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Requirements for Grain Dealers

State of Michigan

Licensing

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Requirements for Grain Dealers

STATE OF MICHIGAN

Current with legislation from the 2014 Reg.Sess..

M.C.L.A. 285.63

285.63. License; requirement; conduct governed by act; grounds for refusal of license; bond; offenses and penalties; inspection of books and records; injunctive relief

- (1) A person shall not act or offer to act as a grain dealer in this state without a license from the department issued under this act.
- (2) A grain dealer shall not process or store farm produce, issue a warehouse receipt, charge or collect a fee for storage of farm produce, issue a price later agreement, or issue an acknowledgment of receipt for delivery of farm produce except in compliance with this act.
- (3) Subject to subsection (4), the department may refuse to issue or renew a license to a grain dealer unless the grain dealer meets at least 1 of the following at the time the grain dealer submits the application:
 - (a) Has allowable net assets of more than \$1,000,000.00.
 - (b) Has allowable net assets of \$50,000.00 or more and handled 500,000 or fewer bushels of farm produce in the grain dealer's most recent fiscal year.
 - (c) Has allowable net assets of \$50,000.00 or more, and the allowable net assets equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the grain dealer's most recent completed fiscal year.
- (4) If a grain dealer fails to meet any of the allowable net asset requirements under subsection (3), the department may issue or renew the license if the grain dealer provides the department with a negotiable bond issued by a surety authorized to conduct business in this state, or proof of establishment of a restricted account in a financial institution that conducts business in this state, acceptable to the department and of which the department is the sole beneficiary, that is in an amount equal to the amount by which the grain dealer's allowable net assets failed to meet the allowable net asset requirement applicable under subsection (3).
- (5) A person who acts or offers to act as a grain dealer without a license is guilty of a misdemeanor. Each day that the person acts or offers to act as a grain dealer without a license is a separate misdemeanor.
- (6) If the director has probable cause to believe that a person is acting or offering to act as a grain dealer without a license, the director may review the books and records relating to the operations of the person.
- (7) Upon application of the department, a court in this state shall issue a temporary or permanent injunction enjoining a person from acting as a grain dealer without a license, issuing a warehouse receipt or price later agreement without a license, or interfering with an employee of the department or a receiver appointed under this act that is performing his or her duties under this act.

M.C.L.A. 285.64

285.64. Issuance, amendment or renewal of license; activities permitted by license; duration of license

- (1) The department may issue, amend, or renew a license if the department determines that the applicant has complied with this act and rules promulgated under this act.
- (2) A licensee may receive farm produce for storage or processing, assess and collect storage or processing charges on farm produce stored or processed, issue warehouse receipts on stored farm produce, issue price later agreements, collect handling charges on price later agreements, and issue acknowledgment forms.
- (3) Except as provided in subsection (4), a license is issued for a term of 1 year. A license is not transferable by the licensee. A licensee shall prominently display his or her license on the vehicle of a licensee who is a farm produce trucker or at the principal place of business of a licensee who is a grain merchandiser or at a facility, as applicable.
- (4) The department may, in its discretion, issue a new license for a term of up to 21 months.

M.C.L.A. 285.65

285.65. Revocation of license; notification of department by licensee of particular events

- (1) The department may revoke a grain dealer's license, but the grain dealer may apply for a new license, if any of the following events occur:
 - (a) The licensee is a party to a merger, consolidation, conversion, or similar transaction. The department may decide not to revoke the license if the successor to the licensee is licensed under this act and executes a successor's agreement acceptable to the department.
 - (b) Fifty percent or more of the shares, other than publicly traded shares, or other ownership interests in the licensee are sold, exchanged, or otherwise transferred. The department may decide not to revoke the license if the transferee is licensed under this act and executes a successor's agreement acceptable to the department.
 - (c) Fifty percent or more of the property and assets of the licensee are sold, leased, exchanged, or otherwise transferred. The department may waive this requirement if the transferee is licensed under this act and executes a successor's agreement acceptable to the department.
 - (d) The licensee ceases to pay its debts in the ordinary course of business, cannot pay its debts as they become due, or is insolvent under an applicable bankruptcy or insolvency law.
 - (e) If the grain dealer has 100 or more stockholders, members, partners, or owners, as applicable, more than 1/2 of the grain dealer's board of directors or other governing body or board are replaced with different individuals.
 - (f) The name of the grain dealer is changed.
- (2) If an event described in subsection (1) occurs, the grain dealer shall file a notice of the event with the department within 1 business day of the event.

M.C.L.A. 285.66
285.66. Temporary permit

(1) If a grain dealer has applied for a license but needs additional time to comply with the requirements of this act for issuance of a license, the department may issue 1 temporary permit to the applicant. A permit issued under this section expires on the expiration date set by the department, which may not be more than 30 days after the permit is issued, when a license is issued, or when the application for license is denied, whichever occurs first. The department may grant 1 extension of up to 30 days of a permit issued under this section.

(2) A grain dealer who has been granted a permit under this section has the same rights and obligations of a licensee under this act.

M.C.L.A. 285.67

285.67. Application for license; grant or denial of license; application fee, licensing fee, and financial statement; inspection and auditing of records

(1) A grain dealer shall file an application for a new license or for renewal or amendment of a license with the department. The department may determine the time when an application is filed and the form of the application. A complete application shall include all of the following:

(a) The name and ownership interest of each owner, stockholder, member, or partner of the grain dealer who owns at least 5% of the shares, other than publicly traded shares, or other ownership interests of the grain dealer, or for a grain dealer described in section 9(3),1 at least 5% of the shares, other than publicly traded shares, or other ownership interests of the parent corporation.

(b) The location and storage capacity of each facility of the grain dealer.

(c) Proof of insurance for all farm produce stored at each facility of the grain dealer.

(d) A statement that none of the events described in section 102 have occurred within the 5 years preceding the date of the license application, or if any of those events have occurred, a description of those events.

(e) A statement of the total bushels of farm produce handled by the grain dealer during the grain dealer's most recent completed fiscal year.

(f) If the grain dealer's most recent completed fiscal year was for a period of less than 12 months or the grain dealer materially changed its farm produce handling practices in that fiscal year, a projection of the total bushels of farm produce the grain dealer expects to handle in the current fiscal year.

(g) Copies of all warehouse receipt forms, price later agreement forms, and acknowledgment forms used by the grain dealer.

(h) Copies of all of the grain dealer's facility lease agreements and bin charts.

(i) If the grain dealer does not maintain an office in this state and does not have a resident agent in this state, the application shall include a written appointment of a statutory agent upon whom process, notice, or demand may be served. The statutory agent shall be an individual residing in this state or a corporation whose principal place of business is located in this state. If the identity or address of the statutory agent changes while the application is pending or after a license is issued, the grain dealer shall within 3 days file with the department a written appointment of the new statutory agent or written notice of the new address, as applicable.

(j) The license fee described in section 8.

(k) The financial statement described in section 9.3

(2) If an application described in subsection (1) is considered incomplete by the department, the department shall notify the applicant in writing or electronically within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 30-day time period described in subsection (6) is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The tolling of the 30-day time period under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other complete applications received at that same time.

(3) For a license renewal, a licensee shall submit the complete application to the department at least 30 days before the expiration of the current license term.

(4) If an application is withdrawn before a license or renewal is approved, the department shall retain \$50.00 for processing and return the remainder of the license fee to the grain dealer.

(5) By submitting an application, a grain dealer consents to inspection and auditing of its farm produce and financial records and its operations by the department. The grain dealer shall make the records available to the department in this state if the department makes a request to inspect or audit the records.

(6) The department shall issue or deny an initial or renewal license within 30 days after the department receives a complete application from an applicant.

(7) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

(8) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with agricultural issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 30-day time period described in subsection (6).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 30-day time period and the amount of money returned to licensees and registrants under subsection (7).

M.C.L.A. 285.68

285.68. License fee; grain dealer's fees fund; duration of license; fee schedule adjustment

(1) A grain dealer shall pay a license fee to the department with an application for a license or renewal of a license. The license fee is the sum of all of the following that apply to the grain dealer:

(a) For each receiving point of the grain dealer that has total bushel capacity of:

- | | |
|---|-----------|
| (i) 100,000 or less | \$ 500.00 |
| (ii) More than 100,000 and 200,000 or less | \$ 625.00 |
| (iii) More than 200,000 and 300,000 or less | \$ 750.00 |
| (iv) More than 300,000 and 400,000 or less | \$ 875.00 |

- (v) More than 400,000 \$ 1,000.00
- (b) For vehicles owned by a farm produce trucker:
 - (i) For 1 vehicle \$ 500.00
 - (ii) For each additional vehicle \$ 200.00
- (c) For a grain merchandiser's license \$ 1,000.00

(2) The grain dealer's fees fund is created in the state treasury. The department shall deposit license fees and administrative fines received under this act in the grain dealer's fees fund, to be used pursuant to legislative appropriation by the director in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining in the grain dealer's fees fund shall not revert or be credited to the general fund at the close of the fiscal year but shall remain in the grain dealer's fees fund. The department shall be the administrator of the fund for audit purposes.

(3) A license fee determined under subsection (1) is the fee for a 1-year license. If the department has issued a license for a period of longer than 1 year under section 4(4),1 it shall require a license fee increased on a proportionate basis to reflect the longer term of the license.

(4) Every year, the department may adjust the fee schedule in subsection (1) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index over the 1-year period. An adjustment under this subsection shall not exceed 5% even if the amount determined by the state treasurer to reflect the cumulative annual percentage change over the 1-year period is more than 5%. A fee adjusted under this subsection shall be rounded to the nearest \$5.00 increment. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

M.C.L.A. 285.69

285.69. Financial statement; plan and timetable for increase of current asset to current liability ratio; declaration of liability of parent corporation

(1) A grain dealer shall include with an application for a license or renewal a financial statement for the grain dealer's most recent completed fiscal year. The financial statement shall be a reviewed or audited financial statement, prepared by a certified public accountant in accordance with generally accepted accounting principles. The end of the grain dealer's most recent completed fiscal year shall be within 6 months of the expiration date of the grain dealer's current license. The financial statement shall include at least all of the following:

- (a) An accountant's report, a balance sheet, an income statement, and notes and disclosures.
- (b) A statement of the grain dealer's allowable net assets for purposes of section 3.1

(2) If a financial statement described in subsection (1) discloses that the grain dealer during the preceding fiscal year had a current asset to current liability ratio of less than 1 to 1, the licensee shall include with the application a plan and timetable to increase the current asset to current liability ratio to 1 to 1 or more.

(3) If a financial statement described in subsection (1) is a financial statement of the licensee's parent corporation or a consolidated financial statement of the licensee and its parent corporation, the application shall include a declaration of liability signed by an authorized representative of the parent corporation, by which the parent corporation assumes all financial obligations incurred by the licensee during the term of the license.

M.C.L.A. 285.70

285.70. Revocation or refusal of license

After a hearing conducted in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may revoke or refuse to issue or renew a license, or require a fidelity bond in an amount and on terms determined by the department, if any of the following occurred within the 5 years preceding the date of the license application:

- (a) The applicant, a manager employed by the applicant, or any other individual with management responsibilities for the farm produce handling business of the applicant was a principal in a grain dealer receivership or insolvency proceeding that resulted in losses to creditors or depositors.
- (b) The applicant, a manager employed by the applicant, or any other individual with management responsibilities for the farm produce handling business of the applicant pled guilty or was convicted of any felony involving fraud, conversion, or embezzlement.
- (c) The applicant's license under the United States warehouse act, 39 Stat. 486, 7 U.S.C. 241 to 273, was revoked or canceled due to a violation of that act.

M.C.L.A. 285.77

285.77. Discontinuance of business by dealer

(1) If a grain dealer intends to discontinue his or her farm produce handling business at or before the expiration of his or her license, at least 30 days before the date the grain dealer intends to discontinue the business, the grain dealer shall by registered or certified mail provide notice of intent to discontinue business to the director, each person storing farm produce in a facility of the grain dealer, and each known holder of a warehouse receipt, acknowledgment form, or open storage or price later agreement issued by the grain dealer. If the holder of a warehouse receipt, acknowledgment form, or open storage or price later agreement is not known, the grain dealer shall publish the notice in a newspaper of general circulation in each county in which a facility is located.

(2) If a grain dealer has provided or published a notice of intent to discontinue business under subsection (1) and the department determines that there is sufficient farm produce to cover warehouse receipts and open storage arrangements, a depositor of farm produce under a warehouse receipt or open storage arrangement in a facility of the grain dealer may remove or direct the removal of the farm produce from the facility before the expiration of the 30-day period described in subsection (1).

(3) Within 14 days of discontinuing his or her farm produce handling business, the grain dealer shall file a list of all farm produce liabilities assumed by a purchaser of the business, or any person other than the licensee, with the department.

M.C.L.A. 285.82

285.82. Administration and enforcement of act; administrative rules; grounds and procedure for revocation or suspension of license of dealer; proceedings upon revocation or suspension of license; seizure and protection of assets

(1) The director shall administer and enforce this act. In addition to any other powers conferred by this act, the director may do any of the following:

- (a) Audit and investigate the receiving, storing, processing, buying, selling, and handling of farm produce and any complaints concerning the receiving, storing, processing, buying, selling, and handling of farm produce.
 - (b) Require a grain dealer to terminate receiving, storing, processing, buying, selling, or other farm produce handling upon revocation, suspension, or summary suspension of his or her license.
 - (c) Administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and the production of records in connection with any investigation or hearing under this act.
 - (d) Prescribe and approve all forms, within the limitations set forth in this act, including the forms of warehouse receipts, acknowledgment forms, and applications for licenses.
 - (e) Employ investigatory personnel, including, but not limited to, a certified public accountant or an individual with accounting background and specialized investigative training and experience.
- (2) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act.
- (3) The director may revoke or suspend the license of a grain dealer or deny a license to a grain dealer if the director finds that the licensee has done any of the following:
- (a) Engaged in fraudulent or deceptive practices.
 - (b) Violated or attempted to violate this act or rules promulgated under this act.
 - (c) Failed to maintain insurance coverage required by this act.
 - (d) Failed to maintain accurate and complete records as required by this act.
 - (e) Failed to pay a fee required by this act.
 - (f) Refused to allow any authorized representative of the department to examine the applicant's or licensee's accounting records, accounts, farm produce inventories, or facilities during regular business hours.
 - (g) Failed to possess sufficient farm produce to cover the outstanding warehouse receipts or acknowledgment forms issued or assumed by the applicant or licensee.
 - (h) Issued a warehouse receipt in violation of this act or any rules adopted under this act.
 - (i) Failed to maintain the net allowable assets required by this act.
 - (j) Failed to submit a financial statement in compliance with this act.
 - (k) Failed to secure his or her obligations for price later agreements.
- (4) In a proceeding to suspend or revoke a license pursuant to subsection (3), the director shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The director may order a summary suspension of a license pursuant to section 92(2) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.
- (5) The director shall post a notice on the property of a grain dealer whose license has been restricted, suspended, or revoked that states the limitations or restrictions imposed on the grain dealer. The notice shall not be removed from the property without written authorization from the director.
- (6) If a grain dealer's license is suspended or revoked, the grain dealer may terminate storage, processing, shipping, or handling arrangements and collect outstanding charges.
- (7) If a grain dealer's license is suspended or revoked, the director shall notify all known warehouse receipt holders and unpaid depositors of the grain dealer.
- (8) If the director revokes a license under this section or a license expires, the grain dealer shall terminate all arrangements for farm produce handling in any facility of the grain dealer covered by the license in the manner prescribed by the director. Under the direction or supervision of the director, the grain dealer may liquidate farm produce previously received by the grain dealer.
- (9) If the director suspends a grain dealer's license under this act, the grain dealer may under direction

or supervision of the director operate the grain dealer's facilities, but shall not receive any farm produce for handling during the term of the suspension.

(10) During a license suspension or revocation proceeding, on behalf of this state and for the protection of holders of warehouse receipts or open storage or price later agreements of the licensee, the director may seize and protect the assets of the licensee by any legal, civil, or criminal proceedings necessary. If the grain dealer's license is revoked, the director may liquidate the grain dealer's warehouse receipts, open storage and price later agreements, and other assets. The director shall distribute the proceeds, first to the holders of warehouse receipts and open storage agreements, then to the secured holders of price later agreements, and then to all remaining holders of price later agreements. The director shall return any remaining proceeds to the grain dealer.