

As Reported by the Senate Agriculture Committee

**130th General Assembly
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S. B. No. 66

Senator Hite

**Cosponsors: Senators Burke, Balderson, LaRose, Peterson, Gentile, Cafaro,
Smith, Manning**

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A B I L L

To amend sections 926.01, 926.021, 926.06, 926.10, 1
926.17, and 926.18 of the Revised Code to revise 2
the Agricultural Commodity Handlers Law. 3

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

Section 1. That sections 926.01, 926.021, 926.06, 926.10, 4
926.17, and 926.18 of the Revised Code be amended to read as 5
follows: 6

Sec. 926.01. As used in this chapter: 7

(A) "Agricultural commodity" means ~~barley,~~ corn, ~~eats,~~ ~~rye,~~ 8
~~grain sorghum,~~ soybeans, wheat, ~~sunflower,~~ ~~speltz,~~ or any other 9
agricultural crop that the director of agriculture may designate 10
by rule. "Agricultural commodity" does not mean any grain that is 11
purchased for sale as seed. 12

(B) "Agricultural commodity handling" or "handling" means any 13
of the following: 14

(1) Engaging in or participating in the business of 15
purchasing from producers agricultural commodities for any use in 16
excess of thirty thousand bushels annually; 17

(2) Operating a warehouse as a bailee for the receiving,	18
storing, shipping, or conditioning of an agricultural commodity;	19
(3) Receiving into a warehouse an agricultural commodity	20
purchased under a delayed price agreement;	21
(4) Providing marketing functions, including storage, delayed	22
price marketing, deferred payment, feed agreements, or any other	23
marketing transaction whereby control is exerted over the monetary	24
proceeds of a producer's agricultural commodities by a person	25
other than the producer.	26
(C) "Agricultural commodity handler" or "handler" means any	27
person who is engaged in the business of agricultural commodity	28
handling.	29
(D) "Depositor" means:	30
(1) Any person who delivers an agricultural commodity to a	31
licensed handler for storage, conditioning, shipment, or sale;	32
(2) Any owner or legal holder of a ticket or receipt issued	33
for an agricultural commodity who is a creditor of the licensed	34
handler for the value of the agricultural commodity;	35
(3) Any licensed handler storing an agricultural commodity	36
that the licensed handler owns solely, jointly, or in common with	37
others in a warehouse owned or controlled by the licensed handler	38
or any other licensed handler.	39
(E) "Receipt" means a warehouse receipt issued by a licensed	40
handler.	41
(F) "Nonnegotiable receipt" means a receipt on which it is	42
stated that the agricultural commodity received will be delivered	43
to the depositor or to the order of any other person named in the	44
receipt.	45
(G) "Negotiable receipt" means a receipt on which it is	46
stated that the agricultural commodity received will be delivered	47

to the bearer or to the order of any person named in the receipt. 48

(H) "Ticket" means a scale weight ticket, a load slip, or any 49
evidence, other than a receipt, given to a depositor by a licensed 50
handler upon delivery of an agricultural commodity to the handler. 51

(I) "Warehouse" means any building, bin, protected enclosure, 52
or similar premises under the control of a licensed or unlicensed 53
handler used for receiving, storing, shipping, or handling an 54
agricultural commodity. 55

(J) "Storage" means the deposit of an agricultural commodity 56
into a warehouse either for the account of the licensed handler 57
operating the warehouse or for the account of a depositor. 58

(K) "Producer" means any person who grows an agricultural 59
commodity on land that the person owns or leases. 60

(L) "Agent" means any person, other than a producer, who 61
delivers an agricultural commodity to a licensed handler, either 62
for sale or for storage, for the account of the producer. 63

(M) "Agricultural commodity tester" or "tester" means a 64
person who operates a moisture meter and other quality testing 65
devices to determine the quality of an agricultural commodity. 66

(N) "Federally licensed grain inspector" means a person who 67
is licensed by the United States department of agriculture under 68
the "United States Grain Standards Act," 39 Stat. 482 (1916), 7 69
U.S.C. 71, as amended, to test and grade grain, as "grain" is 70
defined in that act. 71

(O) "Bailee" means a person to whom an agricultural commodity 72
is delivered in trust for storage in a warehouse with title 73
remaining in the name of the depositor. 74

(P) "Bailor" means a person who delivers an agricultural 75
commodity to a bailee in trust for storage in a warehouse with 76
title remaining in the name of the depositor. 77

(Q) "Bailment agreement" means a bailor-bailee agreement 78
between a depositor and a licensed handler as stated in the terms 79
of a receipt that is issued for an agricultural commodity in 80
storage and subject to the requirements of this chapter governing 81
the use of a receipt. 82

(R) "Delayed price agreement" means a written executory 83
contract executed by and between a licensed handler and a 84
depositor that covers the sale and transfer of title of an 85
agricultural commodity and states in its written terms the service 86
charges and the method for pricing the commodity at a later date. 87

(S) "Delayed price marketing" means the sale and transfer of 88
title of an agricultural commodity with the price to be 89
established at a later date according to the terms of a delayed 90
price agreement. 91

(T) "Deferred payment" means the deferral of payment to a 92
depositor by a licensed handler for an agricultural commodity to 93
which the licensed handler has taken title, for the purpose of 94
deferring income of the depositor from one tax year to another. 95

(U) "Feed agreement" means a written contract executed by and 96
between a licensed handler and a producer or depositor who 97
delivers an agricultural commodity to the licensed handler for 98
storage whereby each of the following applies: 99

(1) The producer or depositor transfers title to the 100
agricultural commodity to the licensed handler in exchange for a 101
nominal sum; 102

(2) The producer, upon delivery of the agricultural commodity 103
to the licensed handler, becomes a creditor of the licensed 104
handler due to the lien that arises under section 926.021 of the 105
Revised Code; 106

(3) All or part of the agricultural commodity is returned to 107
the producer at a later date and used for feed purposes. 108

(V) Notwithstanding section 1.02 of the Revised Code, "and"	109
shall not be read "or" and "or" shall not be read "and."	110
Sec. 926.021. (A) As used in this section:	111
(1) "Claimant" means a person to whom an agricultural	112
commodity handler owes a financial obligation for agricultural	113
commodities or the actual monetary proceeds from agricultural	114
commodities that have been delivered to the handler.	115
(2) "Failure" means any of the following involving an	116
agricultural commodity handler:	117
(a) An inability to satisfy claimants financially;	118
(b) A public declaration of insolvency;	119
(c) A revocation, suspension, or conditional suspension of	120
license with outstanding indebtedness to claimants;	121
(d) Nonpayment in the ordinary course of business where a	122
good faith dispute does not exist;	123
(e) No application for license renewal;	124
(f) Denial of license renewal;	125
(g) Voluntarily surrendering a license.	126
(3) "Agricultural commodity assets" involving an agricultural	127
commodity handler means any of the following:	128
(a) All agricultural commodities owned or stored, including	129
agricultural commodities in transit shipped by the handler but not	130
yet paid for;	131
(b) Redeposited agricultural commodities;	132
(c) Proceeds from the sale of agricultural commodities due or	133
to become due <u>to the depositor</u> ;	134
(d) The equity less any secured financing directly associated	135
therewith in assets in hedging or speculative margin accounts held	136

by commodity or security exchanges or dealers representing the 137
exchanges, and any moneys due or to become due less any secured 138
financing directly associated therewith from any transactions on 139
the exchanges; 140

(e) Any other unencumbered funds, property, or equity in 141
funds or property, wherever located, that can be directly traced 142
to the sale of agricultural commodities by the handler, provided 143
both that the funds, property, or equity in funds or property 144
shall not be considered to be encumbered unless the encumbrance 145
results from good and valuable considerations advanced by any 146
secured party on a good faith basis and that the encumbrance is 147
not the result of the taking of funds, property, or equity in 148
funds or property as additional collateral for an antecedent debt; 149

(f) Any other unencumbered funds, property, or equity in 150
assets. 151

(B) A lien shall exist on all agricultural commodity assets 152
of an agricultural commodity handler in favor of any of the 153
following: 154

(1) Claimants, including lenders, who possess receipts 155
covering grain owned or stored by the handler; 156

(2) Claimants who possess written evidence of ownership other 157
than a receipt disclosing a storage obligation of the handler, 158
including tickets; 159

(3) Claimants who surrendered receipts as part of an 160
agricultural commodity sales transaction but were not paid fully 161
for the agricultural commodity and the handler failed within 162
twenty-one days after the surrender; 163

(4) Claimants who possess any other written evidence of the 164
sale of agricultural commodities to the handler for which they 165
were not paid fully, including the sale of agricultural 166
commodities for a nominal sum under a feed agreement. 167

(C) The lien that shall secure all claims described in 168
division (D) of this section, shall arise, attach to the 169
agricultural commodity assets of an agricultural commodity 170
handler, and become effective at the time of the delivery of the 171
agricultural commodity for sale or for storage under a bailment 172
agreement, commencement of the storage obligation, or when funds 173
are advanced by the lender, and shall terminate when the liability 174
of the agricultural commodity handler to the claimant is 175
discharged, provided that the priority of each lien among the 176
respective claimants shall not relate to the date the claim arises 177
but shall be governed by the priorities established in division 178
(D) of this section. In the event of a failure, the lien claims of 179
all claimants shall be considered to be assigned by operation of 180
this section to the department of agriculture, and in the event of 181
a failure and subsequent liquidation, the lien shall transfer over 182
to assets or proceeds of assets either received or liquidated by 183
the department. The lien established under this section shall have 184
priority over all competing lien claims asserted against the 185
agricultural commodity assets. 186

(D) Except as provided in division (E) of this section, in 187
the event of a failure, the director of agriculture shall possess 188
exclusive authority to enforce the lien claims and allocate the 189
proceeds as follows: 190

(1) First priority against all agricultural commodity assets 191
shall be the following: 192

(a) Claimants, including lenders, who possess receipts 193
covering grain owned or stored by the agricultural commodity 194
handler; 195

(b) Claimants who possess written evidence of ownership other 196
than receipts disclosing a storage obligation of the handler, 197
including tickets; 198

(c) Claimants who surrendered receipts as part of an 199
agricultural commodity transaction, but were not paid fully for 200
the agricultural commodity and the handler failed within 201
twenty-one days after the surrender. 202

(2) Second priority against all agricultural commodity assets 203
shall be to claimants who possess written evidence of the sale of 204
an agricultural commodity, including, but not limited to, tickets, 205
delayed price agreements, or similar agricultural commodity 206
delivery contracts who completed delivery and pricing within 207
thirty days immediately prior to the failure of the handler. 208

(3) To the extent not necessary to satisfy first and second 209
priority claimants, all other claimants who possess written 210
evidence of the sale of agricultural commodities to the handler 211
shall participate in the pro rata distribution of the remainder of 212
the agricultural commodity assets in an amount not to exceed the 213
value of each claim. 214

(E) In the event that any adversary proceeding is commenced 215
to recover agricultural commodity assets upon which the lien 216
imposed in this section is imposed and the department declines to 217
enter the proceeding, the director, upon application to the 218
director by any claimant, shall assign to the claimant the 219
applicable lien to permit the claimant to pursue the claimant's 220
lien in the adversary proceeding to the extent the action will not 221
delay the resolution of the proceeding, the prompt liquidation of 222
the assets, or the ultimate distribution of the assets to all 223
claimants. 224

Sec. 926.06. (A) The director of agriculture may issue a 225
handler's license, or renewal thereof, upon the payment of the 226
prescribed application fee, if the director is satisfied that the 227
applicant meets the standards of financial responsibility required 228
under this section and has complied with this chapter and the 229

rules adopted under it. 230

(B)(1) ~~On the effective date of this amendment, each~~ Each 231
applicant for a handler's license, or renewal thereof, shall have 232
and maintain current assets equal to or greater than current 233
liabilities and a total net worth equal to at least ~~ten~~ fifteen 234
cents per bushel for the total number of bushels of agricultural 235
commodities that the applicant handled during the immediately 236
preceding twelve-month period to cover any indebtedness arising 237
from the applicant's operations as a licensed handler. ~~One year~~ 238
~~after the effective date of this amendment, the total net worth~~ 239
~~requirement shall increase to eleven cents per bushel. For the~~ 240
~~next four years, the requirement shall continue to increase by one~~ 241
~~cent per bushel each year on the anniversary of the effective date~~ 242
~~of this amendment, so that five years after the effective date of~~ 243
~~this amendment, an applicant's total net worth shall be equal to~~ 244
~~at least fifteen cents per bushel for the total number of bushels~~ 245
~~of agricultural commodities that the applicant handled during the~~ 246
~~immediately preceding twelve month period.~~ 247

(2) ~~On the effective date of this amendment, if~~ If an 248
applicant is applying for a handler's license for the first time 249
and did not handle any agricultural commodities during the 250
immediately preceding twelve-month period, the applicant shall 251
have an allowable total net worth of at least ~~twenty five~~ fifty 252
thousand dollars to cover any indebtedness arising from the 253
applicant's operations as a licensed handler. ~~One year after the~~ 254
~~effective date of this amendment, this allowable total net worth~~ 255
~~requirement shall increase to thirty thousand dollars. For the~~ 256
~~next four years, the requirement shall continue to increase by~~ 257
~~five thousand dollars each year on the anniversary of the~~ 258
~~effective date of this amendment, so that five years after the~~ 259
~~effective date of this amendment, an applicant's total net worth~~ 260
~~shall be at least fifty thousand dollars.~~ 261

(3) ~~On the effective date of this amendment, no~~ No person 262
shall be licensed as a handler unless the person has an allowable 263
total net worth of at least ~~twenty-five~~ fifty thousand dollars. 264
~~One year after the effective date of this amendment, this~~ 265
~~allowable total net worth requirement shall increase to thirty~~ 266
~~thousand dollars. For the next four years, the requirement shall~~ 267
~~continue to increase by five thousand dollars each year on the~~ 268
~~anniversary of the effective date of this amendment, so that five~~ 269
~~years after the effective date of this amendment, the person's~~ 270
~~total net worth shall be at least fifty thousand dollars.~~ 271

(4) ~~On the effective date of this amendment, any~~ Any 272
deficiency in required total net worth may be compensated for by 273
an indemnity agreement executed by a person pledging personal 274
assets for the benefit of commodity creditors should the licensed 275
handler default in the licensed handler's obligations to the 276
creditors; a bond issued by a corporate surety company that is 277
authorized to do business under the laws of this state; or, at the 278
director's discretion, an irrevocable letter of credit issued by a 279
bank or other lending institution that is authorized by this state 280
or the United States to issue such letters of credit and is 281
subject to service of process in this state for any suit on the 282
bond or letter of credit. An indemnity agreement executed by a 283
person pledging personal assets shall be accompanied by financial 284
statements that reflect the person's financial position as an 285
individual and comply with the requirements of division (C) of 286
this section. A bond shall be made to the treasurer of state to be 287
deposited in the agricultural commodity depositors fund created 288
under section 926.16 of the Revised Code for the benefit of any 289
person who may be injured by the handler's failure to meet 290
obligations arising under this chapter. A letter of credit shall 291
be issued for the benefit of the department of agriculture and the 292
agricultural commodity depositors fund. 293

(5) The director shall adopt rules in accordance with Chapter 294
119. of the Revised Code specifying the assets for which credit 295
may be given in determining an applicant's total net worth. 296

(6) ~~On the effective date of this amendment, regardless~~ 297
Regardless of the total number of bushels of agricultural 298
commodities that an applicant handled during the immediately 299
preceding twelve-month period, the applicant's total net worth 300
need not exceed a maximum of ~~three~~ four hundred ~~fifty~~ thousand 301
dollars. ~~One year after the effective date of this amendment, this~~ 302
~~maximum total net worth need not exceed three hundred thirty~~ 303
~~thousand dollars. For the next four years, this maximum total net~~ 304
~~worth shall continue to increase by thirty thousand dollars each~~ 305
~~year on the anniversary of the effective date of this amendment,~~ 306
~~so that five years after the effective date of this amendment, an~~ 307
~~applicant's total net worth need not exceed four hundred fifty~~ 308
~~thousand dollars.~~ 309

(C) In order for the director to determine if an applicant 310
meets the standards of financial responsibility required under 311
division (B) of this section, the applicant for a handler's 312
license, or renewal of a handler's license, shall submit financial 313
statements that have been prepared in accordance with generally 314
accepted accounting principles and that have been audited or 315
reviewed by an independent certified public accountant. The 316
financial statements shall consist of the applicant's balance 317
sheet, income statement, statement of retained earnings or 318
statement of stockholder's equity, and statement of cash flows, 319
together with any explanatory footnotes or supplementary 320
information accompanying these statements and with the independent 321
accountant's report on the statements. 322

The financial statements accompanying an applicant's original 323
application shall be for a year ending within six months before 324
the date of application. Thereafter, the applicant applying for 325

renewal shall submit such statements not later than ninety days 326
after the end of the year covered by the statements. 327

The director may require an applicant for a handler's 328
license, or renewal of a handler's license, to submit financial 329
statements audited by an independent certified public accountant 330
if the director determines that the financial statements initially 331
submitted under this division are incomplete or otherwise 332
unsatisfactory. 333

(D) The director may prepare and publish statistical 334
abstracts of information obtained under this section without 335
disclosing details that would identify a particular applicant with 336
particular statistics. Such information otherwise is confidential 337
for purposes of section 102.03 of the Revised Code, and records of 338
the department of agriculture containing such information are not 339
otherwise public records under section 149.43 of the Revised Code. 340

Sec. 926.10. The director of agriculture, by order, may 341
refuse to grant or may suspend or conditionally suspend a 342
handler's license, without prior hearing, when the director 343
determines that there is reasonable cause to believe that the 344
applicant or licensee: 345

(A) Has failed to maintain the insurance coverage required 346
under section 926.07 of the Revised Code; 347

(B) Has failed to maintain accurate and complete records and 348
accounts as required under section 926.11 of the Revised Code; 349

(C) Has failed to charge, collect, or remit the fee required 350
under division (B) of section 926.16 of the Revised Code; 351

(D) Has refused to allow the director or the director's 352
authorized representative to examine, at a reasonable time, the 353
applicant's or licensee's accounting records, accounts, 354
agricultural commodity inventories, or warehouse; 355

(E) Does not possess sufficient agricultural commodities to 356
cover the outstanding receipts or tickets issued or assumed by the 357
applicant or licensee under bailment agreements; 358

(F) Has issued a receipt in violation of this chapter or any 359
rules adopted under it; 360

(G) Does not have the net assets specified in division (B) of 361
section 926.06 of the Revised Code or has failed to obtain a bond 362
or other protection for any deficiency in required net assets as 363
provided in that division; 364

(H) Does not have the obligations for agricultural 365
commodities purchased under delayed price agreements secured or 366
represented as required under division (B) or (C) of section 367
926.29 of the Revised Code; 368

(I) Does not submit financial statements that comply with the 369
requirements of division (C) of section 926.06 of the Revised Code 370
within the applicable time period specified in that division; 371

(J) Does not notify the director of a statutory agent's 372
change of address or of the death, removal, resignation, or 373
revocation of the appointment of a statutory agent or does not 374
appoint another agent in accordance with section 926.051 of the 375
Revised Code. 376

The applicant or licensee to whom a denial, suspension, or 377
conditional suspension order is issued shall be afforded a hearing 378
in accordance with Chapter 119. of the Revised Code, after which 379
the director shall issue or deny the license applied for in the 380
pending application or reinstate or revoke the suspended or 381
conditionally suspended license. The director may suspend, 382
conditionally suspend, or revoke a license after a hearing held in 383
accordance with Chapter 119. of the Revised Code for any other 384
violations of this chapter or any rules adopted under it. 385

The director shall cause a notice to be posted on the 386

property of a person whose license has been suspended, 387
conditionally suspended, or revoked stating the limitations or 388
restrictions imposed on the person in the handling of agricultural 389
commodities as a result of the suspension, conditional suspension, 390
or revocation. The notice shall not be removed from the property 391
without written authorization from the director. 392

If a handler's license is revoked, the handler immediately 393
shall notify, in a manner determined by the director, all parties 394
that are storing agricultural commodities in the handler's 395
warehouse and all holders of receipts issued by the handler, if 396
known. The handler shall liquidate the commodities in the manner 397
determined by the director. 398

Sec. 926.17. (A) The director of agriculture shall annually 399
review the debits of and credits to the agricultural commodity 400
depositors fund created in section 926.16 of the Revised Code and 401
shall make any adjustments in the fee required under that section 402
that are necessary to maintain the fund within the limits 403
established under this section. Not later than the first day of 404
March of each year, the director shall determine the proposed 405
amount of the fee based on the expected volume of agricultural 406
commodities on which the fee is to be collected and that are 407
likely to be handled under this chapter. The director shall make 408
any changes in the previous year's fee in accordance with Chapter 409
119. of the Revised Code. The fee shall become effective on the 410
following first day of June. It shall in no case exceed one-half 411
of one cent per bushel on all agricultural commodities on which 412
the fee is to be paid. 413

(B)(1) If, at the end of any fiscal year, the fund balance 414
exceeds ~~ten~~ fifteen million dollars, less any encumbered balances 415
or pending or unsettled claims, the fee required under division 416
(B) of section 926.16 of the Revised Code shall be waived until 417

the director, with the consent of the commodity advisory 418
commission created in section 926.32 of the Revised Code, 419
reinstates the fee to maintain the liquidity of the fund as 420
provided in division (B)(2) of this section. 421

(2) If, at any time, the director determines that the fund 422
balance, less any encumbered balances or pending or unsettled 423
claims, is less than ~~eight~~ ten million dollars, the director, with 424
the consent of the commodity advisory commission, may reinstate 425
the fee required under division (B) of section 926.16 of the 426
Revised Code. If the director reinstates the fee, the director 427
shall notify all licensed handlers by certified mail, return 428
receipt requested, to begin collecting the fee not later than 429
ninety days after being notified. 430

Sec. 926.18. (A) When a depositor has made a demand for 431
settlement of an obligation concerning an agricultural commodity 432
on which a fee was required to be remitted under section 926.16 of 433
the Revised Code and the licensed handler is experiencing failure, 434
as "failure" is defined in section 926.021 of the Revised Code, 435
and has failed to honor the demand, the depositor, after providing 436
the director of agriculture or the director's authorized 437
representative with evidence of the depositor's demand and the 438
dishonoring of that demand, may file a claim with the director not 439
later than six months after dishonor of the demand for 440
indemnification of the depositor's damages, from the agricultural 441
commodity depositors fund, to be measured as follows: 442

(1) The commodity advisory commission created in section 443
926.32 of the Revised Code shall establish the dollar value of the 444
loss incurred by a depositor holding a receipt or a ticket for 445
agricultural commodities on which a fee was required and that the 446
depositor delivered to the handler under a delayed price 447
agreement, bailment agreement, or feed agreement, or that the 448

depositor delivered to the handler before delivery was due under a 449
contract or other agreement between the depositor and handler. The 450
value shall be based on the fair market price being paid to 451
producers by handlers for the commodities on the date on which the 452
director received notice that the receipt or ticket was dishonored 453
by the handler. All depositors filing claims under this division 454
shall be bound by the value determined by the commission. 455

(2) The dollar value of the loss incurred by a depositor who 456
has sold or delivered for sale, exchange, or solicitation or 457
negotiation for sale agricultural commodities on which a fee was 458
required and who is a creditor of the handler for all or a part of 459
the value of the commodities shall be based on the amount stated 460
on the obligation on the date of the sale. 461

(B) The agricultural commodity depositors fund shall be 462
liable to a depositor for any moneys that are owed to the 463
depositor for commodities deposited with a licensed handler 464
pursuant to a transaction for which the handler must remit a fee 465
under division (B) of section 926.16 of the Revised Code and that 466
are not recovered through other legal and equitable remedies as 467
follows: 468

(1)(a) The liability of the fund shall equal one hundred per 469
cent of the depositor's loss as determined under division (A)(1) 470
of this section if any of the following applies: 471

(i) The commodities were stored with the handler under a 472
bailment agreement. 473

(ii) Payment for the commodities was tendered by the handler 474
and subsequently dishonored, such as payment by a check for which 475
there were insufficient funds or by a check that was written on an 476
account that was frozen by the financial institution. 477

(iii) The commodities were priced ~~at the time of delivery to~~ 478
~~the handler, the delivery occurred~~ not more than thirty days prior 479

to the director's suspension of the handler's license under 480
division (E), (G), or (H) of section 926.10 of the Revised Code, 481
and the handler failed to pay for the commodities on or before the 482
date on which the suspension occurred. 483

(iv) The commodities were priced ~~at the time of delivery to~~ 484
~~the handler, the delivery occurred~~ not more than ninety days prior 485
to the director's suspension of the handler's license under 486
division (E), (G), or (H) of section 926.10 of the Revised Code, 487
the commodities were subject to a written agreement for deferred 488
payment by the handler not later than ninety days following the 489
date of delivery, and the handler failed to pay for the 490
commodities on or before the payment date established in the 491
written agreement. 492

(b) If the deposit of commodities that were the subject of 493
the depositor's loss involves circumstances other than those 494
described in division (B)(1)(a) of this section, the liability of 495
the fund shall equal one hundred per cent of the first ten 496
thousand dollars of the loss and eighty per cent of the remaining 497
dollar value of that loss as determined under divisions (A)(1) and 498
(2) of this section. 499

(2) The aggregate amount recovered by a depositor under all 500
remedies shall not exceed one hundred per cent of the value of the 501
depositor's loss. If the moneys recovered by a depositor under all 502
remedies exceed one hundred per cent of the value of the 503
depositor's loss, the depositor shall reimburse the fund in the 504
amount that exceeds the value of that loss. 505

(C) The director, with the ~~approval~~ recommendation of the 506
commodity advisory commission, shall determine the validity of all 507
claims presented against the fund. A claim filed under this 508
section for losses on agricultural commodities other than 509
commodities stored under a bailment agreement shall not be valid 510
unless the depositor has made a demand for settlement of the 511

obligation within twelve months after the commodities are priced. 512
Any depositor whose claim has been refused by the director and the 513
commission may appeal the refusal either to the court of common 514
pleas of Franklin county or the court of common pleas of the 515
county in which the depositor resides. 516

The director shall provide for payment from the fund to any 517
depositor whose claim has been found to be valid. 518

(D) If at any time the fund does not contain sufficient 519
assets to pay valid claims, the director shall hold those claims 520
for payment until the fund again contains sufficient assets. 521
Claims against the fund shall be paid in the order in which they 522
are presented and found to be valid. 523

(E) If a depositor files an action for legal or equitable 524
remedies in a state or federal court having jurisdiction in those 525
matters that includes a claim against agricultural commodities 526
upon which the depositor may file a claim against the fund at a 527
later date, the depositor also shall file with the director a copy 528
of the action filed with the court. 529

In the event of payment of a loss under this section, the 530
director shall be subrogated to the extent of the amount of any 531
payments to all rights, powers, privileges, and remedies of the 532
depositor against any person regarding the loss. 533

The depositor shall render all necessary assistance to aid 534
the director in securing the rights granted in this section. No 535
action or claim initiated by the depositor and pending at the time 536
of payment from the fund may be compromised or settled without the 537
consent of the director. 538

(F) If, prior to June 20, 1994, a lawsuit, adversary 539
proceeding, or other legal proceeding is brought against a 540
depositor to recover money or payments from funds to which a 541
depositor has a right of indemnification under this section, and 542

the depositor retains legal counsel resulting in a cost or expense 543
to the depositor, upon the rendering of a judgment or other 544
resolution of the lawsuit, adversary proceeding, or other legal 545
proceeding, the director, in the director's discretion and with 546
the approval of the commodity advisory commission, may authorize 547
indemnification from the fund for attorney's fees paid by the 548
depositor. Any claim made by a depositor for the payment of 549
attorney's fees under this division shall be made in the same 550
manner as a claim under division (A) of this section. 551

Attorney's fees payable under this division shall be limited 552
to the actual hourly fee charged or one hundred dollars per hour, 553
whichever is less, and to a total maximum amount of three hundred 554
dollars. 555

Section 2. That existing sections 926.01, 926.021, 926.06, 556
926.10, 926.17, and 926.18 of the Revised Code are hereby 557
repealed. 558