

First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1237

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AN ACT to amend the Indiana Code concerning commercial law.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 26-3-7-2, AS AMENDED BY P.L.60-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The following definitions apply throughout this chapter:

- (1) "Agency" refers to the Indiana grain buyers and warehouse licensing agency established under section 1 of this chapter.
- (2) "Anniversary date" means the date that is ninety (90) calendar days after the fiscal year end of a business licensed under this chapter.
- (3) "Bin" means a bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.
- (4) "Board" means the governing body of the Indiana grain indemnity corporation created by IC 26-4-3-2.**
- ~~(4)~~ **(5) "Buyer-warehouse" means a person that operates both as a warehouse licensed under this chapter and as a grain buyer.**
- ~~(5)~~ **(6) "Claimant" means a person that is unable to secure satisfaction within the twelve (12) months following delivery of the financial obligations due from to whom a licensee owes a storage or financial obligation under this chapter for grain that has been delivered to the licensee for sale or for storage under a bailment.**
- ~~(6)~~ **(7) "Daily position record" means a written or electronic document that is maintained on a daily basis for each grain**

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commodity, contains a record of the total amount of grain in inventory for that business day, and complies with any requirements established by the director.

~~(7)~~ **(8)** "Deferred pricing" or "price later" means a purchase by a buyer in which title to the grain passes to the buyer and the price to be paid to the seller is not determined:

- (A) at the time the grain is received by the buyer; or
- (B) less than twenty-one (21) days after delivery.

~~(8)~~ **(9)** "Delayed payment" means a purchase by a buyer in which title to the grain passes to the buyer at a determined price and payment to the seller is not made in less than twenty-one (21) days after delivery.

~~(9)~~ **(10)** "Depositor" means any of the following:

- (A) A person that delivers grain to a licensee under this chapter for storage or sale.
- (B) A person that:
  - (i) owns or is the legal holder of a ticket or receipt issued by a licensee for grain received by the licensee; and
  - (ii) is the creditor of the issuing licensee for the value of the grain received in return for the ticket or receipt.
- (C) A licensee that stores grain that the licensee owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensee or another licensee.

~~(10)~~ **(11)** "Designated representative" means the person or persons designated by the director to act instead of the director in assisting in the administration of this chapter.

~~(11)~~ **(12)** "Director" means the director of the Indiana grain buyers and warehouse licensing agency appointed under section 1 of this chapter.

~~(12)~~ **(13)** "Facility" means a **permanent business** location or one (1) of several **permanent business** locations in Indiana that are operated as a warehouse or by a grain buyer.

~~(13)~~ **(14)** "Failed" or "failure" means any of the following:

- (A) The inability of a licensee to financially satisfy fully all obligations due to claimants.
- (B) Public declaration of a licensee's insolvency.
- (C) Revocation or suspension of a licensee's license, if the licensee has outstanding indebtedness owed to claimants.
- (D) Nonpayment of a licensee's debts in the ordinary course of business, if there is not a good faith dispute.
- (E) Voluntary surrender of a licensee's license, if the licensee has outstanding indebtedness to claimants.



(F) Involuntary or voluntary bankruptcy of a licensee.

**(15) "Fund" means the Indiana grain indemnity fund established under IC 26-4-4-1.**

~~(14)~~ **(16) "Grain"** means corn for all uses, popcorn, wheat, oats, barley, rye, sorghum, soybeans, oil seeds, other agricultural commodities as approved by the agency, and seed as defined in this section. The term does not include canning crops for processing **or** sweet corn. ~~or flint corn.~~

~~(15)~~ **(17) "Grain assets"** means any of the following:

(A) All grain and grain coproducts owned or stored by a licensee, including the following:

- (i) Grain that is in transit following shipment by a licensee.
- (ii) Grain that has not been paid for.
- (iii) Grain that is stored in unlicensed facilities that are leased, owned, or occupied by the licensee.

(B) All proceeds, due or to become due, from the sale of a licensee's grain.

(C) Equity, less any secured financing directly associated with the equity, in hedging or speculative margin accounts of a licensee held by a commodity or security exchange, or a dealer representing a commodity or security exchange, and any money due the licensee from transactions on the exchange, less any secured financing directly associated with the money due the licensee from the transactions on the exchange.

(D) Any other unencumbered funds, property, or equity in funds or property, wherever located, that can be directly traced to the sale of grain by a licensee. However, funds, property, or equity in funds or property may not be considered encumbered unless:

- (i) the encumbrance results from valuable consideration paid to the licensee in good faith by a secured party; and
- (ii) the encumbrance did not result from the licensee posting the funds, property, or equity in funds or property as additional collateral for an antecedent debt.

(E) Any other unencumbered funds, property, or equity in assets of the licensee.

~~(16)~~ **(18) "Grain bank grain"** means grain owned by a depositor for use in the formulation of feed and stored by the warehouse to be returned to the depositor on demand.

~~(17)~~ **(19) "Grain buyer"** means a person who is engaged in the business of buying grain from producers.

~~(18)~~ **(20) "Grain coproducts"** means any milled or processed



grain, including the grain byproduct of ethanol production.

~~(19)~~ **(21)** "Grain standards act" means the United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71-87 as amended).

~~(20)~~ **(22)** "License" means a license issued under this chapter.

**(23) "Licensee" means a person who operates a facility that is licensed under this chapter.**

~~(21)~~ **(24)** "Official grain standards of the United States" means the standards of quality or condition for grain, fixed and established by the secretary of agriculture under the grain standards act.

~~(22)~~ **(25)** "Person" means an individual, partnership, corporation, association, or other form of business enterprise.

~~(23)~~ **(26)** "Receipt" means a warehouse receipt issued by a warehouse licensed under this chapter.

~~(24)~~ **(27)** "Seed", notwithstanding IC 15-15-1, means grain set apart to be used primarily for the purpose of producing new plants.

~~(25)~~ **(28)** "Seed inventory" means seed for commercial sale.

~~(26)~~ **(29)** "Ticket" means a scale weight ticket, a load slip, or other evidence, other than a receipt, given to a depositor upon initial delivery of grain to a facility.

~~(27)~~ **(30)** "Warehouse act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273 as amended).

~~(28)~~ **(31)** "Warehouse" means any building or other protected enclosure in one (1) general location licensed or required to be licensed under this chapter in which grain is or may be:

- (A) stored for hire;
- (B) used for grain bank storage; or
- (C) used to store company owned grain;

and the building or other protected enclosure is operated under one (1) ownership and run from a single office.

~~(29)~~ **(32)** "Warehouse operator" means a person that operates a facility or group of facilities in which grain is or may be stored for hire or which is used for grain bank storage and which is operated under one (1) ownership and run from a single office.

SECTION 2. IC 26-3-7-3, AS AMENDED BY P.L.60-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The director may do the following:

- (1) Require any reports that are necessary to administer this chapter.
- (2) Administer oaths, issue subpoenas, compel the attendance and



testimony of witnesses, and compel the production of records in connection with any investigation or hearing under this chapter.

(3) Prescribe all forms within the provisions of this chapter.

(4) Establish grain standards in accordance with the grain standards act and federal regulations promulgated under that act that must be used by warehouses.

(5) Investigate the activities required by this chapter including the storage, shipping, marketing, and handling of grain and complaints with respect to the storage, shipping, marketing, and handling of grain.

(6) Inspect a facility, the grain stored in a facility, and all property and records pertaining to a facility. All inspections of an applicant or licensee under this chapter must take into consideration the proprietary nature of an applicant's or licensee's commercial information. The director may adopt rules under IC 4-22-2 regarding inspections permitted under this chapter, and the rules must take into consideration the proprietary nature of an applicant's or a licensee's commercial information. This chapter does not authorize the inspection of an applicant's or licensee's trade secret or intellectual property information.

(7) Determine whether a facility for which a license has been applied for or has been issued is suitable for the proper storage, shipping, and handling of the grain that is stored, shipped, or handled, or is expected to be stored, shipped, or handled.

(8) Require a licensee to terminate storage, shipping, marketing, and handling agreements upon revocation of the person's license.

(9) Attend and preside over any investigation or hearing allowed or required under this chapter.

(10) Impose sanctions for violations of this article.

(11) Require a grain buyer and all persons purchasing grain to show evidence of training or licensing on the risks associated with grain marketing practices only if a grain buyer engages in a risk factor higher than a standard defined by the director. This training or licensing may include requiring the grain buyer or person purchasing grain to do any of the following:

(A) Provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading adviser, a futures commission merchant, an introducing broker, or an associated person.

(B) Demonstrate passage of the series 3 examination administered by the National Futures Association.

(C) Annually attend six (6) hours of continuing education,



approved by the director, focusing on the risks to a grain buyer and seller that are associated with grain marketing practices and the communication of risks to the producer. Additionally, as part of continuing education, require a grain buyer, and all persons purchasing grain for a grain buyer, to pass a test, approved and administered by the director, that reasonably measures the grain buyer's understanding of the risks to grain buyers and sellers associated with producer marketing strategies.

(12) Require all contracts executed after ~~June 30, 1997~~, **August 31, 2017**, for the purchase of grain from producers, except a flat price contract or a contract for the production of seed, to include the following notice immediately above the place on the contract where the seller of the grain must sign:

"NOTICE - SELLER IS CAUTIONED THAT CONTRACTING FOR THE SALE AND DELIVERY OF GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE FUTURE PAYMENTS BY YOU TO MAINTAIN THIS CONTRACT, A LOWER SALES PRICE, AND OTHER RISKS NOT SPECIFIED.

COVERAGE UNDER THE INDIANA GRAIN INDEMNITY PROGRAM IS **FOR GRAIN THAT HAS BEEN DELIVERED TO A FIRST PURCHASER LICENSEE WITHIN THE 15 MONTHS BEFORE THE DATE OF FAILURE AND IS LIMITED TO 100% OF A LOSS FOR STORED GRAIN AND 80% OF A LOSS FOR OTHER COVERED CONTRACTS.**

BE SURE YOU UNDERSTAND THE NATURE OF THIS CONTRACT AND THE ASSOCIATED RISKS."

(13) Require all contracts executed after January 1, 2000, for the production of seed to include the following notice, in conspicuous letters, immediately above the place on the contract or an addendum where the seller of the seed must sign:

"NOTICE - IF THE TERMS OF THIS CONTRACT STATE THAT THE CONTRACTOR RETAINS OWNERSHIP OF THE SEED AND ITS PRODUCTS, YOU MAY NOT BE ELIGIBLE FOR PARTICIPATION IN THE INDIANA GRAIN INDEMNITY PROGRAM. TO BE ELIGIBLE TO PARTICIPATE IN THE INDIANA GRAIN INDEMNITY PROGRAM, FARMERS MUST OWN AND SELL GRAIN OR SEED. BE SURE YOU UNDERSTAND THE NATURE OF THIS CONTRACT AND THE ASSOCIATED RISKS."



(14) At any time, order an unannounced audit for compliance with this article.

(15) Adopt rules under IC 4-22-2 to carry out the purposes and intent of this chapter.

(16) Require all grain buyers offering deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with a grain purchase to document the agreement in writing not more than twenty-one (21) days after delivery.

(b) The director shall do the following:

(1) Establish standards to ensure that a grain buyer has a suitable financial position to conduct a business as a grain buyer.

(2) Require a person who conducts business as a grain buyer to first be licensed by the agency.

(3) Require any person engaged in the business of advising producers on grain marketing for hire to:

(A) register with the agency; and

(B) provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading advisor, a futures commission merchant, an introducing broker, or an associated person.

(c) The director may designate an employee to act for the director in the administration of this chapter. ~~A~~ **An employee** designee may not:

(1) act in matters that require a public hearing or the temporary suspension of a license;

(2) adopt rules; or

(3) act as the ultimate authority in the administration of this chapter.

**(d) The director may designate an administrative law judge to act for the director in the administration of this chapter.**

~~(e)~~ **(e)** The director may determine whether geographically separate facilities constitute a single warehouse or grain buyer and in making the determination may consider the following:

(1) The number of facilities involved.

(2) Whether full weighing equipment is present at the geographically separate facilities.

(3) The method of bookkeeping employed by the separate facilities.

(4) The hours of operation of the separate facilities.

(5) The personnel employed at the separate facilities.

(6) Other factors the director deems relevant.



(f) The director and the director's designees shall become members of the national grain regulatory organization and shall:

- (1) work in partnership with other state grain regulatory officials;
- (2) participate in national grain regulatory meetings; and
- (3) provide expertise and education at national meetings.

**(g) The director may subpoena or require that certain records located outside Indiana, if any, be brought to a specified location in Indiana for review by the agency.**

SECTION 3. IC 26-3-7-4.1, AS ADDED BY P.L.64-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.1. (a) The agency shall mail by first class mail **or send electronically** a renewal application, which must include a listing of all the licensee's facilities, to each licensee before the end of the licensee's fiscal year. The renewal application form must be completed and returned to the agency not later than ninety (90) days after the end of the licensee's fiscal year. The licensee must forward, with the renewal application, the following:

- (1) Current reviewed level financial statement.
- (2) Updated financial profile form supplied by the agency.
- (3) Appropriate license fee.

(b) A renewal application must contain the information as required under rules adopted by the agency. The licensee shall receive an annual renewal license application form appropriate to the license issued to the licensee. The annual renewal license application forms are for a:

- (1) grain bank;
- (2) warehouse;
- (3) grain buyer; or
- (4) buyer-warehouse.

SECTION 4. IC 26-3-7-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.2. **(a) If an applicant for a license or a renewal of a license issued under this chapter does not regularly conduct business at an address at which the applicant usually can be contacted in Indiana, the applicant shall include with the applicant's application a written appointment of a registered agent for service of process, notice, or demand.**

**(b) The appointment in subsection (a) must be accompanied by a written acceptance of the appointment by the registered agent.**

**(c) The registered agent must be an individual who is a resident of Indiana or a corporation whose principal place of business is located in Indiana.**

**(d) The appointment must be made in the form and manner**





prescribed by the director.

(e) If a registered agent resigns or relocates from Indiana or the applicant revokes the registered agent's appointment, the applicant shall:

- (1) immediately notify the director in writing not later than thirty (30) days before the resignation, relocation, or revocation; and
- (2) file with the director a written appointment of another registered agent, along with a written acceptance of the appointment signed by the registered agent.

(f) If a registered agent dies or is incapacitated, the applicant shall:

- (1) immediately notify the director in writing of the death or incapacity;
- (2) not later than thirty (30) days after the death or incapacity, appoint another registered agent; and
- (3) file with the director a written appointment of the other registered agent, along with a written acceptance of the appointment signed by the registered agent.

(g) Failure to comply with this section is grounds for denial, suspension, or revocation of a license.

SECTION 5. IC 26-3-7-6.5, AS AMENDED BY P.L.60-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective counties, and license status of licensees may be disclosed.

(b) Unless in accordance with a judicial order, the director, the agency, its counsel, auditors, or its other employees or agents shall not divulge any other information disclosed by the applications or reports filed or inspections performed under the provisions of this chapter. **except However, information may be divulged to agents and employees of the agency, the board, as required by subsection (d), the state board of accounts or another entity retained under subsection (f),** or to any other legal representative of the state or federal government otherwise empowered to see or review the information.

(c) **Except as provided in subsection (d),** the director may disclose the information **described in subsection (b)** only in the form of an information summary or profile, or statistical study based upon data provided with respect to more than one (1) warehouse, grain buyer, or buyer-warehouse that does not identify the warehouse, grain buyer, or buyer-warehouse to which the information applies.

(d) **The director shall disclose to the board, while the board is in**



executive session, the status and inspection results of any licensee who poses a significant risk of failure or who has failed to meet the minimum requirements in section 4(e) or 16 of this chapter on two (2) consecutive audits. The director may not include any identifying information regarding the licensee. The director may not disclose the information to a board member who has not executed a confidentiality agreement presented by the agency.

(e) The director shall provide the board with records of previous failures to analyze the factors that have led to previous failures.

(f) The director may use the services of the state board of accounts or retain another entity to assist the agency in investigating any audit results or other factors which indicate the potential for a licensee failure. The director may seek the advice and guidance of the board on selecting an entity or on any other matter.

SECTION 6. IC 26-3-7-16.5, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2017 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.5. (a) Upon learning of the possibility that a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an ~~on-premise~~ **on-premises** inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.

(b) If it is determined that a shortage may exist, the director or the director's designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee's books and records and the grain on hand. Only the licensee, the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and any grain depositor who has made a claim or complaint to the agency in conjunction with the shortage shall be considered as interested parties for the purposes of that hearing, and each shall be given notice of the hearing. At the hearing, the director or the director's designated representative shall determine whether there appears to be a reasonable probability that a shortage exists. If it is determined that a reasonable probability exists and that the bond or letter of credit proceeds or the cash deposit should be distributed, a preliminary determination shall be entered to the effect that the licensee has failed to meet its obligations under this chapter or the rules adopted under this chapter. At the hearing, the director or the director's designated representative may order that all proceeds from grain sales are to be held in the form in which they are received and to be kept



separate from all other funds held by the licensee. The order may also provide for informal conferences between agency representatives and persons who have or who appear to have grain deposited with the licensee. The surety company shall be permitted to participate in those conferences.

(c) In the event that the director determines that the bond or letter of credit proceeds or cash deposit is to be distributed, the agency shall hold a hearing on claims. Notice shall be given to the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and to all persons shown by the licensee's books and records to have interests in grain deposited with the licensee. If the agency has actual knowledge of any other depositor or person claiming rights in the grain deposited with the licensee, the bond, the irrevocable letter of credit, or the cash deposit, notice shall also be provided to that person. In addition, public notice shall be provided in newspapers of general circulation that serve the counties in which licensed facilities are located, and notices shall be posted on the licensed premises. At the hearing on claims, the director **or the director's designated representative** may accept as evidence of claims the report of agency representatives who in informal conferences with depositors have concluded that a claim is directly and precisely supported by the licensee's books and records. When there is disagreement between the claims of a depositor and the licensee's books and records, the director or the director's designated representative shall hear oral claims and receive written evidence of claims in order to determine the validity of the claim.

(d) Any depositor who does not present a claim at the hearing may bring the claim to the agency within fifteen (15) days after the conclusion of the hearing. **However, a depositor who has a claim that was involved in the probate of an estate at the time of the claims hearing has one (1) year from the conclusion of the claims hearing to present the claim to the agency.**

(e) **Only grain that has been delivered to a first purchaser licensee for sale or storage under a bailment not more than fifteen (15) months before the date of failure of the licensee may be considered by the director or the director's designated representative in determining the total proven storage and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim.**

(f) Following the hearing on claims, the director **or the director's designated representative** shall make a determination as to the total proven storage ~~obligation of the claimants and financial~~



**obligations due to depositors** and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims **for storage or financial loss** shall be proven claimants. In arriving at that loss, in accordance with section 19 of this chapter, the director shall apply all grain on hand or its identifiable proceeds to meet the licensee's obligations to grain depositors of grain of that type. Initial determinations of loss shall be made on the amount of grain on hand, or identifiable proceeds, and shall reduce the amount to which a depositor may have a proven claim. With respect to the remaining unfulfilled obligations, the director shall, for the sole purpose of establishing each depositor's claim under this chapter, establish a date upon which the loss is discovered, shall price the grain as of that date, shall treat all outstanding grain storage obligations not covered by grain on hand or identifiable proceeds as being sold as of that date, and shall determine the extent of each depositor's loss as being the actual loss sustained as of that date. Grain of a specific type on the premises of a licensee must first be applied to meet the licensee's storage obligations with respect to that type of grain. If there is insufficient grain of a specific type on hand to meet all storage obligations with respect to that type of grain, the grain that is present shall be prorated in accordance with the procedures described in this section and section 16.8 of this chapter.

(f) (g) Upon the failure of the agency to begin an audit, which would serve as the basis for a preliminary administrative determination, within forty-five (45) days of the agency's receipt of a written claim by a depositor, a depositor shall have a right of action upon the bond, letter of credit, or cash deposit. A depositor bringing a civil action need not join other depositors. If the agency has undertaken an audit within the forty-five (45) day period, the exclusive remedy for recovery against the bond, letter of credit, or cash deposit shall be through the recovery procedure prescribed by this section.

(g) (h) When the proven claims exceed the amount of the bond, letter of credit, or cash deposit, recoveries of proven claimants shall be prorated in the same manner as priorities are prorated under section 16.8 of this chapter.

(h) (i) The proceedings and hearings under this section may be undertaken without regard to, in combination with, or in addition to those undertaken in accordance with section 17.1 of this chapter.

(i) (j) The findings of the director shall be final, conclusive, and binding on all parties.

(j) (k) The director may adopt rules under IC 4-22-2 to determine how the agency may distribute the interest that may accrue from funds



held by the agency for the payment of claims.

**(k) (l)** A claim of a licensee for stored grain may not be honored until the proven claims of all other claimants arising from the purchase, storage, and handling of the grain have been paid in full.

**(m) A claim is considered to be adjudicated if the claimant has:**

- (1) agreed with the director's determination on the claim and not filed an appeal under IC 4-21.5-3; or**
- (2) exhausted the claimant's administrative appeal and judicial review remedies.**

**(n) Subject to the requirements under this chapter, if one (1) or more claimants are not paid in full for the claimants' proven claims, the director shall forward to the Indiana grain indemnity fund board of directors a list of the claimants who are owed money and the balance due each claimant along with a copy of the final order.**

SECTION 7. IC 26-3-7-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.7. (a) A licensee or claimant subject to the director's action may appeal under IC 4-21.5-3 from orders issued by the director under section 16.5 or 17.1 of this chapter.**

**(b) A licensee or claimant may request an appeal under IC 4-21.5-3 not more than fifteen (15) days after being served with the director's findings.**

**(c) If a licensee or claimant requests an appeal under IC 4-21.5-3, the director shall designate:**

- (1) an administrative law judge to preside over the appeal; and**
- (2) an ultimate authority for purposes of the appeal in accordance with IC 4-21.5-3.**

SECTION 8. IC 26-3-7-16.8, AS AMENDED BY P.L.75-2010, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.8. (a) A lien against all grain assets of a licensee or a person who is required to be licensed under this chapter attaches in favor of the following:**

- (1) A lender or other claimant that has a receipt for grain owned or stored by the licensee.**
- (2) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.**
- (3) A claimant that surrendered a receipt as part of a grain sales transaction if:**
  - (A) the claimant was not fully paid for the grain sold; and**
  - (B) the licensee failed less than twenty-one (21) days after the**



surrender of the receipt.

(4) A claimant that has other written evidence of a sale to the licensee of grain for which the claimant has not been fully paid.

(b) A lien under this section attaches and is effective at the earliest of the following:

- (1) the delivery of the grain for sale, storage, or under a bailment;
- (2) the commencement of the storage obligation; or
- (3) the advancement of funds by a lender.

(c) A lien under this section terminates when the licensee discharges the claim.

(d) If a licensee has failed, the lien that attaches under this section is assigned to the agency by operation of this section. If a failed licensee is liquidated, a lien under this section continues to attach as a claim against the assets or proceeds of the assets of the licensee that are received or liquidated by the agency.

(e) Except as provided in subsection ~~(g)~~, **(h)**, if a licensee has failed, the power to enforce the lien on the licensee's grain assets transfers by operation of this section to the director and rests exclusively with the director who shall allocate and prorate the proceeds of the grain assets as provided in subsections ~~(f)~~ **(g)** and ~~(h)~~ **(i)**.

**(f) The lien established under this section has priority over all competing lien claims asserted against the licensee's grain assets.**

~~(f)~~ **(g)** The priority of a lien that attaches under this section is not determined by the date on which the claim arose. If a licensee has failed, the director shall enforce lien claims and allocate grain assets and the proceeds of grain assets of the licensee in the following order of priority:

(1) First priority is assigned to the following:

(A) A lender or other claimant that has a receipt for grain owned or stored by the licensee.

(B) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.

(C) A claimant that surrendered a receipt as part of a grain sales transaction if:

- (i) the claimant was not fully paid for the grain sold; and
- (ii) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

If there are insufficient grain assets to satisfy all first priority claims, first priority claimants shall share pro rata in the assets.

(2) Second priority is assigned to all claimants who have written evidence of the sale of grain, such as a ticket, a deferred pricing agreement, or similar grain delivery contract, and who completed



delivery less than thirty (30) days before the licensee's failure. Claimants under this subdivision share pro rata in the remaining assets if all claimants under subdivision (1) have been paid but insufficient assets remain to fully satisfy all claimants under this subdivision.

(3) Third priority is assigned to all other claimants that have written evidence of the sale of grain to the failed licensee. Claimants under this subdivision share pro rata in the distribution of the remaining grain assets.

~~(g)~~ **(h)** If a claimant under this section brings an action to recover grain assets that are subject to a lien under this section and the agency does not join the action, the director shall, upon request of the claimant, assign the lien to the claimant in order to allow the claimant to pursue the claim to the extent that the action does not delay the resolution of the matter by the agency, the prompt liquidation of the assets, or the ultimate distribution of assets to all claimants.

~~(h)~~ **(i)** If:

(1) a claimant engaged in farming operations granted to one (1) or more secured parties one (1) or more security interests in the grain related to the claimant's claim under this section; and

(2) one (1) or more secured parties described in subdivision (1) have given to:

(A) the licensee prior written notice of the security interest under IC 26-1-9.1-320(a)(1) or IC 26-1-9-307(1)(a) before its repeal; and

(B) the director prior written notice of the security interest with respect to the grain described in subdivision (1) sufficient to give the director a reasonable opportunity to cause the issuance of a joint check under this subsection;

the director shall pay the claimant described in subdivision (1) the portion of the proceeds of grain assets under subsection (e) to which the claimant is entitled under this section by issuance of a check payable jointly to the order of the claimant and any secured party described in subdivision (1) who has given the notices described in subdivision (2). If only one (1) secured party described in subdivision (1) is a payee, the rights of the secured party in the check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9.1.

SECTION 9. IC 26-3-7-17.1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.1. (a) Whenever the director, as a result of an inspection or otherwise, has reasonable cause to believe that a person to which this chapter is or may be applicable:

(1) is conducting business contrary to this chapter or in an unauthorized manner; or

(2) has failed, neglected, or refused to observe or comply with any order, rule, or published policy statement of the agency;

then the director may undertake any one (1) of the actions prescribed by this section.

(b) Upon learning of the possibility that a licensee is acting as described in subsection (a), the director or the director's designated representative may seek an informal meeting with the licensee. At that meeting, which shall be held at a time and place agreed to by the licensee and the director, the director or the director's designated representative shall discuss the possible violations and may enter into a consent agreement with the licensee under which the licensee agrees to undertake, or to cease, the activities that were the subject of the meeting. The consent agreement may provide for a time frame within which the licensee must be in compliance.

(c) Upon learning of the possibility that a person is acting as described in subsection (a), the director **or the director's designated representative**, except as otherwise provided in this subsection, shall hold a hearing to determine whether a cease and desist order should issue against a licensee or an unlicensed person undertaking activities covered by this chapter. If the director **or the director's designated representative** determines that the violation or the prohibited practice is likely to cause immediate insolvency or irreparable harm to depositors, the director **or the director's designated representative**, without notice, may issue a temporary cease and desist order requiring the person to cease and desist from that violation or practice. The order shall become effective upon service on the person and shall remain effective and enforceable pending the completion of all administrative proceedings.

(d) Upon a determination, after a hearing held by the director or the director's designated representative, that a person is acting as described in subsection (a), the director may suspend, revoke, or deny a license. If the director suspends, revokes, or denies a license, the director shall publish notice of the suspension, revocation, or denial as provided in section 17.5 of this chapter.

(e) If the director has reasonable cause to believe that a licensee is acting as described in subsection (a) and determines that immediate





action without an opportunity for a hearing is necessary in order to safeguard depositors, the director may suspend a license temporarily without a hearing for a period not to exceed twenty (20) days. When a license is suspended without a hearing, the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible.

SECTION 10. IC 26-3-7-31, AS AMENDED BY P.L.84-2016, SECTION 115, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee cannot meet the licensee's outstanding grain obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

- (1) Cover the shortage with grain that is fully paid for.
- (2) Give additional bond, letter of credit, or cash deposit as required by the director.
- (3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court, superior court, or probate court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with IC 32-30-5 that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in IC 32-30-5-2 may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

**(c) The director shall inform the corporation of any:**

- (1) notice or order issued; or**
- (2) action taken;**

**under this section.**

SECTION 11. IC 26-3-7-37 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 37. (a) Notwithstanding any other law, a**



claimant who delivered grain to a first purchaser for sale or storage under a bailment to a failed licensee beginning October 8, 2014, and ending April 8, 2015, shall be considered by the director or the director's designated representative in determining the total proven storage and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim.

(b) Notwithstanding any other law, the director, the director's designated representative, or the board may not consider any refunds claimed before July 1, 2015, in determining whether a claimant is covered by the fund for a claim for the period beginning October 8, 2014, and ending April 8, 2016.

(c) Before September 1, 2017, the director shall forward to the Indiana grain indemnity fund board of directors a list of the claimants who are owed money under this section and the balance due each claimant along with a copy of the final order for any claimants who were not paid the full amount due for the claimants' proven claims under this section.

(d) The director or the director's designated representative shall send a statement of loss to each claimant that includes the amounts due to each claimant according to the records of the failed licensee for the claim allowed under this section. However, a claimant may submit a claim form with written documentation supporting the claim.

(e) Notwithstanding any other law, before November 1, 2017, the Indiana grain indemnity fund board of directors shall pay, according to the procedures in IC 26-4-6, the claimants who are owed money according to the list forwarded by the director under subsection (c).

**(f) This section expires July 1, 2018.**

SECTION 12. IC 26-4-1-13, AS AMENDED BY P.L.60-2015, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. "Grain" means corn for all uses, popcorn, wheat, oats, rye, soybeans, barley, sorghum, oil seeds, other agricultural commodities as approved by the agency, and seed (as defined in ~~IC 26-3-7-2(24))~~; **IC 26-3-7-2(27)**). The term does not include canning crops for processing or sweet corn. or flint corn.

SECTION 13. IC 26-4-1-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. "Licensee" has the meaning set forth in IC 26-3-7-2(23).**

SECTION 14. IC 26-4-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. "Participant in



the grain indemnity program" means a producer who has: ~~never~~

**(1) not requested and received a refund under IC 26-4-5-1 after June 30, 2015; or has**

**(2) reentered the program under IC 26-4-5-2.**

SECTION 15. IC 26-4-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. "Producer" means an owner of land, a tenant on land, or an operator of a farm that has an interest in and receives all or any part of the proceeds from the sale ~~in Indiana~~ **to a first purchaser licensee** of the grain produced.

SECTION 16. IC 26-4-4-2, AS AMENDED BY P.L.60-2015, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The administrative expense account is created within the fund.

(b) The expenses of administering the fund and paying administrative expenses must be paid from money in the administrative expense account.

(c) The board may transfer annually not more than two hundred fifty thousand dollars (\$250,000) from the fund to the administrative expense account.

(d) Administrative expenses under this section may include:

(1) processing refunds;

(2) enforcement of the fund;

(3) record keeping in relation to the fund;

(4) the ordinary management and investment fees connected with the operation of the fund; ~~and~~

(5) legal fees and legal expenses in actions brought against the corporation or board and that have been approved by the board; **and**

**(6) the use of supplemental consulting services.**

**(e) The agency may not use money in the administrative expense account for expenses other than the expenses described in subsection (d).**

SECTION 17. IC 26-4-4-4, AS AMENDED BY P.L.60-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in section 8 of this chapter, beginning on July 1, 2015, the producers of grain shall be charged a producer premium equal to two-tenths percent (0.2%) of the price on all marketed grain that is sold ~~in Indiana~~ **to a first purchaser licensee.**

(b) The producer premiums required under this section are in addition to any other fees or assessments required by law.

SECTION 18. IC 26-4-5-1 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A producer upon and against whom a producer premium is charged and collected under the provisions of this chapter may demand of and by complying with this chapter receive from the fund through the board a refund of the producer premiums collected from the producer.

(b) The board shall develop the form on which a demand for a refund must be filed. The board shall make the form available to grain buyers, producers, and the public upon request.

(c) Except as provided in subsection (d), a demand for a refund under this section is only valid if:

(1) made in writing and:

(A) hand delivered; or

(B) sent by first class mail;

to the board; and

(2) delivered or sent to the board not more than twelve (12) months after the premium was collected.

(d) The board may for good cause grant an extension for filing a demand for a refund under this chapter.

(e) A producer that requests and receives a refund under this section **after June 30, 2015**, is not protected and will not be compensated by the grain indemnity program. **The board may not consider any refunds claimed before July 1, 2015, in determining whether a producer is covered by the fund.**

(f) Before January 1 of each year in which producer premiums were collected during the immediately preceding calendar year, the board shall send a notice to each producer who requested a refund of producer premiums in any previous year. The notice must inform the producer of the time frame in which a request for a refund must be made and the method of filing for a refund.

SECTION 19. IC 26-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A producer who has received a refund of a producer premium under section 1 of this chapter **after June 30, 2015**, and has made a request for reentry may reenter the grain indemnity program if the following conditions are satisfied:

(1) The producer petitions the board for approval of reentry into the grain indemnity program by hand delivering or sending by certified mail, return receipt requested, a written request in a form required by the board.

(2) The board reviews the producer's petition for reentry and approves the petition.

(3) The producer pays into the fund:

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(A) all previous producer premium refunds; and

(B) interest on the refunds;

as determined by the board.

(b) A producer that reenters the grain indemnity program under subsection (a)(3) is protected by the program from the time all previous producer premium refunds **that were claimed after June 30, 2015**, and interest on the refunds, are paid to the fund.

**(c) A producer who reenters the grain indemnity program may not make a claim on the fund that arises from a failure that occurs before the producer meets the requirements for reentry described in subsection (a).**

SECTION 20. IC 26-4-5-4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 4. The board, in coordination with the agency, shall develop educational information to be made available electronically to producers, grain buyers, and warehouse operators, explaining the following:**

**(1) The purpose of the fund.**

**(2) How the fund is operated.**

**(3) An explanation of coverage under the program, including the duration of coverage and limits on losses.**

**(4) The process for claiming a refund.**

**(5) The process for reentering the program.**

**(6) Where a producer may locate information about the producer's status in the program.**

SECTION 21. IC 26-4-6-4, AS AMENDED BY P.L.75-2010, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a) A claimant who has incurred a storage loss due to the failure of a warehouse operator licensed under IC 26-3-7 is entitled to be compensated by the board from the fund for one hundred percent (100%) of the storage loss incurred less all credits and offsets and any producer premium that would have been due on the sale of the grain. The gross amount of the storage loss shall be as determined by the agency for warehouses licensed under IC 26-3-7 or by the United States Department of Agriculture for warehouses licensed under the United States Warehouse Act. The warehouse operator and claimants may submit to the agency evidence related to outstanding charges against stored grain. If the evidence is submitted, the agency shall determine the storage loss payable by the board.**

**(b) A claimant who has incurred a financial loss due to the failure of a grain buyer is entitled to be compensated by the board from the fund for eighty percent (80%) of the loss incurred less all credits and**



offsets and any producer premium that should have been due on the sale of the grain. The agency shall determine the loss incurred in the following manner:

- (1) For grain that has been priced, the loss shall be the value of the priced grain less any outstanding charges against the grain.
- (2) For grain sold to a grain buyer who is also a warehouse operator and that has not been priced, the loss shall be established using the price determined for the storage obligations.
- (3) For grain sold to a grain buyer who is not a warehouse operator and that has not been priced, the loss shall be established using a price determined by the agency using the same procedures used by the agency to determine the price at the warehouse.

**(c) If a producer appeals under IC 4-21.5-3 an order issued by the director under IC 26-3-7-16.5 that postpones the agency from notifying the board of the amount of loss for proven claimants under IC 26-3-7-16.5(n), the board may issue partial payments to any claimants who have not appealed their claims.**

SECTION 22. IC 26-4-6-6, AS AMENDED BY P.L.75-2010, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A claimant compensated under this chapter ~~may be~~ **is** required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act and all the claimant's rights to any other compensation arising from the failure of the grain buyer or warehouse operator. ~~If so required,~~ The claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

**SECTION 23. An emergency is declared for this act.**



\_\_\_\_\_  
Speaker of the House of Representatives

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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