



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1572/2
KP:amn

2017 ASSEMBLY BILL 698

November 29, 2017 - Introduced by Representatives RIPP, BALLWEG, E. BROOKS, R. BROOKS, HORLACHER, KULP, KRUG, NERISON, TAUCHEN, TITTL, TUSLER and VANDERMEER, cosponsored by Senators MARKLEIN and OLSEN. Referred to Committee on Agriculture.

1 **AN ACT to repeal** 126.01 (20) (a), 126.11 (3) (f), 126.41 (2) (f), 126.44 (1) (c), 126.46
2 (5m) (a) 1., 126.46 (5m) (a) 2., 126.47 (3) (a) 1., 126.47 (3) (a) 2., 126.56 (3) (f) and
3 126.88 (1) (c); **to renumber** 126.41 (9) (a), 126.41 (9) (b) and 126.47 (1) (b) 2.;
4 **to renumber and amend** 126.41 (9) (intro.), 126.44 (1) (a), 126.44 (1) (b),
5 126.46 (5m) (a) (intro.), 126.47 (1) (b) 1. (intro.), 126.47 (1) (b) 1. a., 126.47 (1)
6 (b) 1. b., 126.47 (3) (a) (intro.) and 126.48 (3); **to consolidate, renumber and**
7 **amend** 126.01 (20) (intro.) and (b); **to amend** 126.11 (6), 126.11 (9) (intro.),
8 126.13 (1) (a) 2., 126.13 (1) (b) 2., 126.13 (1) (d), 126.13 (4m), 126.16 (1) (b),
9 126.16 (1) (c) 1. b., 126.16 (3) (a) (intro.), 126.16 (3) (a) 2., 126.16 (3) (b), 126.26
10 (5), 126.28 (4m), 126.41 (6) (intro.), 126.44 (1) (d), 126.44 (3), 126.44 (6m),
11 126.46 (1), 126.47 (3) (b), 126.47 (7) (a) (intro.), 126.47 (7) (am), 126.48 (1),
12 126.48 (2), 126.56 (9) (intro.), 126.58 (4m) and 126.88 (1) (b); and **to create**
13 126.13 (1) (e), 126.16 (3) (am), 126.16 (3) (c), 126.40 (6m), 126.40 (7e) (a) (intro.),
14 126.40 (7e) (b), 126.41 (6) (ag), 126.41 (6) (ar), 126.41 (6) (br) 4., 126.44 (1) (a)

ASSEMBLY BILL 698

1 1., 126.44 (1) (a) 2., 126.44 (1) (b) 1., 126.44 (1) (b) 2., 126.44 (1) (e), 126.47 (1)
2 (ae), 126.47 (3) (ae), 126.47 (3) (c), 126.47 (5m) (title), 126.47 (5m) (a), 126.47
3 (5m) (b) (intro.), 126.47 (7) (ae), 126.485, 126.56 (2) (c), 126.70 (4) (gm), 126.70
4 (4) (L) and 126.73 (4) of the statutes; **relating to:** various changes to the
5 Agricultural Producer Security Program, providing an exemption from
6 emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes changes to the Agricultural Producer Security Program, which is administered by the Department of Agriculture, Trade and Consumer Protection. The program is designed to minimize the risk that certain persons who buy vegetables from producers for processing, who buy milk or grain, or who store grain in a warehouse (contractors) will default on their financial obligations to vegetable, dairy, or grain producers. Under the program, contractors are required to be licensed by DATCP, and most contractors must pay into the agricultural producer security fund. If a contractor defaults, the fund reimburses a producer for a portion of the losses that the producer incurs as a result of the default.

SMALL VEGETABLE PROCESSOR EXEMPTION

Except for restaurants, other retail food establishments, and certain federally licensed persons, current law requires a person who procures vegetables grown for use in food processing from a vegetable producer, or the producer's agent, to satisfy certain requirements including payment of fees and assessments, holding a license granted by DATCP, and filing annual financial statements. The bill exempts a person who procures vegetables that are grown for use in food processing from a vegetable producer, or the producer's agent, from those requirements if the person spends less than \$15,000 per year on procuring vegetables.

MILK DEFERRED PAYMENT CONTRACTS

The bill allows a person who buys milk from a milk producer to enter into a contract to pay the producer for that milk up to approximately five months after the person receives the milk. Under the bill, a deferred payment contract for milk must be in writing, contain certain notices, and meet certain other requirements. Current law requires that a person who buys milk from a milk producer make certain portions of the payment for that milk by the 4th and the 19th days of the next month. The bill also requires DATCP to promulgate rules that establish an additional license assessment that a milk producer must pay for entering into a deferred payment contract, and requires a person who buys milk under a deferred payment contract to file and maintain security with DATCP, in certain situations, until it is eligible to be released.

ASSEMBLY BILL 698**GRAIN DEALER AND GRAIN WAREHOUSE KEEPER FUND BALANCES**

The bill also combines the agricultural producer security fund balance attributable to grain dealers and the fund balance attributable to grain warehouse keepers into a single fund balance attributable to both. Current law establishes a threshold for each fund balance attributable to a particular type of contractor, at which DATCP is required to reduce certain fees paid by contractors who have contributed to the fund by a portion of the amount that the fund balance exceeds the threshold. The bill adds together the threshold for the fund balance attributable to grain dealers and the threshold for the fund balance attributable to grain warehouse keepers to create a single threshold for certain fee reductions for both grain dealers and grain warehouse keepers. Under the bill, however, if the fund balance attributable to both grain dealers and grain warehouse keepers exceeds the threshold established by the bill, grain warehouse keepers are not eligible to receive a reduction in their inspection fee until January 1, 2023.

GRAIN DEALER DEFERRED PAYMENT PURCHASES

The bill also exempts the purchases that a grain dealer makes under a deferred payment contract from being counted in the requirements that are used to determine whether a grain dealer must file annual statements or file and maintain security with DATCP, if the producer who sells the grain under the deferred payment contract permanently waives its ability to receive a payment from the agricultural producer security fund after a default by that grain dealer. Under current law, such purchases are included in determining whether a grain dealer must file annual financial statements or file and maintain security, in certain situations, with DATCP.

PAYMENTS TO PRODUCERS DUE TO A DEFAULT

The bill also requires DATCP to disallow a claim by a producer for compensation from an agricultural producer security fund for a default if the producer does not file a claim against the defaulting party in each federal bankruptcy proceeding or state insolvency proceeding, initiated by another party, in which the producer is eligible to file a claim. The bill also grants DATCP subrogation rights to recover from a defaulting party, or any other party that is liable to a producer, the amount of any payment made by an agricultural producer security fund to a producer as a result of a default.

OTHER PROVISIONS

The bill also modifies the amount of security that a grain dealer or milk contractor is required to maintain in certain other situations besides when purchases are made under a deferred payment contract. Also, the bill eliminates the current law requirement that a sworn and notarized statement accompany a license application and certain financial reports that must be filed with DATCP.

ASSEMBLY BILL 698

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 126.01 (20) (intro.) and (b) of the statutes are consolidated,
2 renumbered 126.01 (20) and amended to read:

3 126.01 **(20)** “Reviewed financial statement” means a contractor’s financial
4 statement, other than an audited financial statement, ~~if all of the following apply:~~
5 ~~(b) The financial statement that~~ is reviewed by an independent certified public
6 accountant licensed or certified under ch. 442.

7 **SECTION 2.** 126.01 (20) (a) of the statutes is repealed.

8 **SECTION 3.** 126.11 (3) (f) of the statutes is repealed.

9 **SECTION 4.** 126.11 (6) of the statutes is amended to read:

10 126.11 **(6)** FEE CREDITS. If the combined balance in the fund contributed by
11 grain dealers and grain warehouse keepers, as defined in s. 126.25 (9), exceeds
12 ~~\$2,000,000~~ \$2,300,000 on May 31 of any license year, the department shall credit 50
13 percent of the excess amount against license fees charged under sub. (4) (b) to
14 contributing grain dealers who file timely license renewal applications for the next
15 license year. The department shall credit each contributing grain dealer on a
16 prorated basis, in proportion to the total fees that the grain dealer paid under sub.
17 (4) (b) for the 4 preceding license years as a contributing grain dealer.

18 **SECTION 5.** 126.11 (9) (intro.) of the statutes is amended to read:

19 126.11 **(9)** ~~SWORN AND NOTARIZED~~ APPLICANT STATEMENT. (intro.) As part of a
20 license application under sub. (3), an applicant shall provide a ~~sworn and notarized~~

ASSEMBLY BILL 698

1 statement, signed by the applicant or an officer of the applicant, that reports all of
2 the following:

3 **SECTION 6.** 126.13 (1) (a) 2. of the statutes is amended to read:

4 126.13 (1) (a) 2. Any deferred payment contract obligations under s. 126.11 (9)
5 (c) to a grain producer or producer agent that has not, under s. 126.70 (1) (b),
6 permanently waived eligibility to file a default claim against the grain dealer.

7 **SECTION 7.** 126.13 (1) (b) 2. of the statutes is amended to read:

8 126.13 (1) (b) 2. Any deferred payment contract obligations under s. 126.11 (9)
9 (c) to a grain producer or producer agent that has not, under s. 126.70 (1) (b),
10 permanently waived eligibility to file a default claim against the grain dealer.

11 **SECTION 8.** 126.13 (1) (d) of the statutes is amended to read:

12 126.13 (1) (d) ~~A~~ Except as provided under par. (e), a grain dealer licensed under
13 s. 126.11 may not incur any obligations under deferred payment contracts for grain
14 procured in this state unless the contractor first notifies the department and files an
15 annual financial statement with the department.

16 **SECTION 9.** 126.13 (1) (e) of the statutes is created to read:

17 126.13 (1) (e) A grain dealer licensed under s. 126.11 is not required to notify
18 the department or file an annual financial statement with the department under par.
19 (d) for an obligation incurred under a deferred payment contract, for grain procured
20 in this state, with a grain producer or producer agent that has, under s. 126.70 (1)
21 (b), permanently waived eligibility to file a default claim against the grain dealer.

22 **SECTION 10.** 126.13 (4m) of the statutes is amended to read:

23 126.13 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time,
24 require a grain dealer licensed under s. 126.11 to file an interim financial statement
25 with the department. ~~The grain dealer shall provide, with the interim financial~~

ASSEMBLY BILL 698**SECTION 10**

1 ~~statement, the grain dealer's sworn and notarized statement that the financial~~
2 ~~statement is correct.~~ An interim financial statement need not be a reviewed financial
3 statement or an audited financial statement.

4 **SECTION 11.** 126.16 (1) (b) of the statutes is amended to read:

5 126.16 (1) (b) A grain dealer who reports any deferred payment contract
6 obligations under s. 126.11 (9) (c) or 126.13 (1) (d), other than deferred payment
7 contract obligations to a grain producer or producer agent who permanently waived
8 eligibility to file a default claim under s. 126.70 (1) (b) and (c), shall file security with
9 the department, and maintain that security until the department releases it under
10 sub. (8) (b), ~~unless the grain dealer has positive equity and the grain dealer's annual~~
11 ~~financial statement under s. 126.13 (1) shows that the grain dealer has positive~~
12 ~~equity and~~ a debt to equity ratio of not more than 4.0 to 1.0.

13 **SECTION 12.** 126.16 (1) (c) 1. b. of the statutes is amended to read:

14 126.16 (1) (c) 1. b. The grain dealer's highest total, at any time during the
15 preceding 12 months, of unpaid obligations for producer grain procured in this state
16 under deferred payment contracts, excluding any unpaid obligations under a
17 deferred payment contract, for grain procured in this state, with a grain producer or
18 producer agent that has, under s. 126.70 (1) (b), permanently waived eligibility to file
19 a default claim against the grain dealer.

20 **SECTION 13.** 126.16 (3) (a) (intro.) of the statutes is amended to read:

21 126.16 (3) (a) (intro.) ~~Except as provided in par. (b), a~~ A grain dealer who is
22 required to file or maintain security under ~~this section~~ sub. (1) (a) shall at all times
23 maintain security that is at least equal to the sum of the following:

24 **SECTION 14.** 126.16 (3) (a) 2. of the statutes is amended to read:

ASSEMBLY BILL 698**SECTION 14**

1 126.16 (3) (a) 2. The grain dealer's highest total, at any time during the
2 preceding 12 months, of unpaid obligations for producer grain procured in this state
3 under deferred payment contracts, excluding any unpaid obligation under a deferred
4 payment contract, for grain procured in this state, with a grain producer or producer
5 agent that has, under s. 126.70 (1) (b), permanently waived eligibility to file a default
6 claim against the grain dealer.

7 **SECTION 15.** 126.16 (3) (am) of the statutes is created to read:

8 126.16 (3) (am) A grain dealer who is required to file or maintain security under
9 sub. (1) (b) shall at all times maintain security that is at least equal to the grain
10 dealer's highest total, at any time during the preceding 12 months, of unpaid
11 obligations for producer grain procured in this state under deferred payment
12 contracts, excluding any unpaid obligation under a deferred payment contract, for
13 grain procured in this state, with a grain producer or producer agent that has, under
14 s. 126.70 (1) (b), permanently waived eligibility to file a default claim against the
15 grain dealer.

16 **SECTION 16.** 126.16 (3) (b) of the statutes is amended to read:

17 126.16 (3) (b) A grain dealer who is required to file or maintain security ~~only~~
18 under sub. (1) (c) 2. shall at all times maintain security at least equal to the grain
19 dealer's estimated default exposure, as defined in sub. (1) (c) 1., less \$20,000,000.

20 **SECTION 17.** 126.16 (3) (c) of the statutes is created to read:

21 126.16 (3) (c) If more than one of pars. (a) to (b) applies to a grain dealer, the
22 grain dealer shall at all times maintain security at least equal to the greatest amount
23 of security that the grain dealer is required to maintain under any one of pars. (a)
24 to (b).

25 **SECTION 18.** 126.26 (5) of the statutes is amended to read:

ASSEMBLY BILL 698**SECTION 18**

1 126.26 (5) FEE CREDIT. If Beginning on January 1, 2023, if the combined fund
2 balance contributed by grain warehouse keepers and grain dealers, as defined in s.
3 126.10 (9), exceeds \$300,000 \$2,300,000 on May 31 of any license year, the
4 department shall credit 12.5 percent of the excess amount against grain warehouse
5 inspection fees charged under sub. (3) (b) to contributing grain warehouse keepers
6 who file timely license renewal applications for the next license year. The
7 department shall credit each contributing grain warehouse keeper on a prorated
8 basis, in proportion to the total inspection fees that the warehouse keeper has paid
9 under sub. (3) (b) for the 4 preceding license years.

10 **SECTION 19.** 126.28 (4m) of the statutes is amended to read:

11 126.28 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time,
12 require a grain warehouse keeper licensed under s. 126.26 (1) to file an interim
13 financial statement with the department. ~~The grain warehouse keeper shall~~
14 ~~provide, with the interim financial statement, the warehouse keeper's sworn and~~
15 ~~notarized statement that the financial statement is correct.~~ An interim financial
16 statement need not be a reviewed financial statement or an audited financial
17 statement.

18 **SECTION 20.** 126.40 (6m) of the statutes is created to read:

19 126.40 (6m) "Deferred payment contract" means a contract for the
20 procurement of producer milk under which all of the following apply to a milk
21 contractor's payment:

22 (a) For producer milk received during the first 15 days of the preceding month,
23 the milk contractor's payment is due after the 4th day of the month, based on an
24 estimated price that is at least 80 percent of the class III price published by the

ASSEMBLY BILL 698

1 regional federal milk market administrator for the month preceding the month in
2 which the milk is received, or 80 percent of the contract price, whichever is greater.

3 (b) For producer milk received during the preceding month, the balance of the
4 milk contractor's payment is due after the 19th day of the month.

5 **SECTION 21.** 126.40 (7e) (a) (intro.) of the statutes is created to read:

6 126.40 (7e) (a) (intro.) Seventy-five percent of the following:

7 **SECTION 22.** 126.40 (7e) (b) of the statutes is created to read:

8 126.40 (7e) (b) The milk contractor's highest total, at any time during the 12
9 preceding months, of unpaid obligations for producer milk procured in this state
10 under a deferred payment contract, excluding any unpaid obligations under a
11 deferred payment contract, for milk procured in this state, with a milk producer or
12 producer agent that has, under s. 126.70 (1) (b), permanently waived eligibility to file
13 a default claim against the milk contractor.

14 **SECTION 23.** 126.41 (2) (f) of the statutes is repealed.

15 **SECTION 24.** 126.41 (6) (intro.) of the statutes is amended to read:

16 126.41 (6) ~~SWORN AND NOTARIZED~~ APPLICANT STATEMENT. (intro.) As part of a
17 license application under sub. (2), an applicant shall provide a ~~sworn and notarized~~
18 statement, signed by the applicant or an authorized officer of the applicant, that
19 reports all of the following information:

20 **SECTION 25.** 126.41 (6) (ag) of the statutes is created to read:

21 126.41 (6) (ag) The amount of payments under par. (a) made under deferred
22 payment contracts.

23 **SECTION 26.** 126.41 (6) (ar) of the statutes is created to read:

ASSEMBLY BILL 698**SECTION 26**

1 126.41 (6) (ar) Whether the applicant has had any obligations under deferred
2 payment contracts, for milk procured in this state, at any time since the beginning
3 of the applicant's last completed fiscal year.

4 **SECTION 27.** 126.41 (6) (br) 4. of the statutes is created to read:

5 126.41 (6) (br) 4. The amount of payments under subd. 3. made under deferred
6 payment contracts.

7 **SECTION 28.** 126.41 (9) (intro.) of the statutes is renumbered 126.47 (5m)
8 (intro.) and amended to read:

9 126.47 (5m) (intro.) A milk contractor who files and maintains is required to
10 file or maintain security under s. 126.47 this section shall provide a monthly report
11 to the department containing ~~either~~ all of the following:

12 **SECTION 29.** 126.41 (9) (a) of the statutes is renumbered 126.47 (5m) (b) 1.

13 **SECTION 30.** 126.41 (9) (b) of the statutes is renumbered 126.47 (5m) (b) 2.

14 **SECTION 31.** 126.44 (1) (a) of the statutes is renumbered 126.44 (1) (a) (intro.)
15 and amended to read:

16 126.44 (1) (a) (intro.) A milk contractor shall file an annual financial statement
17 with the department, before the department first licenses the milk contractor under
18 s. 126.41 (1), ~~unless the milk contractor reports no more than 150,000~~
19 ~~hundredweight of milk under s. 126.41 (6) (bg).~~ if the milk contractor's license
20 application shows any of the following:

21 **SECTION 32.** 126.44 (1) (a) 1. of the statutes is created to read:

22 126.44 (1) (a) 1. That the amount of producer milk reported under s. 126.41 (6)
23 (bg) exceeds 150,000 hundredweight.

24 **SECTION 33.** 126.44 (1) (a) 2. of the statutes is created to read:

ASSEMBLY BILL 698**SECTION 33**

1 126.44 (1) (a) 2. Any deferred payment contract obligations under s. 126.41 (6)
2 (ar) to a milk producer or producer agent that has not, under s. 126.70 (1) (b),
3 permanently waived eligibility to file a default claim against the milk contractor.

4 **SECTION 34.** 126.44 (1) (b) of the statutes is renumbered 126.44 (1) (b) (intro.)
5 and amended to read:

6 126.44 (1) (b) (intro.) Except as provided in par. ~~(e)~~ or (d), a milk contractor
7 licensed under s. 126.41 (1) shall file an annual financial statement with the
8 department during each license year. ~~The~~ if the milk contractor's license application
9 for that year shows any of the following:

10 (cm) A milk contractor shall file ~~the~~ an annual financial statement under par.
11 (b) by the 15th day of the 4th month following the close of the milk contractor's fiscal
12 year. The department may extend the filing deadline for up to 30 days if the milk
13 contractor, or the accountant preparing the financial statement, files a written
14 extension request at least 10 days before the filing deadline.

15 **SECTION 35.** 126.44 (1) (b) 1. of the statutes is created to read:

16 126.44 (1) (b) 1. That the amount of producer milk reported under s. 126.41 (6)
17 (bg) exceeds 150,000 hundredweight and the milk contractor is not a contributing
18 milk contractor who procures milk in this state solely as a producer agent.

19 **SECTION 36.** 126.44 (1) (b) 2. of the statutes is created to read:

20 126.44 (1) (b) 2. Any deferred payment contract obligations under s. 126.41 (6)
21 (ar) to a milk producer or producer agent that has not, under s. 126.70 (1) (b),
22 permanently waived eligibility to file a default claim against the milk contractor.

23 **SECTION 37.** 126.44 (1) (c) of the statutes is repealed.

24 **SECTION 38.** 126.44 (1) (d) of the statutes is amended to read:

ASSEMBLY BILL 698**SECTION 38**

1 126.44 (1) (d) Rather than filing an annual financial statement under par. (b),
2 a milk contractor who is disqualified under s. 126.45 (3) (a) may file, during each
3 fiscal year, a compilation of financial information that is satisfactory to the
4 department ~~along with the milk contractor's sworn and notarized statement that the~~
5 ~~financial information is correct.~~ The milk contractor shall file the financial
6 information by the 15th day of the 4th month following the close of the milk
7 contractor's fiscal year. The department may extend the filing deadline for up to 30
8 days if the milk contractor, or an accountant preparing the financial information,
9 files a written extension request at least 10 days before the filing deadline.

10 **SECTION 39.** 126.44 (1) (e) of the statutes is created to read:

11 126.44 (1) (e) 1. Except as provided in subd. 2., a milk contractor licensed under
12 s. 126.41 may not incur any obligations under a deferred payment contract for milk
13 procured in this state unless the contractor first notifies the department and files an
14 annual financial statement with the department.

15 2. A milk contractor licensed under s. 126.41 is not required to notify the
16 department or file an annual financial statement with the department under subd.
17 1. for an obligation incurred under a deferred payment contract, for milk procured
18 in this state, with a milk producer or producer agent that has, under s. 126.70 (1) (b),
19 permanently waived eligibility to file a default claim against the milk contractor.

20 **SECTION 40.** 126.44 (3) of the statutes is amended to read:

21 126.44 (3) **QUARTERLY FINANCIAL STATEMENTS.** A milk contractor licensed under
22 s. 126.41 (1) who is not a contributing milk contractor shall file quarterly financial
23 statements with the department for the first 3 quarters in each of the milk
24 contractor's fiscal years. The milk contractor shall file each quarterly financial
25 statement no later than 60 days after the end of the fiscal quarter to which the

ASSEMBLY BILL 698**SECTION 40**

1 financial statement pertains. ~~With each quarterly financial statement, the milk~~
2 ~~contractor shall include the milk contractor's sworn and notarized statement that~~
3 ~~the financial statement is correct.~~

4 **SECTION 41.** 126.44 (6m) of the statutes is amended to read:

5 126.44 **(6m)** INTERIM FINANCIAL STATEMENT. The department may, at any time,
6 require a milk contractor licensed under s. 126.41 (1) to file an interim financial
7 statement with the department. ~~With the interim financial statement, the milk~~
8 ~~contractor shall provide the milk contractor's sworn and notarized statement that~~
9 ~~the financial statement is correct.~~ An interim financial statement need not be a
10 reviewed financial statement or an audited financial statement.

11 **SECTION 42.** 126.46 (1) of the statutes is amended to read:

12 126.46 **(1)** GENERAL. A contributing milk contractor shall pay an annual fund
13 assessment for each license year, including an assessment for deferred payment
14 contracts entered into under s. 126.485, in the amount specified by the department
15 by rule.

16 **SECTION 43.** 126.46 (5m) (a) (intro.) of the statutes is renumbered 126.46 (5m)

17 (a) and amended to read:

18 126.46 **(5m)** (a) Divide the amount of security that the milk contractor is
19 required to file under s. 126.47 (3) (b) by ~~75 percent of the following:~~ the amount of
20 the milk contractor's estimated default exposure.

21 **SECTION 44.** 126.46 (5m) (a) 1. of the statutes is repealed.

22 **SECTION 45.** 126.46 (5m) (a) 2. of the statutes is repealed.

23 **SECTION 46.** 126.47 (1) (ae) of the statutes is created to read:

24 126.47 **(1)** (ae) A milk contractor who reports any deferred payment contract
25 obligations under s. 126.41 (6) (ar) or 126.44 (1) (e) 1., other than deferred payment

ASSEMBLY BILL 698**SECTION 46**

1 contract obligations to a milk producer or producer agent that has, under s. 126.70
2 (1) (b), permanently waived eligibility to file a default claim against the milk
3 contractor, shall file security with the department, and maintain that security until
4 the department releases it under sub. (7) (ae), unless the milk contractor's annual
5 financial statement under s. 126.44 (1) shows that the milk contractor has positive
6 equity and a debt to equity ratio of not more than 4.0 to 1.0.

7 **SECTION 47.** 126.47 (1) (b) 1. (intro.) of the statutes is renumbered 126.40 (7e)
8 (intro.) and amended to read:

9 126.40 (7e) (intro.) ~~In this paragraph, “estimated~~ “Estimated default exposure”
10 means ~~75 percent~~ the sum of the following:

11 **SECTION 48.** 126.47 (1) (b) 1. a. of the statutes is renumbered 126.40 (7e) (a) 1.
12 and amended to read:

13 126.40 (7e) (a) 1. If the milk contractor reports unpaid milk payroll obligations
14 under s. ss. 126.41 (6) (b) 1. and ~~(9) (a)~~ 126.47 (5m) (b) 1., the highest amount of
15 unpaid milk payroll obligations, reported under s. 126.41 (6) (b) 1. or ~~(9) (a)~~ 126.47
16 (5m) (b) 1., that the milk contractor had at any time during the last 12 months.

17 **SECTION 49.** 126.47 (1) (b) 1. b. of the statutes is renumbered 126.40 (7e) (a) 2.
18 and amended to read:

19 126.40 (7e) (a) 2. If the milk contractor reports monthly milk payroll
20 obligations under s. ss. 126.41 (6) (b) 2. and ~~(9) (b)~~ 126.47 (5m) (b) 2., the highest
21 amount of milk payroll obligations, reported under s. 126.41 (6) (b) 2. or ~~(9) (b)~~ 126.47
22 (5m) (b) 2., that the milk contractor incurred in any month during the last 12 months.

23 **SECTION 50.** 126.47 (1) (b) 2. of the statutes is renumbered 126.47 (1) (b).

24 **SECTION 51.** 126.47 (3) (a) (intro.) of the statutes is renumbered 126.47 (3) (a)
25 and amended to read:

ASSEMBLY BILL 698**SECTION 51**

1 126.47 (3) (a) ~~Except as provided in par. (b), a~~ A milk contractor who is required
2 to file or maintain security under sub. (1) (a) shall at all times maintain security in
3 an amount at least equal to ~~at least 75 percent of the following: the milk contractor's~~
4 estimated default exposure.

5 **SECTION 52.** 126.47 (3) (a) 1. of the statutes is repealed.

6 **SECTION 53.** 126.47 (3) (a) 2. of the statutes is repealed.

7 **SECTION 54.** 126.47 (3) (ae) of the statutes is created to read:

8 126.47 (3) (ae) A milk contractor who is required to file or maintain security
9 under sub. (1) (ae) shall at all times maintain security that is at least equal to the
10 milk contractor's highest total, at any time during the preceding 12 months, of
11 unpaid obligations for producer milk procured in this state under a deferred payment
12 contract, excluding any unpaid obligation under a deferred payment contract, for
13 milk procured in this state, with a milk producer or producer agent that has, under
14 s. 126.70 (1) (b), permanently waived eligibility to file a default claim against the
15 milk contractor.

16 **SECTION 55.** 126.47 (3) (b) of the statutes is amended to read:

17 126.47 (3) (b) A milk contractor who is required to file or maintain security ~~only~~
18 under sub. (1) (b) shall at all times maintain security at least equal to the milk
19 contractor's estimated default exposure, ~~as defined in sub. (1) (b) 1.,~~ less \$20,000,000.

20 **SECTION 56.** 126.47 (3) (c) of the statutes is created to read:

21 126.47 (3) (c) If more than one of pars. (a) to (b) applies to a milk contractor,
22 the milk contractor shall at all times maintain security at least equal to the greatest
23 amount of security that the milk contractor is required to maintain under any one
24 of pars. (a) to (b).

25 **SECTION 57.** 126.47 (5m) (title) of the statutes is created to read:

ASSEMBLY BILL 698**SECTION 57**

1 126.47 **(5m)** (title) MONTHLY REPORTS.

2 **SECTION 58.** 126.47 (5m) (a) of the statutes is created to read:

3 126.47 **(5m)** (a) The milk contractor's total unpaid obligations at the end of the
4 previous month for producer milk procured in this state under a deferred payment
5 contract, excluding any unpaid obligation under a deferred payment contract, for
6 milk procured in this state, with a milk producer or producer agent that has, under
7 s. 126.70 (1) (b), permanently waived eligibility to file a default claim against the
8 milk contractor.

9 **SECTION 59.** 126.47 (5m) (b) (intro.) of the statutes is created to read:

10 126.47 **(5m)** (b) (intro.) Either of the following:

11 **SECTION 60.** 126.47 (7) (a) (intro.) of the statutes is amended to read:

12 126.47 **(7)** (a) (intro.) The department may release security filed under sub. (1)
13 (a), except for any amount of security that the milk contractor is required to file under
14 sub. (1) (ae) or (b), if any of the following applies:

15 **SECTION 61.** 126.47 (7) (ae) of the statutes is created to read:

16 126.47 **(7)** (ae) The department may release security filed under sub. (1) (ae),
17 except for any amount of security that the milk contractor is required to file under
18 sub. (1) (a) or (b), if any of the following applies:

19 1. The milk contractor has not had any deferred payment contract obligations
20 since the beginning of the milk contractor's last completed fiscal year.

21 2. The milk contractor files 2 consecutive annual financial statements under
22 s. 126.44 showing that the milk contractor meets the applicable equity requirement
23 and debt to equity ratio under sub. (1) (ae).

24 **SECTION 62.** 126.47 (7) (am) of the statutes is amended to read:

ASSEMBLY BILL 698**SECTION 62**

1 126.47 (7) (am) The department may release security filed under sub. (1) (b),
2 except for any amount of security that the milk contractor is required to file because
3 sub. (1) (a) or (ae) applies to the milk contractor, if the milk contractor files 2
4 consecutive annual financial statements under s. 126.44 showing that the milk
5 contractor no longer has negative equity, a current ratio of less than 1.25 to 1.0, or
6 a debt to equity ratio of more than 2.0 to 1.0.

7 **SECTION 63.** 126.48 (1) of the statutes is amended to read:

8 126.48 (1) FIRST MONTHLY PAYMENT. By Except as provided under the terms of
9 a deferred payment contract that satisfies the requirements under s. 126.485, by the
10 4th day of each month, a milk contractor shall pay for producer milk received during
11 the first 15 days of the preceding month. The milk contractor shall base the payment
12 on an estimated price that is at least 80 percent of the class III price published by the
13 regional federal milk market administrator for the month preceding the month in
14 which the milk is received, or 80 percent of the contract price, whichever is greater.

15 **SECTION 64.** 126.48 (2) of the statutes is amended to read:

16 126.48 (2) SECOND MONTHLY PAYMENT. By Except as provided under the terms
17 of a deferred payment contract that satisfies the requirements under s. 126.485, by
18 the 19th day of each month, a milk contractor shall pay the balance due for producer
19 milk received during the preceding month.

20 **SECTION 65.** 126.48 (3) of the statutes is renumbered 126.487, and 126.487
21 (intro.), as renumbered, is amended to read:

22 **126.487 Payment explanation.** (intro.) The department may, by rule,
23 require a milk contractor to provide a milk producer or producer agent with a written
24 explanation of each payment under ~~this section~~ s. 126.48 or of each deferred payment

ASSEMBLY BILL 698**SECTION 65**

1 under s. 126.485. The department may specify the content of the explanation,
2 including information related to any of the following:

3 **SECTION 66.** 126.485 of the statutes is created to read:

4 **126.485 Milk contractors; deferred payment contracts. (1) CONTRACT IN**
5 **WRITING.** A milk contractor may not procure milk from any milk producer or producer
6 agent under a deferred payment contract before the contract is reduced to writing
7 and signed by the parties. The milk contractor shall provide a copy of the signed
8 contract to the other party.

9 **(2) CONTENTS OF CONTRACT.** A milk contractor may not enter into a deferred
10 payment contract unless the deferred payment contract includes all of the following:

11 (a) A unique contract identification number.

12 (b) The specific payments required under s. 126.48 (1) or (2), or portion thereof,
13 that are deferred under the contract.

14 (c) The date by which the milk contractor agrees to make full payment for the
15 milk.

16 (d) The milk contractor's permanent business location.

17 (e) A statement in clear and conspicuous print immediately above the contract
18 signature line stating: "The milk contractor (buyer) becomes the owner of any milk
19 that the producer or producer agent (seller) delivers to the milk contractor under this
20 contract. The producer or producer agent relinquishes ownership and control of the
21 milk, and may become an unsecured creditor pending payment."

22 (f) A statement that the milk contractor deducts the deferred payment contract
23 assessment established by the department by rule under s. 126.46 (1) from the
24 amount paid to a milk producer or producer agent under a deferred payment
25 contract.

ASSEMBLY BILL 698**SECTION 66**

1 (g) Other information required under this section by the department.

2 (3) RULE MAKING. The department may promulgate rules to modify the
3 requirements for the contents of deferred payment contracts under sub. (2).

4 (4) PAYMENT DUE DATES. (a) The due date by which a milk contractor agrees to
5 make full payment for milk under a deferred payment contract may not be more than
6 120 days after the date on which the milk contractor's payments would have been due
7 under s. 126.48 (2).

8 (b) A milk contractor shall make full payment under a deferred payment
9 contract by the due date specified in the contract under sub. (2) (c), or if the parties
10 agree by another date that satisfies par. (a).

11 (5) DEFERRED PAYMENT CONTRACT ASSESSMENT. From the amount that a milk
12 contractor pays to a milk producer or producer agent under a deferred payment
13 contract, the milk contractor shall deduct a deferred payment contract assessment.
14 The assessment shall equal the total amount owed under the contract before the
15 assessment is deducted, multiplied by the deferred payment assessment rate that
16 applies under s. 126.46 (1) when the contract is made. The milk contractor shall
17 disclose the assessment amount.

18 **SECTION 67.** 126.56 (2) (c) of the statutes is created to read:

19 126.56 (2) (c) A vegetable contractor who spends less than \$15,000 per license
20 year to procure processing vegetables from vegetable producers and producer agents.

21 **SECTION 68.** 126.56 (3) (f) of the statutes is repealed.

22 **SECTION 69.** 126.56 (9) (intro.) of the statutes is amended to read:

23 126.56 (9) ~~SWORN AND NOTARIZED~~ APPLICANT STATEMENT. (intro.) As part of a
24 license application under sub. (3), an applicant shall provide a ~~sworn and notarized~~

ASSEMBLY BILL 698**SECTION 69**

1 statement, signed by the applicant or an officer of the applicant, that reports all of
2 the following:

3 **SECTION 70.** 126.58 (4m) of the statutes is amended to read:

4 126.58 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time,
5 require a vegetable contractor licensed under s. 126.56 (1) to file an interim financial
6 statement with the department. ~~The vegetable contractor shall provide, with the~~
7 ~~interim financial statement, the vegetable contractor's sworn and notarized~~
8 ~~statement that the financial statement is correct.~~ An interim financial statement
9 need not be a reviewed or audited financial statement.

10 **SECTION 71.** 126.70 (4) (gm) of the statutes is created to read:

11 126.70 (4) (gm) That the claim relates to a payment that first became due,
12 under a deferred payment contract for milk, after the payment due date under s.
13 126.485 (4) (b).

14 **SECTION 72.** 126.70 (4) (L) of the statutes is created to read:

15 126.70 (4) (L) That the claimant was eligible, at any time before filing a default
16 claim under sub. (2), to file a claim against the defaulting contractor in a federal
17 bankruptcy proceeding under 11 USC 101 et seq. initiated by a party other than the
18 claimant, or a proceeding under ch. 128 initiated by a party other than the claimant,
19 or both, and did not file a claim against the defaulting contractor in each proceeding
20 in which the claimant was eligible to file a claim.

21 **SECTION 73.** 126.73 (4) of the statutes is created to read:

22 126.73 (4) SUBROGATION. The department is subrogated to the rights of a
23 claimant who obtains a payment under s. 126.72 (1) or (2) in an amount equal to the
24 payment, against the defaulting contractor and against any party that would
25 otherwise be liable to the claimant for the amount of the default.

ASSEMBLY BILL 698**SECTION 74**

1 **SECTION 74.** 126.88 (1) (b) of the statutes is amended to read:

2 126.88 (1) (b) Maintain a combined fund balance attributable to grain dealers
3 and grain warehouse keepers of at least ~~\$1,000,000~~ \$1,200,000, but not more than
4 ~~\$6,000,000~~ \$7,000,000.

5 **SECTION 75.** 126.88 (1) (c) of the statutes is repealed.

6 **SECTION 76. Nonstatutory provisions.**

7 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
8 the department of agriculture, trade and consumer protection shall promulgate the
9 rules required under section 126.46 (1) of the statutes for the period before the
10 effective date of the permanent rules promulgated under section 126.46 (1) of the
11 statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, a rule
12 promulgated under this subsection may remain in effect for not more than 24
13 months. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
14 department is not required to provide evidence that promulgating a rule under this
15 subsection as an emergency rule is necessary for the preservation of the public peace,
16 health, safety, or welfare and is not required to provide a finding of emergency for a
17 rule promulgated under this subsection.

18 **SECTION 77. Initial applicability.**

19 (1) DISALLOWED CLAIMS. The treatment of section 126.70 (4) (L) of the statutes
20 first applies to a claim that is filed on the effective date of this subsection.

21 **SECTION 78. Effective dates.** This act takes effect on the 30th day after the
22 day of publication, except as follows:

23 (1) DISALLOWED CLAIMS. The treatment of section 126.70 (4) (L) of the statutes
24 takes effect on the 60th day after the effective date of this subsection.

25

(END)