

**As Reported by the Senate Agriculture Committee**

**125th General Assembly**

**Regular Session**

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**Sub. 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**

**Senator Roberts**

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**A B I L L**

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

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

**Section 1.** That sections 926.16, 926.17, 926.18, 926.19, and 5  
926.32 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) <del>Interest income</del> <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

**Sec. 926.32.** (A) There is hereby created the commodity 269  
advisory commission consisting of seven members to be appointed by 270  
the director of agriculture. Not later than January 1, 1983, the 271  
director shall make appointments to the commission. Of the initial 272  
appointments, three shall be for terms ending January 1, 1984, two 273  
shall be for terms ending January 1, 1985, and two shall be for 274  
terms ending January 1, 1986. Thereafter, terms of office shall be 275  
for three years, each term ending on the same day of the same 276  
month of the year as did the term that it succeeds. Each member 277  
shall hold office from the date of appointment until the end of 278  
the term for which the member was appointed. Any member appointed 279  
to fill a vacancy occurring prior to the expiration of the term 280  
for which the member's predecessor was appointed shall hold office 281  
for the remainder of the term. Any member shall continue in office 282  
subsequent to the expiration date of the member's term until the 283  
member's successor takes office or until a period of sixty days 284  
has elapsed, whichever occurs first. 285

(B) The commission shall at all times be composed of three 286  
farmers who are engaged primarily in the production of 287  
agricultural commodities, one licensed handler who is the manager 288  
of a farmers cooperative, one licensed handler who is the owner 289  
and operator of a warehouse located in a rural area, one licensed 290  
handler representing a warehouse located at a major agricultural 291  
commodity transportation center, and one banker who is an officer 292  
of a rural bank. The director shall designate annually one member 293

of the commission to serve as its chairperson and, after notice 294  
and public hearing, may remove any member only for neglect of duty 295  
or malfeasance in office. 296

(C) A vacancy on the commission shall not impair the right of 297  
the other members to exercise all of the commission's powers. ~~Two~~ 298  
~~farmer members and two handler~~ Four members shall constitute a 299  
quorum for the conduct of business of the commission. 300

(D) The commission shall meet at least three times annually 301  
at times that the commission shall set by rule and may meet at 302  
other times that the chairperson or a majority of the commission 303  
members considers appropriate; ~~provided,~~ that no meeting shall be 304  
held on the call of the chairperson unless at least seven days' 305  
written notice is first given to all members of the commission. 306

(E) Each member shall be reimbursed for the member's actual 307  
and necessary expenses incurred in the discharge of duties as a 308  
commission member. 309

(F) The commission may adopt, amend, or rescind rules or 310  
procedures governing the conduct of its internal affairs. 311

(G) The commission may request from the director, and the 312  
director shall provide, meeting space, assistance, services, and 313  
data to enable it to carry out its functions. 314

(H) All costs of the commission, including all of the 315  
expenses of its members and consultants authorized in this 316  
section, shall be paid from the commodity handler regulatory 317  
program fund created in section 926.19 of the Revised Code 318  
pursuant to itemized vouchers approved by the chairperson of the 319  
commission and the director. 320

(I) The director shall designate an official or employee of 321  
the department of agriculture to act as the executive secretary of 322  
the commission. The director also may request the attendance at 323  
meetings of the commission consultants with expertise in 324

agricultural law, marketing, statistics, or any other subject to 325  
advise and consult with the commission on matters on the agenda of 326  
any regular or special meeting of the commission. The expenses 327  
incurred by consultants attending those meetings shall be 328  
reimbursed according to division (H) of this section. The 329  
executive secretary shall keep or cause to be kept a permanent 330  
journal of all meetings, proceedings, findings, determinations, 331  
and recommendations of the commission, including an itemized 332  
statement of the expenses allowed to each member of the commission 333  
and consultants under this section. The journal shall be a public 334  
record. 335

(J) In addition to the authority granted in division (F) of 336  
section 926.05, division (B) of section 926.17, divisions (A) and 337  
(C) of section 926.18, and division (B) of section 926.19 of the 338  
Revised Code, the commission shall advise and counsel the director 339  
on all matters relating to: 340

(1) The administration of this chapter; 341

(2) The development of rules authorized by section 926.02 of 342  
the Revised Code; 343

(3) Any other matters that the commission and the director 344  
consider appropriate in carrying out this chapter. 345

**Section 2.** That existing sections 926.16, 926.17, 926.18, 346  
926.19, and 926.32 of the Revised Code are hereby repealed. 347