liable to the authority for damages suffered by the authority by reason of a false representation or the breach of a warranty by the mortgage lender and, in the event that a representation proves to be false or a breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage or secured loan for the original purchase price adjusted for amounts subsequently paid on it, as the authority determines.

(5) The authority shall require the recording with the appropriate register of deeds of any assignment of a mortgage loan purchased by it from a mortgage lender and is not required to notify the mortgagor of its purchase of the mortgage loan. The authority is not required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased enters into a contract to service the mortgage loan and account to the authority for the mortgage loan.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

### **285.263 Bonds and notes; general obligations; negotiability; issuance subject to agency financing reporting act.**

#### **Sec. 13.**

(1) The authority may issue its negotiable bonds and notes in a principal amount, which in the opinion of the authority is necessary to provide sufficient funds for achieving its corporate purposes, the payment of interest on bonds and notes of the authority, the establishment of reserves to secure bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The authority may issue renewal notes, issue bonds to pay notes, and if it determines refunding expedient, refund bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded.

(3) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

(4) Whether or not the notes or bonds are of a form or character as to be negotiable instruments under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the notes or bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes or bonds for registration.

(5) Bonds and notes issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 1983, Act 68, Imd. Eff. May 31, 1983 ;-- Am. 2002, Act 381, Imd. Eff. May 24, 2002

### **285.264 Bonds and notes; authorization; requirements; sale.**

#### **Sec. 14.**

The notes and bonds shall be authorized by resolution of the members of the authority; shall bear a date or dates; and shall mature at a time or times, in the case of any note, or any renewal of a note, not exceeding 10 years, from the date of issue of the original note, and in the case of any bond not exceeding 50 years from the date of issue, as the resolution may provide. The notes and bonds shall bear interest at a rate or rates; be in such denominations; be in a form, either coupon or registered; carry such registration privileges; be executed in a manner; be payable in a medium of payment; at a place or places; and be subject to terms of redemption as the resolution or resolutions may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at a price or prices as the authority shall determine.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.265 Resolution authorizing notes or bonds; provisions.**

##### **Sec. 15.**

A resolution authorizing notes or bonds or an issue of notes or bonds may contain provisions, which shall be a part of the contract with the holders of the notes or bonds, as to:

(a) Pledging all or any part of the fees and charges made or received by the authority, and all or any part of the money received in payment of mortgage or secured loans and interest on the loans, and other money received or to be received, to secure the payment of the notes or bonds or of any issue of the notes or bonds, and subject to the agreements with bondholders or noteholders as may then exist.

(b) Pledging all or any part of the assets of the authority, including mortgages and obligations securing mortgages, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to the agreements with noteholders or bondholders as may then exist.

(c) Pledging of any loan, grant, or contribution from the federal, state, or local government, or source in aid of such development as provided for in this act.

(d) The use and disposition of the gross income from mortgages or secured loans owned by the authority and payment of principal of mortgages or secured loans owned by the authority.

(e) The setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds.

(f) Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging those proceeds to secure the payment of the notes or bonds or of any issue of notes or bonds.

(g) Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds.

(h) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds of the holders of which must consent to the amendment or abrogation, and the manner in which that consent may be given.

(i) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to this act and limiting or abrogating the right of the bondholders to appoint a trustee under this section or limiting the rights, powers, and duties of the trustee.

(j) Any other matters, of like or different character, which affect the security or protection of the notes or bonds.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.266 Pledge by authority; validity; lien; recording of resolution or instrument not required.**

##### **Sec. 16.**

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of that pledge without any physical delivery of the lien or further act; and the lien of the pledge shall be valid and binding as against all parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.267 Personal liability on note or bond of authority.**



Sec. 17.

The members of the authority or a person who executes a note or bond shall not be liable personally on the note or bond or be subject to any personal liability or accountability by reason of the issuance of the note or bond.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.268 Purchase and cancellation of notes or bonds by authority; price.**

Sec. 18.

The authority, subject to the agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be canceled, at a price not exceeding (a) the redemption price then applicable plus accrued interest to the next interest payment date thereon, if the notes or bonds are then redeemable, or (b) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, if the notes or bonds are not redeemable.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.269 Nonliability of state on notes or bonds of authority; statement.**

Sec. 19.

The state shall not be liable on notes or bonds of the authority and the notes and bonds shall not be a debt of the state. The notes and bonds shall contain on the face of the notes or bonds a statement to that effect.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.270 Capital reserve funds.**

Sec. 20.

(1) The authority shall create and establish 1 or more special funds to secure notes and bonds of the authority, referred to in this act as capital reserve funds. The authority shall pay into a capital reserve fund money appropriated and made available by this state for the purposes of the fund; the proceeds of the sale of notes or bonds, to the extent provided in the resolution of the authority authorizing the issuance of the notes or bonds; and other money which is made available to the authority for the purpose of a fund from any other source. All money held in any capital reserve fund, except as specifically provided, shall be used as required solely for the payment of the principal of bonds of the authority secured in whole or in part by the capital reserve fund, for the purchase or redemption of bonds, for the payment of interest on the bonds, or for the payment of a redemption premium required to be paid when the bonds are redeemed prior to maturity. However, the authority shall not use the money for an optional purchase or optional redemption of bonds if that use would reduce the amount of money on deposit in a capital reserve fund to less than the capital reserve fund requirements established for the fund. Any income or interest earned by, or increment to, a capital reserve fund due to the investment of the money in the capital reserve fund may be transferred by the authority to other funds or accounts of the authority to the extent that the transfer does not reduce the amount of a capital reserve fund below the capital reserve fund requirement for a fund.

(2) The authority shall not issue bonds secured in whole or in part by a capital reserve fund if, upon the issuance of the bonds, the amount in the capital reserve fund would be less than the capital reserve fund requirement for the fund, unless the authority, at the time of issuance of the bonds, deposits in the fund from the proceeds of the bonds

to be issued, or from other sources, an amount which, together with the amount then in the fund, is not less than the capital reserve fund requirement for the fund. As used in this section, "capital reserve fund requirement" means the requirement provided in the resolution of the authority authorizing the bonds with respect to which the fund is established, which amount shall not exceed the maximum amount of principal and interest maturing and becoming due in a succeeding calendar year on the bonds of the authority secured in whole or in part by the fund.

(3) The authority shall not have outstanding at any time bonds and notes for its corporate purposes in an aggregate principal amount exceeding \$100,000,000.00, excluding bonds and notes issued to refund outstanding bonds and notes.

(4) In computing the amount of a capital reserve fund for the purposes of this section, securities in which all or a portion of the fund is invested shall be valued at par. If the securities are purchased at other than par, the securities may be valued at their cost to the authority, as adjusted by amortization of the discount or premium paid upon purchase of the securities on a pro rata basis to the maturity date of the securities.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

### **285.271 General reserve fund.**

#### **Sec. 21.**

The authority shall create and establish a special fund, referred to as a general reserve fund, and, subject to agreements with bondholders and noteholders, shall pay into the fund all fees and charges collected by the authority on loans made from and mortgages acquired with the proceeds of the sale of bonds and any money which the authority transfers from the capital reserve fund. That money and any other money paid into the general reserve fund, in the discretion of the authority but subject to agreements with bondholders and noteholders, may be used by the authority for any of the following:

(a) For the repayment of advances from the state in accordance with the provisions of repayment agreements between the authority and the director of the department of management and budget.

(b) To pay all costs, expenses, and charges of financing, including fees and expenses of trustees and paying agents.

(c) For transfers to the capital reserve fund.

(d) For the payment of the principal of and interest on bonds or notes issued by the authority when they shall become due whether at maturity or on call for redemption and for the payment of a redemption premium required to be paid if the bonds or notes are redeemed prior to their stated maturities, and to purchase bonds or notes.

(e) For other corporate purposes of the authority as the authority in its discretion shall determine and provide.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

### **285.272 Pledge and agreement of state with holders of notes or bonds.**

#### **Sec. 22.**

The state pledges and agrees with the holders of any notes or bonds issued under this act, that the state will not limit or alter the rights vested in the authority to fulfill the terms of an agreement made with the holders of the notes or bonds, or impair the rights and remedies of the holders until the notes or bonds, together with the interest on the notes or bonds, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in an agreement with the holders of notes or bonds.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.273 Default by authority; appointment and powers of trustee; notice by trustee.**

Sec. 23.

(1) If the authority defaults in the payment of principal of or interest on an issue of notes or bonds after the notes or bonds become due, whether at maturity or upon call for redemption, and that default continues for a period of 30 days, or if the authority fails or refuses to comply with the provisions of this act, or defaults on an agreement made with the holders of an issue of notes or bonds, the holders of 25% in aggregate principal amount of the notes or bonds of the issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Ingham and approved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of those notes or bonds for the purposes provided in this section.

(2) The trustee may, and upon written request of the holders of 25% in principal amount of the notes or bonds then outstanding shall, in the trustee's own name:

(a) By civil action or administrative proceeding, enforce all rights of the noteholders or bondholders, including the right to require the authority to collect fees and charges and interest and amortization payments on mortgages or secured loans made by it adequate to carry out any agreement as to, or pledge of, such fees and charges and interest and amortization payments on mortgages or secured loans and other properties and to require the authority to carry out any other agreements with the holders of the notes or bonds and to perform its duties under this act.

(b) Bring a civil action upon the notes or bonds.

(c) By civil action, require the authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.

(d) By civil action, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the notes or bonds.

(e) Declare all the notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of 25% of the principal amount of the notes or bonds then outstanding, to annul that declaration and its consequences.

(3) The trustee, in addition to the powers granted in subsection (2), shall have and possess all of the powers necessary or appropriate for the exercise of a function specifically provided in this section or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(4) Before declaring the principal of notes or bonds due and payable pursuant to this section, the trustee shall first give 30 days' notice in writing to the governor, to the authority, and to the attorney general of this state.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.274 Depositing money of authority in bank or savings and loan association; security; contracting with holders of notes or bonds for certain purposes; system of accounts; operating expenditures; audit.**

Sec. 24.

(1) All money of the authority shall be held by the authority and deposited in a state bank, national bank, or a state or federally chartered savings and loan association approved by the state treasurer. All deposits of money that are not fully insured by an agency of the United States shall, if required by the state treasurer or the authority, be secured by obligations of the United States, an agency of the United States, or obligations of this state or a local unit of government in this state, of a market value equal to the uninsured amount of the deposit. A state bank, national bank, or a state or federally chartered savings and loan association may give security for the deposits.

(2) The authority may, subject to the approval of the state treasurer, contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of money of the authority, of any money held in trust or otherwise for the payment of notes or bonds, and to carry out the contract. Money held in trust or otherwise for the payment of notes or bonds or to secure notes or bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies may give security for the deposits.

(3) Subject to agreements with noteholders and bondholders, the authority shall prescribe a system of accounts.

(4) The authority may spend for operating purposes those funds appropriated to it annually by the legislature for operating purposes or as otherwise authorized. The authority is subject to audit by the auditor general or an independent public accounting firm appointed by the auditor general.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 1992, Act 56, Imd. Eff. May 20, 1992

#### **285.275 Notes and bonds of authority as securities; investment.**

Sec. 25.

The notes and bonds of the authority are securities in which all public officers and bodies of the state and all local units of government, all insurance companies and associations, and other persons carrying on an insurance business, all banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.276 Recommending issuance of faith and credit bonds to legislature.**

Sec. 26.

The authority from time to time at its discretion may recommend an issuance of faith and credit bonds to the legislature for a vote of the people.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.277 Tax exemptions.**

Sec. 27.

The property of the authority and its income and operation shall be exempt from all taxation by the state or any of its political subdivisions and all bonds and notes of the authority shall be exempt from all taxation by the state or any of its political subdivisions.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

#### **285.278 Covenant by state with purchasers, holders, and transferees of notes and bonds concerning tax exemptions.**

Sec. 28.

The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the authority, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the authority issued pursuant to this act and the income from notes and bonds and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received, pledged to pay or secure the payment of the notes or bonds shall be free and exempt from all state, city, county, or other taxation provided by the laws of the state, except for estate and gift taxes and taxes on transfers.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982

**285.279 Prohibited conduct; violation; penalties; determination of total value; prior convictions; proceeds defined; prohibition.**

Sec. 29.

(1) A person shall not, with the intent to defraud or cheat and designedly by false pretenses, including false statement or representation, obtain money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service provided under this act, including participation in a program established under this act.

(2) A person who violates this section is guilty of a crime as follows:

(a) If the value of the proceeds is less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for violating or attempting to violate subdivision (a) or (b)(ii).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$20,000.00 or more.

(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for violating or attempting to violate subdivision (a) or (b)(ii).

(3) The values of proceeds obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of proceeds obtained.

(4) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(5) As used in this section, "proceeds" means money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service obtained in violation of subsection (1).

(6) If the sentence for a conviction under this section is enhanced by 1 or more convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

**History:** 1982, Act 220, Imd. Eff. July 10, 1982 ;-- Am. 2001, Act 132, Eff. Jan. 1, 2002

**EXECUTIVE REORGANIZATION ORDER**

**E.R.O. No. 1999-4**

**285.291 Transfer of powers and duties of conservation species advisory panel to the director of the department of agriculture by Type III transfer.**

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Conservation Species Advisory Panel was created by Section 9304a of Act No. 463 of the Public Acts of 1998, being Section 324.9304a of the Michigan Compiled Laws; and

WHEREAS, the Conservation Species Advisory Panel was created within the Department of Agriculture, and empowered to establish a list of conservation species by December 1 of each year for the following calendar year that may be propagated, planted, harvested, sold, or rescued as part of a plant rescue operation; and

WHEREAS, the list of conservation species will impact Conservation Districts which engage in plant rescue operations and propagate, plant, harvest, and sell conservation species; and

WHEREAS, Conservation District programs are currently administered by the Department of Agriculture; and

WHEREAS, the functions, duties and responsibilities assigned to the Conservation Species Advisory Panel can be more effectively organized and carried out by the Director of the Department of Agriculture; and

WHEREAS, it is necessary in the interest of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

1. All the statutory authority, powers, duties, functions, and responsibilities of the Conservation Species Advisory Panel, as set forth in Section 9304a of Act No. 463 of the Public Acts of 1998, being Section 324.9304a of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Agriculture, by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of the transfer. The Director of the Department of Agriculture shall administer the assigned functions.

3. The Director of the Department of Agriculture shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Conservation Species Advisory Panel for the activities transferred herein are hereby transferred to the Director of the Department of Agriculture.

5. All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

6. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirements of Article V, Section 2, of the Constitution of the state of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

**History:** 1999, E.R.O. No. 1999-4, Eff. Sept. 21, 1999

**Compiler's Notes:** In paragraph no. 1, the reference to "Michigan Compiled Laws" should evidently read "Michigan Compiled Laws."

**EXECUTIVE REORGANIZATION ORDER**

**E.R.O. No. 2007-8**



**285.292 Transfer of powers and duties of value-added and commercialization roundtable to department of agriculture by type III transfer; abolishment of value-added and commercialization roundtable.**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, the advisory Value-Added and Commercialization Roundtable adds little value for taxpayers given that the State of Michigan already has an appointed Commission of Agriculture;

WHEREAS, abolishing the Value-Added and Commercialization Roundtable will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

**I. DEFINITIONS**

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

**II. TRANSFER OF AUTHORITY**

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Value-Added and Commercialization Roundtable created under Section 302b of the Julian-Stille Value-Added Act, 2000 PA 322, MCL 285.302b, are transferred by Type III transfer to the Department of Agriculture.

B. The Value-Added and Commercialization Roundtable is abolished.

**III. IMPLEMENTATION OF TRANSFERS**

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Value-Added and Commercialization Roundtable for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

**IV. MISCELLANEOUS**

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.



## EXECUTIVE REORGANIZATION ORDER

### E.R.O. No. 2007-14

#### **285.293 Transfer of powers and duties of retail food advisory board to department of agriculture by type III transfer; abolishment of retail food advisory board.**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Retail Food Advisory Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

#### I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

#### II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Retail Food Advisory Board created under Section 2103 of the Food Law of 2000, 2000 PA 92, MCL 289.2103, are transferred by Type III transfer to the Department of Agriculture.

B. The Retail Food Advisory Board is abolished.

#### III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Retail Food Advisory Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

#### IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

**History:** 2007, E.R.O. No. 2007-14, Eff. July 15, 2007

## **JULIAN-STILLE VALUE-ADDED ACT**

### **Act 322 of 2000**

AN ACT to create certain committees; to create certain funds from certain sources and to provide for the disposition of money from the funds; to provide for the creation of certain funds by certain private entities; to create incentives and to locate and maintain value-added agricultural processing, commercialization of agriculture, and production ventures within this state; to provide for grants, loans, and loan guarantees to certain private and governmental entities for certain purposes; to provide for certain powers and duties for certain private entities, state agencies, commissions, and departments; to authorize loans, loan guarantees, expenditures, and grants from the funds; to finance the development of certain programs; and to provide for appropriations.

**History:** 2000, Act 322, Imd. Eff. Oct. 26, 2000 ;-- Am. 2006, Act 423, Imd. Eff. Sept. 29, 2006 ;-- Am. 2013, Act 163, Imd. Eff. Nov. 12, 2013

*The People of the State of Michigan enact:*

#### **285.301 Short title.**

##### **Sec. 1.**

This act shall be known and may be cited as the "Julian-Stille value-added act".

**History:** 2000, Act 322, Imd. Eff. Oct. 26, 2000

**285.302 Definitions; agricultural value-added grant program; establishment and administration; grant awards; procedure; condition of receiving grant; establishment of low-interest loan program; fiduciary obligations upon grant recipient; "substantial conflict of interest" defined; grant application; form or format; rules; effect on prior grants.**

##### **Sec. 2.**

(1) As used in this section and sections 2a and 2b:

(a) "Agricultural processing" means 1 or more of the operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plant or plant products into goods that are used for the intermediate or final consumption including goods for nonfood use.

(b) "Commercialization" means the transition from research to the actions necessary to achieve market entry and general market competitiveness of new innovative technologies, processes, and products and the services that support, assist, equip, finance, or promote a person or an entity with that transition.

(c) "Department" means the Michigan department of agriculture.

(d) "Eligible grantee" means a person able to receive a grant under this section and includes, but is not limited to, individuals, farmer owned cooperatives, partnerships, limited liability companies, private or public corporations, and local units of government.

(e) "Fund" means the agricultural development fund created in section 2a.

(f) "Joint evaluation committee" means a committee selected by the commission of agriculture with appropriate expertise to conduct an independent, unbiased, objective, and competitive evaluation of grant proposals. The committee shall include at least 3 producers, including 1 plant agricultural producer, 1 animal agricultural producer, and another producer at large, an individual with a scientific agriculture education, and an agricultural financial lender.

(g) "Qualified agricultural loan" means a loan for projects designed to establish, retain, attract, or develop value-added agricultural processing and related agricultural production operations in this state.

(h) "Specialty crops" means any agricultural commodity except wheat, feed grains, oil seeds, cotton, rice, peanuts, and tobacco, as well as products derived from these agricultural commodities.

(i) "Value-added" means the enhancement or improvement of the overall value of an agricultural commodity or of an animal or plant product into a product of higher value. The enhancement or improvement includes, but is not limited to, marketing, agricultural processing, transforming, or packaging.

(2) The department shall establish and administer an agricultural value-added grant program. The commission of agriculture shall award grants from the fund created in section 2a only for projects designed to establish, retain, expand, attract, or develop value-added agricultural processing and related agricultural production operations in this state. In approving a grant under this subsection, the commission of agriculture shall state the specific objective reasons supporting the selection of the applicant over competing applicants. The joint evaluation committee shall assist and provide recommendations to the commission of agriculture in identifying high-quality projects for funding based upon the selection criteria and scoring system approved by the commission of agriculture. The recommendations shall include all materials and decision documents used by the joint evaluation committee in making the recommendations.

(3) All scoring sheets, meetings, and other decisions made by the joint evaluation committee shall be open to the public and considered public documents. A record or portion of a record, material, or other data received, prepared, used, or retained by the department in connection with an application to or with a project or product assisted by the department or with an award, grant, loan, or investment relating to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the department as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) Subject to subsection (2), the department shall do all of the following:

(a) Establish a competitive process to award grants. The competitive process shall include, but is not limited to, the following:

(i) A provision that the applications must be reviewed by the joint evaluation committee. Scientific and technical merit, commercial merit, and the ability to leverage additional funding shall be given equal weight in the review and scoring process.

(ii) A preference for proposals that demonstrate a high level of innovation for value-added agricultural processing and related agricultural production ventures to benefit producers in this state.

(iii) A preference for proposals that are attempting to secure a license for agricultural-related intellectual property to be produced in Michigan.

(iv) A provision that the program will utilize contracts with measurable milestones, clear objectives, and provisions to revoke awards for breach of contract.

(v) Provide for a cash match of at least 10% of the grant by the applicant.

(vi) Limit overhead rates for recipients of grants to reflect actual overhead but not greater than 15% of the grant.

(vii) A preference for proposals whose business plan forecasts revenues within 2 years or that have outside investments from investors with experience and management teams with experience in the area targeted by the proposal, or both.

(b) Prepare a request for proposals on at least an annual basis for grants for eligible grantees from the fund. Grants are contingent upon the availability of funds.

(5) Subject to subsection (4)(a)(i), an application for a grant submitted under this section shall be evaluated and ranked according to selection criteria and a scoring or point system approved by the director of the department. The selection criteria and the scoring or point system shall be reviewed and approved by the commission of agriculture. In developing such a system, the department shall seek the assistance of the Michigan economic development corporation, any institution of higher education, the United States department of agriculture's rural development agency, the rural development council of Michigan, agricultural producers, and other industry and professional organizations as determined by the director of the department.

(6) The commission of agriculture shall ensure that a recipient of a grant under this section agrees that, as a condition of receiving the grant, that recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.

(7) The department, in cooperation with the department of treasury and Michigan financial institutions, shall

establish a low-interest loan program in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, or a loan guarantee program to provide qualified agricultural loans. The department of treasury shall give the department any necessary assistance required to establish a low-interest loan or loan guarantee program. The department shall work with Michigan financial institutions to establish a certification system to verify that loan applicants are requesting qualified agricultural loans. As part of the low-interest loan program, the department shall do the following:

- (a) Work with the department of treasury to establish agreements with participating financial institutions.
- (b) Ensure that an investment or new investment utilizing the 21st century jobs fund in which a qualified agricultural loan is attributed is not made pursuant to this section after June 1, 2008.
- (c) Ensure that the terms of a qualified agricultural loan under this section are for a term of not more than 5 years and that the first payment made by the recipient occurs not later than 24 months after the date of the loan.
- (d) Ensure that the interest rate charged by participating financial institutions does not exceed 50% of prime in Michigan plus 1%.
- (e) Ensure that participating financial institutions do not refinance prior debt.
- (f) Require a participating financial institution to certify compliance with the Sarbanes-Oxley act of 2002, Public Law 107-204, or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added low-interest loan from the financial institution.
- (g) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.
- (8) As part of a loan guarantee program, the department shall do the following:
  - (a) Work with the department of treasury to establish agreements with participating financial institutions.
  - (b) Ensure that participating financial institutions require adequate collateral and fully liquidate all collateral before calling on the loan guarantees.
  - (c) Establish a loan guarantee of not more than 90% of the financial institution's loss after all alternatives to collect have been exhausted.
  - (d) Ensure that participating financial institutions do not refinance prior debt.
  - (e) Require a participating financial institution to certify compliance with the Sarbanes-Oxley act of 2002, Public Law 107-204, or prohibit an officer, director, or principal shareholder of a participating financial institution, or his or her immediate family members, from receiving an agricultural value-added loan guarantee from the financial institution.
  - (f) Require the recipient of a qualified agricultural loan under this section to agree that, as a condition of receiving the loan guarantee, that the recipient shall not use the money for the development of a casino regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino regulated under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or any other gaming enterprise.
  - (g) Maintain a list of financial institutions that will participate in the loan guarantee program.
- (9) The director of the department may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.

(10) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of the commission of agriculture and the joint evaluation committee are subject to 1968 PA 317, MCL 15.321 to 15.330. As used in this subsection, "substantial conflict of interest" means that the pecuniary interest is of such importance as to either materially influence the judgment of the member in the actual performance of his or her duty under the act or to foreseeably and materially influence the judgment of a reasonable person with similar knowledge and experience acting under similar circumstances and in a like position as the member. For purposes of this section, members of the commission of agriculture and the joint evaluation committee shall do the following:

- (a) Discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. In discharging duties of the office, the commission of agriculture when acting in good faith may rely upon the report of the joint evaluation committee or upon financial statements of the department represented to the commission of agriculture by the officer having charge of its books or accounts or stated in a written report by the auditor general.
- (b) Not make or participate in making, or in any way attempt to use his or her position to influence a matter before the department regarding, a loan, loan guarantee, grant, or other expenditure under this act.
- (c) Not have any financial interest in a recipient of proceeds under this act and shall not engage in any conduct that constitutes a substantial conflict of interest.
- (d) Immediately advise the commission of agriculture in writing of the details of any incident or circumstances that may present the existence of a substantial conflict of interest with respect to the performance of his or her duty

under this act.

(e) Disclose a substantial conflict of interest related to any matter before the department or the commission of agriculture takes any action with respect to the matter, which disclosure shall become a part of the record of the official proceedings.

(f) Refrain from doing all of the following with respect to the matter that is a basis of a substantial conflict of interest:

- (i) Voting in the proceedings related to the matter.
- (ii) Participating in the discussion or deliberation of the matter.
- (iii) Being present at the meeting when the discussion, deliberation, and voting on the matter takes place.
- (iv) Discussing the matter with any other member of the commission of agriculture or the joint evaluation committee.

(11) An application for a grant from the fund shall be made on a form or format prescribed by the department. The department may require the applicant to provide information reasonably necessary to allow the department to make a determination required under this section.

(12) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

(13) The amendatory act that added subsection (5) shall not affect any grants awarded under this act prior to the effective date of the amendatory act that added subsection (5).

**History:** 2000, Act 322, Imd. Eff. Oct. 26, 2000 ;-- Am. 2006, Act 423, Imd. Eff. Sept. 29, 2006

**Admin Rule:** R 285.351 et seq. of the Michigan Administrative Code.

### **285.302a Agricultural development fund; creation as revolving fund; administration; investment; lapse; money appropriated from 21st century jobs trust fund; manner of investment.**

Sec. 2a.

(1) The agricultural development fund is created as a revolving fund within the department of treasury to be administered by the department. The state treasurer shall direct the investment of the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department may utilize up to 4% of the fund for administrative purposes. The state treasurer shall credit to the fund money from the following sources:

- (a) Appropriations.
- (b) Money or other assets from any source for deposit into the fund, including federal money, other state revenues, gifts, bequests, or donations, as well as money from any other source provided by law.
- (c) Any money representing loan repayments and interest on the loans.

(2) Of the money appropriated under 2006 PA 153 from the 21st century jobs trust fund, not more than 10% shall be used for grants and the remaining shall be used for loans and loan guarantees. The maximum grant from the fund shall not exceed \$250,000.00. The maximum low-interest loan supported by the fund shall not exceed \$500,000.00.

(3) Upon request from the commission of agriculture, the state treasurer shall invest the money in the agricultural development fund in a manner similar to the qualified agricultural loan program established in section 2a of 1855 PA 105, MCL 21.142a, as provided in section 2.

**History:** Add. 2006, Act 424, Imd. Eff. Sept. 29, 2006

### **285.302b Repealed. 2006, Act 422, Eff. Sept. 29, 2008**

**Compiler's Notes:** The repealed section pertained to agricultural value-added commercialization roundtable.

**285.303 "Department" and "fund" defined; Michigan clean air fund; creation; administration; grants and loans; rules.**

Sec. 3.

(1) As used in this section:

(a) "Department" means the department of environmental quality.

(b) "Fund" means the Michigan clean air fund created in this section.

(2) The Michigan clean air fund is created within the department of treasury to be administered by the department. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The state treasurer shall credit to the fund the money from any source provided by law.

(3) Money in the fund shall be used by the department to provide grants and loans to individuals, private or public corporations, and local units of government for programs or projects established to reduce oxides of nitrogen and volatile organic compounds and for the administration of the grant and loan program.

(4) The director of the department shall have final approval of grants and loans made under this section. Grants and loans made under this section are contingent upon the availability of money in the fund.

(5) The director of the department may impose fiduciary obligations upon a recipient of a grant, including performance bonding, and may impose conditions upon the receipt and expenditure of the grant money.

(6) An application for a grant or loan from the fund shall be made on a form or in a format prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make a determination required under this section.

(7) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

**History:** 2000, Act 322, Imd. Eff. Oct. 26, 2000 ;-- Am. 2013, Act 163, Imd. Eff. Nov. 12, 2013

**Compiler's Notes:** Enacting section 2 of Act 163 of 2013 provides: "Enacting section 2. All money in the Michigan clean air fund on the effective date of this amendatory act is appropriated and transferred to the Michigan public service commission for distribution to utilities in the amounts contributed by the utilities to the Michigan clean air fund. Money received by the Michigan public service commission and distributed to utilities under this enacting section shall be refunded to customers through the reconciliation process provided in sections 6h and 6j of 1939 PA 3, MCL 460.6h and 460.6j."

**285.304 Repealed. 2013, Act 163, Imd. Eff. Nov. 12, 2013.**

**Compiler's Notes:** The repealed section pertained to administration and establishment of uncollectibles allowance recovery fund.

**FARM PRODUCE INSURANCE ACT**

**Act 198 of 2003**

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 certain producers of farm products; to impose a fee for regulation of grain dealers and enforcement activities; 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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012

*The People of the State of Michigan enact:*



### **285.311 Short title.**

#### **Sec. 1.**

This act shall be known and may be cited as the "farm produce insurance act".

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003

### **285.313 Definitions.**

#### **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) "Administrative premium" means the amount of money charged to and collected from a producer under section 10.
- (d) "Authority" means the farm produce insurance authority created in section 5.
- (e) "Board" means the board of directors of the authority described in section 7.
- (f) "Claimant" means a producer who makes a claim for reimbursement from the fund under section 15.
- (g) "Cooperative association" means that term as defined in 12 USC 1141j.
- (h) "Department" means the department of agriculture and rural development.
- (i) "Depositor" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (j) "Director" means the director of the department or his or her designee.
- (k) "Facility" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (l) "Failure" of a licensee or grain dealer means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (m) "Farm produce" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (n) "Farm produce insurance program" or "program" means the program for reimbursement of claims described in this act.
- (o) "Financial institution" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (p) "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.
- (q) "Fund" means the farm produce insurance fund created in section 9.
- (r) "Grain dealer" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (s) "Grain dealers act" means the grain dealers act, 1939 PA 141, MCL 285.61 to 285.88.
- (t) "Licensee" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (u) "Net proceeds" means the sale price of farm produce, less usual and customary charges and costs of sale of the farm produce.
- (v) "Person" means an individual, corporation, limited liability company, partnership, association, cooperative association or other cooperative organization, or other legal entity.
- (w) "Price later agreement" means that term as defined in section 2 of the grain dealers act, MCL 285.62.
- (x) "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 and delivery in Michigan of farm produce produced from the land to a grain dealer licensed under the grain dealers act.
- (y) "Producer premium" means the amount of money charged to and collected from a producer under section 11.
- (z) "Producer security activities" means any action by the director under section 22 of the grain dealers act, MCL 285.82, to administer or enforce that act.
- (aa) "Sale" means transfer of title.
- (bb) "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.
- (cc) "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 delivered and sold in this state by a producer to the licensee or to a location in this state designated in advance of the delivery.
- (dd) "Warehouse receipt" means that term as defined in section 2 of the grain dealers act, MCL 285.62.



**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2008, Act 140, Imd. Eff. May 28, 2008 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012

### **285.315 Farm produce insurance authority; creation; powers, duties, and functions.**

#### **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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003

### **285.317 Board of directors; membership; terms; vacancy; quorum; meetings; notice; waiver of objection; duties; powers; compensation; inspection of books and records; confidentiality; disclosure.**

#### **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 the director's designee, is a nonvoting member and the chairperson and secretary of the board. This member must 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 this state, 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 this state, 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 this state, 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 this state, 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 advice and consent of the senate, from recommendations received from the largest Michigan organization exclusively representing dry bean producers in this state, 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 this state, as determined by the director.

(h) 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 wheat producers in this state, 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 either 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, insurance company, 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 the member's 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 must not exceed \$75.00 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(4). Financial information submitted to the department or the authority by a licensee for purposes of this subsection and sections 10(6) and 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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012 ;-- Am. 2016, Act 264, Eff. Sept. 26, 2016 ;-- Am. 2023, Act 196, Imd. Eff. Nov. 7, 2023

### **285.318 Conduct of business at public meetings; public notice; disclosure of information.**

#### **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 7(12), 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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012

### **285.319 Farm produce insurance fund; establishment; payments; allocation for administrative expenses; payment for legal services and expenses; investments; compliance review of investment portfolio; audit; establishment of fiscal year; "financial institution" defined.**

#### **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(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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012 ;-- Am. 2016, Act 264, Eff. Sept. 26, 2016

### **285.320 Administrative premium.**

Sec. 10.

(1) Except as otherwise provided in this section, each producer shall pay to the authority an administrative premium in an amount determined by the board under subsection (2). When the farm produce is sold to a licensee, the licensee shall deduct the administrative premium from the proceeds of sale and pay the premium to the authority on behalf of the producer as provided in subsection (4).

(2) For any calendar year beginning in 2013, the board may establish an administrative premium described in subsection (1). All of the following apply to the amount of an administrative premium established by the board for a calendar year.

(a) The amount of a producer's premium shall be calculated as a percentage of the net proceeds from all farm produce sold by the producer to a licensee in this state.

(b) The amount of the premium shall reflect the board's determination of the amount of money that is necessary to reimburse the director for producer security activities.

(c) The board shall consider past and projected costs over a 2-year period in establishing the amount of the premium.

(3) An administrative premium imposed under this section is in addition to any other fees or assessments required by law.

(4) When purchasing farm produce from a producer, a licensee or its agent or representative shall deduct the administrative 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 administrative premium to the authority for deposit into the fund on behalf of the producer within 30 days of the close of each calendar quarter.

(5) If the board establishes, adjusts, or eliminates an administrative premium under subsection (2) for a calendar year, the board shall notify the department in writing of that action at least 120 days before January 1 of that calendar year, and the department by first-class mail shall notify each licensee of the requirements of subsection (4) at least 90 days before January 1 of that calendar year.

(6) A licensee shall clearly indicate in its books and records the individual administrative premiums collected by the licensee under subsection (4) 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 administrative 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 administrative premiums collected.

**History:** Add. 2012, Act 149, Imd. Eff. May 30, 2012

### **285.321 Producer premium; limitation; payment; deduction from proceeds; notice to producer; forwarding for deposit into fund; books and records; availability for inspection or verification; certification of amount of money in fund.**

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) 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) 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 \$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 \$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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012 ;-- Am. 2016, Act 264, Eff. Sept. 26, 2016

### **285.323 Administrative premium or producer premium; refund.**

#### **Sec. 13.**

(1) Subject to subsection (7), a producer that has paid, either directly or collected by a licensee, an administrative premium or producer premium may receive a refund of that administrative premium or 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 administrative premium or 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 of an administrative premium or producer premium 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 an administrative premium or producer premium under this section, the board shall pay the refund within 60 days of its receipt of the demand for refund.

(4) If administrative premiums or 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 an administrative premium or 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 an administrative premium or 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 administrative premiums and producer premiums refunded to the producer, and interest on the refunds as determined by the board.

(6) A producer that reenters the farm produce insurance program under subsection (5) is eligible for reimbursement of claims under the program for any failure that occurs at least 90 days after reentry.

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

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2008, Act 140, Imd. Eff. May 28, 2008 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012

### **285.325 Claim for reimbursement.**

#### **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 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 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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2008, Act 140, Imd. Eff. May 28, 2008 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012 ;-- Am. 2016, Act 264, Eff. Sept. 26, 2016

### **285.327 Use of money; severability; audit.**

#### **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 at the time and in the amounts established by the board.

(2) At least annually, a certified public accountant selected by the board shall audit the financial records of the fund. 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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010

### **285.329 Action by director or department; defenses.**

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.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003

### **285.331 Conduct as misdemeanor; penalties; enforcement action; costs and expenses.**

Sec. 21.

(1) In addition to any other penalty or remedy provided by law, 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 any administrative premiums or producer premiums as required under this act.

(b) Refusing or failing to pay to the authority any administrative premiums or 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 administrative premiums or 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.

(3) If the board prevails in an action against a licensee to recover administrative premiums or producer premiums collected by or on behalf of the licensee and not forwarded to the fund in violation of section 10(4) or 11(3), the court may award to the board all costs and expenses in bringing the action, including, but not limited to, reasonable attorney fees, court costs, and audit expenses.

**History:** 2003, Act 198, Imd. Eff. Nov. 10, 2003 ;-- Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010 ;-- Am. 2012, Act 149, Imd. Eff. May 30, 2012

## **PUBLICATION OF INFORMATION ESTABLISHING ALTERNATIVE FUELS FACILITIES**

### **Act 330 of 2008**

AN ACT to provide for the publication of certain information regarding the establishing of alternative fuels facilities in this state; to provide for certain powers and duties for certain state agencies; and to make available to the public certain information.

**History:** 2008, Act 330, Imd. Eff. Dec. 18, 2008

*The People of the State of Michigan enact:*

### **285.341 Definitions.**

#### **Sec. 1.**

As used in this act:

(a) "Alternative fuel" means a fuel composed of biomass or another fuel that does not have petroleum as a base or a blend of a nonpetroleum-based fuel and a petroleum-based fuel. Alternative fuel may include, but is not limited to, biodiesel and ethanol.

(b) "Biodiesel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and, in accordance with standards specified by the American society for testing and materials, designated B100, and meeting the requirements of D6751, as approved by the department.

(c) "Biomass fuel" means a fuel made from plant material, vegetation, or agricultural waste.

(d) "Department" means the Michigan department of agriculture.

(e) "Ethanol" means a substance that meets the American society for testing and materials standard in effect on the effective date of this act as the D4806 specification for denatured fuel grade ethanol for blending with gasoline.

**History:** 2008, Act 330, Imd. Eff. Dec. 18, 2008

### **285.342 Duties of department.**

#### **Sec. 2.**

(1) The department shall do the following:

(a) Review and study all information available within any agency or department of state government to determine the body of relevant information regarding the establishing in this state of a production facility for an alternative fuel.

(b) Compile, in written or electronic format, information in a concise and readable form regarding the procedures for preparing and executing applications and approvals necessary for the establishing of a production facility for alternative fuels.

(c) Publish and make available to the public, in written or electronic format, the information described in subdivision (b) in separate categories for biodiesel fuel, ethanol, and other categories of alternative fuels.

(2) As part of the function described in subsection (1), the department shall specifically indicate procedures and processes that are housed in the department of environmental quality, the department of labor and economic growth, and the Michigan economic development corporation.

(3) The department may identify mechanisms that promote effective communication and coordination of efforts between this state and local governments, private industry, and institutions of higher education concerning the investigation, research into, and promotion of alternative fuels.

(4) The department may also review any state regulation that may hinder the use, research, and development of alternative fuels and vehicles that are able to utilize them and recommend changes to the governor and to the legislature.

**History:** 2008, Act 330, Imd. Eff. Dec. 18, 2008

### **285.343 Assistance to department.**

#### **Sec. 3.**

Except as otherwise provided by law and so far as compatible with other duties, the department of environmental quality, the department of labor and economic growth, and the Michigan economic development corporation shall give the department any necessary assistance requested by the department for the fulfillment of its duties under this act.

**History:** 2008, Act 330, Imd. Eff. Dec. 18, 2008

## **WILDLIFE DEPREDATIONS INDEMNIFICATION ACT**

### **Act 487 of 2012**

AN ACT to provide for indemnification for livestock killed, injured, or lost as a result of certain wildlife; and to prescribe the powers and duties of certain state agencies and officials.

**History:** 2012, Act 487, Imd. Eff. Dec. 28, 2012

*The People of the State of Michigan enact:*

#### **285.361 Short title.**

Sec. 1.

This act shall be known and may be cited as the "wildlife depredations indemnification act".

**History:** 2012, Act 487, Imd. Eff. Dec. 28, 2012

#### **285.362 Definitions.**

Sec. 2.

As used in this act:

- (a) "Commission" means the commission of agriculture and rural development.
- (b) "Department" means the department of agriculture and rural development.
- (c) "Livestock" means that term as it is defined in section 3 of the animal industry act, 1988 PA 466, MCL 287.703.

**History:** 2012, Act 487, Imd. Eff. Dec. 28, 2012 ;-- Am. 2019, Act 136, Eff. Feb. 19, 2020

#### **285.363 Death, injury, or loss of livestock from wolves, coyotes, and cougars; indemnification; eligibility.**

Sec. 3.

(1) The department shall provide indemnification for the death, injury, or loss of livestock from wolves, coyotes, and cougars. Indemnification for missing animals shall only be paid if there is a history of losses to the owner of livestock as evidenced by a prior payment by the department due to the death or injury of livestock from wolves.

(2) To be eligible for indemnification under subsection (1), the owner of livestock shall do all of the following:

(a) Report the incident to the department within 24 hours after the animal is discovered to be dead, injured, or missing.

(b) File a claim for indemnification with the department verifying the type and number of animals for which indemnification is sought. The verification may include photographs of the animals or tracks or other information

that provides support for the claim. If the claim seeks indemnification for missing animals, a notarized statement from the owner specifying the date of birth of each missing animal and the date on which the animals were discovered missing, along with evidence of prior indemnification payments due to death or injury of livestock from wolves, is sufficient documentation that 1 or more animals are missing and eligible for indemnification.

(c) Upon request, provide the department of natural resources with access to the owner's property as necessary to conduct an investigation if the department of natural resources believes that an on-site visit will assist its investigation.

(d) Upon request, provide the department with documentation that the animals have official identification, if required under the animal industry act, 1988 PA 466, MCL 287.701 to 287.746.

**History:** 2012, Act 487, Imd. Eff. Dec. 28, 2012

**285.364 Appraisal and inventory; indemnification payment; reimbursement; deduction for compensation from other source; limitation per incident; indemnification subject to specific appropriations.**

**Sec. 4.**

(1) Within 45 days after receipt of a claim for indemnification, the department shall appraise and inventory the livestock for which indemnification is sought and shall make an indemnification payment to a person who is eligible to receive indemnification under this act. If the department fails to make the indemnification payment within this 45-day time period, the person is entitled to receive from the department twice the amount of the original claim.

(2) Except as otherwise provided in this section, the department shall reimburse the claimant, for each animal included in the claim, 100% of the fair market value, on the date of the appraisal, of livestock of that type marketable for the purpose for which the animal was intended to be marketed, not to exceed \$4,000.00 for each animal. The appraisal determination shall not delay the slaughter, destruction, or disposition of the livestock animals.

(3) The department shall deduct from the indemnification amount under subsection (2) for any compensation received, or to be received by the owner, from any other source, including, but not limited to, indemnification by the United States department of agriculture, insurance, or salvage value. The owner shall furnish to the department all records indicating other sources of indemnity. An affidavit signed by the owner attesting to the amount of compensation for the livestock received, or to be received, from any other source shall accompany the appraisal certificate prior to the payment of indemnification under this section.

(4) The department may make an indemnification payment pursuant to this section not to exceed \$100,000.00 per incident which is the basis for a valid claim for indemnification under this act, from any line item in the annual budget for the department in the applicable fiscal year. Any agreement for an indemnification payment greater than \$100,000.00 entered into between the department and an owner of livestock shall contain a provision indicating that, notwithstanding the terms of the agreement, indemnification shall be subject to specific appropriations by the legislature and not be paid from department funds.

**History:** 2012, Act 487, Imd. Eff. Dec. 28, 2012

**285.365 Acceptance of compensation as full and complete release of claim; exceptions to right of indemnity.**

**Sec. 5.**

(1) Acceptance of compensation under this act constitutes a full and complete release of any claim the owner has against this state, its departments, agencies, officers, employees, agents, and contractors to the extent these persons were acting on behalf of this state, within the scope of their employment with this state or under the direction of this state, its departments, agencies, officers, or employees related to the death, injury, or loss of the livestock.

(2) The right to indemnity under this act does not apply to livestock determined by the department to have been imported without meeting import requirements such as an official interstate health certificate or official interstate certificate of veterinary inspection, required testing, required vaccination, or to livestock determined by the department to have been illegally moved within this state. An owner is not entitled to indemnity from this state for

an animal that comes into the possession of the owner with the owner's knowledge that the animal is diseased or is suspected of having been exposed to an infectious, contagious, or toxicological disease. In addition, the department shall not indemnify an owner for animals that have been exposed to an animal that comes into the possession of the owner with the owner's knowledge that the animal is diseased or is suspected of having been exposed to an infectious, contagious, or toxicological disease.

**History:** 2012, Act 487, Imd. Eff. Dec. 28, 2012