

2001 DRAFTING REQUEST

Bill

Received: 09/19/2000

Received By: traderc

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Walker

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Alt. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies: 

Pre Topic:

DOA:.....Walker -

Topic:

Agricultural producer security

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2	traderc 11/17/2000	gilfokm 12/04/2000	jfrantze 12/06/2000 jfrantze 12/06/2000	_____	lrb_docadmin 12/06/2000 lrb_docadmin 12/06/2000		
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/1	traderc 01/11/2001	gilfokm 01/11/2001	kfollet 01/11/2001	_____	lrb_docadmin 01/12/2001		
/2	traderc 01/26/2001	gilfokm 01/26/2001	pgreensl 01/26/2001	_____	lrb_docadmin 01/26/2001		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	traderc 02/07/2001	gilfokm 02/07/2001	kfollet 02/07/2001	_____	lrb_docadmin 02/07/2001		Statc

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/1	traderc 01/11/2001	gilfokm 01/11/2001	kfollet 01/11/2001	<i>1/26</i>	lrb_docadmin 01/12/2001		

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*12-1/26-01 King*  
*1/26 pb*

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\* Ch. 127 has Graphics \*

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				_____			

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DOA:.....Walker - Agricultural producer security

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

The IP1 is the version submitted by DATCP

1 AN ACT ...; relating to: security of payments by grain dealers, grain warehouse  
2 keepers, milk contractors and vegetable contractors to agricultural producers,  
3 granting rule-making authority and making appropriations and fund  
4 transfers.

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***Analysis by the Legislative Reference Bureau  
Agricultural Producer Security Program  
Proposed Legislation***

**Analysis Prepared by the Department of Agriculture**

**TRADE AND CONSUMER PROTECTION**

This bill repeals and recreates current security programs that protect agricultural producers against catastrophic defaults by grain dealers, grain warehouse keepers, dairy plant operators and vegetable processors. This bill creates an agricultural producer security fund, financed by industry fees. This bill is intended to improve security for producers, reduce security costs, and free approximately \$185 million in industry working capital for other uses.

**CURRENT SECURITY PROGRAMS**

The department of agriculture, trade and consumer protection (DATCP) currently administers programs under s. 100.03, s. 100.06 and ch. 127, Stats., related

to agricultural producer security. DATCP has adopted rules under chs. ATCP 98, 99 and 100 to implement these programs.

Current security programs are intended to protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, dairy plant operators and vegetable processors (hereinafter collectively referred to as “operators”). Current programs do not guarantee payment to producers, but are intended to minimize default risks.

Under the current programs, DATCP reviews confidential financial statements filed by licensed operators. If an operator’s financial statement fails to meet minimum financial standards, the operator must file security with DATCP. DATCP holds the security for the benefit of producers, and may convert the security to pay producers if the operator defaults. Financial standards and security requirements vary by industry. Security covers some, but not necessarily all, of an operator’s obligations to producers.

DATCP currently holds nearly \$200 million in security under these programs. Security may include commercial surety bonds, certificates of deposit, marketable securities and bank letters of credit. As an alternative to filing security, a dairy plant operator may enter into a dairy plant trusteeship. Under a dairy plant trusteeship, an independent trustee receives all payments from sales of dairy products, and pays the dairy plant’s obligations to producers before forwarding remaining receipts to the dairy plant operator.

If an operator defaults, DATCP initiates a formal administrative proceeding to determine the amount of allowed producer claims. Affected parties may contest producer claims, and may appeal DATCP’s decision to circuit court. Once DATCP determines the amount of allowed claims, DATCP may seek to pay the claims as follows:

1. If DATCP holds security, DATCP may apply that security to pay allowed producer claims
2. If DATCP finds that a dairy plant trustee has failed to perform his or her obligations, DATCP may make a demand against the trustee’s performance bond. DATCP may use the bond proceeds to pay producer claims.
3. If DATCP holds no security (because the operator was licensed on the strength of the operator’s financial statement), DATCP may not be able to pay producer claims. DATCP may demand payment from the defaulting operator, but the operator will seldom have enough assets to pay all creditor claims. Producer claims are subordinate to those of secured creditors and mortgage holders such as banks. In bankruptcy proceedings, they may also be subordinate to certain unsecured creditor claims that have higher priority under federal bankruptcy law.

### **PROPOSED SECURITY PROGRAM**

This bill repeals and recreates the current producer security programs for grain, dairy and processing vegetables. This bill regulates grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (hereinafter collectively referred to as “contractors”) who procure grain, milk or processing

vegetables from producers. This bill regulates "producer agents" as contractors, but also allows "producer agents" to file claims against defaulting contractors on behalf of producers.

### ***Agricultural Producer Security Fund***

This bill establishes an agricultural producer security fund ("the fund"), a trust fund financed by industry fees and assessments. With certain exceptions, all contractors must be licensed and must contribute to the fund. The fund is managed by the state of Wisconsin investment board. Accumulated interest stays in the fund. The fund is backed by industry surety bonds (one each for grain, milk and processing vegetables) and by a blanket surety bond. DATCP purchases these surety bonds with fund proceeds.

If a contributing contractor defaults, DATCP may pay affected producers (including producers who would have no effective redress under current law) from the fund. If default claims exceed a specified amount, DATCP may resort to the appropriate industry bond (grain, milk or vegetable). If the default claims exceed the combined amounts payable from the fund and the industry bond, DATCP may resort to the blanket bond. This bill spells out the maximum amounts that DATCP may pay from each source.

Fund contributions from grain dealers, grain warehouse keepers, milk contractors and vegetable contractors are pooled in a single fund. Default claims from each industry sector are paid from the overall fund, regardless of fund contribution source. However, DATCP will track fund contributions, default payments and current balances for each industry sector.

If the fund balance for any industry sector exceeds a specified amount, DATCP will return part of the excess (in the form of license fee credits) to contributing contractors in that sector. In consultation with an industry advisory council, DATCP will also be required to adjust fund assessments by rule to keep fund balances within specified limits (see below).

### ***Security***

Because this bill substitutes an insurance pool (the fund) for the current system of individual security, fewer contractors are required to file individual security with DATCP. This will free approximately \$185 million in industry working capital for other uses. It will also save out-of-pocket costs for security fees.

Certain contractors must still file security if they have negative equity when the new law takes effect. But others will be exempt from security filing requirements, even if their financial condition deteriorates in later years. Instead, they will be required to contribute to the fund at a higher rate that reflects their deteriorated financial condition and risk to the fund.

The department will return any security filed, under current law, by a contractor who is no longer required to file security under this bill. The department will return the security 90 days after the contractor's first annual license renewal date following the effective date of this bill.

### ***Financial Statements***

Under current law, most contractors must file annual (and in some cases quarterly) financial statements with DATCP. This bill also requires some

contractors to file financial statements. Filing requirements vary by industry and individual contractor. Some small contractors will no longer be required to file annual financial statements. Overall, this bill will reduce financial statement costs for small contractors.

Some contractors may choose to file financial statements under this bill, even though they are not required to do so. For example, contractors with favorable financial ratios may file voluntary financial statements in order to qualify for lower fund assessments.

### ***Fund Contributions***

This bill requires contractors to contribute to the fund (there are some exceptions). Fund assessments vary by industry. A contractor's annual assessment is based on the contractor's size and financial condition. Contractors with more favorable current ratios and debt-to-equity ratios pay lower fund assessments, reflecting their lower risks to the fund.

Fund assessments are calculated according to a mathematical formula. The formula ensures a smooth transition between assessment levels, so there is no "jump" between payment brackets.

The formula uses the current ratio and debt-to-equity ratio shown in the contractor's annual financial statement. If the contractor has not filed an annual financial statement, the formula uses standard values specified in the law. Contractors who are not required to file financial statements, but who have favorable financial ratios, may file voluntary financial statements to qualify for lower fund assessments.

Many contractors will experience cost savings that will offset the fund assessments under this bill. The industry as a whole will realize cost savings in the first year. Fund assessments will decline, and cost savings will increase, in subsequent years. Individual contractor costs may vary. This bill will not increase program administration costs or charges.

When the fund balance attributable to an industry sector exceeds a specified amount (\$2 million for grain dealers, \$300,000 for grain warehouse keepers, \$4 million for milk contractors and \$1 million for vegetable contractors), DATCP must credit part of the excess against contributing contractors' license fee payments. DATCP will credit contractors on a pro rata basis, based on the license fees that they have paid during the preceding 4 years.

This bill authorizes DATCP to modify license fees and fund assessments by rule, after consulting an industry advisory council. DATCP must modify fund assessments, as necessary, to do all the following:

1. Maintain an overall fund balance of at least \$5 million after January 1, 2006, and not more than \$22 million at any time.
2. Maintain a fund balance attributable to grain dealers of at least \$1 million after January 1, 2006, and not more than \$6 million at any time.
3. Maintain a fund balance attributable to grain warehouse keepers of at least \$200,000 after January 1, 2006, and not more than \$1 million at any time.

4. Maintain a fund balance attributable to milk contractors of at least \$3 million after January 1, 2006, and not more than \$12 million at any time.

5. Maintain a fund balance attributable to vegetable contractors of at least \$800,000 after January 1, 2006, and not more than \$3 million at any time.

### ***Start-up Loan to Fund***

This bill provides a "start-up" loan to the agricultural producer security fund, to create an adequate opening balance in the fund. This bill provides the "start-up" loan by transferring \$2 million to the agricultural producer security fund from the agricultural management fund under s. 25.465, Stats. DATCP may use the loan proceeds to pay producers in the event of a contractor default. DATCP may also use the loan proceeds to purchase the "industry bonds" and "blanket bond" required under this bill.

DATCP must repay the loan principal, plus interest compounded at 5% per year, by July 1, 2006. DATCP must repay the loan with funds from the agricultural producer security fund (as contractor contributions bring the balance in that fund to an adequate level). DATCP must pay annual installments of at least \$250,000 on July 1 of each year, beginning on July 1, 2003. DATCP may accelerate the loan repayment, at its discretion.

### **GRAIN DEALERS**

This bill regulates grain dealers who buy producer grain, or who market producer grain as "producer agents." A "producer agent" is a person who markets grain for a producer without taking ownership of that grain. "Producer grain" is grain marketed by a producer or producer agent. This bill does not regulate transactions between grain dealers, unless one of the grain dealers is acting as a "producer agent."

### ***Grain Dealer Licensing***

Under this bill, DATCP must annually license a grain dealer who buys producer grain for receipt in this state, or who acts as a "producer agent" to market grain produced in this state. An annual license expires on August 31 of each year. The following grain dealers are exempt from licensing, but may volunteer to be licensed:

1. A grain dealer who pays cash on delivery for all producer grain.
2. A grain dealer who buys producer grain solely for the dealer's own use as feed or seed, and who spends less than \$400,000 per year for that grain.

### ***Grain Dealer License Application; Fees***

A grain dealer must apply for an annual license on a form provided by DATCP. The applicant must report the amount paid, during the grain dealer's last completed fiscal year, for producer grain procured in this state. The applicant must pay the following license fees, which are deposited to the fund:

1. A nonrefundable license processing fee of \$25.

2. The following license fees based on the contractor's payments, during the last fiscal year, for producer grain procured in this state:
  - a. A fee of \$500, plus \$225 per business location in excess of one location, if the grain dealer paid at least \$500,000 for producer grain.
  - b. A fee of \$200 if the grain dealer paid at least \$50,000 but less than \$500,000 for producer grain.
  - c. A fee of \$50 if the grain dealer paid less than \$50,000 for producer grain.
3. A license fee of \$45 for each truck, in excess of one truck, that the grain dealer uses to haul grain in this state.
4. The following license surcharges, if applicable:
  - a. A surcharge of \$425 if the grain dealer's last filed financial statement was not an audited financial statement.
  - b. A surcharge of \$500 if the grain dealer operated without a license during the past year, in violation of law.
  - c. A surcharge of \$100 if the applicant failed, within the past year, to file a required annual financial statement within the time required.
  - d. A surcharge of \$100 if the applicant files a late renewal application.

### ***Grain Dealers; Insurance***

Under this bill, a licensed grain dealer must maintain fire and extended coverage insurance covering all grain in the dealer's custody. The grain dealer must replace any cancelled policy so there is no lapse in coverage.

### ***Grain Dealers; Financial Statements***

Under this bill, a grain dealer must file an annual financial statement with DATCP if any of the following apply:

1. The grain dealer annually pays more than \$500,000 for producer grain procured in this state (unless the grain dealer contributes to the fund and operates solely as a "producer agent").
2. The grain dealer procures any producer grain in this state under deferred payment contracts.

Other grain dealers may choose to file annual financial statements, even though they are not required to do so. For example, grain dealers with favorable financial ratios may file voluntary financial statements to qualify for lower fund assessments, or to avoid filing security for deferred payment contracts (see below).

An annual financial statement must cover the grain dealer's last completed fiscal year. The grain dealer must file the financial statement by the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the grain dealer's fiscal year. DATCP may extend the filing deadline for up to 30 days if the grain dealer makes a timely extension request.

An annual financial statement may be a reviewed or audited financial statement, but must be an audited financial statement if any of the following apply:

1. The grain dealer paid more than \$3 million, in the last fiscal year, for grain procured in this state.
2. The grain dealer paid more than \$2 million per year, in each of the last 2 fiscal years, for grain procured in this state.

A financial statement must be prepared according to generally accepted accounting principles, and must include a balance sheet, income statement, equity statement, statement of cash flows and notes. A grain dealer who has been in business for less than one year may file a balance sheet and notes. A financial statement must calculate and report the grain dealer's current ratio and debt-to-equity ratio.

### ***Contributing Grain Dealers***

A "contributing grain dealer" is one who contributes to the fund. DATCP will pay, from the fund, default claims against a grain dealer who was a contributing grain dealer when the default occurred. A grain dealer who is required to be licensed under this bill must also contribute to the fund. A grain dealer who *volunteers* to be licensed *may* contribute to the fund.

However, a grain dealer is *disqualified* from the fund if, when the grain dealer is *first licensed* under the new law, the grain dealer has negative equity and pays more than \$500,000 a year for producer grain procured in this state. The disqualified grain dealer *must* file security with DATCP, but may continue to procure producer grain without paying cash on delivery. The grain dealer is disqualified until DATCP releases the security. DATCP may release the security if the grain dealer achieves positive equity for 2 consecutive years. The grain dealer must then contribute to the fund.

A contributing grain dealer may also be disqualified from the fund. A grain dealer is disqualified from the fund, and must pay cash on delivery for all producer grain, if any of the following occurs:

1. DATCP denies, suspends or revokes the grain dealer's license.
2. DATCP disqualifies the grain dealer because the grain dealer fails to pay fund assessments when due, or fails to file a financial statement when due.
3. The grain dealer fails to reimburse DATCP or the bond surety for default claims paid because of the grain dealer's default.

### ***Contributing Grain Dealers; Fund Assessments***

A contributing grain dealer must pay an annual fund assessment for each license year, even if the grain dealer is only licensed for part of the year. The assessment is based on the grain dealer's size and financial condition:

1. Other things equal, larger grain dealers will pay larger assessments.
2. Other things equal, grain dealers with more favorable current ratios and debt-to-equity ratios will pay lower fund assessments, reflecting their lower risks to the fund.

3. Grain dealers who use deferred payment contracts will pay additional assessments, reflecting their higher risks to the fund.

This bill provides a specific fund assessment formula. Fund assessment rates decline as the fund builds. If the fund balance contributed by grain dealers exceeds \$2 million on June 30 of any license year, DATCP must credit 50% of the excess amount against license fees charged to contributing grain dealers who file timely renewal applications for the next license year beginning September 1. DATCP will credit contributing grain dealers on a pro rata basis, in proportion to the license fees they have paid over the preceding 4 years.

Contributing grain dealers must pay their annual fund assessments in 4 equal quarterly installments. The installments are due on October 1, January 1, April 1 and July 1 of each license year. A grain dealer may prepay any quarterly installment. A contributing grain dealer who fails to pay any quarterly installment when due must pay, in addition to that installment, a late penalty of \$50 or 10% of the overdue installment, whichever is greater.

#### ***Grain Dealers; Security***

A grain dealer must file security with DATCP if, when the grain dealer is *first licensed* under the new law, the grain dealer has negative equity and pays more than \$500,000 a year for producer grain procured in this state. DATCP may release this security if the grain dealer achieves positive equity for 2 consecutive years. The grain dealer is initially disqualified from the fund, but may qualify as a contributing grain dealer when DATCP releases the security.

A contributing grain dealer who uses deferred payment contracts must also file security unless the grain dealer files an annual financial statement showing a debt-to-equity ratio of not more than 5.0 to 1.0 (not more than 4.0 to 1.0 in the contractor's 4<sup>th</sup> and subsequent fiscal year under the new law). DATCP may release the grain dealer's security if the grain dealer stops using deferred payment contracts, or maintains an adequate debt-to-equity ratio for 2 consecutive years.

#### ***Grain Dealers; Security Amounts***

If a grain dealer is required to file security under this bill, the grain dealer must maintain an amount of security that is equal to the sum of the following:

1. 35% of the grain dealer's average monthly producer grain payments for the 3 months (in the preceding 12 months) in which the grain dealer paid the largest monthly amounts for producer grain procured in this state. This amount is not required of a contributing grain dealer after December 1, 2002.

2. The grain dealer's highest total unpaid obligations, at any time during the preceding 12 months, for producer grain procured under deferred payment contracts.

DATCP may demand additional security from a grain dealer if the amount of security on file falls short of the amount required. DATCP may also release excess security and accept equivalent substitute security.



***Grain Dealers; Records***

Under current law and this bill, a grain dealer must keep complete records and accounts of all grain that the grain dealer procures, sells or markets. This bill identifies the records a grain dealer must keep. A grain dealer must keep the records for at least 6 years.

***Grain Dealers; Receipts for Grain***

Under current law and this bill, a grain dealer must provide scale tickets or other receipts for all grain received. The receipts must include information required under this bill. A grain receipt is considered a storage receipt unless it is clearly designated as a purchase receipt.

***Grain Dealers; Deferred Payment Contracts***

Under current law and this bill, a grain dealer may not use a deferred payment contract to procure producer grain unless the contract is in writing and signed by both parties. The contract must include information required under this bill. The contract may not defer payment for more than 180 days from the date on which the grain is priced, or from the date on which the grain dealer receives the grain, whichever is later. A deferred price contract must specify a pricing deadline that is not more than one year after the date on which the grain dealer receives the grain.

***Grain Dealers; Business Practices***

Under current law and this bill, grain dealers must maintain specified business hours and must refrain from unfair and deceptive practices.

***Grain Producer Obligations***

Under current law and this bill:

1. A grain producer who contracts to deliver grain to a grain dealer may not refuse to deliver that grain according to the terms of the contract.
2. A grain dealer who buys grain from or sells grain for a producer may require the producer to disclose any liens or security interests in the grain. A producer may not falsify or fraudulently withhold the requested information.

**GRAIN WAREHOUSE KEEPERS**

This bill regulates grain warehouse keepers who store grain in this state for grain producers or other depositors.

***Warehouse Keepers; Licensing***

Under this bill, DATCP must annually license a person who at any time holds more than 50,000 bushels of grain for others. An annual license expires on August 31 of each year.

***Warehouse Keeper License Application; Fees***

A grain warehouse keeper must apply for an annual license on a form provided by DATCP. The application must report the applicant's total warehouse capacity in this state. The application must include the following license fees, which are deposited to the fund:

1. A nonrefundable license processing fee of \$25, plus \$25 for each warehouse location.
2. The following inspection fees based on the applicant's total warehouse capacity in this state:
  - a. \$500 if total capacity is less than 150,00 bushels.
  - b. \$550 if total capacity is at least 150,000 bushels but less than 250,000 bushels.
  - c. \$600 if total capacity is at least 250,000 bushels but less than 500,000 bushels.
  - d. \$650 if total capacity is at least 500,000 bushels but less than 750,000 bushels.
  - e. \$700 if total capacity is at least 750,000 bushels but less than 1,000,000 bushels.
  - f. \$800 if total capacity is at least 1,000,000 bushels but less than 2,000,000 bushels.
  - g. \$900 if total capacity is at least 2,000,000 bushels but less than 3,000,000 bushels.
  - h. \$1,000 if total capacity is at least 3,000,000 bushels but less than 4,000,000 bushels.
  - i. \$1,100 if total capacity is 4,000,000 bushels or more.
3. A supplementary inspection fee of \$275 for each grain warehouse that the applicant operates in excess of one grain warehouse.
4. The following license surcharges, if applicable:
  - a. A surcharge of \$500 if the applicant operated without a license during the past year, in violation of law.
  - b. A surcharge of \$100 if the applicant failed, within the preceding license year, to file a required annual financial statement within the time required.
  - c. A surcharge of \$100 if the applicant files a late renewal application.

### ***Warehouse Keepers; Insurance***

Under current law and this bill, a licensed grain warehouse keeper must maintain fire and extended coverage insurance covering all grain in the warehouse keeper's custody. A grain warehouse keeper must file proof of insurance with DATCP, and must replace any cancelled policy so there is no lapse in coverage.

### ***Warehouse Keepers; Financial Statements***

Under this bill, a grain warehouse keeper must file an annual financial statement with DATCP if the warehouse keeper has total warehouse capacity of more than 300,000 bushels. Other warehouse keepers may file voluntary financial statements to qualify for lower fund assessments (see below), even though they are not required to do so.

An annual financial statement must cover the warehouse keeper's last completed fiscal year. The warehouse keeper must file the financial statement by the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the warehouse keeper's fiscal year. DATCP may extend the filing deadline for up to 30 days if the warehouse keeper makes a timely extension request.

An annual financial statement may be a reviewed or audited financial statement, but must be an audited financial statement if the warehouse keeper has total warehouse capacity of more than 500,000 bushels. A financial statement must be prepared according to generally accepted accounting principles, and must include a balance sheet, income statement, equity statement, statement of cash flows and notes. A warehouse keeper who has been in business for less than one year may file a balance sheet and notes. A financial statement must calculate and report the warehouse keeper's current ratio and debt-to-equity ratio.

### ***Contributing Warehouse Keepers***

A "contributing grain warehouse keeper" is one who contributes to the fund. DATCP may pay, from the fund, default claims against a warehouse keeper who was a contributing grain warehouse keeper when the default occurred. All licensed warehouse keepers must contribute to the fund. A warehouse keeper may not file security in lieu of contributing to the fund.

However, a grain warehouse keeper is *disqualified* from the fund if, when the warehouse keeper is *first licensed* under the new law, the warehouse keeper has negative equity and more than 300,000 bushels of storage capacity in this state. The disqualified warehouse keeper *must* file security with DATCP, but may continue to operate as a licensed warehouse keeper. The warehouse keeper is disqualified until DATCP releases the security. DATCP may release the security if the warehouse keeper achieves positive equity for 2 consecutive years. The warehouse keeper must then contribute to the fund.

If DATCP denies, suspends or revokes a contributing warehouse keeper's license, the warehouse keeper is also disqualified from the fund until the license is restored. DATCP may suspend a warehouse keeper's license for the following reasons, among others:

1. The warehouse keeper fails to pay fund assessments when due, or fails to file a financial statement when due.
2. The warehouse keeper fails to reimburse DATCP or the bond surety for default claims paid because of the warehouse keeper's default.

### ***Contributing Warehouse Keepers; Fund Assessments***

A contributing warehouse keeper must pay an annual fund assessment for each license year, even if the warehouse keeper is only licensed for part of a year. The assessment is based on the warehouse keeper's size and financial condition:

1. Other things equal, larger warehouse keepers will pay larger assessments.
2. Other things equal, warehouse keepers with more favorable current ratios and debt-to-equity ratios will pay lower fund assessments, reflecting their lower risk to the fund.

This bill provides a specific fund assessment formula. Fund assessment rates decline as the fund builds. If the fund balance contributed by grain warehouse keepers exceeds \$300,000 on June 30 of any license year, DATCP must credit 12.5%

of the excess amount against license fees charged to contributing warehouse keepers who file timely renewal applications for the next license year beginning September 1. DATCP will credit warehouse keepers on a pro rata basis, in proportion to license fees that they have paid over the preceding 4 years.

Contributing grain warehouse keepers must pay their annual fund assessments in 4 equal quarterly installments. Installments are due on October 1, January 1, April 1 and July 1 of each license year. A warehouse keeper may prepay any quarterly installment. A contributing warehouse keeper who fails to pay any quarterly installment when due must pay, in addition to that installment, a late penalty of \$50 or 10% of the overdue installment, whichever is greater.

### ***Warehouse Keepers; Security***

A grain warehouse keeper must file security with DATCP if, when the warehouse keeper is *first licensed* under the new law, the warehouse keeper has negative equity and more than 300,000 bushels of storage capacity. DATCP may release this security if the warehouse keeper achieves positive equity for 2 consecutive years. The warehouse keeper is initially disqualified from the fund, but may qualify as a contributing warehouse keeper when DATCP releases the security.

### ***Warehouse Keepers; Security Amounts***

If a warehouse keeper is required to file security under this bill, the warehouse keeper must maintain an amount of security equal to at least 20% of the current local market value of grain that the warehouse keeper holds in this state for others. DATCP may demand additional security from a warehouse keeper who fails to maintain the required amount. DATCP may also release excess security and accept equivalent substitute security.

### ***Warehouse Keepers; Records***

Under current law and this bill, a grain warehouse keeper must keep complete records and accounts of all grain received into and removed from storage. This bill identifies daily position records, depositor records and other records that a warehouse keeper must keep, and regulates a warehouse keeper's adjustment of records. A warehouse keeper must keep the records for at least 6 years. DATCP must inspect the records annually, except that DATCP must inspect once every 2 years if the warehouse keeper has a current ratio of at least 2.0 to 1.0, and a debt-to-equity ratio of not more than 2.0 to 1.0.

### ***Warehouse Keepers; Receipts for Grain***

Under current law and this bill, a grain warehouse keeper must give storage receipts for all stored grain. The receipts must include information required under this bill. A receipt is considered a storage receipt unless it is clearly designated as a purchase receipt.

### ***Warehouse Keepers; Business Practices***

Under current law and this bill, grain warehouse keepers must refrain from unfair and deceptive practices. A grain warehouse keeper must return stored grain or its equivalent upon demand, and must maintain adequate grain in storage to meet outstanding obligations to depositors.

## ***MILK CONTRACTORS***

This bill regulates dairy plant operators and other "milk contractors" who buy producer milk, or who act as "producer agents" to market producer milk. A "producer agent" is a person who markets milk for a producer without taking ownership of that milk. "Producer milk" is milk marketed by a producer or "producer agent." This bill does not regulate transactions between milk contractors, unless one of the contractors is a "producer agent."

### ***Milk Contractors; Licensing***

Under this bill, DATCP must annually license a milk contractor who does any of the following:

1. Receives producer milk in this state.
2. Collects producer milk from a dairy farm in another state, for direct shipment to a dairy plant the milk contractor operates in this state.
3. Markets, as a "producer agent," milk produced in this state.

A milk contractor who is not engaged in any of these activities may *volunteer* to be licensed if the milk contractor receives, outside this state, direct shipments of producer milk from dairy farms in this state. A milk contractor may not participate in the fund as a "contributing milk contractor" unless the contractor is licensed.

If a milk contractor licensed under this bill operates a dairy plant in this state, the milk contractor must also hold a dairy plant license under s. 97.20, Stats. A milk contractor license, like a dairy plant license, expires on April 30 of each year.

### ***Milk Contractor License Application; Fees***

A milk contractor must apply for an annual license on a form provided by DATCP. The applicant must report the total milk payroll obligations incurred for "producer milk procured in this state" during the applicant's last fiscal year, and the largest amount of unpaid obligations that the contractor had at any time during that year. A milk contractor "procures producer milk in this state" if the contractor does any of the following:

1. Buys producer milk for receipt in this state.
2. Receives producer milk directly from a dairy farm in this state.
3. Collects producer milk from a dairy farm in another state, for direct shipment to a dairy plant the milk contractor operates in this state.
4. Acquires the right to market producer milk produced in this state.

A milk contractor must pay the following annual license fees, which are deposited to the fund:

1. A nonrefundable license processing fee of \$25.
2. The following license surcharges, if applicable:
  - a. A surcharge of \$500 if the applicant operated without a license during the past year, in violation of law.

- b. A surcharge of \$100 if the applicant failed, during the preceding license year, to file a required annual financial statement within the time required.
- c. A surcharge of \$100 if the applicant files a late renewal application.

### ***Milk Contractors; Monthly License Fee***

Under current law and this bill, a milk contractor must pay a monthly fee to DATCP. The fee is 0.15 cent for each 100 pounds of producer milk that the milk contractor procured in this state during the preceding month. A milk contractor must pay the fee by the 15<sup>th</sup> day of each month. If a milk contractor fails to pay on time, the contractor must pay (by the next monthly payment date) a surcharge equal to 20% of the monthly fee.

A milk contractor operating solely as a “producer agent” is not required to pay this monthly fee on producer milk the producer agent markets to another licensed milk contractor, if the other contractor pays a monthly fee on the same milk.

### ***Milk Contractors; Insurance***

Under this bill, a licensed milk contractor must maintain fire and extended coverage insurance covering all milk and dairy products in the milk contractor’s custody. The milk contractor must replace any cancelled policy so there is no lapse in coverage.

### ***Milk Contractors; Annual Financial Statements***

Under this bill, a milk contractor must file an annual financial statement with DATCP unless one of the following applies:

1. The contractor contributes to the fund and procures no more than \$1.5 million worth of producer milk in this state per year.
2. The contractor contributes to the fund and procures producer milk in this state solely as a producer agent.

Other milk contractors may choose to file annual financial statements, even though they are not required to do so. For example, milk contractors with favorable financial ratios may file voluntary financial statements to qualify for lower fund assessments (see below).

An annual financial statement must cover the milk contractor’s last completed fiscal year. The milk contractor must file the financial statement by the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the contractor’s fiscal year. DATCP may extend the filing deadline for up to 30 days if the milk contractor makes a timely extension request.

An annual financial statement may be a reviewed or audited financial statement, but must be an audited financial statement if the milk contractor annually procures more than \$6 million worth of producer milk in this state.

An annual financial statement must be prepared according to generally accepted accounting principles, and must include a balance sheet, income statement, equity statement, statement of cash flows and notes. A milk contractor who has been in business for less than one year may file a balance sheet and notes. A financial

statement must calculate and report the milk contractor's current ratio and debt-to-equity ratio.

### ***Milk Contractors; Quarterly Financial Statements***

A milk contractor must file quarterly financial statements for the first 3 quarters of each fiscal year *unless* the contractor contributes to the fund. The milk contractor must file each quarterly statement within 60 days after the end of the quarter. The milk contractor must certify that each quarterly statement is accurate. However, a quarterly statement need not be a reviewed or audited statement.

### ***Contributing Milk Contractors***

A "contributing milk contractor" is one who contributes to the fund. DATCP may pay, from the fund, default claims against a milk contractor who was a contributing milk contractor when the default occurred.

Under this bill, a milk contractor must contribute to the fund unless the milk contractor files annual and quarterly financial statements with DATCP. If any of those statements shows a current ratio of less than 1.25 to 1.0, or a debt-to-equity ratio of more than 2.0 to 1.0, the contractor must begin contributing to the fund. The contractor must contribute to the fund until the contractor files 2 consecutive annual financial statements that show a current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 2.0 to 1.0.

### ***Disqualified Milk Contractors***

A milk contractor is *disqualified* from the fund if, when the milk contractor is *first licensed* under the new law, the milk contractor has negative equity and annually procures more than \$1.5 million worth of producer milk in this state. The disqualified contractor *must* file security with DATCP, but may continue to operate as a licensed contractor. The contractor is disqualified until DATCP releases the security. DATCP may release the security if the contractor achieves positive equity for 2 consecutive years. The contractor must then contribute to the fund unless the contractor files annual and quarterly financial statements that all show a current ratio of at least 1.25 to 1.0 and a debt-to-equity ratio of not more than 2.0 to 1.0 (see above).

If DATCP denies, suspends or revokes a milk contractor's license, the milk contractor is disqualified from the fund and must stop operating as a milk contractor in this state. If DATCP disqualifies a milk contractor from the fund, without taking action against the contractor's license, the contractor may continue to operate as a milk contractor *if* the contractor files annual and quarterly financial statements that all show a current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 2.0 to 1.0 (see above). DATCP may disqualify a milk contractor who does any of the following:

1. Fails to pay fund assessments when due.
2. Fails to file a financial statement when due.
3. Fails to reimburse DATCP or the bond surety for default claims paid because of the milk contractor's default.

### ***Contributing Milk Contractors; Fund Assessments***

A contributing milk contractor must pay an annual fund assessment for each license year, even if the contractor is only licensed for part of the year. The assessment is based on the milk contractor's size and financial condition:

1. Other things equal, larger milk contractors will pay larger assessments.
2. Other things equal, milk contractors with more favorable current ratios and debt-to-equity ratios will pay lower fund assessments, reflecting their lower risks to the fund.

This bill provides a specific fund assessment formula. Fund assessment rates decline as the fund builds. If the fund balance contributed by milk contractors exceeds \$4 million on February 28 of any license year, DATCP must credit 50% of the excess amount against license fees charged to contributing milk contractors who file timely renewal applications for the next license year beginning May 1. DATCP will credit contributing milk contractors on a pro rata basis, in proportion to the license fees they have paid over the preceding 4 years.

Contributing milk contractors must pay their annual fund assessments in 4 equal quarterly installments. Installments are due on June 1, September 1, December 1 and March 1 of each license year. A milk contractor may prepay any quarterly installment. A contributing milk contractor who fails to pay any quarterly installment when due must pay, in addition to that installment, a late penalty of \$50 or 10% of the overdue installment, whichever is greater.

### ***Milk Contractors; Security***

A milk contractor must file security with DATCP if, when the contractor is *first licensed* under the new law, the contractor has negative equity and annually procures more than \$1.5 million worth of producer milk in this state. DATCP may release this security if the milk contractor achieves positive equity for 2 consecutive years. The contractor is initially disqualified from the fund, but may qualify as a contributing contractor when DATCP releases the security.

### ***Milk Contractors; Security Amounts***

If a milk contractor is required to file security under this bill, the contractor must file an amount of security equal to 75% of the largest unpaid amount the milk contractor owed at any time, since the start of the contractor's last fiscal year, for producer milk procured in this state.

DATCP may demand additional security from a milk contractor if the amount of security on file falls short of the amount required. DATCP may release any excess security, and may accept equivalent substitute security.

### ***Milk Contractors; Payments to Producers***

Under current law and this bill, a milk contractor must:

1. Pay producers by the 4<sup>th</sup> of each month for milk received during the first 15 days of the preceding month (based on an estimated price that is at least 80% of the federal marketing order or contract price).



2. Pay producers, by the 19<sup>th</sup> of each month, the balance due on milk received during the preceding month.

3. Provide producers with a written explanation of each payment, including information related to pay period, milk volume, grade, test results and price adjustments, the gross amount due, the average gross pay per hundredweight less hauling charges, the net amount due, and any deductions or assignments.

### ***Milk Contractors; Records and Reports***

Under current law and this bill, a milk contractor must keep accurate records and accounts of milk receipts, milk payments, and amounts owed for producer milk. DATCP may, by rule, specify records a milk contractor must keep.

### ***Milk Contractors; Business Practices***

This bill, like current law, prohibits a milk contractor from falsifying records, accounts and reports.

## **VEGETABLE CONTRACTORS**

This bill regulates “vegetable contractors,” including food processors and handlers, who do any of the following:

1. Contract with vegetable producers or their agents to procure processing vegetables grown in this state.

2. Contract with vegetable producers to market, as “producer agents,” processing vegetables grown in this state. A “producer agent” is a person who markets processing vegetables for a producer, without taking title to those vegetables.

### ***Vegetable Contractor Licensing***

Under this bill, a vegetable contractor must hold an annual license from DATCP. An annual license expires on January 31 of each year. The following vegetable contractors are exempt from licensing:

1. A vegetable contractor who procures vegetables primarily for unprocessed fresh market use, and is licensed under the federal perishable agricultural commodities act.

2. A restaurant or retail food establishment that procures processing vegetables solely for retail sale at the restaurant or retail food establishment.

If a vegetable contractor operates a food processing plant in this state, the vegetable contractor must also hold an annual food processing plant license under s. 97.29, Stats.

### ***Vegetable Contractor License Application; Fees***

A vegetable contractor must apply for an annual license on a form provided by DATCP. The applicant must report, among other things, the total vegetable contract obligations the contractor incurred in this state during the contractor’s last

completed fiscal year. The applicant must also pay the following license fees, which are deposited to the fund:

1. A nonrefundable license processing fee of \$25.
2. A license fee of \$25 plus 5.75 cents for each \$100 in vegetable contract obligations incurred in this state during the contractor's last completed fiscal year.
3. The following license surcharges if applicable:
  - a. A surcharge of \$500 if the vegetable contractor operated without a license during the past year, in violation of law.
  - b. A surcharge of \$100 if the applicant failed, during the preceding license year, to file a required annual financial statement within the time required.
  - c. A surcharge of \$100 if the applicant files a late renewal application.

### ***Vegetable Contractors; Insurance***

Under this bill, a licensed vegetable contractor must maintain fire and extended coverage insurance covering all vegetables in the contractor's custody. The vegetable contractor must replace any cancelled policy so there is no lapse in coverage.

### ***Vegetable Contractors; Financial Statements***

Under this bill, a vegetable contractor must file an annual financial statement with DATCP if the vegetable contractor annually incurs more than \$500,000 in vegetable contract obligations in this state. This requirement does not apply to contractors who always pay cash on delivery, or to producer-owned cooperatives that procure vegetables only from their producer owners.

Other vegetable contractors may choose to file annual financial statements, even though they are not required to do so. For example, vegetable contractors with favorable financial ratios may file voluntary financial statements to qualify for lower fund assessments, or to avoid filing interim security (see below).

An annual financial statement must cover the vegetable contractor's last completed fiscal year. The vegetable contractor must file the financial statement by the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the contractor's fiscal year. DATCP may extend the filing deadline for up to 30 days if the contractor makes a timely extension request.

An annual financial statement may be a reviewed or audited financial statement, but must be an audited financial statement if the vegetable contractor annually incurs more than \$4 million in vegetable contract obligations in this state. A financial statement must be prepared according to generally accepted accounting principles, and must include a balance sheet, income statement, equity statement, statement of cash flows and notes. A vegetable contractor who has been in business for less than one year may file a balance sheet and notes. A financial statement must calculate and report the contractor's current ratio and debt-to-equity ratio.

### ***Contributing Vegetable Contractors***

A "contributing vegetable contractor" is one who contributes to the fund. DATCP may pay, from the fund, default claims against a vegetable contractor who was a contributing vegetable contractor when the default occurred.

Under this bill, a licensed vegetable contractor *must* contribute to the fund unless one of the following applies:

1. The contractor always pays cash on delivery.
2. The contractor is a producer-owned cooperative that procures vegetables only from its producer owners.
3. The contractor is disqualified from the fund.

### ***Disqualified Vegetable Contractors***

A vegetable contractor is *disqualified* from the fund if, when the contractor is *first licensed* under the new law, the contractor has negative equity and annually incurs more than \$1 million in vegetable contract obligations in this state. The disqualified vegetable contractor *must* file security with DATCP, but is not required to pay cash on delivery for processing vegetables. The contractor is disqualified until DATCP releases the security. DATCP may release the security if the contractor achieves positive equity for 2 consecutive years. The contractor must then contribute to the fund unless the contractor pays cash on delivery for all processing vegetables.

If DATCP denies, suspends or revokes a vegetable contractor's license, the vegetable contractor is disqualified from the fund and must stop operating as a vegetable contractor in this state. If DATCP disqualifies a vegetable contractor from the fund, without taking action against the contractor's license, the contractor may continue to operate *if* the contractor pays cash on delivery for all processing vegetables. DATCP may disqualify a vegetable contractor who does any of the following:

1. Fails to pay fund assessments when due.
2. Fails to file a financial statement when due.
3. Fails to reimburse DATCP or the bond surety for default claims paid because of the vegetable contractor's default.

### ***Contributing Vegetable Contractors; Fund Assessments***

A contributing vegetable contractor must pay an annual fund assessment for each license year, even if the contractor is only licensed for part of the year. The assessment is based on the contractor's size and financial condition:

1. Other things equal, larger contractors will pay larger assessments.
2. Other things equal, contractors with more favorable current ratios and debt-to-equity ratios will pay lower fund assessments, reflecting their lower risks to the fund.
3. Contractors who use deferred payment contracts (contracts authorizing the contractor to pay after January 31 for vegetables procured during the previous calendar year) will pay additional assessments, reflecting their higher risks to the fund.

This bill provides a specific fund assessment formula. Fund assessment rates decline as the fund builds. If the fund balance contributed by vegetable contractors exceeds \$1 million on November 30 of any license year, DATCP must credit 50% of the excess amount against license fees charged to contributing vegetable contractors who file timely renewal applications for the next license year beginning February 1. DATCP will credit contributing contractors on a pro rata basis, in proportion to the license fees that they have paid over the preceding 4 years.

Contributing vegetable contractors must pay their annual fund assessments in 4 equal quarterly installments. Installments are due on March 1, June 1, September 1 and December 1 of each license year. A vegetable contractor may prepay any quarterly installment. A contributing contractor who fails to pay any quarterly installment when due must pay, in addition to that installment, a late penalty of \$50 or 10% of the overdue installment, whichever is greater.

### ***Vegetable Contractors; Security***

A vegetable contractor must file security with DATCP if, when the contractor is *first licensed* under the new law, the contractor has negative equity and annually incurs more than \$1 million in vegetable contract obligations in this state. DATCP may release this security if the contractor achieves positive equity for 2 consecutive years. The contractor is initially disqualified from the fund, but may qualify as a contributing contractor when DATCP releases the security.

A contributing vegetable contractor must file security with DATCP if the contractor uses deferred payment contracts (contracts that authorize the contractor to pay after January 31 for vegetables procured in the preceding calendar year). A contractor is *not* required to file this security if the contractor files an annual financial statement that shows a current ratio of at least 1.25 to 1.0, and a debt-to-equity ratio of not more than 4.0 to 1.0. DATCP may release filed security if the contractor stops using deferred payment contracts, or files 2 consecutive annual financial statements meeting these financial standards.

### ***Vegetable Contractors; Security Amounts***

If a vegetable contractor is required to file security under this bill, the contractor must maintain an amount of security that is equal to the sum of the following:

1. 75% of the highest total amount of unpaid contract obligations that the contractor had, at any time since the beginning of the contractor's last completed fiscal year, for vegetables procured in this state.
2. The full amount of the vegetable contractor's unpaid obligations under deferred payment contracts.

DATCP may demand additional security from a vegetable contractor if the amount of security on file falls short of the amount required. DATCP may also release excess security, and accept equivalent substitute security.

***Vegetable Contractors; Records***

Under current law and this bill, a vegetable contractor must keep records of all vegetable contracts, contract obligations, payments and unpaid balances. A contractor must keep the records for at least 6 years.

***Vegetable Grading and Tare***

Under current law and this bill, a vegetable contractor must grade vegetables according to specified standards if the vegetable grade may affect the amount received by the vegetable producer. If a vegetable contractor makes any deduction for tare, the contractor must determine tare according to procedures that DATCP specifies by rule.

***Timely Payment***

Under current law and this bill, a vegetable contractor must pay vegetable producers by specified dates. This bill does not change the payment dates specified under current law.

***Deferred Payment Contracts***

A “vegetable deferred payment contract” is a contract allowing the contractor to pay after January 31 for vegetables procured during the preceding calendar year. Under current law and this bill, producers must collectively vote to approve a deferred payment contract before a contractor offers that contract to any individual producer. This bill, like current law, specifies the approval procedure. This bill does not change the current procedure.

***Prohibited Practices***

This bill, like current law, prohibits a vegetable contractor from engaging in deceptive or misleading practices.

**RECOVERY PROCEEDINGS*****Default Claims***

Under this bill, any of the following persons may file a default claim with DATCP:

1. A grain producer or producer agent who claims that a grain dealer has failed to make payment, when due, for producer grain that the grain dealer procured in this state.
2. A grain producer or producer agent who claims that a grain warehouse keeper has failed to return stored grain or its equivalent upon demand.
3. A milk producer or producer agent who claims that a milk contractor has failed to make payment, when due, for producer milk procured in this state.
4. A vegetable producer or producer agent who claims that a vegetable contractor has failed to make payment, when due under a vegetable procurement contract, for vegetables grown in this state.

***Filing Default Claims***

A claimant may file a default claim within 30 days after the claimant first learns of the default. The claimant must specify the nature and amount of the

default. DATCP may investigate the alleged default, and may require supporting documentation.

### ***Initiating a Recovery Proceeding***

DATCP may initiate a recovery proceeding in response to one or more default claims. DATCP must give written notice to the contractor and each claimant. If DATCP has reason to believe that other persons may have default claims against the same contractor, DATCP may publish a notice inviting those persons to file claims in the recovery proceeding. The notice may specify a deadline date for filing claims.

### ***Allowed Claims***

DATCP may audit default claims, and may disallow unjustified or improperly filed claims. DATCP must issue a proposed decision allowing (or disallowing) claims. The decision must identify the amount of each claimant's allowed claim. DATCP must give the contractor and each claimant an opportunity to file written objections. DATCP must hold a public hearing, under ch. 227, Stats., on any filed objections. DATCP must then issue a final decision allowing (or disallowing) claims. A contractor or claimant adversely affected by DATCP's final decision may petition for judicial review under ch. 227, Stats.

### ***Paying Allowed Claims***

If the defaulting contractor was a "contributing contractor" when the default occurred, DATCP may pay allowed default claims from the fund (or from the backup bond proceeds, as described below). This bill authorizes DATCP to pay a specified portion of an allowed default claim. The maximum *authorized payment* for each claim is as follows:

1. For each claim allowed against a contributing grain dealer or milk contractor:
  - a. 90% of the first \$20,000 allowed.
  - b. 85% of the next \$20,000 allowed.
  - c. 80% of the next \$20,000 allowed.
  - d. 75% of any amount allowed in excess of \$60,000.
2. For each claim allowed against a contributing grain warehouse keeper, 100% of the first \$100,000 allowed.
3. For each claim allowed against a contributing vegetable contractor:
  - a. 90% of the first \$40,000 allowed.
  - b. 85% of the next \$40,000 allowed.
  - c. 80% of the next \$40,000 allowed.
  - d. 75% of any amount allowed in excess of \$120,000.

If the contractor has filed *security* with DATCP, DATCP will convert that security and use it as follows:

1. If the contractor was *not* a "contributing contractor" when the default occurred, DATCP will use the security proceeds to pay the full amount of the allowed

claims. If the security is not adequate to pay the full amount of the allowed claims, DATCP will pay claimants pro rata in proportion to their allowed claims.

2. If the contractor was a “contributing contractor” when the default occurred, DATCP will use the security proceeds to repay the fund for any fund payment made to the claimants (see above). If allowed claims exceed the maximum *authorized payments* from the fund, DATCP will use any remaining security to pay the balance of the allowed claims. If the security amount is not adequate to pay the entire remaining balance, DATCP will pay claimants pro rata in proportion to their allowed claims. DATCP may, at its discretion, pay claims directly from security proceeds rather than from the fund (for example, if DATCP can quickly convert the security and make prompt payment with security proceeds).

### ***Payments from Fund***

DATCP may make *authorized payments* (see above) directly from the fund, up to an applicable *deductible* amount (see below). If the *authorized payments* exceed the *deductible* amount, DATCP may resort to the appropriate “industry bond” (grain, milk or vegetable) to pay the balance, up to the limit of that bond. If the *authorized payments* exceed the combined amounts payable from the fund and the industry bond, DATCP may resort to the “blanket bond” to pay the balance, up to the limit of that bond.

For claims against a contributing milk contractor, DATCP may make direct fund payments up to the following *deductible* amount:

1. \$1 million if DATCP allows the claims during the first 2 license years under the new law.
2. \$1.5 million if DATCP allows the claims during the 3<sup>rd</sup> and 4<sup>th</sup> license years under the new law.
3. \$2 million if DATCP allows the claims after the 4<sup>th</sup> complete license year under the new law.

For a claims against a contributing grain dealer, contributing grain warehouse keeper or contributing vegetable contractor, DATCP may make direct fund payments up to the following *deductible* amount:

1. \$500,000 if DATCP allows the claims during the first 2 license years under the new law.
2. \$750,000 if DATCP allows the claims during the 3<sup>rd</sup> or 4<sup>th</sup> license years under the new law.
3. \$1 million if DATCP allows the claims after the 4<sup>th</sup> complete license year under the new law.

### ***Payments from Industry Bond***

If *authorized payments* exceed the *deductible* amount that DATCP can pay directly from the fund, DATCP may make a demand against the appropriate

“industry bond” (dairy, grain or vegetable surety bond). DATCP may use the proceeds of that surety bond to make the balance of the *authorized payments*, up to the limit of the bond.

DATCP will use fund revenues to purchase the “industry bonds.” DATCP estimates that the total annual purchase cost for all 3 surety bonds (dairy, grain and vegetable) will start at approximately \$240,000 per year and fall to approximately \$140,000 per year in the 5<sup>th</sup> and subsequent years of the program.

The initial amount of each “industry bond” (dairy, grain and vegetable) must be at least \$5 million but not more than \$20 million. The initial bond amount will be reduced, in the course of each year, by the amount of any claims against the bond during that year. But the bond will renew annually (on the bond anniversary date) to its initial amount.

### ***Payments from Blanket Bond***

If *authorized payments* exceed the combined amounts payable from the fund and the relevant “industry bond” (see above), DATCP may make a demand against the “blanket bond.” DATCP may use the proceeds of that surety bond to make the balance of the authorized claim payments, up to the limit of the bond.

DATCP will use fund revenues to purchase a “blanket bond.” DATCP estimates that the purchase cost for the “blanket bond” will be approximately \$100,000 to \$110,000 per year. The amount of the “blanket bond” must be at least \$20 million but not more than \$40 million. The initial bond amount will be reduced, over the course of each year, by the amount of any claims against the bond during that year. But the bond will renew annually (on the bond anniversary date) to its initial amount.

### ***Payment Restrictions***

DATCP may not pay default claims from the fund, or from the “industry” or “blanket” bonds that back the fund, if the default claims are made against a contractor who was not a “contributing contractor” when the default occurred.

### ***Effect of Payment***

A claimant who accepts payment from DATCP releases his or her claim against the contractor, to the extent of that payment. However, the claimant may seek to recover directly, from the contractor, the unpaid balance of any allowed claim.

### ***Reimbursing Payments***

DATCP may demand and collect, from a defaulting contractor, any claim amounts that DATCP pays from the fund on account of the contractor’s default. A bond surety that issues an “industry” or “blanket” bond may demand and collect, from a defaulting contractor, any claim amounts that the bond surety pays to DATCP on account of the contractor’s default. A contractor will be disqualified from the fund if the contractor fails to reimburse DATCP or the bond surety within 60 days after DATCP or the bond surety demands reimbursement.



## ADMINISTRATION AND ENFORCEMENT

### ***DATCP Authority***

DATCP is responsible for administering the agricultural producer security program created under this bill. This bill authorizes DATCP to:

1. Adopt rules to implement the program. By rule, DATCP may:
  - a. Adjust license fees and fund assessments after consulting an industry advisory council (see below).
  - b. Require contractors to disclose their license, security and fund contribution status to producers.
2. Conduct investigations.
3. Obtain relevant information from contractors.
4. Issue orders requiring contractors to remedy law violations. DATCP may issue an order without prior notice or hearing if that order is necessary to prevent clear and imminent harm to producers or depositors. A contractor may demand an administrative hearing on DATCP's order, and may appeal a final order to circuit court.
5. Deny, suspend, revoke or impose conditions on a contractor's license. DATCP may take license action without prior notice or hearing if that action is necessary to prevent clear and imminent harm to producers or depositors. A contractor may demand an administrative hearing on DATCP's action, and may appeal a final action to circuit court.
6. Seek court action to address law violations. DATCP may ask a district attorney or the department of justice to take court action on behalf of DATCP.

### ***Advisory Council***

This bill requires DATCP to appoint an advisory council to advise DATCP on the administration and enforcement of this chapter. The advisory council must meet at least once annually. DATCP must inform the advisory council of fund balances and payments, and must consult with the advisory council before modifying any license fee or fund assessment. The advisory council must include representatives of organizations identified under this bill.

### ***Confidential Records***

Contractor financial statements, procurement records and storage records filed with DATCP under this bill are not open to public inspection. DATCP may introduce the information in a court or administrative proceeding, subject to any protective order that the court or administrative tribunal deems appropriate.

### ***Penalties***

DATCP may seek court sanctions against a contractor who violates this bill, or a DATCP rule or order issued under this bill. Court sanctions may include:

1. An injunction.
2. A civil forfeiture of not less than \$250 nor more than \$5,000 for each violation.

3. A criminal penalty, for an intentional violation, of up to \$10,000 or a year in jail or both.

4. A judgment ordering the contractor to reimburse DATCP for the amount of any default claim that DATCP pays under this bill because of the contractor's default.

### ***Private Remedy***

Under this bill, if DATCP allows a default claim against a contractor, the claimant may bring a private action in court to recover from the contractor the amount of that allowed claim, less any amount that DATCP pays to the claimant under this bill. The claimant may also recover, in that court action, the claimant's costs and reasonable attorney fees. A claim that DATCP allows under this bill has the same priority in an insolvency proceeding or creditor's action as a claim for labor, except as otherwise provided under federal law.

### ***Funding***

This bill provides funding for the agricultural producer security program created under this bill. Funding is derived from contractor fees and fund assessments, as described above. All fees and fund assessments are deposited to the agricultural producer security fund ("the fund"). Under this bill, all unencumbered balances from current industry-funded appropriations related to dairy, grain and vegetable security are also deposited to the fund.

From the fund, this bill makes the following appropriations:

1. A sum sufficient to pay allowed producer claims that are payable from the fund under this bill.

2. A sum sufficient for DATCP to purchase the "industry bonds" and "blanket bond" required under this bill.

3. An annual DATCP appropriation to administer the agricultural producer security program.

### ***Effective Date; Initial Applicability***

The provisions of this bill, including the appropriation changes and fund transfers contained in this bill, take effect on January 1, 2002. However, this bill first applies to the following industries on the following dates, based on current annual license cycles:

1. The treatment of ch. 127, Stats., first applies to grain dealers and grain warehouse keepers on September 1, 2002, except that:

a. All grain dealer and warehouse keeper license fees and surcharges paid under current ch. 127 after January 1, 2002 (before September 1, 2002) are deposited to the new fund created by this bill.

b. Grain dealer and warehouse keeper license applications for the license year beginning September 1, 2002 must comply with ch. 127, Stats., as recreated by this bill, even though the applications will normally be filed prior to that date.

c. Current ch. 127, Stats., governs proceedings related to grain dealer and warehouse keeper defaults and violations that occur prior to September 1, 2002, even if those proceedings are held after that date.

2. The treatment of s. 100.06 and ch. 127, Stats., first applies to milk contractors on May 1, 2002, except that:

a. Milk producer security fees paid under current s.100.06 after January 1, 2002 (before May 1, 2002) are deposited to the new fund created by this bill.

b. Milk contractor license applications for the license year beginning May 1, 2002 must comply with ch. 127, Stats., as recreated by this bill, even though the applications will normally be filed prior to that date.

c. Current s. 100.06, Stats., governs proceedings related to milk contractor defaults and violations that occur prior to May 1, 2002, even if those proceedings are held after that date.

3. The treatment of s. 100.03 and ch. 127, Stats., first applies to vegetable contractors on February 1, 2002, except that:

a. All vegetable contractor registration fees and surcharges paid under current s. 100.03, Stats., after January 1, 2002 (before February 1, 2002) are deposited to the new fund created by this bill.

b. Vegetable contractor license applications for the license year beginning on February 1, 2002 must comply with ch. 127, Stats., as recreated by this bill, even though the applications will normally be filed prior to that date.

c. Current s. 100.03, Stats., governs proceedings related to vegetable contractor defaults and violations that occur prior to February 1, 2002, even if those proceedings are held after that date.

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

1           **SECTION 1.** 20.115 (1) (g) of the statutes is amended to read:

2           20.115 (1) (g) *Related services.* The amounts in the schedule for the conduct of  
3 services related to food and trade regulation, including special and overtime meat  
4 inspection services under s. 97.42(3), and investigative and audit services under ss.  
5 93.06(6)(b), ~~100.06(1g)(e)~~ and 100.07(1), but excluding services financed under pars.  
6 (gf) and (h). Except as provided in pars. (gf) and (h), all moneys received from  
7 authorized service fees related to food and trade regulation shall be credited to this  
8 appropriation.

1           **SECTION 2.** 20.115 (1) (gf) of the statutes is amended to read:

2           20.115 (1) (gf) *Fruit and vegetable inspection.* All moneys received for the  
3 inspection of fruits and vegetables under ss. 93.06(1m), and 93.09(10) ~~and~~  
4 ~~100.03(3)(a)1.~~

5           **SECTION 3.** 20.115 (1) (gm) (title) of the statutes is amended to read:

6           20.115 (1) (gm) (title) *Dairy trade regulation; ~~dairy product and vegetable~~*  
7 *~~producer security.~~* The amounts in the schedule for the regulation of ~~vegetable~~  
8 ~~procurement under s. 100.03, dairy plant financial condition under s. 100.06 and of~~  
9 ~~dairy trade practices under s. 100.201. All moneys received under ss. 100.03(3)(a)3,~~  
10 ~~100.06(9) and s. 100.201(6) shall be credited to this appropriation.~~

11           **SECTION 4.** From the appropriation account under s. 20.115(1)(gm),  
12 unencumbered balance derived from moneys received under ss. 100.03(3)(a)2. and  
13 3. and 100.06(9) is transferred to the agricultural producer security fund under s.  
14 25.463.

NOTE: The balance remaining in s. 20.115(1)(gm), after the above transfer, is  
attributable to dairy trade practice fees collected under s. 100.201.

15           **SECTION 5.** 20.115 (1) (jm) of the statutes is repealed, and the unencumbered  
16 balance in the appropriation account under s. 20.115(1)(jm) is transferred to the  
17 agricultural producer security fund under s. 25.463..

18           **SECTION 6.** 20.115 (1) (q) of the statutes is created to read:

19           20.115 (1) (q) *Dairy, grain and vegetable security.* From the agricultural  
20 producer security fund under s. 25.463, the amounts in the schedule to administer  
21 dairy, grain and vegetable producer security programs under ch. 127.

22           **SECTION 7.** 20.115 (1) (v) of the statutes is created to read:



SUBCHAPTER V

MILK CONTRACTORS

SUBCHAPTER VI

VEGETABLE CONTRACTORS

SUBCHAPTER VII

RECOVERY PROCEEDINGS

SUBCHAPTER VIII

ADMINISTRATION AND ENFORCEMENT

**SUBCHAPTER I**

**GENERAL DEFINITIONS**

**127.01 General definitions.** In this chapter:

(1) “Affiliate” means any of the following persons:

(a) An owner, major stockholder, partner, officer, director, member, employee or agent of a contractor.

(b) A person owned, controlled or operated by a person under par. (a).

(2) “Asset” means anything of value owned, including current assets, fixed assets and other assets.

(3) “Audited financial statement” means a financial statement on which an independent certified public accountant, or an independent public accountant holding a certificate of authority under ch. 442, has done both the following:

(a) Stated whether the financial statement presents fairly, in all material respects, the financial position of a contractor as of a specific date or for a specific period, according to one of the following:

1. Generally accepted accounting principles.

1           2. The historical cost basis method of accounting for a sole proprietor's personal  
2 financial statement, if that financial statement is prepared on a historical cost basis.

3           (b) Conducted an audit according to generally accepted auditing standards.

4           (4) "Balance sheet" means a statement of assets, liabilities and equity on a  
5 specific date.

6           (5) "Contractor" means any of the following:

7           (a) A grain dealer.

8           (b) A grain warehouse keeper.

9           (c) A milk contractor.

10          (d) A vegetable contractor.

11          (6) "Contributing contractor" means any of the following:

12          (a) A contributing grain dealer.

13          (b) A contributing grain warehouse keeper.

14          (c) A contributing milk contractor.

15          (d) A contributing vegetable contractor.

16          (7) "Contributing grain dealer" has the meaning given in s. 127.10(3).

17          (8) "Contributing grain warehouse keeper" has the meaning given in s.  
18 127.25(2).

19          (9) "Contributing milk contractor" has the meaning given in s. 127.40(1).

20          (10) "Contributing vegetable contractor" has the meaning given in s. 127.55(4).

21          (11) "Current assets" means cash and assets, including trade or investment  
22 items, which may be readily converted into cash in the ordinary course of business  
23 within one year after the date of the balance sheet.

24          (12) "Current liabilities" means those liabilities that are due and payable  
25 within one year after the date of the balance sheet.

1           **(13)** “Department” means the state of Wisconsin department of agriculture,  
2 trade and consumer protection.

3           **(14)** “Depositor” has the meaning given in s. 127.25(5).

4           **(15)** “Equity” means total assets less total liabilities.

5           **(16)** “Equity statement” means a report of the change in equity from the  
6 beginning to the end of the accounting period covered by the report.

7           **(17)** “Fund” means the agricultural producer security fund established under  
8 s. 25.463.

9           **(18)** “Generally accepted accounting principles” means the accounting  
10 standards adopted by the financial accounting standards board. For a business  
11 entity organized and operating outside the United States, “generally accepted  
12 accounting principles” may include generally accepted foreign accounting standards  
13 that are substantially equivalent to standards adopted by the financial accounting  
14 standards board.

15           **(19)** “Grain” means corn, wheat, soybeans, oats, barley, rye, buckwheat,  
16 sorghum, flax seed, milo, sunflower seed and mixed grain as defined in the federal  
17 grain standards act, 7 USC71 to 87k, except that “grain” does not include any of the  
18 following:

19           (a) Sweet corn or other canning crops for processing.

20           (b) Seed corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax  
21 seed, milo, sunflower seed or mixed grain used or intended for use solely for planting  
22 purposes.

23           (c) Corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed,  
24 milo, sunflower seed or mixed grain that has been rolled, cracked, roasted or  
25 otherwise processed.



1           (20) “Grain dealer” has the meaning given in s. 127.10(9).

2           (21) “Grain producer” has the meaning given in s. 127.10(10).

3           (22) “Grain warehouse keeper” has the meaning given in s.127.25(9).

4           (23) “Income statement” means a report of the financial results of business  
5 operations for a specific period.

6           (24) “Individual” means a natural person.

7           (25) “Interim financial statement” means a statement of financial condition  
8 prepared for a period shorter than a fiscal year.

9           (26) “Milk” has the meaning given in s. 97.22(1)(e).

10          (27) “Milk contractor” has the meaning given in s. 127.40(8).

11          (28) “Milk payroll obligation” has the meaning given in s. 127.40(9).

12          (29) “Milk producer” has the meaning given in s. 127.40(10).

13          (30) “Person” means an individual, corporation, cooperative, partnership,  
14 limited liability company, trust or other legal entity.

15          (31) “Procure grain in this state” has the meaning given in s. 127.10(12).

16          (32) “Procure milk in this state” has the meaning given in s. 127.40(12).

17          (33) “Producer” means a grain producer, milk producer or vegetable producer,  
18 as applicable.

19          (34) “Producer grain” has the meaning given in s. 127.10(14).

20          (35) “Producer agent” has the meaning given in s. 127.10(13), 127.40(13) or  
21 127.55(12), as applicable.

22          (36) “Producer milk” has the meaning given in s. 127.40(14).

23          (37) “Reviewed financial statement” means a contractor’s financial statement,  
24 other than an audited financial statement, that meets all the following  
25 requirements:

1 (a) The contractor attests in writing, under oath, that the financial statement  
2 is complete and accurate.

3 (b) The financial statement is reviewed by an independent certified public  
4 accountant, or by an independent public accountant who holds a certificate of  
5 authority under ch. 442.

6 (38) "Security" means security filed or maintained under s. 127.16, 127.31,  
7 127.47 or 127.61.

8 (39) "Sole proprietor" means a contractor who is an individual.

9 (40) "Statement of cash flows" means a report of cash receipts and cash  
10 disbursements from operating, investing and financing activities, including an  
11 explanation of changes in cash and cash equivalents for the accounting period  
12 covered by the report.

13 (41) "Vegetable" means any vegetable that is grown or sold for use in food  
14 processing, whether or not the vegetable is actually processed as food. "Vegetable"  
15 includes, but is not limited to, green beans, kidney beans, lima beans, romano beans,  
16 wax beans, beets, cabbage, carrots, celery, cucumbers, onions, peas, potatoes,  
17 spinach, squash and sweet corn, but does not include grain.

18 (42) "Vegetable contractor" has the meaning given in s. 127.55(14).

19 (43) "Vegetable procurement contract" has the meaning given in s. 127.55(15).

20 (44) "Vegetable producer" has the meaning given in s. 127.55(16).

## 21 SUBCHAPTER II

### 22 AGRICULTURAL PRODUCER SECURITY FUND

23 **127.05 Agricultural producer security fund.** (1) DEPOSITS TO FUND. The  
24 department shall deposit to the fund all fees, surcharges, assessments and

1 reimbursements that the department collects under this chapter. The department  
2 shall keep a record of all deposits, by contractor and industry.

3 (2) PAYMENT OF DEFAULT CLAIMS. Using moneys appropriated under s.  
4 20.115(1)(w) from the fund, the department may pay default claims against  
5 contributing contractors as provided under s. 127.72(1).

6 **127.06 Industry bonds. (1) DEPARTMENT TO ACQUIRE BONDS.** Using moneys  
7 appropriated under s. 20.115(1)(v) from the fund, the department shall acquire and  
8 maintain all the following surety bonds:

9 (a) A surety bond to secure payment under s. 127.72(2) of claims against  
10 contributing milk contractors. This bond shall first take effect on May 1, 2002.

11 (b) A surety bond to secure payment under s. 127.72(2) of claims against  
12 contributing grain dealers and grain warehouse keepers. This bond shall first take  
13 effect on September 1, 2002.

14 (c) A surety bond to secure payment under s. 127.72(2) of claims against  
15 contributing vegetable contractors. This bond shall first take effect on February 1,  
16 2002.

17 (2) BOND TERMS. Each surety bond under sub. (1) shall comply with all the  
18 following:

19 (a) The bond amount shall be at least \$5,000,000 but not more than  
20 \$20,000,000.

21 (b) The bond amount shall renew annually.

22 (c) The bond shall be payable to the department for the benefit of the relevant  
23 claimants under sub. (1).

1 (d) The bond shall be issued by a surety that is authorized to operate a surety  
2 business in this state. No surety may issue more than one of the 3 bonds under sub.  
3 (1).

4 (e) The bond issuer may not cancel or modify the bond unless one of the  
5 following applies:

6 1. The department agrees to the cancellation or modification.

7 2. The issuer notifies the department at least one year prior to the proposed  
8 cancellation or modification. The issuer shall notify the department in writing, and  
9 shall serve the notice in person or by certified mail. Notice is not given until the  
10 department receives it.

11 (f) The bond issuer shall issue the bond in a form, and subject to any terms and  
12 conditions, that the department considers appropriate.

13 (3) BOND PROCUREMENT. The department shall procure the surety bonds under  
14 sub. (1) according to procedures provided in ch. 16.

15 **127.07 Blanket bond. (1) DEPARTMENT TO ACQUIRE BOND.** Using moneys  
16 appropriated under s. 20.115(1)(v) from the fund, the department shall acquire and  
17 maintain a surety bond to secure payment under s. 127.72(3) of claims against  
18 contributing contractors. This surety bond shall first take effect on February 1, 2002.

19 (2) BOND TERMS. The surety bond under sub. (1) shall comply with all the  
20 following:

21 (a) The amount of the bond shall be at least \$20,000,000 but not more than  
22 \$40,000,000.

23 (b) The bond amount shall renew annually.

24 (c) The bond shall be payable to the department for the benefit of claimants  
25 secured under sub. (1).

1 (d) The bond shall be jointly issued by at least 3 sureties acting as co-sureties  
2 on the bond. Each of the sureties shall be authorized to operate a surety business  
3 in this state.

4 (e) No bond issuer may cancel or modify the bond, or withdraw as a co-surety,  
5 unless one of the following applies:

6 1. The department agrees to the cancellation, modification or withdrawal.

7 2. The issuer notifies the department at least one year prior to the proposed  
8 cancellation, modification or withdrawal. The issuer shall notify the department in  
9 writing, and shall serve the notice in person or by certified mail. Notice is not given  
10 until the department receives it.

11 (f) The bond issuers shall issue the bond in a form, and subject to any terms and  
12 conditions, that the department considers appropriate.

13 (3) BOND PROCUREMENT. The department shall procure the surety bond under  
14 sub. (1) according to procedures provided in ch. 16.

15 **127.08 Start-up loan to fund; repayment.** On January 1, 2002, \$2,000,000  
16 is transferred as a loan from the agrichemical management fund established under  
17 s. 25.465, Stats, to the agricultural producer security fund. The department shall  
18 repay this loan principal, plus interest compounded at 5% annually, from the  
19 agricultural producer security fund by July 1, 2006. The department shall transfer  
20 at least \$250,000 from the agricultural producer security fund to the agrichemical  
21 management fund on July 1 of each year, beginning on July 1, 2003. The department  
22 may accelerate the loan repayment, at its discretion.

23 **SUBCHAPTER III**

24 **GRAIN DEALERS**

25 **127.10 Definitions.** In this subchapter:

1           (1) "Cash payment" means payment in any of the following forms:

2           (a) Currency.

3           (b) A cashier's check, or a check that a bank issues and certifies on a bank  
4 instrument.

5           (c) A wire transfer.

6           (d) Simultaneous barter.

7           (2) "Cash on delivery" means full cash payment for grain when the grain dealer  
8 takes custody or control of the grain.

9           (3) "Contributing grain dealer" means a grain dealer, licensed under s.  
10 127.11(1), who contributes to the fund according to ss. 127.14 and 127.15.  
11 "Contributing grain dealer" includes an initial license holder who is required to  
12 contribute to the fund, but whose first quarterly installment under s. 127.15(7) is not  
13 yet due. "Contributing grain dealer" does not include a grain dealer who is  
14 disqualified under s. 127.14(2). A grain dealer who pays one or more quarterly  
15 installments under s. 127.15(7) continues to be a "contributing grain dealer" until  
16 and unless the grain dealer is disqualified under s. 127.14(2).

17           (4) "Current ratio" means the ratio of current assets to current liabilities,  
18 calculated according to s. 127.13(6)(c)1.

19           (5) "Debt to equity ratio" means the ratio of total liabilities to equity, calculated  
20 according to s. 127.13(6)(c)2.

21           (6) "Deferred payment contract" means a grain procurement contract under  
22 which a grain dealer takes custody or control of producer grain more than 7 days  
23 before paying for it in full. "Deferred payment contract" includes a deferred price  
24 contract.

1           (7) “Deferred price contract” means a grain procurement contract under which  
2 a grain dealer takes custody or control of producer grain more than 7 days before the  
3 price of that grain must be determined under the contract.

4           (8) “Disqualified grain dealer” means a grain dealer who is disqualified from  
5 the fund under s. 127.14(2).

6           (9) “Grain dealer” means a person who buys producer grain, or who markets  
7 producer grain as a producer agent. “Grain dealer” does not include any of the  
8 following:

9           (a) A person who merely brokers a contract between a producer and a grain  
10 dealer, without becoming a party to the contract, taking control of grain, or accepting  
11 payment on behalf of the producer.

12           (b) A person who merely buys or sells grain on a board of trade or commodity  
13 exchange.

NOTE: A producer agent must be licensed as a grain dealer. A grain producer may  
file a claim under s. 127.70(1) against a defaulting producer agent. A producer agent may  
file a claim under s. 127.70(1) against a defaulting grain dealer to whom the producer  
agent markets a producer’s grain.

14           (10) “Grain producer” or “producer” means a person who grows grain.

15           (11) “Procure grain” means to buy grain, or acquire the right to market grain.

16           (12) “Procure grain in this state” means any of the following:

17           (a) To buy grain for receipt in this state.

18           (b) To acquire the right to market grain produced in this state.

19           (13) “Producer agent” means a person who acts on behalf of a producer to  
20 market or accept payment for the producer’s grain, without taking title to that grain.

21 “Producer agent” includes a person who uses a producer trust fund to market or  
22 accept payment for producer grain. “Producer agent” does not include any of the  
23 following:

1 (a) A person who merely brokers a contract between a producer and a grain  
2 dealer, without becoming a party to the contract, taking control of grain or accepting  
3 payment on behalf of the producer.

4 (b) A person who merely holds or transports grain for a producer, without  
5 marketing the grain or accepting payment on behalf of the producer.

NOTE: A producer agent must be licensed as a grain dealer. A grain producer may  
file a claim under s. 127.70(1) against a defaulting producer agent. A producer agent may  
file a claim under s. 127.70(1) against a defaulting grain dealer to whom the producer  
agent markets a producer's grain.

6 (14) "Producer grain" means grain that is owned by or held in trust for one or  
7 more grain producers. Grain owned by a grain dealer is not "producer grain." Grain  
8 that a producer agent markets for a producer, without taking title to the grain, is  
9 "producer grain."

10 (15) "Scale ticket" means a receipt, issued by a grain dealer, which states the  
11 weight of grain received by the grain dealer.

12 **127.11 Grain dealers; licensing.** (1) LICENSE REQUIRED. Except as provided  
13 in sub. (2), no grain dealer may procure producer grain in this state without a current  
14 annual license from the department. A license expires on August 31 of each year and  
15 may not be transferred or assigned. A license holder shall comply with this  
16 subchapter.

17 (2) EXEMPT GRAIN DEALERS. The following grain dealers are not required to hold  
18 a license under sub. (1), but may volunteer to be licensed:

19 (a) A grain dealer who pays cash on delivery for all producer grain.

20 (b) A grain dealer who buys producer grain solely for the grain dealer's own use  
21 as feed or seed, and who spends less than \$400,000 per license year for that grain.



1           **(3) LICENSE APPLICATION.** A grain dealer shall apply for an annual license under  
2 sub. (1) in writing, on a form provided by the department. The application shall  
3 include all the following:

4           (a) The applicant's correct legal name, and any trade name under which the  
5 applicant proposes to operate as a grain dealer.

6           (b) Whether the applicant is an individual, corporation, partnership,  
7 cooperative, limited liability company, trust or other legal entity. If the applicant is  
8 a corporation or cooperative, the statement shall identify each officer of the  
9 corporation or cooperative. If the applicant is a partnership, the statement shall  
10 identify each partner.

11           (c) The address of the applicant's primary business location, and the name of  
12 a responsible individual who may be contacted at that location.

13           (d) The address of each business location from which the applicant operates in  
14 this state as a grain dealer, and the name of a responsible individual who may be  
15 contacted at each staffed location.

16           (e) All license fees and surcharges required under sub. (4).

17           (f) The sworn and notarized statement required under sub. (9).

18           (g) A financial statement if required under s. 127.13(1) and not yet filed.

19           (h) Other relevant information required by the department.

20           **(4) LICENSE FEES AND SURCHARGES.** A grain dealer applying for an annual license  
21 under sub. (1) shall pay the following fees and surcharges, unless the department  
22 specifies a different fee or surcharge amount by rule:

23           (a) A license processing fee of \$25. The department may not refund this fee if  
24 the department denies the license application.

1 (b) The following license fees based on the contractor's reported grain payments  
2 under sub. (9)(a), less any credit provided under sub. (6):

3 1. A fee of \$500, plus a fee of \$225 per business location in excess of one business  
4 location, if the amount under sub. (9)(a) is at least \$500,000.

5 2. A fee of \$200 if the amount under sub. (9)(a) is at least \$50,000 but less than  
6 \$500,000.

7 3. A fee of \$50 if the amount under sub. (9)(a) is less than \$50,000.

8 (c) A license fee of \$45 for each truck, in excess of one truck, that the grain dealer  
9 uses to haul grain in this state.

10 (d) A license surcharge of \$425 if the grain dealer's financial statement under  
11 s. 127.13(1) is not an audited financial statement.

12 (e) A license surcharge of \$500 if the department determines that, within 365  
13 days prior to submitting the license application, the applicant operated as a grain  
14 dealer without a license in violation of sub. (1). The applicant shall also pay any  
15 license fees, license surcharges and fund assessments that are still due for any  
16 license year in which the applicant violated sub. (1). Payment under this paragraph  
17 does not relieve the applicant of any other civil or criminal liability that results from  
18 the violation of sub. (1), but does not constitute evidence of any law violation.

19 (f) A license surcharge of \$100 if, during the preceding 12 months, the applicant  
20 failed to file an annual financial statement required under s. 127.13(1)(b) by the  
21 deadline specified in s. 127.13(1)(c).

22 (g) A license surcharge of \$100 if a renewal applicant fails to renew a license  
23 by the license expiration date of August 31. This paragraph does not apply to an  
24 exempt grain dealer under sub. (2) who is voluntarily licensed.

1           **(5) LICENSE FOR PART OF YEAR; FEES.** A person who applies for an annual grain  
2 dealer license after the beginning of a license year shall pay the full annual fee  
3 amounts required under sub. (4).

4           **(6) FEE CREDITS.** If the fund balance contributed by grain dealers exceeds  
5 \$2 million on June 30 of any license year, the department shall credit 50 percent  
6 of the excess amount against fees charged under sub. (4)(b) to contributing grain  
7 dealers who file timely license renewal applications for the next license year  
8 beginning September 1. The department shall credit each contributing grain dealer  
9 on a pro rata basis, in proportion to the total fees that the grain dealer has paid under  
10 sub. (4)(b) for the 4 preceding license years.

11           **(7) FEE STATEMENT.** The department shall provide, with each license application  
12 form, a written statement of all license fees and surcharges required under sub. (4)  
13 or the formula for determining them. The department shall include, in the  
14 statement, any fee credit for which the applicant may qualify under sub. (6).

15           **(8) NO LICENSE WITHOUT FULL PAYMENT.** The department may not issue an  
16 annual license under sub. (1) unless the applicant first pays all license fees and  
17 surcharges identified in the department's statement under sub. (7). The department  
18 shall refund a fee or surcharge paid under protest if, upon review, the department  
19 determines that the fee or surcharge is not due and payable.

20           **(9) SWORN AND NOTARIZED STATEMENT.** A license application under sub. (3) shall  
21 include a sworn and notarized statement, signed by the applicant or an officer of the  
22 applicant, that states all the following:

23           (a) The total amount that the applicant paid, during the applicant's last  
24 completed fiscal year, for producer grain procured in this state. If the applicant has  
25 not yet operated as a grain dealer in this state, the applicant shall estimate the

1 amount that the applicant will pay during the applicant's first complete fiscal year  
2 for producer grain procured in this state.

3 (b) The total payments under par. (a) made under deferred payment contracts.

4 (c) Whether the applicant has had any deferred payment contract obligations,  
5 for grain procured in this state, at any time since the beginning of the applicant's last  
6 completed fiscal year. A grain dealer who reports no deferred payment contract  
7 obligations under this paragraph shall notify the department before incurring any  
8 deferred payment contract obligations.

9 (10) ACTION GRANTING OR DENYING APPLICATION. The department shall grant or  
10 deny an application under sub. (3) within 30 days after the department receives a  
11 complete application. If the department denies a license application, the department  
12 shall give the applicant a written notice stating the reason for the denial.

13 (11) LICENSE DISPLAYED. A grain dealer licensed under sub. (1) shall  
14 prominently display a true copy of that license at each of the following locations:

15 (a) On each truck that the grain dealer uses to haul grain in this state.

16 (b) At each business location from which the grain dealer operates in this state.

17 **127.12 Grain dealers; insurance. (1) FIRE AND EXTENDED COVERAGE**  
18 **INSURANCE.** A grain dealer licensed under s. 127.11(1) shall maintain fire and  
19 extended coverage insurance issued by an insurance company authorized to do  
20 business in this state. The insurance policy shall cover all grain in the custody of the  
21 grain dealer, whether owned by the grain dealer or held for others, at the full local  
22 market value of the grain.

23 (2) INSURANCE CANCELLATION; REPLACEMENT. Whenever an insurance policy  
24 under sub. (1) is canceled, the grain dealer shall replace the policy so there is no lapse  
25 in coverage. The replacement policy shall comply with sub. (1).

1           **(3) INSURANCE COVERAGE; MISREPRESENTATION.** No grain dealer may  
2 misrepresent any of the following to the department, or to any grain producer or  
3 producer agent:

4           (a) That the grain dealer is insured.

5           (b) The nature, coverage or material terms of the grain dealer's insurance  
6 policy.

7           **127.13 Grain dealers; financial statements. (1) REQUIRED ANNUAL**  
8 **FINANCIAL STATEMENT.** (a) A grain dealer shall file an annual financial statement with  
9 the department, before the department licenses the grain dealer under s. 127.11(1),  
10 if the grain dealer's license application reports any of the following:

11           1. More than \$500,000 in grain payments under s. 127.11(9)(a), unless the  
12 grain dealer is a contributing grain dealer who procures grain in this state solely as  
13 a producer agent.

14           2. Any deferred payment contract obligations under s. 127.11(9)(c).

15           (b) A grain dealer licensed under s. 127.11(1) shall file an annual financial  
16 statement with the department during each license year if the grain dealer's license  
17 application for that year reports any of the following:

18           1. More than \$500,000 in grain payments under s. 127.11(9)(a).

19           2. Any deferred payment contract obligations under s. 127.11(9)(c).

20           (c) A grain dealer shall file an annual financial statement under par. (b) by the  
21 15<sup>th</sup> day of the 4th month following the close of the contractor's fiscal year. The  
22 department may extend the filing deadline for up to 30 days if the grain dealer, or  
23 the accountant reviewing or auditing the financial statement, files a written  
24 extension request at least 10 days before the filing deadline.

1 (d) A grain dealer licensed under s. 127.11(1) may not incur any deferred  
2 payment contract obligations for grain procured in this state unless the contractor  
3 first notifies the department and files an annual financial statement with the  
4 department.

5 (2) VOLUNTARY ANNUAL FINANCIAL STATEMENT. A contributing grain dealer may  
6 file an annual financial statement with the department for any of the following  
7 reasons, regardless of whether the grain dealer is required to file a financial  
8 statement under sub. (1):

9 (a) To qualify for a lower fund assessment under s. 127.15.

10 (b) To avoid filing security under s. 127.16(1)(b), if the contractor uses deferred  
11 payment contracts.

12 (3) Reviewed or audited financial statement. An annual financial statement  
13 under sub. (1) or (2) shall be a reviewed or audited financial statement. It shall be  
14 an audited financial statement if any of the following apply:

15 (a) The grain dealer's license application reports more than \$3 million in  
16 payments under s. 127.11(9)(a).

17 (b) The grain dealer's last 2 license applications report more than \$2 million  
18 in payments under s. 127.11(9)(a).

19 (4) ACCOUNTING PERIOD. Except as provided in sub. (6)(b), an annual financial  
20 statement under sub. (1) or (2) shall cover the grain dealer's last completed fiscal  
21 year.

22 (5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. A financial statement under  
23 this section shall be prepared according to generally accepted accounting principles.  
24 A sole proprietor's financial statement, if not audited, shall be prepared on a  
25 historical cost basis.

1           **(6) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a  
2 financial statement under this section shall include a balance sheet, income  
3 statement, equity statement, statement of cash flows, notes to those statements, and  
4 any other information required by the department. A sole proprietor's financial  
5 statement shall include the sole proprietor's business and personal financial  
6 statement. A financial statement shall disclose, separately and clearly, the grain  
7 dealer's unpaid obligations to producers and producer agents.

8           (b) If a grain dealer has been in business for less than one year, the grain  
9 dealer's annual financial statement under sub. (1) or (2) may consist of a balance  
10 sheet and notes.

11           (c) A financial statement under this section shall, for purposes of this chapter,  
12 calculate and report all the following:

- 13           1. The grain dealer's current ratio, excluding any assets identified in sub. (7).  
14           2. The grain dealer's debt to equity ratio, excluding any assets identified in sub.  
15 (7).

NOTE: A grain dealer may append the ratios under par. (c) to the grain dealer's normal financial statement if the grain dealer's normal financial statement does not include them or calculates them in a different way. The department will check the grain dealer's ratio calculations for compliance with par. (c).

16           **(7) ASSETS EXCLUDED.** A financial statement may not include any of the  
17 following assets in the calculations under sub. (6)(c) unless the department  
18 specifically approves their inclusion:

19           (a) Non-trade notes or accounts receivable from officers, directors, employees,  
20 partners or stockholders, or from members of their families, unless the notes and  
21 accounts receivable are secured by a first priority security interest in real or personal  
22 property.

1 (b) Notes or accounts receivable from parent organizations, subsidiaries or  
2 affiliates.

3 (c) Notes or accounts that have been receivable for more than one year, unless  
4 the grain dealer has established an offsetting reserve for uncollectible notes and  
5 accounts receivable.

6 (8) INTERIM FINANCIAL STATEMENT. The department may, at any time, require a  
7 grain dealer licensed under s. 127.11(1) to file an interim financial statement with  
8 the department. The department may require an interim financial statement in  
9 addition to any annual financial statement required under sub. (1) or (2). The grain  
10 dealer shall include, with the interim financial statement, the contractor's sworn  
11 and notarized statement that the financial statement is correct. An interim financial  
12 statement need not be a reviewed or audited financial statement.

13 (9) ENTITY COVERED. A person filing a financial statement under this section  
14 may not file, in lieu of that person's financial statement, the financial statement of  
15 the person's parent, subsidiary, predecessor or successor.

16 (10) DEPARTMENT REVIEW. The department may analyze a financial statement,  
17 and may reject a financial statement that fails to comply with this section.

18 **127.14 Contributing grain dealers.** (1) CONTRIBUTION REQUIRED. A grain  
19 dealer who is required to be licensed under s. 127.11(1) shall pay fund assessments  
20 under s. 127.15 unless the grain dealer is disqualified under sub. (2). A grain dealer  
21 who is voluntarily licensed under s. 127.11(1) may pay voluntary assessments under  
22 s. 127.15.

23 (2) DISQUALIFIED GRAIN DEALER. (a) A grain dealer who is required to file  
24 security under s. 127.16(1)(a) is disqualified from the fund until the department  
25 releases that security under s. 127.16(8)(a). A grain dealer who files security



1 required under s. 127.16(1)(a) is not required to pay cash on delivery for producer  
2 grain.

3 (b) A grain dealer is disqualified from the fund, and required to pay cash on  
4 delivery for producer grain, if any of the following occurs:

5 1. The department denies, suspends or revokes the grain dealer's license.

6 2. The department issues a written notice disqualifying the grain dealer for  
7 cause, including failure to pay fund assessments under s. 127.15 when due or failure  
8 to file a financial statement under s. 127.13 when due.

9 3. The grain dealer fails to reimburse the department, within 60 days after the  
10 department issues a reimbursement demand under s. 127.73(1), for the full amount  
11 that the department pays to claimants under s. 127.72(1) because of that grain  
12 dealer's default.

13 4. The grain dealer fails to reimburse a bond surety, within 60 days after the  
14 bond surety issues a reimbursement demand under s. 127.73(2), for the full amount  
15 that the surety pays to the department under s. 127.72(2) or (3) for the benefit of  
16 claimants affected by that grain dealer's default.

17 (3) EFFECT OF DISQUALIFICATION. (a) The department may not pay default  
18 claims under s. 127.71(1) against a grain dealer who was a disqualified grain dealer  
19 when the default occurred.

20 (b) The department may pay default claims under s. 127.71(1) against a  
21 disqualified grain dealer who was a contributing grain dealer when the default  
22 occurred. The department and the bond surety retain their rights under s. 127.73  
23 to demand and collect reimbursement from the disqualified grain dealer.

24 (c) The department may not return, to a disqualified grain dealer, any fund  
25 assessments that the grain dealer paid as a contributing grain dealer.

1 (d) A disqualified grain dealer remains liable for any unpaid fund installment  
2 under s. 127.15 that became due while the grain dealer was a contributing grain  
3 dealer. A disqualified grain dealer is not liable for any fund installment that becomes  
4 due after the grain dealer is disqualified under sub. (2).

5 **127.15 Contributing grain dealers; fund assessments. (1) GENERAL.** A  
6 contributing grain dealer shall pay an annual fund assessment for each license year.  
7 The assessment equals \$20 or the sum of the following, whichever is greater, unless  
8 the department by rule specifies a different assessment:

9 (a) The grain dealer's current ratio assessment. The current ratio assessment  
10 for each license year equals the grain dealer's current ratio assessment rate under  
11 sub. (2) multiplied by the amount reported under s. 127.11(9)(a) in the grain dealer's  
12 license application.

13 (b) The grain dealer's debt to equity ratio assessment. The debt to equity ratio  
14 assessment equals the grain dealer's debt to equity assessment rate under sub. (4)  
15 multiplied by the payment amount reported under s. 127.11(9)(a) in the grain  
16 dealer's license application.

17 (c) The grain dealer's deferred payment assessment. The deferred payment  
18 assessment for each license year equals the grain dealer's deferred payment  
19 assessment rate under sub. (6) multiplied by the payment amount, if any, that the  
20 grain dealer reports under s. 127.11(9)(b) in the grain dealer's license application.

NOTE: Under s. 127.19(5), a grain dealer must charge to a grain producer that  
portion of the grain dealer's deferred payment assessment that is attributable to the  
grain dealer's deferred payment contract with that producer.

21 **(2) CURRENT RATIO ASSESSMENT RATE.** A grain dealer's current ratio assessment  
22 rate is calculated, as of the beginning of the license year, as follows: