



February 7, 2017

SENATE BILL No. 476

DIGEST OF SB 476 (Updated February 6, 2017 3:53 pm - DI 129)

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

Synopsis: Grain buyers and warehouse licensing. Makes numerous changes to the operations and procedures of the grain indemnity fund board (board) and the grain indemnity fund. Requires that a person applying for or renewing a license who does not conduct business at an Indiana address must appoint a registered agent in Indiana. Provides that violations of certain confidentiality agreements are Class B infractions. Provides that grain that has been delivered to a first purchaser for sale or storage under a bailment to a licensee within 18 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 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) 15 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 six month period 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.

Effective: Upon passage.

Boots, Leising

January 12, 2017, read first time and referred to Committee on Agriculture.
February 6, 2017, amended, reported favorably — Do Pass.

SB 476—LS 7294/DI 77



February 7, 2017

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 UPON PASSAGE]: Sec. 2. The following definitions apply throughout
4 this chapter:

5 (1) "Agency" refers to the Indiana grain buyers and warehouse
6 licensing agency established under section 1 of this chapter.

7 (2) "Anniversary date" means the date that is ninety (90) calendar
8 days after the fiscal year end of a business licensed under this
9 chapter.

10 (3) "Bin" means a bin, tank, interstice, or other container in a
11 warehouse in which bulk grain may be stored.

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

14 (+) (5) "Buyer-warehouse" means a person that operates both as
15 a warehouse licensed under this chapter and as a grain buyer.

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~~(5)~~ **(6)** "Claimant" means a person ~~that is unable to secure satisfaction within the twelve (12) months following delivery of the financial obligations due from a~~ **to whom a licensee owes a storage or financial obligation** under this chapter for grain that has been delivered to the licensee for sale or for storage under a bailment.

~~(6)~~ **(7)** "Daily position record" means a written or electronic document that is maintained on a daily basis for each grain commodity, contains a record of the total amount of grain in inventory for that business day, and complies with any requirements established by the director.

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

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

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

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

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

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

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

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

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

- (A) The inability of a licensee to financially satisfy fully all



obligations due to claimants.

(B) Public declaration of a licensee's insolvency.

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

(D) Nonpayment of a licensee's debts in the ordinary course of business, if there is not a good faith dispute.

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

(F) Involuntary or voluntary bankruptcy of a licensee.

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

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

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

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

(i) Grain that is in transit following shipment by a licensee.

(ii) Grain that has not been paid for.

(iii) Grain that is stored in unlicensed facilities that are leased, owned, or occupied by the licensee.

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

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

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

(i) the encumbrance results from valuable consideration paid to the licensee in good faith by a secured party; and

(ii) the encumbrance did not result from the licensee posting the funds, property, or equity in funds or property as additional collateral for an antecedent debt.



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



hire or which is used for grain bank storage and which is operated under one (1) ownership and run from a single office.

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

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

(2) Administer oaths, issue subpoenas, compel the attendance and testimony of witnesses, and compel the production of records in connection with any investigation or hearing under this chapter, **including subpoenas for and orders to compel production of records located outside Indiana. A subpoena or order to compel may specify the location where the records must be delivered.**

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

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

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

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

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

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

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

(10) Impose sanctions for violations of this article.

(11) Require a grain buyer and all persons purchasing grain to



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

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

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

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

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

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

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

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

(13) Require all contracts executed after January 1, 2000, for the



production of seed to include the following notice, in conspicuous letters, immediately above the place on the contract or an addendum where the seller of the seed must sign:

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

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

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

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

(b) The director shall do the following:

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

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

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

(A) register with the agency; and

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

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

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

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

(2) adopt rules; or

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



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

- (1) The number of facilities involved.
- (2) Whether full weighing equipment is present at the geographically separate facilities.
- (3) The method of bookkeeping employed by the separate facilities.
- (4) The hours of operation of the separate facilities.
- (5) The personnel employed at the separate facilities.
- (6) Other factors the director deems relevant.

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

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

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

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

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

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

SECTION 4. IC 26-3-7-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.2. (a) **An applicant for a license or the renewal of a license under this chapter that does not conduct business at an address in Indiana where the applicant can be contacted shall include with the application a written appointment**



of a registered agent to whom any process, notice, or demand may be served. The appointment must be accompanied by a written acceptance of the appointment by the registered agent. The registered agent must be a natural person who resides in Indiana or a corporation whose principal place of business is located in Indiana. The written appointment must be on forms prepared by and contain information required by the director.

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

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

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

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

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

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

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

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



1 information applies.

2 **(d) The director may disclose to the board, while the board is in**
 3 **executive session, the status, name, and location of any grain buyer**
 4 **or warehouse operator who has failed to meet the minimum net**
 5 **worth requirements in section 16 of this chapter and to provide**
 6 **assurance that sufficient measures are taken to minimize the**
 7 **potential loss to the fund. However, the director may not disclose**
 8 **the information to a board member who has not executed a**
 9 **confidentiality agreement presented by the agency. A member of**
 10 **the board who violates a confidentiality agreement executed under**
 11 **this subsection commits a Class B infraction.**

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

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



1 conferences.

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

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

29 (e) **Only grain that has been delivered to a first purchaser for**
30 **sale or storage under a bailment to a licensee within fifteen (15)**
31 **months before the date of failure of the licensee may be considered**
32 **by the director or the director's designated representative in**
33 **determining the total proven storage and financial obligations due**
34 **to depositors and the loss sustained by each depositor who has**
35 **proven a claim.**

36 (f) Following the hearing on claims, the director **or the**
37 **director's designated representative** shall make a determination as
38 to the total proven storage ~~obligation of the claimants~~ **and financial**
39 **obligations due to depositors** and the loss sustained by each depositor
40 who has proven a claim. Depositors found to have proven their claims
41 **for storage or financial loss** shall be proven claimants. In arriving at
42 that loss, in accordance with section 19 of this chapter, the director



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

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

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

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

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

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

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



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

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

SECTION 7. IC 26-3-7-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.7. Subject to IC 4-21.5-3, the following apply to appeals under this chapter:

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

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

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

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

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

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

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

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

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

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



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



claims, first priority claimants shall share pro rata in the assets.

(2) Second priority is assigned to all claimants who have written evidence of the sale of grain, such as a ticket, a deferred pricing agreement, or similar grain delivery contract, and who completed delivery less than thirty (30) days before the licensee's failure. Claimants under this subdivision share pro rata in the remaining assets if all claimants under subdivision (1) have been paid but insufficient assets remain to fully satisfy all claimants under this subdivision.

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

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

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

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

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

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

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



1 nature, extent, and priority of their respective rights in the check are
 2 determined in the same manner as the nature, extent, and priority of
 3 their respective security interest under IC 26-1-9.1.

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

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

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

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

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

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

38 (d) Upon a determination, after a hearing held by the director or the
 39 director's designated representative, that a person is acting as described
 40 in subsection (a), the director **or the director's designated**
 41 **representative** may suspend, revoke, or deny a license. If the director
 42 **or the director's designated representative** suspends, revokes, or



denies a license, the director **or the director's designated representative** shall publish notice of the suspension, revocation, or denial as provided in section 17.5 of this chapter.

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

SECTION 10. IC 26-3-7-37 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. (a) As used in this section, "claim period" means the six (6) month period before April 8, 2015.**

(b) Notwithstanding any other law, a claimant who delivered grain to a first purchaser for sale or storage under a bailment to a failed licensee within eighteen (18) months before April 8, 2016, shall be considered by the director or the director's representative in determining the total proven storage and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim for the claim period. Before September 1, 2017, the director shall forward to the Indiana grain indemnity fund board of directors a list of the claimants who are owed money and the balance due each claimant along with a copy of the final order for any claimants that were not paid the full amount due for the claimants' proven claims for the claim period.

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

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

(e) This section expires July 1, 2018.

SECTION 11. IC 26-4-1-13, AS AMENDED BY P.L.60-2015, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. "Grain" means corn for all uses, popcorn, wheat, oats, rye, soybeans, barley, sorghum, oil seeds, other agricultural commodities as approved by the agency, and seed (as defined in



~~IC 26-3-7-2(24)).~~ **IC 26-3-7-2(27))**. The term does not include canning crops for processing, sweet corn, or flint corn.

SECTION 12. IC 26-4-1-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. "Licensee" has the meaning set forth in IC 26-3-7-2(23).**

SECTION 13. IC 26-4-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. "Participant in the grain indemnity program" means a producer who has: ~~never~~

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

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

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

SECTION 15. IC 26-4-3-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) Subject to subsection (b), the director may notify the board of the status, name, and location of any grain buyer or warehouse operator who has failed to meet the minimum net worth requirements of IC 26-3-7-16.**

(b) A board member who has not executed a confidentiality agreement presented by the agency may not be provided the information under subsection (a). A member of the board who violates a confidentiality agreement executed under this subsection commits a Class B infraction.

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

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

SECTION 17. IC 26-4-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A producer upon and against whom a producer premium is charged and collected under the provisions of this chapter may demand of and by complying with this chapter receive from the fund through the board a refund of



the producer premiums collected from the producer.

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

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

(1) made in writing and:

(A) hand delivered; or

(B) sent by first class mail; to the board; and

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

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

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

(f) Before ~~January~~ **August 1 of each following the fiscal year** in which producer premiums were collected, ~~during the immediately preceding calendar year~~, the board shall send a notice to each producer who requested a refund of producer premiums in any previous year **after June 30, 2015, and who has not reentered the grain indemnity program under section 2 of this chapter.** The notice must inform the producer:

(1) of the time frame in which a request for a refund must be made and the method of filing for a refund; and

(2) **that the producer is not covered by the grain indemnity program.**

SECTION 18. IC 26-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A producer who has received a refund of a producer premium under section 1 of this chapter **after June 30, 2015**, and has made a request for reentry may reenter the grain indemnity program if the following conditions are satisfied:

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

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



(3) The producer pays into the fund:

(A) all previous producer premium refunds; and

(B) interest on the refunds;

as determined by the board.

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

(c) A producer who has not been a participant in the grain indemnity program may not reenter the program before meeting the criteria of a claimant as defined by this chapter. This subsection does not apply to a producer who only obtained refunds before July 1, 2015.

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

(1) The purpose of the fund.

(2) How the fund is operated.

(3) The process for claiming a refund.

(4) The process for reentering the program.

(5) Where to locate information about who has requested a refund and who is no longer covered by the program.

SECTION 20. IC 26-4-6-4, AS AMENDED BY P.L.75-2010, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a)** A claimant who has incurred a storage loss due to the failure of a warehouse operator licensed under IC 26-3-7 is entitled to be compensated by the board from the fund for one hundred percent (100%) of the storage loss incurred less all credits and offsets and any producer premium that would have been due on the sale of the grain. The gross amount of the storage loss shall be as determined by the agency for warehouses licensed under IC 26-3-7 or by the United States Department of Agriculture for warehouses licensed under the United States Warehouse Act. The warehouse operator and claimants may submit to the agency evidence related to outstanding charges against stored grain. If the evidence is submitted, the agency shall determine the storage loss payable by the board.

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



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

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

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

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

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

SECTION 21. IC 26-4-6-6, AS AMENDED BY P.L.75-2010, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A claimant compensated under this chapter ~~may be~~ is required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act and all the claimant's rights to any other compensation arising from the failure of the grain buyer or warehouse operator. ~~If so required,~~ The claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

SECTION 22. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture, to which was referred Senate Bill No. 476, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the amendment adopted by the senate committee on agriculture on January 23, 2017.

Replace the effective dates in SECTIONS 1 through 10 with "[EFFECTIVE UPON PASSAGE]".

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

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

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

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

Page 2, line 4, strike "(6)" and insert "(7)".

Page 2, line 9, strike "(7)" and insert "(8)".

Page 2, line 14, strike "(8)" and insert "(9)".

Page 2, line 18, strike "(9)" and insert "(10)".

Page 2, line 29, strike "(10)" and insert "(11)".

Page 2, line 32, strike "(11)" and insert "(12)".

Page 2, line 35, strike "(12)" and insert "(13)".

Page 2, line 38, strike "(13)" and insert "(14)".

Page 3, between lines 6 and 7, begin a new line block indented and insert:

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

Page 3, line 7, strike "(14)" and insert "(16)".

Page 3, line 12, strike "(15)" and insert "(17)".

Page 3, line 40, strike "(16)" and insert "(18)".

Page 4, line 1, strike "(17)" and insert "(19)".

Page 4, line 3, strike "(18)" and insert "(20)".

Page 4, line 5, strike "(19)" and insert "(21)".

Page 4, line 8, strike "(20)" and insert "(22)".

Page 4, line 9, delete "(21)" and insert "(23)".

Page 4, line 9, delete "facility" and insert **"person who operates a facility that is"**.

Page 4, line 10, delete "(22)" and insert "(24)".

Page 4, line 13, delete "(23)" and insert "(25)".

Page 4, line 15, delete "(24)" and insert "(26)".

Page 4, line 17, delete "(25)" and insert "(27)".



Page 4, line 20, delete "(26)" and insert "(28)".

Page 4, line 21, delete "(27)" and insert "(29)".

Page 4, line 24, delete "(28)" and insert "(30)".

Page 4, line 27, delete "(29)" and insert "(31)".

Page 4, line 35, delete "(30)" and insert "(32)".

Page 6, line 30, delete "24" and insert "15".

Page 9, between lines 20 and 21, begin a new paragraph and insert:
"SECTION 5. IC 26-3-7-6.5, AS AMENDED BY P.L.60-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective counties, and license status of licensees may be disclosed.

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

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

(d) **The director may disclose to the board, while the board is in executive session, the status, name, and location of any grain buyer or warehouse operator who has failed to meet the minimum net worth requirements in section 16 of this chapter and to provide assurance that sufficient measures are taken to minimize the potential loss to the fund. However, the director may not disclose the information to a board member who has not executed a confidentiality agreement presented by the agency. A member of the board who violates a confidentiality agreement executed under this subsection commits a Class B infraction.**

Page 10, line 34, after "hearing." insert "**However, a depositor who has a claim that was the subject of litigation or was involved in the probate of an estate at the time of the claims hearing has one (1) year from the conclusion of the hearing to present the claim to the agency.**".

Page 10, line 36, delete "twenty-four" and insert "**fifteen (15)**".

Page 10, line 37, delete "(24)".

Page 13, line 18, delete "twenty-four (24)" and insert "**fifteen (15)**".



Page 16, line 20, delete "twelve (12)" and insert "**six (6)**".

Page 16, line 23, delete "twenty-four (24)" and insert "**eighteen (18)**".

Page 17, line 6, delete "IC 26-3-7-2(25))." and insert "**IC 26-3-7-2(27))**".

Page 17, after line 7, begin a new paragraph and insert:

"SECTION 12. IC 26-4-1-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. "Licensee" has the meaning set forth in IC 26-3-7-2(23).**

SECTION 13. IC 26-4-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. "Participant in the grain indemnity program" means a producer who has: ~~never~~

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

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

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

SECTION 15. IC 26-4-3-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) Subject to subsection (b), the director may notify the board of the status, name, and location of any grain buyer or warehouse operator who has failed to meet the minimum net worth requirements of IC 26-3-7-16.**

(b) A board member who has not executed a confidentiality agreement presented by the agency may not be provided the information under subsection (a). A member of the board who violates a confidentiality agreement executed under this subsection commits a Class B infraction.

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

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

SECTION 17. IC 26-4-5-1 IS AMENDED TO READ AS



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

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

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

(1) made in writing and:

(A) hand delivered; or

(B) sent by first class mail;

to the board; and

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

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

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

(f) Before ~~January~~ **August 1** of each following the fiscal year in which producer premiums were collected, ~~during the immediately preceding calendar year~~, the board shall send a notice to each producer who requested a refund of producer premiums in any previous year **after June 30, 2015, and who has not reentered the grain indemnity program under section 2 of this chapter.** The notice must inform the producer:

(1) of the time frame in which a request for a refund must be made and the method of filing for a refund; and

(2) **that the producer is not covered by the grain indemnity program.**

SECTION 18. IC 26-4-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A producer who has received a refund of a producer premium under section 1 of this chapter **after June 30, 2015**, and has made a request for reentry may reenter the grain indemnity program if the following conditions are satisfied:

(1) The producer petitions the board for approval of reentry into the grain indemnity program by hand delivering or sending by



certified mail, return receipt requested, a written request in a form required by the board.

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

(3) The producer pays into the fund:

(A) all previous producer premium refunds; and

(B) interest on the refunds;

as determined by the board.

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

(c) A producer who has not been a participant in the grain indemnity program may not reenter the program before meeting the criteria of a claimant as defined by this chapter. This subsection does not apply to a producer who only obtained refunds before July 1, 2015.

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

(1) The purpose of the fund.

(2) How the fund is operated.

(3) The process for claiming a refund.

(4) The process for reentering the program.

(5) Where to locate information about who has requested a refund and who is no longer covered by the program.

SECTION 20. IC 26-4-6-4, AS AMENDED BY P.L.75-2010, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a) A claimant who has incurred a storage loss due to the failure of a warehouse operator licensed under IC 26-3-7 is entitled to be compensated by the board from the fund for one hundred percent (100%) of the storage loss incurred less all credits and offsets and any producer premium that would have been due on the sale of the grain. The gross amount of the storage loss shall be as determined by the agency for warehouses licensed under IC 26-3-7 or by the United States Department of Agriculture for warehouses licensed under the United States Warehouse Act. The warehouse operator and claimants may submit to the agency evidence related to outstanding charges against stored grain. If the evidence is submitted,**



the agency shall determine the storage loss payable by the board.

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

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

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

SECTION 21. IC 26-4-6-6, AS AMENDED BY P.L.75-2010, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A claimant compensated under this chapter ~~may be~~ is required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act and all the claimant's rights to any other compensation arising from the failure of the grain buyer or warehouse operator. ~~If so required,~~ The claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

SECTION 22. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 476 as introduced and as amended by the senate committee on agriculture on January 23, 2017.)

LEISING, Chairperson

Committee Vote: Yeas 9, Nays 0.

SB 476—LS 7294/DI 77

