



Reprinted
March 24, 2017

ENGROSSED HOUSE BILL No. 1237

DIGEST OF HB 1237 (Updated March 23, 2017 1:53 pm - DI 129)

Citations Affected: IC 26-3; IC 26-4.

Synopsis: Grain buyers and warehouse licensing. Adds and amends various definitions for purposes of the grain buyers and warehouse licensing laws. Amends notice that is required on contracts for the purchase of grain from producers. Allows the director of the grain buyers and warehouse licensing agency (agency) to designate an administrative law judge to act for the director in the administration of the licensing laws. Allows the director of the agency (director) to issue subpoenas and orders to compel production of records. Allows the agency to send license renewal applications electronically. Requires certain applicants to designate a registered agent. Requires the director to provide certain information regarding a licensee who: (1) poses a
(Continued next page)

Effective: Upon passage.

Lehe, Baird, Wright, Friend

(SENATE SPONSORS — LEISING, BOOTS, MRVAN,
RANDOLPH LONNIE M)

January 10, 2017, read first time and referred to Committee on Agriculture and Rural Development.

February 9, 2017, amended, reported — Do Pass.

February 16, 2017, read second time, amended, ordered engrossed.

February 17, 2017, engrossed.

February 21, 2017, read third time, passed. Yeas 97, nays 0.

SENATE ACTION

February 23, 2017, read first time and referred to Committee on Agriculture.

March 20, 2017, amended, reported favorably — Do Pass.

March 23, 2017, read second time, amended, ordered engrossed.

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significant risk of failure; or (2) fails to meet certain minimum asset requirements to the grain indemnity board (board) without including identifying information concerning the licensee to the board. Allows the director to use the services of the state board of accounts or another entity to assist the agency in investigating audit results. Allows the director's designated representative to perform certain functions of the director. Allows certain claimants that are subject to court proceedings one year to file a claim. Specifies that producers who have not requested and received a refund from the program after June 30, 2015, are participants in the grain indemnity program. Changes the future coverage period from 12 months to 15 months. Requires the director to inform the grain indemnity corporation of certain notices and orders issued and actions taken against licensees. Requires the director to consider certain claims due to depositors for a specified period of time. Adds and amends definitions for purposes of the grain indemnity laws. Adds the use of supplemental consulting services to the administrative expense account and limits the agency's use of money in the administrative expense account to certain statutory uses. Specifies when claims may be considered. Requires the grain indemnity board to develop certain educational information for producers. Allows partial payments to claimants who are not appealing while appeals are pending.

EH 1237—LS 6887/DI 130



Reprinted
March 24, 2017

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.

ENGROSSED HOUSE BILL No. 1237

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

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

- 1 SECTION 1. IC 26-3-7-2, AS AMENDED BY P.L.60-2015,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 2. The following definitions apply throughout
4 this chapter:
5 (1) "Agency" refers to the Indiana grain buyers and warehouse
6 licensing agency established under section 1 of this chapter.
7 (2) "Anniversary date" means the date that is ninety (90) calendar
8 days after the fiscal year end of a business licensed under this
9 chapter.
10 (3) "Bin" means a bin, tank, interstice, or other container in a
11 warehouse in which bulk grain may be stored.
12 (4) "Board" means the governing body of the Indiana grain
13 indemnity corporation created by IC 26-4-3-2.
14 ~~(4)~~ (5) "Buyer-warehouse" means a person that operates both as
15 a warehouse licensed under this chapter and as a grain buyer.
16 ~~(5)~~ (6) "Claimant" means a person ~~that is unable to secure~~
17 ~~satisfaction within the twelve (12) months following delivery of~~

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- 1 ~~the financial obligations due from to whom~~ a licensee **owes a**
 2 **storage or financial obligation** under this chapter for grain that
 3 has been delivered to the licensee for sale or for storage under a
 4 bailment.
- 5 ~~(6)~~ **(7)** "Daily position record" means a written or electronic
 6 document that is maintained on a daily basis for each grain
 7 commodity, contains a record of the total amount of grain in
 8 inventory for that business day, and complies with any
 9 requirements established by the director.
- 10 ~~(7)~~ **(8)** "Deferred pricing" or "price later" means a purchase by a
 11 buyer in which title to the grain passes to the buyer and the price
 12 to be paid to the seller is not determined:
- 13 (A) at the time the grain is received by the buyer; or
 14 (B) less than twenty-one (21) days after delivery.
- 15 ~~(8)~~ **(9)** "Delayed payment" means a purchase by a buyer in which
 16 title to the grain passes to the buyer at a determined price and
 17 payment to the seller is not made in less than twenty-one (21)
 18 days after delivery.
- 19 ~~(9)~~ **(10)** "Depositor" means any of the following:
- 20 (A) A person that delivers grain to a licensee under this
 21 chapter for storage or sale.
 22 (B) A person that:
- 23 (i) owns or is the legal holder of a ticket or receipt issued by
 24 a licensee for grain received by the licensee; and
 25 (ii) is the creditor of the issuing licensee for the value of the
 26 grain received in return for the ticket or receipt.
 27 (C) A licensee that stores grain that the licensee owns solely,
 28 jointly, or in common with others in a warehouse owned or
 29 controlled by the licensee or another licensee.
- 30 ~~(10)~~ **(11)** "Designated representative" means the person or
 31 persons designated by the director to act instead of the director in
 32 assisting in the administration of this chapter.
- 33 ~~(11)~~ **(12)** "Director" means the director of the Indiana grain
 34 buyers and warehouse licensing agency appointed under section
 35 1 of this chapter.
- 36 ~~(12)~~ **(13)** "Facility" means a **permanent business** location or one
 37 (1) of several **permanent business** locations in Indiana that are
 38 operated as a warehouse or by a grain buyer.
- 39 ~~(13)~~ **(14)** "Failed" or "failure" means any of the following:
- 40 (A) The inability of a licensee to financially satisfy fully all
 41 obligations due to claimants.
 42 (B) Public declaration of a licensee's insolvency.



- 1 (C) Revocation or suspension of a licensee's license, if the
 2 licensee has outstanding indebtedness owed to claimants.
 3 (D) Nonpayment of a licensee's debts in the ordinary course of
 4 business, if there is not a good faith dispute.
 5 (E) Voluntary surrender of a licensee's license, if the licensee
 6 has outstanding indebtedness to claimants.
 7 (F) Involuntary or voluntary bankruptcy of a licensee.
 8 **(15) "Fund" means the Indiana grain indemnity fund**
 9 **established under IC 26-4-4-1.**
 10 ~~(14)~~ **(16) "Grain"** means corn for all uses, popcorn, wheat, oats,
 11 barley, rye, sorghum, soybeans, oil seeds, other agricultural
 12 commodities as approved by the agency, and seed as defined in
 13 this section. The term does not include canning crops for
 14 processing ~~or~~ sweet corn. ~~or flint corn.~~
 15 ~~(15)~~ **(17) "Grain assets"** means any of the following:
 16 (A) All grain and grain coproducts owned or stored by a
 17 licensee, including the following:
 18 (i) Grain that is in transit following shipment by a licensee.
 19 (ii) Grain that has not been paid for.
 20 (iii) Grain that is stored in unlicensed facilities that are
 21 leased, owned, or occupied by the licensee.
 22 (B) All proceeds, due or to become due, from the sale of a
 23 licensee's grain.
 24 (C) Equity, less any secured financing directly associated with
 25 the equity, in hedging or speculative margin accounts of a
 26 licensee held by a commodity or security exchange, or a dealer
 27 representing a commodity or security exchange, and any
 28 money due the licensee from transactions on the exchange,
 29 less any secured financing directly associated with the money
 30 due the licensee from the transactions on the exchange.
 31 (D) Any other unencumbered funds, property, or equity in
 32 funds or property, wherever located, that can be directly traced
 33 to the sale of grain by a licensee. However, funds, property, or
 34 equity in funds or property may not be considered encumbered
 35 unless:
 36 (i) the encumbrance results from valuable consideration paid
 37 to the licensee in good faith by a secured party; and
 38 (ii) the encumbrance did not result from the licensee posting
 39 the funds, property, or equity in funds or property as
 40 additional collateral for an antecedent debt.
 41 (E) Any other unencumbered funds, property, or equity in
 42 assets of the licensee.



- 1 ~~(16)~~ **(18)** "Grain bank grain" means grain owned by a depositor
 2 for use in the formulation of feed and stored by the warehouse to
 3 be returned to the depositor on demand.
 4 ~~(17)~~ **(19)** "Grain buyer" means a person who is engaged in the
 5 business of buying grain from producers.
 6 ~~(18)~~ **(20)** "Grain coproducts" means any milled or processed
 7 grain, including the grain byproduct of ethanol production.
 8 ~~(19)~~ **(21)** "Grain standards act" means the United States Grain
 9 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
 10 71-87 as amended).
 11 ~~(20)~~ **(22)** "License" means a license issued under this chapter.
 12 **(23) "Licensee" means a person who operates a facility that**
 13 **is licensed under this chapter.**
 14 ~~(21)~~ **(24)** "Official grain standards of the United States" means the
 15 standards of quality or condition for grain, fixed and established
 16 by the secretary of agriculture under the grain standards act.
 17 ~~(22)~~ **(25)** "Person" means an individual, partnership, corporation,
 18 association, or other form of business enterprise.
 19 ~~(23)~~ **(26)** "Receipt" means a warehouse receipt issued by a
 20 warehouse licensed under this chapter.
 21 ~~(24)~~ **(27)** "Seed", notwithstanding IC 15-15-1, means grain set
 22 apart to be used primarily for the purpose of producing new
 23 plants.
 24 ~~(25)~~ **(28)** "Seed inventory" means seed for commercial sale.
 25 ~~(26)~~ **(29)** "Ticket" means a scale weight ticket, a load slip, or
 26 other evidence, other than a receipt, given to a depositor upon
 27 initial delivery of grain to a facility.
 28 ~~(27)~~ **(30)** "Warehouse act" means the United States Warehouse
 29 Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273
 30 as amended).
 31 ~~(28)~~ **(31)** "Warehouse" means any building or other protected
 32 enclosure in one (1) general location licensed or required to be
 33 licensed under this chapter in which grain is or may be:
 34 (A) stored for hire;
 35 (B) used for grain bank storage; or
 36 (C) used to store company owned grain;
 37 and the building or other protected enclosure is operated under
 38 one (1) ownership and run from a single office.
 39 ~~(29)~~ **(32)** "Warehouse operator" means a person that operates a
 40 facility or group of facilities in which grain is or may be stored for
 41 hire or which is used for grain bank storage and which is operated
 42 under one (1) ownership and run from a single office.



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

4 (1) Require any reports that are necessary to administer this
5 chapter.

6 (2) Administer oaths, issue subpoenas, compel the attendance and
7 testimony of witnesses, and compel the production of records in
8 connection with any investigation or hearing under this chapter.

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

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

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

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

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

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

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

35 (10) Impose sanctions for violations of this article.

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

42 (A) Provide the agency with proof of registry with the



- 1 commodity futures trading commission (CFTC) as a
 2 commodity trading adviser, a futures commission merchant, an
 3 introducing broker, or an associated person.
- 4 (B) Demonstrate passage of the series 3 examination
 5 administered by the National Futures Association.
- 6 (C) Annually attend six (6) hours of continuing education,
 7 approved by the director, focusing on the risks to a grain buyer
 8 and seller that are associated with grain marketing practices
 9 and the communication of risks to the producer. Additionally,
 10 as part of continuing education, require a grain buyer, and all
 11 persons purchasing grain for a grain buyer, to pass a test,
 12 approved and administered by the director, that reasonably
 13 measures the grain buyer's understanding of the risks to grain
 14 buyers and sellers associated with producer marketing
 15 strategies.
- 16 (12) Require all contracts executed after ~~June 30, 1997~~, **August**
 17 **31, 2017**, for the purchase of grain from producers, except a flat
 18 price contract or a contract for the production of seed, to include
 19 the following notice immediately above the place on the contract
 20 where the seller of the grain must sign:
 21 "NOTICE - SELLER IS CAUTIONED THAT
 22 CONTRACTING FOR THE SALE AND DELIVERY OF
 23 GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE
 24 FUTURE PAYMENTS BY YOU TO MAINTAIN THIS
 25 CONTRACT, A LOWER SALES PRICE, AND OTHER
 26 RISKS NOT SPECIFIED.
 27 COVERAGE UNDER THE INDIANA GRAIN INDEMNITY
 28 PROGRAM IS **FOR GRAIN THAT HAS BEEN**
 29 **DELIVERED TO A FIRST PURCHASER LICENSEE**
 30 **WITHIN THE 15 MONTHS BEFORE THE DATE OF**
 31 **FAILURE AND IS LIMITED TO 100% OF A LOSS FOR**
 32 **STORED GRAIN AND 80% OF A LOSS FOR OTHER**
 33 **COVERED CONTRACTS.**
 34 **BE SURE YOU UNDERSTAND THE NATURE OF THIS**
 35 **CONTRACT AND THE ASSOCIATED RISKS."**
- 36 (13) Require all contracts executed after January 1, 2000, for the
 37 production of seed to include the following notice, in conspicuous
 38 letters, immediately above the place on the contract or an
 39 addendum where the seller of the seed must sign:
 40 "NOTICE - IF THE TERMS OF THIS CONTRACT STATE
 41 THAT THE CONTRACTOR RETAINS OWNERSHIP OF
 42 THE SEED AND ITS PRODUCTS, YOU MAY NOT BE



- 1 ELIGIBLE FOR PARTICIPATION IN THE INDIANA
 2 GRAIN INDEMNITY PROGRAM. TO BE ELIGIBLE TO
 3 PARTICIPATE IN THE INDIANA GRAIN INDEMNITY
 4 PROGRAM, FARMERS MUST OWN AND SELL GRAIN
 5 OR SEED. BE SURE YOU UNDERSTAND THE NATURE
 6 OF THIS CONTRACT AND THE ASSOCIATED RISKS.".
- 7 (14) At any time, order an unannounced audit for compliance with
 8 this article.
- 9 (15) Adopt rules under IC 4-22-2 to carry out the purposes and
 10 intent of this chapter.
- 11 (16) Require all grain buyers offering deferred pricing, delayed
 12 payments, or contracts linked to the commodity futures or
 13 commodity options market in connection with a grain purchase to
 14 document the agreement in writing not more than twenty-one (21)
 15 days after delivery.
- 16 (b) The director shall do the following:
- 17 (1) Establish standards to ensure that a grain buyer has a suitable
 18 financial position to conduct a business as a grain buyer.
- 19 (2) Require a person who conducts business as a grain buyer to
 20 first be licensed by the agency.
- 21 (3) Require any person engaged in the business of advising
 22 producers on grain marketing for hire to:
- 23 (A) register with the agency; and
- 24 (B) provide the agency with proof of registry with the
 25 commodity futures trading commission (CFTC) as a
 26 commodity trading advisor, a futures commission merchant, an
 27 introducing broker, or an associated person.
- 28 (c) The director may designate an employee to act for the director
 29 in the administration of this chapter. ~~A~~ **An employee** designee may
 30 not:
- 31 (1) act in matters that require a public hearing or the temporary
 32 suspension of a license;
- 33 (2) adopt rules; or
- 34 (3) act as the ultimate authority in the administration of this
 35 chapter.
- 36 **(d) The director may designate an administrative law judge to**
 37 **act for the director in the administration of this chapter.**
- 38 ~~(d)~~ **(e)** The director may determine whether geographically separate
 39 facilities constitute a single warehouse or grain buyer and in making
 40 the determination may consider the following:
- 41 (1) The number of facilities involved.
- 42 (2) Whether full weighing equipment is present at the



1 geographically separate facilities.

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

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

5 (5) The personnel employed at the separate facilities.

6 (6) Other factors the director deems relevant.

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

9 (1) work in partnership with other state grain regulatory officials;

10 (2) participate in national grain regulatory meetings; and

11 (3) provide expertise and education at national meetings.

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

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

24 (1) Current reviewed level financial statement.

25 (2) Updated financial profile form supplied by the agency.

26 (3) Appropriate license fee.

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

31 (1) grain bank;

32 (2) warehouse;

33 (3) grain buyer; or

34 (4) buyer-warehouse.

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



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

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

6 **(d) The appointment must be made in the form and manner**
 7 **prescribed by the director.**

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

11 **(1) immediately notify the director in writing not later than**
 12 **thirty (30) days before the resignation, relocation, or**
 13 **revocation; and**

14 **(2) file with the director a written appointment of another**
 15 **registered agent, along with a written acceptance of the**
 16 **appointment signed by the registered agent.**

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

19 **(1) immediately notify the director in writing of the death or**
 20 **incapacity;**

21 **(2) not later than thirty (30) days after the death or**
 22 **incapacity, appoint another registered agent; and**

23 **(3) file with the director a written appointment of the other**
 24 **registered agent, along with a written acceptance of the**
 25 **appointment signed by the registered agent.**

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

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

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

42 **(c) Except as provided in subsection (d),** the director may disclose



1 the information **described in subsection (b)** only in the form of an
 2 information summary or profile, or statistical study based upon data
 3 provided with respect to more than one (1) warehouse, grain buyer, or
 4 buyer-warehouse that does not identify the warehouse, grain buyer, or
 5 buyer-warehouse to which the information applies.

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

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

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

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

31 (b) If it is determined that a shortage may exist, the director or the
 32 director's designated representative shall hold a hearing as soon as
 33 possible to confirm the existence of a shortage as indicated by the
 34 licensee's books and records and the grain on hand. Only the licensee,
 35 the surety company named on the licensee's bond, the issuer of the
 36 irrevocable letter of credit, and any grain depositor who has made a
 37 claim or complaint to the agency in conjunction with the shortage shall
 38 be considered as interested parties for the purposes of that hearing, and
 39 each shall be given notice of the hearing. At the hearing, the director
 40 or the director's designated representative shall determine whether
 41 there appears to be a reasonable probability that a shortage exists. If it
 42 is determined that a reasonable probability exists and that the bond or



1 letter of credit proceeds or the cash deposit should be distributed, a
2 preliminary determination shall be entered to the effect that the
3 licensee has failed to meet its obligations under this chapter or the rules
4 adopted under this chapter. At the hearing, the director or the director's
5 designated representative may order that all proceeds from grain sales
6 are to be held in the form in which they are received and to be kept
7 separate from all other funds held by the licensee. The order may also
8 provide for informal conferences between agency representatives and
9 persons who have or who appear to have grain deposited with the
10 licensee. The surety company shall be permitted to participate in those
11 conferences.

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

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

39 (e) **Only grain that has been delivered to a first purchaser**
40 **licensee for sale or storage under a bailment not more than fifteen**
41 **(15) months before the date of failure of the licensee may be**
42 **considered by the director or the director's designated**



1 **representative in determining the total proven storage and**
 2 **financial obligations due to depositors and the loss sustained by**
 3 **each depositor who has proven a claim.**

4 ~~(e)~~ **(f)** Following the hearing on claims, the director **or the**
 5 **director's designated representative** shall make a determination as
 6 to the total proven storage ~~obligation of the claimants~~ **and financial**
 7 **obligations due to depositors** and the loss sustained by each depositor
 8 who has proven a claim. Depositors found to have proven their claims
 9 **for storage or financial loss** shall be proven claimants. In arriving at
 10 that loss, in accordance with section 19 of this chapter, the director
 11 shall apply all grain on hand or its identifiable proceeds to meet the
 12 licensee's obligations to grain depositors of grain of that type. Initial
 13 determinations of loss shall be made on the amount of grain on hand,
 14 or identifiable proceeds, and shall reduce the amount to which a
 15 depositor may have a proven claim. With respect to the remaining
 16 unfulfilled obligations, the director shall, for the sole purpose of
 17 establishing each depositor's claim under this chapter, establish a date
 18 upon which the loss is discovered, shall price the grain as of that date,
 19 shall treat all outstanding grain storage obligations not covered by grain
 20 on hand or identifiable proceeds as being sold as of that date, and shall
 21 determine the extent of each depositor's loss as being the actual loss
 22 sustained as of that date. Grain of a specific type on the premises of a
 23 licensee must first be applied to meet the licensee's storage obligations
 24 with respect to that type of grain. If there is insufficient grain of a
 25 specific type on hand to meet all storage obligations with respect to that
 26 type of grain, the grain that is present shall be prorated in accordance
 27 with the procedures described in this section and section 16.8 of this
 28 chapter.

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

38 ~~(g)~~ **(h)** When the proven claims exceed the amount of the bond,
 39 letter of credit, or cash deposit, recoveries of proven claimants shall be
 40 prorated in the same manner as priorities are prorated under section
 41 16.8 of this chapter.

42 ~~(h)~~ **(i)** The proceedings and hearings under this section may be



1 undertaken without regard to, in combination with, or in addition to
2 those undertaken in accordance with section 17.1 of this chapter.

3 ~~(j)~~ **(j)** The findings of the director shall be final, conclusive, and
4 binding on all parties.

5 ~~(k)~~ **(k)** The director may adopt rules under IC 4-22-2 to determine
6 how the agency may distribute the interest that may accrue from funds
7 held by the agency for the payment of claims.

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

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

12 **(1) agreed with the director's determination on the claim and**
13 **not filed an appeal under IC 4-21.5-3; or**

14 **(2) exhausted the claimant's administrative appeal and**
15 **judicial review remedies.**

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

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

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

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

32 **(1) an administrative law judge to preside over the appeal;**
33 **and**

34 **(2) an ultimate authority for purposes of the appeal in**
35 **accordance with IC 4-21.5-3.**

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

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



- 1 (2) A claimant that has a ticket or written evidence, other than a
 2 receipt, of a storage obligation of the licensee.
 3 (3) A claimant that surrendered a receipt as part of a grain sales
 4 transaction if:
 5 (A) the claimant was not fully paid for the grain sold; and
 6 (B) the licensee failed less than twenty-one (21) days after the
 7 surrender of the receipt.
 8 (4) A claimant that has other written evidence of a sale to the
 9 licensee of grain for which the claimant has not been fully paid.
 10 (b) A lien under this section attaches and is effective at the earliest
 11 of the following:
 12 (1) the delivery of the grain for sale, storage, or under a bailment;
 13 (2) the commencement of the storage obligation; or
 14 (3) the advancement of funds by a lender.
 15 (c) A lien under this section terminates when the licensee discharges
 16 the claim.
 17 (d) If a licensee has failed, the lien that attaches under this section
 18 is assigned to the agency by operation of this section. If a failed
 19 licensee is liquidated, a lien under this section continues to attach as a
 20 claim against the assets or proceeds of the assets of the licensee that are
 21 received or liquidated by the agency.
 22 (e) Except as provided in subsection ~~(g)~~, **(h)**, if a licensee has failed,
 23 the power to enforce the lien on the licensee's grain assets transfers by
 24 operation of this section to the director and rests exclusively with the
 25 director who shall allocate and prorate the proceeds of the grain assets
 26 as provided in subsections ~~(f)~~ **(g)** and ~~(h)~~: **(i)**.
 27 **(f) The lien established under this section has priority over all**
 28 **competing lien claims asserted against the licensee's grain assets.**
 29 ~~(f)~~ **(g)** The priority of a lien that attaches under this section is not
 30 determined by the date on which the claim arose. If a licensee has
 31 failed, the director shall enforce lien claims and allocate grain assets
 32 and the proceeds of grain assets of the licensee in the following order
 33 of priority:
 34 (1) First priority is assigned to the following:
 35 (A) A lender or other claimant that has a receipt for grain
 36 owned or stored by the licensee.
 37 (B) A claimant that has a ticket or written evidence, other than
 38 a receipt, of a storage obligation of the licensee.
 39 (C) A claimant that surrendered a receipt as part of a grain
 40 sales transaction if:
 41 (i) the claimant was not fully paid for the grain sold; and
 42 (ii) the licensee failed less than twenty-one (21) days after



- 1 the surrender of the receipt.
- 2 If there are insufficient grain assets to satisfy all first priority
- 3 claims, first priority claimants shall share pro rata in the assets.
- 4 (2) Second priority is assigned to all claimants who have written
- 5 evidence of the sale of grain, such as a ticket, a deferred pricing
- 6 agreement, or similar grain delivery contract, and who completed
- 7 delivery less than thirty (30) days before the licensee's failure.
- 8 Claimants under this subdivision share pro rata in the remaining
- 9 assets if all claimants under subdivision (1) have been paid but
- 10 insufficient assets remain to fully satisfy all claimants under this
- 11 subdivision.
- 12 (3) Third priority is assigned to all other claimants that have
- 13 written evidence of the sale of grain to the failed licensee.
- 14 Claimants under this subdivision share pro rata in the distribution
- 15 of the remaining grain assets.
- 16 ~~(g)~~ **(h)** If a claimant under this section brings an action to recover
- 17 grain assets that are subject to a lien under this section and the agency
- 18 does not join the action, the director shall, upon request of the claimant,
- 19 assign the lien to the claimant in order to allow the claimant to pursue
- 20 the claim to the extent that the action does not delay the resolution of
- 21 the matter by the agency, the prompt liquidation of the assets, or the
- 22 ultimate distribution of assets to all claimants.
- 23 ~~(h)~~ **(i)** If:
- 24 (1) a claimant engaged in farming operations granted to one (1)
- 25 or more secured parties one (1) or more security interests in the
- 26 grain related to the claimant's claim under this section; and
- 27 (2) one (1) or more secured parties described in subdivision (1)
- 28 have given to:
- 29 (A) the licensee prior written notice of the security interest
- 30 under IC 26-1-9.1-320(a)(1) or IC 26-1-9-307(1)(a) before its
- 31 repeal; and
- 32 (B) the director prior written notice of the security interest
- 33 with respect to the grain described in subdivision (1) sufficient
- 34 to give the director a reasonable opportunity to cause the
- 35 issuance of a joint check under this subsection;
- 36 the director shall pay the claimant described in subdivision (1) the
- 37 portion of the proceeds of grain assets under subsection (e) to which
- 38 the claimant is entitled under this section by issuance of a check
- 39 payable jointly to the order of the claimant and any secured party
- 40 described in subdivision (1) who has given the notices described in
- 41 subdivision (2). If only one (1) secured party described in subdivision
- 42 (1) is a payee, the rights of the secured party in the check shall be to the



1 extent of the indebtedness of the claimant to the secured party. If two
 2 (2) or more secured parties described in subdivision (1) are payees, the
 3 nature, extent, and priority of their respective rights in the check are
 4 determined in the same manner as the nature, extent, and priority of
 5 their respective security interest under IC 26-1-9.1.

6 SECTION 9. IC 26-3-7-17.1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.1. (a) Whenever
 8 the director, as a result of an inspection or otherwise, has reasonable
 9 cause to believe that a person to which this chapter is or may be
 10 applicable:

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

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

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

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

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

41 (d) Upon a determination, after a hearing held by the director or the
 42 director's designated representative, that a person is acting as described



1 in subsection (a), the director may suspend, revoke, or deny a license.
 2 If the director suspends, revokes, or denies a license, the director shall
 3 publish notice of the suspension, revocation, or denial as provided in
 4 section 17.5 of this chapter.

5 (e) If the director has reasonable cause to believe that a licensee is
 6 acting as described in subsection (a) and determines that immediate
 7 action without an opportunity for a hearing is necessary in order to
 8 safeguard depositors, the director may suspend a license temporarily
 9 without a hearing for a period not to exceed twenty (20) days. When a
 10 license is suspended without a hearing, the director or the director's
 11 designated representative shall grant an opportunity for a hearing as
 12 soon as possible.

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

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

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

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

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1 **(1) notice or order issued; or**
 2 **(2) action taken;**
 3 **under this section.**

4 SECTION 11. IC 26-3-7-37 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 6 **UPON PASSAGE]: Sec. 37. (a) Notwithstanding any other law, a**
 7 **claimant who delivered grain to a first purchaser for sale or**
 8 **storage under a bailment to a failed licensee beginning October 8,**
 9 **2014, and ending April 8, 2015, shall be considered by the director**
 10 **or the director's designated representative in determining the total**
 11 **proven storage and financial obligations due to depositors and the**
 12 **loss sustained by each depositor who has proven a claim.**

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

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

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

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

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

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



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

5 SECTION 14. IC 26-4-1-16 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. "Participant in
 7 the grain indemnity program" means a producer who has: ~~never~~

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

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

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

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

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

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

26 (d) Administrative expenses under this section may include:

27 (1) processing refunds;

28 (2) enforcement of the fund;

29 (3) record keeping in relation to the fund;

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

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

34 **and**

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

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

39 SECTION 17. IC 26-4-4-4, AS AMENDED BY P.L.60-2015,
 40 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]: Sec. 4. (a) Except as provided in section 8 of this
 42 chapter, beginning on July 1, 2015, the producers of grain shall be



1 charged a producer premium equal to two-tenths percent (0.2%) of the
 2 price on all marketed grain that is sold ~~in Indiana~~. **to a first purchaser**
 3 **licensee.**

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

6 SECTION 18. IC 26-4-5-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A producer
 8 upon and against whom a producer premium is charged and collected
 9 under the provisions of this chapter may demand of and by complying
 10 with this chapter receive from the fund through the board a refund of
 11 the producer premiums collected from the producer.

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

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

17 (1) made in writing and:

18 (A) hand delivered; or

19 (B) sent by first class mail;

20 to the board; and

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

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

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

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

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

42 (1) The producer petitions the board for approval of reentry into



1 the grain indemnity program by hand delivering or sending by
 2 certified mail, return receipt requested, a written request in a form
 3 required by the board.

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

6 (3) The producer pays into the fund:

7 (A) all previous producer premium refunds; and

8 (B) interest on the refunds;

9 as determined by the board.

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

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

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

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

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

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

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

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

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

32 SECTION 21. IC 26-4-6-4, AS AMENDED BY P.L.75-2010,
 33 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 UPON PASSAGE]: Sec. 4. (a) A claimant who has incurred a storage
 35 loss due to the failure of a warehouse operator licensed under IC 26-3-7
 36 is entitled to be compensated by the board from the fund for one
 37 hundred percent (100%) of the storage loss incurred less all credits and
 38 offsets and any producer premium that would have been due on the sale
 39 of the grain. The gross amount of the storage loss shall be as
 40 determined by the agency for warehouses licensed under IC 26-3-7 or
 41 by the United States Department of Agriculture for warehouses
 42 licensed under the United States Warehouse Act. The warehouse



1 operator and claimants may submit to the agency evidence related to
 2 outstanding charges against stored grain. If the evidence is submitted,
 3 the agency shall determine the storage loss payable by the board.

4 (b) A claimant who has incurred a financial loss due to the failure
 5 of a grain buyer is entitled to be compensated by the board from the
 6 fund for eighty percent (80%) of the loss incurred less all credits and
 7 offsets and any producer premium that should have been due on the
 8 sale of the grain. The agency shall determine the loss incurred in the
 9 following manner:

10 (1) For grain that has been priced, the loss shall be the value of
 11 the priced grain less any outstanding charges against the grain.

12 (2) For grain sold to a grain buyer who is also a warehouse
 13 operator and that has not been priced, the loss shall be established
 14 using the price determined for the storage obligations.

15 (3) For grain sold to a grain buyer who is not a warehouse
 16 operator and that has not been priced, the loss shall be established
 17 using a price determined by the agency using the same procedures
 18 used by the agency to determine the price at the warehouse.

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

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

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1237, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 8 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between lines 11 and 12, begin a new line block indented and insert:

"(4) "Board" means the governing body of the Indiana grain indemnity corporation created by IC 26-4-3-2."

Page 1, line 12, strike "(4)" and insert "(5)".

Page 1, line 14, strike "(5)" and insert "(6)".

Page 2, line 2, strike "(6)" and insert "(7)".

Page 2, line 7, strike "(7)" and insert "(8)".

Page 2, line 12, strike "(8)" and insert "(9)".

Page 2, line 16, strike "(9)" and insert "(10)".

Page 2, line 27, strike "(10)" and insert "(11)".

Page 2, line 30, strike "(11)" and insert "(12)".

Page 2, line 33, strike "(12)" and insert "(13)".

Page 2, line 36, strike "(13)" and insert "(14)".

Page 3, between lines 4 and 5, begin a new line block indented and insert:

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

Page 3, line 5, strike "(14)" and insert "(16)".

Page 3, line 10, strike "(15)" and insert "(17)".

Page 3, line 38, strike "(16)" and insert "(18)".

Page 3, line 41, strike "(17)" and insert "(19)".

Page 4, line 1, strike "(18)" and insert "(20)".

Page 4, line 3, strike "(19)" and insert "(21)".

Page 4, line 6, strike "(20)" and insert "(22)".

Page 4, line 7, delete "(21)" and insert "(23)".

Page 4, line 9, delete "(22)" and insert "(24)".

Page 4, line 12, delete "(23)" and insert "(25)".

Page 4, line 14, delete "(24)" and insert "(26)".

Page 4, line 16, delete "(25)" and insert "(27)".

Page 4, line 19, delete "(26)" and insert "(28)".

Page 4, line 20, delete "(27)" and insert "(29)".

Page 4, line 23, delete "(28)" and insert "(30)".

Page 4, line 26, delete "(29)" and insert "(31)".



Page 4, line 34, delete "(30)" and insert "(32)".

Page 6, line 11, strike "June 30, 1997," and insert "**December 31, 2017,**".

Page 6, line 23, delete "FOR GRAIN THAT HAS BEEN".

Page 6, delete lines 24 through 25.

Page 6, line 26, delete "DATE OF FAILURE AND IS".

Page 6, between lines 28 and 29, begin a new line double block indented and insert:

"INDIANA LAW UNDER IC 26-3-7 CONTAINS IMPORTANT INFORMATION CONCERNING THE DURATION OF YOUR COVERAGE."

Page 7, between lines 10 and 11, begin a new line block indented and insert:

"(17) Require all grain buyers who execute a contract after December 31, 2017, with a producer under subdivision (12) to provide the producer with the educational materials prepared under IC 26-4-5-4."

Page 7, line 21, reset in roman "advisor,".

Page 7, line 21, delete "adviser,".

Page 9, between lines 20 and 21, begin a new paragraph and insert:

"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 to agents and employees of the agency, **the board**, 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 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 grain buyer or warehouse operator who has failed to meet the minimum requirements in section 4(e) or 16 of this chapter and to provide assurance that sufficient measures are being taken to minimize the**



potential loss to the fund. However, 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 may provide the board with records of previous failures to analyze the factors that have led to previous failures.

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 the subject of litigation or was involved in the probate of an estate at the time of the claims hearing has one (1) year from the conclusion of the 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 later 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."

Page 10, line 16, delete "twelve (12)" and insert "**fifteen (15)**".

Page 12, line 33, after "director" insert "**or the director's designated representative**".

Page 12, line 35, delete "director," and insert "**director or the director's designated representative,**".

Page 13, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 8. 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 9. 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) As used in this section, "claim period" means the period beginning October 7, 2014, and ending April 7, 2015.**

(b) Notwithstanding any other law, a claimant who delivered grain to a first purchaser for sale or storage under a bailment to a failed licensee within the claim period shall be considered by the director or the director's 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 for the claim period.

(c) Notwithstanding any other law, the director, the director's designee, 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 7, 2014, and ending April 7, 2016.

(d) 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.

(e) The director or the director's designee 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.

(f) 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 (d).

(g) This section expires July 1, 2018."

Page 13, line 17, delete "IC 26-3-7-2(25)." and insert "IC 26-3-7-2(27)).".

Page 13, after line 18, begin a new paragraph and insert:

"SECTION 12. 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 13. 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 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 14. 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 15. IC 26-4-3-11 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. The director shall disclose to the board, while the board is in executive session, the status and inspection results of any grain buyer or warehouse operator who has failed to meet the minimum requirements in IC 26-3-7-4(e) or IC 26-3-7-16 and to provide assurance that sufficient measures are being taken to minimize the potential loss to the fund. However, the director may not disclose the information to a board member who has not executed a confidentiality agreement presented by the agency.**

SECTION 16. 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 17. 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 18. 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:
 - (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 has not been a participant in the grain indemnity program may not reenter the program before meeting the criteria of a claimant as defined by this chapter. This



subsection does not apply to a producer who obtained refunds only before July 1, 2015.

SECTION 19. IC 26-4-5-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) **The board, in coordination with the agency, shall develop educational information to be made available to producers both electronically and through 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 to locate information about who has requested a refund and who is no longer covered by the program.**

(b) A producer who has deposited grain with a grain buyer or warehouse operator shall be provided the educational information developed under subsection (a) by the grain buyer or warehouse operator when a contract is executed under IC 26-3-7-3(a)(12).

SECTION 20. 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 21. 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 22. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1237 as introduced.)

LEHE

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1237 be amended to read as follows:

Page 6, line 28, after "IS" insert "**FOR GRAIN THAT HAS BEEN DELIVERED TO A FIRST PURCHASER LICENSEE WITHIN THE 15 MONTHS BEFORE THE DATE OF FAILURE AND IS**".

Page 6, delete lines 31 through 33.

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Page 7, delete lines 16 through 19.

Page 21, line 7, delete "(a)".

Page 21, delete lines 19 through 22.

(Reference is to HB 1237 as printed February 10, 2017.)

LEHE

COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture, to which was referred House Bill No. 1237, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 14, after "processing" delete "," and insert "**or**".

Page 3, line 14, after "sweet corn" delete "," and insert ".".

Page 3, line 14, strike "or flint corn."

Page 4, line 12, delete "(23)"Licensee"" and insert "**(23) Licensee**".

Page 6, line 17, delete "December" and insert "**August**".

Page 8, line 41, delete "statutory" and insert "**registered**".

Page 9, line 2, delete "statutory" and insert "**registered**".

Page 9, line 3, delete "statutory" and insert "**registered**".

Page 9, line 8, delete "statutory" and insert "**registered**".

Page 9, line 9, delete "statutory" and insert "**registered**".

Page 9, line 15, delete "statutory" and insert "**registered**".

Page 9, line 16, delete "statutory" and insert "**registered**".

Page 9, line 17, delete "statutory" and insert "**registered**".

Page 9, line 17, after "dies" insert "**or is incapacitated**".

Page 9, line 18, after "death" insert "**or incapacity**".

Page 9, line 19, after "death" insert "**or incapacity**".

Page 9, line 20, delete "statutory" and insert "**registered**".

Page 9, line 22, delete "statutory" and insert "**registered**".

Page 9, line 23, delete "statutory" and insert "**registered**".

Page 9, delete lines 26 through 42, begin a new paragraph and insert:

"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."

Page 10, delete lines 1 through 10.

Page 11, line 25, delete "the subject of litigation or was".

Page 11, line 27, after "of the" insert "**claims**".

Page 11, line 29, delete "not later" and insert "**not more**".

Page 13, line 13, delete "licensee," and insert "**licensee or claimant subject to**".

Page 13, line 13, delete "claimant, or person".

Page 13, line 14, delete "aggrieved by".

Page 13, line 17, delete "party" and insert "**licensee or claimant**".

Page 13, line 20, delete "party" and insert "**licensee or claimant**".

Page 14, line 5, delete ":".



- Page 14, line 6, delete "(1)".
- Page 14, line 6, delete "claim; or" and insert "claim."
- Page 14, run in lines 5 through 6.
- Page 14, delete lines 7 through 9.
- Page 17, line 41, delete "(a) As used in this section, "claim".
- Page 17, line 42, delete "period" means the period beginning October 7, 2014, and ending".
- Page 18, delete line 1.
- Page 18, line 2, delete "(b)" and insert "(a)".
- Page 18, line 4, delete "within the claim period" and insert **"beginning October 8, 2014, and ending April 8, 2015."**
- Page 18, line 7, delete "for the" and insert ".".
- Page 18, line 8, delete "claim period."
- Page 18, line 9, delete "(c)" and insert "(b)".
- Page 18, line 12, delete "October 7, 2014," and insert **"October 8, 2014, and ending April 8, 2016."**
- Page 18, delete line 13.
- Page 18, line 14, delete "(d)" and insert "(c)".
- Page 18, line 20, delete "(e)" and insert "(d)".
- Page 18, line 25, delete "(f)" and insert "(e)".
- Page 18, line 29, delete "(d)" and insert "(c)".
- Page 18, line 30, delete "(g)" and insert "(f)".
- Page 18, line 37, after "processing" delete "," and insert **"or"**.
- Page 18, line 37, after "sweet corn" delete "," and insert ".".
- Page 18, line 37, strike "or flint corn."
- Page 19, line 3, after "requested" insert **"and received"**.
- Page 19, delete lines 11 through 20, begin a new paragraph and insert:
- "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)."

Page 20, delete lines 38 through 42, begin a new paragraph and insert:

"(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)."

Page 21, line 4, after "available" insert "**electronically**".

Page 21, line 5, after "producers" insert ",".

Page 21, line 5, delete "both electronically and through".

Page 21, line 5, after "grain buyers" insert ",".

Page 21, line 13, delete "to" and insert "**a producer may**".

Page 21, line 13, delete "who has requested a" and insert "**the producer's status in the program.**".

Page 21, line 14, delete "refund and who is no longer covered by the program."

and when so amended that said bill do pass.

(Reference is to HB 1237 as reprinted February 17, 2017.)

LEISING, Chairperson

Committee Vote: Yeas 7, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1237 be amended to read as follows:

Page 7, line 38, delete "(e)The" and insert "**(e) The**".

Page 18, line 9, delete "." and insert ",".

Page 18, line 10, after "director's" insert "**designated**".

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Page 18, line 14, delete "designee," and insert "**designated representative**,".

Page 18, line 24, delete "designee" and insert "**designated representative**".

(Reference is to EHB 1237 as printed March 21, 2017.)

LEISING

