

## CONFERENCE COMMITTEE REPORT DIGEST FOR HB 1159

**Citations Affected:** IC 15-1.5-10-3; IC 26-3-7.

**Synopsis:** Agriculture. Conference committee report for EHB 1159. Provides that the time that an individual appointed to fill a vacancy on the state fair commission or the state fair board is not included in the limitation on the term of office for commission members or board members. Amends the purposes of the center for agricultural science and heritage (the barn) as enacted by SEA 185-1998. 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. (This conference committee report deletes the provisions of the bill relating to establishment of the center for agricultural science and heritage which was enacted by SEA 185-1998 and amends the statute stating the purposes of the center. The report also adds to the bill the provisions relating to the agricultural commodities licensing law.)

**Effective:** July 1, 1998.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1159 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1           Page 2, delete lines 7 through 42, begin a new paragraph and  
2 insert:  
3           "SECTION 3. IC 15-1.5-10-3, AS ADDED BY SEA 185-1998, IS  
4 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:  
5 Sec. 3. (a) The center for agricultural science and heritage (the barn) is  
6 established.  
7           (b) The following are the purposes for which the barn is  
8 established:  
9           (1) To ~~inform the public of~~ **educate the public concerning** the  
10 past, present, and future of American agriculture and rural life.  
11           (2) To educate youth and the general public about American  
12 agriculture and food systems.  
13           (3) To provide educational programming for youth that  
14 complements school curricula, both onsite and in the classroom.  
15           (4) To create a synergy between Indiana's institutions of ~~higher~~  
16 education and agriculture related industries.  
17           (5) To generate economic vitality, convention activity, and  
18 tourism activity for Indiana.  
19           (6) To become a center for agricultural business and thinking, a  
20 clearinghouse of agricultural information, a resource center for  
21 educators and the public, and a repository for agricultural  
22 artifacts and history.  
23           (7) To create a central, prominent partner with whom  
24 agricultural organizations can launch, collaborate on, and  
25 coordinate programs.  
26           (8) To position Indiana as the recognized agricultural center of  
27 the nation.

1 SECTION 4. IC 26-3-7-2, AS AMENDED BY P.L.125-1997,  
 2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 1998]: Sec. 2. The following definitions apply throughout this  
 4 chapter:

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

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

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

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

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

16 ~~(5)~~ **(6) "Claimant" means a person that is unable to secure**  
 17 **satisfaction of the financial obligations due from a licensee or**  
 18 **certificate holder** under this chapter for grain **or seed** that has  
 19 been delivered to the licensee **or certificate holder** for sale or  
 20 for storage under a bailment.

21 ~~(6)~~ **(7) "Deferred pricing" means a purchase by a buyer in which**  
 22 **title to the grain or seed** passes to the buyer and the price to be  
 23 paid to the seller is not determined:

24 (A) at the time the grain **or seed** is received by the buyer; or

25 (B) within ten (10) days of receipt.

26 ~~(7)~~ **(8) "Depositor" means any of the following:**

27 (A) A person that delivers grain **or seed** to a licensee **or**  
 28 **certificate holder** under this chapter for storage or sale.

29 (B) A person that:

30 (i) owns or is the legal holder of a ticket or receipt  
 31 issued by a licensee **or certificate holder** for grain **or**  
 32 **seed** received by the licensee **or certificate holder**;  
 33 and

34 (ii) is the creditor of the issuing licensee **or certificate**  
 35 **holder** for the value of the grain **or seed** received in  
 36 return for the ticket or receipt.

37 (C) A licensee **or certificate holder** that stores grain **or**  
 38 **seed** that the licensee **or certificate holder** owns solely,  
 39 jointly, or in common with others in a warehouse owned or  
 40 controlled by the licensee **or certificate holder** or another  
 41 licensee **or certificate holder**.

42 ~~(8)~~ **(9) "Designated representative" means the person or persons**  
 43 **designated by the director to act instead of the director in**  
 44 **assisting in the administration of this chapter.**

45 ~~(9)~~ **(10) "Facility" means a location or one (1) of several**  
 46 **locations in Indiana that are operated as a warehouse or by a**  
 47 **grain buyer or seed buyer.**

48 ~~(10)~~ **(11) "Failure" means any of the following:**

49 (A) The inability of a licensee **or certificate holder** to  
 50 financially satisfy claimants.

- 1 (B) Public declaration of a licensee's **or certificate holder's**  
 2 insolvency.
- 3 (C) Revocation or suspension of a licensee's license **or**  
 4 **certificate holder's certificate**, if the licensee **or**  
 5 **certificate holder** has outstanding indebtedness owed to  
 6 claimants.
- 7 (D) Nonpayment of a licensee's **or certificate holder's**  
 8 debts in the ordinary course of business, if there is not a  
 9 good faith dispute.
- 10 (E) Voluntary surrender of a licensee's license **or**  
 11 **certificate holder's certificate**, if the licensee **or**  
 12 **certificate holder** has outstanding indebtedness to  
 13 claimants.
- 14 ~~(H)~~ **(12)** "Grain" means corn, wheat, oats, barley, rye, sorghum,  
 15 soybeans, oil seeds, **and other agricultural commodities as**  
 16 **approved by the agency, but does not including include seed**  
 17 **as defined in subdivision (21) and** canning crops for  
 18 processing. **As used in this subdivision, "corn" includes corn**  
 19 **for all uses, including popcorn, but not including sweet corn,**  
 20 **seed corn, and flint corn.**
- 21 ~~(I)~~ **(13)** "Grain assets" means any of the following:
- 22 (A) All grain **or seed** owned or stored by a licensee **or**  
 23 **certificate holder**, including grain **or seed** that:
- 24 (i) is in transit following shipment by a licensee **or**  
 25 **certificate holder**; and
- 26 (ii) has not been paid for.
- 27 (B) All proceeds, due or to become due, from the sale of a  
 28 licensee's **or certificate holder's** grain **or seed**.
- 29 (C) Equity, less any secured financing directly associated  
 30 with the equity, in hedging or speculative margin accounts  
 31 of a licensee **or certificate holder** held by a commodity or  
 32 security exchange, or a dealer representing a commodity or  
 33 security exchange, and any money due the licensee **or**  
 34 **certificate holder** from transactions on the exchange, less  
 35 any secured financing directly associated with the money  
 36 due the licensee **or certificate holder** from the transactions  
 37 on the exchange.
- 38 (D) Any other unencumbered funds, property, or equity in  
 39 funds or property, wherever located, that can be directly  
 40 traced to the sale of grain **or seed** by a licensee **or**  
 41 **certificate holder**. However, funds, property, or equity in  
 42 funds or property may not be considered encumbered  
 43 unless:
- 44 (i) the encumbrance results from valuable  
 45 consideration paid to the licensee **or certificate holder**  
 46 in good faith by a secured party; and
- 47 (ii) the encumbrance did not result from the licensee **or**  
 48 **certificate holder** posting the funds, property, or  
 49 equity in funds or property as additional collateral for  
 50 an antecedent debt.

- 1 (E) Any other unencumbered funds, property, or equity in  
 2 assets of the licensee **or certificate holder.**
- 3 ~~(13)~~ **(14)** "Grain bank grain" means grain owned by a depositor  
 4 for use in the formulation of feed and stored by the warehouse to  
 5 be returned to the depositor on demand.
- 6 ~~(14)~~ **(15)** "Grain buyer" means a person who is engaged in the  
 7 business of buying grain from producers. The term does not  
 8 include a buyer of grain who **does any of the following:**
- 9 (A) Buys less than fifty thousand (50,000) bushels of grain  
 10 annually. ~~or~~
- 11 (B) Buys grain for the sole purpose of feeding the person's  
 12 own livestock or poultry, if:
- 13 (i) the person derives a major portion of the person's  
 14 income from selling that livestock or poultry; and
- 15 (ii) the person does not offer storage, deferred pricing,  
 16 delayed payment, or contracts or other instruments that  
 17 are linked to the commodity futures or commodity  
 18 options market.
- 19 **(C) Buys grain predominantly to be used as seed.**
- 20 ~~(15)~~ **(16)** "Grain standards act" means the United States Grain  
 21 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.  
 22 71-87 as amended).
- 23 ~~(16)~~ **(17)** "License" means a license issued under this chapter.
- 24 ~~(17)~~ **(18)** "Official grain standards of the United States" means  
 25 the standards of quality or condition for grain, fixed and  
 26 established by the secretary of agriculture under the grain  
 27 standards act.
- 28 ~~(18)~~ **(19)** "Person" means an individual, partnership, corporation,  
 29 association, or other form of business enterprise.
- 30 ~~(19)~~ **(20)** "Receipt" means a warehouse receipt issued by a  
 31 warehouse licensed under this chapter.
- 32 **(21) "Seed" means grain set apart for the predominant**  
 33 **purpose to be used in the production of new plants.**
- 34 **(22) "Seed buyer", as used in this chapter only, means a**  
 35 **person who is engaged in the business of buying seed from**  
 36 **producers or contracting to grow, or contracting to purchase**  
 37 **the services of an independent producer for the predominant**  
 38 **purpose to grow seed. The term does not include a buyer of**  
 39 **seed who:**
- 40 **(A) buys less than fifty thousand (50,000) bushels of seed**  
 41 **annually; or**
- 42 **(B) does not offer deferred pricing, delayed payments or**  
 43 **contracts or other instruments that are linked to the**  
 44 **commodity futures or commodity options market.**
- 45 ~~(20)~~ **(23)** "Ticket" means a scale weight ticket, a load slip, or  
 46 other evidence, other than a receipt, given to a depositor upon  
 47 initial delivery of grain **or seed** to a facility.
- 48 ~~(21)~~ **(24)** "Warehouse act" means the United States Warehouse  
 49 Act, approved August 11, 1916, (39 Stat. 486; 7 U.S.C. 241-273  
 50 as amended).
- 51 ~~(22)~~ **(25)** "Warehouse" means a person that operates a facility or

1 group of facilities in which grain is or may be stored for hire or  
2 which is used for grain bank storage and which is operated under  
3 one (1) ownership and run from a single office.

4 SECTION 5. IC 26-3-7-3, AS AMENDED BY P.L.125-1997,  
5 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 1998]: Sec. 3. (a) The director may do the following:

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

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

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

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

17 (5) Investigate the activities required by this chapter including  
18 the storage, shipping, marketing, and handling of grain **or seed**  
19 and complaints with respect to the storage, shipping, marketing,  
20 and handling of grain **or seed**.

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

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

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

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

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

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

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

40 (B) Demonstrate passage of the series 3 examination  
41 administered by the National Association of Security  
42 Dealers.

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

- 1 associated with producer marketing strategies.
- 2 (12) Require all contracts executed after June 30, 1997, for the
- 3 purchase of grain **or seed** from producers, except a flat price
- 4 contract, to include the following notice immediately above the
- 5 place on the contract where the seller of the grain **or seed** must
- 6 sign:
- 7 "NOTICE ) SELLER IS CAUTIONED THAT
- 8 CONTRACTING FOR THE SALE AND DELIVERY OF
- 9 GRAIN INVOLVES RISKS. THESE RISKS MAY
- 10 INCLUDE FUTURE PAYMENTS BY YOU TO
- 11 MAINTAIN THIS CONTRACT, A LOWER SALES
- 12 PRICE, AND OTHER RISKS NOT SPECIFIED.
- 13 COVERAGE UNDER THE INDIANA GRAIN
- 14 INDEMNITY PROGRAM IS LIMITED TO 100% OF A
- 15 LOSS FOR STORED GRAIN AND 80% OF A LOSS FOR
- 16 OTHER COVERED CONTRACTS.
- 17 BE SURE YOU UNDERSTAND THE NATURE OF THIS
- 18 CONTRACT AND THE ASSOCIATED RISKS."
- 19 (13) At any time, order an unannounced audit for compliance
- 20 with this article.
- 21 (14) Adopt rules under IC 4-22-2 to carry out the purposes and
- 22 intent of this chapter.
- 23 (b) The director shall do the following:
- 24 (1) Establish standards to ensure that a grain **or seed** buyer has
- 25 a suitable financial position to conduct a business as a grain **or**
- 26 **seed** buyer.
- 27 (2) Require a person who conducts business as a grain **or seed**
- 28 buyer to first **be licensed by obtain a license or certificate from**
- 29 the agency.
- 30 (3) Require any person engaged in the business of advising
- 31 producers on grain marketing for hire to:
- 32 (A) register with the agency; and
- 33 (B) provide the agency with proof of registry with the
- 34 commodity futures trading commission (CFTC) as a
- 35 commodity trading advisor, a futures commission merchant,
- 36 an introducing broker, or an associated person.
- 37 (c) The director may designate an employee to act for the director
- 38 in the administration of this chapter. A designee may not:
- 39 (1) act in matters that require a public hearing or the temporary
- 40 suspension of a license **or certificate**;
- 41 (2) adopt rules; or
- 42 (3) act as the ultimate authority in the administration of this
- 43 chapter.
- 44 (d) The director may determine whether geographically separate
- 45 facilities constitute a single warehouse, **or a grain buyer, or seed a**
- 46 **buyer** and in making the determination may consider the following:
- 47 (1) The number of facilities involved.
- 48 (2) Whether full weighing equipment is present at the
- 49 geographically separate facilities.
- 50 (3) The method of bookkeeping employed by the separate
- 51 facilities.

- 1 (4) The hours of operation of the separate facilities.  
 2 (5) The personnel employed at the separate facilities.  
 3 (6) Other factors the director deems relevant.

4 SECTION 6. IC 26-3-7-4, AS AMENDED BY P.L.125-1997,  
 5 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 1998]: Sec. 4. (a) A person may not operate a warehouse or  
 7 conduct business as a grain buyer, **seed buyer**, or buyer-warehouse  
 8 without first having obtained the appropriate license **or certificate**  
 9 from the agency, nor may a person continue to operate a warehouse or  
 10 conduct business as a grain buyer, **seed buyer**, or buyer-warehouse  
 11 after the person's license **or certificate** has been revoked or suspended,  
 12 except as provided in section 18 of this chapter.

13 (b) All facilities in Indiana that an applicant for a license **or**  
 14 **certificate** uses to store or handle grain **or seed** must qualify for **and**  
 15 **obtain** a license ~~and be licensed~~ **or certificate** under this chapter  
 16 before the applicant may operate a warehouse or conduct business as  
 17 a grain buyer **or seed buyer** in Indiana. An applicant may not be  
 18 ~~licensed~~ **issued a license or a certificate** unless all of the applicant's  
 19 facilities qualify for a license **or certificate** under this chapter. An  
 20 applicant for a license **or certificate** must apply to the agency for a  
 21 license **or certificate** that covers all facilities operated by the applicant  
 22 for the storage or handling of grain **or seed** in Indiana.

23 (c) If a licensee **or certificate holder** acquires an additional grain  
 24 **or seed** storage or handling facility in Indiana, the licensee **or**  
 25 **certificate holder** shall promptly submit to the agency an amended  
 26 application for licensure **or certification**. A licensee **or certificate**  
 27 **holder** shall promptly notify the agency of a material change to the  
 28 licensee's **or certificate holder's** operations, such as expansion of the  
 29 amount of storage being used in the licensee's **or certificate holder's**  
 30 existing facilities or change of ownership of a facility, and shall provide  
 31 the director with additional information the director may require. A  
 32 licensee **or certificate holder** shall obtain the approval of the director  
 33 before making use of increased storage or handling capacity.

34 (d) A licensee **or certificate holder** that acquires an additional  
 35 grain storage or handling facility that is required to be licensed **or have**  
 36 **a certificate** shall not use the facility for the storage or handling of  
 37 grain **or seed** until it qualifies for **and is issued** a license ~~and is~~  
 38 ~~licensed~~ **or certificate** as provided in this chapter. If a licensed **or**  
 39 **certified** grain **or seed** storage or handling facility that a licensee **or**  
 40 **certificate holder** operates in Indiana becomes ineligible for a license  
 41 **or certificate** at any time for any reason, it shall not be used for the  
 42 storage or handling of grain **or seed** until the condition making it  
 43 ineligible is removed.

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

- 47 (1) Company owned grain **or seed**.  
 48 (2) Cash on hand.  
 49 (3) Cash held on account in federally or state licensed financial  
 50 institutions or lending institutions of the Federal Farm Credit

- 1 Administration.
- 2 (4) Investments held in time accounts with federally or state
- 3 licensed financial institutions.
- 4 (5) Direct obligations of the United States government.
- 5 (6) Balances in grain margin accounts determined by marking to
- 6 market.
- 7 (7) Balances due or to become due to the licensee **or certificate**
- 8 **holder** on deferred pricing contracts.
- 9 (8) Marketable securities, including mutual funds.
- 10 (9) Irrevocable letters of credit that are:
- 11 (A) in favor of the agency;
- 12 (B) acceptable to the agency; and
- 13 (C) in addition to any letter of credit deposited with the
- 14 director to satisfy the bonding requirement of this chapter.
- 15 (10) Deferred pricing contract service charges due or to become
- 16 due to the licensee **or certificate holder**.
- 17 (11) Other evidence of proceeds from or of grain **or seed** that is
- 18 acceptable to the agency.
- 19 (12) Other assets approved by the director.
- 20 (f) A licensee **or certificate holder** must have the minimum
- 21 **positive** net worth specified in section 16 of this chapter to hold any
- 22 license **or certificate** or do business.
- 23 SECTION 7. IC 26-3-7-6, AS AMENDED BY P.L.125-1997,
- 24 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 25 JULY 1, 1998]: Sec. 6. (a) The agency may issue the following licenses
- 26 **or certificates:**
- 27 (1) A grain bank license may be issued to a person that:
- 28 (A) stores only grain bank grain;
- 29 (B) has a storage capacity of not more than fifty thousand
- 30 (50,000) bushels of grain; and
- 31 (C) purchases less than fifty thousand (50,000) bushels of
- 32 grain per year.
- 33 (2) A warehouse license may be issued to a person that:
- 34 (A) stores grain; and
- 35 (B) purchases less than fifty thousand (50,000) bushels of
- 36 grain per year.
- 37 (3) A grain buyer license may be issued to a person that:
- 38 (A) purchases annually at least fifty thousand (50,000)
- 39 bushels of grain that are not for the sole purpose of feeding
- 40 the person's own livestock or poultry;
- 41 (B) does not store grain **for hire; and or**
- 42 (C) offers deferred pricing, delayed payments, or contracts
- 43 linked to the commodity futures or commodity options
- 44 market in connection with grain purchases.
- 45 (4) A buyer-warehouse license may be issued to a person that
- 46 operates both as a warehouse and as a grain buyer.
- 47 (5) **A seed buyer certificate may be issued to a person that:**
- 48 (A) **annually purchases at least fifty thousand (50,000)**
- 49 **bushels of seed; or**
- 50 (B) **offers deferred pricing, delayed payments, or**
- 51 **contracts linked to the commodity futures or commodity**

1                   **options market in connection with seed purchases.**

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

6                   (c) An initial application for a license **or certificate** must be  
7 accompanied by a ~~license~~ fee as follows:

8                   (1) For a grain bank or for a warehouse or buyer-warehouse with  
9 a storage capacity of less than two hundred fifty thousand  
10 (250,000) bushels, two hundred fifty dollars (\$250) for the first  
11 facility and fifty dollars (\$50) for each additional facility.

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

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

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

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

30                   **(6) For a seed buyer purchasing less than fifty thousand**  
31 **(50,000) bushels, two hundred fifty dollars (\$250) for the first**  
32 **facility and fifty dollars (\$50) for each additional facility.**

33                   **(7) For a seed buyer purchasing at least fifty thousand**  
34 **(50,000) bushels, five hundred dollars for the first facility**  
35 **and fifty dollars (\$50) for each additional facility.**

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

39                   (d) Before the anniversary date of the license **or certificate**, the  
40 licensee **or certificate holder** shall pay an annual ~~license~~ fee in an  
41 amount equal to the amount required under subsection (c).

42                   (e) A licensee **or certificate holder** or an applicant for an initial  
43 license **or certificate** must have a minimum current asset to current  
44 liability ratio of one (1) to one (1) **or better**.

45                   (f) An applicant for an initial license **or certificate** shall submit  
46 with the person's application a review level financial statement or better  
47 financial statement that reflects the applicant's financial situation on a  
48 date not more than fifteen (15) months before the date on which the  
49 application is submitted. Not more than ninety (90) days after the end  
50 of a licensee's **or certificate holder's** fiscal year, the licensee **or**  
51 **certificate holder** shall file with the agency a current review level

1 financial statement or better financial statement that reflects the  
 2 licensee's **or certificate holder's** financial situation for the fiscal year  
 3 just ended. A financial statement submitted under this section must:

- 4 (1) be prepared by an independent accountant certified under  
 5 IC 25-2.1;
- 6 (2) comply with generally accepted accounting principles; and
- 7 (3) contain:
  - 8 (A) an income statement;
  - 9 (B) a balance sheet;
  - 10 (C) a statement of cash flow;
  - 11 (D) a statement of retained earnings;
  - 12 (E) the preparer's notes; and
  - 13 (F) other information the agency may require.

14 The director may adopt rules under IC 4-22-2 to allow the agency to  
 15 accept other substantial supporting documents instead of those listed  
 16 if the director determines that providing the listed documents creates  
 17 a financial or other hardship on the applicant, ~~or~~ licensee, **or**  
 18 **certificate holder**.

- 19 (g) An application for a license implies a consent to be inspected.
  - 20 (h) A person that:
    - 21 (1) does not operate a facility used to store grain;
    - 22 (2) purchases:
      - 23 (A) less than fifty thousand (50,000) bushels of grain per  
 24 year; or
      - 25 (B) only grain used for the production of the person's own  
 26 livestock; and
    - 27 (3) does not:
      - 28 ~~(A)~~ **(A)** purchase grain;
      - 29 ~~(B)~~ **(A)** offer deferred pricing;
      - 30 ~~(C)~~ **(B)** offer delayed payment; or
      - 31 ~~(D)~~ **(C)** offer other contracts;
- 32 that are linked to the commodity futures or commodity options  
 33 market;

34 is not required to be licensed.

35 SECTION 8. IC 26-3-7-6.5, AS AMENDED BY P.L.125-1997,  
 36 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 1998]: Sec. 6.5. Unless in accordance with a judicial order,  
 38 the director, the agency, its counsel, auditors, or its other employees or  
 39 agents shall not divulge any information disclosed by the applications  
 40 or reports filed or inspections performed under the provisions of this  
 41 chapter, except to agents and employees of the agency or to any other  
 42 legal representative of the state or federal government otherwise  
 43 empowered to see or review the information. The director may disclose  
 44 the information only in the form of an information summary or profile,  
 45 or statistical study based upon data provided with respect to more than  
 46 one (1) warehouse, grain buyer, **seed buyer**, or buyer-warehouse that  
 47 does not identify the warehouse, grain buyer, **seed buyer**, or  
 48 buyer-warehouse to which the information applies.

49 SECTION 9. IC 26-3-7-7, AS AMENDED BY P.L.125-1997,  
 50 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 51 JULY 1, 1998]: Sec. 7. (a) The director may issue or amend a license

- 1 **or certificate** after the director has:
- 2 (1) received and approved the required information and
- 3 documentation; and
- 4 (2) determined that:
- 5 (A) the facility or facilities covered by the application are
- 6 suitable for the proper storage or handling of the grain **or**
- 7 **seed** intended to be stored or handled in the facility or
- 8 facilities; and
- 9 (B) the applicant has complied with this chapter and the
- 10 rules adopted under this chapter.
- 11 (b) A person may not represent that the person is licensed **or holds**
- 12 **a certificate** under this chapter, and may not use a name or description
- 13 that conveys the impression that the person is licensed, **or holds a**
- 14 **certificate** in a receipt or otherwise, unless the person holds an
- 15 unsuspended and unrevoked license **or certificate** to conduct the
- 16 business indicated by the license **or certificate**.
- 17 (c) An applicant for a license **or certificate** under this chapter
- 18 must show that the applicant:
- 19 (1) has a good business reputation;
- 20 (2) has not been involved in improper manipulation of books and
- 21 records or other improper business practice;
- 22 (3) has the qualifications and background essential for the
- 23 conduct of the business to be licensed **or issued a certificate**;
- 24 (4) employs management and principal officers that have
- 25 suitable business reputations, background, and qualifications to
- 26 perform their duties;
- 27 (5) has not been found guilty of a crime that would affect the
- 28 licensee's **or certificate holder's** ability to conduct business
- 29 with integrity; and
- 30 (6) does not employ an officer, director, partner, or manager that
- 31 has been found guilty of a crime that would affect the licensee's
- 32 **or certificate holder's** ability to conduct business with integrity.
- 33 SECTION 10. IC 26-3-7-8, AS AMENDED BY P.L.125-1997,
- 34 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 35 JULY 1, 1998]: Sec. 8. Upon receipt of an application for a permanent
- 36 license **or certificate**, the director may issue a temporary license **or**
- 37 **certificate** to the applicant for a reasonable time, not to exceed ninety
- 38 (90) days, as the director deems necessary or advisable to enable the
- 39 applicant to comply with the further requirements for obtaining a
- 40 license **or certificate** under this chapter. A temporary license **or**
- 41 **certificate** entitles the temporary licensee **or certificate holder** to the
- 42 same rights and subjects the temporary licensee **or certificate holder**
- 43 to the same duties as if the temporary licensee **or certificate holder**
- 44 had a permanent license **or certificate**.
- 45 SECTION 11. IC 26-3-7-8.5, AS ADDED BY P.L.125-1997,
- 46 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 47 JULY 1, 1998]: Sec. 8.5. If the ownership of a facility or business
- 48 ~~licensed~~ **holding a license or a certificate** under this chapter passes to
- 49 a successor owner, the obligations under this chapter of the original
- 50 licensee **or certificate holder** do not cease until the successor owner

1 is properly licensed **has been issued a license or a certificate** and has  
 2 executed a successor's agreement with the agency.

3 SECTION 12. IC 26-3-7-9, AS AMENDED BY P.L.125-1997,  
 4 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 1998]: Sec. 9. (a) Each applicant for a license **or certificate**  
 6 under this chapter shall, as a condition of ~~licensure~~, **issuance of the**  
 7 **license or certificate**, file or have on file with the director:

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

11 as provided in section 10 of this chapter.

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

- 13 (1) be conditioned upon the faithful performance of all  
 14 obligations of the licensee **or certificate holder** under this  
 15 chapter and the rules adopted under this chapter from the  
 16 effective date of the bond until the earlier of the date the license  
 17 **or certificate** is revoked or the bond is canceled as provided in  
 18 this chapter; and
- 19 (2) be further conditioned upon the faithful performance of all  
 20 obligations from the effective date of the bond and thereafter,  
 21 regardless of whether the licensee's **or certificate holder's**  
 22 facility or facilities exist on the effective date of the bond or are  
 23 thereafter assumed prior to the date the licensee's license **or**  
 24 **certificate holder's certificate** is revoked or the bond is  
 25 canceled as provided in this chapter.

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

30 SECTION 13. IC 26-3-7-10, AS AMENDED BY P.L.125-1997,  
 31 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 1998]: Sec. 10. (a) The minimum amount of bond, letter of  
 33 credit, or cash deposit required from a licensee **or certificate holder**  
 34 is as follows:

- 35 (1) For a grain bank license or a warehouse license:  
 36 (A) ten thousand dollars (\$10,000); or  
 37 (B) ten cents (\$0.10) multiplied by the licensed bushel  
 38 storage capacity of the grain bank or warehouse;  
 39 whichever is greater.
- 40 (2) For a grain buyer, including a grain buyer that is also a  
 41 licensee under the warehouse act:  
 42 (A) ten thousand dollars (\$10,000); or  
 43 (B) five-tenths percent (0.5%) of the total amount the grain  
 44 buyer paid for grain purchased from producers during the  
 45 grain buyer's fiscal year immediately preceding the date the  
 46 bond, letter of credit, or cash deposit is due;  
 47 whichever is greater.
- 48 (3) For a buyer-warehouse:  
 49 (A) ten thousand dollars (\$10,000);  
 50 (B) ten cents (\$0.10) multiplied by the licensed bushel

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

7 whichever is greater.

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

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

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

15 **whichever is greater.**

16 (b) Except as provided in subsections (g) and (h), the amount of  
 17 bond, letter of credit, or cash deposit required by this chapter may not  
 18 exceed one hundred thousand dollars (\$100,000) per license **or**  
 19 **certificate** and may not exceed a total of five hundred thousand dollars  
 20 (\$500,000) per person.

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

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

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

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

45 (g) If a licensee **or certificate holder** has a deficiency in the  
 46 minimum **positive** net worth required under section 16(a)(2)(B),  
 47 16(a)(3)(B), 16(a)(4)(A)(ii), ~~or~~ 16(a)(5)(A)(ii), **or 16(a)(6)(B)** of this  
 48 chapter, the licensee **or certificate holder** shall add to the amount of  
 49 bond, letter of credit, or cash deposit determined under subsection (a)  
 50 an amount equal to the deficiency.

51 (h) Except as provided in subsections (i) and (j), a licensee **or**

1 **certificate holder** may not correct a deficiency in the minimum  
 2 **positive** net worth required by section 16(a)(1), 16(a)(2)(A),  
 3 16(a)(3)(A), 16(a)(4)(A)(i), ~~or 16(a)(5)(A)(i),~~ **or 16(a)(6)(A)** of this  
 4 chapter by adding to the amount of bond, letter of credit, or cash  
 5 deposit required by subsection (a).

6 (i) A buyer-warehouse that has a bushel storage capacity of less  
 7 than one million (1,000,000) bushels or purchases less than one million  
 8 (1,000,000) bushels of grain per year may correct a deficiency in  
 9 minimum net worth by adding to the amount of bond, letter of credit,  
 10 or cash deposit determined under subsection (a) if the buyer-warehouse  
 11 has a minimum net worth of at least fifteen thousand dollars (\$15,000),  
 12 not including the amount added to the bond, letter of credit, or cash  
 13 deposit.

14 (j) A buyer-warehouse that has a bushel storage capacity of at least  
 15 one million (1,000,000) bushels, or purchases at least one million  
 16 (1,000,000) bushels of grain per year, may correct a deficiency in  
 17 minimum net worth by adding to the amount of bond, letter of credit,  
 18 or cash deposit determined under subsection (a) if the buyer-warehouse  
 19 has a minimum net worth of at least fifty thousand dollars (\$50,000),  
 20 not including the amount added to the bond, letter of credit, or cash  
 21 deposit.

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

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

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

36 SECTION 14. IC 26-3-7-12, AS AMENDED BY P.L.125-1997,  
 37 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 1998]: Sec. 12. (a) Each applicant for a license **or certificate**  
 39 under this chapter shall, as a condition to the granting of the license **or**  
 40 **certificate**, file or have on file a certificate of insurance evidencing an  
 41 effective policy of insurance issued by an insurance company  
 42 authorized to do business in Indiana insuring in the name of the  
 43 applicant all grain **or seed** that is or may be in the licensee's **or**  
 44 **certificate holder's** facilities for its full market value against loss by  
 45 fire, internal explosion, lightning, and windstorm.

46 (b) In case fire, internal explosion, lightning, or wind-storm  
 47 destroys or damages any grain **or seed** in a ~~licensed~~ facility **of a**  
 48 **licensee or certificate holder**, the licensee **or certificate holder** shall,  
 49 upon demand by the depositor and upon being presented with the  
 50 receipt or other evidence of ownership, make settlement, after

1 deducting the licensee's **or certificate holder's** charges and advances,  
 2 at the market value of the grain **or seed** based on the value at the  
 3 average price paid for grain **or seed** of the same grade and quality on  
 4 the date of the loss at the location of the facility. If a settlement is not  
 5 made within sixty (60) days from the date of demand, the depositor is  
 6 entitled to seek recovery from the insurance company.

7 **(c) A licensee or certificate holder may petition the director for**  
 8 **a waiver of the requirements of this section.**

9 SECTION 15. IC 26-3-7-13, AS AMENDED BY P.L.125-1997,  
 10 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 1998]: Sec. 13. Whenever the director determines that a  
 12 previously approved bond, letter of credit, cash deposit, or previously  
 13 approved insurance is insufficient, the director shall require an  
 14 additional bond, letter of credit, cash deposit, or insurance to be given  
 15 by the licensee **or certificate holder** in the form and upon the terms  
 16 and conditions required by this chapter and rules adopted under this  
 17 chapter.

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

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

- 36 (1) file a new bond, letter of credit, or cash deposit within the
- 37 ninety (90) day period as provided in this section;
- 38 (2) file new evidence of insurance within the thirty (30) day
- 39 period as provided in this section; or
- 40 (3) maintain at all times a bond or cash deposit and insurance as
- 41 provided in this chapter.

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

44 SECTION 17. IC 26-3-7-15, AS AMENDED BY P.L.125-1997,  
 45 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 46 JULY 1, 1998]: Sec. 15. (a) A licensee **or certificate holder** shall  
 47 maintain inventories of sufficient quantity and grade of grain **or seed**  
 48 to meet the licensee's **or certificate holder's** storage obligations.

49 (b) Inventories representing grain **or seed** evidenced by  
 50 outstanding warehouse receipts shall be maintained in the warehouse  
 51 shown on the warehouse receipt issued by the warehouse in which the

- 1 grain **or seed** was originally deposited.
- 2 (c) Inventories representing storage obligations other than those
- 3 evidenced by warehouse receipts may be represented by:
- 4 (1) receipts for grain **or seed** stored in a facility ~~licensed that~~
- 5 **holds a license or a certificate** under this chapter;
- 6 (2) receipts in a warehouse licensed and bonded under the
- 7 warehouse act; or
- 8 (3) other warehouse receipts or tickets as approved by the
- 9 director.
- 10 SECTION 18. IC 26-3-7-16, AS AMENDED BY
- 11 P.L.253-1997(ss), SECTION 26, IS AMENDED TO READ AS
- 12 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) A licensee **or**
- 13 **certificate holder** shall have and maintain a current asset to current
- 14 liability ratio of one to one (1:1) **or better** and shall maintain, as
- 15 evidenced by the financial statement required by section 6 of this
- 16 chapter, the following minimum **positive** net worth:
- 17 (1) For a grain bank, minimum net worth is at least ten thousand
- 18 dollars (\$10,000).
- 19 (2) For a warehouse, minimum net worth is at least equal to the
- 20 sum of:
- 21 (A) fifteen thousand dollars (\$15,000); and
- 22 (B) ten cents (\$0.10) multiplied by the bushel storage
- 23 capacity of the warehouse.
- 24 (3) For a grain buyer, minimum net worth is at least **equal to the**
- 25 **sum of:**
- 26 (A) ten thousand dollars (\$10,000); ~~or~~ **and**
- 27 (B) five cents (\$0.05) multiplied by the total number of
- 28 bushels of grain purchased by the grain buyer during the
- 29 grain buyer's fiscal year immediately preceding the date net
- 30 worth is calculated.
- 31 ~~whichever is greater:~~
- 32 (4) For a buyer-warehouse that has a bushel storage capacity of
- 33 less than one million (1,000,000) bushels or purchases less than
- 34 one million (1,000,000) bushels of grain per year, minimum net
- 35 worth is at least equal to:
- 36 (A) the sum of:
- 37 (i) fifteen thousand dollars (\$15,000); and
- 38 (ii) ten cents (\$0.10) multiplied by the bushel storage
- 39 capacity of the buyer-warehouse; or
- 40 (B) five cents (\$0.05) multiplied by the total number of
- 41 bushels of grain purchased by the buyer-warehouse during
- 42 the buyer-warehouse's fiscal year immediately preceding the
- 43 date net worth is calculated;
- 44 whichever is greater.
- 45 (5) For a buyer-warehouse that has a bushel storage capacity of
- 46 at least one million (1,000,000) bushels or purchases at least one
- 47 million (1,000,000) bushels of grain per year, minimum net
- 48 worth is at least equal to:
- 49 (A) the sum of:
- 50 (i) fifty thousand dollars (\$50,000); and
- 51 (ii) ten cents (\$0.10) multiplied by the bushel storage

1 capacity of the buyer-warehouse; or  
 2 (B) five cents (\$0.05) multiplied by the number of bushels  
 3 of grain purchased by the buyer-warehouse during the  
 4 buyer-warehouse's fiscal year immediately preceding the  
 5 date net worth is calculated;

6 whichever is greater.

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

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

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

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

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

24 SECTION 19. IC 26-3-7-16.5, AS AMENDED BY P.L. 125-1997,  
 25 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 JULY 1, 1998]: Sec. 16.5. (a) Upon learning of the possibility that a  
 27 shortage exists, either as a result of an inspection or a report or  
 28 complaint from a depositor, the agency, based on an on-premise  
 29 inspection, shall make a preliminary determination as to whether a  
 30 shortage exists. If a shortage is not discovered, the agency shall treat  
 31 the audit as it would any other audit.

32 (b) If it is determined that a shortage may exist, the director or ~~his~~  
 33 **the director's** designated representative shall hold a hearing as soon  
 34 as possible to confirm the existence of a shortage as indicated by the  
 35 licensee's **or certificate holder's** books and records and the grain **or**  
 36 **seed** on hand. Only the licensee **or certificate holder**, the surety  
 37 company named on the licensee's **or certificate holder's** bond, the  
 38 issuer of the irrevocable letter of credit, and any grain **or seed** depositor  
 39 who has made a claim or complaint to the agency in conjunction with  
 40 the shortage shall be considered as interested parties for the purposes  
 41 of that hearing, and each shall be given notice of the hearing. At the  
 42 hearing, the director or the director's designated representative shall  
 43 determine whether there appears to be a reasonable probability that a  
 44 shortage exists. If it is determined that a reasonable probability exists  
 45 and that the bond or letter of credit proceeds or the cash deposit should  
 46 be distributed, a preliminary determination shall be entered to the effect  
 47 that the licensee **or certificate holder** has failed to meet its obligations  
 48 under this chapter or the rules adopted under this chapter. At the  
 49 hearing, the director or the director's designated representative may  
 50 order that all proceeds from grain **or seed** sales are to be held in the  
 51 form in which they are received and to be kept separate from all other

1 funds held by the licensee **or certificate holder**. The order may also  
2 provide for informal conferences between agency representatives and  
3 persons who have or who appear to have grain **or seed** deposited with  
4 the licensee **or certificate holder**. The surety company shall be  
5 permitted to participate in those conferences.

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

29 (d) Following the hearing on claims, the director shall make a  
30 determination as to the total proven storage obligation of the claimants  
31 and the loss sustained by each depositor who has proven a claim.  
32 Depositors found to have proven their claims shall be proven  
33 claimants. In arriving at that loss, in accordance with section 19 of this  
34 chapter, the director shall apply all grain **or seed** on hand or its  
35 identifiable proceeds to meet the licensee's **or certificate holder's**  
36 obligations to grain **or seed** depositors of grain **or seed** of that type.  
37 Initial determinations of loss shall be made on a bushel loss basis.  
38 Grain **or seed** on hand, or identifiable proceeds, shall reduce the  
39 number of bushels to which a depositor may have a proven claim. With  
40 respect to the remaining unfulfilled obligations, the director shall, for  
41 the sole purpose of establishing each depositor's claim under this  
42 chapter, establish a date upon which the loss is discovered, shall price  
43 the grain **or seed** as of that date, shall treat all outstanding grain **or**  
44 **seed** storage obligations not covered by grain **or seed** on hand or  
45 identifiable proceeds as being sold as of that date, and shall determine  
46 the extent of each depositor's loss as being the actual loss sustained as  
47 of that date. Grain **or seed** of a specific type on the premises of a  
48 licensee **or certificate holder** must first be applied to meet the  
49 licensee's **or certificate holder's** storage obligations with respect to  
50 that type of grain **or seed**. If there is insufficient grain **or seed** of a

1 specific type on hand to meet all storage obligations with respect to that  
 2 type of grain **or seed**, the grain **or seed** that is present shall be prorated  
 3 in accordance with the procedures described in this section and section  
 4 16.8 of this chapter.

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

14 (f) When the proven claims exceed the amount of the bond, letter  
 15 of credit, or cash deposit, recoveries of proven claimants shall be  
 16 prorated in the same manner as priorities are prorated under section  
 17 16.8 of this chapter.

18 (g) The proceedings and hearings under this section may be  
 19 undertaken without regard to, in combination with, or in addition to  
 20 those undertaken in accordance with section 17.1 of this chapter.

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

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

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

30 SECTION 20. IC 26-3-7-16.6, AS AMENDED BY P.L.125-1997,  
 31 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 1998]: Sec. 16.6. The procedures established by ~~section 16.5~~  
 33 ~~of~~ this chapter also apply when the director learns or has reason to  
 34 believe that a person is doing business as a grain buyer, **a seed buyer**,  
 35 operating a warehouse, or acting as a buyer-warehouse without the  
 36 license **or certificate** required by this chapter.

37 SECTION 21. IC 26-3-7-16.8, AS ADDED BY P.L.125-1997,  
 38 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 1998]: Sec. 16.8. **(a) For purposes of this section, the**  
 40 **following apply:**

41 **(1) "Licensee" includes a person required to be licensed**  
 42 **under this chapter.**

43 **(2) "Certificate holder" includes a person required to hold a**  
 44 **certificate under this chapter.**

45 ~~(a)~~ **(b) A lien against all grain or seed assets of a licensee or**  
 46 **certificate holder attaches in favor of the following:**

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

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

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

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

8 (3) Third priority is assigned to all other claimants that have  
 9 written evidence of the sale of grain **or seed** to the failed  
 10 licensee **or certificate holder**. Claimants under this subdivision  
 11 share pro rata in the distribution of the remaining grain **or seed**  
 12 assets.

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

20 SECTION 22. IC 26-3-7-17.1, AS AMENDED BY P.L. 125-1997,  
 21 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 1998]: Sec. 17.1. (a) Whenever the director, as a result of an  
 23 inspection or otherwise, has reasonable cause to believe that a person  
 24 to which this chapter is or may be applicable:

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

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

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

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

43 (c) Upon learning of the possibility that a person is acting as  
 44 described in subsection (a), the director, except as otherwise provided  
 45 in this subsection, shall hold a hearing to determine whether a cease  
 46 and desist order should issue against a licensee ~~or an unlicensed~~ person  
 47 undertaking activities covered by this chapter. If the director  
 48 determines that the violation or the prohibited practice is likely to cause  
 49 immediate insolvency or irreparable harm to depositors, the director,  
 50 without notice, may issue a temporary cease and desist order requiring

1 the person to cease and desist from that violation or practice. The order  
 2 shall become effective upon service on the person and shall remain  
 3 effective and enforceable pending the completion of all administrative  
 4 proceedings.

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

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

21 SECTION 23. IC 26-3-7-17.5, AS ADDED BY P.L.125-1997,  
 22 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 1998]: Sec. 17.5. (a) Whenever ~~the a license of a licensee or~~  
 24 **a certificate** is suspended or revoked, the director may:

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

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

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

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

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

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

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

42 SECTION 24. IC 26-3-7-18, AS AMENDED BY P.L.125-1997,  
 43 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 44 JULY 1, 1998]: Sec. 18. (a) When a license **or certificate** is revoked,  
 45 the licensee **or certificate holder** shall terminate in the manner  
 46 prescribed by the director all arrangements covering the grain **or seed**  
 47 in the facility covered by the license **or certificate**, but shall be  
 48 permitted, under the direction and supervision of the director or the  
 49 director's designated representative, to deliver grain **or seed** previously  
 50 received.

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

5 SECTION 25. IC 26-3-7-19, AS AMENDED BY P.L.125-1997,  
 6 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 1998]: Sec. 19. (a) A licensee **or certificate holder** shall issue  
 8 a receipt or ticket for grain **or seed** received. Grain **or seed** received by  
 9 a licensee **or certificate holder** shall be credited to the depositor on the  
 10 books of the licensee **or certificate holder** within seven (7) days from  
 11 the date of its delivery. If a ticket is issued on delivery of the grain **or**  
 12 **seed** for storage, a receipt shall be issued on demand, but no receipt  
 13 shall be issued on grain bank grain.

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

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

26 SECTION 27. IC 26-3-7-22, AS AMENDED BY P.L.125-1997,  
 27 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 1998]: Sec. 22. Different lots of the same type of grain **or**  
 29 **seed** delivered to a licensee **or certificate holder** may be commingled  
 30 by type of grain **or seed** unless the receipt or ticket states that the  
 31 identity of the lot of grain **or seed** is to be preserved.

32 SECTION 28. IC 26-3-7-24, AS AMENDED BY P.L.125-1997,  
 33 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 1998]: Sec. 24. While a receipt or ticket issued under this  
 35 chapter is outstanding and uncanceled by the issuing licensee **or**  
 36 **certificate holder** no other receipt or ticket shall be issued for the grain  
 37 **or seed** or any part of the grain **or seed** that is covered by the receipt  
 38 or ticket. However, if a receipt or ticket is lost, stolen, or destroyed the  
 39 owner of the receipt or ticket is entitled to a new receipt that is a  
 40 duplicate of the missing receipt or a new ticket that is a substitute for  
 41 the missing ticket. The duplicate receipt or substitute ticket entitles the  
 42 owner to all rights appertaining to the document for which it was  
 43 issued, and shall state that it is in lieu of the former receipt or ticket and  
 44 give the number and date of the former receipt or ticket. If the missing  
 45 document was a negotiable receipt, the issuing licensee **or certificate**  
 46 **holder** shall require an indemnity bond of double the market value of  
 47 the grain **or seed** covered by the missing receipt in a form and with the  
 48 surety that the director may prescribe to fully protect all rights under  
 49 the missing receipt.

50 SECTION 29. IC 26-3-7-25, AS AMENDED BY P.L.125-1997,

1 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 1998]: Sec. 25. Every warehouse receipt issued shall embody  
3 within its terms the following:

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

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

9 (B) a mark identifying the preserved grain appears on the  
10 face of the receipt.

11 (2) A statement that the receipt is issued subject to the Indiana  
12 Grain Buyers and Warehouse Licensing and Bonding Law,  
13 IC 26-3-7, and rules adopted under the Indiana Grain Buyers and  
14 Warehouse Licensing and Bonding Law.

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

19 (4) A clause that reserves to the licensee **or certificate holder**  
20 the right to terminate storage, shipping, and handling  
21 arrangements and collect outstanding charges upon the  
22 revocation of the licensee's license **or certificate holder's**  
23 **certificate.**

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

28 (6) A clause that terminates storage on the date the license held  
29 by the licensee **or the certificate held by the certificate holder**  
30 when the receipt was issued expires and reserves to the licensee  
31 **or certificate holder** the right to collect outstanding charges  
32 against any lot of grain **or seed.**

33 (7) Other provisions prescribed by the director.

34 SECTION 30. IC 26-3-7-26, AS AMENDED BY P.L.125-1997,  
35 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 JULY 1, 1998]: Sec. 26. Every ticket issued shall embody within its  
37 terms:

38 (1) the name of the licensee **or certificate holder** to whom the  
39 grain **or seed** was delivered;

40 (2) the date the grain **or seed** was delivered;

41 (3) exact information concerning the type, net weight, and grade  
42 factors of the grain **or seed** received;

43 (4) a statement that the grain **or seed** described in the ticket is to  
44 be taken into storage, is being delivered on contract, or is to be  
45 sold under other arrangements;

46 (5) the name of the owner of the grain **or seed**;

47 (6) a statement that tickets marked for storage are non-negotiable  
48 receipts; and

49 (7) other provisions prescribed by the director.

50 SECTION 31. IC 26-3-7-28, AS AMENDED BY P.L.125-1997,

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

8 SECTION 32. IC 26-3-7-29, AS AMENDED BY P.L.125-1997,  
9 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 1998]: Sec. 29. A licensee **or certificate holder** shall:

11 (1) conspicuously display the licensee's license **or certificate**  
12 **holder's certificate** in the licensee's **or certificate holder's**  
13 main office and at each facility included under the license **or**  
14 **certificate**;

15 (2) conspicuously display in each operational office the  
16 approved schedule of charges for services; and

17 (3) conspicuously display at each facility all charts and diagrams  
18 provided to the facility by the agency.

19 SECTION 33. IC 26-3-7-30 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 30. All receipt forms  
21 shall be supplied by the director except where the director, in writing,  
22 approves the form and gives permission to a warehouseman to have  
23 receipts printed. Requests for receipts shall be on forms furnished by  
24 the director and shall be accompanied by payment to cover the  
25 estimated cost of printing, packaging, and shipping, as determined by  
26 the director. Where privately printed, the printer shall furnish the  
27 director an affidavit showing the amount of the receipts printed, and the  
28 serial numbers thereof. All receipts remaining unused shall be  
29 recovered by the director or ~~his~~ **the director's** designated  
30 representative if the license **or certificate** required by this chapter is  
31 terminated or suspended.

32 SECTION 34. IC 26-3-7-31, AS AMENDED BY HEA 1011-1998,  
33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
34 1998]: Sec. 31. (a) Whenever it appears to the satisfaction of the  
35 director that a licensee **or certificate holder** does not have in the  
36 licensee's **or certificate holder's** possession sufficient grain **or seed** to  
37 cover the outstanding receipts and tickets issued or assumed by the  
38 licensee **or certificate holder**, or when a licensee **or certificate holder**  
39 refuses to submit the licensee's **or certificate holder's** records or  
40 property to lawful inspection, the director may give notice to the  
41 licensee **or certificate holder** to do any of the following:

42 (1) Cover the shortage with grain **or seed** that is fully paid for.

43 (2) Give additional bond, letter of credit, or cash deposit as  
44 required by the director.

45 (3) Submit to inspection as the director may deem necessary.

46 (b) If the licensee **or certificate holder** fails to comply with the  
47 terms of the notice within five (5) business days from the date of its  
48 issuance, or within an extension of time that the director may allow, the  
49 director may petition the circuit court of the Indiana county where the  
50 licensee's **or certificate holder's** principal place of business is located

1 seeking the appointment of a receiver. If the court determines in  
 2 accordance with IC 34-48-1 that a receiver should be appointed, upon  
 3 the request of the licensee **or certificate holder**, the court may appoint  
 4 the agency or its representative to act as receiver. The agency or its  
 5 representative shall not be appointed as receiver except upon the  
 6 request of the licensee **or certificate holder**. If the agency or its  
 7 representative is appointed, any person interested in an action as  
 8 described in IC 34-48-1-2 may after twenty (20) days request that the  
 9 agency or its representative be removed as receiver. If the agency or its  
 10 representative is not serving as receiver, the receiver appointed shall  
 11 meet and confer with representatives of the agency regarding the  
 12 licensee's **or certificate holder's** grain **or seed** related obligations and,  
 13 before taking any actions regarding those obligations, the receiver and  
 14 the court shall consider the agency's views and comments.

15 SECTION 35. IC 26-3-7-32, AS AMENDED BY P.L.125-1997,  
 16 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 1998]: Sec. 32. (a) The director may apply for, and the courts  
 18 of this state are vested with jurisdiction to issue, a temporary or  
 19 permanent injunction against the business operation of a licensee **or**  
 20 **certificate holder** or the issuance of receipts or tickets without a  
 21 license **or certificate** and against interference by any person with the  
 22 director, the director's designated representative, or a receiver  
 23 appointed under section 31 of this chapter, in the performance of their  
 24 duties and powers under this chapter.

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

41 SECTION 36. IC 26-3-7-34, AS AMENDED BY P.L.125-1997,  
 42 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 43 JULY 1, 1998]: Sec. 34. (a) A person who knowingly or intentionally  
 44 violates or fails to comply with this chapter commits a Class A  
 45 misdemeanor. Each day a person violates this chapter constitutes a  
 46 separate violation.

47 (b) A person who knowingly or intentionally issues a receipt or  
 48 ticket, knowing that the grain **or seed** for which the receipt or ticket is  
 49 issued has not been actually received at the licensed warehouse,  
 50 commits a Class A misdemeanor. A person who issues a duplicate, or

1 additional negotiable receipt for grain **or seed**, knowing that a former  
 2 negotiable receipt for the same grain **or seed** or any part of the grain is  
 3 outstanding and uncanceled, except in the case of a lost, stolen, or  
 4 destroyed receipt, as provided in section 24 of this chapter, commits a  
 5 Class A misdemeanor. A person who fraudulently represents, alters, or  
 6 counterfeits any license **or certificate** provided for in this chapter  
 7 commits a Class D felony.

8 (c) Except in case of sale or other disposition of the grain **or seed**  
 9 in lawful enforcement of the lien on grain **or seed** that attaches under  
 10 this chapter or on a licensee's **or certificate holder's** lawful  
 11 termination of storage, shipping, or handling agreements, or except as  
 12 permitted by the rules adopted by the director under IC 4-22-2 to  
 13 effectuate the purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

15 SECTION 37. IC 26-3-7-35, AS AMENDED BY P.L.125-1997,  
16 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 1998]: Sec. 35. A person licensed under the warehouse act  
18 must also have a valid grain buyer license **or seed buyer certificate** to  
19 do business in Indiana as a grain buyer **or seed buyer.**".

20 Delete pages 3 through 5.

(Reference is to EHB 1159 as printed February 20, 1998.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1159**

**S**igned by:

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Senator Weatherwax

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Representative Grubb

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Senator Lewis

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Representative Davis

**Senate Conferees**

**House Conferees**