

State of Wisconsin



2009 Senate Bill 527

Date of enactment: **May 12, 2010**
Date of publication*: **May 26, 2010**

2009 WISCONSIN ACT 296

AN ACT *to repeal* 126.06 (2) (intro.) (except 126.06 (2) (title)), 126.08, 126.11 (4) (b) 1. to 3., 126.14 (2) (b) 3. and 4., 126.16 (1) (b) 1., 126.16 (1) (c) 2. a. to c., 126.16 (2), 126.16 (3) (b) 1. and 2., 126.16 (4) (e), 126.16 (8) (c), 126.17 (3) (a) 1. and 2., 126.31 (1) (b) 2. a. to c., 126.31 (2), 126.31 (3) (b) 1. and 2., 126.31 (4) (e), 126.31 (8) (b), 126.32 (5) (a) 1. and 2., 126.45 (3) (c), 126.46 (1) (a) and (b), 126.46 (2) to (5), 126.47 (2), 126.47 (3) (a) 3., 126.47 (3) (b) 1. and 2., 126.47 (4) (e), 126.47 (7) (b), 126.59 (2) (c) 1. to 4., 126.60 (1) (c), 126.61 (1) (bm), 126.61 (2), 126.61 (3) (a) 2., 126.61 (3) (b) 1. and 2., 126.61 (4) (e), 126.61 (7) (b), 126.61 (7) (c), 126.62 (2) (a) and (b), 126.71 (1) (d) and (e), 126.71 (3) (a) 1. to 3., 126.81 (3) and 126.86 (1) (g); *to renumber* 126.81 (intro.) and (1) and 126.81 (4); *to renumber and amend* 126.11 (4) (b) (intro.), 126.16 (1) (c) 2. (intro.), 126.17 (3) (a) (intro.), 126.19 (4), 126.31 (1) (b) 2. (intro.), 126.32 (5) (a) (intro.), 126.40 (1), 126.41 (6) (b), 126.45 (3) (b), 126.46 (1) (intro.), 126.46 (5m) (a), 126.59 (2) (c) (intro.), 126.62 (2) (intro.), 126.70 (1), 126.81 (2) and 126.88; *to consolidate, renumber and amend* 126.16 (1) (b) (intro.) and 2., 126.16 (3) (b) (intro.) and 3., 126.31 (3) (b) (intro.) and 3., 126.47 (3) (b) (intro.) and 3., 126.61 (3) (a) (intro.) and 1. and 126.61 (3) (b) (intro.) and 3.; *to amend* 126.05 (2), 126.06 (1) (intro.), 126.11 (4) (intro.) and (a), 126.11 (4) (c) to (g), 126.11 (6), 126.11 (9) (a), 126.13 (1) (a) (intro.), 126.13 (1) (b) (intro.), 126.14 (2) (b) (intro.), 126.14 (2) (b) 2., 126.15 (1) (c), 126.15 (6), 126.20 (4) (intro.) and (a), 126.26 (3) (intro.) and (a), 126.26 (3) (c) to (f), 126.26 (3m), 126.26 (5), 126.34 (5) (intro.) and (a), 126.41 (3) (intro.) and (a), 126.41 (6) (a), 126.42 (6), 126.44 (1) (a), 126.44 (1) (c) 1., 126.45 (3) (a), 126.45 (4) (a), 126.46 (5m) (intro.), 126.46 (5m) (b), 126.47 (1) (a) 1., 126.47 (3) (a) (intro.), 126.47 (7) (a) 1. and 2., 126.50 (intro.), 126.56 (4), 126.56 (4m), 126.58 (1) (a) and (b), 126.60 (1) (a) and (b), 126.60 (5m) (intro.) and (a), 126.61 (1) (a) 1., 126.61 (7) (a) (intro.), 126.61 (7) (a) 1., 126.61 (7) (bm), 126.64 (intro.), 126.70 (4) (title), 126.71 (1) (a) (intro.), 126.72 (2), 126.73 (1), 126.85 (1) and 126.86 (3) (a); *to repeal and recreate* 126.06 (2) (a), 126.13 (1) (a) 1., 126.13 (1) (b) 1., 126.13 (3), 126.26 (3) (b), 126.28 (3), 126.41 (9), 126.44 (5), 126.47 (1) (b), 126.47 (3) (a) 1. and 2., 126.56 (12), 126.58 (3), 126.61 (1) (b), 126.63 (4) (c) and 126.86 (1) (f); and *to create* 126.06 (1) (c) and (d), 126.11 (9) (d) and (e), 126.14 (4) and (5), 126.19 (4) (b), 126.20 (4) (g), 126.34 (5) (g), 126.40 (1) (a) and (b), 126.41 (6) (b) (intro.), 126.41 (6) (b) 2., 126.41 (6) (bg), 126.41 (6) (br), 126.45 (3) (b) 2., 126.45 (5), 126.46 (5m) (a) 1. and 2., 126.50 (6), 126.56 (9) (am), 126.56 (9) (i), 126.59 (4), 126.64 (7), 126.70 (1) (b) and (c), 126.70 (4) (f) to (k), 126.70 (6) (g), 126.73 (3), 126.81 (1) (c), 126.81 (2m), 126.85 (2) (h) and (i) and 126.88 (2) of the statutes; **relating to:** the agricultural producer security program, providing an exemption from emergency rule procedures, and granting rule-making authority.

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

SECTION 1. 126.05 (2) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

126.05 (2) The department shall deposit into the fund all fees, surcharges, assessments, reimbursements, and proceeds of contingent financial backing that the department collects under this chapter. The department shall keep a record by contractor and industry, of all deposits into the fund. The department shall keep a record by industry of all payments from the fund.

SECTION 2. 126.06 (1) (intro.) of the statutes is amended to read:

126.06 (1) ~~DEPARTMENT TO~~ MAY ACQUIRE. (intro.) Using moneys appropriated under s. 20.115 (1) (v), the department shall may acquire contingent financial backing to secure payment under s. 126.72 (2) of claims against contributing contractors, as defined in s. 126.68 (1). The contingent financial backing may be in one or more of the following forms:

SECTION 3. 126.06 (1) (c) and (d) of the statutes are created to read:

126.06 (1) (c) Trade credit insurance.

(d) Any other form that the department determines is appropriate.

SECTION 4. 126.06 (2) (intro.) (except 126.06 (2) (title)) of the statutes is repealed.

SECTION 5. 126.06 (2) (a) of the statutes is repealed and recreated to read:

126.06 (2) (a) Except as provided in par. (b), the department may determine the amount of any contingent financial backing that it obtains under sub. (1), up to the amount that, in the department's judgment, is sufficient to meet reasonably foreseeable needs under s. 126.72 (2). In making this determination, the department shall consider acquisition costs and repayment liabilities.

SECTION 6. 126.08 of the statutes is repealed.

SECTION 7. 126.11 (4) (intro.) and (a) of the statutes are amended to read:

126.11 (4) LICENSE FEES AND SURCHARGES. (intro.) A grain dealer applying for an annual license under this section shall pay the following fees and surcharges, unless in the amounts that the department specifies a different fee or surcharge amount by rule:

(a) A nonrefundable basic license ~~processing~~ fee of \$25.

SECTION 8. 126.11 (4) (b) (intro.) of the statutes is renumbered 126.11 (4) (b) and amended to read:

126.11 (4) (b) ~~The following license fees~~ A supplementary license fee based on the volume of grain dealer's reported grain payments by the grain dealer under sub. (9) ~~(a) (d)~~, less any credit provided under sub. (6);

SECTION 9. 126.11 (4) (b) 1. to 3. of the statutes are repealed.

SECTION 10. 126.11 (4) (c) to (g) of the statutes are amended to read:

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

(d) A license surcharge of ~~\$425~~ if the grain dealer files a financial statement under s. 126.13 (1) that is not an audited financial statement.

(e) A license surcharge of ~~\$500~~ if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain dealer without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for any license year in which the applicant violated sub. (1).

(f) A license surcharge of ~~\$100~~ if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.13 (1) (b) by the deadline specified in s. 126.13 (1) (c).

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

SECTION 11. 126.11 (6) of the statutes is amended to read:

126.11 (6) FEE CREDITS. If the balance in the fund contributed by grain dealers exceeds \$2,000,000 on ~~June 30~~ May 31 of any license year, the department shall credit 50% of the excess amount against license fees charged under sub. (4) (b) to contributing grain dealers who file timely license renewal applications for the next license year. The department shall credit each contributing grain dealer on a prorated basis, in proportion to the total fees that the grain dealer paid under sub. (4) (b) for the 4 preceding license years as a contributing grain dealer.

SECTION 12. 126.11 (9) (a) of the statutes is amended to read:

126.11 (9) (a) The total amount that the applicant paid, during the applicant's last completed fiscal year, for producer grain procured in this state, less the total amount reported under par. (e) 3., if any. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the amount that the applicant will pay during the applicant's first complete fiscal year for producer grain procured in this state, less the total amount reported under par. (e) 3., if any.

SECTION 13. 126.11 (9) (d) and (e) of the statutes are created to read:

126.11 (9) (d) The total number of bushels of producer grain that the applicant procured in this state during the applicant's last completed fiscal year. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total number of bushels of producer grain that the applicant will procure in this state during the applicant's first complete fiscal year.

(e) All of the following information related to each grain producer or producer agent that under s. 126.70 (1) (b) has permanently waived eligibility to file a default claim against the applicant:

1. A copy of the written waiver that the grain producer or producer agent filed under s. 126.70 (1) (c).

2. The total number of bushels of producer grain that the applicant procured in this state from that grain producer or producer agent during the applicant's last completed fiscal year. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total number of bushels of producer grain that the applicant will procure in this state from that grain producer or producer agent during the applicant's first complete fiscal year.

3. The total amount that the applicant paid during the applicant's last completed fiscal year for producer grain that the applicant procured in this state from that grain producer or producer agent. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total amount that the applicant will pay during the applicant's first complete fiscal year for producer grain that the applicant will procure in this state from that producer or producer agent.

4. The amount of payments under subd. 3. made under deferred payment contracts.

SECTION 14. 126.13 (1) (a) (intro.) of the statutes is amended to read:

126.13 (1) (a) (intro.) A grain dealer shall file an annual financial statement with the department, before the department first licenses the grain dealer under s. 126.11, if the grain dealer's license application ~~reports~~ shows any of the following:

SECTION 15. 126.13 (1) (a) 1. of the statutes is repealed and recreated to read:

126.13 (1) (a) 1. That the amount of grain reported under s. 126.11 (9) (d), less the total amount reported under s. 126.11 (9) (e) 2., if any, exceeds 200,000 bushels.

SECTION 16. 126.13 (1) (b) (intro.) of the statutes is amended to read:

126.13 (1) (b) (intro.) A grain dealer licensed under s. 126.11 shall file an annual financial statement with the department during each license year if the grain dealer's license application for that year ~~reports~~ shows any of the following:

SECTION 17. 126.13 (1) (b) 1. of the statutes is repealed and recreated to read:

126.13 (1) (b) 1. That the amount of grain reported under s. 126.11 (9) (d), less the total amount reported under s. 126.11 (9) (e) 2., if any, exceeds 200,000 bushels and the grain dealer is not a contributing grain dealer who procures grain in this state solely as a producer agent.

SECTION 18. 126.13 (3) of the statutes is repealed and recreated to read:

126.13 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. A grain dealer filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the volume of grain reported by the grain dealer under s. 126.11 (9) (d), less the total volume reported by the grain

dealer under s. 126.11 (9) (e) 2., if any, exceeds 2,500,000 bushels, the grain dealer shall file an audited financial statement.

SECTION 19. 126.14 (2) (b) (intro.) of the statutes is amended to read:

126.14 (2) (b) (intro.) A grain dealer is disqualified from the fund, ~~and required to pay cash on delivery for producer grain,~~ if any of the following occurs:

SECTION 20. 126.14 (2) (b) 2. of the statutes is amended to read:

126.14 (2) (b) 2. The department issues ~~a written notice~~ an order under s. 126.85 disqualifying the grain dealer ~~for cause, including failure to pay fund assessments under s. 126.15 when due or failure to file a financial statement under s. 126.13 when due~~ from the fund.

SECTION 21. 126.14 (2) (b) 3. and 4. of the statutes are repealed.

SECTION 22. 126.14 (4) and (5) of the statutes are created to read:

126.14 (4) NOTICE TO PRODUCERS. A grain dealer who is disqualified from the fund shall immediately give written notice of that disqualification to all grain producers and producer agents to whom the grain dealer has unpaid contract obligations for producer grain produced in this state. The department may by rule or order specify the form and content of the notice.

(5) DISQUALIFIED GRAIN DEALER TO PAY CASH ON DELIVERY. A grain dealer who is disqualified from the fund shall pay cash on delivery for all producer grain procured in this state.

SECTION 23. 126.15 (1) (c) of the statutes is amended to read:

126.15 (1) (c) The grain dealer's deferred payment assessment. The deferred payment assessment for a license year equals the ~~grain dealer's deferred payment assessment rate under sub. (6) multiplied by the payment amount, if any, that the grain dealer reports under s. 126.11 (9) (b) in the grain dealer's license application for that license year, less any amount reported under s. 126.11 (9) (e) 4., multiplied by the grain dealer's deferred payment assessment rate under sub. (6).~~

SECTION 24. 126.15 (6) of the statutes is amended to read:

126.15 (6) DEFERRED PAYMENT ASSESSMENT RATE. A grain dealer's deferred payment assessment rate is 0.0035, except that it is 0.002 for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer unless the department specifies a different rate by rule.

SECTION 25. 126.16 (1) (b) (intro.) and 2. of the statutes are consolidated, renumbered 126.16 (1) (b) and amended to read:

126.16 (1) (b) A grain dealer who reports any deferred payment contract obligations under s. 126.11 (9) (c) or 126.13 (1) (d), other than deferred payment contract obligations to a grain producer or producer agent

who permanently waived eligibility to file a default claim under s. 126.70 (1) (b) and (c), shall file security with the department, and maintain that security until the department releases it under sub. (8) (b), unless the grain dealer has positive equity and one of the following applies: 2. The the grain dealer's annual financial statement under s. 126.13 covers a fiscal year ending after January 1, 2006, and (1) shows a debt to equity ratio of not more than 4.0 to 1.0.

SECTION 26. 126.16 (1) (b) 1. of the statutes is repealed.

SECTION 27. 126.16 (1) (c) 2. (intro.) of the statutes is renumbered 126.16 (1) (c) 2. and amended to read:

126.16 (1) (c) 2. A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8) (bm), if the grain dealer files an annual financial statement under s. 126.13 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain dealer's estimated default exposure is greater than the following amount: \$20,000,000.

SECTION 28. 126.16 (1) (c) 2. a. to c. of the statutes are repealed.

SECTION 29. 126.16 (2) of the statutes is repealed.

SECTION 30. 126.16 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.16 (3) (b) and amended to read:

126.16 (3) (b) A grain dealer who is ~~only~~ required to file or maintain security only under sub. (1) (c) shall at all times maintain security equal to the grain dealer's estimated default exposure, as defined in sub. (1) (c) 1., less the following amount: 3. For a license year that begins on September 1, 2005, or later, \$20,000,000.

SECTION 31. 126.16 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 32. 126.16 (4) (e) of the statutes is repealed.

SECTION 33. 126.16 (8) (c) of the statutes is repealed.

SECTION 34. 126.17 (3) (a) (intro.) of the statutes is renumbered 126.17 (3) (a) and amended to read:

126.17 (3) (a) A grain dealer shall keep copies of all of the following records required under this section and s. 126.18 (2) for at least 6 years after the records are created:.

SECTION 35. 126.17 (3) (a) 1. and 2. of the statutes are repealed.

SECTION 36. 126.19 (4) of the statutes is renumbered 126.19 (4) (a) and amended to read:

126.19 (4) (a) A grain dealer may not enter into a deferred payment contract with a grain producer or producer agent unless the deferred payment contract clearly discloses that it is not a storage contract. ~~Whenever a grain dealer buys grain from a grain producer under a deferred payment contract, the grain dealer shall include~~ includes the following statement in capitalized, boldface clear and conspicuous print immediately above the contract signature line: "This is not a storage contract. The

grain dealer (buyer) becomes the owner of any grain that the producer or producer agent (seller) delivers to the grain dealer under this contract. The producer or producer agent relinquishes ownership and control of the grain, and becomes may become an unsecured creditor pending payment."

SECTION 37. 126.19 (4) (b) of the statutes is created to read:

126.19 (4) (b) A grain dealer may not enter into a deferred payment contract under which a grain producer or producer agent agrees to receive payment for grain more than 120 days after delivering the grain to the grain dealer unless the deferred payment contract clearly and conspicuously discloses that if the grain dealer defaults on payment under the deferred payment contract, any claim filed by the producer or producer agent with the department under s. 126.70 will be disallowed. The department may by rule or order specify the form and content of the disclosure.

SECTION 38. 126.20 (4) (intro.) and (a) of the statutes are amended to read:

126.20 (4) PROHIBITED PRACTICES. (intro.) No grain dealer, or officer, employee, or agent of a grain dealer, may do any of the following:

(a) Misrepresent the weight, grade, or quality of producer grain received from or delivered to any person.

SECTION 39. 126.20 (4) (g) of the statutes is created to read:

126.20 (4) (g) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

SECTION 40. 126.26 (3) (intro.) and (a) of the statutes are amended to read:

126.26 (3) LICENSE FEES AND SURCHARGES. (intro.) A person applying for a grain warehouse keeper license shall pay the following fees and surcharges, unless in the amounts that the department specifies ~~a different fee or surcharge amount~~ by rule:

(a) A nonrefundable basic license processing fee of ~~\$25 plus \$25 for each grain warehouse identified under sub. (2) (d).~~ If a grain warehouse keeper operates 2 or more grain warehouses located within 0.5 mile of each other, the grain warehouse keeper may treat those grain warehouses as a single grain warehouse for purposes of this paragraph and par. (c) fee, which may be based on the number of grain warehouses that the applicant operates.

SECTION 41. 126.26 (3) (b) of the statutes is repealed and recreated to read:

126.26 (3) (b) A grain warehouse inspection fee, which may be based on the number and sizes of the grain warehouses that the applicant operates.

SECTION 42. 126.26 (3) (c) to (f) of the statutes are amended to read:

126.26 (3) (c) A supplementary inspection fee of ~~\$275~~ for each grain warehouse that the applicant operates in excess of one grain warehouse.

(d) A license surcharge of ~~\$500~~ if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain warehouse keeper without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated sub. (1).

(e) A license surcharge of ~~\$100~~ if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.28 (1) (b) by the applicable deadline.

(f) A license surcharge of ~~\$100~~ if a renewal applicant fails to renew a license by the license expiration date of August 31.

SECTION 43. 126.26 (3m) of the statutes is amended to read:

126.26 (3m) EFFECT OF PAYMENT OF SURCHARGE. Payment of a license surcharge under sub. (3) (d) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

SECTION 44. 126.26 (5) of the statutes is amended to read:

126.26 (5) FEE CREDIT. If the fund balance contributed by grain warehouse keepers exceeds \$300,000 on ~~June 30~~ May 31 of any license year, the department shall credit 12.5% of the excess amount against grain warehouse inspection fees charged under sub. (3) (b) to contributing grain warehouse keepers who file timely license renewal applications for the next license year. The department shall credit each contributing grain warehouse keeper on a prorated basis, in proportion to the total inspection fees that the warehouse keeper has paid under sub. (3) (b) for the 4 preceding license years.

SECTION 45. 126.28 (3) of the statutes is repealed and recreated to read:

126.28 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. A grain warehouse keeper filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the grain warehouse keeper operates grain warehouses with a combined capacity of more than 1,500,000 bushels, the grain warehouse keeper shall file an audited financial statement.

SECTION 46. 126.31 (1) (b) 2. (intro.) of the statutes is renumbered 126.31 (1) (b) 2. and amended to read:

126.31 (1) (b) 2. A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8) (am), if the grain warehouse keeper files an annual financial statement under s. 126.28 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain warehouse keeper's estimated default exposure is greater than the following amount: \$20,000,000.

SECTION 47. 126.31 (1) (b) 2. a. to c. of the statutes are repealed.

SECTION 48. 126.31 (2) of the statutes is repealed.

SECTION 49. 126.31 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.31 (3) (b) and amended to read:

126.31 (3) (b) A grain warehouse keeper who is ~~only~~ required to file or maintain security only under sub. (1) (b) shall at all times maintain security equal to the grain warehouse keeper's estimated default exposure, as defined in sub. (1) (b) 1., less the following amount: ~~3. For a license year that begins on September 1, 2005, or later, \$20,000,000.~~

SECTION 50. 126.31 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 51. 126.31 (4) (e) of the statutes is repealed.

SECTION 52. 126.31 (8) (b) of the statutes is repealed.

SECTION 53. 126.32 (5) (a) (intro.) of the statutes is renumbered 126.32 (5) (a) and amended to read:

126.32 (5) (a) A grain warehouse keeper shall retain all of the following records required under this section and s. 126.33 (3) for at least 6 years from the date of their creation:

SECTION 54. 126.32 (5) (a) 1. and 2. of the statutes are repealed.

SECTION 55. 126.34 (5) (intro.) and (a) of the statutes are amended to read:

126.34 (5) PROHIBITED PRACTICES. (intro.) No grain warehouse keeper, ~~or officer, employee, or agent of a grain warehouse keeper,~~ may do any of the following:

(a) Misrepresent the weight, grade, or quality of depositor grain received from or delivered to any person.

SECTION 56. 126.34 (5) (g) of the statutes is created to read:

126.34 (5) (g) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

SECTION 57. 126.40 (1) of the statutes is renumbered 126.40 (1) (intro.) and amended to read:

126.40 (1) (intro.) "Contributing milk contractor" means a milk contractor who is licensed under s. 126.41 (1), ~~who either has paid one or more quarterly installments under s. 126.46 or is required to contribute to the fund, but the first quarterly installment under s. 126.46 (6) is not yet due, and who is~~ has not been disqualified from the fund under s. 126.45 (3), ~~and who either:~~

SECTION 58. 126.40 (1) (a) and (b) of the statutes are created to read:

126.40 (1) (a) Has paid one or more fund assessments under s. 126.46.

(b) Is required to contribute to the fund but the first fund assessment under s. 126.46 (6) is not yet due.

SECTION 59. 126.41 (3) (intro.) and (a) of the statutes are amended to read:

126.41 (3) ANNUAL LICENSE FEES AND SURCHARGES. (intro.) A milk contractor applying for ~~a~~ an annual license under sub. (1) shall include the following fees and surcharges with the license application, unless the department specifies a different fee or surcharge amount by rule:

(a) A nonrefundable basic license ~~processing~~ fee of \$25, ~~regardless of whether application is made after the beginning of a license year.~~

SECTION 60. 126.41 (6) (a) of the statutes is amended to read:

126.41 (6) (a) The total milk payroll obligations that the applicant incurred during the applicant's last completed fiscal year, less the total amount reported under par. (br) 3., if any. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total milk payroll obligations that the applicant will incur during the applicant's first complete fiscal year, less the total amount reported under par. (br) 3., if any.

SECTION 61. 126.41 (6) (b) (intro.) of the statutes is created to read:

126.41 (6) (b) (intro.) Either of the following amounts:

SECTION 62. 126.41 (6) (b) of the statutes is renumbered 126.41 (6) (b) 1. and amended to read:

126.41 (6) (b) 1. The ~~largest~~ highest amount of unpaid milk payroll obligations that the ~~milk contractor applicant~~ had at any time during the ~~milk contractor's applicant's~~ last completed fiscal year.

SECTION 63. 126.41 (6) (b) 2. of the statutes is created to read:

126.41 (6) (b) 2. The highest amount of milk payroll obligations that the applicant incurred in any single month during the applicant's last completed fiscal year.

SECTION 64. 126.41 (6) (bg) of the statutes is created to read:

126.41 (6) (bg) The total amount in hundredweight of producer milk that the applicant procured in this state during the applicant's last completed fiscal year, less the total amount reported under par. (br) 2., if any. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total amount in hundredweight of producer milk that the applicant will procure in this state during the applicant's first complete fiscal year, less the total amount reported under par. (br) 2., if any.

SECTION 65. 126.41 (6) (br) of the statutes is created to read:

126.41 (6) (br) All of the following information related to each milk producer or producer agent that under s. 126.70 (1) (b) has permanently waived eligibility to file a default claim against the applicant:

1. A copy of the written waiver that the milk producer or producer agent filed under s. 126.70 (1) (c).

2. The total amount in hundredweight of producer milk that the applicant procured in this state from that milk producer or producer agent during the applicant's last completed fiscal year. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total amount in hundredweight of producer milk that the applicant will procure in this state from that milk producer or producer agent during the applicant's first complete fiscal year.

3. The total milk payroll obligations that the applicant incurred during the applicant's last completed fiscal year for producer milk that the applicant procured from that milk producer or producer agent. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total milk payroll obligations that the applicant will incur during the applicant's first complete fiscal year for producer milk that the applicant will procure from that milk producer or producer agent.

SECTION 66. 126.41 (9) of the statutes is repealed and recreated to read:

126.41 (9) A milk contractor who files and maintains security under s. 126.47 shall provide a monthly report to the department containing either of the following:

(a) The highest amount of the milk contractor's unpaid milk payroll obligations at any time during the preceding month.

(b) The total amount of milk payroll obligations that the milk contractor incurred during the preceding month.

SECTION 67. 126.42 (6) of the statutes is amended to read:

126.42 (6) FEE CHANGES. The department may modify the license fees under sub. (1) by rule, ~~as provided under s. 126.81 (2).~~

SECTION 68. 126.44 (1) (a) of the statutes is amended to read:

126.44 (1) (a) A milk contractor shall file an annual financial statement with the department before the department first licenses the milk contractor under s. 126.41 (1), unless the milk contractor reports no more than ~~\$1,500,000 in annual milk payroll obligations~~ 150,000 hundredweight of milk under s. 126.41 (6) (a) (bg).

SECTION 69. 126.44 (1) (c) 1. of the statutes is amended to read:

126.44 (1) (c) 1. A contributing milk contractor who reports no more than ~~\$1,500,000 in annual milk payroll obligations~~ 150,000 hundredweight of milk under s. 126.41 (6) (a) (bg).

SECTION 70. 126.44 (5) of the statutes is repealed and recreated to read:

126.44 (5) REVIEWED OR AUDITED FINANCIAL STATEMENT. A milk contractor filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the milk contractor reports more than 2,500,000 hun-

dredweight of milk under s. 126.41 (6) (bg), the milk contractor shall file an audited financial statement.

SECTION 71. 126.45 (3) (a) of the statutes is amended to read:

126.45 (3) (a) A milk contractor who is required to file security under s. 126.47 (1) (a) is disqualified from the fund until the department releases that security under s. 126.47 (7) (a). ~~This paragraph does not apply, during the period beginning on May 1, 2002, and ending on April 30, 2007, to a qualified producer agent who files security under s. 126.47 (3) (a) 3.~~

SECTION 72. 126.45 (3) (b) of the statutes is renumbered 126.45 (3) (b) (intro.) and amended to read:

126.45 (3) (b) (intro.) A milk contractor is disqualified from the fund if the department denies does any of the following:

1. Denies, suspends, or revokes the milk contractor's license.

SECTION 73. 126.45 (3) (b) 2. of the statutes is created to read:

126.45 (3) (b) 2. Issues an order under s. 126.85 disqualifying the milk contractor from the fund.

SECTION 74. 126.45 (3) (c) of the statutes is repealed.

SECTION 75. 126.45 (4) (a) of the statutes is amended to read:

126.45 (4) (a) A milk contractor disqualified under sub. (3) (e) (b) 2. may not engage in any activities for which a license is required under s. 126.41 (1) (a) if the milk contractor files an annual, quarterly, or interim financial statement under s. 126.44 that shows a current ratio of less than 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity.

SECTION 76. 126.45 (5) of the statutes is created to read:

126.45 (5) NOTICE TO PRODUCERS. A milk contractor who is disqualified under sub. (3) shall immediately give written notice of the disqualification to all milk producers and producer agents to whom the milk contractor has unpaid milk payment obligations. The department may by rule or order specify the form and content of the notice.

SECTION 77. 126.46 (1) (intro.) of the statutes is renumbered 126.46 (1) and amended to read:

126.46 (1) GENERAL. A contributing milk contractor shall pay an annual fund assessment for each license year. ~~Except as provided in sub. (5m), the assessment equals \$20 or the sum of the following, whichever is greater, unless in the amount specified by the department by rule specifies a different assessment.~~

SECTION 78. 126.46 (1) (a) and (b) of the statutes are repealed.

SECTION 79. 126.46 (2) to (5) of the statutes are repealed.

SECTION 80. 126.46 (5m) (intro.) of the statutes is amended to read:

126.46 (5m) REDUCED ASSESSMENT FOR CERTAIN MILK CONTRACTORS FILING SECURITY. (intro.) If a contributing

milk contractor files security under s. 126.47 (1) (b), the contributing milk contractor's fund assessment is the amount ~~determined~~ specified under sub. (1) reduced by an amount determined as follows:

SECTION 81. 126.46 (5m) (a) of the statutes is renumbered 126.46 (5m) (a) (intro.) and amended to read:

126.46 (5m) (a) (intro.) Divide the amount of security that the milk contractor is required to file as determined under s. 126.47 (3) (b) by the amount of the milk contractor's estimated default exposure, as defined in s. 126.47 (1) (b) 1. 75 percent of the following:

SECTION 82. 126.46 (5m) (a) 1. and 2. of the statutes are created to read:

126.46 (5m) (a) 1. If the milk contractor reports unpaid milk payroll obligations under s. 126.41 (6) (b) 1. and (9) (a), the highest amount of unpaid milk payroll obligations, reported under s. 126.41 (6) (b) 1. or (9) (a), that the milk contractor had at any time during the last 12 months.

2. If the milk contractor reports monthly milk payroll obligations under s. 126.41 (6) (b) 2. and (9) (b), the highest amount of milk payroll obligations, reported under s. 126.41 (6) (b) 2. or (9) (b), that the milk contractor incurred in any month during the last 12 months.

SECTION 83. 126.46 (5m) (b) of the statutes is amended to read:

126.46 (5m) (b) Multiply the amount of ~~the assessment determined~~ specified under sub. (1) by the amount determined under par. (a).

SECTION 84. 126.47 (1) (a) 1. of the statutes is amended to read:

126.47 (1) (a) 1. The milk contractor reports more than ~~\$1,500,000 in annual milk payroll obligations~~ 150,000 hundredweight of milk under s. 126.41 (6) (a) (bg).

SECTION 85. 126.47 (1) (b) of the statutes is repealed and recreated to read:

126.47 (1) (b) 1. In this paragraph, "estimated default exposure" means 75 percent of the following:

a. If the milk contractor reports unpaid milk payroll obligations under s. 126.41 (6) (b) 1. and (9) (a), the highest amount of unpaid milk payroll obligations, reported under s. 126.41 (6) (b) 1. or (9) (a), that the milk contractor had at any time during the last 12 months.

b. If the milk contractor reports monthly milk payroll obligations under s. 126.41 (6) (b) 2. and (9) (b), the highest amount of milk payroll obligations, reported under s. 126.41 (6) (b) 2. or (9) (b), that the milk contractor incurred in any month during the last 12 months.

2. A milk contractor shall file security with the department, and shall maintain that security until the department releases it under sub. (7) (am), if all of the following apply:

a. The milk contractor's last annual financial statement under s. 126.44 (1) shows negative equity, 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.

b. The milk contractor's estimated default exposure exceeds \$20,000,000.

SECTION 86. 126.47 (2) of the statutes is repealed.

SECTION 87. 126.47 (3) (a) (intro.) of the statutes is amended to read:

126.47 (3) (a) (intro.) Except as provided in par. (b), a milk contractor who is required to file or maintain security under ~~this section sub. (1)~~ shall at all times maintain the following amount of security in an amount equal to at least 75 percent of the following:

SECTION 88. 126.47 (3) (a) 1. and 2. of the statutes are repealed and recreated to read:

126.47 (3) (a) 1. If the milk contractor reports unpaid milk payroll obligations under s. 126.41 (6) (b) 1. and (9) (a), the highest amount of unpaid milk payroll obligations, reported under s. 126.41 (6) (b) 1. or (9) (b), that the milk contractor had at any time during the last 12 months.

2. If the milk contractor reports monthly milk payroll obligations under s. 126.41 (6) (b) 2. and (9) (b), the highest amount of milk payroll obligations, reported under s. 126.41 (6) (b) 1. or (9) (b), that the milk contractor incurred in any month during the last 12 months.

SECTION 89. 126.47 (3) (a) 3. of the statutes is repealed.

SECTION 90. 126.47 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.47 (3) (b) and amended to read:

126.47 (3) (b) A milk contractor who is ~~only~~ required to file or maintain security only under sub. (1) (b) shall at all times maintain security equal to the milk contractor's estimated default exposure, as defined in sub. (1) (b) 1., ~~less the following amount:~~ 3. For a license year that ~~begins on May 1, 2005, or later,~~ \$20,000,000.

SECTION 91. 126.47 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 92. 126.47 (4) (e) of the statutes is repealed.

SECTION 93. 126.47 (7) (a) 1. and 2. of the statutes are amended to read:

126.47 (7) (a) 1. The milk contractor reports not more than ~~\$1,500,000 in milk payroll obligations under s. 126.41 (6) (a)~~ 150,000 hundredweight of milk under s. 126.41 (6) (bg) for at least 2 consecutive years and the milk contractor pays the quarterly fund assessment installment amount that would have been required of the milk contractor if the milk contractor had been a contributing milk contractor on the date when the most recent quarterly installment date under s. 126.46 (6) was due.

2. The milk contractor's annual financial statement under s. 126.44 shows positive equity for at least 2 consecutive years, ~~the financial statements are audited or, if the milk contractor reports \$6,000,000 or less in annual milk payroll obligations under s. 126.41 (6) (a), reviewed,~~ and the milk contractor pays the quarterly fund assessment installment amount that would have been

required of the milk contractor if the milk contractor had been a contributing milk contractor on the date when the most recent quarterly installment date under s. 126.46 (6) was due.

SECTION 94. 126.47 (7) (b) of the statutes is repealed.

SECTION 95. 126.50 (intro.) of the statutes is amended to read:

126.50 Milk contractors; prohibited practices. (intro.) No milk contractor, or officer, employee, or agent of a milk contractor, may do any of the following:

SECTION 96. 126.50 (6) of the statutes is created to read:

126.50 (6) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

SECTION 97. 126.56 (4) of the statutes is amended to read:

126.56 (4) LICENSE FEES AND SURCHARGES. A vegetable contractor applying for a license under sub. (1) shall pay the following fees and surcharges, unless in amounts that the department specifies ~~a different fee or surcharge amount~~ by rule:

(a) A nonrefundable basic license ~~processing~~ fee of \$25.

(b) A fee of ~~\$25 plus 5.75 cents for each \$100 in~~ based on the amount of contract obligations reported under sub. (9) (a), less any credit provided under sub. (6), except that this paragraph does not apply to a vegetable contractor to whom par. (f) applies.

(c) A license surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a vegetable contractor without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated sub. (1).

(d) A license surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.58 (1) (b) by the applicable deadline.

(e) A license surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of January 31.

(f) ~~If A fee if~~ the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1), ~~a fee of \$500 or another amount established by the department by rule.~~

SECTION 98. 126.56 (4m) of the statutes is amended to read:

126.56 (4m) EFFECT OF PAYMENT OF SURCHARGE. Payment of a license surcharge under sub. (3) (4) (c) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

SECTION 99. 126.56 (9) (am) of the statutes is created to read:

126.56 (9) (am) The amount of contract obligations under par. (a) less any amount under par. (i) 2.

SECTION 100. 126.56 (9) (i) of the statutes is created to read:

126.56 (9) (i) All of the following information related to each vegetable producer or producer agent that under s. 126.70 (1) (b) has permanently waived eligibility to file a default claim against the applicant:

1. A copy of the written waiver that the vegetable producer or producer agent filed under s. 126.70 (1) (c).

2. The total amount of contract obligations that the applicant incurred during the applicant's last completed fiscal year under vegetable procurement contracts with that vegetable producer or producer agent. If the applicant has not yet operated as a vegetable contractor, the applicant shall estimate the total amount of contract obligations that the applicant will incur during the applicant's first complete fiscal year under vegetable procurement contracts with that vegetable producer or producer agent.

SECTION 101. 126.56 (12) of the statutes is repealed and recreated to read:

126.56 (12) MONTHLY REPORTS. A vegetable contractor who files security under s. 126.61 shall provide a monthly report to the department showing the highest amount of the vegetable contractor's unpaid contract obligations at any time during the preceding month and the total amount of unpaid contract obligations under deferred payment contracts.

SECTION 102. 126.58 (1) (a) and (b) of the statutes are amended to read:

126.58 (1) (a) Except as provided in par. (c), a vegetable contractor shall file an annual financial statement with the department, before the department first licenses the vegetable contractor under s. 126.56 (1), if the vegetable contractor reports more than \$500,000 in contract obligations under s. 126.56 (9) (a) (am).

(b) Except as provided in par. (c), a vegetable contractor licensed under s. 126.56 (1) shall file an annual financial statement with the department during each license year if the vegetable contractor's license application for that year reports more than \$500,000 in contract obligations under s. 126.56 (9) (a) (am). The vegetable contractor shall file the annual financial statement by the 15th day of the 4th month following the close of the vegetable contractor's fiscal year, except that the department may extend the filing deadline for up to 30 days if the vegetable contractor, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

SECTION 103. 126.58 (3) of the statutes is repealed and recreated to read:

126.58 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. A vegetable contractor filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if

the amount that the vegetable contractor last reported under s. 126.56 (9) (am) is more than \$7,500,000, the vegetable contractor shall file an audited financial statement.

SECTION 104. 126.59 (2) (c) (intro.) of the statutes is renumbered 126.59 (2) (c) and amended to read:

126.59 (2) (c) A vegetable contractor is disqualified from the fund, and required to pay cash on delivery under vegetable procurement contracts, if the department issues ~~a written notice~~ an order under s. 126.85 disqualifying the vegetable contractor ~~for cause. Cause may include any of the following:~~ from the fund.

SECTION 105. 126.59 (2) (c) 1. to 4. of the statutes are repealed.

SECTION 106. 126.59 (4) of the statutes is created to read:

126.59 (4) NOTICE TO PRODUCERS. A vegetable contractor who is disqualified under sub. (2) (b) or (c) shall immediately give written notice of the disqualification to all vegetable producers and producer agents to whom the vegetable contractor has unpaid obligations under vegetable procurement contracts. The department may by rule or order specify the required form and content of the notice.

SECTION 107. 126.60 (1) (a) and (b) of the statutes are amended to read:

126.60 (1) (a) The vegetable contractor's current ratio assessment. The current ratio assessment for a license year equals the vegetable contractor's current ratio assessment rate under sub. (2) multiplied by the amount reported under s. 126.56 (9) (a) (am) in the vegetable contractor's license application for that license year.

126.60 (1) (b) The vegetable contractor's debt to equity ratio assessment. The debt to equity ratio assessment for a license year equals the vegetable contractor's debt to equity ratio assessment rate under sub. (4) multiplied by the amount reported under s. 126.56 (9) (a) (am) in the vegetable contractor's license application for that license year.

SECTION 108. 126.60 (1) (c) of the statutes is repealed.

SECTION 109. 126.60 (5m) (intro.) and (a) of the statutes are amended to read:

126.60 (5m) REDUCED ASSESSMENT FOR CERTAIN VEGETABLE CONTRACTORS FILING SECURITY. (intro.) If a vegetable contractor files security under s. 126.61 (1) (b) (b), the vegetable contractor's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the vegetable contractor is required to file as determined under s. 126.61 (3) (b) by the amount of the vegetable contractor's estimated default exposure, as defined in s. 126.61 (1) (b) 1.

SECTION 110. 126.61 (1) (a) 1. of the statutes is amended to read:

126.61 (1) (a) 1. The vegetable contractor reports more than \$1,000,000 \$500,000 in annual contract obligations under s. 126.56 (9) ~~(a)~~ (am).

SECTION 111. 126.61 (1) (b) of the statutes is repealed and recreated to read:

126.61 (1) (b) 1. In this paragraph, “estimated default exposure” means 75 percent of the highest amount of unpaid contract obligations, reported by a vegetable contractor under s. 126.56 (9) (b) or (12) that the vegetable contractor had at any time during the last 12 months.

2. Except as provided in par. (c), a vegetable contractor shall file security with the department, and shall maintain that security until the department releases it under sub. (7) (bm), if at any time all of the following apply:

a. The vegetable contractor’s latest annual financial statement under s. 126.58 (1) shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

b. The vegetable contractor’s estimated default exposure exceeds \$20,000,000.

SECTION 112. 126.61 (1) (bm) of the statutes is repealed.

SECTION 113. 126.61 (2) of the statutes is repealed.

SECTION 114. 126.61 (3) (a) (intro.) and 1. of the statutes are consolidated, renumbered 126.61 (3) and amended to read:

126.61 (3) Except as provided in par. (b), a vegetable contractor who is required to file or maintain security under this section shall, at all times, maintain security that is at least equal to ~~the sum of the following:~~ 1. ~~Seventy-five~~ 75 percent of the amount of unpaid contract obligations last reported under s. 126.56 (9) (b) or (12) ~~(a)~~, except that this amount is not required of a contributing vegetable contractor.

SECTION 115. 126.61 (3) (a) 2. of the statutes is repealed.

SECTION 116. 126.61 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.61 (3) (b) and amended to read:

126.61 (3) (b) A vegetable contractor who is ~~only~~ required to file or maintain security only under sub. (1) ~~(bm)~~ (b) shall at all times maintain security equal to the vegetable contractor’s estimated default exposure, as defined in sub. (1) ~~(bm)~~ (b) 1., ~~less the following amount:~~ 3. ~~For a license year that begins on February 1, 2005, or later,~~ \$20,000,000.

SECTION 117. 126.61 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 118. 126.61 (4) (e) of the statutes is repealed.

SECTION 119. 126.61 (7) (a) (intro.) of the statutes is amended to read:

126.61 (7) (a) (intro.) The department may release security filed under sub. (1) (a), except for any amount of

security that the vegetable contractor is required to file because sub. (1) (b) ~~or (bm)~~ applies to the vegetable contractor, if any of the following applies:

SECTION 120. 126.61 (7) (a) 1. of the statutes is amended to read:

126.61 (7) (a) 1. The vegetable contractor reports less than \$1,000,000 \$500,000 in annual contract obligations under s. 126.56 (9) (a) for at least 2 consecutive years and the vegetable contractor pays the quarterly fund assessment that would have been required of the vegetable contractor if the vegetable contractor had been a contributing vegetable contractor on the most recent quarterly installment date under s. 126.60 (6).

SECTION 121. 126.61 (7) (b) of the statutes is repealed.

SECTION 122. 126.61 (7) (bm) of the statutes is amended to read:

126.61 (7) (bm) The department may release security filed under sub. (1) ~~(bm)~~ (b), except for any amount of security that the vegetable contractor is required to file because sub. (1) (a) ~~or (b)~~ applies to the vegetable contractor, if the vegetable contractor files 2 consecutive annual financial statements under s. 126.58 showing that the vegetable contractor no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

SECTION 123. 126.61 (7) (c) of the statutes is repealed.

SECTION 124. 126.62 (2) (intro.) of the statutes is renumbered 126.62 (2) and amended to read:

126.62 (2) RECORDS RETENTION. A vegetable contractor shall keep all ~~of the following records~~ required under sub. (1) for at least 6 years from the date of their creation:

SECTION 125. 126.62 (2) (a) and (b) of the statutes are repealed.

SECTION 126. 126.63 (4) (c) of the statutes is repealed and recreated to read:

126.63 (4) (c) A vegetable contractor may pay after January 31 for processing vegetables delivered on or before December 31, in accordance with a deferred payment contract, if all of the following apply:

1. The vegetable contractor complies with sub. (5).
2. The deferred payment contract specifies a date by which full payment must be paid.

3. The deferred payment contract clearly and conspicuously discloses that the vegetable producer or producer agent is disqualified from filing a default claim under s. 126.70 in the event that the vegetable contractor defaults on payment under the deferred payment contract. The department may by rule or order specify the form and content of the disclosure.

SECTION 127. 126.64 (intro.) of the statutes is amended to read:

126.64 Vegetable contractors; prohibited practices. (intro.) No vegetable contractor, or officer,

employee, or agent of a vegetable contractor, may do any of the following:

SECTION 128. 126.64 (7) of the statutes is created to read:

126.64 (7) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

SECTION 129. 126.70 (1) of the statutes is renumbered 126.70 (1) (a), and 126.70 (1) (a) (intro.), as renumbered, is amended to read:

126.70 (1) (a) (intro.) ~~Any A person who is one~~ of the following persons may file a default claim with the department against a contractor who is licensed, or required to be licensed, under this chapter, unless the person has waived eligibility to file a claim as provided in pars. (b) and (c):

SECTION 130. 126.70 (1) (b) and (c) of the statutes are created to read:

126.70 (1) (b) A producer or producer agent may permanently waive eligibility to file a default claim against a grain dealer, milk contractor, or vegetable contractor if, at the time of the waiver, any of the following applies:

1. The producer or producer agent has a greater than 50 percent ownership interest in the grain dealer, milk contractor, or vegetable contractor.

2. Persons who collectively have a greater than 50 percent ownership interest in the producer or producer agent also collectively have a greater than 50 percent ownership interest in the grain dealer, milk contractor, or vegetable contractor.

(c) A producer or producer agent shall file a waiver under par. (b) with the department in writing, on a form provided by the department. In the waiver, the producer or producer agent shall include documentation to show that the requirements in par. (b) are satisfied and that the individuals signing the waiver are authorized to do so on behalf of the producer or producer agent.

SECTION 131. 126.70 (4) (title) of the statutes is amended to read:

126.70 (4) (title) AUDITING AND DISALLOWING CLAIMS.

SECTION 132. 126.70 (4) (f) to (k) of the statutes are created to read:

126.70 (4) (f) That the defaulting contractor paid the amount due by check, but the claimant failed to present the check for payment within 30 days of receipt.

(g) That the claim relates to a payment that first became due, under a deferred payment contract for grain, more than 120 days after the grain was delivered to the defaulting grain dealer.

(h) That the claim relates to a payment that first became due, under a deferred payment contract for processing vegetables, after January 31 of any year for processing vegetables tendered or delivered to a vegetable contractor on or before December 31 of the preceding year.

(i) That the claim relates to grain, milk, or vegetables that were never tendered to or received and accepted by the defaulting grain dealer, milk contractor, or vegetable contractor. This paragraph does not apply to unharvested acreage, as defined in s. 126.55 (17).

(j) That the claimant has, under sub. (1) (b), permanently waived eligibility to file the claim.

(k) That any of the following circumstances exists and causes the claim to be an unfair or unreasonable claim against the fund, regardless of whether the claimant has, under sub. (1) (b), waived the claim:

1. The claimant had a greater than 50 percent ownership interest in the defaulting contractor at the time of the default or at relevant times before the default.

2. Persons who collectively had a greater than 50 percent ownership interest in the claimant also had a greater than 50 percent ownership interest in the defaulting contractor at the time of the default or at relevant times before the default.

3. The claimant, or any of the claimant's owners, officers, or managers, had substantial management control, at the time of the default or at relevant times before the default, over any of the defaulting contractor's operations involved in the default.

4. The claimant, or any of the claimant's owners, officers, or managers, conspired with the defaulting contractor, or any of the defaulting contractor's owners, officers, or managers, to create a default and a resulting claim against the fund.

5. Other circumstances that the department specifies by rule.

SECTION 133. 126.70 (6) (g) of the statutes is created to read:

126.70 (6) (g) Specify any further actions required of a claimant, including any further actions required to obtain payment under a trade credit insurance policy or other contingent financial backing under s. 126.06.

SECTION 134. 126.71 (1) (a) (intro.) of the statutes is amended to read:

126.71 (1) (a) (intro.) ~~Except as provided in par. (d) or (e), for~~ For each default claim allowed under s. 126.70 against a grain dealer or milk contractor who was a contributing contractor when the default occurred:

SECTION 135. 126.71 (1) (d) and (e) of the statutes are repealed.

SECTION 136. 126.71 (3) (a) 1. to 3. of the statutes are repealed.

SECTION 137. 126.72 (2) of the statutes is amended to read:

126.72 (2) PROCEEDS OF CONTINGENT FINANCIAL BACKING. The department, at the direction of the secretary of agriculture, trade and consumer protection, shall draw on the contingent financial backing acquired under s. 126.06 to make payments authorized under s. 126.71 (1), to the extent that those payments exceed the deductible amount in sub. (3). If the contingent financial back-

ing is in the form of a trade credit insurance policy that appears to cover the authorized payments, the department shall file a claim against the policy.

SECTION 138. 126.73 (1) of the statutes is amended to read:

126.73 (1) ~~PAYMENTS FROM THE FUND~~ GENERALLY. The Except as provided in sub. (2) or (3), the department may demand and collect, from a contractor, any claim amounts that the department pays under s. 126.72 (1) or under s. 126.72 (2) with the proceeds of ~~a loan under s. 126.06 (1) (b) contingent financial backing under s. 126.06 (1)~~ because of the contractor's default.

SECTION 139. 126.73 (3) of the statutes is created to read:

126.73 (3) TRADE CREDIT INSURANCE PAYMENTS. If the department files a claim against a trade credit insurance policy under s. 126.72 (2) and obtains and uses proceeds from the insurance policy to make payments authorized under s. 126.72 (2), the trade credit insurer may demand and collect the amount of those payments from the defaulting contractor.

SECTION 140. 126.81 (intro.) and (1) of the statutes are renumbered 126.81 (1) (intro.) and (a).

SECTION 141. 126.81 (1) (c) of the statutes is created to read:

126.81 (1) (c) Specify additional circumstances for denying claims under s. 126.70 (4) (k).

SECTION 142. 126.81 (2) of the statutes is renumbered 126.81 (1) (b) and amended to read:

126.81 (1) (b) Modify the license fees and surcharges ~~provided in under s. 126.11 (4), 126.26 (3), 126.41 (3), 126.42, or 126.56 (4).~~

SECTION 143. 126.81 (2m) of the statutes is created to read:

126.81 (2m) The department shall promulgate rules to do all of the following:

(a) Specify license fees and surcharges under ss. 126.11 (4), 126.26 (3), and 126.56 (4).

(b) Specify fund assessments under s. 126.46 (1).

SECTION 144. 126.81 (3) of the statutes is repealed.

SECTION 145. 126.81 (4) of the statutes is renumbered 126.81 (d).

SECTION 146. 126.85 (1) of the statutes is amended to read:

126.85 (1) GENERAL. The department may, by special order, require a contractor to remedy a violation of this chapter ~~or~~ a rule promulgated under this chapter, or a condition imposed under s. 126.86 (1). The department may order the contractor to take specific remedial actions, including actions to remedy deficiencies or to prevent losses to persons protected under this chapter. In an order under this subsection, the department may disqualify the contractor from the fund pending compliance with the order. Except as provided in sub. (2), the department shall give the contractor notice and an opportunity for hearing before the department issues an order.

SECTION 147. 126.85 (2) (h) and (i) of the statutes are created to read:

126.85 (2) (h) A contractor fails to file a financial statement with the department by the time or in the form required under this chapter.

(i) A contractor fails to pay an amount owed under s. 126.73 within 60 days after the contractor receives a written demand for payment from the department or other person to whom payment is due under s. 126.73.

SECTION 148. 126.86 (1) (f) of the statutes is repealed and recreated to read:

126.86 (1) (f) The contractor fails to pay an amount owed under s. 126.73 within 60 days after the contractor receives a written demand for payment from the department or other person to whom payment is due under s. 126.73.

SECTION 149. 126.86 (1) (g) of the statutes is repealed.

SECTION 150. 126.86 (3) (a) of the statutes is amended to read:

126.86 (3) (a) The department may, without prior notice or hearing, summarily suspend, revoke, or impose conditions on a license held by a contractor if the department finds that any of the conditions identified in s. 126.85 (2) exist or otherwise finds that summary action is necessary to prevent a clear and imminent threat of harm to persons protected under this chapter. ~~Conditions indicating a clear and imminent threat of harm include those identified in s. 126.85 (2).~~

SECTION 151. 126.88 of the statutes is renumbered 126.88 (1) and amended to read:

126.88 (1) The department may by rule modify the fund assessments provided under s. 126.15, 126.30, ~~126.46,~~ or 126.60. The department shall modify fund assessments under ss. 126.15, 126.30, 126.46, and 126.60 as necessary to do all of the following:

(a) Maintain an overall fund balance of at least \$5,000,000 ~~after January 1, 2006,~~ but not more than \$22,000,000 ~~at any time.~~

(b) Maintain a fund balance attributable to grain dealers of at least \$1,000,000 ~~after January 1, 2006,~~ but not more than \$6,000,000 ~~at any time.~~

(c) Maintain a fund balance attributable to grain warehouse keepers of at least \$200,000 ~~after January 1, 2006,~~ but not more than \$1,000,000 ~~at any time.~~

(d) Maintain a fund balance attributable to milk contractors of at least \$3,000,000 ~~after January 1, 2006,~~ but not more than \$12,000,000 ~~at any time.~~

(e) Maintain a fund balance attributable to vegetable contractors of at least \$800,000 ~~after January 1, 2006,~~ but not more than \$3,000,000 ~~at any time.~~

SECTION 152. 126.88 (2) of the statutes is created to read:

126.88 (2) (a) If the fund balance for a portion of the fund under sub. (1) (b) to (e) falls below the minimum amount required for that portion of the fund, the depart-

ment shall by rule modify the assessment rates for the type of contractor that contributes to that portion of the fund so that the assessment rates are adequate to reach and maintain the minimum balance within a reasonable time.

(b) The department may use the procedure under s. 227.24 to promulgate a rule modifying an assessment under par. (a). In a rule promulgated under this paragraph, the department may not provide that the modification of an assessment takes effect before the beginning of

the next license year. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under this paragraph may remain in effect for not more than 24 months. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.
