



Reprinted
March 2, 1999

HOUSE BILL No. 1782

DIGEST OF HB1782 (Updated March 1, 1999 7:37 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 checked 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 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.

Effective: July 1, 1999.

Whetstone, Kuzman, Crosby

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.

HB 1782—LS 8096/DI 100+



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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.**

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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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