



March 19, 1999

ENGROSSED HOUSE BILL No. 1782

DIGEST OF HB 1782 (Updated March 17, 1999 12:51 pm - DI 51)

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

Synopsis: Liens against grain assets. Provides that if a secured party gives notice to the licensee and to the director of the Indiana grain buyers and warehouse licensing agency of the secured parties interest in a claimant's grain, the director shall pay to the claimant the portion of the proceeds of grain assets to which the claimant is entitled with a check issued jointly to the claimant and the secured party. Provides for payment to claimants and multiple secured parties. Provides that if a secured party gives notice to the licensee and to the board of the grain
(Continued next page)

Effective: July 1, 1999.

Whetstone, Kuzman, Crosby
(SENATE SPONSORS — WEATHERWAX, LEWIS, LAWSON C)

January 26, 1999, read first time and referred to Committee on Financial Institutions.
February 25, 1999, amended, reported — Do Pass.
March 1, 1999, read second time, amended, ordered engrossed.
March 2, 1999, engrossed.
March 3, 1999, read third time, passed. Yeas 94, nays 0.
SENATE ACTION
March 8, 1999, read first time and referred to Committee on Judiciary.
March 18, 1999, amended, reported favorably — Do Pass.

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indemnity fund of the secured parties interest in a claimant's grain, the board may compensate the claimant with the portion of the proceeds of grain assets to which the claimant is entitled by issuing a checked jointly to the claimant and the secured party. Provides for grain indemnity payments to claimants and multiple secured parties. Exempts grain buyers who are licensed under state or federal law from paying an additional \$100 registration fee. Adds one member to the board of the Indiana grain indemnity corporation.

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March 19, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1782

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

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

- 1 SECTION 1. IC 26-3-7-16.8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.8. (a) A lien against
3 all grain assets of a licensee attaches in favor of the following:
4 (1) A lender or other claimant that has a receipt for grain owned
5 or stored by the licensee.
6 (2) A claimant that has a ticket or written evidence, other than a
7 receipt, of a storage obligation of the licensee.
8 (3) A claimant that surrendered a receipt as part of a grain sales
9 transaction if:
10 (A) the claimant was not fully paid for the grain sold; and
11 (B) the licensee failed less than twenty-one (21) days after the
12 surrender of the receipt.
13 (4) A claimant that has other written evidence of a sale to the
14 licensee of grain for which the claimant has not been fully paid.
15 (b) A lien under this section attaches and is effective at the earliest
16 of the following:

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

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1 Claimants under this subdivision share pro rata in the distribution
2 of the remaining grain assets.

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

10 (h) If:

11 (1) a claimant engaged in farming operations granted to one
12 (1) or more secured parties one (1) or more security interests
13 in the grain related to the claimant's claim under this section;
14 and

15 (2) one (1) or more secured parties described in subdivision
16 (1) have given to:

17 (A) the licensee prior written notice of the security interest
18 under IC 26-1-9-307(1)(a); and

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

23 the director shall pay the claimant described in subdivision (1) the
24 portion of the proceeds of grain assets under subsection (e) to
25 which the claimant is entitled under this section by issuance of a
26 check payable jointly to the order of the claimant and any secured
27 party described in subdivision (1) who has given the notices
28 described in subdivision (2). If only one (1) secured party described
29 in subdivision (1) is a payee, the rights of the secured party in the
30 check shall be to the extent of the indebtedness of the claimant to
31 the secured party. If two (2) or more secured parties described in
32 subdivision (1) are payees, the nature, extent, and priority of their
33 respective rights in the check are determined in the same manner
34 as the nature, extent, and priority of their respective security
35 interest under IC 26-1-9.

36 SECTION 2. IC 26-4-2-1 IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Except as provided in
38 subsection (c), a grain buyer shall, beginning on May 1, 1996 register
39 with the board.

40 (b) A grain buyer that is not a **grain buyer** or warehouse licensed
41 under:

42 (1) IC 26-3-7; or

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1 (2) the United States Warehouse Act;
2 shall pay to the board a registration fee of one hundred dollars (\$100).

3 (c) A producer who buys less than fifty thousand (50,000) bushels
4 of grain annually for the buyer's own use as seed or feed is not required
5 to register under this section.

6 SECTION 3. IC 26-4-3-2 IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The corporation's board is
8 created. The governing powers of the corporation are vested in the
9 board, which is composed of ~~twelve (12)~~ **thirteen (13)** members as
10 described in subsections (b) and (c).

11 (b) The board consists of the following ~~nine (9)~~ **ten (10)** voting
12 members:

13 (1) Two (2) members appointed by the largest Indiana
14 organization representing the interests of grain and feed dealers
15 in Indiana.

16 (2) Two (2) members appointed by the largest Indiana
17 organization representing general farm interests in Indiana.

18 (3) One (1) member appointed by the second largest Indiana
19 organization representing general farm interests in Indiana.

20 (4) One (1) member appointed by the largest Indiana organization
21 exclusively representing the interests of corn producers.

22 (5) One (1) member appointed by the largest Indiana organization
23 exclusively representing the interests of soybean producers in
24 Indiana.

25 (6) One (1) member appointed by the largest Indiana organization
26 representing the interests of bankers in Indiana.

27 (7) One (1) member appointed by the second largest Indiana
28 organization representing the interests of bankers in Indiana.

29 **(8) One (1) member appointed by the largest Indiana**
30 **organization representing the interests of the seed trade in**
31 **Indiana.**

32 The members appointed under subdivisions (2) through (5) must be
33 producers.

34 (c) The board consists of the following three (3) nonvoting
35 members:

36 (1) The attorney general.

37 (2) The treasurer of state.

38 (3) The director of the agency, who shall serve as the chairperson.

39 (d) The attorney general and treasurer of state may each designate
40 a representative to serve on the board.

41 SECTION 4. IC 26-4-3-4 IS AMENDED TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Except as provided in



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1 subsection (b), ~~five (5)~~ **six (6)** voting members constitute a quorum.
 2 The affirmative votes of at least ~~five (5)~~ **six (6)** voting members are
 3 necessary for any action to be taken by the board.

4 (b) A meeting may be adjourned by less than ~~five (5)~~ **six (6)**
 5 members.

6 SECTION 5. IC 26-4-6-3 IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) Except as provided in
 8 subsection (b), within ninety (90) days of the board's approval of a
 9 valid claim, the board shall compensate from the fund, in an amount
 10 described in section 4 of this chapter **and in the manner described in**
 11 **subsection (c)**, a claimant who has incurred a financial loss or storage
 12 loss due to a failure of a grain buyer or warehouseman.

13 (b) The time for payment may be extended if the board and claimant
 14 mutually agree and put the terms of the payment in writing.

15 (c) **If:**

16 (1) **a claimant engaged in farming operations granted to one**
 17 **(1) or more secured parties one (1) or more security interests**
 18 **in the grain related to the claimant's claim under this section;**
 19 **and**

20 (2) **one (1) or more secured parties described in subdivision**
 21 **(1) have given to:**

22 (A) **the licensee prior written notice of the security interest**
 23 **under IC 26-1-9-307(1)(a); and**

24 (B) **the board prior written notice of the security interest**
 25 **with respect to the grain described in subdivision (1)**
 26 **sufficient to give the board a reasonable opportunity to**
 27 **cause the issuance of a joint check under this subsection;**

28 **the board may compensate the claimant described in subdivision**
 29 **(1) in the amount to which the claimant is entitled under section 4**
 30 **of this chapter by causing the issuance of a check payable jointly**
 31 **to the order of the claimant and any secured party described in**
 32 **subdivision (1) who has given the notices described in subdivision**
 33 **(2). If only one (1) secured party described in subdivision (1) is a**
 34 **payee, the rights of the secured party in the check shall be to the**
 35 **extent of the indebtedness of the claimant to the secured party. If**
 36 **two (2) or more secured parties described in subdivision (1) are**
 37 **payees, the nature, extent, and priority of their respective rights in**
 38 **the check are determined in the same manner as the nature, extent,**
 39 **and priority of their respective security interest under IC 26-1-9.**



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1782, 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 adopted by the House Financial Institutions committee on February 17, 1999.

Page 1, line 4, delete ":".

Page 1, delete lines 5 through 7.

Page 1, line 8, delete "(B)".

Page 1, line 8, delete ", as provided by subsection (h) or (i) or".

Page 1, line 9, delete "otherwise,".

Page 1, run in lines 4 through 9.

Page 2, line 20, delete "(j)" and insert "(h)".

Page 2, line 27, delete ":".

Page 2, delete lines 28 through 30.

Page 2, line 31, delete "(ii)".

Page 2, line 31, delete ", as provided by subsection (h) or (i) or".

Page 2, run in lines 27 through 31.

Page 2, line 32, delete "otherwise,".

Page 2, delete lines 33 through 34.

Page 3, line 21, delete "When a licensee issues a receipt for grain stored by the" and insert "**If:**

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

(2) one (1) or more secured parties described in subdivision (1) have given to:

(A) the licensee prior written notice of the security interest under IC 26-1-9-307(1)(a); and

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

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



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check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9."

Page 3, delete lines 22 through 42.

Page 4, delete lines 1 through 15.

Page 4, line 25, delete "The manner of compensation for a claimant who has" and insert "If:

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

(2) one (1) or more secured parties described in subdivision (1) have given to:

(A) the licensee prior written notice of the security interest under IC 26-1-9-307(1)(a); and

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

the board may compensate the claimant described in subdivision (1) in the amount to which the claimant is entitled under section 4 of this chapter by causing the issuance of a check payable jointly to the order of the claimant and any secured party described in subdivision (1) who has given the notices described in subdivision (2). If only one (1) secured party described in subdivision (1) is a payee, the rights of the secured party in the check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9."

and when so amended that said bill do pass.

(Reference is to HB 2027 as introduced and as amended by the House Committee on Financial Institutions on February 17, 1999.)

BODIKER, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1782 be amended to read as follows:

Page 4, delete lines 29 through 42.

Delete page 5.

(Reference is to HB 1782 as printed February 26, 1999.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1782, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 36 and 37, begin a new paragraph and insert:
 "SECTION 2. IC 26-4-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Except as provided in subsection (c), a grain buyer shall, beginning on May 1, 1996 register with the board.

(b) A grain buyer that is not a **grain buyer or** warehouse licensed under:

- (1) IC 26-3-7; or
- (2) the United States Warehouse Act;

shall pay to the board a registration fee of one hundred dollars (\$100).

(c) A producer who buys less than fifty thousand (50,000) bushels of grain annually for the buyer's own use as seed or feed is not required to register under this section.

SECTION 3. IC 26-4-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The corporation's board is created. The governing powers of the corporation are vested in the board, which is composed of ~~twelve (12)~~ **thirteen (13)** members as described in subsections (b) and (c).

(b) The board consists of the following ~~nine (9)~~ **ten (10)** voting members:

- (1) Two (2) members appointed by the largest Indiana organization representing the interests of grain and feed dealers in Indiana.
- (2) Two (2) members appointed by the largest Indiana organization representing general farm interests in Indiana.
- (3) One (1) member appointed by the second largest Indiana organization representing general farm interests in Indiana.
- (4) One (1) member appointed by the largest Indiana organization exclusively representing the interests of corn producers.
- (5) One (1) member appointed by the largest Indiana organization exclusively representing the interests of soybean producers in Indiana.
- (6) One (1) member appointed by the largest Indiana organization representing the interests of bankers in Indiana.
- (7) One (1) member appointed by the second largest Indiana organization representing the interests of bankers in Indiana.
- (8) **One (1) member appointed by the largest Indiana**

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organization representing the interests of the seed trade in Indiana.

The members appointed under subdivisions (2) through (5) must be producers.

(c) The board consists of the following three (3) nonvoting members:

- (1) The attorney general.
- (2) The treasurer of state.
- (3) The director of the agency, who shall serve as the chairperson.

(d) The attorney general and treasurer of state may each designate a representative to serve on the board.

SECTION 4. IC 26-4-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Except as provided in subsection (b), ~~five (5)~~ **six (6)** voting members constitute a quorum. The affirmative votes of at least ~~five (5)~~ **six (6)** voting members are necessary for any action to be taken by the board.

(b) A meeting may be adjourned by less than ~~five (5)~~ **six (6)** members."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1782 as reprinted March 2, 1999.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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