

HOUSE BILL No. 1483

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-3-7; IC 26-4.

Synopsis: Grain indemnity fund. Amends the definition of "failed" or "failure" under the Indiana grain buyers and warehouse licensing law (licensing law). Provides that the director of the Indiana grain buyers and warehouse licensing agency (agency) may share information with board members of the Indiana grain indemnity corporation (corporation) regarding the risk that a person licensed under the licensing law (licensee) may fail and the potential financial impact to the Indiana grain indemnity fund (fund) if the licensee does fail. Requires the director of the agency to engage a third party firm to conduct a performance review of the agency's auditing practices and procedures before October 1, 2021, and at least once every five years thereafter. Adds a definition of "conflict of interest". Requires that if the director of the agency finds a deficiency in minimum net worth before the licensee's next audit by the agency, the director shall issue a notice of deficiency to the licensee stating that the licensee has 30 days to correct the deficiency and if the licensee fails to correct a deficiency in minimum net worth within the 30 day period, the director may issue a fine. Provides that if a licensee fails to correct a deficiency in minimum net worth within 60 days of receiving a fine the director may issue a temporary suspension. Prohibits a licensee, beginning after June 30, 2021, from entering into a deferred pricing agreement or a delayed payment agreement in connection with grain purchases that extends beyond one year from the date of delivery of the grain. Provides specified phase out periods for deferred pricing agreements or delayed payment agreements that were entered into by a licensee before July 1, 2021. Provides that a board member of the corporation
(Continued next page)

Effective: Upon passage.

Snow, Leonard

January 14, 2021, read first time and referred to Committee on Agriculture and Rural Development.



Digest Continued

with a conflict of interest in a proceeding before the board is recused from the proceedings. Provides that, if a board member is found to have violated the terms of a confidentiality agreement, the board member forfeits the member's appointment to the board and shall be removed as a member of the board. Allows interest transfers from the Indiana grain indemnity fund to a professional development account.



Introduced

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1483

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.145-2017,
2 SECTION 1, 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 (5) "Buyer-warehouse" means a person that operates both as a
15 warehouse licensed under this chapter and as a grain buyer.



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



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



- 1 in the formulation of feed and stored by the warehouse to be
 2 returned to the depositor on demand.
- 3 (19) "Grain buyer" means a person who is engaged in the business
 4 of buying grain from producers.
- 5 (20) "Grain coproducts" means any milled or processed grain,
 6 including the grain byproduct of ethanol production.
- 7 (21) "Grain standards act" means the United States Grain
 8 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
 9 71-87 as amended).
- 10 (22) "License" means a license issued under this chapter.
- 11 (23) "Licensee" means a person who operates a facility that is
 12 licensed under this chapter.
- 13 (24) "Official grain standards of the United States" means the
 14 standards of quality or condition for grain, fixed and established
 15 by the secretary of agriculture under the grain standards act.
- 16 (25) "Person" means an individual, partnership, corporation,
 17 association, or other form of business enterprise.
- 18 (26) "Receipt" means a warehouse receipt issued by a warehouse
 19 licensed under this chapter.
- 20 (27) "Seed", notwithstanding IC 15-15-1, means grain set apart to
 21 be used primarily for the purpose of producing new plants.
- 22 (28) "Seed inventory" means seed for commercial sale.
- 23 (29) "Ticket" means a scale weight ticket, a load slip, or other
 24 evidence, other than a receipt, given to a depositor upon initial
 25 delivery of grain to a facility.
- 26 (30) "Warehouse act" means the United States Warehouse Act,
 27 approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273 as
 28 amended).
- 29 (31) "Warehouse" means any building or other protected
 30 enclosure in one (1) general location licensed or required to be
 31 licensed under this chapter in which grain is or may be:
 32 (A) stored for hire;
 33 (B) used for grain bank storage; or
 34 (C) used to store company owned grain;
 35 and the building or other protected enclosure is operated under
 36 one (1) ownership and run from a single office.
- 37 (32) "Warehouse operator" means a person that operates a facility
 38 or group of facilities in which grain is or may be stored for hire or
 39 which is used for grain bank storage and which is operated under
 40 one (1) ownership and run from a single office.
- 41 SECTION 2. IC 26-3-7-3, AS AMENDED BY P.L.145-2017,
 42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 UPON PASSAGE]: Sec. 3. (a) The director may do the following:
2 (1) Require any reports that are necessary to administer this
3 chapter.
4 (2) Administer oaths, issue subpoenas, compel the attendance and
5 testimony of witnesses, and compel the production of records in
6 connection with any investigation or hearing under this chapter.
7 (3) Prescribe all forms within the provisions of this chapter.
8 (4) Establish grain standards in accordance with the grain
9 standards act and federal regulations promulgated under that act
10 that must be used by warehouses.
11 (5) Investigate the activities required by this chapter including the
12 storage, shipping, marketing, and handling of grain and
13 complaints with respect to the storage, shipping, marketing, and
14 handling of grain.
15 (6) Inspect a facility, the grain stored in a facility, and all property
16 and records pertaining to a facility. All inspections of an applicant
17 or licensee under this chapter must take into consideration the
18 proprietary nature of an applicant's or licensee's commercial
19 information. The director may adopt rules under IC 4-22-2
20 regarding inspections permitted under this chapter, and the rules
21 must take into consideration the proprietary nature of an
22 applicant's or a licensee's commercial information. This chapter
23 does not authorize the inspection of an applicant's or licensee's
24 trade secret or intellectual property information.
25 (7) Determine whether a facility for which a license has been
26 applied for or has been issued is suitable for the proper storage,
27 shipping, and handling of the grain that is stored, shipped, or
28 handled, or is expected to be stored, shipped, or handled.
29 (8) Require a licensee to terminate storage, shipping, marketing,
30 and handling agreements upon revocation of the person's license.
31 (9) Attend and preside over any investigation or hearing allowed
32 or required under this chapter.
33 (10) Impose sanctions for violations of this article.
34 (11) Require a grain buyer and all persons purchasing grain to
35 show evidence of training or licensing on the risks associated with
36 grain marketing practices only if a grain buyer engages in a risk
37 factor higher than a standard defined by the director. This training
38 or licensing may include requiring the grain buyer or person
39 purchasing grain to do any of the following:
40 (A) Provide the agency with proof of registry with the
41 commodity futures trading commission (CFTC) as a
42 commodity trading adviser, a futures commission merchant, an



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



- 1 PARTICIPATE IN THE INDIANA GRAIN INDEMNITY
 2 PROGRAM, FARMERS MUST OWN AND SELL GRAIN
 3 OR SEED. BE SURE YOU UNDERSTAND THE NATURE
 4 OF THIS CONTRACT AND THE ASSOCIATED RISKS.".
- 5 (14) At any time, order an unannounced audit for compliance with
 6 this article.
- 7 (15) Adopt rules under IC 4-22-2 to carry out the purposes and
 8 intent of this chapter.
- 9 (16) Require all grain buyers offering deferred pricing, delayed
 10 payments, or contracts linked to the commodity futures or
 11 commodity options market in connection with a grain purchase to
 12 document the agreement in writing not more than twenty-one (21)
 13 days after delivery.
- 14 **(17) Share information with board members regarding the**
 15 **financial status of a licensee, including the following:**
- 16 **(A) Whether there is a risk that a licensee may fail.**
 17 **(B) The financial impact to the fund if a licensee identified**
 18 **in clause (A) were to fail.**
 19 **(C) The estimated number of potential claimants that**
 20 **could result from the failure of a licensee identified in**
 21 **clause (A).**
 22 **(D) Any other information the director determines is**
 23 **necessary to solicit the advice of the board regarding the**
 24 **financial status of a licensee.**
- 25 **However, the director may not share information under this**
 26 **subdivision with a board member who has not executed a**
 27 **confidentiality agreement.**
- 28 (b) The director shall do the following:
- 29 (1) Establish standards to ensure that a grain buyer has a suitable
 30 financial position to conduct a business as a grain buyer.
- 31 (2) Require a person who conducts business as a grain buyer to
 32 first be licensed by the agency.
- 33 (3) Require any person engaged in the business of advising
 34 producers on grain marketing for hire to:
- 35 (A) register with the agency; and
 36 (B) provide the agency with proof of registry with the
 37 commodity futures trading commission (CFTC) as a
 38 commodity trading advisor, a futures commission merchant, an
 39 introducing broker, or an associated person.
- 40 (c) The director may designate an employee to act for the director
 41 in the administration of this chapter. An employee designee may not:
 42 (1) act in matters that require a public hearing or the temporary



- 1 suspension of a license;
 2 (2) adopt rules; or
 3 (3) act as the ultimate authority in the administration of this
 4 chapter.
 5 (d) The director may designate an administrative law judge to act for
 6 the director in the administration of this chapter.
 7 (e) The director may determine whether geographically separate
 8 facilities constitute a single warehouse or grain buyer and in making
 9 the determination may consider the following:
 10 (1) The number of facilities involved.
 11 (2) Whether full weighing equipment is present at the
 12 geographically separate facilities.
 13 (3) The method of bookkeeping employed by the separate
 14 facilities.
 15 (4) The hours of operation of the separate facilities.
 16 (5) The personnel employed at the separate facilities.
 17 (6) Other factors the director deems relevant.
 18 (f) The director and the director's designees shall become members
 19 of the national grain regulatory organization and shall:
 20 (1) work in partnership with other state grain regulatory officials;
 21 (2) participate in national grain regulatory meetings; and
 22 (3) provide expertise and education at national meetings
 23 **(g) The director shall engage an independent third party firm to**
 24 **conduct a performance review of the agency's auditing practices**
 25 **and procedures before October 1, 2021, and at least once every five**
 26 **(5) years thereafter.**
 27 ~~(g)~~ **(h)** The director may subpoena or require that certain records
 28 located outside Indiana, if any, be brought to a specified location in
 29 Indiana for review by the agency.
 30 SECTION 3. IC 26-3-7-6.5, AS AMENDED BY P.L.145-2017,
 31 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective
 33 counties, and license status of licensees may be disclosed.
 34 (b) Unless in accordance with a judicial order, the director, the
 35 agency, its counsel, auditors, or its other employees or agents shall not
 36 divulge any other information disclosed by the applications or reports
 37 filed or inspections performed under the provisions of this chapter.
 38 However, information may be divulged to agents and employees of the
 39 agency, the board, as required by subsection (d), the state board of
 40 accounts or another entity retained under subsection (f), or to any other
 41 legal representative of the state or federal government otherwise
 42 empowered to see or review the information.



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

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

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

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

22 SECTION 4. IC 26-3-7-10, AS AMENDED BY P.L.60-2015,
 23 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: Sec. 10. (a) The minimum amount of bond, letter
 25 of credit, or cash deposit required from a licensee is as follows:

26 (1) For a grain bank license or a warehouse license:

27 (A) fifty thousand dollars (\$50,000); and

28 (B) ten cents (\$0.10) multiplied by the licensed bushel storage
 29 capacity of the grain bank or warehouse.

30 (2) For a grain buyer, including a grain buyer that is also a
 31 licensee under the warehouse act:

32 (A) fifty thousand dollars (\$50,000); or

33 (B) five-tenths percent (0.5%) of the total amount the grain
 34 buyer paid for grain purchased from producers during the
 35 grain buyer's most recent fiscal year;

36 whichever is greater.

37 (3) For a buyer-warehouse:

38 (A) an amount equal to the sum of:

39 (i) fifty thousand dollars (\$50,000); and

40 (ii) ten cents (\$0.10) multiplied by the licensed bushel
 41 storage capacity of the buyer-warehouse's facility; or

42 (B) five-tenths percent (0.5%) of the total amount the



- 1 buyer-warehouse paid for grain purchased from producers
2 during the buyer-warehouse's most recent fiscal year;
3 whichever is greater.
- 4 (b) Except as provided in subsections (g) and (h), the amount of
5 bond, letter of credit, or cash deposit required by this chapter may not
6 exceed two hundred fifty thousand dollars (\$250,000) per license and
7 may not exceed a total of one million dollars (\$1,000,000) per person.
- 8 (c) The licensed bushel storage capacity is the maximum number of
9 bushels of grain that the licensee's facility could accommodate as
10 determined by the director or the director's designated representative
11 and shall be increased or reduced in accordance with the amount of
12 space being used for storage from time to time.
- 13 (d) Instead of a bond or cash deposit, an irrevocable letter of credit
14 in the prescribed amount may be provided with the director as the
15 beneficiary. The director shall adopt rules under IC 4-22-2 to establish
16 acceptable form, substance, terms, and conditions for letters of credit.
17 The director may not release a party from the obligations of the letter
18 of credit within eighteen (18) months of the termination of the
19 licensee's license.
- 20 (e) The director shall adopt rules under IC 4-22-2 to provide for the
21 receipt and retention of cash deposits. However, the director shall not
22 return a cash deposit to a licensee until the director has taken
23 reasonable precautions to assure that the licensee's obligations and
24 liabilities have been or will be met.
- 25 (f) If a person is licensed or is applying for licenses to operate two
26 (2) or more facilities in Indiana, the person may give a single bond,
27 letter of credit, or cash deposit to satisfy the requirements of this
28 chapter and the rules adopted under this chapter to cover all the
29 person's facilities in Indiana.
- 30 (g) If a licensee has a deficiency in the minimum positive net worth
31 required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or
32 16(a)(5)(B) of this chapter, the licensee shall add to the amount of
33 bond, letter of credit, or cash deposit determined under subsection (a)
34 an amount equal to the deficiency or provide another form of surety as
35 permitted under the rules of the agency.
- 36 (h) Except as provided in subsections (i) and (j), a licensee may not
37 correct a deficiency in the minimum positive net worth required by
38 section 16(a)(1), 16(a)(2)(A), 16(a)(3)(A), 16(a)(4)(A), or 16(a)(5)(A)
39 of this chapter by adding to the amount of bond, letter of credit, or cash
40 deposit required by subsection (a).
- 41 (i) A buyer-warehouse that has a bushel storage capacity of less than
42 one million (1,000,000) bushels or purchases less than one million



1 (1,000,000) bushels of grain per year may correct a deficiency in
2 minimum positive net worth by adding to the amount of bond, letter of
3 credit, or cash deposit determined under subsection (a) if the
4 buyer-warehouse has a minimum positive net worth of at least fifty
5 thousand dollars (\$50,000), not including the amount added to the
6 bond, letter of credit, or cash deposit.

7 (j) A buyer-warehouse that has a bushel storage capacity of at least
8 one million (1,000,000) bushels, or purchases at least one million
9 (1,000,000) bushels of grain per year, may correct a deficiency in
10 minimum positive net worth by adding to the amount of bond, letter of
11 credit, or cash deposit determined under subsection (a) if the
12 buyer-warehouse has a minimum positive net worth of at least one
13 hundred thousand dollars (\$100,000), not including the amount added
14 to the bond, letter of credit, or cash deposit.

15 (k) If the director or the director's designated representative finds
16 that conditions exist that warrant requiring additional bond or cash
17 deposit, there shall be added to the amount of bond or cash deposit as
18 determined under the other provisions of this section, a further amount
19 to meet the conditions.

20 **(l) If the director or the director's designated representative**
21 **finds a deficiency in minimum net worth before the licensee's next**
22 **audit by the agency, the director shall issue a notice of deficiency**
23 **to the licensee stating that the licensee has thirty (30) days to**
24 **correct the deficiency. If a licensee fails to correct a deficiency in**
25 **minimum net worth within the thirty (30) day period, the director**
26 **may issue a fine of not more than one thousand dollars (\$1,000).**

27 **(m) If a licensee fails to correct a deficiency in minimum net**
28 **worth within sixty (60) days of receiving a fine under subsection (l),**
29 **the director may issue a temporary suspension of not more than**
30 **thirty (30) days. The director or the director's designated**
31 **representative shall grant an opportunity for a hearing as soon as**
32 **possible following a temporary suspension under this subsection.**

33 ~~(n)~~ **(n)** The director may accept, instead of a single cash deposit,
34 letter of credit, or bond, a deposit consisting of any combination of cash
35 deposits, letters of credit, or bonds in an amount equal to the licensee's
36 obligation under this chapter. The director shall adopt rules under
37 IC 4-22-2 to establish standards for determining the order in which the
38 forms of security on deposit must be used to pay proven claims if the
39 licensee defaults.

40 ~~(m)~~ **(o)** The director may require additional bonding that the director
41 considers necessary.

42 SECTION 5. IC 26-3-7-26.5 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: **Sec. 26.5. (a) Beginning after June 30, 2021, a**
3 **licensee shall not enter into a deferred pricing agreement or a**
4 **delayed payment agreement in connection with grain purchases**
5 **that extends beyond one (1) year from the date of delivery of the**
6 **grain.**

7 **(b) The following apply to deferred pricing agreements or**
8 **delayed payment agreements in connection with grain purchases**
9 **that were entered into by a licensee before July 1, 2021:**

10 **(1) If the agreement was entered into before January 1, 2017,**
11 **the licensee shall complete the licensee's payment obligations**
12 **to the seller under the agreement before July 1, 2021. In the**
13 **case of a deferred pricing agreement, the determined price**
14 **date shall be:**

15 **(A) the determined price date as set forth in the agreement,**
16 **if that date occurs before July 1, 2021;**

17 **(B) if clause (A) does not apply, a determined price date**
18 **that is mutually agreed to by the licensee and the seller; or**

19 **(C) if clauses (A) and (B) do not apply, the date on which**
20 **the licensee completes the licensee's payment obligations to**
21 **the seller.**

22 **(2) If the agreement was entered into after December 31,**
23 **2016, but before January 1, 2018, the licensee shall complete**
24 **the licensee's payment obligations to the seller under the**
25 **agreement before July 1, 2022. In the case of a deferred**
26 **pricing agreement, the determined price date shall be:**

27 **(A) the determined price date as set forth in the agreement,**
28 **if that date occurs before July 1, 2022;**

29 **(B) if clause (A) does not apply, a determined price date**
30 **that is mutually agreed to by the licensee and the seller; or**

31 **(C) if clauses (A) and (B) do not apply, the date on which**
32 **the licensee completes the licensee's payment obligations to**
33 **the seller.**

34 **(3) If the agreement was entered into after December 31,**
35 **2017, but before January 1, 2019, the licensee shall complete**
36 **the licensee's payment obligations to the seller under the**
37 **agreement before July 1, 2023. In the case of a deferred**
38 **pricing agreement, the determined price date shall be:**

39 **(A) the determined price date as set forth in the agreement,**
40 **if that date occurs before July 1, 2023;**

41 **(B) if clause (A) does not apply, a determined price date**
42 **that is mutually agreed to by the licensee and the seller; or**



- 1 (C) if clauses (A) and (B) do not apply, the date on which
- 2 the licensee completes the licensee's payment obligations to
- 3 the seller.
- 4 **(4) If the agreement was entered into after December 31,**
- 5 **2018, but before January 1, 2020, the licensee shall complete**
- 6 **the licensee's payment obligations to the seller under the**
- 7 **agreement before July 1, 2024. In the case of a deferred**
- 8 **pricing agreement, the determined price date shall be:**
- 9 **(A) the determined price date as set forth in the agreement,**
- 10 **if that date occurs before July 1, 2024;**
- 11 **(B) if clause (A) does not apply, a determined price date**
- 12 **that is mutually agreed to by the licensee and the seller; or**
- 13 **(C) if clauses (A) and (B) do not apply, the date on which**
- 14 **the licensee completes the licensee's payment obligations to**
- 15 **the seller.**
- 16 **(5) If the agreement was entered into after December 31,**
- 17 **2019, but before January 1, 2021, the licensee shall complete**
- 18 **the licensee's payment obligations to the seller under the**
- 19 **agreement before July 1, 2025. In the case of a deferred**
- 20 **pricing agreement, the determined price date shall be:**
- 21 **(A) the determined price date as set forth in the agreement,**
- 22 **if that date occurs before July 1, 2025;**
- 23 **(B) if clause (A) does not apply, a determined price date**
- 24 **that is mutually agreed to by the licensee and the seller; or**
- 25 **(C) if clauses (A) and (B) do not apply, the date on which**
- 26 **the licensee completes the licensee's payment obligations to**
- 27 **the seller.**
- 28 SECTION 6. IC 26-4-1-5.5 IS ADDED TO THE INDIANA CODE
- 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 30 UPON PASSAGE]: **Sec. 5.5. "Conflict of interest" means having or**
- 31 **representing a person who has a direct or indirect financial interest**
- 32 **in a licensee.**
- 33 SECTION 7. IC 26-4-3-7 IS AMENDED TO READ AS FOLLOWS
- 34 [EFFECTIVE UPON PASSAGE]: **Sec. 7. The board shall do the**
- 35 **following:**
- 36 **(1) Adopt rules, create forms, and establish guidelines to**
- 37 **implement this article.**
- 38 **(2) Collect and deposit all producer premiums authorized under**
- 39 **IC 26-4-4-4 into the fund for investment by the board.**
- 40 **(3) Require written reports from the agency regarding the**
- 41 **financial status of a licensee, including the following:**
- 42 **(A) Whether there is a risk that a licensee may fail.**



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(B) The financial impact to the fund if a licensee identified in clause (A) were to fail.

(C) The estimated number of potential claimants that could result from the failure of a licensee identified in clause (A).

(D) Any other information the director determines is necessary to solicit the advice of the board regarding the financial status of a licensee.

However, the director may not share information under this subdivision with a board member who has not executed a confidentiality agreement.

~~(3)~~ **(4) Initiate any action it may consider necessary to compel the grain buyer against whom an awarded claim arose to repay to the fund the sums that are disbursed from the fund in relation to each claim.**

~~(4)~~ **(5) Initiate any action it may consider necessary to compel the claimant whose claim arose due to a failure to participate in any legal proceeding in relation to the claim.**

~~(5)~~ **(6) Within five (5) business days of receiving notice of failure of a grain buyer, publish notice of the failure in a manner described in IC 5-3.**

SECTION 8. IC 26-4-3-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. If a board member believes that a conflict of interest exists with respect to the exercise of the board member's official duties in a particular case, or if the board member has knowledge about the financial status of a licensee, the board member:

- (1) shall disclose that a conflict of interest exists to the board and the agency; and**
- (2) is recused from the proceeding.**

SECTION 9. IC 26-4-3-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.7. If a board member is found to have violated the terms of a confidentiality agreement entered into under this chapter, the board member forfeits the member's appointment to the board and shall be removed as a member of the board.

SECTION 10. IC 26-4-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The corporation may do or shall have any of the following:

- (1) Perpetual succession by its corporate name as a corporate**



- 1 body.
- 2 (2) Adopt and make use of an official seal and alter the same at
3 pleasure.
- 4 (3) Adopt, amend, and repeal bylaws consistent with the
5 provisions of this article for the regulation and conduct of the
6 corporation's affairs and prescribe rules and policies in connection
7 with the performance of the corporation's functions and duties.
- 8 (4) Use the services of the agency and the attorney general when
9 considered necessary in the execution of the duties of the board.
- 10 (5) Accept gifts, devises, bequests, grants, loans, appropriations,
11 revenue sharing, other financing and assistance, and any other aid
12 from any source and agree to and comply with any attached
13 conditions.
- 14 (6) Procure insurance against any loss in connection with its
15 operations in the amounts and from the insurers as it considers
16 necessary or desirable.
- 17 (7) Borrow money from a bank, an insurance company, an
18 investment company, or any other person. The corporation may
19 negotiate the terms of a loan contract. The contract must provide
20 for repayment of the money in not more than forty (40) years and
21 that the loan may be prepaid. The loan contract must plainly state
22 that it is not an indebtedness of the state but constitutes a
23 corporate obligation solely of the corporation and is payable
24 solely from revenues of the corporation or any appropriations
25 from the state that might be made to the corporation for that
26 purpose.
- 27 (8) Include in any borrowing amounts considered necessary by the
28 corporation to pay financing charges, interest on the obligations,
29 consultant, advisory, and legal fees, and other expenses necessary
30 or incident to such borrowing.
- 31 (9) Employ personnel as may be required in the judgment of the
32 corporation, and fix and pay compensation from money available
33 to the corporation from the administrative expenses account.
- 34 (10) Make, execute, and carry out any and all contracts,
35 agreements, or other documents with any governmental agency or
36 any person, corporation, limited liability company, association,
37 partnership, or other organization or entity necessary or
38 convenient to accomplish the purposes of this article.
- 39 (11) Upon the request of the director of the agency and the
40 approval of the board, make payment from the fund when the
41 payment is necessary for the purpose of compensating claimants
42 in accordance with the provisions of IC 26-4-6.



1 (12) Have powers necessary or appropriate for the exercise of the
 2 powers specifically conferred upon the corporation and all
 3 incidental powers customary in corporations.

4 **(13) Require an actuarial study from a third party of the fund**
 5 **as needed. However, the corporation must have an actuarial**
 6 **study of the fund conducted not less than every five (5) years.**

7 (b) The corporation or the board may use the services of a person
 8 other than the attorney general to collect money owed to the fund or to
 9 litigate claims concerning money owed to the fund.

10 SECTION 11. IC 26-4-4-2, AS AMENDED BY P.L.145-2017,
 11 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 UPON PASSAGE]: Sec. 2. (a) The administrative expense account is
 13 created within the fund.

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

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

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

- 21 (1) processing refunds;
- 22 (2) enforcement of the fund;
- 23 (3) record keeping in relation to the fund;
- 24 (4) the ordinary management and investment fees connected with
 25 the operation of the fund;
- 26 (5) legal fees and legal expenses in actions brought against the
 27 corporation or board and that have been approved by the board;
- 28 ~~and~~

29 **(6) an actuarial study of the fund; and**

30 ~~(7)~~ (7) the use of supplemental consulting services.

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

34 **(f) In addition to the transfers under subsection (c), the board**
 35 **may transfer from the fund to a professional development and**
 36 **training account in the biennium beginning July 1, 2021, and**
 37 **ending June 30, 2023, and each biennium thereafter, an amount**
 38 **equal to the monthly interest generated from the fund over a six (6)**
 39 **consecutive month period within the biennium as determined by**
 40 **the board. The board may make only one (1) transfer of interest**
 41 **from the fund under this subsection during a biennium. Money in**
 42 **the professional development and training account must be used**



1 **for professional development and training programs that are**
2 **closely relevant to the auditing, licensing, and other regulatory**
3 **functions of the agency.**

4 **SECTION 12. An emergency is declared for this act.**

