
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 862 Session of
2023

INTRODUCED BY D. WILLIAMS, FREEMAN, KINSEY, MADDEN AND SANCHEZ,
APRIL 10, 2023

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
APRIL 10, 2023

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, providing for licensing and regulation of
3 agricultural commodity handlers; creating the 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 13

11 AGRICULTURAL COMMODITY HANDLING

12 Sec.

13 1301. Scope of chapter.

14 1302. Definitions.

15 1303. Requirement of handler's license and application.

16 1304. Issuance of license.

17 1305. Powers and duties of department.

18 1306. Refusal or suspension of handler's license.

19 1307. Agricultural Commodity Indemnity Fund.

- 1 1308. Delayed price agreement.
2 1309. Filing claim upon handler's dishonor of demand.
3 1310. Lien on agricultural commodity assets of failed handler.
4 1311. Insolvent or discontinued handler.
5 1312. Handler recordkeeping and operational duties.
6 1313. Shortage of agricultural commodities.
7 1314. Payment deadline for sale of agricultural commodity.
8 1315. Disclosing lack of title or existence of lien.
9 1316. Penalties.

10 § 1301. Scope of chapter.

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

13 § 1302. Definitions.

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

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

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

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

25 (2) Redeposited agricultural commodities.

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

28 (4) Equity less any secured financing directly
29 associated with assets in hedging or speculative margin
30 accounts held by commodity or security exchanges or dealers

1 representing the exchanges and any money due or to become due
2 less any secured financing directly associated with any
3 transactions on the exchanges.

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

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

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

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

18 (7) Voluntarily surrendering a license.

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

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

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

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

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

30 (4) Providing a marketing function, including storage,

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

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

8 "Claimant." A person to whom a licensed handler owes a
9 financial obligation for agricultural commodities of the actual
10 monetary proceeds from agricultural commodities that have been
11 delivered to the handler.

12 "Deferred payment." The deferral of payment to a depositor
13 by a licensed handler for an agricultural commodity to which the
14 licensed handler has taken title to defer income of the
15 depositor from one tax year to another.

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

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

24 "Department." The Department of Agriculture of the
25 Commonwealth.

26 "Depositor." Any of the following:

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

30 (2) An owner or legal holder of a ticket or receipt

1 issued for an agricultural commodity who is a creditor of the
2 licensed handler for the value of the agricultural commodity.
3 "Failure" or "failed handler."

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

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

6 (ii) A public declaration of insolvency.

7 (iii) A revocation, suspension or conditional
8 suspension of license with outstanding indebtedness to a
9 claimant.

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

12 (v) Failure to file an application for license
13 renewal.

14 (vi) Denial of license renewal.

15 (2) As used in section 1312(b) (relating to handler
16 recordkeeping and operational duties), the term includes a
17 receiver, trustee or other custodian of an agricultural
18 commodity appointed for a licensed handler by a court of the
19 United States or this Commonwealth.

20 "Feed agreement." A written contract executed by and between
21 a licensed handler and a depositor who delivers an agricultural
22 commodity to the licensed handler for storage where the
23 following apply:

24 (1) The depositor transfers title to the agricultural
25 commodity to the licensed handler in exchange for a nominal
26 sum.

27 (2) The depositor, upon delivery of the agricultural
28 commodity to the licensed handler, becomes a creditor of the
29 licensed handler due to the lien arising under section 1310
30 (relating to lien on agricultural commodity assets of failed

1 handler).

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

5 "Fund." The Agricultural Commodity Indemnity Fund.

6 "Licensed handler." A person required to obtain a license
7 under section 1303(a) (relating to requirement of handler's
8 license and application) to handle an agricultural commodity
9 within this Commonwealth.

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

11 "Secretary." The Secretary of Agriculture of the
12 Commonwealth.

13 "Storage." The deposit of an agricultural commodity into a
14 warehouse, either for the account of the licensed handler
15 operating the warehouse or for the account of a depositor.

16 "Ticket." A scale weight ticket, a load slip or any
17 evidence, other than a receipt, given to a depositor by a
18 licensed handler upon delivery of an agricultural commodity to
19 the handler.

20 "Warehouse." A building, bin, protected enclosure or similar
21 premises used for receiving, storing, shipping or handling an
22 agricultural commodity.

23 § 1303. Requirement of handler's license and application.

24 (a) License required.--

25 (1) Except as provided in paragraph (2), no person may
26 engage in agricultural commodity handling without first
27 obtaining a handler's license.

28 (2) An agricultural commodity stored under a bailment
29 agreement in a warehouse operated by a person licensed under
30 7 U.S.C. § 242(j) (relating to powers of secretary), shall be

1 exempt from sections 1307 (relating to Agricultural Commodity
2 Indemnity Fund), 1311(b) (relating to insolvent or
3 discontinued handler), 1312(b) (relating to handler
4 recordkeeping and operational duties) and 1313 (relating to
5 shortage of agricultural commodities). Each person licensed
6 under 7 U.S.C. § 242(j) shall annually notify the secretary
7 in writing of the warehouse's licensing and, if applicable,
8 if the license is suspended or terminated.

9 (b) License application.--

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

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

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

25 (4) An application for renewal of a handler's license
26 shall be filed with the secretary no later than 30 days
27 before the current license expires. An applicant who fails to
28 file a renewal application in time shall pay a late fee of \$1
29 for each day the application is late, or \$15, whichever is
30 greater. A renewal license shall not be issued until a late

1 fee that is due has been paid.

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

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

12 (ii) The applicant pleaded guilty to or was
13 convicted of a felony or charge of embezzlement under the
14 laws of the United States, this Commonwealth or other
15 state.

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

18 (iv) The applicant's license under 7 U.S.C. § 242(j)
19 was revoked or canceled due to a violation of that act.

20 (c) Statutory agent.--

21 (1) An applicant for a handler's license or renewal
22 issued under subsection (b) that does not conduct business at
23 an address in this Commonwealth at which the applicant
24 usually can be contacted shall include with the application a
25 written appointment of an agent upon whom any process, notice
26 or demand may be served. The appointment shall be accompanied
27 by a written acceptance of the appointment signed by the
28 agent. The agent may be a natural person who is a resident of
29 this Commonwealth or a corporation whose principal place of
30 business is located in this Commonwealth. The appointment

1 shall be on forms and contain information as the secretary
2 prescribes. Failure to comply with this paragraph is grounds
3 for rejection of the application under subsection (b) (3).

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

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

20 (4) Failure to comply with paragraphs (2) and (3) is
21 grounds for suspension or conditional suspension of a
22 handler's license, without prior hearing, under section 1306
23 (relating to refusal or suspension of handler's license).

24 § 1304. Issuance of license.

25 (a) Issuance.--The secretary may issue a handler's license,
26 or renewal, upon the payment of the prescribed license fee, if
27 the secretary is satisfied the applicant meets the standards of
28 financial responsibility under this section.

29 (b) Financial responsibility standards.--

30 (1) Each applicant for a handler's license, or renewal,

1 shall have and maintain current assets equal to or greater
2 than current liabilities and a total net worth determined by
3 the department.

4 (2) The following apply:

5 (i) A deficiency in required total net worth may be
6 compensated by any of the following:

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

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

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

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

1 (c) Accounting.--

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

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

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

26 § 1305. Powers and duties of department.

27 The department has the following powers and duties:

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

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

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

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

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

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

19 § 1306. Refusal or suspension of handler's license.

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

25 (1) Has not maintained accurate and complete records and
26 accounts as required under section 1312(a) (relating to
27 handler recordkeeping and operational duties).

28 (2) Has failed to charge, collect or remit the fee
29 required under section 1307(d) (relating to Agricultural
30 Commodity Indemnity Fund).

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

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

9 (5) Does not have the net assets specified in section
10 1304(b) (relating to issuance of license) or has not obtained
11 a bond or other protection for any deficiency in required net
12 assets as provided in that section.

13 (6) Does not have the obligations for agricultural
14 commodities purchased under delayed price agreements secured
15 or represented as required under section 1308 (relating to
16 delayed price agreement).

17 (7) Does not submit financial statements that comply
18 with the requirements of section 1304(c) within the
19 applicable time period specified in that subsection.

20 (8) Does not notify the secretary of a statutory agent's
21 change of address or of the death, removal, resignation or
22 revocation of the appointment of a statutory agent or does
23 not appoint another agent in accordance with section 1303(c)
24 (relating to requirement of handler's license and
25 application).

26 (b) Hearing.--The applicant or licensed handler to whom a
27 denial, suspension or conditional suspension order is issued
28 shall be afforded a hearing in accordance with 2 Pa.C.S. Ch. 5
29 Subch. A (relating to practice and procedure of Commonwealth
30 agencies) after which the secretary shall issue or deny the

1 handler's license applied for in the pending application or
2 reinstate or revoke the suspended or conditionally suspended
3 license. The secretary may suspend, conditionally suspend or
4 revoke a handler's license after a hearing held in accordance
5 with the 2 Pa.C.S. Ch. 5 Subch. A for any other violation of
6 this chapter or any regulation adopted under it.

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

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

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

29 § 1307. Agricultural Commodity Indemnity Fund.

30 (a) Creation of fund.--A special fund to be known as the

1 Agricultural Commodity Indemnity Fund is created in the State
2 Treasury. The Commonwealth shall not be held liable for any
3 claim presented against the fund under section 1309 (relating to
4 filing claim upon handler's dishonor of demand).

5 (b) Funding sources.--The fund shall consist of a per-bushel
6 fee remitted under subsection (d), agricultural commodity
7 handler license fees under section 1303(b) (relating to
8 requirement of handler's license and application), a sum that
9 the secretary may collect by any legal action on behalf of the
10 fund and any property or security acquired through the use of
11 money in the fund.

12 (c) Use.--The money in the fund shall be used exclusively to
13 indemnify a depositor as provided in section 1309 and to pay
14 examination, inspection, administrative and enforcement costs of
15 this chapter.

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

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

21 (2) Agricultural commodities delivered to the licensed
22 handler for first sale.

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

25 (e) Procedure for recruiting and remittance.--A licensed
26 handler shall account for and remit money under subsection (d)
27 to the secretary in the manner and form as the secretary shall
28 prescribe by regulation.

29 (f) Disbursements.--Disbursements from the fund shall be
30 paid by the State Treasurer under a voucher authorized by the

1 secretary.

2 (g) Fee adjustment or waiver.--

3 (1) The secretary shall annually review the debits of
4 and credits to the fund and shall make any adjustment in the
5 fee necessary to maintain the fund within the limits
6 established under this section, but the fee may not exceed
7 \$0.005 per bushel on any agricultural commodity on which the
8 fee is to be paid. No later than March 1 of each year, the
9 secretary shall determine the proposed amount of the fee
10 based on the expected volume of agricultural commodities on
11 which the fee is to be collected and that are likely to be
12 handled under this chapter. The fee shall become effective on
13 June 1, 2023, and each June 1 thereafter.

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

15 (i) If, at the end of any calendar year, the fund
16 balance exceeds \$10,000,000, less any encumbered
17 balances, pending or unsettled claims and handler license
18 fees under section 1303(b), the fee required under
19 subsection (d) shall be waived until the secretary
20 reinstates the fee to maintain the liquidity of the fund
21 as provided in subparagraph (ii).

22 (ii) If, at any time, the secretary determines that
23 the fund balance, less any encumbered balances, pending
24 or unsettled claims and handler license fees under
25 section 1303(b), is less than \$8,000,000, the secretary
26 may reinstate the fee required under subsection (d). If
27 the secretary reinstates the fee, the secretary shall
28 notify all licensed handlers to begin collecting the fee
29 no later than 90 days after notification.

30 § 1308. Delayed price agreement.

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

6 (b) Maintenance of commodity required.--Subject to the lien
7 that attaches under section 1310 (relating to lien on
8 agricultural commodity assets of failed handler), a licensed
9 handler who purchases an agricultural commodity under a delayed
10 price agreement shall, at all times, maintain the commodity,
11 rights in the commodity, proceeds from the sale of the
12 commodity, or a combination of the commodity, rights and
13 proceeds, equal to at least 90% of the value of the licensed
14 handler's obligation for all commodities that the licensed
15 handler has purchased that are not priced under delayed price
16 agreements. The obligation shall be secured or represented by
17 means determined by the secretary.

18 § 1309. Filing claim upon handler's dishonor of demand.

19 (a) Claim.--If a depositor makes a demand for settlement of
20 an obligation concerning an agricultural commodity on which a
21 fee was required to be remitted under section 1307 (relating to
22 Agricultural Commodity Indemnity Fund) and the licensed handler
23 is experiencing failure, the depositor, after providing the
24 secretary or the secretary's designee with evidence of the
25 depositor's demand and the dishonoring of that demand, may file
26 a claim with the secretary no later than six months after
27 dishonor of the demand for indemnification from the fund, to be
28 measured as follows:

29 (1) The department shall establish the dollar value of
30 the loss incurred by a depositor holding a receipt or a

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

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

19 (b) Liability.--The fund shall be liable to a depositor for
20 money owed to the depositor for an agricultural commodity
21 deposited with a licensed handler under a transaction for which
22 the handler must remit a fee under section 1307(d) and that is
23 not recovered through other legal and equitable remedies as
24 follows:

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

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

30 (ii) Payment for the agricultural commodity was

1 tendered by the handler and subsequently dishonored, such
2 as payment by a check for which there were insufficient
3 funds or by a check that was written on an account that
4 was frozen by the financial institution.

5 (iii) The agricultural commodity was priced at the
6 time of delivery to the licensed handler, the delivery
7 occurred no more than 30 days prior to the secretary's
8 suspension of the licensed handler's license under
9 section 1306(a) (4), (6) or (7) (relating to refusal or
10 suspension of handler's license), and the handler failed
11 to pay for the agricultural commodity on or before the
12 date on which the suspension occurred.

13 (iv) The agricultural commodity was priced at the
14 time of delivery to the licensed handler, the delivery
15 occurred no more than 90 days prior to the secretary's
16 suspension of the licensed handler's license under
17 section 1306(a) (4), (6) or (7), the agricultural
18 commodity was subject to a written agreement for deferred
19 payment by the handler no later than 90 days following
20 the date of delivery and the licensed handler failed to
21 pay for the agricultural commodity on or before the
22 payment date established in the written agreement.

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

29 (3) Notwithstanding paragraphs (1) and (2), the
30 aggregate amount recovered by a depositor under all remedies

1 shall not exceed 100% of the value of the depositor's loss.
2 If the money recovered by a depositor under all remedies
3 exceeds 100% of the value of the depositor's loss, the
4 depositor shall reimburse the fund in the amount that exceeds
5 the value of that loss.

6 (c) Determination.--The secretary or the secretary's
7 designee shall determine the validity of any claim presented
8 against the fund. A claim filed under this section for losses on
9 an agricultural commodity other than an agricultural commodity
10 stored under a bailment agreement shall not be valid unless the
11 depositor has made a demand for settlement of the obligation
12 within 12 months after the agricultural commodity is priced. A
13 depositor whose claim has been refused by the secretary may
14 appeal the refusal either to the Court of Common Pleas of
15 Dauphin County or the court of common pleas of the county in
16 which the depositor resides. The secretary shall provide for
17 payment from the fund to a depositor whose claim has been found
18 to be valid.

19 (d) Lack of sufficient assets.--If, at any time, the fund
20 does not contain sufficient assets to pay valid claims, the
21 secretary shall hold those claims for payment until the fund
22 again contains sufficient assets. Claims against the fund shall
23 be paid in the order in which the claims are presented and found
24 to be valid.

25 (e) Depositor action.--If a depositor files an action for a
26 legal or equitable remedy in a Federal or State court having
27 jurisdiction in those matters that includes a claim against an
28 agricultural commodity upon which the depositor may file a claim
29 against the fund at a later date, the depositor also shall file
30 with the secretary a copy of the action filed with the court.

1 The following shall apply to claims against the fund filed under
2 this subsection:

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

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

12 § 1310. Lien on agricultural commodity assets of failed
13 handler.

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

16 (1) Including a lender, who possesses a receipt covering
17 an agricultural commodity owned or stored by the licensed
18 handler.

19 (2) Who possesses written evidence of ownership, other
20 than a receipt, disclosing a storage obligation of the
21 handler, including a ticket.

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

26 (4) Who possesses any other written evidence of the sale
27 of an agricultural commodity to the licensed handler for
28 which they were not paid fully, including the sale of an
29 agricultural commodity for a nominal sum under a feed
30 agreement.

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

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

23 (1) First priority against all agricultural commodity
24 assets shall be a claimant:

25 (i) Including a lender, who possesses a receipt
26 covering an agricultural commodity owned or stored by the
27 licensed handler.

28 (ii) Who possesses written evidence of ownership,
29 other than a receipt, disclosing a storage obligation of
30 the licensed handler, including a ticket.

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

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

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

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

28 § 1311. Insolvent or discontinued handler.

29 (a) Prohibition.--Except in payment of or as security for an
30 existing debt, a licensed handler who is insolvent may not

1 accept a deposit of an agricultural commodity.

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

22 § 1312. Handler recordkeeping and operational duties.

23 (a) Maintenance and records.--

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

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

28 (ii) Receipts and tickets issued by the licensed
29 handler.

30 (iii) Receipts and tickets returned to and canceled

1 by the licensed handler.

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

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

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

30 (5) Each licensed handler shall keep separate records

1 and accounts of all agricultural commodities that are
2 delivered to the licensed handler for storage under bailment
3 agreements and shall not include those agricultural
4 commodities in any accounting or computation of the licensed
5 handler's assets.

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

16 § 1313. Shortage of agricultural commodities.

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

24 (1) Cover the shortage.

25 (2) Furnish bond as required by the secretary.

26 (3) Submit to inspection as the secretary considers
27 necessary.

28 § 1314. Payment deadline for sale of agricultural commodity.

29 (a) Payment required.--Except as provided in subsection (b),
30 a licensed handler shall tender payment to a depositor or a

1 depositor's agent within 14 days of the sale of an agricultural
2 commodity.

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

5 (1) A written agreement providing a different payment
6 deadline.

7 (2) A delayed price agreement.

8 (3) A deferred payment agreement.

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

11 § 1315. Disclosing lack of title or existence of lien.

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

17 § 1316. Penalties.

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

19 (1) Except as provided in paragraph (2), a violation of
20 section 1303(a) (relating to requirement of handler's license
21 and application) shall constitute a summary offense for a
22 first offense and a misdemeanor of the third degree for each
23 subsequent offense. Upon conviction of a first offense, a
24 person may be imprisoned for no more than 90 days and be
25 fined no more \$1,000. Upon conviction of a subsequent
26 offense, a person may be imprisoned for no more than one year
27 and be fined no more than \$2,500.

28 (2) A person who violates section 1303(a) and who is
29 insolvent and financially unable to satisfy a claimant
30 commits the following offenses:

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

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

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

18 (b) Violation relating to delayed price agreements,
19 insolvency and disclosures.--A violation of section 1308(b)
20 (relating to delayed price agreement), 1311(a) (relating to
21 insolvent or discontinued handler) or 1315(a) (relating to
22 disclosing lack of title or existence of lien) shall constitute
23 a misdemeanor of the first degree. Upon conviction of an offense
24 under this subsection, an individual may be imprisoned for no
25 more than five years and be fined no more than \$10,000.

26 (c) Violations relating to records and accounts.--A licensed
27 handler who keeps false records and accounts in violation of
28 section 1312(a)(3) (relating to handler recordkeeping and
29 operational duties) commits the offense of tampering with
30 records or identification under 18 Pa.C.S. § 4104(a) (relating

1 to tampering with records or identification).

2 (d) Violations relating to payment deadlines.--A violation
3 of section 1314(a) (relating to payment deadline for sale of
4 agricultural commodity) shall constitute a summary offense for a
5 first offense and a misdemeanor of the third degree for each
6 subsequent offense. Upon conviction of a first offense, an
7 individual may be imprisoned for no more than 90 days and be
8 finned no more \$1,000. Upon conviction of a subsequent offense,
9 an individual may be imprisoned for no more than one year and be
10 finned no more than \$2,500.

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