(125th General Assembly)
(Substitute House Bill Number 421)

AN ACT

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

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 926.32 of the Revised Code be amended to read as follows:

Sec. 926.16. (A) There is hereby created in the state treasury the agricultural commodity depositors fund. The state shall not be held liable for any claims presented against the fund under section 926.18 of the Revised Code. The fund shall consist of a per-bushel fee remitted by licensed handlers under this section, any sums that the director of agriculture may collect by any legal action on behalf of the fund, and any property or securities acquired through the use of moneys in the fund. All investment earnings of the fund shall be credited to the fund. The moneys ~~collected under this section and deposited~~ in the fund shall be used exclusively to indemnify depositors as provided in section 926.18 of the Revised Code and ~~for no other purpose~~ to pay the examination and administrative costs of this chapter as provided in division (E) of this section.

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

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

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

(3) All agricultural commodities that are being stored by licensed handlers who own them solely, jointly, or in common with others and who are issuing a receipt for them in accordance with section 926.25 of the Revised Code. The maximum number of bushels on which a licensed handler shall be required to pay the fee under division (B)(3) of this section

between the first day of July and the thirtieth day of June of any marketing year shall be the greatest number of bushels of all commodities for which receipts are outstanding at any one time during that period.

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

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

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

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

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. ~~He~~ 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 ~~assets of the~~ fund ~~exceed one-half of the sum of all claims approved during the preceding four years or four~~ balance exceeds ten million dollars, ~~whichever is greater,~~ 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. ~~The~~

(2) If, at any time, the director ~~may establish the limits of the assets to be maintained in~~ determines that the fund ~~in accordance with this division~~ balance, less any encumbered balances or pending or unsettled claims, is less than eight 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) ~~For~~ (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 ~~a licensed~~ the handler under a bailment agreement ~~for one hundred per cent of the depositor's loss as determined under division (A)(1) of this section;~~

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

(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 ~~depositor's~~ loss and eighty per cent of the remaining dollar value of that loss as determined under divisions (A)(1) and (2) of this section. ~~The~~

(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 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.

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

(1) All revenues collected by the director of agriculture from distribution of the receipt forms under division (B) of section 926.20 of the Revised Code and such other forms and registration books as the director may require by rule for the administration of this chapter;

(2) The application and examination fees collected under division (B) of section 926.05 of the Revised Code;

(3) The agricultural commodity tester certificate fees collected under division (B) of section 926.30 of the Revised Code;

(4) ~~Interest income~~ Any moneys transferred from the agricultural commodity depositors fund under section 926.16 of the Revised Code;

(5) All fines, penalties, and costs, except court costs, that are collected under section 926.99 of the Revised Code in consequence of a violation of this chapter;

(6) All sums collected by the director of agriculture under a contract described in section 926.36 of the Revised Code.

(B) The examination and administrative costs of this chapter shall be computed by the director not later than the thirty-first day of December of each even-numbered year to cover the biennium that begins on the following first day of July. The commodity advisory commission created in section 926.32 of the Revised Code shall approve, and may amend, the examination and administrative costs. The commission's decision shall be binding on the director. The commission also at any time may approve for presentation to the controlling board a request to increase or decrease the appropriation authority for the biennial examination and administrative costs if it determines that an increase or decrease in the cost is necessary to carry out the purpose of this chapter.

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

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

(B) The commission shall at all times be composed of three farmers who are engaged primarily in the production of agricultural commodities, one licensed handler who is the manager of a farmers cooperative, one licensed handler who is the owner and operator of a warehouse located in a rural area, one licensed handler representing a warehouse located at a major agricultural commodity transportation center, and one banker who is an officer of a rural bank. The director shall designate annually one member of the commission to serve as its chairperson and, after notice and public hearing, may remove any member only for neglect of duty or malfeasance in office.

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

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

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

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

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

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

(I) The director shall designate an official or employee of the department of agriculture to act as the executive secretary of the commission. The director also may request the attendance at meetings of the commission consultants with expertise in agricultural law, marketing, statistics, or any other subject to advise and consult with the commission on matters on the agenda of any regular or special meeting of the commission. The expenses incurred by consultants attending those meetings shall be reimbursed according to division (H) of this section. The executive secretary shall keep or cause to be kept a permanent journal of all meetings, proceedings, findings, determinations, and recommendations of the commission, including an itemized statement of the expenses allowed to each member of the commission and consultants under this section. The journal shall be a public record.

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

(1) The administration of this chapter;

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

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

SECTION 2. That existing sections 926.16, 926.17, 926.18, 926.19, and 926.32 of the Revised Code are hereby repealed.

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Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

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Governor.

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

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Director, Legislative Service Commission.

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

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Secretary of State.

File No. _____ Effective Date _____