



February 26, 1999

# HOUSE BILL No. 1782

DIGEST OF HB 1782 (Updated February 25, 1999 5:17 pm - DI 94)

**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 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  
(Continued next page)

**Effective:** July 1, 1999.

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**Whetstone, Kuzman, Crosby**

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January 26, 1999, read first time and referred to Committee on Financial Institutions.  
February 25, 1999, amended, reported — Do Pass.

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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.

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**HB 1782—LS 8096/DI 100+**



February 26, 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.

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## 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

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1 of the following:

- 2 (1) the delivery of the grain for sale, storage, or under a bailment;  
 3 (2) the commencement of the storage obligation; or  
 4 (3) the advancement of funds by a lender.

5 (c) A lien under this section terminates when the licensee discharges  
 6 the claim.

7 (d) If a licensee fails, the lien that attaches under this section is  
 8 assigned to the agency by operation of this section. If a failed licensee  
 9 is liquidated, a lien under this section continues to attach as a claim  
 10 against the assets or proceeds of the assets of the licensee that are  
 11 received or liquidated by the agency.

12 (e) Except as provided in subsection (g), if a licensee fails, the  
 13 power to enforce the lien on the licensee's grain assets transfers by  
 14 operation of this section to the director and rests exclusively with the  
 15 director who shall allocate and prorate the proceeds of the grain assets  
 16 as provided in ~~subsection~~ **subsections (f) and (h)**.

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

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

32 If there are insufficient grain assets to satisfy all first priority  
 33 claims, first priority claimants shall share pro rata in the assets.

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

42 (3) Third priority is assigned to all other claimants that have

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1 written evidence of the sale of grain to the failed licensee.  
 2 Claimants under this subdivision share pro rata in the distribution  
 3 of the remaining grain assets.

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

11 **(h) If:**

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

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

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

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

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

37 SECTION 2. IC 26-4-6-3 IS AMENDED TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) Except as provided in  
 39 subsection (b), within ninety (90) days of the board's approval of a  
 40 valid claim, the board shall compensate from the fund, in an amount  
 41 described in section 4 of this chapter **and in the manner described in**  
 42 **subsection (c)**, a claimant who has incurred a financial loss or storage



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1 loss due to a failure of a grain buyer or warehouseman.

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

4 (c) **If:**

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

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

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

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

17 **the board may compensate the claimant described in subdivision**  
18 **(1) in the amount to which the claimant is entitled under section 4**  
19 **of this chapter by causing the issuance of a check payable jointly**  
20 **to the order of the claimant and any secured party described in**  
21 **subdivision (1) who has given the notices described in subdivision**  
22 **(2). If only one (1) secured party described in subdivision (1) is a**  
23 **payee, the rights of the secured party in the check shall be to the**  
24 **extent of the indebtedness of the claimant to the secured party. If**  
25 **two (2) or more secured parties described in subdivision (1) are**  
26 **payees, the nature, extent, and priority of their respective rights in**  
27 **the check are determined in the same manner as the nature, extent,**  
28 **and priority of their respective security interest under IC 26-1-9.**  
29 **incurred a financial loss or storage loss due to a failure of a grain**  
30 **buyer or warehouseman shall be by issuance of a check paid jointly**  
31 **to the order of:**

32 **(1) the claimant who has created one (1) or more security**  
33 **interests in the grain to which the claimant has incurred a loss**  
34 **described in subsection (a); and**

35 **(2) any secured parties from whom the grain buyer or**  
36 **warehouseman has received prior written notice of a security**  
37 **interest, as provided in IC 26-1-9-307(1)(a), with respect to**  
38 **the grain described in subdivision (1);**

39 **if there are any secured parties described in subdivision (2). If only**  
40 **one (1) secured party described in subdivision (2) is a payee, the**  
41 **rights of the secured party in the check shall be to the extent of the**  
42 **indebtedness of the claimant to the secured party. If two (2) or**



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1 more secured parties described in subdivision (2) are payees, the  
2 extent and priority of their respective rights in the check are  
3 determined as would the extent and priority of their respective  
4 liens under IC 26-1-9.

5 (d) The board may decline to issue a joint check, as provided in  
6 subsection (c), to any secured party described in subsection (c)(2)  
7 that:

- 8 (1) knows or reasonably should know of the failure of the  
9 grain buyer or warehouseman; and  
10 (2) has not provided the board with a written list of the  
11 secured party's debtors who may have incurred a loss  
12 described in subsection (a) within a reasonable time for the  
13 board to issue a joint check.

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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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