



Ohio Legislative Service Commission

Bill Analysis

Amanda George

Am. S.B. 66*

130th General Assembly

(As Reported by H. Agriculture and Natural Resources)

Sens. Hite, Burke, Balderson, LaRose, Peterson, Gentile, Cafaro, Smith, Manning, Bacon, Beagle, Brown, Coley, Eklund, Faber, Gardner, Hughes, Kearney, Lehner, Obhof, Oelslager, Sawyer, Schaffer, Schiavoni, Seitz, Skindell, Tavares, Turner, Uecker, Widener

BILL SUMMARY

- Removes barley, oats, rye, grain sorghum, sunflower, and speltz from the list of agricultural commodities that are regulated under the Agricultural Commodity Handlers Law, but retains the regulation of corn, soybeans, wheat, and other crops designated by the Director of Agriculture.
- Requires the lien established under current law on all agricultural commodity assets of an agricultural commodity handler in favor of claimants meeting specified criteria to have priority over all competing lien claims asserted against those assets.
- Requires an agricultural commodity handler whose license is revoked to immediately notify all parties that are storing agricultural commodities in the handler's warehouse and all holders of receipts issued by the handler, if known.
- Revises certain conditions under which the Agricultural Commodity Handlers Fund is used to indemnify a depositor for any money that is owed to the depositor for commodities deposited with a licensed handler pursuant to a transaction for which the handler must remit a per-bushel fee for purposes of the Fund and that are not recovered through other legal and equitable remedies.
- Increases the required minimum and maximum balances of the Fund.

* This analysis was prepared before the report of the House Agriculture and Natural Resources Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires the Director to determine the validity of all claims against the Fund with the recommendation of the Commodity Advisory Commission rather than the approval of the Commission as in current law.
- Revises the type of financial statements that must be submitted to the Director by an applicant for an agricultural commodity handler's license or renewal of a handler's license.

CONTENT AND OPERATION

Overview of Agricultural Commodity Handlers Law

Ohio law regulates the depositing of certain agricultural commodities by producers with agricultural commodity handlers for storage, conditioning, shipment, or sale. The agricultural commodity handlers must comply with certain requirements, including obtaining a license from the Director of Agriculture. The Director is required to annually examine commodity handler records and warehouses to determine whether a handler has enough assets to cover insolvency and to verify the commodity handler's grain assets and grain obligations. The Director also is responsible for administering the Agricultural Commodity Depositors Fund, which generally consists of a per-bushel fee remitted by licensed handlers. Money in the Fund is used to indemnify depositors of agricultural commodities under specified circumstances.

Applicability of the Law to certain agricultural commodities

The bill removes barley, oats, rye, grain sorghum, sunflower, and speltz from the list of agricultural commodities that are regulated under the Agricultural Commodity Handlers Law. It retains the regulation of corn, soybeans, wheat, and any other crop designated by the Director under that Law.¹

Liens on agricultural commodity assets

The bill requires the lien established under current law on all agricultural commodity assets of an agricultural commodity handler to have priority over all competing lien claims asserted against the agricultural commodity assets. Under law retained by the bill, the lien must be in favor of claimants meeting specified criteria, including those who possess receipts covering grain owned or stored by the handler.²

¹ R.C. 926.01(A).

² R.C. 921.021(B) and (C).

For purposes of the statute governing such a lien, agricultural commodity assets are any of the following:

- (1) All agricultural commodities owned or stored, including agricultural commodities in transit shipped by the handler but not yet paid for;
- (2) Redeposited agricultural commodities; or
- (3) Proceeds from the sale of agricultural commodities due or to become due.

The bill clarifies that the proceeds from the sale of agricultural commodities due or to become due are due to the depositor.³

Revocation of an agricultural commodity handler license

The bill requires an agricultural commodity handler whose license is revoked by the Director as authorized under current law to immediately notify, in a manner determined by the Director, all parties that are storing agricultural commodities in the handler's warehouse and all holders of receipts issued by the handler, if known. The handler must liquidate the commodities in the manner determined by the Director.⁴

Agricultural Commodity Depositors Fund

Liability of the Fund

Under continuing law, the Agricultural Commodity Depositors Fund consists in part of money from a per-bushel fee that licensed handlers are required to pay on the agricultural commodities delivered to them. The Fund is used in part to indemnify a depositor for any money that is owed to the depositor for commodities deposited with a licensed handler pursuant to a transaction for which the handler must remit the fee and that are not recovered through other legal and equitable remedies. The liability of the Fund must equal 100% of the depositor's loss if certain conditions apply. One of the conditions is that if 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 and the handler failed to pay for the commodities on or before the date on which the suspension occurred. The bill instead stipulates that the commodities must have been priced not more than 30 days prior to the Director's suspension; it retains the second stipulation.

³ R.C. 926.021(A)(3).

⁴ R.C. 926.10.



Similarly, another of the conditions is that if the commodities were priced at the time of the delivery to the handler, the delivery occurred not more than 90 days prior to the Director's suspension of the handler's license, 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 the commodities on or before the payment date established in the agreement. The bill instead stipulates that the commodities must have been priced not more than 90 days prior to the Director's suspensions; it retains the other stipulations.⁵

Balance of the Fund

Under existing law, the Director must annually review the debits of and credits to the Agricultural Commodity Depositors Fund and must make any adjustments to the fee discussed above that licensed handlers must pay regarding the agricultural commodities delivered to them. If, at the end of any fiscal year, the Fund balance exceeds \$10 million, less any encumbered balances or pending or unsettled claims, the fee must be waived until the Director, with the consent of the Commodity Advisory Commission, reinstates the fee to maintain the liquidity of the Fund as discussed below. The bill increases the maximum balance of the Fund from \$10 million to \$15 million.

Currently, 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, with the consent of the Commission, may reinstate the fee. If the Director reinstates the fee, the Director must notify all licensed handlers by certified mail to begin collecting the fee not later than 90 days after being notified. The bill increases the minimum balance of the Fund from \$8 million to \$10 million.⁶

Validity of all claims against the Fund

Under existing law, the Director, with the approval of the Commission, must determine the validity of all claims presented against the Agricultural Commodity Depositors Fund. The bill instead requires the Director to make the determination with the recommendation of the Commission.⁷

Licensed agricultural commodity handlers financial statements

Under existing law, in order for the Director to determine if an applicant for an agricultural commodity handler's license or renewal of a handler's license meets the

⁵ R.C. 926.18(B).

⁶ R.C. 926.17.

⁷ R.C. 926.18(C).

standards of financial responsibility required by the Agricultural Commodity Handlers Law, the applicant must submit financial statements that have been prepared in accordance with generally accepted accounting principles and that have been audited or reviewed by an independent certified public accountant. The financial statements must consist of the applicant's balance sheet, income statement, statement of retained earnings or statement of stockholder's equity, and statement of cash flows together with any explanatory footnotes or supplementary information accompanying those statements and with the independent accountant's report on the statements. The bill instead requires the financial statements to consist of all financial statements and footnotes required by generally accepted accounting principles as promulgated by the Financial Accounting Standards Board together with the independent accountant's report on the statements.⁸

Miscellaneous

The bill eliminates outdated language regarding the net worth requirements of applicants for handlers' licenses.⁹

HISTORY

ACTION	DATE
Introduced	03-12-13
Reported, S. Agriculture	03-20-13
Passed Senate (33-0)	03-20-13
Reported, H. Agriculture & Natural Resources	---

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⁸ R.C. 926.06(C).

⁹ R.C. 926.06(B).

