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Am. H. B. No. 421

**Representatives 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**

A B I L L

To amend sections 926.16, 926.17, 926.18, and 926.19 1
of the Revised Code to revise the statutes 2
governing the Agricultural Commodity Depositors 3
Fund. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 926.16, 926.17, 926.18, and 926.19 5
of the Revised Code be amended to read as follows: 6

Sec. 926.16. (A) There is hereby created in the state 7
treasury the agricultural commodity depositors fund. The state 8
shall not be held liable for any claims presented against the fund 9
under section 926.18 of the Revised Code. The fund shall consist 10
of a per-bushel fee remitted by licensed handlers under this 11
section, any sums that the director of agriculture may collect by 12
any legal action on behalf of the fund, and any property or 13
securities acquired through the use of moneys in the fund. All 14
investment earnings of the fund shall be credited to the fund. The 15
~~moneys collected under this section and deposited~~ in the fund 16

shall be used exclusively to indemnify depositors as provided in 17
section 926.18 of the Revised Code and ~~for no other purpose to pay~~ 18
the examination and administrative costs of this chapter as 19
provided in division (E) of this section. 20

(B) All licensed handlers shall remit the fee determined by 21
the director in accordance with section 926.17 of the Revised Code 22
on: 23

(1) All agricultural commodities delivered to them for 24
storage under a bailment agreement or for sale, exchange, or 25
negotiation or solicitation of sale by depositors who produced 26
them or caused them to be produced; 27

(2) All agricultural commodities delivered to them for 28
storage under a bailment agreement, regardless of who produced the 29
commodities, if a receipt is to be issued for the commodities; 30

(3) All agricultural commodities that are being stored by 31
licensed handlers who own them solely, jointly, or in common with 32
others and who are issuing a receipt for them in accordance with 33
section 926.25 of the Revised Code. The maximum number of bushels 34
on which a licensed handler shall be required to pay the fee under 35
division (B)(3) of this section between the first day of July and 36
the thirtieth day of June of any marketing year shall be the 37
greatest number of bushels of all commodities for which receipts 38
are outstanding at any one time during that period. 39

(4) All agricultural commodities that are not involved in a 40
transaction described in division (B)(1), (2), or (3) of this 41
section and the monetary proceeds of which are controlled by a 42
handler who is not involved in the production of the commodities 43
and who serves as an intermediary between the producer and a 44
handler receiving the commodities. In such a situation, the 45
handler responsible for paying the producer shall remit the fee. 46

(C) All licensed handlers shall account for and remit moneys 47
under division (B) of this section to the director in such manner 48
and using such forms as the director shall prescribe by rule. 49

(D) All disbursements from the fund shall be paid by the 50
treasurer of state pursuant to vouchers authorized by the 51
director. 52

(E) ~~All interest earned by the fees collected under this~~ 53
~~section shall be credited to the fund and, at~~ At the request of 54
the director of agriculture ~~and to the extent necessary to pay the~~ 55
~~examination and administrative costs of this chapter as provided~~ 56
~~in section 926.19 of the Revised Code, may be transferred by,~~ the 57
director of budget and management shall transfer not more than 58
five hundred thousand dollars per fiscal year from the 59
agricultural commodity depositors fund to the commodity handler 60
regulatory program fund created in ~~that~~ section 926.19 of the 61
Revised Code to pay the examination and administrative costs of 62
this chapter. 63

Sec. 926.17. (A) The director of agriculture shall annually 64
review the debits of and credits to the agricultural commodity 65
depositors fund created in section 926.16 of the Revised Code and 66
shall make any adjustments in the fee required under that section 67
that are necessary to maintain the fund within the limits 68
established under this section. Not later than the first day of 69
March of each year, the director shall determine the proposed 70
amount of the fee based on the expected volume of agricultural 71
commodities on which the fee is to be collected and that are 72
likely to be handled under this chapter. ~~He~~ The director shall 73
make any changes in the previous year's fee in accordance with 74
Chapter 119. of the Revised Code. The fee shall become effective 75
on the following first day of June. It shall in no case exceed 76
one-half of one cent per bushel on all agricultural commodities on 77

which the fee is to be paid. 78

(B)(1) If, at the end of any fiscal year, the ~~assets of the~~ 79
fund ~~exceed one half of the sum of all claims approved during the~~ 80
~~preceding four years or four~~ balance exceeds ten million dollars, 81
~~whichever is greater,~~ less any encumbered balances or pending or 82
unsettled claims, the fee required under division (B) of section 83
926.16 of the Revised Code shall be waived until the director, 84
with the consent of the commodity advisory commission created in 85
section 926.32 of the Revised Code, reinstates the fee to maintain 86
the liquidity of the fund as provided in division (B)(2) of this 87
section. The 88

(2) If, at any time, the director may establish the limits of 89
the assets to be maintained in determines that the fund ~~in~~ 90
~~accordance with this division~~ balance, less any encumbered 91
balances or pending or unsettled claims, is less than eight 92
million dollars, the director, with the consent of the commodity 93
advisory commission, may reinstate the fee required under division 94
(B) of section 926.16 of the Revised Code. If the director 95
reinstates the fee, the director shall notify all licensed 96
handlers by certified mail, return receipt requested, to begin 97
collecting the fee not later than ninety days after being 98
notified. 99

Sec. 926.18. (A) When a depositor has made a demand for 100
settlement of an obligation concerning an agricultural commodity 101
on which a fee was required to be remitted under section 926.16 of 102
the Revised Code and the licensed handler is experiencing failure, 103
as "failure" is defined in section 926.021 of the Revised Code, 104
and has failed to honor the demand, the depositor, after providing 105
the director of agriculture or the director's authorized 106
representative with evidence of the depositor's demand and the 107
dishonoring of that demand, may file a claim with the director not 108

later than six months after dishonor of the demand for 109
indemnification of the depositor's damages, from the agricultural 110
commodity depositors fund, to be measured as follows: 111

(1) The commodity advisory commission created in section 112
926.32 of the Revised Code shall establish the dollar value of the 113
loss incurred by a depositor holding a receipt or a ticket for 114
agricultural commodities on which a fee was required and that the 115
depositor delivered to the handler under a delayed price 116
agreement, bailment agreement, or feed agreement, or that the 117
depositor delivered to the handler before delivery was due under a 118
contract or other agreement between the depositor and handler. The 119
value shall be based on the fair market price being paid to 120
producers by handlers for the commodities on the date on which the 121
director received notice that the receipt or ticket was dishonored 122
by the handler. All depositors filing claims under this division 123
shall be bound by the value determined by the commission. 124

(2) The dollar value of the loss incurred by a depositor who 125
has sold or delivered for sale, exchange, or solicitation or 126
negotiation for sale agricultural commodities on which a fee was 127
required and who is a creditor of the handler for all or a part of 128
the value of the commodities shall be based on the amount stated 129
on the obligation on the date of the sale. 130

(B) The agricultural commodity depositors fund shall be 131
liable to a depositor for any moneys that are owed to the 132
depositor for commodities deposited with a licensed handler 133
pursuant to a transaction for which the handler must remit a fee 134
under division (B) of section 926.16 of the Revised Code and that 135
are not recovered through other legal and equitable remedies as 136
follows: 137

(1) ~~For~~ (a) The liability of the fund shall equal one hundred 138
per cent of the depositor's loss as determined under division 139

(A)(1) of this section if any of the following applies: 140

(i) The commodities were stored with a licensed the handler 141
under a bailment agreement for one hundred per cent of the 142
depositor's loss as determined under division (A)(1) of this 143
section; 144

~~(2) For commodities deposited with a licensed handler under~~ 145
~~an agreement other than a bailment agreement for.~~ 146

(ii) Payment for the commodities was tendered by the handler 147
and subsequently dishonored, such as payment by a check for which 148
there were insufficient funds or by a check that was written on an 149
account that was frozen by the financial institution. 150

(iii) The commodities were priced at the time of delivery to 151
the handler, the delivery occurred not more than thirty days prior 152
to the director's suspension of the handler's license under 153
division (E), (G), or (H) of section 926.10 of the Revised Code, 154
and the handler failed to pay for the commodities on or before the 155
date on which the suspension occurred. 156

(iv) The commodities were priced at the time of delivery to 157
the handler, the delivery occurred not more than ninety days prior 158
to the director's suspension of the handler's license under 159
division (E), (G), or (H) of section 926.10 of the Revised Code, 160
the commodities were subject to a written agreement for deferred 161
payment by the handler not later than ninety days following the 162
date of delivery, and the handler failed to pay for the 163
commodities on or before the payment date established in the 164
written agreement. 165

(b) If the deposit of commodities that were the subject of 166
the depositor's loss involves circumstances other than those 167
described in division (B)(1)(a) of this section, the liability of 168
the fund shall equal one hundred per cent of the first ten 169
thousand dollars of the depositor's loss and eighty per cent of 170

the remaining dollar value of that loss as determined under 171
divisions (A)(1) and (2) of this section. ~~The~~ 172

(2) The aggregate amount recovered by a depositor under all 173
remedies shall not exceed one hundred per cent of the value of the 174
depositor's loss. If the moneys recovered by a depositor under all 175
remedies exceed one hundred per cent of the value of the 176
depositor's loss, the depositor shall reimburse the fund in the 177
amount that exceeds the value of that loss. 178

(C) The director, with the approval of the commodity advisory 179
commission, shall determine the validity of all claims presented 180
against the fund. A claim filed under this section for losses on 181
agricultural commodities other than commodities stored under a 182
bailment agreement shall not be valid unless the depositor has 183
made a demand for settlement of the obligation within twelve 184
months after the commodities are priced. Any depositor whose claim 185
has been refused by the director and the commission may appeal the 186
refusal either to the court of common pleas of Franklin county or 187
the court of common pleas of the county in which the depositor 188
resides. 189

The director shall provide for payment from the fund to any 190
depositor whose claim has been found to be valid. 191

(D) If at any time the fund does not contain sufficient 192
assets to pay valid claims, the director shall hold those claims 193
for payment until the fund again contains sufficient assets. 194
Claims against the fund shall be paid in the order in which they 195
are presented and found to be valid. 196

(E) If a depositor files an action for legal or equitable 197
remedies in a state or federal court having jurisdiction in those 198
matters that includes a claim against agricultural commodities 199
upon which the depositor may file a claim against the fund at a 200
later date, the depositor also shall file with the director a copy 201

of the action filed with the court. 202

In the event of payment of a loss under this section, the 203
director shall be subrogated to the extent of the amount of any 204
payments to all rights, powers, privileges, and remedies of the 205
depositor against any person regarding the loss. 206

The depositor shall render all necessary assistance to aid 207
the director in securing the rights granted in this section. No 208
action or claim initiated by the depositor and pending at the time 209
of payment from the fund may be compromised or settled without the 210
consent of the director. 211

(F) If, prior to June 20, 1994, a lawsuit, adversary 212
proceeding, or other legal proceeding is brought against a 213
depositor to recover money or payments from funds to which a 214
depositor has a right of indemnification under this section, and 215
the depositor retains legal counsel resulting in a cost or expense 216
to the depositor, upon the rendering of a judgment or other 217
resolution of the lawsuit, adversary proceeding, or other legal 218
proceeding, the director, in the director's discretion and with 219
the approval of the commodity advisory commission, may authorize 220
indemnification from the fund for attorney's fees paid by the 221
depositor. Any claim made by a depositor for the payment of 222
attorney's fees under this division shall be made in the same 223
manner as a claim under division (A) of this section. 224

Attorney's fees payable under this division shall be limited 225
to the actual hourly fee charged or one hundred dollars per hour, 226
whichever is less, and to a total maximum amount of three hundred 227
dollars. 228

Sec. 926.19. (A) There is hereby created in the state 229
treasury the commodity handler regulatory program fund. The moneys 230
in the fund shall be used to pay the examination and 231
administrative costs of this chapter and shall consist of: 232

(1) All revenues collected by the director of agriculture	233
from distribution of the receipt forms under division (B) of	234
section 926.20 of the Revised Code and such other forms and	235
registration books as the director may require by rule for the	236
administration of this chapter;	237
(2) The application and examination fees collected under	238
division (B) of section 926.05 of the Revised Code;	239
(3) The agricultural commodity tester certificate fees	240
collected under division (B) of section 926.30 of the Revised	241
Code;	242
(4) Interest income <u>Any moneys</u> transferred from the	243
agricultural commodity depositors fund under section 926.16 of the	244
Revised Code;	245
(5) All fines, penalties, and costs, except court costs, that	246
are collected under section 926.99 of the Revised Code in	247
consequence of a violation of this chapter;	248
(6) All sums collected by the director of agriculture under a	249
contract described in section 926.36 of the Revised Code.	250
(B) The examination and administrative costs of this chapter	251
shall be computed by the director not later than the thirty-first	252
day of December of each even-numbered year to cover the biennium	253
that begins on the following first day of July. The commodity	254
advisory commission created in section 926.32 of the Revised Code	255
shall approve, and may amend, the examination and administrative	256
costs. The commission's decision shall be binding on the director.	257
The commission also at any time may approve for presentation to	258
the controlling board a request to increase or decrease the	259
appropriation authority for the biennial examination and	260
administrative costs if it determines that an increase or decrease	261
in the cost is necessary to carry out the purpose of this chapter.	262

(C) If at any time the moneys deposited in the fund, 263
including ~~interest income~~ moneys transferred from the agricultural 264
commodity depositors fund under section 926.16 of the Revised 265
Code, are not sufficient to pay the examination and administrative 266
costs of this chapter, the director shall request an appropriation 267
from the general revenue fund to pay those costs. 268

Section 2. That existing sections 926.16, 926.17, 926.18, and 269
926.19 of the Revised Code are hereby repealed. 270