
SENATE BILL No. 476

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-3-7; IC 26-4-1-13.

Synopsis: Grain buyers and warehouse licensing. Amends the definition of "claimant" and "facility" and adds a definition of "licensee" for purposes of the grain buyers and warehouse licensing laws (licensing laws). Amends provisions concerning subpoenas and orders to compel production of records. Amends notice that is required on contracts for the purchase of grain from producers. Allows the director of the grain buyers and warehouse licensing agency (agency) to designate an administrative law judge to act for the director in the administration of the licensing laws. Allows the agency to send license renewal applications by electronic means. Requires that a person applying for renewing a license who does not conduct business at an Indiana address must appoint a registered agent who is in Indiana. Allows the director's designated representative to perform certain functions of the director. Provides that grain that has been delivered to a first purchaser for sale or storage under a bailment to a licensee within 24 months before the date of failure of the licensee may be considered in determining the total proven storage and financial obligations due to the depositor. (Current law provides that deliveries within the 12 months before the date of failure will be considered.) Specifies when a claim is considered to be adjudicated. Specifies information that must be forwarded to the grain indemnity fund board (board). Specifies certain requirements for an appeal. Specifies that a lien against a licensee terminates the earlier of: (1) when the licensee discharges the claim; or (2) the 24 months after the delivery of grain to a first purchaser for sale or storage under a bailment. Requires the director to consider claims due depositors for the 12 month period
(Continued next page)

Effective: July 1, 2017.

Boots

January 12, 2017, read first time and referred to Committee on Agriculture.



Digest Continued

before April 8, 2015, as a result of a licensee's failure before April 8, 2016. Requires the director to forward certain claim information to the board and requires the board to pay the claimants who are owed money according to the director. Makes a technical correction.



Introduced

First Regular Session 120th General Assembly (2017)

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

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

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

SENATE BILL No. 476

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

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

- 1 SECTION 1. IC 26-3-7-2, AS AMENDED BY P.L.60-2015,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 2. The following definitions apply throughout this
4 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) "Buyer-warehouse" means a person that operates both as a
13 warehouse licensed under this chapter and as a grain buyer.
14 (5) "Claimant" means a person ~~that is unable to secure satisfaction~~
15 ~~within the twelve (12) months following delivery of the financial~~



- 1 ~~obligations due from a to whom a~~ licensee **owes a storage or**
 2 **financial obligation** under this chapter for grain that has been
 3 delivered to the licensee for sale or for storage under a bailment.
 4 (6) "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 (7) "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 (8) "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 (9) "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 (10) "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 (11) "Director" means the director of the Indiana grain buyers and
 33 warehouse licensing agency appointed under section 1 of this
 34 chapter.
 35 (12) "Facility" means a **permanent business** location or one (1)
 36 of several **permanent business** locations in Indiana that are
 37 operated as a warehouse or by a grain buyer.
 38 (13) "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 (14) "Grain" means corn for all uses, popcorn, wheat, oats, barley,
 8 rye, sorghum, soybeans, oil seeds, other agricultural commodities
 9 as approved by the agency, and seed as defined in this section.
 10 The term does not include canning crops for processing, sweet
 11 corn, or flint corn.
 12 (15) "Grain assets" means any of the following:
 13 (A) All grain and grain coproducts owned or stored by a
 14 licensee, including the following:
 15 (i) Grain that is in transit following shipment by a licensee.
 16 (ii) Grain that has not been paid for.
 17 (iii) Grain that is stored in unlicensed facilities that are
 18 leased, owned, or occupied by the licensee.
 19 (B) All proceeds, due or to become due, from the sale of a
 20 licensee's grain.
 21 (C) Equity, less any secured financing directly associated with
 22 the equity, in hedging or speculative margin accounts of a
 23 licensee held by a commodity or security exchange, or a dealer
 24 representing a commodity or security exchange, and any
 25 money due the licensee from transactions on the exchange,
 26 less any secured financing directly associated with the money
 27 due the licensee from the transactions on the exchange.
 28 (D) Any other unencumbered funds, property, or equity in
 29 funds or property, wherever located, that can be directly traced
 30 to the sale of grain by a licensee. However, funds, property, or
 31 equity in funds or property may not be considered encumbered
 32 unless:
 33 (i) the encumbrance results from valuable consideration paid
 34 to the licensee in good faith by a secured party; and
 35 (ii) the encumbrance did not result from the licensee posting
 36 the funds, property, or equity in funds or property as
 37 additional collateral for an antecedent debt.
 38 (E) Any other unencumbered funds, property, or equity in
 39 assets of the licensee.
 40 (16) "Grain bank grain" means grain owned by a depositor for use
 41 in the formulation of feed and stored by the warehouse to be
 42 returned to the depositor on demand.



- 1 (17) "Grain buyer" means a person who is engaged in the business
 2 of buying grain from producers.
 3 (18) "Grain coproducts" means any milled or processed grain,
 4 including the grain byproduct of ethanol production.
 5 (19) "Grain standards act" means the United States Grain
 6 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
 7 71-87 as amended).
 8 (20) "License" means a license issued under this chapter.
 9 **(21) "Licensee" means a facility licensed under this chapter.**
 10 ~~(21)~~ **(22)** "Official grain standards of the United States" means the
 11 standards of quality or condition for grain, fixed and established
 12 by the secretary of agriculture under the grain standards act.
 13 ~~(22)~~ **(23)** "Person" means an individual, partnership, corporation,
 14 association, or other form of business enterprise.
 15 ~~(23)~~ **(24)** "Receipt" means a warehouse receipt issued by a
 16 warehouse licensed under this chapter.
 17 ~~(24)~~ **(25)** "Seed", notwithstanding IC 15-15-1, means grain set
 18 apart to be used primarily for the purpose of producing new
 19 plants.
 20 ~~(25)~~ **(26)** "Seed inventory" means seed for commercial sale.
 21 ~~(26)~~ **(27)** "Ticket" means a scale weight ticket, a load slip, or
 22 other evidence, other than a receipt, given to a depositor upon
 23 initial delivery of grain to a facility.
 24 ~~(27)~~ **(28)** "Warehouse act" means the United States Warehouse
 25 Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273
 26 as amended).
 27 ~~(28)~~ **(29)** "Warehouse" means any building or other protected
 28 enclosure in one (1) general location licensed or required to be
 29 licensed under this chapter in which grain is or may be:
 30 (A) stored for hire;
 31 (B) used for grain bank storage; or
 32 (C) used to store company owned grain;
 33 and the building or other protected enclosure is operated under
 34 one (1) ownership and run from a single office.
 35 ~~(29)~~ **(30)** "Warehouse operator" means a person that operates a
 36 facility or group of facilities in which grain is or may be stored for
 37 hire or which is used for grain bank storage and which is operated
 38 under one (1) ownership and run from a single office.
 39 SECTION 2. IC 26-3-7-3, AS AMENDED BY P.L.60-2015,
 40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2017]: Sec. 3. (a) The director may do the following:
 42 (1) Require any reports that are necessary to administer this



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



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



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



- 1 (3) The method of bookkeeping employed by the separate
 2 facilities.
 3 (4) The hours of operation of the separate facilities.
 4 (5) The personnel employed at the separate facilities.
 5 (6) Other factors the director deems relevant.
 6 ~~(e)~~ (f) The director and the director's designees shall become
 7 members of the national grain regulatory organization and shall:
 8 (1) work in partnership with other state grain regulatory officials;
 9 (2) participate in national grain regulatory meetings; and
 10 (3) provide expertise and education at national meetings.

11 SECTION 3. IC 26-3-7-4.1, AS ADDED BY P.L.64-2009,
 12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2017]: Sec. 4.1. (a) The agency shall mail by first class mail
 14 **or send by electronic means** a renewal application, which must
 15 include a listing of all the licensee's facilities, to each licensee before
 16 the end of the licensee's fiscal year. The renewal application form must
 17 be completed and returned to the agency not later than ninety (90) days
 18 after the end of the licensee's fiscal year. The licensee must forward,
 19 with the renewal application, the following:

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

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

- 27 (1) grain bank;
 28 (2) warehouse;
 29 (3) grain buyer; or
 30 (4) buyer-warehouse.

31 SECTION 4. IC 26-3-7-4.2 IS ADDED TO THE INDIANA CODE
 32 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 33 **1, 2017]: Sec. 4.2. (a) An applicant for a license or the renewal of a**
 34 **license under this chapter that does not conduct business at an**
 35 **address in Indiana where the applicant can be contacted shall**
 36 **include with the application a written appointment of a registered**
 37 **agent to whom any process, notice, or demand may be served. The**
 38 **appointment must be accompanied by a written acceptance of the**
 39 **appointment by the registered agent. The registered agent must be**
 40 **a natural person who resides in Indiana or a corporation whose**
 41 **principal place of business is located in Indiana. The written**
 42 **appointment must be on forms prepared by and contain**



1 information required by the director.

2 (b) A registered agent shall inform an applicant for a license or
3 licensee, in writing, forty-five (45) days before the registered agent
4 moves outside Indiana or resigns. If the applicant for a license or
5 licensee:

6 (1) receives notice that the registered agent will no longer
7 reside in Indiana or will resign; or

8 (2) intends to revoke the registered agent's appointment;
9 the applicant or licensee shall notify the director in writing not
10 more than thirty (30) days before the registered agent's relocation,
11 resignation, or removal and appoint a registered agent subject to
12 the requirements under subsection (a).

13 (c) If a registered agent dies or is incapacitated, the applicant or
14 licensee shall notify the director in writing immediately and not
15 more than thirty (30) days after the registered agent's death or
16 incapacity appoint a registered agent subject to the requirements
17 under subsection (a).

18 (d) The director may deny, suspend, or revoke an applicant's
19 application for a license or licensee's license for failing to comply
20 with this section.

21 SECTION 5. IC 26-3-7-16.5, AS AMENDED BY THE
22 TECHNICAL CORRECTIONS BILL OF THE 2017 GENERAL
23 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2017]: Sec. 16.5. (a) Upon learning of the possibility that a
25 shortage exists, either as a result of an inspection or a report or
26 complaint from a depositor, the agency, based on an ~~on-premise~~
27 **on-premises** inspection, shall make a preliminary determination as to
28 whether a shortage exists. If a shortage is not discovered, the agency
29 shall treat the audit as it would any other audit.

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



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

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

32 (d) Any depositor who does not present a claim at the hearing may
 33 bring the claim to the agency within fifteen (15) days after the
 34 conclusion of the hearing.

35 (e) **Only grain that has been delivered to a first purchaser for**
 36 **sale or storage under a bailment to a licensee within twenty-four**
 37 **(24) months before the date of failure of the licensee may be**
 38 **considered by the director or the director's designated**
 39 **representative in determining the total proven storage and**
 40 **financial obligations due to depositors and the loss sustained by**
 41 **each depositor who has proven a claim.**

42 (f) Following the hearing on claims, the director **or the**



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

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

34 ~~(g)~~ **(h)** When the proven claims exceed the amount of the bond,
 35 letter of credit, or cash deposit, recoveries of proven claimants shall be
 36 prorated in the same manner as priorities are prorated under section
 37 16.8 of this chapter.

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

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



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

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

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

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

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

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

18 SECTION 6. IC 26-3-7-16.7 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2017]: **Sec. 16.7. Subject to IC 4-21.5-3, the following apply to**
 21 **appeals under this chapter:**

22 **(1) If an order is issued by the director under section 16.5 or**
 23 **17.1 of this chapter, a licensee, claimant, or other person**
 24 **aggrieved by the director's action may file an appeal under**
 25 **IC 4-21.5-3.**

26 **(2) A licensee, claimant, or other person aggrieved by the**
 27 **director's action who has been served with the director's**
 28 **findings must request an appeal under IC 4-21.5-3 not more**
 29 **than fifteen (15) days after being served the findings.**

30 **(3) If a licensee, claimant, or other person aggrieved by the**
 31 **director's action requests an appeal under IC 4-21.5-3, the**
 32 **director shall:**

33 **(A) designate an administrative law judge to preside over**
 34 **the appeal; and**

35 **(B) designate an ultimate authority for the appeal in**
 36 **compliance with IC 4-21.5-3.**

37 SECTION 7. IC 26-3-7-16.8, AS AMENDED BY P.L.75-2010,
 38 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2017]: **Sec. 16.8. (a) A lien against all grain assets of a**
 40 **licensee or a person who is required to be licensed under this chapter**
 41 **attaches in favor of the following:**

42 **(1) A lender or other claimant that has a receipt for grain owned**



1 or stored by the licensee.

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

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

6 (A) the claimant was not fully paid for the grain sold; and

7 (B) the licensee failed less than twenty-one (21) days after the
8 surrender of the receipt.

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

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

13 (1) the delivery of the grain for sale, storage, or under a bailment;

14 (2) the commencement of the storage obligation; or

15 (3) the advancement of funds by a lender.

16 (c) A lien under this section terminates:

17 (1) when the licensee discharges the claim; or

18 (2) **twenty-four (24) months after the delivery of grain to a**
19 **first purchaser for sale or storage under a bailment;**

20 **whichever occurs first.**

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

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

31 **(f) A lien established under this section has priority over all**
32 **competing lien claims asserted against the grain assets.**

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

38 (1) First priority is assigned to the following:

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

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



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



1 payable jointly to the order of the claimant and any secured party
 2 described in subdivision (1) who has given the notices described in
 3 subdivision (2). If only one (1) secured party described in subdivision
 4 (1) is a payee, the rights of the secured party in the check shall be to the
 5 extent of the indebtedness of the claimant to the secured party. If two
 6 (2) or more secured parties described in subdivision (1) are payees, the
 7 nature, extent, and priority of their respective rights in the check are
 8 determined in the same manner as the nature, extent, and priority of
 9 their respective security interest under IC 26-1-9.1.

10 SECTION 8. IC 26-3-7-17.1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 17.1. (a) Whenever the
 12 director, as a result of an inspection or otherwise, has reasonable cause
 13 to believe that a person to which this chapter is or may be applicable:

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

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

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

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

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



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

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

17 SECTION 9. IC 26-3-7-37 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2017]: **Sec. 37. (a) As used in this section, "claim period" means**
 20 **the twelve (12) month period before April 8, 2015.**

21 **(b) Notwithstanding any other law, a claimant who delivered**
 22 **grain to a first purchaser for sale or storage under a bailment to a**
 23 **failed licensee within twenty-four (24) months before April 8, 2016,**
 24 **shall be considered by the director or the director's representative**
 25 **in determining the total proven storage and financial obligations**
 26 **due to depositors and the loss sustained by each depositor who has**
 27 **proven a claim for the claim period. Before September 1, 2017, the**
 28 **director shall forward to the Indiana grain indemnity fund board**
 29 **of directors a list of the claimants who are owed money and the**
 30 **balance due each claimant along with a copy of the final order for**
 31 **any claimants that were not paid the full amount due for the**
 32 **claimants' proven claims for the claim period.**

33 **(c) The director or the director's designee shall send a statement**
 34 **of loss to each claimant that includes the amounts due to each**
 35 **claimant according to the records of the failed licensee for the**
 36 **claim period. However, a claimant may submit a claim form with**
 37 **written documentation supporting the claim.**

38 **(d) Notwithstanding any other law, before November 1, 2017,**
 39 **the Indiana grain indemnity fund board of directors shall pay the**
 40 **claimants who are owed money according to the list forwarded by**
 41 **the director under subsection (b).**

42 **(e) This section expires July 1, 2018.**



1 SECTION 10. IC 26-4-1-13, AS AMENDED BY P.L.60-2015,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 13. "Grain" means corn for all uses, popcorn,
4 wheat, oats, rye, soybeans, barley, sorghum, oil seeds, other agricultural
5 commodities as approved by the agency, and seed (as defined in
6 ~~IC 26-3-7-2(24))~~. **IC 26-3-7-2(25)**). The term does not include canning
7 crops for processing, sweet corn, or flint corn.

