



Jeff Grim

Final Analysis
Legislative Service Commission

Sub. H.B. 421

125th General Assembly
(As Passed by the General Assembly)

Reps. Schlichter, McGregor, Fessler, Gibbs, Collier, Aslanides, Wolpert, Seaver, Reinhard, Carmichael, Distel, Domenick, C. Evans, Niehaus, Perry, Setzer, Wagner, Widener, Yates, Driehaus, Barrett, Book, Carano, Chandler, Cirelli, Combs, D. Evans, Flowers, Grendell, Hollister, Hoops, Hughes, Schaffer, Schmidt, Seitz, G. Smith, Taylor, Wilson

Sens. Roberts, Mumper, Armbruster, Robert Gardner, Jordan, Schuler, Schuring, Spada, Harris, White

Effective date: *

ACT SUMMARY

- Modifies the conditions involving the balance of the Agricultural Commodity Depositors Fund under which the Director of Agriculture must waive or reinstate the per-bushel fee remitted by licensed handlers of agricultural commodities.
- Expands the situations under which the Agricultural Commodity Depositors Fund is liable for 100% of a loss incurred by a depositor of agricultural commodities, provided that the loss involves moneys that a licensed handler of agricultural commodities owes the depositor with respect to an agricultural commodity handling transaction for which the handler was required to remit a per-bushel fee.
- Requires the Director of Budget and Management, at the request of the Director of Agriculture, to transfer not more than \$500,000 per fiscal year from the Agricultural Commodity Depositors Fund to the Commodity Handler Regulatory Program Fund for purposes of paying

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

the examination and administrative costs of the Agricultural Commodity Handlers Law.

- Changes the quorum requirement for the conduct of business of the Commodity Advisory Commission from two farmer members and two agricultural commodity handler members to any four members.

CONTENT AND OPERATION

Background

The act revises certain provisions in the Agricultural Commodity Handlers Law that pertain to the Agricultural Commodity Depositors Fund. Under continuing law, "agricultural commodity" means barley, corn, oats, rye, grain, sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop that the Director of Agriculture may designate by rule, but does not include any grain that is purchased for sale as seed (sec. 926.01(A), not in the act).

Law retained by the act establishes a detailed, specific definition of "agricultural commodity handling" (sec. 926.01(B), not in the act). To summarize that definition, "agricultural commodity handling" generally refers to acting as an intermediary between a producer of an agricultural commodity and the retailer or consumer. It mainly involves purchasing agricultural commodities in certain volumes for processing, sale, resale, or any other use; performing certain marketing functions; or operating a warehouse in which agricultural commodities are stored.¹

Under law unchanged by the act, agricultural commodity handlers must hold a valid license issued by the Director (sec. 926.04(A), not in the act). Continuing law defines "agricultural commodity handler" or "handler" as any person who is engaged in the business of commodity handling, but does not include a person who does not handle agricultural commodities as a bailee and who annually purchases agricultural commodities in volumes under certain threshold amounts (sec. 926.01(C), not in the act).²

¹ A producer is a person who grows an agricultural commodity on land that the person owns or leases, i.e. a farmer (sec. 926.01(K), not in the act).

² A bailee is a person to whom an agricultural commodity is delivered in trust for storage in a warehouse with title remaining in the name of the depositor (sec. 926.01(O), not in the act).

Agricultural Commodity Depositors Fund

Background

Law retained by the act creates the Agricultural Commodity Depositors Fund that is used exclusively to indemnify depositors who have incurred losses after making a demand for settlement of an obligation concerning an agricultural commodity to a licensed handler who failed to honor the demand. "Depositor" means any of the following: (1) any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale, (2) any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity, or (3) any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler (sec. 926.01(D), not in the act). The Agricultural Commodity Depositors Fund consists of a per-bushel fee remitted by licensed handlers, any sums that the Director may collect by any legal action on behalf of the Fund, and any property or securities acquired through the use of moneys in the Fund (sec. 926.16(A)).

Waiver and reinstatement of per-bushel fee

Law changed in part by the act requires the per-bushel fee to be waived under specified circumstances. Formerly, if, at the end of any fiscal year, the assets of the Fund exceeded one-half of the sum of all claims approved during the preceding four years or \$4 million, whichever was greater, less any encumbered balances or pending or unsettled claims, the Director had to waive the per-bushel fee (sec. 926.17(B)). The act instead requires the Director to waive the fee if, at the end of any fiscal year, the Fund balance exceeds \$10 million less any encumbered balances or pending or unsettled claims (sec. 926.17(B)(1)).

Under former law, the Director had to reinstate the waived fee, with the consent of the Commodity Advisory Commission (see "*Commodity Advisory Commission*," below), if necessary to maintain the liquidity of the Fund (sec. 926.17(B)). The act instead specifies that if, at any time, the Director determines that the Fund balance, less any encumbered balances or pending or unsettled claims, is less than \$8 million, the Director may reinstate the fee with the consent of the Commission. If the Director reinstates the fee, the act requires him to notify all licensed handlers by certified mail, return receipt requested, to begin collecting the fee not later than 90 days after being notified. (Sec. 926.17(B)(2)).



Finally, the act eliminates law that authorized the Director to establish the limits of the assets to be maintained in the Fund in accordance with the requirements governing waiver and reinstatement of the fee (sec. 926.17(B)).

Liability of Fund to depositor

Ongoing law specifies, and the act reemphasizes, that the Agricultural Commodity Depositors Fund is liable to a depositor for moneys that a licensed handler owes a depositor with respect to a transaction for which the handler was required to remit a per-bushel fee, provided that the moneys were not recovered through other legal and equitable remedies (sec. 926.18(A) and (B)). Under continuing law, the Fund is liable for 100% of the depositor's loss for commodities stored under a bailment agreement (sec. 926.18(B)(1)). However, prior law specified that with respect to commodities deposited with a licensed handler under an agreement other than a bailment agreement, the Fund was liable for 100% of the first \$10,000 of the depositor's loss and 80% of the remaining dollar value of that loss (sec. 926.18(B)(2)).³

A bailment involves a situation in which a depositor (the bailor) delivers an agricultural commodity to a licensed handler (the bailee) in trust for storage in a warehouse with title remaining in the name of the depositor. The bailment agreement is stated in the terms of the warehouse receipt issued by the licensed handler for the agricultural commodity in storage. (Sec. 926.01(O), (P), and (Q), not in the act.)

As noted above, the act retains the provision specifying that the liability of the Fund equals 100% of the depositor's loss if the commodities were stored with the handler under a bailment agreement and expands the situations under which

³ *Under law unchanged by the act, the Commodity Advisory Commission must establish the dollar value of the loss incurred by a depositor holding a receipt for commodities delivered to a handler under a delayed price agreement, bailment agreement, or feed agreement or that the depositor delivered to the handler before delivery was due under a contract or other agreement between the depositor and handler. In such circumstances, the value of the loss must be based on the fair market price being paid to producers by handlers for the commodities on the date on which the Director received notice from the depositor that a handler who meets certain criteria such as insolvency or loss of licensure has failed to honor the depositor's demand for payment for the commodities. (Sec. 926.18(A)(1).) The dollar value of the loss incurred by a depositor who has sold or delivered for sale, exchange, or solicitation or negotiation for sale agricultural commodities and who is a creditor of the handler for all or part of the value of the commodities must be based on the amount stated on the obligation on the date of sale (sec. 926.18(A)(2)).*

the liability of the Fund equals 100% of the depositor's loss. Those situations include any of the following: (1) payment for the commodities was tendered by the handler and subsequently dishonored, such as payment by a check for which there were insufficient funds or by a check that was written on an account that was frozen by the financial institution, (2) the commodities were priced at the time of delivery to the handler, the delivery occurred not more than 30 days prior to the Director's suspension of the handler's license for certain reasons, and the handler failed to pay for the commodities on or before the date on which the suspension occurred, or (3) the commodities were priced at the time of delivery to the handler, the delivery occurred not more than 90 days prior to the Director's suspension of the handler's license for those same reasons, the commodities were subject to a written agreement for deferred payment by the handler not later than 90 days following the date of delivery, and the handler failed to pay for commodities on or before the payment date established in the written agreement. (Sec. 926.18(B)(1)(a).)⁴

The act also specifies that if the deposit of commodities that were the subject of the depositor's loss involves circumstances other than those described above, the liability of the Fund equals 100% of the first \$10,000 of the loss and 80% of the remaining dollar value of that loss (sec. 926.18(B)(1)(b)). The act retains a prohibition against the aggregate amount recovered by a depositor under all remedies from exceeding 100% of his loss (sec. 926.18(B)(2)).

Transfer of moneys to Commodity Handler Regulatory Program Fund

Law modified by the act requires all moneys collected from the per-bushel fee remitted by licensed handlers, any sums that the Director may collect by legal action on behalf of the Agricultural Commodity Depositors Fund, and any property or securities acquired through the use of moneys in the Fund to be used exclusively to indemnify depositors and for no other purpose (sec. 926.16(A)). Under former law, all interest earned by the collected fees had to be credited to the Fund and, at the request of the Director and to the extent necessary to pay the

⁴ *The reasons for license suspension include situations in which the Director determines that there is reasonable cause to believe that the licensee does not possess sufficient agricultural commodities to cover the outstanding receipts or tickets issued or assumed by the licensee under bailment agreements, does not have the net assets specified under minimum net worth requirements established by the Agricultural Commodity Handlers Law or has failed to obtain a bond or other protection for any deficiency in required net assets as provided in that Law, or does not have the obligations for agricultural commodities purchased under delayed price agreements secured or presented as required under that Law (secs. 926.10(E), (G), and (H), not in the act, and 926.18(B)(1)(iii) and (iv)).*

examination and administrative costs incurred under the Agricultural Commodity Handlers Law, could be transferred by the Director of Budget and Management to the Commodity Handler Regulatory Program Fund (sec. 926.16(E)).⁵

The act eliminates the requirement that all interest earned by the collected fees be credited to the Agricultural Commodity Depositors Fund and instead specifies that all investment earnings of that Fund must be credited to that Fund (sec. 926.16(A) and (E)). It also eliminates the requirement that moneys deposited in the Agricultural Commodity Depositors Fund be used for no other purpose than to indemnify depositors and adds that moneys in that Fund also must be used to pay the examination and administrative costs of the Agricultural Commodity Handlers Law (sec. 926.16(A)). Under the act, the Director of Budget and Management, at the request of the Director of Agriculture, must transfer not more than \$500,000 per fiscal year from the Agricultural Commodity Depositors Fund to the Commodity Handler Regulatory Program Fund to pay the examination and administrative costs of that Law (sec. 926.16(E)).

Commodity Advisory Commission

Continuing law creates the Commodity Advisory Commission to advise and counsel the Director on all matters related to the Agricultural Commodity Handlers Law. The Commission consists of seven members to be appointed by the Director. It must at all times be composed of three farmers who are engaged primarily in the production of agricultural commodities, one licensed agricultural commodity handler who is the manager of a farmers cooperative, one licensed agricultural commodity handler who is the owner and operator of a warehouse located in a rural area, one licensed agricultural commodity handler representing a warehouse located at a major agricultural commodity transportation center, and one banker who is an officer of a rural bank. Formerly, two farmer members and two handler members constituted a quorum for the conduct of business of the Commission. The act changes the quorum requirement from two farmer members and two handler members to any four members. (Sec. 926.32.)

⁵ *Moneys in the Commodity Handler Regulatory Program Fund must be used to pay the examination and administrative costs of the Agricultural Commodity Handlers Law (sec. 926.19(A)).*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-04	p. 1656
Reported, H. Agriculture & Natural Resources	04-21-04	pp. 1769-1770
Passed House (94-0)	04-21-04	pp. 1782-1784
Reported, S. Agriculture	05-12-04	pp. 1892-1893
Passed Senate (33-0)	05-12-04	pp. 1901-1902
House concurred in Senate amendments (95-0)	05-12-04	pp. 1918-1920

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