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:

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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.

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(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.”

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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.

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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.”

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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."

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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.

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(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.

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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

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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

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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

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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.

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(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

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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.

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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

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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.

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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.

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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.

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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.

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(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.

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(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

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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 the 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

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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

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