

SENATE BILL No. 364

DIGEST OF INTRODUCED BILL

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

Synopsis: Grain indemnity program. Provides that the director (director) of the Indiana grain buyers and warehouse licensing agency (agency) may share nonidentifying information with board members of the Indiana grain indemnity corporation (corporation) in executive session 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 to conduct a third party performance review of the agency's auditing practices and procedures at least once every five years. Provides that the corporation may require an actuarial study from a third party of the fund as needed, but not less than every five years. Provides that, if the director finds a deficiency in minimum net worth prior to a licensee's next audit by the agency: (1) the director shall issue a notice of deficiency to the licensee stating that the licensee has 30 days to correct the deficiency; (2) if a licensee fails to correct a deficiency within 30 days, the director may impose a \$1,000 fine; and (3) if a licensee fails to correct a deficiency within 60 days, the director may issue a temporary suspension of not more than 30 days. Amends the definition of "failed" or "failure" to exclude a suspension. Adds a definition of "suspension" to mean a temporary halt to the purchase of grain from a claimant. Provides that, for purposes of determining depositor claims, if the director determines that the licensee experienced banking irregularities within the 12 month period immediately preceding the date the licensee would otherwise be determined to have failed, the applicable failure date of the licensee for purposes of the 15 month look back period shall be the date of the first
(Continued next page)

Effective: Upon passage; July 1, 2018 (retroactive).

Holdman

January 19, 2021, read first time and referred to Committee on Tax and Fiscal Policy.



Digest Continued

banking irregularity of the licensee as determined by the director. Defines "banking irregularities" for purposes of this provision. 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. Requires the director of the agency to consider certain claims due to depositors for a specified period of time. Provides that a board member of the corporation with a conflict of interest in a proceeding before the board must recuse himself or herself from those proceedings. Provides that, if a board member is found to have violated the terms of a confidentiality agreement, the board member forfeits his or her appointment to the board and shall be removed as a member of the board. Authorizes the board to transfer the monthly interest generated from the fund over a six month period during a biennium to a professional development, training, and technology account to be used for specified purposes that are closely relevant to the auditing, licensing, and other regulatory functions of the agency.



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.

SENATE BILL No. 364

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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 JULY 1, 2018 (RETROACTIVE)]: Sec. 2. The following definitions
4 apply throughout 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) **"Banking irregularities" means items recorded by a**
11 **financial institution on an account reconciliation statement or**
12 **similar statement that indicate that a person cannot meet**
13 **financial obligations, including the following:**
14 (A) **Returned checks for insufficient funds.**
15 (B) **A negative account balance.**



- 1 **(C) Overdraft of the account.**
2 ~~(3)~~ **(4)** "Bin" means a bin, tank, interstice, or other container in a
3 warehouse in which bulk grain may be stored.
4 ~~(4)~~ **(5)** "Board" means the governing body of the Indiana grain
5 indemnity corporation created by IC 26-4-3-2.
6 ~~(5)~~ **(6)** "Buyer-warehouse" means a person that operates both as
7 a warehouse licensed under this chapter and as a grain buyer.
8 ~~(6)~~ **(7)** "Claimant" means a person to whom a licensee owes a
9 storage or financial obligation under this chapter for grain that has
10 been delivered to the licensee for sale or for storage under a
11 bailment.
12 ~~(7)~~ **(8)** "Daily position record" means a written or electronic
13 document that is maintained on a daily basis for each grain
14 commodity, contains a record of the total amount of grain in
15 inventory for that business day, and complies with any
16 requirements established by the director.
17 ~~(8)~~ **(9)** "Deferred pricing" or "price later" means a purchase by a
18 buyer in which title to the grain passes to the buyer and the price
19 to be paid to the seller is not determined:
20 (A) at the time the grain is received by the buyer; or
21 (B) less than twenty-one (21) days after delivery.
22 ~~(9)~~ **(10)** "Delayed payment" means a purchase by a buyer in which
23 title to the grain passes to the buyer at a determined price and
24 payment to the seller is not made in less than twenty-one (21)
25 days after delivery.
26 ~~(10)~~ **(11)** "Depositor" means any of the following:
27 (A) A person that delivers grain to a licensee under this
28 chapter for storage or sale.
29 (B) A person that:
30 (i) owns or is the legal holder of a ticket or receipt issued by
31 a licensee for grain received by the licensee; and
32 (ii) is the creditor of the issuing licensee for the value of the
33 grain received in return for the ticket or receipt.
34 (C) A licensee that stores grain that the licensee owns solely,
35 jointly, or in common with others in a warehouse owned or
36 controlled by the licensee or another licensee.
37 ~~(11)~~ **(12)** "Designated representative" means the person or
38 persons designated by the director to act instead of the director in
39 assisting in the administration of this chapter.
40 ~~(12)~~ **(13)** "Director" means the director of the Indiana grain
41 buyers and warehouse licensing agency appointed under section
42 1 of this chapter.



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



- 1 (i) the encumbrance results from valuable consideration paid
 2 to the licensee in good faith by a secured party; and
 3 (ii) the encumbrance did not result from the licensee posting
 4 the funds, property, or equity in funds or property as
 5 additional collateral for an antecedent debt.
 6 (E) Any other unencumbered funds, property, or equity in
 7 assets of the licensee.
- 8 ~~(18)~~ **(19)** "Grain bank grain" means grain owned by a depositor
 9 for use in the formulation of feed and stored by the warehouse to
 10 be returned to the depositor on demand.
- 11 ~~(19)~~ **(20)** "Grain buyer" means a person who is engaged in the
 12 business of buying grain from producers.
- 13 ~~(20)~~ **(21)** "Grain coproducts" means any milled or processed
 14 grain, including the grain byproduct of ethanol production.
- 15 ~~(21)~~ **(22)** "Grain standards act" means the United States Grain
 16 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
 17 71-87 as amended).
- 18 ~~(22)~~ **(23)** "License" means a license issued under this chapter.
- 19 ~~(23)~~ **(24)** "Licensee" means a person who operates a facility that
 20 is licensed under this chapter.
- 21 ~~(24)~~ **(25)** "Official grain standards of the United States" means the
 22 standards of quality or condition for grain, fixed and established
 23 by the secretary of agriculture under the grain standards act.
- 24 ~~(25)~~ **(26)** "Person" means an individual, partnership, corporation,
 25 association, or other form of business enterprise.
- 26 ~~(26)~~ **(27)** "Receipt" means a warehouse receipt issued by a
 27 warehouse licensed under this chapter.
- 28 ~~(27)~~ **(28)** "Seed", notwithstanding IC 15-15-1, means grain set
 29 apart to be used primarily for the purpose of producing new
 30 plants.
- 31 ~~(28)~~ **(29)** "Seed inventory" means seed for commercial sale.
- 32 **(30) "Suspension" means a temporary halt to the purchase of**
 33 **grain from a claimant.**
- 34 ~~(29)~~ **(31)** "Ticket" means a scale weight ticket, a load slip, or
 35 other evidence, other than a receipt, given to a depositor upon
 36 initial delivery of grain to a facility.
- 37 ~~(30)~~ **(32)** "Warehouse act" means the United States Warehouse
 38 Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273
 39 as amended).
- 40 ~~(31)~~ **(33)** "Warehouse" means any building or other protected
 41 enclosure in one (1) general location licensed or required to be
 42 licensed under this chapter in which grain is or may be:



- 1 (A) stored for hire;
- 2 (B) used for grain bank storage; or
- 3 (C) used to store company owned grain;
- 4 and the building or other protected enclosure is operated under
- 5 one (1) ownership and run from a single office.
- 6 ~~(32)~~ (34) "Warehouse operator" means a person that operates a
- 7 facility or group of facilities in which grain is or may be stored for
- 8 hire or which is used for grain bank storage and which is operated
- 9 under one (1) ownership and run from a single office.
- 10 SECTION 2. IC 26-3-7-3, AS AMENDED BY P.L.145-2017,
- 11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 UPON PASSAGE]: Sec. 3. (a) The director may do the following:
- 13 (1) Require any reports that are necessary to administer this
- 14 chapter.
- 15 (2) Administer oaths, issue subpoenas, compel the attendance and
- 16 testimony of witnesses, and compel the production of records in
- 17 connection with any investigation or hearing under this chapter.
- 18 (3) Prescribe all forms within the provisions of this chapter.
- 19 (4) Establish grain standards in accordance with the grain
- 20 standards act and federal regulations promulgated under that act
- 21 that must be used by warehouses.
- 22 (5) Investigate the activities required by this chapter including the
- 23 storage, shipping, marketing, and handling of grain and
- 24 complaints with respect to the storage, shipping, marketing, and
- 25 handling of grain.
- 26 (6) Inspect a facility, the grain stored in a facility, and all property
- 27 and records pertaining to a facility. All inspections of an applicant
- 28 or licensee under this chapter must take into consideration the
- 29 proprietary nature of an applicant's or licensee's commercial
- 30 information. The director may adopt rules under IC 4-22-2
- 31 regarding inspections permitted under this chapter, and the rules
- 32 must take into consideration the proprietary nature of an
- 33 applicant's or a licensee's commercial information. This chapter
- 34 does not authorize the inspection of an applicant's or licensee's
- 35 trade secret or intellectual property information.
- 36 (7) Determine whether a facility for which a license has been
- 37 applied for or has been issued is suitable for the proper storage,
- 38 shipping, and handling of the grain that is stored, shipped, or
- 39 handled, or is expected to be stored, shipped, or handled.
- 40 (8) Require a licensee to terminate storage, shipping, marketing,
- 41 and handling agreements upon revocation of the person's license.
- 42 (9) Attend and preside over any investigation or hearing allowed



1 or required under this chapter.

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

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

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

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

15 (C) Annually attend six (6) hours of continuing education,
16 approved by the director, focusing on the risks to a grain buyer
17 and seller that are associated with grain marketing practices
18 and the communication of risks to the producer. Additionally,
19 as part of continuing education, require a grain buyer, and all
20 persons purchasing grain for a grain buyer, to pass a test,
21 approved and administered by the director, that reasonably
22 measures the grain buyer's understanding of the risks to grain
23 buyers and sellers associated with producer marketing
24 strategies.

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

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

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



- 1 BE SURE YOU UNDERSTAND THE NATURE OF THIS
 2 CONTRACT AND THE ASSOCIATED RISKS."
 3 (13) Require all contracts executed after January 1, 2000, for the
 4 production of seed to include the following notice, in conspicuous
 5 letters, immediately above the place on the contract or an
 6 addendum where the seller of the seed must sign:
 7 "NOTICE - IF THE TERMS OF THIS CONTRACT STATE
 8 THAT THE CONTRACTOR RETAINS OWNERSHIP OF
 9 THE SEED AND ITS PRODUCTS, YOU MAY NOT BE
 10 ELIGIBLE FOR PARTICIPATION IN THE INDIANA
 11 GRAIN INDEMNITY PROGRAM. TO BE ELIGIBLE TO
 12 PARTICIPATE IN THE INDIANA GRAIN INDEMNITY
 13 PROGRAM, FARMERS MUST OWN AND SELL GRAIN
 14 OR SEED. BE SURE YOU UNDERSTAND THE NATURE
 15 OF THIS CONTRACT AND THE ASSOCIATED RISKS."
 16 (14) At any time, order an unannounced audit for compliance with
 17 this article.
 18 (15) Adopt rules under IC 4-22-2 to carry out the purposes and
 19 intent of this chapter.
 20 (16) Require all grain buyers offering deferred pricing, delayed
 21 payments, or contracts linked to the commodity futures or
 22 commodity options market in connection with a grain purchase to
 23 document the agreement in writing not more than twenty-one (21)
 24 days after delivery.
 25 **(17) Share information with board members regarding the**
 26 **financial status of a licensee while the board is in executive**
 27 **session and without disclosing the name or any other**
 28 **identifying information of the licensee, including the**
 29 **following:**
 30 **(A) Whether there is a risk that a licensee may fail.**
 31 **(B) The estimated financial impact to the fund if a licensee**
 32 **discussed under clause (A) were to fail.**
 33 **(C) The estimated number of potential claimants that**
 34 **could result from the failure of a licensee discussed under**
 35 **clause (A).**
 36 **(D) Any other information the director deems necessary to**
 37 **solicit the advice of the board regarding the financial**
 38 **status of a licensee.**
 39 **However, the director shall not share information under this**
 40 **subdivision with a board member who has not executed a**
 41 **confidentiality agreement.**
 42 (b) The director shall do the following:



- 1 (1) Establish standards to ensure that a grain buyer has a suitable
 2 financial position to conduct a business as a grain buyer.
 3 (2) Require a person who conducts business as a grain buyer to
 4 first be licensed by the agency.
 5 (3) Require any person engaged in the business of advising
 6 producers on grain marketing for hire to:
 7 (A) register with the agency; and
 8 (B) provide the agency with proof of registry with the
 9 commodity futures trading commission (CFTC) as a
 10 commodity trading advisor, a futures commission merchant, an
 11 introducing broker, or an associated person.
 12 (c) The director may designate an employee to act for the director
 13 in the administration of this chapter. An employee designee may not:
 14 (1) act in matters that require a public hearing or the temporary
 15 suspension of a license;
 16 (2) adopt rules; or
 17 (3) act as the ultimate authority in the administration of this
 18 chapter.
 19 (d) The director may designate an administrative law judge to act for
 20 the director in the administration of this chapter.
 21 (e) The director may determine whether geographically separate
 22 facilities constitute a single warehouse or grain buyer and in making
 23 the determination may consider the following:
 24 (1) The number of facilities involved.
 25 (2) Whether full weighing equipment is present at the
 26 geographically separate facilities.
 27 (3) The method of bookkeeping employed by the separate
 28 facilities.
 29 (4) The hours of operation of the separate facilities.
 30 (5) The personnel employed at the separate facilities.
 31 (6) Other factors the director deems relevant.
 32 (f) The director and the director's designees shall become members
 33 of the national grain regulatory organization and shall:
 34 (1) work in partnership with other state grain regulatory officials;
 35 (2) participate in national grain regulatory meetings; and
 36 (3) provide expertise and education at national meetings.
 37 **(g) The director shall conduct a third party performance review**
 38 **of the agency's auditing practices and procedures at least once**
 39 **every five (5) years.**
 40 ~~(g)~~ **(h)** The director may subpoena or require that certain records
 41 located outside Indiana, if any, be brought to a specified location in
 42 Indiana for review by the agency.



1 SECTION 3. IC 26-3-7-6.3, AS AMENDED BY P.L.2-2008,
 2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 6.3. (a) The grain buyers and warehouse
 4 licensing agency license fee fund is established to provide funds for the
 5 administration of this chapter. The fund shall be administered by the
 6 agency. The fund consists of:

7 (1) the moisture testing device inspection fees collected under
 8 IC 15-11-8-3;

9 (2) the licensing fees collected under section 6 of this chapter;

10 **(3) the fines collected under section 10(1)(2) of this chapter for**
 11 **failure to correct a deficiency in minimum net worth;**

12 ~~(4)~~ (4) gifts and bequests; and

13 ~~(5)~~ (5) appropriations made by the general assembly.

14 (b) Expenses of administering the fund shall be paid from money in
 15 the fund.

16 (c) The treasurer of state shall invest the money in the fund not
 17 currently needed to meet the obligations of the fund in the same
 18 manner as other public money may be invested. Interest that accrues
 19 from these investments shall be deposited in the fund.

20 (d) Money in the fund at the end of a state fiscal year does not revert
 21 to the state general fund.

22 SECTION 4. IC 26-3-7-6.5, AS AMENDED BY P.L.145-2017,
 23 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective
 25 counties, and license status of licensees may be disclosed.

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

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

41 (d) The director shall disclose to the board, while the board is in
 42 executive session, the status and inspection results of any licensee who



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

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

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

14 SECTION 5. IC 26-3-7-10, AS AMENDED BY P.L.60-2015,
 15 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: Sec. 10. (a) The minimum amount of bond, letter
 17 of credit, or cash deposit required from a licensee is as follows:

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

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

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

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

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

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

28 whichever is greater.

29 (3) For a buyer-warehouse:

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

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

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

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

37 whichever is greater.

38 (b) Except as provided in subsections (g) and (h), the amount of
 39 bond, letter of credit, or cash deposit required by this chapter may not
 40 exceed two hundred fifty thousand dollars (\$250,000) per license and
 41 may not exceed a total of one million dollars (\$1,000,000) per person.

42 (c) The licensed bushel storage capacity is the maximum number of



1 bushels of grain that the licensee's facility could accommodate as
2 determined by the director or the director's designated representative
3 and shall be increased or reduced in accordance with the amount of
4 space being used for storage from time to time.

5 (d) Instead of a bond or cash deposit, an irrevocable letter of credit
6 in the prescribed amount may be provided with the director as the
7 beneficiary. The director shall adopt rules under IC 4-22-2 to establish
8 acceptable form, substance, terms, and conditions for letters of credit.
9 The director may not release a party from the obligations of the letter
10 of credit within eighteen (18) months of the termination of the
11 licensee's license.

12 (e) The director shall adopt rules under IC 4-22-2 to provide for the
13 receipt and retention of cash deposits. However, the director shall not
14 return a cash deposit to a licensee until the director has taken
15 reasonable precautions to assure that the licensee's obligations and
16 liabilities have been or will be met.

17 (f) If a person is licensed or is applying for licenses to operate two
18 (2) or more facilities in Indiana, the person may give a single bond,
19 letter of credit, or cash deposit to satisfy the requirements of this
20 chapter and the rules adopted under this chapter to cover all the
21 person's facilities in Indiana.

22 (g) If a licensee has a deficiency in the minimum positive net worth
23 required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or
24 16(a)(5)(B) of this chapter, the licensee shall add to the amount of
25 bond, letter of credit, or cash deposit determined under subsection (a)
26 an amount equal to the deficiency or provide another form of surety as
27 permitted under the rules of the agency.

28 (h) Except as provided in subsections (i) and (j), a licensee may not
29 correct a deficiency in the minimum positive net worth required by
30 section 16(a)(1), 16(a)(2)(A), 16(a)(3)(A), 16(a)(4)(A), or 16(a)(5)(A)
31 of this chapter by adding to the amount of bond, letter of credit, or cash
32 deposit required by subsection (a).

33 (i) A buyer-warehouse that has a bushel storage capacity of less than
34 one million (1,000,000) bushels or purchases less than one million
35 (1,000,000) bushels of grain per year may correct a deficiency in
36 minimum positive net worth by adding to the amount of bond, letter of
37 credit, or cash deposit determined under subsection (a) if the
38 buyer-warehouse has a minimum positive net worth of at least fifty
39 thousand dollars (\$50,000), not including the amount added to the
40 bond, letter of credit, or cash deposit.

41 (j) A buyer-warehouse that has a bushel storage capacity of at least
42 one million (1,000,000) bushels, or purchases at least 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 one
 5 hundred thousand dollars (\$100,000), not including the amount added
 6 to the bond, letter of credit, or cash deposit.

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

12 **(l) The following apply:**

13 **(1) If the director or the director's designated representative**
 14 **finds a deficiency in minimum net worth prior to a licensee's**
 15 **next audit by the agency, the director shall issue a notice of**
 16 **deficiency to the licensee stating that the licensee has thirty**
 17 **(30) days to correct the deficiency.**

18 **(2) If a licensee fails to correct a deficiency in minimum net**
 19 **worth within thirty (30) days of the date of the notice under**
 20 **subdivision (1), the director may impose a fine on the licensee**
 21 **of not more than one thousand dollars (\$1,000). Fines**
 22 **collected under this subdivision shall be deposited in the grain**
 23 **buyers and warehouse licensing agency license fee fund under**
 24 **section 6.3 of this chapter.**

25 **(3) Notwithstanding the provisions in section 17.1 of this**
 26 **chapter, if a licensee fails to correct a deficiency in minimum**
 27 **net worth within sixty (60) days of the date of the notice under**
 28 **subdivision (1), the director may issue a temporary suspension**
 29 **of not more than thirty (30) days.**

30 **If the director issues a temporary suspension under subdivision (3)**
 31 **following a licensee's failure to correct a deficiency in minimum net**
 32 **worth, the director or the director's designated representative shall**
 33 **grant an opportunity for a hearing as soon as possible following the**
 34 **temporary suspension.**

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

42 ~~(m)~~ **(n)** The director may require additional bonding that the



1 director considers necessary.

2 SECTION 6. IC 26-3-7-16.5, AS AMENDED BY P.L.145-2017,
3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2018 (RETROACTIVE)]: Sec. 16.5. (a) Upon learning of the
5 possibility that a shortage exists, either as a result of an inspection or
6 a report or complaint from a depositor, the agency, based on an
7 on-premises inspection, shall make a preliminary determination as to
8 whether a shortage exists. If a shortage is not discovered, the agency
9 shall treat the audit as it would any other audit.

10 (b) If it is determined that a shortage may exist, the director or the
11 director's designated representative shall hold a hearing as soon as
12 possible to confirm the existence of a shortage as indicated by the
13 licensee's books and records and the grain on hand. Only the licensee,
14 the surety company named on the licensee's bond, the issuer of the
15 irrevocable letter of credit, and any grain depositor who has made a
16 claim or complaint to the agency in conjunction with the shortage shall
17 be considered as interested parties for the purposes of that hearing, and
18 each shall be given notice of the hearing. At the hearing, the director
19 or the director's designated representative shall determine whether
20 there appears to be a reasonable probability that a shortage exists. If it
21 is determined that a reasonable probability exists and that the bond or
22 letter of credit proceeds or the cash deposit should be distributed, a
23 preliminary determination shall be entered to the effect that the
24 licensee has failed to meet its obligations under this chapter or the rules
25 adopted under this chapter. At the hearing, the director or the director's
26 designated representative may order that all proceeds from grain sales
27 are to be held in the form in which they are received and to be kept
28 separate from all other funds held by the licensee. The order may also
29 provide for informal conferences between agency representatives and
30 persons who have or who appear to have grain deposited with the
31 licensee. The surety company shall be permitted to participate in those
32 conferences.

33 (c) In the event that the director determines that the bond or letter
34 of credit proceeds or cash deposit is to be distributed, the agency shall
35 hold a hearing on claims. Notice shall be given to the surety company
36 named on the licensee's bond, the issuer of the irrevocable letter of
37 credit, and to all persons shown by the licensee's books and records to
38 have interests in grain deposited with the licensee. If the agency has
39 actual knowledge of any other depositor or person claiming rights in
40 the grain deposited with the licensee, the bond, the irrevocable letter of
41 credit, or the cash deposit, notice shall also be provided to that person.
42 In addition, public notice shall be provided in newspapers of general



1 circulation that serve the counties in which licensed facilities are
 2 located, and notices shall be posted on the licensed premises. At the
 3 hearing on claims, the director or the director's designated
 4 representative may accept as evidence of claims the report of agency
 5 representatives who in informal conferences with depositors have
 6 concluded that a claim is directly and precisely supported by the
 7 licensee's books and records. When there is disagreement between the
 8 claims of a depositor and the licensee's books and records, the director
 9 or the director's designated representative shall hear oral claims and
 10 receive written evidence of claims in order to determine the validity of
 11 the claim.

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

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

25 **(f) For purposes of subsection (e) only and notwithstanding any**
 26 **other provision of this chapter, if the director or the director's**
 27 **designated representative determines that the licensee experienced**
 28 **banking irregularities within the twelve (12) month period**
 29 **immediately preceding the date of failure of the licensee as defined**
 30 **in section 2(15) of this chapter, the applicable date of failure of the**
 31 **licensee for purposes of the fifteen (15) month look back period**
 32 **under subsection (e) shall be the date of the first banking**
 33 **irregularity of the licensee that occurred within the twelve (12)**
 34 **month period as determined by the director or the director's**
 35 **designated representative. However, this subsection shall not be**
 36 **construed to preclude depositors that delivered grain to the**
 37 **licensee after the applicable date of failure of the licensee as**
 38 **determined under this subsection and before the date of failure of**
 39 **the licensee as defined in section 2(15) of this chapter.**

40 **(f)(g)** Following the hearing on claims, the director or the director's
 41 designated representative shall make a determination as to the total
 42 proven storage and financial obligations due to depositors and the loss



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

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

31 ~~(h)~~ **(i)** When the proven claims exceed the amount of the bond, letter
 32 of credit, or cash deposit, recoveries of proven claimants shall be
 33 prorated in the same manner as priorities are prorated under section
 34 16.8 of this chapter.

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

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

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



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

4 (†) (n) A claim is considered to be adjudicated if the claimant has:
 5 (1) agreed with the director's determination on the claim and not
 6 filed an appeal under IC 4-21.5-3; or
 7 (2) exhausted the claimant's administrative appeal and judicial
 8 review remedies.

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

14 SECTION 7. IC 26-3-7-26.5 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: **Sec. 26.5. (a) Beginning after June 30, 2021, a
 17 licensee shall not enter into a deferred pricing agreement or a
 18 delayed payment agreement in connection with grain purchases
 19 that extends beyond one (1) year from the date of delivery of the
 20 grain.**

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

24 **(1) If the agreement was entered into before January 1, 2017,
 25 the licensee shall complete the licensee's payment obligations
 26 to the seller under the agreement before July 1, 2021. In the
 27 case of a deferred pricing agreement, the determined price
 28 date shall be:**

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

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

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

36 **(2) If the agreement was entered into after December 31,
 37 2016, but before January 1, 2018, the licensee shall complete
 38 the licensee's payment obligations to the seller under the
 39 agreement before July 1, 2022. In the case of a deferred
 40 pricing agreement, the determined price date shall be:**

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



- 1 **(B) if clause (A) does not apply, a determined price date**
 2 **that is mutually agreed to by the licensee and the seller; or**
 3 **(C) if clauses (A) and (B) do not apply, the date on which**
 4 **the licensee completes the licensee's payment obligations to**
 5 **the seller.**
- 6 **(3) If the agreement was entered into after December 31,**
 7 **2017, but before January 1, 2019, the licensee shall complete**
 8 **the licensee's payment obligations to the seller under the**
 9 **agreement before July 1, 2023. In the case of a deferred**
 10 **pricing agreement, the determined price date shall be:**
- 11 **(A) the determined price date as set forth in the agreement,**
 12 **if that date occurs before July 1, 2023;**
- 13 **(B) if clause (A) does not apply, a determined price date**
 14 **that is mutually agreed to by the licensee and the seller; or**
 15 **(C) if clauses (A) and (B) do not apply, the date on which**
 16 **the licensee completes the licensee's payment obligations to**
 17 **the seller.**
- 18 **(4) If the agreement was entered into after December 31,**
 19 **2018, but before January 1, 2020, the licensee shall complete**
 20 **the licensee's payment obligations to the seller under the**
 21 **agreement before July 1, 2024. In the case of a deferred**
 22 **pricing agreement, the determined price date shall be:**
- 23 **(A) the determined price date as set forth in the agreement,**
 24 **if that date occurs before July 1, 2024;**
- 25 **(B) if clause (A) does not apply, a determined price date**
 26 **that is mutually agreed to by the licensee and the seller; or**
 27 **(C) if clauses (A) and (B) do not apply, the date on which**
 28 **the licensee completes the licensee's payment obligations to**
 29 **the seller.**
- 30 **(5) If the agreement was entered into after December 31,**
 31 **2019, but before January 1, 2021, the licensee shall complete**
 32 **the licensee's payment obligations to the seller under the**
 33 **agreement before July 1, 2025. In the case of a deferred**
 34 **pricing agreement, the determined price date shall be:**
- 35 **(A) the determined price date as set forth in the agreement,**
 36 **if that date occurs before July 1, 2025;**
- 37 **(B) if clause (A) does not apply, a determined price date**
 38 **that is mutually agreed to by the licensee and the seller; or**
 39 **(C) if clauses (A) and (B) do not apply, the date on which**
 40 **the licensee completes the licensee's payment obligations to**
 41 **the seller.**
- 42 **SECTION 8. IC 26-3-7-38 IS ADDED TO THE INDIANA CODE**



1 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 2 1, 2018 (RETROACTIVE)]: **Sec. 38. (a) Notwithstanding any other**
 3 **law, a claimant who delivered grain to a first purchaser for sale or**
 4 **storage under a bailment to a failed licensee beginning June 1,**
 5 **2018, and ending April 24, 2020, shall be considered by the director**
 6 **or the director's designated representative in determining the total**
 7 **proven storage and financial obligations due to depositors and the**
 8 **loss sustained by each depositor who has a proven claim.**

9 **(b) The section expires July 1, 2022.**

10 SECTION 9. IC 26-4-1-5.5 IS ADDED TO THE INDIANA CODE
 11 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE
 12 UPON PASSAGE]: **Sec. 5.5. "Conflict of interest" means:**

13 **(1) either:**

14 **(A) having a direct or indirect financial interest in a**
 15 **licensee; or**

16 **(B) representing a person who has a direct or indirect**
 17 **financial interest in a licensee;**

18 **that has a case or issue before the board; or**

19 **(2) having personal knowledge about the financial status of a**
 20 **licensee in a failure proceeding before the board.**

21 SECTION 10. IC 26-4-1-10, AS AMENDED BY P.L.42-2011,
 22 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 UPON PASSAGE]: **Sec. 10. "Failed" or "failure" means any of the**
 24 **following:**

25 (1) An inability of a licensee to financially satisfy fully all
 26 obligations due a claimant.

27 (2) A public declaration of a licensee's insolvency.

28 (3) The nonpayment of a licensee's debts in the ordinary course of
 29 business if there is not a good faith dispute.

30 (4) Revocation ~~or suspension~~ of a licensee's license, if the
 31 licensee has outstanding indebtedness owed to claimants.

32 (5) Voluntary surrender of a licensee's license, if the licensee has
 33 outstanding indebtedness to claimants.

34 (6) Involuntary or voluntary bankruptcy of a licensee.

35 SECTION 11. IC 26-4-1-13, AS AMENDED BY P.L.145-2017,
 36 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2018 (RETROACTIVE)]: **Sec. 13. "Grain" means corn for all**
 38 **uses, popcorn, wheat, oats, rye, soybeans, barley, sorghum, oil seeds,**
 39 **other agricultural commodities as approved by the agency, and seed (as**
 40 **defined in ~~IC 26-3-7-2(27)~~. IC 26-3-7-2(28).** The term does not
 41 include canning crops for processing or sweet corn.

42 SECTION 12. IC 26-4-1-15.5, AS ADDED BY P.L.145-2017,



1 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2018 (RETROACTIVE)]: Sec. 15.5. "Licensee" has the
3 meaning set forth in ~~IC 26-3-7-2(23)~~. **IC 26-3-7-2(24)**.

4 SECTION 13. IC 26-4-3-7 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board shall
6 do the following:

7 (1) Adopt rules, create forms, and establish guidelines to
8 implement this article.

9 (2) Collect and deposit all producer premiums authorized under
10 IC 26-4-4-4 into the fund for investment by the board.

11 **(3) Require written reports from the agency regarding the**
12 **financial status of a licensee while the board is in executive**
13 **session and without disclosing the name or any other**
14 **identifying information of the licensee, including the**
15 **following:**

16 **(A) Whether there is a risk that a licensee may fail.**

17 **(B) The estimated financial impact to the fund if a licensee**
18 **discussed under clause (A) were to fail.**

19 **(C) The estimated number of potential claimants that**
20 **could result from the failure of a licensee discussed under**
21 **clause (A).**

22 **(D) Any other information the director deems necessary to**
23 **solicit the advice of the board regarding the financial**
24 **status of a licensee.**

25 **However, the director shall not share information with a**
26 **board member under this subdivision who has not executed a**
27 **confidentiality agreement.**

28 ~~(3)~~ **(4)** Initiate any action it may consider necessary to compel the
29 grain buyer against whom an awarded claim arose to repay to the
30 fund the sums that are disbursed from the fund in relation to each
31 claim.

32 ~~(4)~~ **(5)** Initiate any action it may consider necessary to compel the
33 claimant whose claim arose due to a failure to participate in any
34 legal proceeding in relation to the claim.

35 ~~(5)~~ **(6)** Within five (5) business days of receiving notice of failure
36 of a grain buyer, publish notice of the failure in a manner
37 described in IC 5-3.

38 SECTION 14. IC 26-4-3-8.5 IS ADDED TO THE INDIANA CODE
39 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
40 UPON PASSAGE]: **Sec. 8.5. If a board member believes that a**
41 **conflict of interest exists with respect to the exercise of the board**
42 **member's official duties in a particular case, or if the board**



1 member has knowledge about the financial status of a licensee, the
2 board member shall:

- 3 (1) disclose that conflict to the board and the agency; and
- 4 (2) recuse himself or herself from those board proceedings.

5 SECTION 15. IC 26-4-3-8.7 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
7 UPON PASSAGE]: **Sec. 8.7. If a board member is found to have
8 violated the terms of a confidentiality agreement entered into
9 under this chapter, the board member forfeits the member's
10 appointment to the board and shall be removed as a member of the
11 board.**

12 SECTION 16. IC 26-4-3-9 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The
14 corporation may do or shall have any of the following:

- 15 (1) Perpetual succession by its corporate name as a corporate
16 body.
- 17 (2) Adopt and make use of an official seal and alter the same at
18 pleasure.
- 19 (3) Adopt, amend, and repeal bylaws consistent with the
20 provisions of this article for the regulation and conduct of the
21 corporation's affairs and prescribe rules and policies in connection
22 with the performance of the corporation's functions and duties.
- 23 (4) Use the services of the agency and the attorney general when
24 considered necessary in the execution of the duties of the board.
- 25 (5) Accept gifts, devises, bequests, grants, loans, appropriations,
26 revenue sharing, other financing and assistance, and any other aid
27 from any source and agree to and comply with any attached
28 conditions.
- 29 (6) Procure insurance against any loss in connection with its
30 operations in the amounts and from the insurers as it considers
31 necessary or desirable.
- 32 **(7) Require an actuarial study from a third party of the fund
33 as needed, but not less than once every five (5) years.**
- 34 ~~(7)~~ **(8)** Borrow money from a bank, an insurance company, an
35 investment company, or any other person. The corporation may
36 negotiate the terms of a loan contract. The contract must provide
37 for repayment of the money in not more than forty (40) years and
38 that the loan may be prepaid. The loan contract must plainly state
39 that it is not an indebtedness of the state but constitutes a
40 corporate obligation solely of the corporation and is payable
41 solely from revenues of the corporation or any appropriations
42 from the state that might be made to the corporation for that



1 purpose.

2 ~~(8)~~ **(9)** Include in any borrowing amounts considered necessary by

3 the corporation to pay financing charges, interest on the

4 obligations, consultant, advisory, and legal fees, and other

5 expenses necessary or incident to such borrowing.

6 ~~(9)~~ **(10)** Employ personnel as may be required in the judgment of

7 the corporation, and fix and pay compensation from money

8 available to the corporation from the administrative expenses

9 account.

10 ~~(10)~~ **(11)** Make, execute, and carry out any and all contracts,

11 agreements, or other documents with any governmental agency or

12 any person, corporation, limited liability company, association,

13 partnership, or other organization or entity necessary or

14 convenient to accomplish the purposes of this article.

15 ~~(11)~~ **(12)** Upon the request of the director of the agency and the

16 approval of the board, make payment from the fund when the

17 payment is necessary for the purpose of compensating claimants

18 in accordance with the provisions of IC 26-4-6.

19 ~~(12)~~ **(13)** Have powers necessary or appropriate for the exercise

20 of the powers specifically conferred upon the corporation and all

21 incidental powers customary in corporations.

22 (b) The corporation or the board may use the services of a person

23 other than the attorney general to collect money owed to the fund or to

24 litigate claims concerning money owed to the fund.

25 SECTION 17. IC 26-4-4-2, AS AMENDED BY P.L.145-2017,

26 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

27 UPON PASSAGE]: Sec. 2. (a) The administrative expense account is

28 created within the fund.

29 (b) The expenses of administering the fund and paying

30 administrative expenses must be paid from money in the administrative

31 expense account.

32 (c) The board may transfer annually not more than two hundred fifty

33 thousand dollars (\$250,000) from the fund to the administrative

34 expense account.

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

36 (1) processing refunds;

37 (2) enforcement of the fund;

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

39 (4) the ordinary management and investment fees connected with

40 the operation of the fund;

41 (5) legal fees and legal expenses in actions brought against the

42 corporation or board and that have been approved by the board;



1 and

2 **(6) an actuarial study of the fund;**

3 **(7) a performance review of the agency's auditing practices**
 4 **and procedures; and**

5 ~~(8)~~ **(8) the use of supplemental consulting services.**

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

9 **(f) In addition to the transfers under subsection (c), the board**
 10 **may transfer from the fund to a professional development,**
 11 **training, and technology account in the biennium beginning July**
 12 **1, 2021, and ending June 30, 2023, and each biennium thereafter,**
 13 **an amount equal to the monthly interest generated from the fund**
 14 **over a six (6) consecutive month period within the biennium as**
 15 **determined by the board. The board may make only one (1)**
 16 **transfer of interest from the fund under this subsection during a**
 17 **biennium. Money in the professional development, training, and**
 18 **technology account must be used for either or both:**

19 **(1) professional development and training programs; or**

20 **(2) technology software updates and technology support**
 21 **services;**

22 **that are closely relevant to the auditing, licensing, and other**
 23 **regulatory functions of the agency.**

24 SECTION 18. IC 26-4-6-4, AS AMENDED BY P.L.145-2017,
 25 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2018 (RETROACTIVE)]: Sec. 4. (a) A claimant who has
 27 incurred a storage loss due to the failure of a warehouse operator
 28 licensed under IC 26-3-7 is entitled to be compensated by the board
 29 from the fund for one hundred percent (100%) of the storage loss
 30 incurred less all credits and offsets and any producer premium that
 31 would have been due on the sale of the grain. The gross amount of the
 32 storage loss shall be as determined by the agency for warehouses
 33 licensed under IC 26-3-7 or by the United States Department of
 34 Agriculture for warehouses licensed under the United States
 35 Warehouse Act. The warehouse operator and claimants may submit to
 36 the agency evidence related to outstanding charges against stored grain.
 37 If the evidence is submitted, the agency shall determine the storage loss
 38 payable by the board.

39 (b) A claimant who has incurred a financial loss due to the failure
 40 of a grain buyer is entitled to be compensated by the board from the
 41 fund for eighty percent (80%) of the loss incurred less all credits and
 42 offsets and any producer premium that should have been due on the



- 1 sale of the grain. The agency shall determine the loss incurred in the
2 following manner:
- 3 (1) For grain that has been priced, the loss shall be the value of
4 the priced grain less any outstanding charges against the grain.
- 5 (2) For grain sold to a grain buyer who is also a warehouse
6 operator and that has not been priced, the loss shall be established
7 using the price determined for the storage obligations.
- 8 (3) For grain sold to a grain buyer who is not a warehouse
9 operator and that has not been priced, the loss shall be established
10 using a price determined by the agency using the same procedures
11 used by the agency to determine the price at the warehouse.
- 12 (c) If a producer appeals under IC 4-21.5-3 an order issued by the
13 director under IC 26-3-7-16.5 that postpones the agency from notifying
14 the board of the amount of loss for proven claimants under
15 ~~IC 26-3-7-16.5(n)~~, **IC 26-3-7-16.5(o)**, the board may issue partial
16 payments to any claimants who have not appealed their claims.
- 17 **SECTION 19. An emergency is declared for this act.**

