

Act No. 238  
Public Acts of 1992  
Approved by the Governor  
November 10, 1992  
Filed with the Secretary of State  
November 12, 1992

**STATE OF MICHIGAN  
86TH LEGISLATURE  
REGULAR SESSION OF 1992**

Introduced by Reps. McBryde, Harder, Hickner, Gnodtke, Bobier, Gernaat, Robertson, Bandstra, Middleton, Jamian, McNutt, Dalman, Bodem, Horton, Oxender, Fitzgerald, Brackenridge, Dolan, Sikkema, London, Randall, Muxlow, Anthony, DeLange, Alley, Rocca, Bennett, Middaugh, Byrum, Walberg, Strand, Kosteva, Gubow, Jondahl, DeMars, Wozniak, Olshove, Dobb, Willis Bullard, O'Connor, Martin, Munsell, Shugars, Nye, Bartnik, O'Neill, Gilmer, Hoffman, Trim, Jaye, Weeks, Bender, Hillegonds, Porreca, Dresch, Niederstadt, Pitoniak, Ostling and Bankes

## **ENROLLED HOUSE BILL No. 5573**

AN ACT to amend sections 2, 6, and 7a of Act No. 141 of the Public Acts of 1939, entitled as amended "An act to permit the director of the department of agriculture of this state 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 and price later agreements and their priority; to provide for the creation of security interests; to provide for the establishment of an inspection service and personnel for licensed grain dealers; and to provide penalties for the violation of this act," sections 2 and 7a as amended by Act No. 365 of the Public Acts of 1988 and section 6 as amended by Act No. 33 of the Public Acts of 1982, being sections 285.62, 285.66, and 285.67a of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 2, 6, and 7a of Act No. 141 of the Public Acts of 1939, sections 2 and 7a as amended by Act No. 365 of the Public Acts of 1988 and section 6 as amended by Act No. 33 of the Public Acts of 1982, being sections 285.62, 285.66, and 285.67a of the Michigan Compiled Laws, are amended to read as follows:

Sec. 2. As used in this act:

(a) "Farm produce" means individually and collectively, dry edible beans, soy beans, small grains, cereal grains, corn, grass seeds, hay, and legume seeds in a raw or natural state, produced or grown for storage or purchase by a person.

(b) "Person" means a person, partnership, firm, corporation, association, cooperative organization, or other legal entity operating within this state that buys, exchanges, or sells farm produce grown, stored, handled, or shipped either into or out of this state.

(c) "Grain dealer" means a person engaged in the business of receiving, buying, exchanging, selling, or storing farm produce, but does not include:

(i) A grower or producer selling farm produce that the grower or producer actually produces.

(ii) A person who buys farm produce on a cash basis as a feeder of the person's own livestock or poultry.

(iii) A retailer who sells farm produce if the sales are an incidental portion of the retailer's business.

(iv) A person who purchases farm produce from a nongrower; purchases farm produce on a cash basis; does not take possession of the farm produce; and is not required to offer warehouse receipts, price later agreements, or scale tickets.

(d) "Director" means the director of the state department of agriculture and the director's authorized agents and representatives.

(e) "Price later agreement" means a written agreement by which a grain dealer takes title to farm produce for a sale price which is not fixed at the time of delivery.

(f) "Acknowledgment form" means a written receipt issued by a grain dealer or his or her authorized representative to a farm produce owner which identifies the farm produce being transferred from the physical jurisdiction of the owner to the grain dealer. "Scale ticket" is synonymous with acknowledgment form if used to describe weighed quantities of farm produce.

(g) "Cash sale" means farm produce whose title is transferred only after a price is decided upon not later than the time of delivery.

(h) "Grain bank" or "feed bank" means the storage of farm produce on a warehouse receipt intended to be, periodically, partially withdrawn by the owner.

(i) "Warehouse receipt" means a written acknowledgment issued by the grain dealer to a farm produce owner upon acceptance of the farm produce for storage in the grain dealer's facility.

(j) "Financial institution" means a commercial bank whose deposits are insured by the federal deposit insurance corporation or a national bank for cooperatives subject to the farm credit act of 1971, Public Law 92-181, 85 Stat. 583.

Sec. 6. (1) The director shall prepare and, upon acceptance of an application, issue a grain dealer's license to the applicant. The license shall be of 1 year's duration, renewable annually, and shall carry a license fee as provided in subsection (2). Each license shall be suspendible or revocable for cause by the director, carry a serial identification number, be nontransferable, and be prominently displayed on the location or vehicle of the holder of the license. A separate license is required for each business location of the grain dealer, and if the grain dealer receives farm produce and later disposes of it without depositing that farm produce at a licensed business location of the grain dealer, the grain dealer shall secure a grain dealer's license for each vehicle used in such business transactions. The license shall grant authority to the holder to receive farm produce for storage if the holder is in compliance with the bonding or letter of credit requirements imposed in section 7a; assess and collect storage charges on the stored farm produce; issue warehouse receipts on the stored farm produce; issue price later agreements; and issue acknowledgment forms regarding farm produce, under the rules and supervision established by the director in accordance with this act.

(2) A grain dealer's license shall be issued upon the payment of the following fee:

(a) For a facility having a total bushel capacity of:

(i) Not more than 50,000 .....	\$125.00
(ii) More than 50,000, and less than or equal to 100,000.....	\$150.00
(iii) More than 100,000, and less than or equal to 200,000 .....	\$200.00
(iv) More than 200,000, and less than or equal to 300,000 .....	\$270.00
(v) More than 300,000, and less than or equal to 400,000 .....	\$325.00
(vi) More than 400,000, and less than or equal to 500,000 .....	\$375.00
(vii) More than 500,000 .....	\$400.00
(b) For 1 vehicle .....	\$200.00
(c) For each additional vehicle .....	\$ 50.00.

Sec. 7a. (1) An application for a grain dealer's license shall be made on a form provided by the director, shall be filed 30 days in advance of a license expiration date if there is an outstanding license, and shall be accompanied by a sufficient bond on a form provided by the director or an irrevocable letter of credit on a form provided by the director in favor of the department of agriculture which fulfills the requirements of subsection (4). The bond shall run to the department of agriculture with sufficient surety conditioned for the faithful performance of the duties of a grain dealer and compliance with all laws of this state relating to grain dealers. The amount of the bond for a grain dealer who is a bailee of farm produce or who issues warehouse receipts shall be \$15,000.00 for the first 10,000 bushels of storage capacity of the grain dealer, plus \$5,000.00 for each additional 10,000 bushel capacity or fraction of that capacity used for the storage of warehouse receipted farm produce. The amount of the bond for a grain dealer who does not own a farm produce storage or handling facility or does not own a vehicle used to transport farm produce shall be \$50,000.00.

(2) A grain dealer issuing price later agreements shall maintain allowable net assets of not less than \$20,000.00 and shall comply with 1 or more of the following:

(a) Keep the farm produce, fungible farm produce, or farm produce of equivalent value on hand as the dealer's own property.

(b) Procure and maintain price later agreements or warehouse receipts in other grain dealers' facilities as approved by the director.

(c) Maintain sufficient cash or other short-term secured investments in an escrow account with a financial institution in an amount equal to 80% of the value, established by daily bid price, of any deficiency in the price later agreements. This deficiency shall be protected by procuring an offsetting purchase commitment.

(3) Instead of the bonding requirements in subsection (1), a person owning 2 or more farm produce storage facilities may furnish a blanket surety bond equal to the sum of the requirements for the individual facilities, except that when the requirements are equal to or greater than \$400,000.00 a blanket bond in the amount of \$400,000.00 shall be considered sufficient to meet the requirements of this act. The bond shall show the address and capacity of each facility.

(4) A person may submit an irrevocable letter of credit with an application for a grain dealer's license if the letter of credit is in an amount equal to the amount that would otherwise be required by this section for a bond and if it is issued by a financial institution.

(5) A financial institution shall not cancel, reduce, or allow the expiration of an irrevocable letter of credit unless the financial institution notifies in writing the department of agriculture not less than 30 days before the effective date of the cancellation, reduction, or expiration.

(6) Upon demand of a grower from whom farm produce is purchased in accordance with a price later agreement, the grain dealer who issues the price later agreement shall grant the grower a security interest in that farm produce as provided in section 9312 of the uniform commercial code, Act No. 174 of the Public Acts of 1962, being section 440.9312 of the Michigan Compiled Laws. A security agreement may be on a form which shall be prescribed and provided to grain dealers by the director and which shall include a description of the rights and responsibilities of a grower concerning the security agreement. A grain dealer shall post a sign to inform growers of the availability of security agreements and forms.

(7) Upon the written demand of the department of agriculture, a financial institution shall unconditionally pay a claim in an amount specified by the department of agriculture but not greater than the maximum value of the irrevocable letter of credit. Upon the payment of a claim, a financial institution may request the department of agriculture in writing for justification of the claim.

This act is ordered to take immediate effect.

.....  
Clerk of the House of Representatives.

.....  
Secretary of the Senate.

Approved .....

.....  
Governor.