

ENGROSSED SENATE BILL No. 369

DIGEST OF SB 369 (Updated February 18, 1998 4:15 pm - DI 75)

Citations Affected: IC 15-2.1; IC 26-3; IC 26-4.

Synopsis: Agricultural products. Makes technical changes in statutory definitions applicable to the Indiana state board of animal health. Authorizes the board to adopt administrative rules to define "milk" and "milk products". Authorizes the board to adopt administrative rules to establish and impose civil penalties for violations of laws that prohibit drug residues in milk and milk products. Establishes a procedure for screening milk for drug residue violations. Requires that milk testing positive for drug residues must be removed from the human or animal
(Continued next page)

Effective: July 1, 1998.

Jackman

(HOUSE SPONSORS — BISCHOFF, LEUCK, LINDER)

January 8, 1998, read first time and referred to Committee on Agriculture and Small Business.

January 22, 1998, reported favorably — Do Pass.

January 27, 1998, read second time, ordered engrossed.

January 28, 1998, engrossed.

January 29, 1998, read third time, call withdrawn.

January 30, 1998, returned to second reading.

February 2, 1998, reread second time, amended, ordered engrossed.

February 3, 1998, engrossed. Reread third time, passed. Yeas 42, nays 7.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Agriculture and Rural Development.

February 16, 1998, amended, reported — Do Pass.

February 18, 1998, read second time, amended, ordered engrossed.

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food chain or be acceptably reconditioned under federal standards. Provides that when milk tests positive for drug residues, the producer may not resume shipping milk until the shipper's milk tests negative for drug residues. Requires a producer whose milk tests positive for drug residues to pay a civil penalty and participate in drug residue education activities. Establishes standards for imposition of civil penalties. Establishes the dairy drug residue abatement fund. Requires civil penalties collected for milk drug residue violations to be deposited in the fund. Provides that money in the fund may be used to implement education and other programs designed to prevent drug residue violations. Appropriates money in the fund for these purposes. Makes the following changes to the agricultural commodities warehouse licensing law: (1) Adds popcorn and grain purchased for sale as seed to the definition of "grain". (2) Adds definitions of "seed" and "seed buyer" to the statute. (3) Changes references in the law from "minimum net worth" to "minimum positive net worth". (4) Establishes requirements for a seed buyer's certificate issued by the Indiana grain buyers and warehouse licensing agency.

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Reprinted
February 19, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

ENGROSSED SENATE BILL No. 369

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.

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

- 1 SECTION 1. IC 15-2.1-2-9.2, AS ADDED BY P.L.137-1996,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 9.2. (a) "Bulk milk hauler" for purposes of
4 IC ~~15-2.1-22~~; means a person ~~who does the following~~:
- 5 (1) ~~that~~ collects raw fluid milk in bulk form ~~on a bulk milk route~~;
 - 6 (2) ~~Transports the milk for transportation~~ to a **milk plant**,
7 receiving station, or transfer station.
 - 8 (b) "Bulk milk hauler" for the purposes of IC ~~15-2.1-23~~; means a
9 person who collects raw fluid milk in bulk form from at least one (1)
10 dairy farm for delivery to a receiving station or transfer station.
- 11 SECTION 2. IC 15-2.1-2-28.4, AS ADDED BY P.L.137-1996,
12 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 1998]: Sec. 28.4. "Milk" means the lacteal secretion
14 practically free from colostrum that ~~meets the following conditions~~:
- 15 (1) is obtained by the complete milking of healthy ~~cows or goats~~;

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- 1 (2) Contains the following:
- 2 (A) Not less than eight and one-fourth percent (8 1/4%) milk
- 3 solids that are not fat.
- 4 (B) Not less than three and one-fourth percent (3 1/4%)
- 5 milkfat: **dairy animals and that meets a definition and**
- 6 **standard of identity for milk adopted by the board under**
- 7 **IC 4-22-2.**
- 8 SECTION 3. IC 15-2.1-2-28.9, AS ADDED BY P.L.137-1996,
- 9 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 10 JULY 1, 1998]: Sec. 28.9. (a) "Milk products"; for purposes of
- 11 IC 15-2.1-22; means all products other than milk that are derived or
- 12 produced from milk; either whole or in part. The term includes the
- 13 following:
- 14 (1) Homogenized milk:
- 15 (2) Lowfat milk:
- 16 (3) Skim or skimmed milk:
- 17 (4) Vitamin D milk and vitamin D milk products:
- 18 (5) Fortified milk and fortified milk products:
- 19 (6) Flavored milk and flavored milk products:
- 20 (7) Reconstituted or recombined milk and milk products:
- 21 (8) Concentrated milk and concentrated milk products:
- 22 (9) Half-and-half:
- 23 (10) Sour half-and-half or cultured half-and-half:
- 24 (11) Buttermilk:
- 25 (12) Cultured buttermilk:
- 26 (13) Cultured milk and cultured milk products:
- 27 (14) Acidified milk and acidified milk products:
- 28 (15) Cream class of food:
- 29 (16) Light cream; coffee cream; and table cream:
- 30 (17) Whipping cream class of food:
- 31 (18) Light whipping cream; heavy cream; and heavy whipping
- 32 cream:
- 33 (19) Whipped cream:
- 34 (20) Whipped light cream; coffee cream; or table cream:
- 35 (21) Sour cream or cultured sour cream:
- 36 (22) Eggnog:
- 37 (23) Evaporated or condensed milk or milk products:
- 38 (24) Dried or powdered milk and milk products:
- 39 (25) Cheese:
- 40 (26) Cottage cheese:
- 41 (27) Creamed cottage cheese:
- 42 (28) Lowfat creamed cottage cheese:

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- 1 (29) Ice cream.
 2 (30) Ice milk.
 3 (31) Sherbets.
 4 (32) Fruit ices.
 5 (33) Any other product of milk defined in rules adopted by the
 6 board.
- 7 (b) "Milk products" for purposes of IC 15-2.1-23, means the
 8 application of those products designated by the rules of the board as:
 9 (1) being within **IC 15-2.1-22 and IC 15-2.1-23**; and
 10 (2) conforming to the definitions and standards of identity
 11 specified in those rules. The term does not include products such
 12 as the following:
 13 (1) Sterilized milk and milk products hermetically sealed in a
 14 container and processed either before or after sealing to prevent
 15 microbial spoilage.
 16 (2) Evaporated milk, condensed milk, ice cream and other frozen
 17 desserts, butter, dry milk products (except as defined in section
 18 20.5 of this chapter), or cheese, except when combined with other
 19 substances to produce pasteurized milk or a milk product.
- 20 SECTION 4. IC 15-2.1-2-44.7, AS ADDED BY P.L.137-1996,
 21 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 1998]: Sec. 44.7. "Recognized establishment" and
 23 "**establishment**" for purposes of IC 15-2.1-24, **means mean** a
 24 building, part of a building, or other location used for slaughtering
 25 livestock or poultry or preparing meat or poultry, meat food products,
 26 and meat byproducts capable of use as human food.
- 27 SECTION 5. IC 15-2.1-23-6.5 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 1998]: Sec. 6.5. (a) **The following definitions**
 30 **apply throughout this section:**
 31 (1) "**DP**" or "**daily production**" means the amount of milk,
 32 measured by hundred weight, produced by the positive
 33 producer in one (1) day, measured on the day in which the
 34 drug residue violation occurred.
 35 (2) "**PR**" or "**producer reimbursement**" means an amount
 36 assessed against the positive producer to reimburse others for
 37 milk contaminated by the positive producer's contaminated
 38 milk, not including the value of the positive producer's
 39 contaminated milk for which he or she was not paid.
 40 (3) "**Revocation period**" means the period after a Grade A
 41 producer's permit is revoked under this section that the
 42 producer may not apply for a Grade A permit.

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1 (b) A penalty established under this section may not be more
2 severe than the penalty standard for drug residue violations
3 adopted by the National Conference on Interstate Milk Shipments
4 in its Pasteurized Milk Ordinance adopted in accordance with the
5 National Conference's Memorandum of Understanding with the
6 United States Department of Health and Human Services, Food
7 and Drug Administration. The penalty imposed may not exceed
8 one thousand dollars (\$1,000) for a first offense or two thousand
9 dollars (\$2,000) for a subsequent offense.

10 (c) The board may impose a civil penalty for violations of laws
11 that prohibit drug residues in milk and milk products as described
12 in this section.

13 (d) Milk shall be screened for drug residue violations as follows:

14 (1) Except as provided in subdivision (2), milk shall be
15 screened for drug residues under Appendix N of the
16 Pasteurized Milk Ordinance (345 IAC 8-3-1).

17 (2) Milk from manufacturing grade dairy farms shall be
18 tested for drug residues under 345 IAC 8-2-3.

19 (3) All milk that tests positive for drug residues must be
20 disposed of in a manner that removes it from the human and
21 animal food chain or that acceptably reconditions the milk
22 under United States Health and Human Services - Food and
23 Drug Administration compliance policy guidelines. In all
24 cases of drug residue violations, a producer may not resume
25 shipping milk until a drug test conducted by a certified
26 laboratory shows the producer's milk is negative for drug
27 residues and the test results are reported to the office of the
28 state veterinarian.

29 (4) All positive drug residue test results must be called into the
30 office of the state veterinarian immediately, and a written
31 report of the test results must be faxed or delivered to the
32 office of the state veterinarian within twenty-four (24) hours
33 of the test. The producer whose milk tested positive must be
34 notified of the positive drug residue test immediately. The
35 company that conducted the test is responsible for the
36 reporting requirements in this subdivision.

37 (5) A producer whose milk tests positive for drug residues
38 shall pay a civil penalty and participate in drug residue
39 education activities as follows:

40 (A) The following is imposed on a producer for the first
41 positive test for drug residues within a twelve (12) month
42 period:

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1 (i) The positive producer must pay a civil penalty to the
2 board equal to the result of the following equation:

3 (DP times two (2) days times three dollars (\$3)) minus
4 PR.

5 However, if the result is less than five dollars (\$5) then
6 the civil penalty is five dollars (\$5).

7 (ii) The positive producer must, in conjunction with the
8 producer's veterinarian and an official of the board,
9 complete the "Milk and Dairy Beef Residue Prevention
10 Protocol" and provide proof of completion to the board
11 of animal health - office of the state veterinarian within
12 thirty (30) days of the drug residue violation. Failure to
13 complete the Protocol and submit proof of completion
14 within thirty (30) days will result in action to suspend the
15 producer's permit.

16 (B) The following is imposed for a second positive test for
17 drug residues within a twelve (12) month period:

18 (i) The positive producer must pay a civil penalty to the
19 board equal to the result of the following equation:

20 DP times four (4) days times three dollars (\$3).

21 However, if the result is less than five dollars (\$5) then
22 the civil penalty is five dollars (\$5).

23 (ii) The positive producer must, in conjunction with the
24 producer's veterinarian and an official of the board,
25 complete the "Milk and Dairy Beef Residue Prevention
26 Protocol" and provide proof of completion to the board
27 of animal health - office of the state veterinarian within
28 thirty (30) days of the drug residue violation. Failure to
29 complete the Protocol and provide proof of completion
30 will result in action to suspend the producer's permit.

31 (iii) The producer must attend a producer education
32 program or meeting designated by the state veterinarian.
33 The producer is responsible for paying registration and
34 material fees and other costs associated with attending
35 the education program or meeting. The producer must
36 provide proof of attendance to the state veterinarian
37 within ten (10) days of completion of the program or
38 meeting.

39 (C) The third positive test result for drug residues within
40 a twelve (12) month period shall result in the following:

41 (i) The board revoking a producer's Grade A permit if
42 the producer has a permit.

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- 1 (ii) The sanctions for a second offense set forth in clause
2 (B) are imposed.
- 3 (iii) The producer must submit to the state veterinarian
4 a set of written procedures that the producer will follow
5 to prevent future drug residue violations. The
6 procedures must be submitted with the proof of
7 completion required in clause (B) and must be specific,
8 practical, and reasonably likely to lessen the possibility
9 of a drug residue violation when followed by the
10 producer.
- 11 (iv) After a producer's Grade A permit is revoked for a
12 third offense violation under this statute, the producer
13 may not receive a new Grade A permit for a revocation
14 period of thirty (30) days from the date of the revocation.
15 After the revocation period, the state veterinarian must
16 issue a conditional Grade A permit to a producer that
17 has applied for a permit if the producer has met all of
18 the requirements of this section at the time of application
19 and the producer meets all other requirements of the
20 board for obtaining a Grade A permit. The permit must
21 be issued on the condition that all of the requirements of
22 this section must be completed within the time set forth
23 in this section. A permit issued under this item
24 automatically becomes unconditional after the producer
25 fully complies with all of the provisions of this section.
- 26 (D) For each drug residue violation in a twelve (12) month
27 period in excess of three (3) the producer is subject to the
28 penalties for a third offense in clause (C) are imposed, but
29 for Grade A producers the revocation period will begin on
30 the date the producer's permit is revoked and run for a
31 period equal to two (2) times the length of the revocation
32 period imposed after the producer's last drug residue
33 violation.
- 34 (e) The state veterinarian may, by special permit, allow a
35 producer that objects to the imposition of a civil penalty to dump
36 two (2) days of milk production on a first offense and four (4) days
37 of milk production on the second or third offense instead of paying
38 a civil penalty if payment of a civil penalty would impose undue
39 hardship on a producer. The state veterinarian may set the
40 conditions under which the milk is to be dumped and may require
41 documentation from the producer showing the circumstances
42 under which the milk was dumped.



1 **(f) Civil penalties collected under this section shall be deposited**
 2 **in the dairy drug residue abatement fund established under section**
 3 **17 of this chapter.**

4 SECTION 6. IC 15-2.1-23-17 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 1998]: **Sec. 17. (a) The dairy drug residue**
 7 **abatement fund is established to implement education and other**
 8 **programs designed to prevent drug residue violations. Money in**
 9 **the fund is appropriated for these purposes.**

10 **(b) The fund consists of civil penalties collected under section**
 11 **6.5 of this chapter.**

12 **(c) The fund shall be administered by the board.**

13 **(d) The expenses of administering the fund shall be paid from**
 14 **money in the fund.**

15 **(e) The treasurer of state shall invest the money in the fund not**
 16 **currently needed to meet the obligations of the fund in the same**
 17 **manner as other public money may be invested.**

18 **(f) Money in the fund at the end of a state fiscal year does not**
 19 **revert to the state general fund.**

20 SECTION 7. IC 26-3-7-2, AS AMENDED BY P.L.125-1997,
 21 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 1998]: Sec. 2. The following definitions apply throughout this
 23 chapter:

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

26 (2) "Anniversary date" means the date that is ninety (90) calendar
 27 days after the fiscal year end of a business ~~licensed~~ **qualifying for**
 28 **a license or a certificate** under this chapter.

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

31 (4) "Buyer-warehouse" means a person that operates both as a
 32 warehouse licensed under this chapter and as a grain buyer.

33 **(5) "Certificate" refers to a certificate issued under this**
 34 **chapter.**

35 ~~(5)~~ **(6) "Claimant" means a person that is unable to secure**
 36 **satisfaction of the financial obligations due from a licensee or**
 37 **certificate holder** under this chapter for grain that has been
 38 delivered to the licensee **or certificate holder** for sale or for
 39 storage under a bailment.

40 ~~(6)~~ **(7) "Deferred pricing" means a purchase by a buyer in which**
 41 **title to the grain or seed** passes to the buyer and the price to be
 42 paid to the seller is not determined:



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- 1 (A) at the time the grain **or seed** is received by the buyer; or
 2 (B) within ten (10) days of receipt.
- 3 ~~(7)~~ **(8)** "Depositor" means any of the following:
 4 (A) A person that delivers grain **or seed** to a licensee **or**
 5 **certificate holder** under this chapter for storage or sale.
 6 (B) A person that:
 7 (i) owns or is the legal holder of a ticket or receipt issued by
 8 a licensee **or certificate holder** for grain **or seed** received
 9 by the licensee **or certificate holder**; and
 10 (ii) is the creditor of the issuing licensee **or certificate**
 11 **holder** for the value of the grain **or seed** received in return
 12 for the ticket or receipt.
 13 (C) A licensee **or certificate holder** that stores grain **or seed**
 14 that the licensee **or certificate holder** owns solely, jointly, or
 15 in common with others in a warehouse owned or controlled by
 16 the licensee **or certificate holder** or another licensee **or**
 17 **certificate holder**.
- 18 ~~(8)~~ **(9)** "Designated representative" means the person or persons
 19 designated by the director to act instead of the director in assisting
 20 in the administration of this chapter.
- 21 ~~(9)~~ **(10)** "Facility" means a location or one (1) of several locations
 22 in Indiana that are operated as a warehouse or by a grain buyer **or**
 23 **seed buyer**.
- 24 ~~(10)~~ **(11)** "Failure" means any of the following:
 25 (A) The inability of a licensee **or certificate holder** to
 26 financially satisfy claimants.
 27 (B) Public declaration of a licensee's **or certificate holder's**
 28 insolvency.
 29 (C) Revocation or suspension of a licensee's license **or**
 30 **certificate holder's certificate**, if the licensee **or certificate**
 31 **holder** has outstanding indebtedness owed to claimants.
 32 (D) Nonpayment of a licensee's **or certificate holder's** debts
 33 in the ordinary course of business, if there is not a good faith
 34 dispute.
 35 (E) Voluntary surrender of a licensee's license **or certificate**
 36 **holder's certificate**, if the licensee **or certificate holder** has
 37 outstanding indebtedness to claimants.
- 38 ~~(11)~~ **(12)** "Grain" means corn, wheat, oats, barley, rye, sorghum,
 39 soybeans, oil seeds, **and other agricultural commodities as**
 40 **approved by the agency and includes grain grown for seed**
 41 **use, but does not including include** canning crops for processing.
 42 **As used in this subdivision, "corn" includes corn for all uses,**



1 **including popcorn, but not including sweet corn and flint**
 2 **corn.**

3 ~~(12)~~ **(13)** "Grain assets" means any of the following:

4 (A) All grain **or seed** owned or stored by a licensee **or**
 5 **certificate holder**, including grain **or seed** that:

6 (i) is in transit following shipment by a licensee **or**
 7 **certificate holder**; and

8 (ii) has not been paid for.

9 (B) All proceeds, due or to become due, from the sale of a
 10 licensee's **or certificate holder's** grain **or seed**.

11 (C) Equity, less any secured financing directly associated with
 12 the equity, in hedging or speculative margin accounts of a
 13 licensee **or certificate holder** held by a commodity or security
 14 exchange, or a dealer representing a commodity or security
 15 exchange, and any money due the licensee **or certificate**
 16 **holder** from transactions on the exchange, less any secured
 17 financing directly associated with the money due the licensee
 18 **or certificate holder** from the transactions on the exchange.

19 (D) Any other unencumbered funds, property, or equity in
 20 funds or property, wherever located, that can be directly traced
 21 to the sale of grain **or seed** by a licensee **or certificate holder**.
 22 However, funds, property, or equity in funds or property may
 23 not be considered encumbered unless:

24 (i) the encumbrance results from valuable consideration paid
 25 to the licensee **or certificate holder** in good faith by a
 26 secured party; and

27 (ii) the encumbrance did not result from the licensee **or**
 28 **certificate holder** posting the funds, property, or equity in
 29 funds or property as additional collateral for an antecedent
 30 debt.

31 (E) Any other unencumbered funds, property, or equity in
 32 assets of the licensee **or certificate holder**.

33 ~~(13)~~ **(14)** "Grain bank grain" means grain owned by a depositor
 34 for use in the formulation of feed and stored by the warehouse to
 35 be returned to the depositor on demand.

36 ~~(14)~~ **(15)** "Grain buyer" means a person who is engaged in the
 37 business of buying grain from producers. The term does not
 38 include a buyer of grain who **does any of the following**:

39 (A) Buys less than fifty thousand (50,000) bushels of grain
 40 annually. ~~or~~

41 (B) Buys grain for the sole purpose of feeding the person's own
 42 livestock or poultry, if:

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- 1 (i) the person derives a major portion of the person's income
- 2 from selling that livestock or poultry; and
- 3 (ii) the person does not offer storage, deferred pricing,
- 4 delayed payment, or contracts or other instruments that are
- 5 linked to the commodity futures or commodity options
- 6 market.

7 **(C) Buys grain predominately to be used as seed.**

8 ~~(15)~~ **(16)** "Grain standards act" means the United States Grain
9 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
10 71-87 as amended).

11 ~~(16)~~ **(17)** "License" means a license issued under this chapter.

12 ~~(17)~~ **(18)** "Official grain standards of the United States" means the
13 standards of quality or condition for grain, fixed and established
14 by the secretary of agriculture under the grain standards act.

15 ~~(18)~~ **(19)** "Person" means an individual, partnership, corporation,
16 association, or other form of business enterprise.

17 ~~(19)~~ **(20)** "Receipt" means a warehouse receipt issued by a
18 warehouse licensed under this chapter.

19 **(21) "Seed" means grain set apart for the predominate**
20 **purpose to be used in the production of new plants.**

21 **(22) "Seed buyer", as used in this chapter only, means a**
22 **person who is engaged in the business of buying grain from**
23 **producers or contracting to grow, or contracting to purchase**
24 **the services of an independent producer for the predominant**
25 **purpose to grow seed. The term does not include a buyer of**
26 **seed who:**

27 **(A) buys less than fifty thousand (50,000) bushels of seed**
28 **annually; or**

29 **(B) does not offer storage for hire, deferred pricing,**
30 **delayed payments or contracts or other instruments that**
31 **are linked to the commodity futures or commodity options**
32 **market.**

33 ~~(20)~~ **(23)** "Ticket" means a scale weight ticket, a load slip, or
34 other evidence, other than a receipt, given to a depositor upon
35 initial delivery of grain **or seed** to a facility.

36 ~~(21)~~ **(24)** "Warehouse act" means the United States Warehouse
37 Act, approved August 11, 1916, (39 Stat. 486; 7 U.S.C. 241-273
38 as amended).

39 ~~(22)~~ **(25)** "Warehouse" means a person that operates a facility or
40 group of facilities in which grain is or may be stored for hire or
41 which is used for grain bank storage and which is operated under
42 one (1) ownership and run from a single office.

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1 SECTION 8. IC 26-3-7-3, AS AMENDED BY P.L.125-1997,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 3. (a) The director may do the following:

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

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

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

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

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

17 (6) Inspect a facility, the grain **or seed** stored in a facility, and all
18 property and records pertaining to a facility.

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

24 (8) Require a licensee **or certificate holder** to terminate storage,
25 shipping, marketing, and handling agreements upon revocation of
26 the person's license **or certificate**.

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

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

30 (11) Require a grain buyer and all persons purchasing grain for a
31 grain buyer to do any of the following:

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

36 (B) Demonstrate passage of the series 3 examination
37 administered by the National Association of Security Dealers.

38 (C) Annually attend six (6) hours of continuing education,
39 approved by the director, focusing on the risks to a grain buyer
40 and seller that are associated with grain marketing practices
41 and the communication of risks to the producer. Additionally,
42 as part of continuing education, require a grain buyer, and all

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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, for the purchase of grain **or seed** from producers, except a flat price contract, to include the following notice immediately above the place on the contract where the seller of the grain **or seed** 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 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) At any time, order an unannounced audit for compliance with this article.

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

(b) The director shall do the following:

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

(2) Require a person who conducts business as a grain **or seed** buyer to first ~~be licensed by~~ **obtain a license or certificate from** 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 employee to act for the director in the administration of this chapter. A designee may not:

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- 1 (1) act in matters that require a public hearing or the temporary
- 2 suspension of a license **or certificate**;
- 3 (2) adopt rules; or
- 4 (3) act as the ultimate authority in the administration of this
- 5 chapter.
- 6 (d) The director may determine whether geographically separate
- 7 facilities constitute a single warehouse, ~~or a grain buyer, or seed a~~
- 8 **buyer** and in making the determination may consider the following:
- 9 (1) The number of facilities involved.
- 10 (2) Whether full weighing equipment is present at the
- 11 geographically separate facilities.
- 12 (3) The method of bookkeeping employed by the separate
- 13 facilities.
- 14 (4) The hours of operation of the separate facilities.
- 15 (5) The personnel employed at the separate facilities.
- 16 (6) Other factors the director deems relevant.

17 SECTION 9. IC 26-3-7-4, AS AMENDED BY P.L.125-1997,
 18 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 1998]: Sec. 4. (a) A person may not operate a warehouse or
 20 conduct business as a grain buyer, **seed buyer**, or buyer-warehouse
 21 without first having obtained the appropriate license **or certificate**
 22 from the agency, nor may a person continue to operate a warehouse or
 23 conduct business as a grain buyer, **seed buyer**, or buyer-warehouse
 24 after the person's license **or certificate** has been revoked or suspended,
 25 except as provided in section 18 of this chapter.

26 (b) All facilities in Indiana that an applicant for a license **or**
 27 **certificate** uses to store or handle grain **or seed** must qualify for **and**
 28 **obtain** a license ~~and be licensed or certificate~~ under this chapter
 29 before the applicant may operate a warehouse or conduct business as
 30 a grain buyer **or seed buyer** in Indiana. An applicant may not be
 31 ~~licensed~~ **issued a license or a certificate** unless all of the applicant's
 32 facilities qualify for a license **or certificate** under this chapter. An
 33 applicant for a license **or certificate** must apply to the agency for a
 34 license **or certificate** that covers all facilities operated by the applicant
 35 for the storage or handling of grain **or seed** in Indiana.

36 (c) If a licensee **or certificate holder** acquires an additional grain
 37 **or seed** storage or handling facility in Indiana, the licensee **or**
 38 **certificate holder** shall promptly submit to the agency an amended
 39 application for licensure **or certification**. A licensee **or certificate**
 40 **holder** shall promptly notify the agency of a material change to the
 41 licensee's **or certificate holder's** operations, such as expansion of the
 42 amount of storage being used in the licensee's **or certificate holder's**



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1 existing facilities or change of ownership of a facility, and shall provide
 2 the director with additional information the director may require. A
 3 licensee **or certificate holder** shall obtain the approval of the director
 4 before making use of increased storage or handling capacity.

5 (d) A licensee **or certificate holder** that acquires an additional
 6 grain storage or handling facility that is required to be licensed **or have**
 7 **a certificate** shall not use the facility for the storage or handling of
 8 grain **or seed** until it qualifies for **and is issued** a license **and is**
 9 **licensed or certificate** as provided in this chapter. If a licensed **or**
 10 **certified** grain **or seed** storage or handling facility that a licensee **or**
 11 **certificate holder** operates in Indiana becomes ineligible for a license
 12 **or certificate** at any time for any reason, it shall not be used for the
 13 storage or handling of grain **or seed** until the condition making it
 14 ineligible is removed.

15 (e) A licensee **or certificate holder** shall maintain at least eighty
 16 percent (80%) of the unpaid balance of grain **or seed** payables in
 17 unencumbered assets represented by the aggregate of the following:

- 18 (1) Company owned grain **or seed**.
- 19 (2) Cash on hand.
- 20 (3) Cash held on account in federally or state licensed financial
 21 institutions or lending institutions of the Federal Farm Credit
 22 Administration.
- 23 (4) Investments held in time accounts with federally or state
 24 licensed financial institutions.
- 25 (5) Direct obligations of the United States government.
- 26 (6) Balances in grain margin accounts determined by marking to
 27 market.
- 28 (7) Balances due or to become due to the licensee **or certificate**
 29 **holder** on deferred pricing contracts.
- 30 (8) Marketable securities, including mutual funds.
- 31 (9) Irrevocable letters of credit that are:
 - 32 (A) in favor of the agency;
 - 33 (B) acceptable to the agency; and
 - 34 (C) in addition to any letter of credit deposited with the
 35 director to satisfy the bonding requirement of this chapter.
- 36 (10) Deferred pricing contract service charges due or to become
 37 due to the licensee **or certificate holder**.
- 38 (11) Other evidence of proceeds from or of grain **or seed** that is
 39 acceptable to the agency.
- 40 (12) Other assets approved by the director.

41 (f) A licensee **or certificate holder** must have the minimum
 42 **positive** net worth specified in section 16 of this chapter to hold any



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1 license **or certificate** or do business.

2 SECTION 10. IC 26-3-7-6, AS AMENDED BY P.L.125-1997,
3 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 1998]: Sec. 6. (a) The agency may issue the following licenses
5 **or certificates:**

- 6 (1) A grain bank license may be issued to a person that:
7 (A) stores only grain bank grain;
8 (B) has a storage capacity of not more than fifty thousand
9 (50,000) bushels of grain; and
10 (C) purchases less than fifty thousand (50,000) bushels of
11 grain per year.
- 12 (2) A warehouse license may be issued to a person that:
13 (A) stores grain; and
14 (B) purchases less than fifty thousand (50,000) bushels of
15 grain per year.
- 16 (3) A grain buyer license may be issued to a person that:
17 (A) purchases annually at least fifty thousand (50,000) bushels
18 of grain that are not for the sole purpose of feeding the
19 person's own livestock or poultry;
20 (B) does not store grain **for hire; and or**
21 (C) offers deferred pricing, delayed payments, or contracts
22 linked to the commodity futures or commodity options market
23 in connection with grain purchases.
- 24 (4) A buyer-warehouse license may be issued to a person that
25 operates both as a warehouse and as a grain buyer.
- 26 (5) **A seed buyer certificate may be issued to a person that:**
27 **(A) annually purchases at least fifty thousand (50,000)**
28 **bushels of seed that are not for the sole purpose of feeding**
29 **the person's own livestock or poultry;**
30 **(B) does not store seed for hire; or**
31 **(C) offers deferred pricing, delayed payments, or contracts**
32 **linked to the commodity futures or commodity options**
33 **market in connection with seed purchases.**
- 34 (b) An applicant shall file with the director a separate application
35 for each license **or certificate** or amendment of a license **or certificate**
36 at the times, on the forms, and containing the information that the
37 director prescribes.
- 38 (c) An initial application for a license **or certificate** must be
39 accompanied by a ~~license~~ fee as follows:
40 (1) For a grain bank or for a warehouse or buyer-warehouse with
41 a storage capacity of less than two hundred fifty thousand
42 (250,000) bushels, two hundred fifty dollars (\$250) for the first



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- 1 facility and fifty dollars (\$50) for each additional facility.
- 2 (2) For a warehouse or a buyer-warehouse with a storage capacity
- 3 of at least two hundred fifty thousand (250,000) bushels but less
- 4 than one million (1,000,000) bushels, five hundred dollars (\$500)
- 5 for the first facility and fifty dollars (\$50) for each additional
- 6 facility.
- 7 (3) For a warehouse or a buyer-warehouse with a storage capacity
- 8 of at least one million (1,000,000) bushels but less than ten
- 9 million (10,000,000) bushels, seven hundred fifty dollars (\$750)
- 10 for the first facility and fifty dollars (\$50) for each additional
- 11 facility.
- 12 (4) For a warehouse or buyer-warehouse with a storage capacity
- 13 greater than ten million (10,000,000) bushels, one thousand
- 14 dollars (\$1,000) for the first facility and fifty dollars (\$50) for
- 15 each additional facility.
- 16 (5) For a grain buyer, including a grain buyer that is also licensed
- 17 as a warehouse under the warehouse act, five hundred dollars
- 18 (\$500) for the first facility and fifty dollars (\$50) for each
- 19 additional facility.
- 20 **(6) For a seed buyer, five hundred dollars (\$500) for the first**
- 21 **facility and fifty dollars (\$50) for each additional facility.**
- 22 The director may prorate the initial application fee for a license **or**
- 23 **certificate** that is issued at least thirty (30) days after the anniversary
- 24 date of the licensee's **or certificate holder's** business.
- 25 (d) Before the anniversary date of the license **or certificate**, the
- 26 licensee **or certificate holder** shall pay an annual ~~license~~ fee in an
- 27 amount equal to the amount required under subsection (c).
- 28 (e) A licensee **or certificate holder** or an applicant for an initial
- 29 license **or certificate** must have a minimum current asset to current
- 30 liability ratio of one (1) to one (1) **or better**.
- 31 (f) An applicant for an initial license **or certificate** shall submit
- 32 with the person's application a review level financial statement or better
- 33 financial statement that reflects the applicant's financial situation on a
- 34 date not more than fifteen (15) months before the date on which the
- 35 application is submitted. Not more than ninety (90) days after the end
- 36 of a licensee's **or certificate holder's** fiscal year, the licensee **or**
- 37 **certificate holder** shall file with the agency a current review level
- 38 financial statement or better financial statement that reflects the
- 39 licensee's **or certificate holder's** financial situation for the fiscal year
- 40 just ended. A financial statement submitted under this section must:
- 41 (1) be prepared by an independent accountant certified under
- 42 IC 25-2.1;

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1 (2) comply with generally accepted accounting principles; and
 2 (3) contain:
 3 (A) an income statement;
 4 (B) a balance sheet;
 5 (C) a statement of cash flow;
 6 (D) a statement of retained earnings;
 7 (E) the preparer's notes; and
 8 (F) other information the agency may require.
 9 The director may adopt rules under IC 4-22-2 to allow the agency to
 10 accept other substantial supporting documents instead of those listed
 11 if the director determines that providing the listed documents creates
 12 a financial or other hardship on the applicant, ~~or~~ licensee **or certificate**
 13 **holder.**
 14 (g) An application for a license implies a consent to be inspected.
 15 (h) A person that:
 16 (1) does not operate a facility used to store grain;
 17 (2) purchases:
 18 (A) less than fifty thousand (50,000) bushels of grain per year;
 19 or
 20 (B) only grain used for the production of the person's own
 21 livestock; and
 22 (3) does not:
 23 ~~(A)~~ **(A)** purchase grain;
 24 ~~(B)~~ **(A)** offer deferred pricing;
 25 ~~(C)~~ **(B)** offer delayed payment; or
 26 ~~(D)~~ **(C)** offer other contracts;
 27 that are linked to the commodity futures or commodity options
 28 market;
 29 is not required to be licensed.
 30 SECTION 11. IC 26-3-7-6.5, AS AMENDED BY P.L.125-1997,
 31 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 1998]: Sec. 6.5. Unless in accordance with a judicial order,
 33 the director, the agency, its counsel, auditors, or its other employees or
 34 agents shall not divulge any information disclosed by the applications
 35 or reports filed or inspections performed under the provisions of this
 36 chapter, except to agents and employees of the agency or to any other
 37 legal representative of the state or federal government otherwise
 38 empowered to see or review the information. The director may disclose
 39 the information only in the form of an information summary or profile,
 40 or statistical study based upon data provided with respect to more than
 41 one (1) warehouse, grain buyer, **seed buyer**, or buyer-warehouse that
 42 does not identify the warehouse, grain buyer, **seed buyer** or

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buyer-warehouse to which the information applies.

SECTION 12. IC 26-3-7-7, AS AMENDED BY P.L.125-1997, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The director may issue or amend a license **or certificate** after the director has:

- (1) received and approved the required information and documentation; and
- (2) determined that:
 - (A) the facility or facilities covered by the application are suitable for the proper storage or handling of the grain **or seed** intended to be stored or handled in the facility or facilities; and
 - (B) the applicant has complied with this chapter and the rules adopted under this chapter.

(b) A person may not represent that the person is licensed **or holds a certificate** under this chapter, and may not use a name or description that conveys the impression that the person is licensed, **or holds a certificate** in a receipt or otherwise, unless the person holds an unsuspended and unrevoked license **or certificate** to conduct the business indicated by the license **or certificate**.

(c) An applicant for a license **or certificate** under this chapter must show that the applicant:

- (1) has a good business reputation;
- (2) has not been involved in improper manipulation of books and records or other improper business practice;
- (3) has the qualifications and background essential for the conduct of the business to be licensed **or issued a certificate**;
- (4) employs management and principal officers that have suitable business reputations, background, and qualifications to perform their duties;
- (5) has not been found guilty of a crime that would affect the licensee's **or certificate holder's** ability to conduct business with integrity; and
- (6) does not employ an officer, director, partner, or manager that has been found guilty of a crime that would affect the licensee's **or certificate holder's** ability to conduct business with integrity.

SECTION 13. IC 26-3-7-8, AS AMENDED BY P.L.125-1997, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. Upon receipt of an application for a permanent license **or certificate**, the director may issue a temporary license **or certificate** to the applicant for a reasonable time, not to exceed ninety (90) days, as the director deems necessary or advisable to enable the applicant to comply with the further requirements for obtaining a

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1 license **or certificate** under this chapter. A temporary license **or**
 2 **certificate** entitles the temporary licensee **or certificate holder** to the
 3 same rights and subjects the temporary licensee **or certificate holder**
 4 to the same duties as if the temporary licensee **or certificate holder**
 5 had a permanent license **or certificate**.

6 SECTION 14. IC 26-3-7-8.5, AS ADDED BY P.L.125-1997,
 7 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 1998]: Sec. 8.5. If the ownership of a facility or business
 9 **licensed holding a license or a certificate** under this chapter passes to
 10 a successor owner, the obligations under this chapter of the original
 11 licensee **or certificate holder** do not cease until the successor owner
 12 **is properly licensed has been issued a license or a certificate** and has
 13 executed a successor's agreement with the agency.

14 SECTION 15. IC 26-3-7-9, AS AMENDED BY P.L.125-1997,
 15 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 1998]: Sec. 9. (a) Each applicant for a license **or certificate**
 17 under this chapter shall, as a condition of ~~licensure~~; **issuance of the**
 18 **license or certificate** file or have on file with the director:

- 19 (1) a cash deposit;
- 20 (2) an irrevocable letter of credit; or
- 21 (3) a bond;

22 as provided in section 10 of this chapter.

23 (b) A bond filed under this chapter shall:

- 24 (1) be conditioned upon the faithful performance of all obligations
 25 of the licensee **or certificate holder** under this chapter and the
 26 rules adopted under this chapter from the effective date of the
 27 bond until the earlier of the date the license **or certificate** is
 28 revoked or the bond is canceled as provided in this chapter; and
- 29 (2) be further conditioned upon the faithful performance of all
 30 obligations from the effective date of the bond and thereafter,
 31 regardless of whether the licensee's **or certificate holder's**
 32 facility or facilities exist on the effective date of the bond or are
 33 thereafter assumed prior to the date the licensee's license **or**
 34 **certificate holder's certificate** is revoked or the bond is canceled
 35 as provided in this chapter.

36 (c) The bond must remain in effect during a violation, a temporary
 37 suspension of the licensee's license **or certificate holder's certificate**,
 38 or a period during which the licensee **or certificate holder** is subject
 39 to a cease and desist order.

40 SECTION 16. IC 26-3-7-10, AS AMENDED BY P.L.125-1997,
 41 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 1998]: Sec. 10. (a) The minimum amount of bond, letter of

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1 credit, or cash deposit required from a licensee **or certificate holder**
 2 is as follows:

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

4 (A) ten thousand dollars (\$10,000); or

5 (B) ten cents (\$.10) multiplied by the licensed bushel storage
 6 capacity of the grain bank or warehouse;

7 whichever is greater.

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

10 (A) ten thousand dollars (\$10,000); or

11 (B) five-tenths percent (0.5%) of the total amount the grain
 12 buyer paid for grain purchased from producers during the
 13 grain buyer's fiscal year immediately preceding the date the
 14 bond, letter of credit, or cash deposit is due;

15 whichever is greater.

16 (3) For a buyer-warehouse:

17 (A) ten thousand dollars (\$10,000);

18 (B) ten cents (\$.10) multiplied by the licensed bushel storage
 19 capacity of the buyer-warehouse's facility; or

20 (C) five-tenths percent (0.5%) of the total amount the
 21 buyer-warehouse paid for grain purchased from producers
 22 during the buyer-warehouse's fiscal year immediately
 23 preceding the date the bond, letter of credit, or cash deposit is
 24 due;

25 whichever is greater.

26 (4) **For a seed buyer:**

27 (A) **ten thousand dollars (\$10,000); or**

28 (B) **five-tenths percent (0.5%) of the total amount the seed**
 29 **buyer paid for seed purchased from producers during the**
 30 **seed buyer's fiscal year immediately preceding the date the**
 31 **bond, letter of credit, or cash deposit is due;**

32 **whichever is greater.**

33 (b) Except as provided in subsections (g) and (h), the amount of
 34 bond, letter of credit, or cash deposit required by this chapter may not
 35 exceed one hundred thousand dollars (\$100,000) per license **or**
 36 **certificate** and may not exceed a total of five hundred thousand dollars
 37 (\$500,000) per person.

38 (c) The licensed bushel storage capacity **of a licensee or certificate**
 39 **holder** is the maximum number of bushels of grain **or seed** that the
 40 licensee's **or certificate holder's** facility could accommodate as
 41 determined by the director or the director's designated representative
 42 and shall be increased or reduced in accordance with the amount of



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1 space being used for storage from time to time.

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

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

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

20 (g) If a licensee **or certificate holder** has a deficiency in the
21 minimum **positive** net worth required under section 16(a)(2)(B),
22 16(a)(3)(B), 16(a)(4)(A)(ii), ~~or~~ 16(a)(5)(A)(ii), **or 16(a)(6)(B)** of this
23 chapter, the licensee **or certificate holder** shall add to the amount of
24 bond, letter of credit, or cash deposit determined under subsection (a)
25 an amount equal to the deficiency.

26 (h) Except as provided in subsections (i) and (j), a licensee **or**
27 **certificate holder** may not correct a deficiency in the minimum
28 **positive** net worth required by section 16(a)(1), 16(a)(2)(A),
29 16(a)(3)(A), 16(a)(4)(A)(i), ~~or~~ 16(a)(5)(A)(i), **or 16(a)(6)(A)** of this
30 chapter by adding to the amount of bond, letter of credit, or cash
31 deposit required by subsection (a).

32 (i) A buyer-warehouse that has a bushel storage capacity of less than
33 one million (1,000,000) bushels or purchases less than one million
34 (1,000,000) bushels of grain per year may correct a deficiency in
35 minimum net worth by adding to the amount of bond, letter of credit,
36 or cash deposit determined under subsection (a) if the buyer-warehouse
37 has a minimum net worth of at least fifteen thousand dollars (\$15,000),
38 not including the amount added to the bond, letter of credit, or cash
39 deposit.

40 (j) A buyer-warehouse that has a bushel storage capacity of at least
41 one million (1,000,000) bushels, or purchases at least one million
42 (1,000,000) bushels of grain per year, may correct a deficiency in

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

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

11 (l) The director may accept, instead of a single cash deposit, letter
 12 of credit, or bond, a deposit consisting of any combination of cash
 13 deposits, letters of credit, or bonds in an amount equal to the licensee's
 14 **or certificate holder's** obligation under this chapter. The director shall
 15 adopt rules under IC 4-22-2 to establish standards for determining the
 16 order in which the forms of security on deposit must be used to pay
 17 proven claims if the licensee **or certificate holder** defaults.

18 (m) The director may require additional bonding that the director
 19 considers necessary.

20 SECTION 17. IC 26-3-7-12, AS AMENDED BY P.L.125-1997,
 21 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 1998]: Sec. 12. (a) Each applicant for a license **or certificate**
 23 under this chapter shall, as a condition to the granting of the license **or**
 24 **certificate**, file or have on file a certificate of insurance evidencing an
 25 effective policy of insurance issued by an insurance company
 26 authorized to do business in Indiana insuring in the name of the
 27 applicant all grain **or seed** that is or may be in the licensee's **or**
 28 **certificate holder's** facilities for its full market value against loss by
 29 fire, internal explosion, lightning, and windstorm.

30 (b) In case fire, internal explosion, lightning, or wind-storm destroys
 31 or damages any grain **or seed** in a ~~licensed~~ facility **of a licensee or**
 32 **certificate holder**, the licensee **or certificate holder** shall, upon
 33 demand by the depositor and upon being presented with the receipt or
 34 other evidence of ownership, make settlement, after deducting the
 35 licensee's **or certificate holder's** charges and advances, at the market
 36 value of the grain **or seed** based on the value at the average price paid
 37 for grain **or seed** of the same grade and quality on the date of the loss
 38 at the location of the facility. If a settlement is not made within sixty
 39 (60) days from the date of demand, the depositor is entitled to seek
 40 recovery from the insurance company.

41 SECTION 18. IC 26-3-7-13, AS AMENDED BY P.L.125-1997,
 42 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 1998]: Sec. 13. Whenever the director determines that a
 2 previously approved bond, letter of credit, cash deposit, or previously
 3 approved insurance is insufficient, the director shall require an
 4 additional bond, letter of credit, cash deposit, or insurance to be given
 5 by the licensee **or certificate holder** in the form and upon the terms
 6 and conditions required by this chapter and rules adopted under this
 7 chapter.

8 SECTION 19. IC 26-3-7-14, AS AMENDED BY P.L.125-1997,
 9 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 1998]: Sec. 14. (a) A licensee **or certificate holder** may not
 11 cancel an approved bond or approved insurance unless the director has
 12 given prior written approval for the cancellation and has received a
 13 substitute cash deposit or has approved a substitute bond or insurance.
 14 The surety on a bond may cancel a bond required by this chapter only
 15 after the expiration of ninety (90) days from the date the surety mailed
 16 a notice of intent to cancel, by registered or certified mail, to the
 17 director. An insurance company may cancel insurance required by this
 18 chapter only after the expiration of a thirty (30) day period from the
 19 mailing, by certified mail, of notice of intent to cancel, to the director.
 20 The surety and the insurance company shall, at the time of giving
 21 notice to the director, send a copy of the notice to the licensee **or**
 22 **certificate holder**.

23 (b) Notwithstanding any other provision of this chapter, the license
 24 **or certificate** of a licensee **or certificate holder** shall automatically be
 25 suspended for failure to:

- 26 (1) file a new bond, letter of credit, or cash deposit within the
- 27 ninety (90) day period as provided in this section;
- 28 (2) file new evidence of insurance within the thirty (30) day
- 29 period as provided in this section; or
- 30 (3) maintain at all times a bond or cash deposit and insurance as
- 31 provided in this chapter.

32 The suspension shall continue until the licensee **or certificate holder**
 33 complies with the bonding and insurance requirements of this chapter.

34 SECTION 20. IC 26-3-7-15, AS AMENDED BY P.L.125-1997,
 35 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 1998]: Sec. 15. (a) A licensee **or certificate holder** shall
 37 maintain inventories of sufficient quantity and grade of grain **or seed**
 38 to meet the licensee's **or certificate holder's** storage obligations.

39 (b) Inventories representing grain **or seed** evidenced by outstanding
 40 warehouse receipts shall be maintained in the warehouse shown on the
 41 warehouse receipt issued by the warehouse in which the grain **or seed**
 42 was originally deposited.



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1 (c) Inventories representing storage obligations other than those
2 evidenced by warehouse receipts may be represented by:

- 3 (1) receipts for grain **or seed** stored in a facility ~~licensed that~~
4 **holds a license or a certificate** under this chapter;
5 (2) receipts in a warehouse licensed and bonded under the
6 warehouse act; or
7 (3) other warehouse receipts or tickets as approved by the
8 director.

9 SECTION 21. IC 26-3-7-16, AS AMENDED BY P.L.253-1997(ss),
10 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 1998]: Sec. 16. (a) A licensee **or certificate holder** shall have
12 and maintain a current asset to current liability ratio of one to one (1:1)
13 and shall maintain, as evidenced by the financial statement required by
14 section 6 of this chapter, the following minimum **positive** net worth:

- 15 (1) For a grain bank, minimum net worth is at least ten thousand
16 dollars (\$10,000).
17 (2) For a warehouse, minimum net worth is at least equal to the
18 sum of:
19 (A) fifteen thousand dollars (\$15,000); and
20 (B) ten cents (\$0.10) multiplied by the bushel storage capacity
21 of the warehouse.
22 (3) For a grain buyer, minimum net worth is at least **equal to the**
23 **sum of:**
24 (A) ten thousand dollars (\$10,000); ~~or and~~
25 (B) five cents (\$0.05) multiplied by the total number of
26 bushels of grain purchased by the grain buyer during the grain
27 buyer's fiscal year immediately preceding the date net worth is
28 calculated.

29 **whichever is greater:**

- 30 (4) For a buyer-warehouse that has a bushel storage capacity of
31 less than one million (1,000,000) bushels or purchases less than
32 one million (1,000,000) bushels of grain per year, minimum net
33 worth is at least equal to:
34 (A) the sum of:
35 (i) fifteen thousand dollars (\$15,000); and
36 (ii) ten cents (\$0.10) multiplied by the bushel storage
37 capacity of the buyer-warehouse; or
38 (B) five cents (\$0.05) multiplied by the total number of
39 bushels of grain purchased by the buyer-warehouse during the
40 buyer-warehouse's fiscal year immediately preceding the date
41 net worth is calculated;
42 **whichever is greater.**



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1 (5) For a buyer-warehouse that has a bushel storage capacity of at
 2 least one million (1,000,000) bushels or purchases at least one
 3 million (1,000,000) bushels of grain per year, minimum net worth
 4 is at least equal to:

5 (A) the sum of:

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

7 (ii) ten cents (\$0.10) multiplied by the bushel storage
 8 capacity of the buyer-warehouse; or

9 (B) five cents (\$0.05) multiplied by the number of bushels of
 10 grain purchased by the buyer-warehouse during the
 11 buyer-warehouse's fiscal year immediately preceding the date
 12 net worth is calculated;

13 whichever is greater.

14 **(6) For a seed buyer, minimum net worth is at least equal to**
 15 **the sum of:**

16 **(A) ten thousand dollars (\$10,000); and**

17 **(B) five cents (\$0.05) multiplied by the total number of**
 18 **bushels of seed purchased by the seed buyer during the**
 19 **seed buyer's fiscal year immediately preceding the date net**
 20 **worth is calculated.**

21 (b) Except as provided in section 10 of this chapter, if a licensee **or**
 22 **certificate holder** is required to show additional net worth to comply
 23 with this section, the licensee **or certificate holder** may satisfy the
 24 requirement by adding to the amount of the bond, letter of credit, or
 25 cash deposit required under section 10 of this chapter an amount equal
 26 to the additional net worth required.

27 (c) The director may adopt rules under IC 4-22-2 to provide that a
 28 narrative market appraisal that demonstrates assets sufficient to comply
 29 with this section may satisfy the minimum net worth requirement.

30 SECTION 22. IC 26-3-7-16.5, AS AMENDED BY P.L.125-1997,
 31 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 1998]: Sec. 16.5. (a) Upon learning of the possibility that a
 33 shortage exists, either as a result of an inspection or a report or
 34 complaint from a depositor, the agency, based on an on-premise
 35 inspection, shall make a preliminary determination as to whether a
 36 shortage exists. If a shortage is not discovered, the agency shall treat
 37 the audit as it would any other audit.

38 (b) If it is determined that a shortage may exist, the director or ~~his~~
 39 **the director's** designated representative shall hold a hearing as soon
 40 as possible to confirm the existence of a shortage as indicated by the
 41 licensee's **or certificate holder's** books and records and the grain **or**
 42 **seed** on hand. Only the licensee **or certificate holder**, the surety



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1 company named on the licensee's bond, the issuer of the irrevocable
 2 letter of credit, and any grain **or seed** depositor who has made a claim
 3 or complaint to the agency in conjunction with the shortage shall be
 4 considered as interested parties for the purposes of that hearing, and
 5 each shall be given notice of the hearing. At the hearing, the director
 6 or the director's designated representative shall determine whether
 7 there appears to be a reasonable probability that a shortage exists. If it
 8 is determined that a reasonable probability exists and that the bond or
 9 letter of credit proceeds or the cash deposit should be distributed, a
 10 preliminary determination shall be entered to the effect that the
 11 licensee **or certificate holder** has failed to meet its obligations under
 12 this chapter or the rules adopted under this chapter. At the hearing, the
 13 director or the director's designated representative may order that all
 14 proceeds from grain **or seed** sales are to be held in the form in which
 15 they are received and to be kept separate from all other funds held by
 16 the licensee **or certificate holder**. The order may also provide for
 17 informal conferences between agency representatives and persons who
 18 have or who appear to have grain **or seed** deposited with the licensee
 19 **or certificate holder**. The surety company shall be permitted to
 20 participate in those conferences.

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



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1 validity of the claim.

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

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

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

41 (g) The proceedings and hearings under this section may be
42 undertaken without regard to, in combination with, or in addition to



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1 those undertaken in accordance with section 17.1 of this chapter.

2 (h) The findings of the director shall be final, conclusive, and
3 binding on all parties.

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

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

11 SECTION 23. IC 26-3-7-16.6, AS AMENDED BY P.L.125-1997,
12 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 1998]: Sec. 16.6. The procedures established by section 16.5
14 of this chapter also apply when the director learns or has reason to
15 believe that a person is doing business as a grain buyer, **a seed buyer**,
16 operating a warehouse, or acting as a buyer-warehouse without the
17 license **or certificate** required by this chapter.

18 SECTION 24. IC 26-3-7-16.8, AS ADDED BY P.L.125-1997,
19 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 1998]: Sec. 16.8. (a) A lien against all grain **or seed** assets of
21 a licensee **or certificate holder** attaches in favor of the following:

22 (1) A lender or other claimant that has a receipt for grain **or seed**
23 owned or stored by the licensee **or certificate holder**.

24 (2) A claimant that has a ticket or written evidence, other than a
25 receipt, of a storage obligation of the licensee **or certificate**
26 **holder**.

27 (3) A claimant that surrendered a receipt as part of a grain **or seed**
28 sales transaction if:

29 (A) the claimant was not fully paid for the grain **or seed** sold;
30 and

31 (B) the licensee **or certificate holder** failed less than
32 twenty-one (21) days after the surrender of the receipt.

33 (4) A claimant that has other written evidence of a sale to the
34 licensee **or certificate holder** of grain **or seed** for which the
35 claimant has not been fully paid.

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

38 (1) the delivery of the grain **or seed** for sale, storage, or under a
39 bailment;

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

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

42 (c) A lien under this section terminates when the licensee **or**

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1 **certificate holder** discharges the claim.

2 (d) If a licensee **or certificate holder** fails, the lien that attaches
3 under this section is assigned to the agency by operation of this section.
4 If a failed licensee **or certificate holder** is liquidated, a lien under this
5 section continues to attach as a claim against the assets or proceeds of
6 the assets of the licensee **or certificate holder** that are received or
7 liquidated by the agency.

8 (e) Except as provided in subsection (g), if a licensee **or certificate**
9 **holder** fails, the power to enforce the lien on the licensee's **or**
10 **certificate holder's** grain **or seed** assets transfers by operation of this
11 section to the director and rests exclusively with the director who shall
12 allocate and prorate the proceeds of the grain **or seed** assets as
13 provided in subsection (f).

14 (f) The priority of a lien that attaches under this section is not
15 determined by the date on which the claim arose. If a licensee fails, the
16 director shall enforce lien claims and allocate grain **or seed** assets and
17 the proceeds of grain **or seed** assets of the licensee in the following
18 order of priority:

- 19 (1) First priority is assigned to the following:
- 20 (A) A lender or other claimant that has a receipt for grain **or**
21 **seed** owned or stored by the licensee.
- 22 (B) A claimant that has a ticket or written evidence, other than
23 a receipt, of a storage obligation of the licensee.
- 24 (C) A claimant that surrendered a receipt as part of a grain **or**
25 **seed** sales transaction if:
- 26 (i) the claimant was not fully paid for the grain **or seed** sold;
27 and
28 (ii) the licensee failed less than twenty-one (21) days after
29 the surrender of the receipt.

30 If there are insufficient grain **or seed** assets to satisfy all first
31 priority claims, first priority claimants shall share pro rata in the
32 assets.

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

41 (3) Third priority is assigned to all other claimants that have
42 written evidence of the sale of grain **or seed** to the failed licensee

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1 **or certificate holder.** Claimants under this subdivision share pro
2 rata in the distribution of the remaining grain **or seed** assets.
3 (g) If a claimant under this section brings an action to recover grain
4 **or seed** assets that are subject to a lien under this section and the
5 agency does not join the action, the director shall, upon request of the
6 claimant, assign the lien to the claimant in order to allow the claimant
7 to pursue the claim to the extent that the action does not delay the
8 resolution of the matter by the agency, the prompt liquidation of the
9 assets, or the ultimate distribution of assets to all claimants.
10 SECTION 25. IC 26-3-7-17.1, AS AMENDED BY P.L.125-1997,
11 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 1998]: Sec. 17.1. (a) Whenever the director, as a result of an
13 inspection or otherwise, has reasonable cause to believe that a person
14 to which this chapter is or may be applicable:
15 (1) is conducting business contrary to this chapter or in an
16 unauthorized manner; or
17 (2) has failed, neglected, or refused to observe or comply with any
18 order, rule, or published policy statement of the agency;
19 then the director may undertake any one (1) of the actions prescribed
20 by this section.
21 (b) Upon learning of the possibility that a licensee **or certificate**
22 **holder** is acting as described in subsection (a), the director or the
23 director’s designated representative may seek an informal meeting with
24 the licensee **or certificate holder**. At that meeting, which shall be held
25 at a time and place agreed to by the licensee **or certificate holder** and
26 the director, the director or the director’s designated representative
27 shall discuss the possible violations and may enter into a consent
28 agreement with the licensee **or certificate holder** under which the
29 licensee **or certificate holder** agrees to undertake, or to cease, the
30 activities that were the subject of the meeting. The consent agreement
31 may provide for a time frame within which the licensee **or certificate**
32 **holder** must be in compliance.
33 (c) Upon learning of the possibility that a person is acting as
34 described in subsection (a), the director, except as otherwise provided
35 in this subsection, shall hold a hearing to determine whether a cease
36 and desist order should issue against a licensee **or an unlicensed** person
37 undertaking activities covered by this chapter. If the director
38 determines that the violation or the prohibited practice is likely to cause
39 immediate insolvency or irreparable harm to depositors, the director,
40 without notice, may issue a temporary cease and desist order requiring
41 the person to cease and desist from that violation or practice. The order
42 shall become effective upon service on the person and shall remain

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1 effective and enforceable pending the completion of all administrative
2 proceedings.

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

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

18 SECTION 26. IC 26-3-7-17.5, AS ADDED BY P.L.125-1997,
19 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 1998]: Sec. 17.5. (a) Whenever ~~the a~~ a license of a licensee **or**
21 **a certificate** is suspended or revoked, the director may:

22 (1) for each facility operated by the licensee **or certificate holder**
23 publish a public notice in a newspaper of general circulation that
24 serves the county in which the facility is located; and

25 (2) cause notice of the suspension or revocation to be posted at
26 the facilities covered by the license **or certificate**.

27 (b) Whenever an application for ~~license~~ a license **or a certificate**
28 under this chapter is denied, the director may:

29 (1) for each facility operated by the applicant, publish a public
30 notice in a newspaper of general circulation that serves the county
31 in which the facility is located; and

32 (2) cause notice of the denial to be posted at the applicant's
33 facilities.

34 (c) A notice posted under this section may not be removed without
35 the written permission of the director.

36 (d) The director shall adopt rules under IC 4-22-2 to determine the
37 content of the notices required by this section.

38 SECTION 27. IC 26-3-7-18, AS AMENDED BY P.L.125-1997,
39 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 1998]: Sec. 18. (a) When a license **or certificate** is revoked,
41 the licensee **or certificate holder** shall terminate in the manner
42 prescribed by the director all arrangements covering the grain **or seed**



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1 in the facility covered by the license **or certificate**, but shall be
 2 permitted, under the direction and supervision of the director or the
 3 director's designated representative, to deliver grain **or seed** previously
 4 received.

5 (b) During any suspension of a license **or certificate**, the licensee
 6 **or certificate holder** may, under the direction and supervision of the
 7 director or the director's designated representative, operate the facility,
 8 but shall not incur any additional obligations to producers.

9 SECTION 28. IC 26-3-7-19, AS AMENDED BY P.L.125-1997,
 10 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 1998]: Sec. 19. (a) A licensee **or certificate holder** shall issue
 12 a receipt or ticket for grain **or seed** received. Grain **or seed** received by
 13 a licensee **or certificate holder** shall be credited to the depositor on the
 14 books of the licensee **or certificate holder** within seven (7) days from
 15 the date of its delivery. If a ticket is issued on delivery of the grain **or**
 16 **seed** for storage, a receipt shall be issued on demand, but no receipt
 17 shall be issued on grain bank grain.

18 (b) The licensee **or certificate holder** is a bailee with respect to all
 19 stored grain **or seed**. The person whose name appears on a receipt or
 20 a ticket has title to the stored grain **or seed** evidenced by the receipt or
 21 ticket.

22 SECTION 29. IC 26-3-7-20, AS AMENDED BY P.L.125-1997,
 23 SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 1998]: Sec. 20. A licensee **or certificate holder** may issue a
 25 receipt for grain **or seed** owned by the licensee **or certificate holder**
 26 in whole or in part, located in the licensee's **or certificate holder's**
 27 facility. The negotiation, transfer, sale, or pledge of the receipt shall not
 28 be defeated by reason of the licensee's **or certificate holder's**
 29 ownership.

30 SECTION 30. IC 26-3-7-22, AS AMENDED BY P.L.125-1997,
 31 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 1998]: Sec. 22. Different lots of the same type of grain **or**
 33 **seed** delivered to a licensee **or certificate holder** may be commingled
 34 by type of grain **or seed** unless the receipt or ticket states that the
 35 identity of the lot of grain **or seed** is to be preserved.

36 SECTION 31. IC 26-3-7-24, AS AMENDED BY P.L.125-1997,
 37 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 1998]: Sec. 24. While a receipt or ticket issued under this
 39 chapter is outstanding and uncanceled by the issuing licensee **or**
 40 **certificate holder** no other receipt or ticket shall be issued for the grain
 41 **or seed** or any part of the grain **or seed** that is covered by the receipt
 42 or ticket. However, if a receipt or ticket is lost, stolen, or destroyed the



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1 owner of the receipt or ticket is entitled to a new receipt that is a
 2 duplicate of the missing receipt or a new ticket that is a substitute for
 3 the missing ticket. The duplicate receipt or substitute ticket entitles the
 4 owner to all rights appertaining to the document for which it was
 5 issued, and shall state that it is in lieu of the former receipt or ticket and
 6 give the number and date of the former receipt or ticket. If the missing
 7 document was a negotiable receipt, the issuing licensee **or certificate**
 8 **holder** shall require an indemnity bond of double the market value of
 9 the grain **or seed** covered by the missing receipt in a form and with the
 10 surety that the director may prescribe to fully protect all rights under
 11 the missing receipt.

12 SECTION 32. IC 26-3-7-25, AS AMENDED BY P.L.125-1997,
 13 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 1998]: Sec. 25. Every warehouse receipt issued shall embody
 15 within its terms the following:

16 (1) The type, grade, and quantity of the grain stored as established
 17 by the official grain standards of the United States, unless:

18 (A) the identity of the grain is preserved in a special pile or
 19 special bin or otherwise; and

20 (B) a mark identifying the preserved grain appears on the face
 21 of the receipt.

22 (2) A statement that the receipt is issued subject to the Indiana
 23 Grain Buyers and Warehouse Licensing and Bonding Law,
 24 IC 26-3-7, and rules adopted under the Indiana Grain Buyers and
 25 Warehouse Licensing and Bonding Law.

26 (3) A clause that reserves to the licensee **or certificate holder** the
 27 right to terminate storage and collect outstanding charges against
 28 any lot of grain that remains in storage after June 30 following the
 29 date of the receipt.

30 (4) A clause that reserves to the licensee **or certificate holder** the
 31 right to terminate storage, shipping, and handling arrangements
 32 and collect outstanding charges upon the revocation of the
 33 licensee's license **or certificate holder's certificate**.

34 (5) Other terms and conditions as provided in the Uniform
 35 Warehouse Receipts Acts. However, nothing contained in the
 36 Uniform Warehouse Receipts Act shall require a receipt issued
 37 for grain to specifically state the variety of the grain by name.

38 (6) A clause that terminates storage on the date the license held
 39 by the licensee **or the certificate held by the certificate holder**
 40 when the receipt was issued expires and reserves to the licensee
 41 **or certificate holder** the right to collect outstanding charges
 42 against any lot of grain **or seed**.



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1 (7) Other provisions prescribed by the director.
 2 SECTION 33. IC 26-3-7-26, AS AMENDED BY P.L.125-1997,
 3 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 1998]: Sec. 26. Every ticket issued shall embody within its
 5 terms:
 6 (1) the name of the licensee **or certificate holder** to whom the
 7 grain **or seed** was delivered;
 8 (2) the date the grain **or seed** was delivered;
 9 (3) exact information concerning the type, net weight, and grade
 10 factors of the grain **or seed** received;
 11 (4) a statement that the grain **or seed** described in the ticket is to
 12 be taken into storage, is being delivered on contract, or is to be
 13 sold under other arrangements;
 14 (5) the name of the owner of the grain **or seed**;
 15 (6) a statement that tickets marked for storage are non-negotiable
 16 receipts; and
 17 (7) other provisions prescribed by the director.
 18 SECTION 34. IC 26-3-7-28, AS AMENDED BY P.L.125-1997,
 19 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 1998]: Sec. 28. A licensee **or certificate holder** shall keep in
 21 a place of safety complete and correct records and accounts pertaining
 22 to the licensee's **or certificate holder's** grain **or seed** business. The
 23 licensee **or certificate holder** shall retain records and accounts for not
 24 less than six (6) years from the date of the final settlement of the
 25 transaction.
 26 SECTION 35. IC 26-3-7-29, AS AMENDED BY P.L.125-1997,
 27 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 1998]: Sec. 29. A licensee **or certificate holder** shall:
 29 (1) conspicuously display the licensee's license **or certificate**
 30 **holder's certificate** in the licensee's **or certificate holder's** main
 31 office and at each facility included under the license **or**
 32 **certificate**;
 33 (2) conspicuously display in each operational office the approved
 34 schedule of charges for services; and
 35 (3) conspicuously display at each facility all charts and diagrams
 36 provided to the facility by the agency.
 37 SECTION 36. IC 26-3-7-30 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 30. All receipt forms
 39 shall be supplied by the director except where the director, in writing,
 40 approves the form and gives permission to a warehouseman to have
 41 receipts printed. Requests for receipts shall be on forms furnished by
 42 the director and shall be accompanied by payment to cover the

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1 estimated cost of printing, packaging, and shipping, as determined by
 2 the director. Where privately printed, the printer shall furnish the
 3 director an affidavit showing the amount of the receipts printed, and the
 4 serial numbers thereof. All receipts remaining unused shall be
 5 recovered by the director or ~~his~~ **the director's** designated
 6 representative if the license **or certificate** required by this chapter is
 7 terminated or suspended.

8 SECTION 37. IC 26-3-7-31, AS AMENDED BY P.L.125-1997,
 9 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 1998]: Sec. 31. (a) Whenever it appears to the satisfaction of
 11 the director that a licensee **or certificate holder** does not have in the
 12 licensee's **or certificate holder's** possession sufficient grain **or seed** to
 13 cover the outstanding receipts and tickets issued or assumed by the
 14 licensee **or certificate holder**, or when a licensee **or certificate holder**
 15 refuses to submit the licensee's **or certificate holder's** records or
 16 property to lawful inspection, the director may give notice to the
 17 licensee **or certificate holder** to do any of the following:

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

22 (b) If the licensee **or certificate holder** fails to comply with the
 23 terms of the notice within five (5) business days from the date of its
 24 issuance, or within an extension of time that the director may allow, the
 25 director may petition the circuit court of the Indiana county where the
 26 licensee's **or certificate holder's** principal place of business is located
 27 seeking the appointment of a receiver. If the court determines in
 28 accordance with IC 34-1-12 that a receiver should be appointed, upon
 29 the request of the licensee **or certificate holder**, the court may appoint
 30 the agency or its representative to act as receiver. The agency or its
 31 representative shall not be appointed as receiver except upon the
 32 request of the licensee **or certificate holder**. If the agency or its
 33 representative is appointed, any person interested in an action as
 34 described in IC 34-1-12-2 may after twenty (20) days request that the
 35 agency or its representative be removed as receiver. If the agency or its
 36 representative is not serving as receiver, the receiver appointed shall
 37 meet and confer with representatives of the agency regarding the
 38 licensee's **or certificate holder's** grain **or seed** related obligations and,
 39 before taking any actions regarding those obligations, the receiver and
 40 the court shall consider the agency's views and comments.

41 SECTION 38. IC 26-3-7-32, AS AMENDED BY P.L.125-1997,
 42 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



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1 JULY 1, 1998]: Sec. 32. (a) The director may apply for, and the courts
 2 of this state are vested with jurisdiction to issue, a temporary or
 3 permanent injunction against the business operation of a licensee **or**
 4 **certificate holder** or the issuance of receipts or tickets without a
 5 license **or certificate** and against interference by any person with the
 6 director, the director's designated representative, or a receiver
 7 appointed under section 31 of this chapter, in the performance of their
 8 duties and powers under this chapter.

9 (b) Upon a determination by the director that there is reasonable
 10 cause to believe that a licensee **or certificate holder** is unable to meet
 11 the licensee's **or certificate holder's** storage or other grain **or seed**
 12 obligations, and that the licensee **or certificate holder** is removing, or
 13 the director has reasonable cause to believe that the licensee **or**
 14 **certificate holder** may remove, grain **or seed** from the licensed
 15 premises, the director may, under the conditions provided in, and in
 16 accordance with, the Indiana Rules of Trial Procedure, seek from the
 17 circuit court of the Indiana county in which the licensee **or certificate**
 18 **holder** has the licensee's **or certificate holder's** principal place of
 19 business a temporary restraining order preventing the further sale or
 20 movement of any grain **or seed** and requiring that proceeds from grain
 21 **or seed** sales received after the issuance of the temporary restraining
 22 order should be held in the form in which they are received by the
 23 licensee **or certificate holder** and kept separate from all other funds
 24 held by the licensee **or certificate holder**.

25 SECTION 39. IC 26-3-7-34, AS AMENDED BY P.L.125-1997,
 26 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 1998]: Sec. 34. (a) A person who knowingly or intentionally
 28 violates or fails to comply with this chapter commits a Class A
 29 misdemeanor. Each day a person violates this chapter constitutes a
 30 separate violation.

31 (b) A person who knowingly or intentionally issues a receipt or
 32 ticket, knowing that the grain **or seed** for which the receipt or ticket is
 33 issued has not been actually received at the licensed warehouse,
 34 commits a Class A misdemeanor. A person who issues a duplicate, or
 35 additional negotiable receipt for grain **or seed**, knowing that a former
 36 negotiable receipt for the same grain **or seed** or any part of the grain is
 37 outstanding and uncanceled, except in the case of a lost, stolen, or
 38 destroyed receipt, as provided in section 24 of this chapter, commits a
 39 Class A misdemeanor. A person who fraudulently represents, alters, or
 40 counterfeits any license **or certificate** provided for in this chapter
 41 commits a Class D felony.

42 (c) Except in case of sale or other disposition of the grain **or seed** in



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1 lawful enforcement of the lien on grain **or seed** that attaches under this
 2 chapter or on a licensee's **or certificate holder's** lawful termination of
 3 storage, shipping, or handling agreements, or except as permitted by
 4 the rules adopted by the director under IC 4-22-2 to effectuate the
 5 purposes of this chapter:

6 (1) a person who knowingly or intentionally delivers grain **or seed**
 7 out of a ~~licensed~~ facility **having a license or certificate**, knowing
 8 that a negotiable receipt, the negotiation of which would transfer
 9 the right of possession of the grain **or seed** is outstanding and
 10 uncanceled, without obtaining the possession of the receipt at or
 11 before the time of delivery, commits a Class D felony; and

12 (2) a person who knowingly or intentionally delivers grain **or seed**
 13 out of a ~~licensed~~ facility **having a license or a certificate**,
 14 knowing that a non-negotiable receipt or ticket is outstanding and
 15 uncanceled, without the prior written approval of the person
 16 lawfully entitled to delivery under the non-negotiable receipt or
 17 ticket and without delivery being shown on the appropriate
 18 records of the licensee **or certificate holder** commits a Class D
 19 felony.

20 (d) A person who fraudulently issues a receipt, a ticket, or a weight
 21 or grade certificate, knowing that it contains a false statement, or who
 22 issues a receipt for grain **or seed** owned solely or jointly by the person
 23 and does not state the fact of the person's ownership in the receipt,
 24 commits a Class A misdemeanor.

25 (e) A person who recklessly changes a receipt or ticket subsequent
 26 to issuance, except for notation by the licensee **or certificate holder**
 27 of partial delivery, commits a Class B misdemeanor.

28 (f) A person who knowingly or intentionally deposits grain **or seed**
 29 to which the person does not have title or upon which there is a lien or
 30 mortgage and who accepts for the grain **or seed** a receipt or ticket,
 31 without disclosing the lack of title or the existence of the lien or
 32 mortgage, commits a Class D felony.

33 (g) A person commits a Class A misdemeanor who knowingly or
 34 intentionally:

35 (1) engages in the business of being a grain buyer **or a seed**
 36 **buyer** or operates a warehouse without a valid license issued by
 37 the director;

38 (2) engages in the business of being a grain buyer **or a seed**
 39 **buyer** or operates a warehouse without a sufficient cash deposit,
 40 letter of credit, or surety bond on file with and in a form approved
 41 by the director; or

42 (3) engages in the business of being a grain buyer **or a seed**

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1 **buyer** or operates a warehouse while in violation of the rules
2 adopted by the director.

3 (h) A person commits a Class A misdemeanor who willfully makes
4 or causes to be made a false entry or statement of fact in an application
5 or report filed with the director.

6 (i) A person who is not in compliance with section 3(a)(11) of this
7 chapter may be subject to a fine imposed by the agency of not more
8 than twenty thousand dollars (\$20,000), or the suspension of the grain
9 buyer's license for not more than five (5) years, or both.

10 (j) The director may suspend or revoke the license of a licensee **or**
11 **certificate of a certificate holder** that uses ~~an unlicensed~~ a facility
12 **that does not have a license or a certificate** to store or handle grain
13 **or seed** or commits another violation of this chapter.

14 SECTION 40. IC 26-3-7-35, AS AMENDED BY P.L.125-1997,
15 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 1998]: Sec. 35. A person licensed **or a holder of a certificate**
17 under the warehouse act must also have a valid grain buyer **or seed**
18 **buyer license or certificate** to do business in Indiana as a grain buyer
19 **or seed buyer.**

20 SECTION 41. IC 26-4-1-13, AS ADDED BY P.L.250-1995,
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 1998]: Sec. 13. (a) "Grain" means corn, wheat, oats, rye,
23 soybeans, barley, sorghum, oil seeds, and other agricultural
24 commodities as approved by the agency **and includes grain grown for**
25 **seed use.**

26 (b) The term does not include canning crops for processing.

27 (c) **As used in this section, "corn" includes all corn for all uses,**
28 **including popcorn, but excluding sweet corn and flint corn.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Agriculture and Small Business, to which was referred Senate Bill 369, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 369 as introduced.)

NUGENT, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 369, which is eligible for third reading, be returned to second reading for purposes of amendment.

JACKMAN

 SENATE MOTION

Mr. President: I move that Senate Bill 369 be amended to read as follows:

Page 3, line 27, delete "(a) **The board may, by rules**".

Page 3, delete lines 28 through 29.

Page 3, line 30, delete "(b)" and insert "(a)".

Page 3, line 36, after "**Administration.**" insert "**The penalty imposed shall not exceed \$1,000 for a first offense or \$2,000 for a subsequent offense.**".

Page 3, line 37, delete "(c)" and insert "(b)".

Page 3, line 37, delete "under **IC 15-2.1-19**".

Page 3, line 38, delete "**a drug residue violation.**" and insert "**violations of laws that prohibit drug residues in milk and milk products as follows:**".

Page 3, between lines 38 and 39, begin a new paragraph and insert:

"1 (a) The following definitions apply throughout this section:

(1) "DP" or "daily production" means the amount of milk, measured by hundred weight, produced by the positive producer in one day, measured on the day in which the drug residue violation occurred.

(2) "PR" or "producer reimbursement" means an amount assessed against the positive producer to reimburse others for milk contaminated by the positive producer's contaminated milk, not including the value of the positive producer's contaminated milk for which he or she was not paid.

(3) "Revocation period" means the period after a Grade A producer's permit is revoked under this statute that he or she may not apply for a Grade A permit.

(b) Milk shall be screened for drug residue violations as follows:

(1) Except as provided in subdivision (2), milk shall be screened for drug residues pursuant to Appendix N of the Pasturized



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Milk Ordinance (345 IAC 8-3-1).

(2) Milk from manufacturing grade dairy farms shall be tested for drug residues pursuant to 345 IAC 8-2-3.

(3) All milk that tests positive for drug residues must be disposed of in a manner that removes it from the human and animal food chain or that acceptably reconditions the milk under United States Health and Human Services-Food and Drug Administration compliance policy guidelines. In all cases of drug residue violations, a producer may not resume shipping milk until a drug test conducted by a certified laboratory shows the producer's milk is negative for drug residues and the test results are reported to the office of the state veterinarian.

(4) All positive drug residue test results must be called into the office of the state veterinarian immediately, and a written report of the test results must be faxed or delivered to the office of the state veterinarian within twenty-four (24) hours of the test. The producer whose milk tested positive must be notified of the positive drug residue test immediately. The company that conducted the test is responsible for the reporting requirements in this subsection.

(5) A producer whose milk tests positive for drug residues shall pay a fine and participate in drug residue education activities as follows:

(i) The following is imposed on a producer for the first positive test for drug residues within a twelve (12) month period:

(A) The positive producer must pay a fine to the Board of Animal Health equal to the result of the following equation:

$$(DP)(2 \text{ days})(\$3.00)-(PR)$$

However, if the result is less than \$5.00 then the fine is \$5.00.

(B) The positive producer must, in conjunction with his or her veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the Board of Animal Health-Office of the State Veterinarian within 30 days of the drug residue violation. Failure to complete the Protocol and submit proof of completion within 30 days will result in action to suspend the producer's permit.

(ii) The following is imposed for a second positive test for drug residues within a twelve (12) month period:

(A) The positive producer must pay a fine to the Board of

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Animal Health equal to the result of the following equation:

$(DP)(4 \text{ days})(\$3.00)$

However, if the result is less than \$5.00 then the fine is \$5.00.

(B) The positive producer must, in conjunction with his or her veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the Board of Animal Health-Office of the State Veterinarian within 30 days of the drug residue violation. Failure to complete the Protocol and provide proof of completion will result in action to suspend the producer's permit.

(C) The producer must attend a producer education program or meeting designated by the state veterinarian. The producer is responsible for paying registration and material fees and other costs associated with attending the education program or meeting. The producer must provide proof of attendance to the state veterinarian within ten days of completion of the program or meeting.

(iii) The third positive test result for drug residues within a twelve (12) month period shall result in the following:

(A) The board revoking a producer's Grade A permit if the producer has one;

(B) The sanctions for a second offense set forth in section (b) are imposed;

(C) The producer must submit to the state veterinarian a set of written procedures that he or she will follow to prevent future drug residue violations. The procedures must be submitted with the proof of completion required in section (b) and must be specific, practical, and reasonably likely to lessen the possibility of a drug residue violation when followed by the producer.

(D) After a producer's Grade A permit is revoked for a third offense violation under this statute, he or she shall not receive a new Grade A permit for a revocation period of thirty (30) days from the date of the revocation. After the revocation period, the state veterinarian must issue a conditional Grade A permit to a producer that has applied for a permit if the following requirements are met;

(i) The producer has met all of the requirements of this statute at the time of application, and

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(ii) The producer meets all other requirements of the board for obtaining a Grade A permit.

The permit will be issued on the condition that all of the requirements of this statute must be completed within the time frames set forth in this statute. A permit issued under this subdivision automatically becomes unconditional after the producer fully complies with all of the provisions of this statute.

(iv) For each drug residue violation in a twelve (12) month period in excess of three (3) the producer is subject to the penalties for a third offense in subdivision (iii) are imposed, but for Grade A producers the revocation period will begin on the date his or her permit is revoked and run for a period equal to the length of the revocation period imposed after the producer's last drug residue violation times two. For example, the revocation period for a fourth offense in a twelve (12) month period is sixty (60) days and for a fifth offense the revocation period is one hundred twenty (120) days.

(f) The state veterinarian may, by special permit, allow a producer that objects to the imposition of a fine to dump two (2) days of milk production on a first offense and four (4) days of milk production on the second or third offense instead of paying a monetary fine where payment of a fine would impose undue hardship on a producer. The state veterinarian may set the conditions under which the milk is to be dumped and may require documentation from the producer showing the circumstances under which the milk was dumped."

Page 3, line 39, delete "(d)" and insert "(c)".

(Reference is to Senate Bill 369 as printed January 23, 1998.)

JACKMAN

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 369, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the amendment made on motion of Senator Jackman adopted February 2, 1998.

Page 3, delete lines 25 through 41, begin a new paragraph and insert:

"SECTION 5. IC 15-2.1-23-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 6.5. (a) The following definitions apply throughout this section:**

(1) "DP" or "daily production" means the amount of milk, measured by hundred weight, produced by the positive producer in one (1) day, measured on the day in which the drug residue violation occurred.

(2) "PR" or "producer reimbursement" means an amount assessed against the positive producer to reimburse others for milk contaminated by the positive producer's contaminated milk, not including the value of the positive producer's contaminated milk for which he or she was not paid.

(3) "Revocation period" means the period after a Grade A producer's permit is revoked under this section that the producer may not apply for a Grade A permit.

(b) A penalty established under this section may not be more severe than the penalty standard for drug residue violations adopted by the National Conference on Interstate Milk Shipments in its Pasteurized Milk Ordinance adopted in accordance with the National Conference's Memorandum of Understanding with the United States Department of Health and Human Services, Food and Drug Administration. The penalty imposed may not exceed one thousand dollars (\$1,000) for a first offense or two thousand dollars (\$2,000) for a subsequent offense.

(c) The board may impose a civil penalty for violations of laws that prohibit drug residues in milk and milk products as described in this section.

(d) Milk shall be screened for drug residue violations as follows:

(1) Except as provided in subdivision (2), milk shall be screened for drug residues under Appendix N of the Pasteurized Milk Ordinance (345 IAC 8-3-1).

(2) Milk from manufacturing grade dairy farms shall be

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tested for drug residues under 345 IAC 8-2-3.

(3) All milk that tests positive for drug residues must be disposed of in a manner that removes it from the human and animal food chain or that acceptably reconditions the milk under United States Health and Human Services - Food and Drug Administration compliance policy guidelines. In all cases of drug residue violations, a producer may not resume shipping milk until a drug test conducted by a certified laboratory shows the producer's milk is negative for drug residues and the test results are reported to the office of the state veterinarian.

(4) All positive drug residue test results must be called into the office of the state veterinarian immediately, and a written report of the test results must be faxed or delivered to the office of the state veterinarian within twenty-four (24) hours of the test. The producer whose milk tested positive must be notified of the positive drug residue test immediately. The company that conducted the test is responsible for the reporting requirements in this subdivision.

(5) A producer whose milk tests positive for drug residues shall pay a civil penalty and participate in drug residue education activities as follows:

(A) The following is imposed on a producer for the first positive test for drug residues within a twelve (12) month period:

(i) The positive producer must pay a civil penalty to the board equal to the result of the following equation:

(DP times two (2) days times three dollars (\$3)) minus PR.

However, if the result is less than five dollars (\$5) then the civil penalty is five dollars (\$5).

(ii) The positive producer must, in conjunction with the producer's veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the board of animal health - office of the state veterinarian within thirty (30) days of the drug residue violation. Failure to complete the Protocol and submit proof of completion within thirty (30) days will result in action to suspend the producer's permit.

(B) The following is imposed for a second positive test for drug residues within a twelve (12) month period:



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(i) The positive producer must pay a civil penalty to the board equal to the result of the following equation:

DP times four (4) days times three dollars (\$3).

However, if the result is less than five dollars (\$5) then the civil penalty is five dollars (\$5).

(ii) The positive producer must, in conjunction with the producer's veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the board of animal health - office of the state veterinarian within thirty (30) days of the drug residue violation. Failure to complete the Protocol and provide proof of completion will result in action to suspend the producer's permit.

(iii) The producer must attend a producer education program or meeting designated by the state veterinarian. The producer is responsible for paying registration and material fees and other costs associated with attending the education program or meeting. The producer must provide proof of attendance to the state veterinarian within ten (10) days of completion of the program or meeting.

(C) The third positive test result for drug residues within a twelve (12) month period shall result in the following:

(i) The board revoking a producer's Grade A permit if the producer has a permit.

(ii) The sanctions for a second offense set forth in clause (B) are imposed.

(iii) The producer must submit to the state veterinarian a set of written procedures that the producer will follow to prevent future drug residue violations. The procedures must be submitted with the proof of completion required in clause (B) and must be specific, practical, and reasonably likely to lessen the possibility of a drug residue violation when followed by the producer.

(iv) After a producer's Grade A permit is revoked for a third offense violation under this statute, the producer may not receive a new Grade A permit for a revocation period of thirty (30) days from the date of the revocation. After the revocation period, the state veterinarian must issue a conditional Grade A permit to a producer that has applied for a permit if the producer has met all of

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the requirements of this section at the time of application and the producer meets all other requirements of the board for obtaining a Grade A permit. The permit must be issued on the condition that all of the requirements of this section must be completed within the time set forth in this section. A permit issued under this item automatically becomes unconditional after the producer fully complies with all of the provisions of this section.

(D) For each drug residue violation in a twelve (12) month period in excess of three (3) the producer is subject to the penalties for a third offense in clause (C) are imposed, but for Grade A producers the revocation period will begin on the date the producer's permit is revoked and run for a period equal to two (2) times the length of the revocation period imposed after the producer's last drug residue violation.

(e) The state veterinarian may, by special permit, allow a producer that objects to the imposition of a civil penalty to dump two (2) days of milk production on a first offense and four (4) days of milk production on the second or third offense instead of paying a civil penalty if payment of a civil penalty would impose undue hardship on a producer. The state veterinarian may set the conditions under which the milk is to be dumped and may require documentation from the producer showing the circumstances under which the milk was dumped.

(f) Civil penalties collected under this section shall be deposited in the dairy drug residue abatement fund established under section 17 of this chapter."

Page 4, after line 15, begin a new paragraph and insert:

"SECTION 7. IC 26-3-7-2, AS AMENDED BY P.L.125-1997, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. The following definitions apply throughout this chapter:

- (1) "Agency" refers to the Indiana grain buyers and warehouse licensing agency established under section 1 of this chapter.
- (2) "Anniversary date" means the date that is ninety (90) calendar days after the fiscal year end of a business licensed under this chapter.
- (3) "Bin" means a bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.
- (4) "Buyer-warehouse" means a person that operates both as a warehouse licensed under this chapter and as a grain buyer.



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- (5) "Claimant" means a person that is unable to secure satisfaction of the financial obligations due from a licensee under this chapter for grain that has been delivered to the licensee for sale or for storage under a bailment.
- (6) "Deferred pricing" 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) within ten (10) days of receipt.
- (7) "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.
- (8) "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.
- (9) "Facility" means a location or one (1) of several locations in Indiana that are operated as a warehouse or by a grain buyer.
- (10) "Failure" means any of the following:
- (A) The inability of a licensee to financially satisfy 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.
- (11) "Grain" means corn, wheat, oats, barley, rye, sorghum, soybeans, oil seeds, **and other agricultural commodities as approved by the agency and includes grain grown for seed use, but does not including include** canning crops for processing. **As used in this subdivision, "corn" includes corn for all uses, including popcorn, but not including sweet corn and flint corn.**
- (12) "Grain assets" means any of the following:

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(A) All grain owned or stored by a licensee, including grain that:

- (i) is in transit following shipment by a licensee; and
- (ii) has not been paid for.

(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.

(E) Any other unencumbered funds, property, or equity in assets of the licensee.

(13) "Grain bank grain" means grain owned by a depositor for use in the formulation of feed and stored by the warehouse to be returned to the depositor on demand.

(14) "Grain buyer" means a person who is engaged in the business of buying grain from producers. The term does not include a buyer of grain who:

- (A) buys less than fifty thousand (50,000) bushels of grain annually; or
- (B) buys grain for the sole purpose of feeding the person's own livestock or poultry, if:
 - (i) the person derives a major portion of the person's income from selling that livestock or poultry; and
 - (ii) the person does not offer storage, deferred pricing, delayed payment, or contracts or other instruments that are linked to the commodity futures or commodity options market.

(15) "Grain standards act" means the United States Grain

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Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71-87 as amended).

(16) "License" means a license issued under this chapter.

(17) "Official grain standards of the United States" means the standards of quality or condition for grain, fixed and established by the secretary of agriculture under the grain standards act.

(18) "Person" means an individual, partnership, corporation, association, or other form of business enterprise.

(19) "Receipt" means a warehouse receipt issued by a warehouse licensed under this chapter.

(20) "Ticket" means a scale weight ticket, a load slip, or other evidence, other than a receipt, given to a depositor upon initial delivery of grain to a facility.

(21) "Warehouse act" means the United States Warehouse Act, approved August 11, 1916, (39 Stat. 486; 7 U.S.C. 241-273 as amended).

(22) "Warehouse" means a person that operates a 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 8. IC 26-3-7-4, AS AMENDED BY P.L.125-1997, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A person may not operate a warehouse or conduct business as a grain buyer or buyer-warehouse without first having obtained the appropriate license from the agency, nor may a person continue to operate a warehouse or conduct business as a grain buyer or buyer-warehouse after the person's license has been revoked or suspended, except as provided in section 18 of this chapter.

(b) All facilities in Indiana that an applicant for a license uses to store or handle grain must qualify for a license and be licensed under this chapter before the applicant may operate a warehouse or conduct business as a grain buyer in Indiana. An applicant may not be licensed unless all of the applicant's facilities qualify for a license under this chapter. An applicant for a license must apply to the agency for a license that covers all facilities operated by the applicant for the storage or handling of grain in Indiana.

(c) If a licensee acquires an additional grain storage or handling facility in Indiana, the licensee shall promptly submit to the agency an amended application for licensure. A licensee shall promptly notify the agency of a material change to the licensee's operations, such as expansion of the amount of storage being used in the licensee's existing facilities or change of ownership of a facility, and shall provide the



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director with additional information the director may require. A licensee shall obtain the approval of the director before making use of increased storage or handling capacity.

(d) A licensee that acquires an additional grain storage or handling facility that is required to be licensed shall not use the facility for the storage or handling of grain until it qualifies for a license and is licensed as provided in this chapter. If a licensed grain storage or handling facility that a licensee operates in Indiana becomes ineligible for a license at any time for any reason, it shall not be used for the storage or handling of grain until the condition making it ineligible is removed.

(e) A licensee shall maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets represented by the aggregate of the following:

- (1) Company owned grain.
- (2) Cash on hand.
- (3) Cash held on account in federally or state licensed financial institutions or lending institutions of the Federal Farm Credit Administration.
- (4) Investments held in time accounts with federally or state licensed financial institutions.
- (5) Direct obligations of the United States government.
- (6) Balances in grain margin accounts determined by marking to market.
- (7) Balances due or to become due to the licensee on deferred pricing contracts.
- (8) Marketable securities, including mutual funds.
- (9) Irrevocable letters of credit that are:
 - (A) in favor of the agency;
 - (B) acceptable to the agency; and
 - (C) in addition to any letter of credit deposited with the director to satisfy the bonding requirement of this chapter.
- (10) Deferred pricing contract service charges due or to become due to the licensee.
- (11) Other evidence of proceeds from or of grain that is acceptable to the agency.
- (12) Other assets approved by the director.

(f) A licensee must have the minimum **positive** net worth specified in section 16 of this chapter to hold any license or do business.

SECTION 9. IC 26-3-7-6, AS AMENDED BY P.L.125-1997, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) The agency may issue the following

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licenses:

- (1) A grain bank license may be issued to a person that:
 - (A) stores only grain bank grain;
 - (B) has a storage capacity of not more than fifty thousand (50,000) bushels of grain; and
 - (C) purchases less than fifty thousand (50,000) bushels of grain per year.
- (2) A warehouse license may be issued to a person that:
 - (A) stores grain; and
 - (B) purchases less than fifty thousand (50,000) bushels of grain per year.
- (3) A grain buyer license may be issued to a person that:
 - (A) purchases annually at least fifty thousand (50,000) bushels of grain that are not for the sole purpose of feeding the person's own livestock or poultry;
 - (B) does not store grain **for hire; and or**
 - (C) offers deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with grain purchases.
- (4) A buyer-warehouse license may be issued to a person that operates both as a warehouse and as a grain buyer.
- (5) A seed buyer license may be issued to a person that:**
 - (A) annually purchases at least fifty thousand (50,000) bushels of seed that are not for the sole purpose of feeding the person's own livestock or poultry;**
 - (B) does not store seed for hire; or**
 - (C) offers deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with seed purchases.**

(b) An applicant shall file with the director a separate application for each license or amendment of a license at the times, on the forms, and containing the information that the director prescribes.

(c) An initial application for a license must be accompanied by a license fee as follows:

- (1) For a grain bank or for a warehouse or buyer-warehouse with a storage capacity of less than two hundred fifty thousand (250,000) bushels, two hundred fifty dollars (\$250) for the first facility and fifty dollars (\$50) for each additional facility.
- (2) For a warehouse or a buyer-warehouse with a storage capacity of at least two hundred fifty thousand (250,000) bushels but less than one million (1,000,000) bushels, five hundred dollars (\$500) for the first facility and fifty dollars (\$50) for each additional



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facility.

(3) For a warehouse or a buyer-warehouse with a storage capacity of at least one million (1,000,000) bushels but less than ten million (10,000,000) bushels, seven hundred fifty dollars (\$750) for the first facility and fifty dollars (\$50) for each additional facility.

(4) For a warehouse or buyer-warehouse with a storage capacity greater than ten million (10,000,000) bushels, one thousand dollars (\$1,000) for the first facility and fifty dollars (\$50) for each additional facility.

(5) For a grain buyer, including a grain buyer that is also licensed as a warehouse under the warehouse act, five hundred dollars (\$500) for the first facility and fifty dollars (\$50) for each additional facility.

(6) For a seed buyer, five hundred dollars (\$500) for the first facility and fifty dollars (\$50) for each additional facility.

The director may prorate the initial application fee for a license that is issued at least thirty (30) days after the anniversary date of the licensee's business.

(d) Before the anniversary date of the license, the licensee shall pay an annual license fee in an amount equal to the amount required under subsection (c).

(e) A licensee or an applicant for an initial license must have a minimum current asset to current liability ratio of one (1) to one (1).

(f) An applicant for an initial license shall submit with the person's application a review level financial statement or better financial statement that reflects the applicant's financial situation on a date not more than fifteen (15) months before the date on which the application is submitted. Not more than ninety (90) days after the end of a licensee's fiscal year, the licensee shall file with the agency a current review level financial statement or better financial statement that reflects the licensee's financial situation for the fiscal year just ended. A financial statement submitted under this section must:

- (1) be prepared by an independent accountant certified under IC 25-2.1;
- (2) comply with generally accepted accounting principles; and
- (3) contain:
 - (A) an income statement;
 - (B) a balance sheet;
 - (C) a statement of cash flow;
 - (D) a statement of retained earnings;
 - (E) the preparer's notes; and



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(F) other information the agency may require.

The director may adopt rules under IC 4-22-2 to allow the agency to accept other substantial supporting documents instead of those listed if the director determines that providing the listed documents creates a financial or other hardship on the applicant or licensee.

(g) An application for a license implies a consent to be inspected.

(h) A person that:

(1) does not operate a facility used to store grain;

(2) purchases:

(A) less than fifty thousand (50,000) bushels of grain per year;

or

(B) only grain used for the production of the person's own livestock; and

(3) does not:

~~(A) purchase grain;~~

~~(B) (A) offer deferred pricing;~~

~~(C) (B) offer delayed payment; or~~

~~(D) (C) offer other contracts;~~

that are linked to the commodity futures or commodity options market;

is not required to be licensed.

SECTION 10. IC 26-3-7-10, AS AMENDED BY P.L.125-1997, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. (a) The minimum amount of bond, letter of credit, or cash deposit required from a licensee is as follows:

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

(A) ten thousand dollars (\$10,000); or

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

whichever is greater.

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

(A) ten thousand dollars (\$10,000); or

(B) five-tenths percent (0.5%) of the total amount the grain buyer paid for grain purchased from producers during the grain buyer's fiscal year immediately preceding the date the bond, letter of credit, or cash deposit is due;

whichever is greater.

(3) For a buyer-warehouse:

(A) ten thousand dollars (\$10,000);

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

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(C) five-tenths percent (0.5%) of the total amount the buyer-warehouse paid for grain purchased from producers during the buyer-warehouse's fiscal year immediately preceding the date the bond, letter of credit, or cash deposit is due;

whichever is greater.

(4) For a seed buyer:

(A) ten thousand dollars (\$10,000); or

(B) five-tenths percent (0.5%) of the total amount the seed buyer paid for seed purchased from producers during the seed buyer's fiscal year immediately preceding the date the bond, letter of credit, or cash deposit is due;

whichever is greater.

(b) Except as provided in subsections (g) and (h), the amount of bond, letter of credit, or cash deposit required by this chapter may not exceed one hundred thousand dollars (\$100,000) per license and may not exceed a total of five hundred thousand dollars (\$500,000) per person.

(c) The licensed bushel storage capacity is the maximum number of bushels of grain that the licensee's facility could accommodate as determined by the director or the director's designated representative and shall be increased or reduced in accordance with the amount of space being used for storage from time to time.

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

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

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

(g) If a licensee has a deficiency in the minimum **positive** net worth required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(A)(ii), or

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16(a)(5)(A)(ii), **or 16(a)(6)(B)** of this chapter, the licensee shall add to the amount of bond, letter of credit, or cash deposit determined under subsection (a) an amount equal to the deficiency.

(h) Except as provided in subsections (i) and (j), a licensee may not correct a deficiency in the minimum **positive** net worth required by section 16(a)(1), 16(a)(2)(A), 16(a)(3)(A), 16(a)(4)(A)(i), **or 16(a)(5)(A)(i), or 16(a)(6)(A)** of this chapter by adding to the amount of bond, letter of credit, or cash deposit required by subsection (a).

(i) A buyer-warehouse that has a bushel storage capacity of less than one million (1,000,000) bushels or purchases less than one million (1,000,000) bushels of grain per year may correct a deficiency in minimum net worth by adding to the amount of bond, letter of credit, or cash deposit determined under subsection (a) if the buyer-warehouse has a minimum net worth of at least fifteen thousand dollars (\$15,000), not including the amount added to the bond, letter of credit, or cash deposit.

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

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

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

(m) The director may require additional bonding that the director considers necessary.

SECTION 11. IC 26-3-7-16, AS AMENDED BY P.L.253-1997(ss), SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) A licensee shall have and maintain a current asset to current liability ratio of one to one (1:1) and shall



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maintain, as evidenced by the financial statement required by section 6 of this chapter, the following minimum **positive** net worth:

- (1) For a grain bank, minimum net worth is at least ten thousand dollars (\$10,000).
- (2) For a warehouse, minimum net worth is at least equal to the sum of:
 - (A) fifteen thousand dollars (\$15,000); and
 - (B) ten cents (\$0.10) multiplied by the bushel storage capacity of the warehouse.
- (3) For a grain buyer, minimum net worth is at least **equal to the sum of:**
 - (A) ten thousand dollars (\$10,000); ~~or~~ **and**
 - (B) five cents (\$0.05) multiplied by the total number of bushels of grain purchased by the grain buyer during the grain buyer's fiscal year immediately preceding the date net worth is calculated.

~~whichever is greater.~~

- (4) For a buyer-warehouse that has a bushel storage capacity of less than one million (1,000,000) bushels or purchases less than one million (1,000,000) bushels of grain per year, minimum net worth is at least equal to:
 - (A) the sum of:
 - (i) fifteen thousand dollars (\$15,000); and
 - (ii) ten cents (\$0.10) multiplied by the bushel storage capacity of the buyer-warehouse; or
 - (B) five cents (\$0.05) multiplied by the total number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's fiscal year immediately preceding the date net worth is calculated;

~~whichever is greater.~~

- (5) For a buyer-warehouse that has a bushel storage capacity of at least one million (1,000,000) bushels or purchases at least one million (1,000,000) bushels of grain per year, minimum net worth is at least equal to:
 - (A) the sum of:
 - (i) fifty thousand dollars (\$50,000); and
 - (ii) ten cents (\$0.10) multiplied by the bushel storage capacity of the buyer-warehouse; or
 - (B) five cents (\$0.05) multiplied by the number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's fiscal year immediately preceding the date net worth is calculated;



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whichever is greater.

(6) For a seed buyer, minimum net worth is at least equal to the sum of:

(A) ten thousand dollars (\$10,000); and

(B) five cents (\$0.05) multiplied by the total number of bushels of seed purchased by the seed buyer during the seed buyer's fiscal year immediately preceding the date net worth is calculated.

(b) Except as provided in section 10 of this chapter, if a licensee is required to show additional net worth to comply with this section, the licensee may satisfy the requirement by adding to the amount of the bond, letter of credit, or cash deposit required under section 10 of this chapter an amount equal to the additional net worth required.

(c) The director may adopt rules under IC 4-22-2 to provide that a narrative market appraisal that demonstrates assets sufficient to comply with this section may satisfy the minimum net worth requirement.

SECTION 12. IC 26-4-1-13, AS ADDED BY P.L.250-1995, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. (a) "Grain" means corn, wheat, oats, rye, soybeans, barley, sorghum, oil seeds, and other agricultural commodities as approved by the agency **and includes grain grown for seed use.**

(b) The term does not include canning crops for processing.

(c) As used in this section, "corn" includes all corn for all uses, including popcorn, but excluding sweet corn and flint corn."

and when so amended that said bill do pass.

(Reference is to Senate Bill 369 as printed January 23, 1998, and as amended on motion of Senator Jackman adopted February 2, 1998.)

BISCHOFF, Chair

Committee Vote: yeas 14, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 369 be amended to read as follows:

Page 7, line 27, strike "licensed" and insert "**qualifying for a license or a certificate**".

Page 7, line 34, after "licensee" insert "**or certificate holder**".

Page 7, between lines 32 and 33, begin a new line block indented and insert:

"(5) "Certificate" refers to a certificate issued under this chapter."

Page 7, line 33, strike "(5)" and insert "(6)".

Page 7, line 35, after "licensee" insert "**or certificate holder**".

Page 7, line 37, strike "(6)" and insert "(7)".

Page 7, line 38, after "grain" insert "**or seed**".

Page 7, line 40, after "grain" insert "**or seed**".

Page 7, line 42, strike "(7)" and insert "(8)".

Page 8, line 1, after "grain" insert "**or seed**".

Page 8, line 1, after "licensee" insert "**or certificate holder**".

Page 8, line 5, after "a licensee" insert "**or certificate holder**".

Page 8, line 5, after "grain" insert "**or seed**".

Page 8, line 5, delete ";" and insert "**or certificate holder;**".

Page 8, line 6, after "licensee" insert "**or certificate holder**".

Page 8, line 7, after "grain" insert "**or seed**".

Page 8, line 8, after "A licensee" insert "**or certificate holder**".

Page 8, line 8, after "grain" insert "**or seed**".

Page 8, line 8, after "the licensee" insert "**or certificate holder**".

Page 8, line 10, after "the licensee" insert "**or certificate holder**".

Page 8, line 10, delete "." and insert "**or certificate holder.**".

Page 8, line 11, strike "(8)" and insert "(9)".

Page 8, line 14, strike "(9)" and insert "(10)".

Page 8, line 15, delete "." and insert "**or seed buyer.**".

Page 8, line 16, strike "(10)" and insert "(11)".

Page 8, line 17, after "licensee" insert "**or certificate holder**".

Page 8, line 18, after "licensee's" insert "**or certificate holder's**".

Page 8, line 19, after "license," delete "," and insert "**or certificate holder's certificate,**".

Page 8, line 20, after "licensee" insert "**or certificate holder**".

Page 8, line 21, after "licensee's" insert "**or certificate holder's**".

Page 8, line 23, delete "," and insert "**or certificate holder's certificate,**".

Page 8, line 23, after "licensee" insert "**or certificate holder**".

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- Page 8, line 25, strike "(11)" and insert "(12)".
- Page 8, line 32, strike "(12)" and insert "(13)".
- Page 8, line 33, after "All grain" insert "or seed".
- Page 8, line 33, delete "," and insert "or certificate holder,".
- Page 8, line 33, after "including grain" insert "or seed".
- Page 8, line 35, delete ";" and insert "or certificate holder;".
- Page 8, line 38, after "licensee's" insert "or certificate holder's".
- Page 8, line 38, delete "." and insert "or seed.".
- Page 8, line 41, after "licensee" insert "or certificate holder".
- Page 9, line 1, after "licensee" insert "or certificate holder".
- Page 9, line 3, after "licensee" insert "or certificate holder".
- Page 9, line 6, after "grain" insert "or seed".
- Page 9, line 6, delete "." and insert "or certificate holder.".
- Page 9, line 10, after "licensee" insert "or certificate holder".
- Page 9, line 11, after "licensee" insert "or certificate holder".
- Page 9, line 15, delete "." and insert "or certificate holder.".
- Page 9, line 16, strike "(13)" and insert "(14)".
- Page 9, line 19, strike "(14)" and insert "(15)".
- Page 9, line 21, delete ":" and insert "does any of the following:".
- Page 9, line 22, delete "buys" and insert "Buys".
- Page 9, line 23, delete ";" and insert ".".
- Page 9, line 23, strike "or".
- Page 9, line 24, delete "buys" and insert "Buys".
- Page 9, between lines 31 and 32, begin a new line double block indented and insert:
- "(C) Buys grain predominately to be used as seed."**
- Page 9, line 32, strike "(15)" and insert "(16)".
- Page 9, line 35, strike "(16)" and insert "(17)".
- Page 9, line 36, strike "(17)" and insert "(18)".
- Page 9, line 39, strike "(18)" and insert "(19)".
- Page 9, line 41, strike "(19)" and insert "(20)".
- Page 9, after line 42, begin a new line block indented and insert:
- "(21) "Seed" means grain set apart for the predominate purpose to be used in the production of new plants.**
- (22) "Seed buyer", as used in this chapter only, means a person who is engaged in the business of buying grain from producers or contracting to grow, or contracting to purchase the services of an independent producer for the predominant purpose to grow seed. The term does not include a buyer of seed who:**
- (A) buys less than fifty thousand (50,000) bushels of seed annually; or**

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(B) does not offer storage for hire, deferred pricing, delayed payments or contracts or other instruments that are linked to the commodity futures or commodity options market."

Page 10, line 1, strike "(20)" and insert "**(23)**".

Page 10, line 3, after "grain" insert "**or seed**".

Page 10, line 4, strike "(21)" and insert "**(24)**".

Page 10, line 7, strike "(22)" and insert "**(25)**".

Page 10, between lines 10 and 11, begin a new paragraph and insert:
 "SECTION 8. IC 26-3-7-3, AS AMENDED BY P.L.125-1997,
 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 1998]: 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.
- (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 **or seed** and complaints with respect to the storage, shipping, marketing, and handling of grain **or seed**.
- (6) Inspect a facility, the grain **or seed** stored in a facility, and all property and records pertaining to a facility.
- (7) Determine whether a facility for which a license **or certificate** has been applied for or has been issued is suitable for the proper storage, shipping, and handling of the grain **or seed** that is stored, shipped, or handled, or is expected to be stored, shipped, or handled.
- (8) Require a licensee **or certificate holder** to terminate storage, shipping, marketing, and handling agreements upon revocation of the person's license **or certificate**.
- (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 for a grain buyer to do any of the following:
 - (A) Provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a

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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 Association of Security Dealers.

(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, for the purchase of grain **or seed** from producers, except a flat price contract, to include the following notice immediately above the place on the contract where the seller of the grain **or seed** 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 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) At any time, order an unannounced audit for compliance with this article.

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

(b) The director shall do the following:

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

(2) Require a person who conducts business as a grain **or seed** buyer to first be licensed by **obtain a license or certificate from** the agency.



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(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 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 **or certificate**;

(2) adopt rules; or

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

(d) The director may determine whether geographically separate facilities constitute a single warehouse, **or a grain buyer, or seed a 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."

Page 10, line 14, after "buyer" insert ", **seed buyer**,".

Page 10, line 15, after "license" insert "**or certificate**".

Page 10, line 17, after "buyer" insert ", **seed buyer**,".

Page 10, line 17, after "license" insert "**or certificate**".

Page 10, line 19, after "license" insert "**or certificate**".

Page 10, line 20, after "grain" insert "**or seed**".

Page 10, line 20, after "for" insert "**and obtain**".

Page 10, line 20, strike "and be licensed" and insert "**or certificate**".

Page 10, line 22, after "buyer" insert "**or seed buyer**".

Page 10, line 22, strike "licensed" and insert "**issued a license or a certificate**".

Page 10, line 23, after "license" insert "**or certificate**".

Page 10, line 24, after "license" insert "**or certificate**".

Page 10, line 25, after "license" insert "**or certificate**".

Page 10, line 26, after "grain" insert "**or seed**".

Page 10, line 27, after "licensee" insert "**or certificate holder**".

Page 10, line 27, after "grain" insert "**or seed**".



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Page 10, line 28, after "licensee" insert "**or certificate holder**".
 Page 10, line 29, delete "." and insert "**or certification.**".
 Page 10, line 29, after "licensee" insert "**or certificate holder**".
 Page 10, line 30, after "licensee's" insert "**or certificate holder's**".
 Page 10, line 31, after "licensee's" insert "**or certificate holder's**".
 Page 10, line 34, after "licensee" insert "**or certificate holder**".
 Page 10, line 36, after "licensee" insert "**or certificate holder**".
 Page 10, line 37, after "licensed" insert "**or have a certificate**".
 Page 10, line 38, after "grain" insert "**or seed**".
 Page 10, line 38, after "for" insert "**and is issued**".
 Page 10, line 38, strike "and is".
 Page 10, line 39, strike "licensed" and insert "**or certificate**".
 Page 10, line 39, after "licensed" insert "**or certified**".
 Page 10, line 39, after "grain" insert "**or seed**".
 Page 10, line 40, after "licensee" insert "**or certificate holder**".
 Page 10, line 41, after "license" insert "**or certificate**".
 Page 10, line 42, after "grain" insert "**or seed**".
 Page 11, line 2, after "licensee" insert "**or certificate holder**".
 Page 11, line 3, after "grain" insert "**or seed**".
 Page 11, line 5, delete "." and insert "**or seed.**".
 Page 11, line 15, after "licensee" insert "**or certificate holder**".
 Page 11, line 24, delete "." and insert "**or certificate holder.**".
 Page 11, line 25, after "grain" insert "**or seed**".
 Page 11, line 28, after "licensee" insert "**or certificate holder**".
 Page 11, line 29, after "license" insert "**or certificate**".
 Page 11, line 33, delete ":" and insert "**or certificates:**".
 Page 12, line 12, delete "license" and insert "**certificate**".
 Page 12, line 21, after "each license" insert "**or certificate**".
 Page 12, line 21, after "a license" insert "**or certificate**".
 Page 12, line 23, after "license" insert "**or certificate**".
 Page 12, line 24, strike "license".
 Page 13, line 7, after "license" insert "**or certificate**".
 Page 13, line 9, after "licensee's" insert "**or certificate holder's**".
 Page 13, line 10, delete "," and insert "**or certificate,**".
 Page 13, line 10, after "licensee" insert "**or certificate holder**".
 Page 13, line 11, strike "license".
 Page 13, line 13, after "licensee" insert "**or certificate holder**".
 Page 13, line 13, after "license" insert "**or certificate**".
 Page 13, line 14, delete "." and insert "**or better.**".
 Page 13, line 15, after "license" insert "**or certificate**".
 Page 13, line 20, after "licensee's" insert "**or certificate holder's**".
 Page 13, line 20, after "licensee" insert "**or certificate holder**".

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Page 13, line 22, after "licensee's" insert "**or certificate holder's**".

Page 13, line 37, after "applicant" insert ",".

Page 13, line 37, after "applicant" strike "or".

Page 13, line 37, delete "." and insert "**or certificate holder.**".

Page 14, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 11. IC 26-3-7-6.5, AS AMENDED BY P.L.125-1997, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6.5. Unless in accordance with a judicial order, the director, the agency, its counsel, auditors, or its other employees or agents shall not divulge any 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 or to any other legal representative of the state or federal government otherwise empowered to see or review the information. 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, **seed buyer**, or buyer-warehouse that does not identify the warehouse, grain buyer, **seed buyer** or buyer-warehouse to which the information applies.

SECTION 12. IC 26-3-7-7, AS AMENDED BY P.L.125-1997, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The director may issue or amend a license **or certificate** after the director has:

(1) received and approved the required information and documentation; and

(2) determined that:

(A) the facility or facilities covered by the application are suitable for the proper storage or handling of the grain **or seed** intended to be stored or handled in the facility or facilities; and

(B) the applicant has complied with this chapter and the rules adopted under this chapter.

(b) A person may not represent that the person is licensed **or holds a certificate** under this chapter, and may not use a name or description that conveys the impression that the person is licensed, **or holds a certificate** in a receipt or otherwise, unless the person holds an unsuspended and unrevoked license **or certificate** to conduct the business indicated by the license **or certificate**.

(c) An applicant for a license **or certificate** under this chapter must show that the applicant:

(1) has a good business reputation;

(2) has not been involved in improper manipulation of books and records or other improper business practice;



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- (3) has the qualifications and background essential for the conduct of the business to be licensed **or issued a certificate**;
- (4) employs management and principal officers that have suitable business reputations, background, and qualifications to perform their duties;
- (5) has not been found guilty of a crime that would affect the licensee's **or certificate holder's** ability to conduct business with integrity; and
- (6) does not employ an officer, director, partner, or manager that has been found guilty of a crime that would affect the licensee's **or certificate holder's** ability to conduct business with integrity.

SECTION 13. IC 26-3-7-8, AS AMENDED BY P.L.125-1997, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. Upon receipt of an application for a permanent license **or certificate**, the director may issue a temporary license **or certificate** to the applicant for a reasonable time, not to exceed ninety (90) days, as the director deems necessary or advisable to enable the applicant to comply with the further requirements for obtaining a license **or certificate** under this chapter. A temporary license **or certificate** entitles the temporary licensee **or certificate holder** to the same rights and subjects the temporary licensee **or certificate holder** to the same duties as if the temporary licensee **or certificate holder** had a permanent license **or certificate**.

SECTION 14. IC 26-3-7-8.5, AS ADDED BY P.L.125-1997, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8.5. If the ownership of a facility or business ~~licensed holding a license or a certificate~~ under this chapter passes to a successor owner, the obligations under this chapter of the original licensee **or certificate holder** do not cease until the successor owner ~~is properly licensed~~ **has been issued a license or a certificate** and has executed a successor's agreement with the agency.

SECTION 15. IC 26-3-7-9, AS AMENDED BY P.L.125-1997, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. (a) Each applicant for a license **or certificate** under this chapter shall, as a condition of ~~licensure~~, **issuance of the license or certificate** file or have on file with the director:

- (1) a cash deposit;
- (2) an irrevocable letter of credit; or
- (3) a bond;

as provided in section 10 of this chapter.

(b) A bond filed under this chapter shall:

- (1) be conditioned upon the faithful performance of all obligations

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of the licensee **or certificate holder** under this chapter and the rules adopted under this chapter from the effective date of the bond until the earlier of the date the license **or certificate** is revoked or the bond is canceled as provided in this chapter; and (2) be further conditioned upon the faithful performance of all obligations from the effective date of the bond and thereafter, regardless of whether the licensee's **or certificate holder's** facility or facilities exist on the effective date of the bond or are thereafter assumed prior to the date the licensee's license **or certificate holder's certificate** is revoked or the bond is canceled as provided in this chapter.

(c) The bond must remain in effect during a violation, a temporary suspension of the licensee's license **or certificate holder's certificate**, or a period during which the licensee **or certificate holder** is subject to a cease and desist order."

Page 14, line 15, after "licensee" insert "**or certificate holder**".

Page 15, line 6, after "license" insert "**or certificate**".

Page 15, line 9, after "capacity" insert "**of a licensee or certificate holder**".

Page 15, line 10, after "grain" insert "**or seed**".

Page 15, line 10, after "licensee's" insert "**or certificate holder's**".

Page 15, line 20, strike "licensee's".

Page 15, line 20, delete "." and insert "**or certificate.**".

Page 15, line 23, after "licensee" insert "**or certificate holder**".

Page 15, line 24, after "licensee's" insert "**or certificate holder's**".

Page 15, line 26, strike "is licensed" and insert "**has received a license or certificate**".

Page 15, line 26, after "licenses" insert "**or certificates**".

Page 15, line 31, after "licensee" insert "**or certificate holder**".

Page 15, line 33, after "licensee" insert "**or certificate holder**".

Page 15, line 36, after "licensee" insert "**or certificate holder**".

Page 16, line 22, after "licensee's" insert "**or certificate holder's**".

Page 16, line 26, after "licensee" insert "**or certificate holder**".

Page 16, between lines 28 and 29, begin a new paragraph and insert:
 "SECTION 17. IC 26-3-7-12, AS AMENDED BY P.L.125-1997, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 12. (a) Each applicant for a license **or certificate** under this chapter shall, as a condition to the granting of the license **or certificate**, file or have on file a certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in Indiana insuring in the name of the applicant all grain **or seed** that is or may be in the licensee's **or**



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certificate holder's facilities for its full market value against loss by fire, internal explosion, lightning, and windstorm.

(b) In case fire, internal explosion, lightning, or wind-storm destroys or damages any grain **or seed** in a **licensed facility of a licensee or certificate holder**, the licensee **or certificate holder** shall, upon demand by the depositor and upon being presented with the receipt or other evidence of ownership, make settlement, after deducting the licensee's **or certificate holder's** charges and advances, at the market value of the grain **or seed** based on the value at the average price paid for grain **or seed** of the same grade and quality on the date of the loss at the location of the facility. If a settlement is not made within sixty (60) days from the date of demand, the depositor is entitled to seek recovery from the insurance company.

SECTION 18. IC 26-3-7-13, AS AMENDED BY P.L.125-1997, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. Whenever the director determines that a previously approved bond, letter of credit, cash deposit, or previously approved insurance is insufficient, the director shall require an additional bond, letter of credit, cash deposit, or insurance to be given by the licensee **or certificate holder** in the form and upon the terms and conditions required by this chapter and rules adopted under this chapter.

SECTION 19. IC 26-3-7-14, AS AMENDED BY P.L.125-1997, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 14. (a) A licensee **or certificate holder** may not cancel an approved bond or approved insurance unless the director has given prior written approval for the cancellation and has received a substitute cash deposit or has approved a substitute bond or insurance. The surety on a bond may cancel a bond required by this chapter only after the expiration of ninety (90) days from the date the surety mailed a notice of intent to cancel, by registered or certified mail, to the director. An insurance company may cancel insurance required by this chapter only after the expiration of a thirty (30) day period from the mailing, by certified mail, of notice of intent to cancel, to the director. The surety and the insurance company shall, at the time of giving notice to the director, send a copy of the notice to the licensee **or certificate holder**.

(b) Notwithstanding any other provision of this chapter, the license **or certificate** of a licensee **or certificate holder** shall automatically be suspended for failure to:

- (1) file a new bond, letter of credit, or cash deposit within the ninety (90) day period as provided in this section;

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- (2) file new evidence of insurance within the thirty (30) day period as provided in this section; or
- (3) maintain at all times a bond or cash deposit and insurance as provided in this chapter.

The suspension shall continue until the licensee **or certificate holder** complies with the bonding and insurance requirements of this chapter.

SECTION 20. IC 26-3-7-15, AS AMENDED BY P.L.125-1997, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 15. (a) A licensee **or certificate holder** shall maintain inventories of sufficient quantity and grade of grain **or seed** to meet the licensee's **or certificate holder's** storage obligations.

(b) Inventories representing grain **or seed** evidenced by outstanding warehouse receipts shall be maintained in the warehouse shown on the warehouse receipt issued by the warehouse in which the grain **or seed** was originally deposited.

(c) Inventories representing storage obligations other than those evidenced by warehouse receipts may be represented by:

- (1) receipts for grain **or seed** stored in a facility **licensed that holds a license or a certificate** under this chapter;
- (2) receipts in a warehouse licensed and bonded under the warehouse act; or
- (3) other warehouse receipts or tickets as approved by the director."

Page 16, line 31, after "licensee" insert "**or certificate holder**".

Page 17, line 41, after "licensee" insert "**or certificate holder**".

Page 18, line 1, after "licensee" insert "**or certificate holder**".

Page 18, between lines 6 and 7, begin a new paragraph and insert: "SECTION 22. IC 26-3-7-16.5, AS AMENDED BY P.L.125-1997, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16.5. (a) Upon learning of the possibility that a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an on-premise inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.

(b) If it is determined that a shortage may exist, the director or ~~his~~ **the director's** designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee's **or certificate holder's** books and records and the grain **or seed** on hand. Only the licensee **or certificate holder**, the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and any grain **or seed** depositor who has made a claim



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or complaint to the agency in conjunction with the shortage shall be considered as interested parties for the purposes of that hearing, and each shall be given notice of the hearing. At the hearing, the director or the director's designated representative shall determine whether there appears to be a reasonable probability that a shortage exists. If it is determined that a reasonable probability exists and that the bond or letter of credit proceeds or the cash deposit should be distributed, a preliminary determination shall be entered to the effect that the licensee **or certificate holder** has failed to meet its obligations under this chapter or the rules adopted under this chapter. At the hearing, the director or the director's designated representative may order that all proceeds from grain **or seed** sales are to be held in the form in which they are received and to be kept separate from all other funds held by the licensee **or certificate holder**. The order may also provide for informal conferences between agency representatives and persons who have or who appear to have grain **or seed** deposited with the licensee **or certificate holder**. The surety company shall be permitted to participate in those conferences.

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

(d) Following the hearing on claims, the director shall make a



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determination as to the total proven storage obligation of the claimants and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims shall be proven claimants. In arriving at that loss, in accordance with section 19 of this chapter, the director shall apply all grain **or seed** on hand or its identifiable proceeds to meet the licensee's **or certificate holder's** obligations to grain **or seed** depositors of grain **or seed** of that type. Initial determinations of loss shall be made on a bushel loss basis. Grain on hand, or identifiable proceeds, shall reduce the number of bushels 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 **or seed** as of that date, shall treat all outstanding grain **or seed** storage obligations not covered by grain **or seed** 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 **or seed** of a specific type on the premises of a licensee **or certificate holder** must first be applied to meet the licensee's **or certificate holder's** storage obligations with respect to that type of grain **or seed**. If there is insufficient grain **or seed** of a specific type on hand to meet all storage obligations with respect to that type of grain **or seed**, the grain **or seed** that is present shall be prorated in accordance with the procedures described in this section and section 16.8 of this chapter.

(e) 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.

(f) 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.

(g) 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.

(h) The findings of the director shall be final, conclusive, and

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binding on all parties.

(i) 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.

(j) A claim of a licensee **or certificate holder** for stored grain **or seed** may not be honored until the proven claims of all other claimants arising from the purchase, storage, and handling of the grain **or seed** have been paid in full.

SECTION 23. IC 26-3-7-16.6, AS AMENDED BY P.L.125-1997, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16.6. The procedures established by section 16.5 of this chapter also apply when the director learns or has reason to believe that a person is doing business as a grain buyer, **a seed buyer**, operating a warehouse, or acting as a buyer-warehouse without the license **or certificate** required by this chapter.

SECTION 24. IC 26-3-7-16.8, AS ADDED BY P.L.125-1997, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16.8. (a) A lien against all grain **or seed** assets of a licensee **or certificate holder** attaches in favor of the following:

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

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

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

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

(B) the licensee **or certificate holder** failed less than twenty-one (21) days after the surrender of the receipt.

(4) A claimant that has other written evidence of a sale to the licensee **or certificate holder** of grain **or seed** for which the claimant has not been fully paid.

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

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

(2) the commencement of the storage obligation; or

(3) the advancement of funds by a lender.

(c) A lien under this section terminates when the licensee **or certificate holder** discharges the claim.

(d) If a licensee **or certificate holder** fails, the lien that attaches

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under this section is assigned to the agency by operation of this section. If a failed licensee **or certificate holder** is liquidated, a lien under this section continues to attach as a claim against the assets or proceeds of the assets of the licensee **or certificate holder** that are received or liquidated by the agency.

(e) Except as provided in subsection (g), if a licensee **or certificate holder** fails, the power to enforce the lien on the licensee's **or certificate holder's** grain **or seed** assets transfers by operation of this section to the director and rests exclusively with the director who shall allocate and prorate the proceeds of the grain **or seed** assets as provided in subsection (f).

(f) The priority of a lien that attaches under this section is not determined by the date on which the claim arose. If a licensee fails, the director shall enforce lien claims and allocate grain **or seed** assets and the proceeds of grain **or seed** assets of the licensee in the following order of priority:

- (1) First priority is assigned to the following:
 - (A) A lender or other claimant that has a receipt for grain **or seed** owned or stored by the licensee.
 - (B) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.
 - (C) A claimant that surrendered a receipt as part of a grain **or seed** sales transaction if:
 - (i) the claimant was not fully paid for the grain **or seed** sold; and
 - (ii) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

If there are insufficient grain **or seed** 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 **or seed**, such as a ticket, a deferred pricing agreement, or similar grain **or seed** delivery contract, and who completed delivery less than thirty (30) days before the licensee's **or certificate holder'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 **or seed** to the failed licensee **or certificate holder**. Claimants under this subdivision share pro rata in the distribution of the remaining grain **or seed** assets.

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(g) If a claimant under this section brings an action to recover grain **or seed** 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.

SECTION 25. IC 26-3-7-17.1, AS AMENDED BY P.L.125-1997, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17.1. (a) Whenever the director, as a result of an inspection or otherwise, has reasonable cause to believe that a person to which this chapter is or may be applicable:

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

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

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

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

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

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(d) Upon a determination, after a hearing held by the director or the director's designated representative, that a person is acting as described in subsection (a), the director may suspend, revoke, or deny a license **or certificate**. If the director suspends, revokes, or denies a license **or certificate**, the director 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 **or certificate holder** 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 **or certificate** temporarily without a hearing for a period not to exceed twenty (20) days. When a license **or a certificate** 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 26. IC 26-3-7-17.5, AS ADDED BY P.L.125-1997, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17.5. (a) Whenever ~~the a~~ license of a licensee **or a certificate** is suspended or revoked, the director may:

- (1) for each facility operated by the licensee **or certificate holder** publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and
- (2) cause notice of the suspension or revocation to be posted at the facilities covered by the license **or certificate**.

(b) Whenever an application for ~~license~~ **a license or a certificate** under this chapter is denied, the director may:

- (1) for each facility operated by the applicant, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and
- (2) cause notice of the denial to be posted at the applicant's facilities.

(c) A notice posted under this section may not be removed without the written permission of the director.

(d) The director shall adopt rules under IC 4-22-2 to determine the content of the notices required by this section.

SECTION 27. IC 26-3-7-18, AS AMENDED BY P.L.125-1997, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 18. (a) When a license **or certificate** is revoked, the licensee **or certificate holder** shall terminate in the manner prescribed by the director all arrangements covering the grain **or seed** in the facility covered by the license **or certificate**, but shall be permitted, under the direction and supervision of the director or the



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director's designated representative, to deliver grain **or seed** previously received.

(b) During any suspension of a license **or certificate**, the licensee **or certificate holder** may, under the direction and supervision of the director or the director's designated representative, operate the facility, but shall not incur any additional obligations to producers.

SECTION 28. IC 26-3-7-19, AS AMENDED BY P.L.125-1997, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. (a) A licensee **or certificate holder** shall issue a receipt or ticket for grain **or seed** received. Grain **or seed** received by a licensee **or certificate holder** shall be credited to the depositor on the books of the licensee **or certificate holder** within seven (7) days from the date of its delivery. If a ticket is issued on delivery of the grain **or seed** for storage, a receipt shall be issued on demand, but no receipt shall be issued on grain bank grain.

(b) The licensee **or certificate holder** is a bailee with respect to all stored grain **or seed**. The person whose name appears on a receipt or a ticket has title to the stored grain **or seed** evidenced by the receipt or ticket.

SECTION 29. IC 26-3-7-20, AS AMENDED BY P.L.125-1997, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 20. A licensee **or certificate holder** may issue a receipt for grain **or seed** owned by the licensee **or certificate holder** in whole or in part, located in the licensee's **or certificate holder's** facility. The negotiation, transfer, sale, or pledge of the receipt shall not be defeated by reason of the licensee's **or certificate holder's** ownership.

SECTION 30. IC 26-3-7-22, AS AMENDED BY P.L.125-1997, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 22. Different lots of the same type of grain **or seed** delivered to a licensee **or certificate holder** may be commingled by type of grain **or seed** unless the receipt or ticket states that the identity of the lot of grain **or seed** is to be preserved.

SECTION 31. IC 26-3-7-24, AS AMENDED BY P.L.125-1997, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 24. While a receipt or ticket issued under this chapter is outstanding and uncanceled by the issuing licensee **or certificate holder** no other receipt or ticket shall be issued for the grain **or seed** or any part of the grain **or seed** that is covered by the receipt or ticket. However, if a receipt or ticket is lost, stolen, or destroyed the owner of the receipt or ticket is entitled to a new receipt that is a duplicate of the missing receipt or a new ticket that is a substitute for



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the missing ticket. The duplicate receipt or substitute ticket entitles the owner to all rights appertaining to the document for which it was issued, and shall state that it is in lieu of the former receipt or ticket and give the number and date of the former receipt or ticket. If the missing document was a negotiable receipt, the issuing licensee **or certificate holder** shall require an indemnity bond of double the market value of the grain **or seed** covered by the missing receipt in a form and with the surety that the director may prescribe to fully protect all rights under the missing receipt.

SECTION 32. IC 26-3-7-25, AS AMENDED BY P.L.125-1997, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 25. Every warehouse receipt issued shall embody within its terms the following:

- (1) The type, grade, and quantity of the grain stored as established by the official grain standards of the United States, unless:
 - (A) the identity of the grain is preserved in a special pile or special bin or otherwise; and
 - (B) a mark identifying the preserved grain appears on the face of the receipt.
- (2) A statement that the receipt is issued subject to the Indiana Grain Buyers and Warehouse Licensing and Bonding Law, IC 26-3-7, and rules adopted under the Indiana Grain Buyers and Warehouse Licensing and Bonding Law.
- (3) A clause that reserves to the licensee **or certificate holder** the right to terminate storage and collect outstanding charges against any lot of grain that remains in storage after June 30 following the date of the receipt.
- (4) A clause that reserves to the licensee **or certificate holder** the right to terminate storage, shipping, and handling arrangements and collect outstanding charges upon the revocation of the licensee's license **or certificate holder's certificate**.
- (5) Other terms and conditions as provided in the Uniform Warehouse Receipts Acts. However, nothing contained in the Uniform Warehouse Receipts Act shall require a receipt issued for grain to specifically state the variety of the grain by name.
- (6) A clause that terminates storage on the date the license held by the licensee **or the certificate held by the certificate holder** when the receipt was issued expires and reserves to the licensee **or certificate holder** the right to collect outstanding charges against any lot of grain **or seed**.
- (7) Other provisions prescribed by the director.

SECTION 33. IC 26-3-7-26, AS AMENDED BY P.L.125-1997,

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SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 26. Every ticket issued shall embody within its terms:

- (1) the name of the licensee **or certificate holder** to whom the grain **or seed** was delivered;
- (2) the date the grain **or seed** was delivered;
- (3) exact information concerning the type, net weight, and grade factors of the grain **or seed** received;
- (4) a statement that the grain **or seed** described in the ticket is to be taken into storage, is being delivered on contract, or is to be sold under other arrangements;
- (5) the name of the owner of the grain **or seed**;
- (6) a statement that tickets marked for storage are non-negotiable receipts; and
- (7) other provisions prescribed by the director.

SECTION 34. IC 26-3-7-28, AS AMENDED BY P.L.125-1997, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 28. A licensee **or certificate holder** shall keep in a place of safety complete and correct records and accounts pertaining to the licensee's **or certificate holder's** grain **or seed** business. The licensee **or certificate holder** shall retain records and accounts for not less than six (6) years from the date of the final settlement of the transaction.

SECTION 35. IC 26-3-7-29, AS AMENDED BY P.L.125-1997, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 29. A licensee **or certificate holder** shall:

- (1) conspicuously display the licensee's license **or certificate holder's certificate** in the licensee's **or certificate holder's** main office and at each facility included under the license **or certificate**;
- (2) conspicuously display in each operational office the approved schedule of charges for services; and
- (3) conspicuously display at each facility all charts and diagrams provided to the facility by the agency.

SECTION 36. IC 26-3-7-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 30. All receipt forms shall be supplied by the director except where the director, in writing, approves the form and gives permission to a warehouseman to have receipts printed. Requests for receipts shall be on forms furnished by the director and shall be accompanied by payment to cover the estimated cost of printing, packaging, and shipping, as determined by the director. Where privately printed, the printer shall furnish the



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director an affidavit showing the amount of the receipts printed, and the serial numbers thereof. All receipts remaining unused shall be recovered by the director or ~~his~~ **the director's** designated representative if the license **or certificate** required by this chapter is terminated or suspended.

SECTION 37. IC 26-3-7-31, AS AMENDED BY P.L.125-1997, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee **or certificate holder** does not have in the licensee's **or certificate holder's** possession sufficient grain **or seed** to cover the outstanding receipts and tickets issued or assumed by the licensee **or certificate holder**, or when a licensee **or certificate holder** refuses to submit the licensee's **or certificate holder's** records or property to lawful inspection, the director may give notice to the licensee **or certificate holder** to do any of the following:

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

(b) If the licensee **or certificate holder** fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's **or certificate holder's** principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with IC 34-1-12 that a receiver should be appointed, upon the request of the licensee **or certificate holder**, the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee **or certificate holder**. If the agency or its representative is appointed, any person interested in an action as described in IC 34-1-12-2 may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's **or certificate holder's** grain **or seed** related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

SECTION 38. IC 26-3-7-32, AS AMENDED BY P.L.125-1997, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 32. (a) The director may apply for, and the courts of this state are vested with jurisdiction to issue, a temporary or



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permanent injunction against the business operation of a licensee **or certificate holder** or the issuance of receipts or tickets without a license **or certificate** and against interference by any person with the director, the director's designated representative, or a receiver appointed under section 31 of this chapter, in the performance of their duties and powers under this chapter.

(b) Upon a determination by the director that there is reasonable cause to believe that a licensee **or certificate holder** is unable to meet the licensee's **or certificate holder's** storage or other grain **or seed** obligations, and that the licensee **or certificate holder** is removing, or the director has reasonable cause to believe that the licensee **or certificate holder** may remove, grain **or seed** from the licensed premises, the director may, under the conditions provided in, and in accordance with, the Indiana Rules of Trial Procedure, seek from the circuit court of the Indiana county in which the licensee **or certificate holder** has the licensee's **or certificate holder's** principal place of business a temporary restraining order preventing the further sale or movement of any grain **or seed** and requiring that proceeds from grain **or seed** sales received after the issuance of the temporary restraining order should be held in the form in which they are received by the licensee **or certificate holder** and kept separate from all other funds held by the licensee **or certificate holder**.

SECTION 39. IC 26-3-7-34, AS AMENDED BY P.L.125-1997, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 34. (a) A person who knowingly or intentionally violates or fails to comply with this chapter commits a Class A misdemeanor. Each day a person violates this chapter constitutes a separate violation.

(b) A person who knowingly or intentionally issues a receipt or ticket, knowing that the grain **or seed** for which the receipt or ticket is issued has not been actually received at the licensed warehouse, commits a Class A misdemeanor. A person who issues a duplicate, or additional negotiable receipt for grain **or seed**, knowing that a former negotiable receipt for the same grain **or seed** or any part of the grain is outstanding and uncanceled, except in the case of a lost, stolen, or destroyed receipt, as provided in section 24 of this chapter, commits a Class A misdemeanor. A person who fraudulently represents, alters, or counterfeits any license **or certificate** provided for in this chapter commits a Class D felony.

(c) Except in case of sale or other disposition of the grain **or seed** in lawful enforcement of the lien on grain **or seed** that attaches under this chapter or on a licensee's **or certificate holder's** lawful termination of



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storage, shipping, or handling agreements, or except as permitted by the rules adopted by the director under IC 4-22-2 to effectuate the purposes of this chapter:

(1) a person who knowingly or intentionally delivers grain **or seed** out of a ~~licensed~~ facility **having a license or certificate**, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of the grain **or seed** is outstanding and uncanceled, without obtaining the possession of the receipt at or before the time of delivery, commits a Class D felony; and

(2) a person who knowingly or intentionally delivers grain **or seed** out of a ~~licensed~~ facility **having a license or a certificate**, knowing that a non-negotiable receipt or ticket is outstanding and uncanceled, without the prior written approval of the person lawfully entitled to delivery under the non-negotiable receipt or ticket and without delivery being shown on the appropriate records of the licensee **or certificate holder** commits a Class D felony.

(d) A person who fraudulently issues a receipt, a ticket, or a weight or grade certificate, knowing that it contains a false statement, or who issues a receipt for grain **or seed** owned solely or jointly by the person and does not state the fact of the person's ownership in the receipt, commits a Class A misdemeanor.

(e) A person who recklessly changes a receipt or ticket subsequent to issuance, except for notation by the licensee **or certificate holder** of partial delivery, commits a Class B misdemeanor.

(f) A person who knowingly or intentionally deposits grain **or seed** to which the person does not have title or upon which there is a lien or mortgage and who accepts for the grain **or seed** a receipt or ticket, without disclosing the lack of title or the existence of the lien or mortgage, commits a Class D felony.

(g) A person commits a Class A misdemeanor who knowingly or intentionally:

(1) engages in the business of being a grain buyer **or a seed buyer** or operates a warehouse without a valid license issued by the director;

(2) engages in the business of being a grain buyer **or a seed buyer** or operates a warehouse without a sufficient cash deposit, letter of credit, or surety bond on file with and in a form approved by the director; or

(3) engages in the business of being a grain buyer **or a seed buyer** or operates a warehouse while in violation of the rules adopted by the director.



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(h) A person commits a Class A misdemeanor who willfully makes or causes to be made a false entry or statement of fact in an application or report filed with the director.

(i) A person who is not in compliance with section 3(a)(11) of this chapter may be subject to a fine imposed by the agency of not more than twenty thousand dollars (\$20,000), or the suspension of the grain buyer's license for not more than five (5) years, or both.

(j) The director may suspend or revoke the license of a licensee **or certificate of a certificate holder** that uses ~~an unlicensed a~~ facility **that does not have a license or a certificate** to store or handle grain **or seed** or commits another violation of this chapter.

SECTION 34. IC 26-3-7-35, AS AMENDED BY P.L.125-1997, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 35. A person licensed **or a holder of a certificate** under the warehouse act must also have a valid grain buyer **or seed buyer** license **or certificate** to do business in Indiana as a grain buyer **or seed buyer**."

Renumber all SECTIONS consecutively.

(Reference is to Engrossed Senate Bill 369 as printed February 16, 1998.)

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