

AN ACT

To amend sections 926.01, 926.021, 926.06, 926.10, 926.17,
and 926.18 of the Revised Code to revise the Agricultural
Commodity Handlers Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 926.01, 926.021, 926.06, 926.10, 926.17, and 926.18 of the Revised Code be amended to read as follows:

Sec. 926.01. As used in this chapter:

(A) "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. "Agricultural commodity" does not mean any grain that is purchased for sale as seed.

(B) "Agricultural commodity handling" or "handling" means any of the following:

(1) Engaging in or participating in the business of purchasing from producers agricultural commodities for any use in excess of thirty thousand bushels annually;

(2) Operating a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receiving into a warehouse an agricultural commodity purchased under a delayed price agreement;

(4) Providing marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transaction whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer.

(C) "Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling.

(D) "Depositor" means:

(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;

(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.

(E) "Receipt" means a warehouse receipt issued by a licensed handler.

(F) "Nonnegotiable receipt" means a receipt on which it is stated that the agricultural commodity received will be delivered to the depositor or to the order of any other person named in the receipt.

(G) "Negotiable receipt" means a receipt on which it is stated that the agricultural commodity received will be delivered to the bearer or to the order of any person named in the receipt.

(H) "Ticket" means a scale weight ticket, a load slip, or any evidence, other than a receipt, given to a depositor by a licensed handler upon delivery of an agricultural commodity to the handler.

(I) "Warehouse" means any building, bin, protected enclosure, or similar premises under the control of a licensed or unlicensed handler used for receiving, storing, shipping, or handling an agricultural commodity.

(J) "Storage" means the deposit of an agricultural commodity into a warehouse either for the account of the licensed handler operating the warehouse or for the account of a depositor.

(K) "Producer" means any person who grows an agricultural commodity on land that the person owns or leases.

(L) "Agent" means any person, other than a producer, who delivers an agricultural commodity to a licensed handler, either for sale or for storage, for the account of the producer.

(M) "Agricultural commodity tester" or "tester" means a person who operates a moisture meter and other quality testing devices to determine the quality of an agricultural commodity.

(N) "Federally licensed grain inspector" means a person who is licensed by the United States department of agriculture under the "United States Grain Standards Act," 39 Stat. 482 (1916), 7 U.S.C. 71, as amended, to test and grade grain, as "grain" is defined in that act.

(O) "Bailee" means 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.

(P) "Bailor" means a person who delivers an agricultural commodity to a bailee in trust for storage in a warehouse with title remaining in the name of the depositor.

(Q) "Bailment agreement" means a bailor-bailee agreement between a depositor and a licensed handler as stated in the terms of a receipt that is

issued for an agricultural commodity in storage and subject to the requirements of this chapter governing the use of a receipt.

(R) "Delayed price agreement" means a written executory contract executed by and between a licensed handler and a depositor that covers the sale and transfer of title of an agricultural commodity and states in its written terms the service charges and the method for pricing the commodity at a later date.

(S) "Delayed price marketing" means the sale and transfer of title of an agricultural commodity with the price to be established at a later date according to the terms of a delayed price agreement.

(T) "Deferred payment" means the deferral of payment to a depositor by a licensed handler for an agricultural commodity to which the licensed handler has taken title, for the purpose of deferring income of the depositor from one tax year to another.

(U) "Feed agreement" means a written contract executed by and between a licensed handler and a producer or depositor who delivers an agricultural commodity to the licensed handler for storage whereby each of the following applies:

(1) The producer or depositor transfers title to the agricultural commodity to the licensed handler in exchange for a nominal sum;

(2) The producer, upon delivery of the agricultural commodity to the licensed handler, becomes a creditor of the licensed handler due to the lien that arises under section 926.021 of the Revised Code;

(3) All or part of the agricultural commodity is returned to the producer at a later date and used for feed purposes.

(V) Notwithstanding section 1.02 of the Revised Code, "and" shall not be read "or" and "or" shall not be read "and."

Sec. 926.021. (A) As used in this section:

(1) "Claimant" means a person to whom an agricultural commodity handler owes a financial obligation for agricultural commodities or the actual monetary proceeds from agricultural commodities that have been delivered to the handler.

(2) "Failure" means any of the following involving an agricultural commodity handler:

(a) An inability to satisfy claimants financially;

(b) A public declaration of insolvency;

(c) A revocation, suspension, or conditional suspension of license with outstanding indebtedness to claimants;

(d) Nonpayment in the ordinary course of business where a good faith dispute does not exist;

- (e) No application for license renewal;
- (f) Denial of license renewal;
- (g) Voluntarily surrendering a license.

(3) "Agricultural commodity assets" involving an agricultural commodity handler means any of the following:

(a) All agricultural commodities owned or stored, including agricultural commodities in transit shipped by the handler but not yet paid for;

(b) Redeposited agricultural commodities;

(c) Proceeds from the sale of agricultural commodities due or to become due to the depositor;

(d) The equity less any secured financing directly associated therewith in assets in hedging or speculative margin accounts held by commodity or security exchanges or dealers representing the exchanges, and any moneys due or to become due less any secured financing directly associated therewith from any transactions on the exchanges;

(e) Any other unencumbered funds, property, or equity in funds or property, wherever located, that can be directly traced to the sale of agricultural commodities by the handler, provided both that the funds, property, or equity in funds or property shall not be considered to be encumbered unless the encumbrance results from good and valuable considerations advanced by any secured party on a good faith basis and that the encumbrance is not the result of the taking of funds, property, or equity in funds or property as additional collateral for an antecedent debt;

(f) Any other unencumbered funds, property, or equity in assets.

(B) A lien shall exist on all agricultural commodity assets of an agricultural commodity handler in favor of any of the following:

(1) Claimants, including lenders, who possess receipts covering grain owned or stored by the handler;

(2) Claimants who possess written evidence of ownership other than a receipt disclosing a storage obligation of the handler, including tickets;

(3) Claimants who surrendered receipts as part of an agricultural commodity sales transaction but were not paid fully for the agricultural commodity and the handler failed within twenty-one days after the surrender;

(4) Claimants who possess any other written evidence of the sale of agricultural commodities to the handler for which they were not paid fully, including the sale of agricultural commodities for a nominal sum under a feed agreement.

(C) The lien that shall secure all claims described in division (D) of this section, shall arise, attach to the agricultural commodity assets of an

agricultural commodity handler, and become effective at the time of the delivery of the agricultural commodity for sale or for storage under a bailment agreement, commencement of the storage obligation, or when funds are advanced by the lender, and shall terminate when the liability of the agricultural commodity handler to the claimant is discharged, provided that the priority of each lien among the respective claimants shall not relate to the date the claim arises but shall be governed by the priorities established in division (D) of this section. In the event of a failure, the lien claims of all claimants shall be considered to be assigned by operation of this section to the department of agriculture, and in the event of a failure and subsequent liquidation, the lien shall transfer over to assets or proceeds of assets either received or liquidated by the department. The lien established under this section shall have priority over all competing lien claims asserted against the agricultural commodity assets.

(D) Except as provided in division (E) of this section, in the event of a failure, the director of agriculture shall possess exclusive authority to enforce the lien claims and allocate the proceeds as follows:

(1) First priority against all agricultural commodity assets shall be the following:

(a) Claimants, including lenders, who possess receipts covering grain owned or stored by the agricultural commodity handler;

(b) Claimants who possess written evidence of ownership other than receipts disclosing a storage obligation of the handler, including tickets;

(c) Claimants who surrendered receipts as part of an agricultural commodity transaction, but were not paid fully for the agricultural commodity and the handler failed within twenty-one days after the surrender.

(2) Second priority against all agricultural commodity assets shall be to claimants who possess written evidence of the sale of an agricultural commodity, including, but not limited to, tickets, delayed price agreements, or similar agricultural commodity delivery contracts who completed delivery and pricing within thirty days immediately prior to the failure of the handler.

(3) To the extent not necessary to satisfy first and second priority claimants, all other claimants who possess written evidence of the sale of agricultural commodities to the handler shall participate in the pro rata distribution of the remainder of the agricultural commodity assets in an amount not to exceed the value of each claim.

(E) In the event that any adversary proceeding is commenced to recover agricultural commodity assets upon which the lien imposed in this section is

imposed and the department declines to enter the proceeding, the director, upon application to the director by any claimant, 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 the action will not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets to all claimants.

Sec. 926.06. (A) The director of agriculture may issue a handler's license, or renewal thereof, upon the payment of the prescribed application fee, if the director is satisfied that the applicant meets the standards of financial responsibility required under this section and has complied with this chapter and the rules adopted under it.

~~(B)(1) On the effective date of this amendment, each~~ Each applicant for a handler's license, or renewal thereof, shall have and maintain current assets equal to or greater than current liabilities and a total net worth equal to at least ~~ten~~ fifteen cents per bushel for the total number of bushels of agricultural commodities that the applicant handled during the immediately preceding twelve-month period to cover any indebtedness arising from the applicant's operations as a licensed handler. ~~One year after the effective date of this amendment, the total net worth requirement shall increase to eleven cents per bushel. For the next four years, the requirement shall continue to increase by one cent per bushel each year on the anniversary of the effective date of this amendment, so that five years after the effective date of this amendment, an applicant's total net worth shall be equal to at least fifteen cents per bushel for the total number of bushels of agricultural commodities that the applicant handled during the immediately preceding twelve-month period.~~

~~(2) On the effective date of this amendment, if~~ If an applicant is applying for a handler's license for the first time and did not handle any agricultural commodities during the immediately preceding twelve-month period, the applicant shall have an allowable total net worth of at least ~~twenty-five~~ fifty thousand dollars to cover any indebtedness arising from the applicant's operations as a licensed handler. ~~One year after the effective date of this amendment, this allowable total net worth requirement shall increase to thirty thousand dollars. For the next four years, the requirement shall continue to increase by five thousand dollars each year on the anniversary of the effective date of this amendment, so that five years after the effective date of this amendment, an applicant's total net worth shall be at least fifty thousand dollars.~~

~~(3) On the effective date of this amendment, no~~ No person shall be licensed as a handler unless the person has an allowable total net worth of at

~~least twenty-five~~ fifty thousand dollars. ~~One year after the effective date of this amendment, this allowable total net worth requirement shall increase to thirty thousand dollars. For the next four years, the requirement shall continue to increase by five thousand dollars each year on the anniversary of the effective date of this amendment, so that five years after the effective date of this amendment, the person's total net worth shall be at least fifty thousand dollars.~~

(4) ~~On the effective date of this amendment, any~~ Any deficiency in required total net worth may be compensated for by an indemnity agreement executed by a person pledging personal assets for the benefit of commodity creditors should the licensed handler default in the licensed handler's obligations to the creditors; a bond issued by a corporate surety company that is authorized to do business under the laws of this state; or, at the director's discretion, an irrevocable letter of credit issued by a bank or other lending institution that is authorized by this state or the United States to issue such letters of credit and is subject to service of process in this state for any suit on the bond or letter of credit. An indemnity agreement executed by a person pledging personal assets shall be accompanied by financial statements that reflect the person's financial position as an individual and comply with the requirements of division (C) of this section. A bond shall be made to the treasurer of state to be deposited in the agricultural commodity depositors fund created under section 926.16 of the Revised Code for the benefit of any person who may be injured by the handler's failure to meet obligations arising under this chapter. A letter of credit shall be issued for the benefit of the department of agriculture and the agricultural commodity depositors fund.

(5) The director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying the assets for which credit may be given in determining an applicant's total net worth.

(6) ~~On the effective date of this amendment, regardless~~ Regardless of the total number of bushels of agricultural commodities that an applicant handled during the immediately preceding twelve-month period, the applicant's total net worth need not exceed a maximum of ~~three~~ four hundred ~~fifty~~ thousand dollars. ~~One year after the effective date of this amendment, this maximum total net worth need not exceed three hundred thirty thousand dollars. For the next four years, this maximum total net worth shall continue to increase by thirty thousand dollars each year on the anniversary of the effective date of this amendment, so that five years after the effective date of this amendment, an applicant's total net worth need not exceed four hundred fifty thousand dollars.~~

(C) In order for the director to determine if an applicant meets the standards of financial responsibility required under division (B) of this section, the applicant for a handler's license, or renewal of a handler's license, shall 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 shall 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 these~~ 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.

The financial statements accompanying an applicant's original application shall be for a year ending within six months before the date of application. Thereafter, the applicant applying for renewal shall submit such statements not later than ninety days after the end of the year covered by the statements.

The director may require an applicant for a handler's license, or renewal of a handler's license, to submit financial statements audited by an independent certified public accountant if the director determines that the financial statements initially submitted under this division are incomplete or otherwise unsatisfactory.

(D) The director may prepare and publish statistical abstracts of information obtained under this section without disclosing details that would identify a particular applicant with particular statistics. Such information otherwise is confidential for purposes of section 102.03 of the Revised Code, and records of the department of agriculture containing such information are not otherwise public records under section 149.43 of the Revised Code.

Sec. 926.10. The director of agriculture, by order, may refuse to grant or may suspend or conditionally suspend a handler's license, without prior hearing, when the director determines that there is reasonable cause to believe that the applicant or licensee:

(A) Has failed to maintain the insurance coverage required under section 926.07 of the Revised Code;

(B) Has failed to maintain accurate and complete records and accounts as required under section 926.11 of the Revised Code;

(C) Has failed to charge, collect, or remit the fee required under division (B) of section 926.16 of the Revised Code;

(D) Has refused to allow the director or the director's authorized representative to examine, at a reasonable time, the applicant's or licensee's accounting records, accounts, agricultural commodity inventories, or warehouse;

(E) Does not possess sufficient agricultural commodities to cover the outstanding receipts or tickets issued or assumed by the applicant or licensee under bailment agreements;

(F) Has issued a receipt in violation of this chapter or any rules adopted under it;

(G) Does not have the net assets specified in division (B) of section 926.06 of the Revised Code or has failed to obtain a bond or other protection for any deficiency in required net assets as provided in that division;

(H) Does not have the obligations for agricultural commodities purchased under delayed price agreements secured or represented as required under division (B) or (C) of section 926.29 of the Revised Code;

(I) Does not submit financial statements that comply with the requirements of division (C) of section 926.06 of the Revised Code within the applicable time period specified in that division;

(J) Does not notify the director of a statutory agent's change of address or of the death, removal, resignation, or revocation of the appointment of a statutory agent or does not appoint another agent in accordance with section 926.051 of the Revised Code.

The applicant or licensee to whom a denial, suspension, or conditional suspension order is issued shall be afforded a hearing in accordance with Chapter 119. of the Revised Code, after which the director shall issue or deny the license applied for in the pending application or reinstate or revoke the suspended or conditionally suspended license. The director may suspend, conditionally suspend, or revoke a license after a hearing held in accordance with Chapter 119. of the Revised Code for any other violations of this chapter or any rules adopted under it.

The director shall cause a notice to be posted on the property of a person whose license has been suspended, conditionally suspended, or revoked stating the limitations or restrictions imposed on the person in the handling of agricultural commodities as a result of the suspension, conditional suspension, or revocation. The notice shall not be removed from the property without written authorization from the director.

If a handler's license is revoked, the handler immediately shall 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 shall liquidate the commodities in the

manner determined by the director.

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

(B)(1) If, at the end of any fiscal year, the fund balance exceeds ~~ten~~ fifteen million dollars, less any encumbered balances or pending or unsettled claims, the fee required under division (B) of section 926.16 of the Revised Code shall be waived until the director, with the consent of the commodity advisory commission created in section 926.32 of the Revised Code, reinstates the fee to maintain the liquidity of the fund as provided in division (B)(2) of this section.

(2) If, at any time, the director determines that the fund balance, less any encumbered balances or pending or unsettled claims, is less than ~~eight~~ ten million dollars, the director, with the consent of the commodity advisory commission, may reinstate the fee required under division (B) of section 926.16 of the Revised Code. If the director reinstates the fee, the director shall notify all licensed handlers by certified mail, return receipt requested, to begin collecting the fee not later than ninety days after being notified.

Sec. 926.18. (A) When a depositor has made a demand for settlement of an obligation concerning an agricultural commodity on which a fee was required to be remitted under section 926.16 of the Revised Code and the licensed handler is experiencing failure, as "failure" is defined in section 926.021 of the Revised Code, and has failed to honor the demand, the depositor, after providing the director of agriculture or the director's authorized representative with evidence of the depositor's demand and the dishonoring of that demand, may file a claim with the director not later than six months after dishonor of the demand for indemnification of the depositor's damages, from the agricultural commodity depositors fund, to be measured as follows:

(1) The commodity advisory commission created in section 926.32 of

the Revised Code shall establish the dollar value of the loss incurred by a depositor holding a receipt or a ticket for agricultural commodities on which a fee was required and that the depositor delivered to the 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. The value shall 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 that the receipt or ticket was dishonored by the handler. All depositors filing claims under this division shall be bound by the value determined by the commission.

(2) 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 on which a fee was required and who is a creditor of the handler for all or a part of the value of the commodities shall be based on the amount stated on the obligation on the date of the sale.

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

(1)(a) The liability of the fund shall equal one hundred per cent of the depositor's loss as determined under division (A)(1) of this section if any of the following applies:

(i) The commodities were stored with the handler under a bailment agreement.

(ii) 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.

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

(iv) The commodities were priced ~~at the time of delivery to the handler, the delivery occurred~~ not more than ninety days prior to the director's suspension of the handler's license under division (E), (G), or (H) of section 926.10 of the Revised Code, the commodities were subject to a written

agreement for deferred payment by the handler not later than ninety days following the date of delivery, and the handler failed to pay for the commodities on or before the payment date established in the written agreement.

(b) If the deposit of commodities that were the subject of the depositor's loss involves circumstances other than those described in division (B)(1)(a) of this section, the liability of the fund shall equal one hundred per cent of the first ten thousand dollars of the loss and eighty per cent of the remaining dollar value of that loss as determined under divisions (A)(1) and (2) of this section.

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

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

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

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

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

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

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

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

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

SECTION 2. That existing sections 926.01, 926.021, 926.06, 926.10, 926.17, and 926.18 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. S. B. No. 66

130th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____