

FARM PRODUCE INSURANCE ACT (EXCERPT)
Act 198 of 2003

***** 285.325.amended THIS AMENDED SECTION IS EFFECTIVE SEPTEMBER 26, 2016 *****

285.325.amended Claim for reimbursement.

Sec. 15. (1) Subject to subsection (2), a producer that satisfies any of the following conditions is eligible to make a claim for reimbursement from the fund under this section:

(a) The producer possesses written evidence of ownership of farm produce that discloses a storage obligation of a licensee that has failed, including, but not limited to, a warehouse receipt, acknowledgment form, or settlement sheet.

(b) The producer has surrendered warehouse receipts as part of a sale of farm produce to a licensee that failed not more than 21 days after the surrender of the warehouse receipts and the producer surrendering the warehouse receipts was not fully paid for the farm produce.

(c) The producer possesses written evidence of the delivery and sale of farm produce or transfer of price later farm produce to a failed licensee, including, but not limited to, an acknowledgment form, settlement sheet, price later agreement, or similar farm produce delivery contract, but the grain dealer did not pay the producer in full for the farm produce.

(2) A producer is not eligible for reimbursement from the fund for a claim submitted under this section if any of the following apply:

(a) The producer previously requested a refund from the fund under section 13 and the producer did not previously reenter the program under section 13(5).

(b) The claim relates to delivery of farm produce to a licensee that is a cooperative association, under the terms of an agreement between the producer and the licensee that allocated delivery rights and obligations proportionate to a capital investment of the producer in the licensee.

(c) At the time the claim is submitted, excluding patronage interests, the producer is the owner of at least 5% of the voting shares, other than publicly traded shares, membership interests, partnership interests, or other ownership interests of the licensee whose failure is the basis of the claim. As used in this subdivision, "patronage interests" means shares or membership, partnership, or other ownership interests in a licensee that is a cooperative association that are allocated and distributed to the producer in proportion to that producer's patronage of the cooperative association.

(d) At the time the claim is submitted, the producer is the owner of at least 5% of the voting shares, other than publicly traded shares, membership interests, partnership interests, or other ownership interests of the parent corporation of the licensee whose failure is the basis of the claim.

(e) Title to the farm produce that is the subject of the claim was transferred by the producer more than 18 months before the date the claim is submitted.

(f) If notice of the failure of the licensee was published in a newspaper of general circulation in each county in which a facility of the licensee was located, the claim is submitted more than 1 year after that publication.

(3) If the department finds a claim made under subsection (1) is valid and the board approves of the valid claim, the board shall within 90 days of the board's approval pay the claimant the amount described in subsection (4) or (5) from the fund as compensation for the claim. The 90-day time period for payment may be extended if the board and claimant agree in a writing that describes the payment terms and schedule.

(4) A claimant that incurs a storage loss due to the failure of a licensee is entitled to payment under subsection (3) in an amount equal to 100% of the storage loss, less any administrative premium or producer premium that would have been due on the sale of the farm produce. The department shall determine the gross amount of the storage loss based on local market prices on the date of failure. The department may consider any evidence submitted by the failed licensee or any claimants concerning the actual charges associated with stored farm produce.

(5) A claimant that incurs a financial loss due to the failure of a licensee is entitled to payment under subsection (3) in an amount equal to 90% of the financial loss. For farm produce that is sold in a transaction subject to the grain dealers act, the department shall determine the amount of the financial loss based on the value of the farm produce less any outstanding charges against the farm produce. If the farm produce has not been priced, the department shall establish the amount of the financial loss using the local market on the date of failure less any usual and customary charges associated with the sale of farm produce.

(6) The board may require a claimant paid under this section for a valid claim to subrogate to the board or authority all the claimant's rights to collect on any bond issued under the grain dealers act or the United States warehouse act, 7 USC 241 to 256, and the claimant's rights to any other compensation arising from the failure

of the licensee. If required to subrogate under this subsection, the claimant shall assign the claimant's interest in any judgment concerning the failure to the board or authority.

(7) The board shall deny the payment of a valid claim under this section if the board determines any of the following are met:

(a) The claimant as payee fails to present for payment a negotiable instrument issued as payment for farm produce within 90 days after the date the negotiable instrument is tendered to the claimant as payment for farm produce purchased by the licensee.

(b) The claimant has engaged in marketing or management practices that have contributed to the claimant's loss. The authority may consider whether the marketing or management practices are generally accepted marketing or management practices in this state in making its determination.

(c) The claimant has intentionally committed a fraud or violated this act in connection with the claim.

(d) The claimant did not take reasonable actions to mitigate farm produce losses.

(8) If the department determines that a failure of a licensee has occurred, the board shall do all of the following:

(a) Determine the valid claims against the licensee and the amount of the valid claims.

(b) Authorize payment of money from the fund when necessary to pay claimants for valid claims as provided in this section.

(c) Deposit into the fund any proceeds of the remaining farm produce assets of a failed licensee to repay the fund for money paid to claimants, subject to any priority lien right a holder of a mortgage, security interest, or other encumbrance may possess under any applicable law. The board shall not deposit into the fund an amount in excess of the sum of the principal amount of valid claims paid to claimants, plus interest for the period from the date a claimant was paid for a valid claim to the date that the remaining farm produce assets were received by the board under this subsection, at a per annum rate equal to the auction rate of 91-day discount treasury bills on the date the claimant was paid.

(d) If the amount in the fund and any amount the board borrows under subsection (9)(b) are insufficient to pay all valid claims, pay the amount available for payment proportionately among the valid claims approved by the board and pay the prorated amount to those claimants.

(9) If the department determines that a failure of a licensee has occurred, the board may do any of the following:

(a) Pursue any subrogation rights obtained from claimants under subsection (6).

(b) If the fund has insufficient money to pay the valid claims, borrow money as authorized under section 7(8)(j) for the payment of valid claims.

History: 2003, Act 198, Imd. Eff. Nov. 10, 2003;—Am. 2008, Act 140, Imd. Eff. May 28, 2008;—Am. 2010, Act 300, Imd. Eff. Dec. 16, 2010;—Am. 2012, Act 149, Imd. Eff. May 30, 2012;—Am. 2016, Act 264, Eff. Sept. 26, 2016.