

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2564 Session of
2022

INTRODUCED BY D. WILLIAMS, FREEMAN, LONGIETTI, SAPPEY, GUENST,
O'NEAL, SANCHEZ, HOHENSTEIN, MADDEN, HENNESSEY AND PARKER,
MAY 2, 2022

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
MAY 2, 2022

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, providing for licensing and regulation of
3 agricultural commodity handlers; creating an Agricultural
4 Commodity Indemnity Fund; and providing for penalties and
5 enforcement.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 3 of the Pennsylvania Consolidated Statutes
9 is amended by adding a chapter to read:

10 CHAPTER 11

11 AGRICULTURAL COMMODITY HANDLING

12 Sec.

13 1101. Scope of chapter.

14 1102. Definitions.

15 1103. Requirement of handler's license and application.

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17 1105. Powers and duties of department.

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1107. Agricultural Commodity Indemnity Fund.
1108. Delayed price agreement.
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1110. Lien on agricultural commodity assets of failed handler.
1111. Insolvent or discontinued handler.
1112. Handler recordkeeping and operational duties.
1113. Shortage of agricultural commodities.
1114. Payment deadline for sale of agricultural commodity.
1115. Disclosing lack of title or existence of lien.
1116. Penalties.

§ 1101. Scope of chapter.

This chapter relates to the licensing and regulation of
agricultural commodity handlers.

§ 1102. Definitions.

The following words and phrases when used in this chapter
shall have the meanings given to them in this section unless the
context clearly indicates otherwise:

"Agricultural commodity." Corn, soybean, wheat, barley, oat,
milo or any other agricultural crop the secretary designates by
regulation. The term shall not include crops purchased as seed.

"Agricultural commodity assets." Any of the following
involving a failed handler:

(1) Agricultural commodities owned or stored, including
agricultural commodities in transit shipped by the licensed
handler but not yet paid for.

(2) Redeposited agricultural commodities.

(3) Proceeds from the sale of agricultural commodities
due or to become due to the depositor.

(4) Equity less any secured financing directly
associated with assets in hedging or speculative margin

1 accounts held by commodity or security exchanges or dealers
2 representing the exchanges and any money due or to become due
3 less any secured financing directly associated with any
4 transactions on the exchanges.

5 (5) Subject to subparagraphs (i) and (ii), any other
6 unencumbered money, property or equity in funds or property,
7 wherever located, that can be directly traced to the sale of
8 an agricultural commodity by the handler. The following shall
9 apply:

10 (i) Money, property or equity in funds or property
11 shall not be considered encumbered unless the encumbrance
12 results from good and valuable considerations advanced by
13 any secured party on a good-faith basis.

14 (ii) The taking of money, property or equity in
15 funds or property as additional collateral for an
16 antecedent debt shall not be considered an encumbrance.

17 (6) Any other unencumbered money, property or equity in
18 assets.

19 (7) Voluntarily surrendering a license.

20 "Agricultural commodity handler." A person engaged in the
21 business of agricultural commodity handling.

22 "Agricultural commodity handling." Any of the following:

23 (1) Engaging in or participating in the business of
24 purchasing from depositors, for any reason, agricultural
25 commodities in excess of 10,000 bushels annually.

26 (2) Operating a warehouse as a bailee for the receiving,
27 storing, shipping or conditioning of an agricultural
28 commodity in excess of 5,000 bushels annually.

29 (3) Receiving into a warehouse an agricultural commodity
30 purchased under a delayed price agreement.

1 (4) Providing a marketing function, including storage,
2 delayed price marketing, deferred payment, feed agreement or
3 any other marketing transaction where control is exerted over
4 the monetary proceeds of a depositor's agricultural commodity
5 by a person other than the depositor.

6 "Bailee." A person to whom an agricultural commodity is
7 delivered in trust for storage in a warehouse with title
8 remaining in the name of the depositor.

9 "Bailor." A person that delivers an agricultural commodity
10 to a bailee in trust for storage in a warehouse with title
11 remaining in the name of the depositor.

12 "Claimant." A person to whom a licensed handler owes a
13 financial obligation for agricultural commodities of the actual
14 monetary proceeds from agricultural commodities that have been
15 delivered to the handler.

16 "Deferred payment." The deferral of payment to a depositor
17 by a licensed handler for an agricultural commodity to which the
18 licensed handler has taken title to defer income of the
19 depositor from one tax year to another.

20 "Delayed price agreement." A written executory contract
21 executed by and between a licensed handler and a depositor that
22 covers the sale and transfer of title of an agricultural
23 commodity and provides in written terms the service charges and
24 method for pricing the commodity at a later date.

25 "Delayed price marketing." The sale and transfer of title of
26 an agricultural commodity with the price to be established at a
27 later date according to the terms of a delayed price agreement.

28 "Department." The Department of Agriculture of the
29 Commonwealth.

30 "Depositor." Any of the following:

1 (1) A person that delivers an agricultural commodity to
2 a licensed handler for storage, conditioning, shipment or
3 sale.

4 (2) An owner or legal holder of a ticket or receipt
5 issued for an agricultural commodity who is a creditor of the
6 licensed handler for the value of the agricultural commodity.
7 "Failure" or "failed handler."

8 (1) Any of the following involving a licensed handler:

9 (i) An inability to satisfy a claimant financially.

10 (ii) A public declaration of insolvency.

11 (iii) A revocation, suspension or conditional
12 suspension of license with outstanding indebtedness to a
13 claimant.

14 (iv) Nonpayment in the ordinary course of business
15 where a good-faith dispute does not exist.

16 (v) Failure to file an application for license
17 renewal.

18 (vi) Denial of license renewal.

19 (2) As used in section 1112(b) (relating to handler
20 recordkeeping and operational duties), the term includes a
21 receiver, trustee or other custodian of an agricultural
22 commodity appointed for a licensed handler by a court of the
23 United States or this Commonwealth.

24 "Feed agreement." A written contract executed by and between
25 a licensed handler and a depositor who delivers an agricultural
26 commodity to the licensed handler for storage where the
27 following apply:

28 (1) The depositor transfers title to the agricultural
29 commodity to the licensed handler in exchange for a nominal
30 sum.

1 (2) The depositor, upon delivery of the agricultural
2 commodity to the licensed handler, becomes a creditor of the
3 licensed handler due to the lien arising under section 1110
4 (relating to lien on agricultural commodity assets of failed
5 handler).

6 (3) All or part of the agricultural commodity is
7 returned to the depositor at a later date used for feed
8 purposes.

9 "Fund." The Agricultural Commodity Indemnity Fund.

10 "Licensed handler." A person required to obtain a license
11 under section 1103(a) (relating to requirement of handler's
12 license and application) to handle an agricultural commodity
13 within this Commonwealth.

14 "Receipt." A warehouse receipt issued by a licensed handler.

15 "Secretary." The Secretary of Agriculture of the
16 Commonwealth.

17 "Storage." The deposit of an agricultural commodity into a
18 warehouse, either for the account of the licensed handler
19 operating the warehouse or for the account of a depositor.

20 "Ticket." A scale weight ticket, a load slip or any
21 evidence, other than a receipt, given to a depositor by a
22 licensed handler upon delivery of an agricultural commodity to
23 the handler.

24 "Warehouse." A building, bin, protected enclosure or similar
25 premises used for receiving, storing, shipping or handling an
26 agricultural commodity.

27 § 1103. Requirement of handler's license and application.

28 (a) License required.--

29 (1) Except as provided in paragraph (2), no person may
30 engage in agricultural commodity handling without first

1 obtaining a handler's license.

2 (2) An agricultural commodity stored under a bailment
3 agreement in a warehouse operated by a person licensed under
4 the United States Warehouse Act (7 U.S.C. § 241 et seq.),
5 shall be exempt from sections 1107 (relating to Agricultural
6 Commodity Indemnity Fund), 1111(b) (relating to insolvent or
7 discontinued handler), 1112(b) (relating to handler
8 recordkeeping and operational duties) and 1113 (relating to
9 shortage of agricultural commodities). Each person licensed
10 under the United States Warehouse Act shall annually notify
11 the secretary in writing of its licensing and, if applicable,
12 if its license is suspended or terminated.

13 (b) License application.--

14 (1) Each person seeking to obtain or renew a handler's
15 license shall file an application annually with the secretary
16 at times and on forms and containing information as the
17 secretary prescribes, including, if applicable, the
18 appointment of a statutory agent under subsection (c).

19 (2) The secretary shall establish license fees to be
20 paid by a person engaged in agricultural commodity handling.

21 (3) The secretary shall approve or reject each
22 application for license within 15 days after receipt, if the
23 application is in proper form and contains the information
24 required under paragraph (1). A rejection of an application
25 shall be accompanied by a statement from the secretary of any
26 additional requirement necessary for licensure. The applicant
27 may resubmit the application without payment of any
28 additional fee.

29 (4) An application for renewal of a handler's license
30 shall be filed with the secretary no later than 30 days

1 before the current license expires. An applicant who fails to
2 file a renewal application in time shall pay a late fee of \$1
3 for each day the application is late, or \$15, whichever is
4 greater. A renewal license shall not be issued until a late
5 fee that is due has been paid.

6 (5) The secretary may revoke or refuse to issue or renew
7 a handler's license if any of the following occurred within
8 five years before the application for the license or renewal
9 was filed:

10 (i) The applicant, the spouse of the applicant, a
11 manager employed by the applicant or other individual
12 materially involved in the agricultural commodity
13 handling business of the applicant was a principal in a
14 receivership or insolvency that resulted in losses to
15 creditors or to the fund.

16 (ii) The applicant pleaded guilty to or was
17 convicted of a felony or charge of embezzlement under the
18 laws of the United States, this Commonwealth or other
19 state.

20 (iii) The applicant made a delivery of commodities
21 not authorized under this chapter.

22 (iv) The applicant's license under the United States
23 Warehouse Act was revoked or canceled due to a violation
24 of that act.

25 (c) Statutory agent.--

26 (1) An applicant for a handler's license or renewal
27 issued under subsection (b) that does not conduct business at
28 an address in this Commonwealth at which the applicant
29 usually can be contacted shall include with the application a
30 written appointment of an agent upon whom any process, notice

1 or demand may be served. The appointment shall be accompanied
2 by a written acceptance of the appointment signed by the
3 agent. The agent may be a natural person who is a resident of
4 this Commonwealth or a corporation whose principal place of
5 business is located in this Commonwealth. The appointment
6 shall be on forms and contain information as the secretary
7 prescribes. Failure to comply with this paragraph is grounds
8 for rejection of the application under subsection (b)(3).

9 (2) If an agent removes from the Commonwealth or
10 resigns, or if the applicant revokes the agent's appointment,
11 the applicant immediately shall notify the secretary in
12 writing no later than 30 days prior to the removal,
13 resignation or revocation. If an agent dies, the applicant
14 immediately shall notify the secretary in writing. Prior to
15 the removal, resignation or revocation, and no later than 30
16 days after the death of the agent, the applicant shall
17 appoint another agent and file with the secretary a written
18 appointment of the agent, along with a written acceptance of
19 the appointment signed by the agent.

20 (3) If the agent's address changes from that appearing
21 on the application, the applicant, no later than 30 days
22 prior to the address change, shall file with the secretary a
23 written statement setting forth the new address, along with
24 any other information the secretary requests.

25 (4) Failure to comply with paragraphs (2) and (3) is
26 grounds for suspension or conditional suspension of a
27 handler's license, without prior hearing, under section 1106.
28 § 1104. Issuance of license.

29 (a) Issuance.--The secretary may issue a handler's license,
30 or renewal of it, upon the payment of the prescribed license

1 fee, if the secretary is satisfied the applicant meets the
2 standards of financial responsibility under this section.

3 (b) Financial responsibility standards.--

4 (1) Each applicant for a handler's license, or renewal
5 of it, shall have and maintain current assets equal to or
6 greater than current liabilities and a total net worth
7 determined by the department.

8 (2) (i) A deficiency in required total net worth may be
9 compensated by any of the following:

10 (A) An indemnity agreement executed by a person
11 pledging personal assets for the benefit of commodity
12 creditors should the licensed handler default in the
13 licensed handler's obligations to the creditors.

14 (B) A bond issued by a corporate surety company
15 that is authorized to do business under the laws of
16 this Commonwealth.

17 (C) At the secretary's discretion, an
18 irrevocable letter of credit issued by a bank or
19 other lending institution that is authorized by this
20 Commonwealth or the United States to issue letters of
21 credit and is subject to service of process in this
22 Commonwealth for any suit on the bond or letter of
23 credit.

24 (ii) An indemnity agreement executed by a person
25 pledging personal assets shall be accompanied by
26 financial statements that reflect the person's financial
27 position as an individual and comply with the
28 requirements of subsection (c). A bond shall be made to
29 the State Treasurer to be deposited in the fund for the
30 benefit of any person who may be injured by the handler's

1 failure to meet obligations arising under this chapter. A
2 letter of credit shall be issued for the benefit of the
3 department and the fund.

4 (c) Accounting.--

5 (1) To determine if an applicant meets the standards of
6 financial responsibility required under subsection (b), the
7 applicant for a handler's license, or renewal of a handler's
8 license, shall submit financial statements that have been
9 prepared in accordance with generally accepted accounting
10 principles and that have been audited or reviewed by an
11 independent certified public accountant. The financial
12 statements shall consist of all financial statements and
13 footnotes required by generally accepted accounting
14 principles as promulgated by the financial accounting
15 standards board together with the independent accountant's
16 report on the statements.

17 (2) The financial statements accompanying an applicant's
18 original application shall be for a year ending within six
19 months before the date of application. Afterward, the
20 applicant applying for renewal shall submit the financial
21 statements no later than 90 days after the end of the year
22 covered by the statements.

23 (3) The secretary may require an applicant for a
24 handler's license, or renewal of a handler's license, to
25 submit financial statements audited by an independent
26 certified public accountant if the department determines that
27 the financial statements initially submitted under this
28 subsection are incomplete or otherwise unsatisfactory.

29 § 1105. Powers and duties of department.

30 The department has the following powers and duties:

1 (1) To administer and enforce this chapter, including
2 the power to promulgate any regulation the department deems
3 necessary to carry out those duties.

4 (2) To inspect, or cause to be inspected, a warehouse or
5 premises suspected of being a warehouse at any reasonable
6 time.

7 (3) To require the filing of a report describing any
8 warehouse or operation of a warehouse.

9 (4) To petition, despite the existence of an adequate
10 remedy at law, a court of competent jurisdiction of the
11 United States or this Commonwealth to enforce compliance by a
12 licensed handler with this chapter, or any regulation adopted
13 by the secretary under it, by a special, preliminary or
14 permanent injunction, including an order against a person's
15 interference with the secretary in carrying out the powers
16 and duties under this chapter.

17 (5) To prescribe all forms, within the limitations
18 provided in this chapter, including receipts, tickets,
19 contracts, licenses, reports and license applications.

20 (6) To impound a receipt, ticket or any other record
21 when a licensed handler's license is under suspension.

22 § 1106. Refusal or suspension of handler's license.

23 (a) License refusal or suspension.--The secretary, by order,
24 may refuse to grant or may suspend or conditionally suspend a
25 handler's license, without prior hearing, if the secretary
26 determines there is reasonable cause to believe that the
27 applicant or licensed handler:

28 (1) Has not maintained accurate and complete records and
29 accounts as required under section 1112(a) (relating to
30 handler recordkeeping and operational duties).

1 (2) Has failed to charge, collect or remit the fee
2 required under section 1107(d) (relating to Agricultural
3 Commodity Indemnity Fund).

4 (3) Has refused to allow the secretary or the
5 secretary's designee to examine, at a reasonable time, the
6 applicant's or licensed handler's accounting records,
7 accounts, agricultural commodity inventories or warehouse.

8 (4) Does not possess sufficient agricultural commodities
9 to cover the outstanding receipts or tickets issued or
10 assumed by the applicant or licensed handler under bailment
11 agreements.

12 (5) Does not have the net assets specified in section
13 1104(b) (relating to issuance of license) or has not obtained
14 a bond or other protection for any deficiency in required net
15 assets as provided in that section.

16 (6) Does not have the obligations for agricultural
17 commodities purchased under delayed price agreements secured
18 or represented as required under section 1108 (relating to
19 delayed price agreement).

20 (7) Does not submit financial statements that comply
21 with the requirements of section 1104(c) within the
22 applicable time period specified in that subsection.

23 (8) Does not notify the secretary of a statutory agent's
24 change of address or of the death, removal, resignation or
25 revocation of the appointment of a statutory agent or does
26 not appoint another agent in accordance with section 1103(c)
27 (relating to requirement of handler's license and
28 application).

29 (b) Hearing.--The applicant or licensed handler to whom a
30 denial, suspension or conditional suspension order is issued

1 shall be afforded a hearing in accordance with 2 Pa.C.S. Ch. 5
2 Subch. A (relating to practice and procedure of Commonwealth
3 agencies) after which the secretary shall issue or deny the
4 handler's license applied for in the pending application or
5 reinstate or revoke the suspended or conditionally suspended
6 license. The secretary may suspend, conditionally suspend or
7 revoke a handler's license after a hearing held in accordance
8 with the 2 Pa.C.S. Ch. 5 Subch. A for any other violation of
9 this chapter or any regulation adopted under it.

10 (c) Notice required.--The secretary shall cause a notice to
11 be posted on the property of a licensed handler whose license
12 has been suspended, conditionally suspended or revoked stating
13 the limitation or restriction imposed on the person in the
14 handling of an agricultural commodity due to the suspension,
15 conditional suspension or revocation. The notice shall not be
16 removed from the property without written authorization from the
17 secretary.

18 (d) Handler notice responsibility.--If a licensed handler's
19 license is revoked, the licensed handler immediately shall
20 notify, in a manner determined by the secretary, all parties
21 storing agricultural commodities in the licensed handler's
22 warehouse and all holders of receipts issued by the handler, if
23 known.

24 (e) Immunity.--If any court of competent jurisdiction issues
25 an order restraining, overturning or modifying an order of the
26 secretary that suspends, conditionally suspends or revokes a
27 licensed handler's license or that refuses to issue a licensed
28 handler's license, the department, its officers, employees,
29 agents and the fund shall be held harmless from liability or
30 financial obligations arising out of the operations of the

1 licensed handler while operating under the court order.

2 § 1107. Agricultural Commodity Indemnity Fund.

3 (a) Creation of fund.--A special fund to be known as the
4 Agricultural Commodity Indemnity Fund is created in the State
5 Treasury. The Commonwealth shall not be held liable for any
6 claim presented against the fund under section 1109 (relating to
7 filing claim upon handler's dishonor of demand).

8 (b) Funding sources.--The fund shall consist of a per-bushel
9 fee remitted under subsection (d), agricultural commodity
10 handler license fees under section 1103(b) (relating to
11 requirement of handler's license and application), a sum that
12 the secretary may collect by any legal action on behalf of the
13 fund and any property or security acquired through the use of
14 money in the fund.

15 (c) Use.--The money in the fund shall be used exclusively to
16 indemnify a depositor as provided in section 1109 and to pay
17 examination, inspection, administrative and enforcement costs of
18 this chapter.

19 (d) Remittance.--A licensed handler shall remit the fee
20 determined by the secretary under subsection (g) on any of the
21 following:

22 (1) Agricultural commodities delivered to the licensed
23 handler for storage under a bailment agreement.

24 (2) Agricultural commodities delivered to the licensed
25 handler for first sale.

26 (3) Any other circumstance determined by the secretary,
27 as issued under a regulation.

28 (e) Procedure for recruiting and remittance.--A licensed
29 handler shall account for and remit money under subsection (d)
30 to the secretary in the manner and form as the secretary shall

1 prescribe by regulation.

2 (f) Disbursements.--Disbursements from the fund shall be
3 paid by the State Treasurer under a voucher authorized by the
4 secretary.

5 (g) Fee adjustment or waiver.--

6 (1) The secretary shall annually review the debits of
7 and credits to the fund and shall make any adjustment in the
8 fee necessary to maintain the fund within the limits
9 established under this section, but the fee may not exceed
10 \$0.005 per bushel on any agricultural commodity on which the
11 fee is to be paid. No later than March 1 of each year, the
12 secretary shall determine the proposed amount of the fee
13 based on the expected volume of agricultural commodities on
14 which the fee is to be collected and that are likely to be
15 handled under this chapter. The fee shall become effective on
16 June 1, 2022, and each June 1 thereafter.

17 (2) Fund balance limits for fee imposition.--

18 (i) If, at the end of any calendar year, the fund
19 balance exceeds \$10,000,000, less any encumbered
20 balances, pending or unsettled claims and handler license
21 fees under section 1103(b), the fee required under
22 subsection (d) shall be waived until the secretary
23 reinstates the fee to maintain the liquidity of the fund
24 as provided in subparagraph (ii).

25 (ii) If, at any time, the secretary determines that
26 the fund balance, less any encumbered balances, pending
27 or unsettled claims and handler license fees under
28 section 1103(b), is less than \$8,000,000, the secretary
29 may reinstate the fee required under subsection (d). If
30 the secretary reinstates the fee, the secretary shall

1 notify all licensed handlers to begin collecting the fee
2 no later than 90 days after notification.

3 § 1108. Delayed price agreement.

4 (a) Execution of agreement.--A delayed price agreement shall
5 be executed between the licensed handler and the depositor, or
6 by their authorized representative, no later than 15 days after
7 the first delivery of an agricultural commodity is received for
8 delayed pricing under the agreement.

9 (b) Maintenance of commodity required.--Subject to the lien
10 that attaches under section 1110 (relating to lien on
11 agricultural commodity assets of failed handler), a licensed
12 handler who purchases an agricultural commodity under a delayed
13 price agreement shall, at all times, maintain the commodity,
14 rights in the commodity, proceeds from the sale of the
15 commodity, or a combination of the commodity, rights and
16 proceeds, equal to at least 90% of the value of the licensed
17 handler's obligation for all commodities that the licensed
18 handler has purchased that are not priced under delayed price
19 agreements. The obligation shall be secured or represented by
20 means determined by the secretary.

21 § 1109. Filing claim upon handler's dishonor of demand.

22 (a) Claim.--If a depositor makes a demand for settlement of
23 an obligation concerning an agricultural commodity on which a
24 fee was required to be remitted under section 1107 (relating to
25 Agricultural Commodity Indemnity Fund) and the licensed handler
26 is experiencing failure, the depositor, after providing the
27 secretary or the secretary's designee with evidence of the
28 depositor's demand and the dishonoring of that demand, may file
29 a claim with the secretary no later than six months after
30 dishonor of the demand for indemnification from the fund, to be

1 measured as follows:

2 (1) The department shall establish the dollar value of
3 the loss incurred by a depositor holding a receipt or a
4 ticket for an agricultural commodity on which a fee was
5 required and that the depositor delivered to the licensed
6 handler under a delayed price agreement, bailment agreement
7 or feed agreement, or that the depositor delivered to the
8 licensed handler before delivery was due under a contract or
9 other agreement between the depositor and licensed handler.
10 The value shall be based on the fair market price being paid
11 to depositors by licensed handlers for the commodities on the
12 date on which the department received notice that the receipt
13 or ticket was dishonored by the licensed handler. A depositor
14 filing a claim under this subsection shall be bound by the
15 value determined by the department.

16 (2) The dollar value of the loss incurred by a depositor
17 who has sold or delivered for sale an agricultural commodity
18 on which a fee was required and who is a creditor of the
19 licensed handler for all or a part of the value of the
20 commodity shall be based on the amount stated on the
21 obligation on the date of the sale.

22 (b) Liability.--The fund shall be liable to a depositor for
23 money owed to the depositor for an agricultural commodity
24 deposited with a licensed handler under a transaction for which
25 the handler must remit a fee under section 1107(d) and that is
26 not recovered through other legal and equitable remedies as
27 follows:

28 (1) The liability of the fund shall equal 100% of the
29 depositor's loss, as determined under subsection (a)(1) and
30 (2), if any of the following apply:

1 (i) The agricultural commodity was stored with the
2 licensed handler under a bailment agreement.

3 (ii) Payment for the agricultural commodity was
4 tendered by the handler and subsequently dishonored, such
5 as payment by a check for which there were insufficient
6 funds or by a check that was written on an account that
7 was frozen by the financial institution.

8 (iii) The agricultural commodity was priced at the
9 time of delivery to the licensed handler, the delivery
10 occurred no more than 30 days prior to the secretary's
11 suspension of the licensed handler's license under
12 section 1106(a)(4), (6) or (7) (relating to refusal or
13 suspension of handler's license), and the handler failed
14 to pay for the agricultural commodity on or before the
15 date on which the suspension occurred.

16 (iv) The agricultural commodity was priced at the
17 time of delivery to the licensed handler, the delivery
18 occurred no more than 90 days prior to the secretary's
19 suspension of the licensed handler's license under
20 section 1106(a)(4), (6) or (7), the agricultural
21 commodity was subject to a written agreement for deferred
22 payment by the handler no later than 90 days following
23 the date of delivery and the licensed handler failed to
24 pay for the agricultural commodity on or before the
25 payment date established in the written agreement.

26 (2) If the deposit of agricultural commodity that was
27 the subject of the depositor's loss involves a circumstance
28 other than those described in paragraph (1), the liability of
29 the fund shall equal 100% of the first \$10,000 of the loss
30 and 80% of the remaining dollar value of that loss as

determined under subsection (a)(1) and (2).

(3) Notwithstanding paragraphs (1) and (2), the aggregate amount recovered by a depositor under all remedies shall not exceed 100% of the value of the depositor's loss. If the money recovered by a depositor under all remedies exceeds 100% 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) Determination.--The secretary or the secretary's designee shall determine the validity of any claim presented against the fund. A claim filed under this section for losses on an agricultural commodity other than an agricultural commodity stored under a bailment agreement shall not be valid unless the depositor has made a demand for settlement of the obligation within 12 months after the agricultural commodity is priced. A depositor whose claim has been refused by the secretary may appeal the refusal either to the Court of Common Pleas of Dauphin County or the court of common pleas of the county in which the depositor resides. The secretary shall provide for payment from the fund to a depositor whose claim has been found to be valid.

(d) Lack of sufficient assets.--If, at any time, the fund does not contain sufficient assets to pay valid claims, the secretary 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 the claims are presented and found to be valid.

(e) Depositor action.--If a depositor files an action for a legal or equitable remedy in a Federal or State court having jurisdiction in those matters that includes a claim against an

1 agricultural commodity upon which the depositor may file a claim
2 against the fund at a later date, the depositor also shall file
3 with the secretary a copy of the action filed with the court.

4 The following shall apply to claims against the fund filed under
5 this subsection:

6 (1) In the event of payment of a loss, the secretary
7 shall be subrogated to the extent of the amount of payments
8 to all rights, powers, privileges and remedies of the
9 depositor against any person regarding the loss.

10 (2) The depositor shall render all necessary assistance
11 to aid the secretary in securing the rights granted in this
12 section. An action or claim initiated by the depositor and
13 pending at the time of payment from the fund may not be
14 compromised or settled without the consent of the secretary.

15 § 1110. Lien on agricultural commodity assets of failed
16 handler.

17 (a) Parties.--A lien shall exist on all agricultural
18 commodity assets of a licensed handler in favor of a claimant:

19 (1) Including a lender, who possesses a receipt covering
20 an agricultural commodity owned or stored by the licensed
21 handler.

22 (2) Who possesses written evidence of ownership, other
23 than a receipt, disclosing a storage obligation of the
24 handler, including a ticket.

25 (3) Who surrendered a receipt as part of an agricultural
26 commodity sales transaction but was not paid fully for the
27 agricultural commodity and the handler failed within 21 days
28 after the surrender.

29 (4) Who possesses any other written evidence of the sale
30 of an agricultural commodity to the licensed handler for

1 which they were not paid fully, including the sale of an
2 agricultural commodity for a nominal sum under a feed
3 agreement.

4 (b) Attachment.--The lien that secures all claims described
5 in subsection (c) shall arise, attach to the agricultural
6 commodity assets of a licensed handler and take effect at the
7 time of delivery of the agricultural commodity for sale or for
8 storage under a bailment agreement, commencement of the storage
9 obligation or when money is advanced by the lender. The lien
10 shall terminate when the liability of the licensed handler to
11 the claimant is discharged on the condition that the priority of
12 each lien among the respective claimants shall not relate to the
13 date the claim arises but shall be governed by the priorities
14 established in subsection (c). If a failure occurs, the lien
15 claims of all claimants shall be considered assigned by
16 operation of this section to the department. If a failure and
17 subsequent litigation occurs, the lien shall transfer over to
18 assets or proceeds, or assets either received or liquidated by
19 the department. The lien established under this section shall
20 have priority over all competing lien claims asserted against
21 the agricultural commodity assets.

22 (c) Exclusive authority to enforce.--Except as provided in
23 subsection (d), if a failure occurs, the secretary shall possess
24 exclusive authority to enforce the lien claims and allocate the
25 proceeds as follows:

26 (1) First priority against all agricultural commodity
27 assets shall be a claimant:

28 (i) Including a lender, who possesses a receipt
29 covering an agricultural commodity owned or stored by the
30 licensed handler.

1 (ii) Who possesses written evidence of ownership,
2 other than a receipt, disclosing a storage obligation of
3 the licensed handler, including a ticket.

4 (iii) Who surrenders a receipt as part of an
5 agricultural commodity transaction but was not fully paid
6 for the agricultural commodity, and the licensed handler
7 failed within 21 days after the surrender.

8 (2) Second priority against all agricultural commodity
9 assets shall be to a claimant who possesses written evidence
10 of the sale of an agricultural commodity, including, but not
11 limited to, a ticket, delayed price agreement or similar
12 agricultural commodity delivery contract where delivery and
13 pricing was completed within 30 days prior to a licensed
14 handler's failure.

15 (3) To the extent not necessary to satisfy a first and
16 second priority claimant, any other claimant who possesses
17 written evidence of the sale of an agricultural commodity to
18 the licensed handler shall participate in the pro rata
19 distribution of the remainder of the agricultural assets in
20 an amount not to exceed the value of each claim.

21 (d) Adversary proceedings.--If any adversary proceeding is
22 commenced to recover agricultural commodity assets upon which
23 the lien imposed in this section is imposed and the department
24 declines to enter the proceeding, the secretary, upon
25 application to the secretary by a claimant, shall assign to the
26 claimant the applicable lien to permit the claimant to pursue
27 the claimant's lien in the adversary proceeding to the extent
28 the action will not delay the resolution of the proceeding, the
29 prompt liquidation of the assets or the ultimate distribution of
30 the assets to all claimants.

1 § 1111. Insolvent or discontinued handler.

2 (a) Prohibition.--Except in payment of or as security for an
3 existing debt, a licensed handler who is insolvent may not
4 accept a deposit of an agricultural commodity.

5 (b) Notification of expiration or cancellation.--A licensed
6 handler who intends to discontinue its operations at the
7 expiration of the licensed handler's license or at any other
8 time shall, at least 30 days prior to the date of the expiration
9 or cancellation of its license, notify the secretary, all
10 parties storing an agricultural commodity in the licensed
11 handler's warehouse and all holders of receipts issued by the
12 licensed handler, if known. If all holders of receipts are not
13 known, the licensed handler shall advertise its intention by
14 public notice in a newspaper of general circulation in the place
15 in which the warehouse is situated or, if no newspaper is
16 published in that place, in a newspaper of general circulation
17 in the county in which the warehouse is situated. The owners or
18 depositors of the agricultural commodities shall remove, or
19 cause to be removed, the agricultural commodities from the
20 warehouse before the expiration or cancellation of the license.
21 If for any reason the agricultural commodities are not removed
22 from the warehouse, the licensed handler shall sell them for the
23 account of the depositors in accordance with regulations
24 promulgated by the secretary.

25 § 1112. Handler recordkeeping and operational duties.

26 (a) Maintenance and records.--

27 (1) Each licensed handler shall keep in a place of
28 safety complete and correct records and accounts of:

29 (i) Agricultural commodities received in and
30 withdrawn from the licensed handler's warehouse.

1 (ii) Receipts and tickets issued by the licensed
2 handler.

3 (iii) Receipts and tickets returned to and canceled
4 by the licensed handler.

5 (2) The records and accounts required under paragraph
6 (1) shall be retained by the licensed handler for a period
7 prescribed by the secretary and copies of receipts or other
8 documents evidencing ownership of an agricultural commodity
9 or liability as a licensed handler shall be retained so long
10 as the documents are outstanding. A document that has been
11 canceled shall be retained for a period of not less than
12 three years from the date of cancellation.

13 (3) All records and accounts required under this section
14 shall be kept separate and distinct from records and accounts
15 of other business and shall be subject to inspection by the
16 secretary or the secretary's designee at all reasonable
17 times.

18 (4) The secretary may examine, or cause to be examined
19 at any reasonable time, the records and accounts,
20 agricultural commodity inventory or warehouse of a licensed
21 handler, applicant for a licensed handler's license or
22 unlicensed person suspected of being an agricultural
23 commodity handler. If the secretary or the secretary's
24 designee is unable to conduct or complete an examination of a
25 licensed handler's records, inventory or warehouse due to
26 inadequate, incomplete or noncurrent records, as required
27 under this chapter and any regulation adopted under it, the
28 secretary or the secretary's designee may assess a charge
29 against the licensed handler for necessary expenses incurred
30 or required by the secretary or the secretary's designee to

1 complete the examination. The charge shall become a claim of
2 the Commonwealth.

3 (5) Each licensed handler shall keep separate records
4 and accounts of all agricultural commodities that are
5 delivered to the licensed handler for storage under bailment
6 agreements and shall not include those agricultural
7 commodities in any accounting or computation of the licensed
8 handler's assets.

9 (b) Duty of care.--Each licensed handler shall, at all
10 times, including any period of suspension of the licensed
11 handler's license, exercise the care in regard to an
12 agricultural commodity in its custody as a bailee as a
13 reasonably prudent owner would exercise under the same
14 circumstance and condition. A licensed handler committing an
15 action or neglect, the effect of which is to depreciate the
16 value of an agricultural commodity stored under a bailment
17 agreement in a warehouse under the handler's control, shall be
18 liable to the depositor damaged by its action or neglect.
19 § 1113. Shortage of agricultural commodities.

20 If the secretary determines that a licensed handler does not
21 have in its possession sufficient agricultural commodities to
22 cover the outstanding receipts and tickets issued or assumed
23 under a bailment agreement, or if the licensed handler refuses
24 to submit records or property to lawful inspection as provided
25 under this chapter, the secretary may give notice requiring the
26 licensed handler to do any of the following:

- 27 (1) Cover the shortage.
28 (2) Furnish bond as required by the secretary.
29 (3) Submit to inspection as the secretary considers
30 necessary.

1 § 1114. Payment deadline for sale of agricultural commodity.

2 (a) Payment required.--Except as provided in subsection (b),
3 a licensed handler shall tender payment to a depositor or a
4 depositor's agent within 14 days of the sale of an agricultural
5 commodity.

6 (b) Exception.--Subsection (a) shall not apply to any of the
7 following:

8 (1) A written agreement providing a different payment
9 deadline.

10 (2) A delayed price agreement.

11 (3) A deferred payment agreement.

12 (4) Any other circumstance determined by the secretary,
13 as issued under a regulation.

14 § 1115. Disclosing lack of title or existence of lien.

15 No person shall knowingly deposit an agricultural commodity
16 to which the person does not have title or upon which there is a
17 lien or mortgage, either for sale or for storage under a
18 bailment agreement, without disclosing the lack of title or the
19 existence of the lien or mortgage.

20 § 1116. Penalties.

21 (a) Failure to obtain handler's license.--

22 (1) Except as provided in paragraph (2), a violation of
23 section 1103(a) (relating to requirement of handler's license
24 and application) shall constitute a summary offense for a
25 first offense and a misdemeanor of the third degree for each
26 subsequent offense. Upon conviction of a first offense, a
27 person may be imprisoned for no more than 90 days and be
28 fined no more \$1,000. Upon conviction of a subsequent
29 offense, a person may be imprisoned for no more than one year
30 and be fined no more than \$2,500.

1 (2) A person who violates section 1103(a) and who is
2 insolvent and financially unable to satisfy a claimant
3 commits the following offenses:

4 (i) If the financial obligation owed by the offender
5 to the claimant is \$1,000 or more but less than \$7,500,
6 the person is guilty of a misdemeanor of the second
7 degree. Upon conviction of an offense under this
8 subparagraph, an individual may be imprisoned for no more
9 than two years and be fined no more than \$5,000.

10 (ii) If the financial obligation is \$7,500 or more
11 but less than \$150,000, the person is guilty of a
12 misdemeanor of the first degree. Upon conviction of an
13 offense under this subparagraph, an individual may be
14 imprisoned for no more than five years and be fined no
15 more than \$10,000.

16 (iii) If the financial obligation is \$150,000 or
17 more, the person is guilty of a felony of the third
18 degree. Upon conviction of an offense under this
19 subparagraph, an individual may be imprisoned for no more
20 than seven years and be fined no more than \$15,000.

21 (b) Violation relating to delayed price agreements,
22 insolvency and disclosures.--A violation of section 1108(b)
23 (relating to delayed price agreement), 1111(a) (relating to
24 insolvent or discontinued handler) or 1115(a) (relating to
25 disclosing lack of title or existence of lien) shall constitute
26 a misdemeanor of the first degree. Upon conviction of an offense
27 under this subsection, an individual may be imprisoned for no
28 more than five years and be fined no more than \$10,000.

29 (c) Violations relating to records and accounts.--A licensed
30 handler who keeps false records and accounts in violation of

1 section 1112(a)(3) (relating to handler recordkeeping and
2 operational duties) commits the offense of tampering with
3 records or identification under 18 Pa.C.S. § 4104(a) (relating
4 to tampering with records or identification).

5 (d) Violations relating to payment deadlines.--A violation
6 of section 1114(a) (relating to payment deadline for sale of
7 agricultural commodity) shall constitute a summary offense for a
8 first offense and a misdemeanor of the third degree for each
9 subsequent offense. Upon conviction of a first offense, an
10 individual may be imprisoned for no more than 90 days and be
11 finned no more \$1,000. Upon conviction of a subsequent offense,
12 an individual may be imprisoned for no more than one year and be
13 finned no more than \$2,500.

14 Section 2. This act shall take effect in 120 days.