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Assembly Bill 698

December 12, 2017

Good morning Chairman Nerison and members of the Assembly Committee on Agriculture,

Thank you for holding a public hearing on AB-698 and allowing me the opportunity to testify on this bill today.

AB-698 modernizes the Agricultural Producer Security Act to reflect current and preferred business practices in the agriculture industry. This bill makes significant improvements in the following diverse areas that affect Wisconsin's agricultural production and economy:

- 1. AB-698 provides more flexibility to local communities and organizations.

This bill creates an exemption for anyone purchasing less than \$15,000 of processing vegetables. Current law requires anyone purchasing vegetables from growers for processing to obtain a license from the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP). There is no minimum threshold for this requirement under current state law. This means that small organizations, including charitable organizations that process and sell vegetables for fundraisers, are required to obtain a vegetable contractor license for their incidental purchases from growers. Small vegetable contractors will benefit by being exempt from licensing and fees for events as simple as a local community organization hosting a fundraiser.

- 2. AB-698 provides more flexibility to Wisconsin's milk industry

This bill allows a milk producer to defer a portion of their milk check up to 120 days, requires a written contract outlining the terms of the payment deferral, and directs DATCP to establish an additional assessment into the Producer Security Trust Fund (PSTF). Current law requires milk contractors to pay milk producers twice monthly. There is no exception to this requirement. For cash management or tax planning purposes, some milk producers have expressed a desire to defer a portion of their milk check to a later date. State law does not permit such a deferral. The milk industry will benefit from more flexibility with regard to payment terms.

- 3. AB-698 provides more flexibility to the state's grain dealers and suppliers

This bill would combine required fund balance thresholds for grain dealers and grain warehouse keepers to make it easier to maintain balances within statutory limits. Current law establishes separate minimum and maximum PSTF balance thresholds for grain dealers and grain warehouse keepers. Most grain

warehouse keepers are also grain dealers, and the thresholds for grain warehouse keepers are very small. The grain industry will benefit from a more predictable Agricultural Producer Security Trust Fund balance levels.

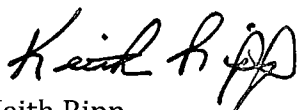
- 4. AB-698 provides more flexibility to DATCP in the legal system

This bill would strengthen DATCP's legal position in reimbursement and bankruptcy proceedings for defaults paid from the PSTF. Current law does not require producers to file claims in an ongoing bankruptcy or receivership proceeding to be eligible to file a claim against the PSTF. Nor does current law specifically provide that DATCP has subrogation rights (i.e. the same rights that producers have) in such proceedings. This could jeopardize DATCP's ability to recover otherwise collectible debt that is owed to the department due to a default payout. Passing this legislation will strengthen DATCP's ability to seek reimbursement for defaults paid from the PSTF. Furthermore, all agricultural industries in Wisconsin will benefit from stronger default proceeding requirements and increased probability of recovering funds paid as a result of a default.

Finally, this piece of legislation is supported unanimously by the Agricultural Producer Security Council, a statutory advisory council to DATCP under Chapter 126 of the Wisconsin state statutes. Additionally, this bill has strong support across the agricultural industry, especially both contractor and producer groups.

Thank you again for your time and consideration on Assembly Bill 698. I hope you support this legislation, and I would be more than happy to answer any questions you may have about this bill.

Warmest regards,



Keith Ripp
Wisconsin State Representative
42nd Assembly District



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

December 12, 2017 Assembly Committee on Agriculture Testimony on Assembly Bill (AB) 698

Good morning!

Thank you Chair Nerison and committee members for hearing Assembly Bill 698 (AB 698), which updates and modernizes the Agricultural Producer Security Act to reflect current and preferred business practices in the agriculture industry.

Rep. Ripp and I have brought forward AB 698 on behalf of the Department of Agriculture, Trade & Consumer Protection (DATCP) and the Agricultural Producer Security Council, a statutory advisory council to DATCP under Chapter 126 of the Wisconsin state statutes.

There are four main components to this update:

- Provide an exemption for anyone purchasing less than \$15,000 of processing vegetables. Current law requires anyone purchasing vegetables from growers for processing to obtain a license from DATCP.
- Allows a milk producer to defer a portion of their milk check up to 120 days, requires a written contract outlining the terms of the payment deferral, and directs DATCP to establish an additional assessment into the Producer Security Trust Fund (PSTF).
- Combine required fund balance thresholds for grain dealers and grain warehouse keepers to make it easier to maintain balances within statutory limits.
- Strengthen DATCP's legal position in reimbursement and bankruptcy proceedings for defaults paid from the PSTF.

This bill received unanimous support from the Agricultural Producer Security Council.

Thank you again for hearing AB 698.



December 12, 2017

To: Members, Assembly Committee on Agriculture
From: John Manske, Chair, Agricultural Producer Security Council &
Dave Daniels, Vice-Chair, Agricultural Producer Security Council
Re: Support for AB 698

We are speaking today as officers of the Agricultural Producer Security (APS) Council, a 10-member advisory group to DATCP on the administration and enforcement of Chapter 126 of the statutes, which governs the APS security fund. We represent Cooperative Network and the Wisconsin Farm Bureau Federation on the council. The other organizations represented on the council are the following: Wisconsin Farmers Union, National Farmers Organization, Wisconsin Agri-Business Association, Midwest Food Products Association, Wisconsin Dairy Products Association, Wisconsin Potato & Vegetable Growers Association, Wisconsin Cheese Makers Association, Wisconsin Corn Growers Association and the Wisconsin Soybean Association. The last two are together represented by one individual while each of the other organizations has a representative on the council. The council is referenced in statute 126.90.

The council voted 10-0 at our meeting on Oct. 13 to support the legislative draft that became AB 698/SB 599. We appreciate the leadership of Representative Ripp and Senator Marklein on the important legislation, and the timely hearing today by the Committee on Agriculture. We are hopeful that the committee will take positive action on the legislation soon.

We will focus on two of the provisions today, and welcome questions from the committee on any of the provisions in the bill. The allowance of deferred payment contracts between milk purchasers and milk producers is a key provision that enjoys wide support within the dairy industry. After DATCP found through audits that not all milk buyers were in compliance with the law that requires contractors to pay producers by the 4th and 19th of each month for the previous month's milk, but were deferring payment as a cash management benefit to producers, they requested that the practice cease. At that time, we began discussion with various dairy industry representatives as well as DATCP about advancing deferred payment authorization. The result is the provision in AB 698 that is similar to what is already allowed in the grain industry in Wisconsin as well as surrounding states that allow deferred payment in the dairy industry. Because of the increased default risk involved, DATCP will propose a deferred payment assessment through rule-making to cover the risk.

The combining of APS fund balance thresholds in the grain dealer and grain warehouse keeper programs is a recommendation that was made by the firm Milliman when they did an actuarial study of the program. The grain warehouse keeper segment of the program is so small that a large default could have a major and long-term impact on the remaining grain warehouse keeper license holders.

We also support the provisions that strengthen the department's ability to recover amounts paid from the fund in the event of a default to producers.

Thank you for your attention. We would be happy to respond to any questions.



A division of GROWMARK, Inc.

December 12, 2017

Chairman Nerison and members of the committee,

Thank you for the opportunity to testify today in support of Assembly Bill 698 – changes to the Ag Producer Security Fund.

My name is Scott Eastwood and I am the Credit Manager for Insight FS. Insight FS is a cooperative providing agri-finance, agronomy, energy, feed, grain marketing and turf products and services in Wisconsin and the upper peninsula of Michigan. We employ over 270 full-time employees at 23 locations throughout the state. Our grain business handles 4.5 million bushels of grain each year.

We agree with the provision in this legislation that combines grain dealer and warehouse programs. The warehouse programs are too small to stand alone and some elevators hold both licenses. This is a change to the program that makes sense.

While Insight FS may not be a milk contractor, many of our farmer owners are dairy producers. An allowance for deferred payment contracts for milk, similar to what currently exists for our grain customers, would be of great benefit to our producers.

Lastly, I feel it is important to note that this legislation came forward from a consensus of the APS Council. The Council is made up of a diverse group of industry stakeholders who have discussed these issues at length.

We ask for the committee's support of Assembly Bill 698.

Thank you for your time and attention.



**Hearing Testimony for
Assembly Committee on Agriculture, December 12, 2017
John T. Umhoefer, Wisconsin Cheese Makers Association
Re: Support for AB 698**

Wisconsin Cheese Makers Association (WCMA) represents a majority of milk contractors – the buyers of fresh farm milk regulated by the Wisconsin’s Agricultural Producer Security Program. These firms, cooperative and privately-held, have particular interest in the new provisions allowing for deferred payment contracts between milk contractors and dairy farmers.

Our WCMA Board of Directors **supports** this addition to the APS program and is **registering in favor** of this bill this morning. Deferred payments for milk are a tool that helps dairy farms manage farm income and profitability, and this legislation now codifies and regulates this industry practice.

Wisconsin Cheese Makers Association wishes Representatives to understand that deferred payment is more readily adoptable by cooperatives because of federal regulations that this bill cannot address.

Wisconsin regulates payment for milk, and the federal government, through federal milk marketing orders, also regulates payments to dairy farmers who have milk pooled on the federal order.

Federal Milk Marketing Orders 30 and 32 blanket the state of Wisconsin and set monthly prices for milk in product classes. The Orders then audits dairy plants each month to assure that farms were paid the federally-mandated minimum price and were paid in a timely manner. Federal orders require two milk payments to dairy producers each month. For milk made in December, for example, a first payment is due on December 26th for the first half of the month, and a final check is due on the 17th of January. (WDATCP requires payment for the first half of December milk by Jan. 4; the second half by Jan. 19.)

All federal order regulations apply only to Grade A milk pooled on the order. But that’s most of Wisconsin’s milk. In 2016, 81 percent of milk made in Wisconsin was pooled on federal orders.

The federal order does not specify minimum payments dates or amounts for producers paid by cooperatives, where the farmers are considered owners of the entity.

Privately-owned dairy plants that pool milk on the federal order must adhere to the payment dates noted above. If a dairy producer or producers are paid between 1 and 30 days late, the order penalizes the plant 1% of the dollars owed to the producer(s). If payment is between 30-60 days late, the penalty is 2% of the dollars owed. (An additional percentage point is added every 30 days.) This penalty money is paid to the federal order. Order officials told WCMA that late payment notices and fines are rarely issued, but would apply if a deferred payment contract results in delayed payment.

So, privately-owned cheese plants that pool milk on the federal order face this penalty hurdle if they would seek to use the deferred payment contract proposed in this legislation.

Despite this federal penalty for some milk contractors, WCMA supports the deferred payment contract language in this bill due to the assistance these contracts will provide to dairy farms wishing to manage farm income and profitability. The health of Wisconsin dairy farms is paramount to the success of Wisconsin’s \$46 billion dairy industry.

Assembly Committee on Agriculture
Assembly Bill 698
December 12, 2017

Testimony Provided by: Jeremy McPherson, Director - Bureau of Business Trade Practices
Department of Agriculture, Trade, and Consumer Protection

Good morning Chair Nerison and members of the committee. My name is Jeremy McPherson. I am the Director of the Bureau of Business Trade Practices at the Department of Agriculture, Trade, and Consumer Protection. Thank you for allowing me to testify regarding AB 698. I am testifying today in support of this bill.

This bill modernizes the Agricultural Producer Security Law, Chapter 126 of the statutes. This important law helps provide assurance that producers are paid for the milk, grain, and vegetables that they sell, and that grain held in storage for others is maintained.

This bill not only updates Chapter 126 to reflect current business practices, it also eliminates unnecessary or burdensome requirements and strengthens DATCP's legal position when attempting to recover funds paid as a result of a default.

This proposal was developed in partnership with the Agricultural Producer Security Council, a 10 member advisory council established to advise the Department on policy matters involving producer security issues. The Council was active in identifying the issues addressed by this bill and unanimously supported the final package before you today.

This bill makes a number of changes to the producer security law:

1. The bill provides an exemption from both license requirements and participation in the Producer Security trust fund for anyone purchasing less than \$15,000 per year of vegetables for processing. Current law does not provide a minimum purchase amount; therefore, anyone who purchases any amount of vegetables for processing directly from producers must obtain a license, pay licensing fees and pay assessments into the producer security fund. The minimum threshold of \$15,000 will provide relief for organizations whose primary business is not processing vegetables (charitable organizations for example) but it will not put undue risk on producers who sell to those organizations.
2. The bill allows milk contractors and producers to enter into agreements to defer milk payments to a later date. Under current law, milk contractors must pay producers in full on the 4th and the 19th of every month. Under no circumstances can producers and contractors agree to payment terms beyond those dates. Because milk prices have been volatile over the last several years, a number of producers have expressed interest in using this tool to delay a portion of their income and smooth the tax effects of milk price volatility. This bill allows producers to delay some or all of their milk checks up to 120 days, similar to what is currently allowed in the grain industry. The bill adds financial statement filing requirements and security requirements for some milk contractors using deferred payment

contracts. This bill also directs DATCP to write rules to establish a deferred payment assessment to cover the additional risk to the producer security fund that will result from deferring these payments.

3. The bill combines minimum and maximum fund balances for grain dealers and grain warehouse keepers. After considering the results of a recent actuarial study, it became clear that these two limits should be combined. First, most grain warehouses are also grain dealers. Second, the grain warehouse program has struggled to reach its minimum fund balance of \$200,000. Although grain warehouse defaults are rare and usually very small, if a default were to occur that drew the warehouse balance below \$200,000, the department would be required to raise assessments to bring the balance back to the minimum. Combining the balances helps provide stability to the warehouse portion of the fund. Also, because separate license fees and assessments will be maintained for grain warehouse keepers, it will not over burden the grain dealer portion of the fund.
4. The bill exempts certain transactions from regulation. Some owners of companies required to maintain producer security licenses also maintain farm operations that are organized as a separate legal entity. These farm operations sell milk, grain, or vegetables to the licensed entity. Technically, it's possible that the licensee could choose not to pay the farm operation, and the farm could make a claim against the producer security fund. The insurance industry refers to this as a "moral hazard" and would not cover such claims. Likewise, current law allows DATCP to deny claims for this type of situation. Current law also allows licensees to avoid assessments on these transactions in exchange for an agreement not to attempt a claim on the fund. However, these transactions are not exempt from the law's financial statement filing or security requirements. This bill would exclude these transactions from those requirements.
5. Current law requires sworn and notarized statements to accompany license applications and financial statements. This bill eliminates this requirement.
6. Finally, the bill improves DATCP's ability to recover directly from a defaulting party, or its estate, any money paid out of the fund. The bill requires producers to file bankruptcy or receivership claims in addition to filing a claim against the producer security fund. Current law does not compel a producer to preserve their legal rights by filing a claim in a bankruptcy or state receivership action. Failure to file these claims could jeopardize DATCP's ability to recover money from these proceedings once it pays a claim from the fund. The bill also provides DATCP the same legal rights as producers when attempting these recoveries. In some circumstances producers have a preferred status in bankruptcy or receivership. Under this bill, that preference would transfer to DATCP after producers receive reimbursement from the fund.

Again, this bill was developed in conjunction with industry representatives sitting on the Agricultural Producer Security Council, and the issues address by this bill received unanimous support. I'd be happy to answer any questions.



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My name is Tom Bressner, and I am the Executive Director of the Wisconsin Agri-Business Association. Doug Cropp, Vice President of the Grain Division for Landmark Services Cooperative in Cottage Grove represents the Grain Dealer and Grain Warehouse industry on the Agricultural Producers Security Council. Unfortunately, due to prior commitments, Doug is not able to be here to provide testimony this morning. He has asked me to speak in his place.

I want to congratulate DATCP staff and the Agricultural Producers Security Council for the work they have done to develop these proposed changes to the Agriculture Producers Security Program as detailed in Assembly Bill 698. A detailed study was conducted by the Council, attempting to provide the best alternatives for the fund, while limiting risk to all sectors and making it fair to all sectors. They took no shortcuts and no one was excluded from these discussions. In the end, these proposed changes represent negotiations from all sides, and appears to be the best alternative to moving the program forward from here.

The Wisconsin Agri-Business Association supports Assembly Bill 698, and I thank you for the opportunity to share our support with the Assembly Committee on Agriculture here this morning.

Sincerely,

Tom Bressner

Executive Director

Wisconsin Agri-Business Association

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December 12, 2017

To: Chairman Lee Nerison and members, Assembly Committee on Agriculture

From: David Ward, Director of Government Relations and Dairy, Cooperative Network

Re: Support for Assembly Bill 698 (AB 698)

Thank you for the opportunity to register my support for AB 698. Cooperative Network supports the legislation in its entirety because it has broad industry support through the Agricultural Producer Security Council, I will focus my comments on the Deferred Milk Contractor Payments.

In late 2015 The Department of Agriculture Trade and Consumer Protection's (DATCP) Business Trade Practice Bureau was doing an audit on a milk contractor for Wisconsin's Agricultural Producer Security (APS) program and they discovered milk contractors have been deferring payments for milk from one tax year to the next tax year when a producer requests it to be done for income tax purposes.

On February 11, 2016 DATCP sent a memo to all Wisconsin Milk Contractor License Holders informing them that "deferring payments to producers for milk into the next calendar year is not an allowed practice under the APS statutes (Chapter 126 Wis. Stats)."

Chapter 126.48 Wis. Stats Milk contractors; payments to producers, which states that a milk contractor shall pay for producer milk as close to the 4th and 19th of each month.

Many milk contractors have contacted us and expressed support for what is in AB 698. AB 698 allows a milk contractor to enter into a contract to pay the producer for that milk up to five months after the contractor receives the milk. Any additional costs or fees must be paid for by the producer who requests the deferred payment.