SENATE BILL No. 582

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-3-7; IC 26-4-1-13.

Synopsis: Grain buyers law. Makes the following changes to the agricultural commodities warehouse licensing law: (1) Adds popcorn and grain grown for use as seed to the definition of "grain". (2) Adds a person who buys grain to be used predominantly for seed to the definition of "grain buyer". (3) Adds a definition of "seed" to the statute. (4) Changes references in the law from minimum net worth to minimum positive net worth.

Effective: July 1, 1999.

Weatherwax

January 21, 1999, read first time and referred to Committee on Agriculture and Small Business.

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Introduced

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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SENATE BILL No. 582

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:

SECTION 1. IC 26-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The following definitions apply throughout this chapter:

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

(2) "Anniversary date" means the date that is ninety (90) calendar days after the fiscal year end of a business licensed under this chapter.

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

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

(5) "Claimant" means a person that is unable to secure satisfaction of the financial obligations due from a licensee under this chapter for grain that has been delivered to the licensee for sale or for storage under a bailment.

(6) "Deferred pricing" means a purchase by a buyer in which title

to the grain passes to the buyer and the price to be paid to the seller is not determined:

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

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

(7) "Depositor" means any of the following:

(A) A person that delivers grain to a licensee under this chapter for storage or sale.

(B) A person that:

(i) owns or is the legal holder of a ticket or receipt issued by a licensee for grain received by the licensee; and

(ii) is the creditor of the issuing licensee for the value of the grain received in return for the ticket or receipt.

(C) A licensee that stores grain that the licensee owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensee or another licensee.

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

(9) "Facility" means a location or one (1) of several locations in Indiana that are operated as a warehouse or by a grain buyer.

(10) "Failure" means any of the following:

(A) The inability of a licensee to financially satisfy claimants.

(B) Public declaration of a licensee's insolvency.

(C) Revocation or suspension of a licensee's license, if the licensee has outstanding indebtedness owed to claimants.

(D) Nonpayment of a licensee's debts in the ordinary course of business, if there is not a good faith dispute.

(E) Voluntary surrender of a licensee's license, if the licensee has outstanding indebtedness to claimants.

(11) "Grain" means corn **for all uses, including popcorn**, wheat, oats, barley, rye, sorghum, soybeans, oil seeds, ~~but not including canning crops for processing.~~ **other agricultural commodities as approved by the agency, and grain grown for seed use. The term does not include canning crops for processing, sweet corn, or flint corn.**

(12) "Grain assets" means any of the following:

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

(i) is in transit following shipment by a licensee; and

(ii) has not been paid for.

(B) All proceeds, due or to become due, from the sale of a licensee's grain.

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(C) Equity, less any secured financing directly associated with the equity, in hedging or speculative margin accounts of a licensee held by a commodity or security exchange, or a dealer representing a commodity or security exchange, and any money due the licensee from transactions on the exchange, less any secured financing directly associated with the money due the licensee from the transactions on the exchange.

(D) Any other unencumbered funds, property, or equity in funds or property, wherever located, that can be directly traced to the sale of grain by a licensee. However, funds, property, or equity in funds or property may not be considered encumbered unless:

(i) the encumbrance results from valuable consideration paid to the licensee in good faith by a secured party; and

(ii) the encumbrance did not result from the licensee posting the funds, property, or equity in funds or property as additional collateral for an antecedent debt.

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

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

(14) "Grain buyer" means a person who is engaged in the business of buying grain from producers **or a person who is engaged in the business of buying grain for the primary purpose of seed use.** The term does not include a buyer of grain who:

(A) buys less than fifty thousand (50,000) bushels of grain annually; ~~or~~

(B) buys grain for the sole purpose of feeding the person's own livestock or poultry ~~if:~~ **and**

~~(i) the person~~ derives a major portion of the person's income from selling that livestock or poultry; ~~and~~ **or**

~~(ii)~~ **(C)** ~~the person~~ does not offer storage, deferred pricing, delayed payment, or contracts or other instruments that are linked to the commodity futures or commodity options market.

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

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

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

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

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

(20) "Seed" means grain set apart to be used primarily for the purpose of producing new plants.

~~(20)~~ **(21)** "Ticket" means a scale weight ticket, a load slip, or other evidence, other than a receipt, given to a depositor upon initial delivery of grain to a facility.

~~(21)~~ **(22)** "Warehouse act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273 as amended).

~~(22)~~ **(23)** "Warehouse" means a person that operates a facility or group of facilities in which grain is or may be stored for hire or which is used for grain bank storage and which is operated under one (1) ownership and run from a single office.

SECTION 2. IC 26-3-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A person may not operate a warehouse or conduct business as a grain buyer or buyer-warehouse without first having obtained the appropriate license from the agency, nor may a person continue to operate a warehouse or conduct business as a grain buyer or buyer-warehouse after the person's license has been revoked or suspended, except as provided in section 18 of this chapter.

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

(c) If a licensee acquires an additional grain storage or handling facility in Indiana, the licensee shall promptly submit to the agency an amended application for licensure. A licensee shall promptly notify the agency of a material change to the licensee's operations, such as expansion of the amount of storage being used in the licensee's existing facilities or change of ownership of a facility, and shall provide the director with additional information the director may require. A licensee shall obtain the approval of the director before making use of increased storage or handling capacity.

(d) A licensee that acquires an additional grain storage or handling facility that is required to be licensed shall not use the facility for the

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storage or handling of grain until it qualifies for **and is issued** a license and is licensed as provided in this chapter. If a licensed grain storage or handling facility that a licensee operates in Indiana becomes ineligible for a license at any time for any reason, it shall not be used for the storage or handling of grain until the condition making it ineligible is removed.

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

(1) Company owned grain.

(2) Cash on hand.

(3) Cash held on account in federally or state licensed financial institutions or lending institutions of the Federal Farm Credit Administration.

(4) Investments held in time accounts with federally or state licensed financial institutions.

(5) Direct obligations of the United States government.

(6) Balances in grain margin accounts determined by marking to market.

(7) Balances due or to become due to the licensee on deferred pricing contracts.

(8) Marketable securities, including mutual funds.

(9) Irrevocable letters of credit that are:

(A) in favor of the agency;

(B) acceptable to the agency; and

(C) in addition to any letter of credit deposited with the director to satisfy the bonding requirement of this chapter.

(10) Deferred pricing contract service charges due or to become due to the licensee.

(11) Other evidence of proceeds from or of grain that is acceptable to the agency.

(12) Other assets approved by the director.

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

SECTION 3. IC 26-3-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The agency may issue the following licenses:

(1) A grain bank license may be issued to a person that:

(A) stores only grain bank grain;

(B) has a storage capacity of not more than fifty thousand (50,000) bushels of grain; and

(C) purchases less than fifty thousand (50,000) bushels of

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grain per year.

(2) A warehouse license may be issued to a person that:

(A) stores grain **for hire;** and

(B) purchases less than fifty thousand (50,000) bushels of grain per year.

(3) A grain buyer license may be issued to a person that:

(A) purchases annually at least fifty thousand (50,000) bushels of grain that are not for the sole purpose of feeding the person's own livestock or poultry;

(B) does not store grain **for hire;** ~~and~~

(C) offers deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with grain purchases; **or**

(D) buys grain to be used primarily for seed.

(4) A buyer-warehouse license may be issued to a person that operates both as a warehouse and as a grain buyer.

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

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

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

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

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

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

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

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additional facility.

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

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

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

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

(1) be prepared by an independent accountant certified under IC 25-2.1;

(2) comply with generally accepted accounting principles; and

(3) contain:

(A) an income statement;

(B) a balance sheet;

(C) a statement of cash flow;

(D) a statement of retained earnings;

(E) the preparer's notes; and

(F) other information the agency may require.

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

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

(h) A person that:

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

(2) purchases:

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

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

(3) does not

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~~(A)~~ purchase grain **by:**

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

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

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

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

is not required to be licensed.

SECTION 4. IC 26-3-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Each applicant for a license under this chapter shall, as a condition of licensure, file or have on file with the director:

(1) a cash deposit;

(2) an irrevocable letter of credit; ~~or~~

(3) a bond; **or**

(4) any combination of the above;

as provided in section 10 of this chapter.

(b) A bond filed under this chapter shall:

(1) be conditioned upon the faithful performance of all obligations of the licensee under this chapter and the rules adopted under this chapter from the effective date of the bond until the earlier of the date the license is revoked or the bond is canceled as provided in this chapter; and

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

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

SECTION 5. IC 26-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) The minimum amount of bond, letter of credit, or cash deposit required from a licensee is as follows:

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

(A) ten thousand dollars ($10,000); ~~or~~ **and**

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

~~whichever is greater.~~

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

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

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

whichever is greater.

(3) For a buyer-warehouse:

(A) **an amount equal to the sum of:**

(i) ten thousand dollars ($10,000); **and**

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

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

whichever is greater.

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

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

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

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

(f) If a person is licensed or is applying for licenses to operate two (2) or more facilities in Indiana, the person may give a single bond, letter of credit, or cash deposit to satisfy the requirements of this

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chapter and the rules adopted under this chapter to cover all the person's facilities in Indiana.

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

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

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

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

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

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

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

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SECTION 6. IC 26-3-7-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) A licensee shall have and maintain a current asset to current liability ratio of one to one (1:1) and shall maintain, as evidenced by the financial statement required by section 6 of this chapter, the following minimum **positive** net worth:

(1) For a grain bank, minimum **positive** net worth is at least ten thousand dollars ($10,000).

(2) For a warehouse, minimum **positive** net worth is at least equal to the sum of:

(A) fifteen thousand dollars ($15,000); and

(B) ten cents ($0.10) multiplied by the bushel storage capacity of the warehouse.

(3) For a grain buyer, minimum **positive** net worth is: ~~at least:~~

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

(B) five cents ($0.05) multiplied by the total number of bushels of grain purchased by the grain buyer during the grain buyer's **most recent** fiscal year; ~~immediately preceding the date net worth is calculated;~~

whichever is greater.

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

(A) the sum of:

(i) fifteen thousand dollars ($15,000); and

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

(B) five cents ($0.05) multiplied by the total number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's **most recent** fiscal year; ~~immediately preceding the date net worth is calculated;~~

whichever is greater.

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

(A) the sum of:

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

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

(B) five cents ($0.05) multiplied by the **total** number of

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bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's **most recent** fiscal year; ~~immediately preceding the date net worth is calculated;~~

whichever is greater.

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

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

SECTION 7. IC 26-3-7-16.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.5. (a) Upon learning of the possibility that a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an on-premise inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.

(b) If it is determined that a shortage may exist, the director or ~~his~~ **the director's** designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee's books and records and the grain on hand. Only the licensee, the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and any grain depositor who has made a claim or complaint to the agency in conjunction with the shortage shall be considered as interested parties for the purposes of that hearing, and each shall be given notice of the hearing. At the hearing, the director or the director’s designated representative shall determine whether there appears to be a reasonable probability that a shortage exists. If it is determined that a reasonable probability exists and that the bond or letter of credit proceeds or the cash deposit should be distributed, a preliminary determination shall be entered to the effect that the licensee has failed to meet its obligations under this chapter or the rules adopted under this chapter. At the hearing, the director or the director’s designated representative may order that all proceeds from grain sales are to be held in the form in which they are received and to be kept separate from all other funds held by the licensee. The order may also provide for informal conferences between agency representatives and persons who have or who appear to have grain deposited with the licensee. The surety company shall be permitted to participate in those conferences.

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

(d) Following the hearing on claims, the director shall make a determination as to the total proven storage obligation of the claimants and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims shall be proven claimants. In arriving at that loss, in accordance with section 19 of this chapter, the director shall apply all grain on hand or its identifiable proceeds to meet the licensee's obligations to grain depositors of grain of that type. Initial determinations of loss shall be made on a bushel loss basis. Grain on hand, or identifiable proceeds, shall reduce the number of bushels to which a depositor may have a proven claim. With respect to the remaining unfulfilled obligations, the director shall, for the sole purpose of establishing each depositor's claim under this chapter, establish a date upon which the loss is discovered, shall price the grain as of that date, shall treat all outstanding grain storage obligations not covered by grain on hand or identifiable proceeds as being sold as of that date, and shall determine the extent of each depositor's loss as being the actual loss sustained as of that date. Grain of a specific type on the premises of a licensee must first be applied to meet the licensee's storage obligations with respect to that type of grain. If there is insufficient grain of a specific type on hand to meet all storage obligations with respect to that type of grain, the grain that is present shall be prorated in accordance with the procedures described

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in this section and section 16.8 of this chapter.

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

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

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

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

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

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

SECTION 8. IC 26-3-7-16.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.6. The procedures established by ~~section 16.5 of~~ this chapter also apply when the director learns or has reason to believe that a person is doing business as a grain buyer, operating a warehouse, or acting as a buyer-warehouse without the license required by this chapter.

SECTION 9. IC 26-3-7-16.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.8. (a) A lien against all grain assets of a licensee **or a person who is required to be licensed under this chapter** attaches in favor of the following:

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

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

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

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

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

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

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

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

(2) the commencement of the storage obligation; or

(3) the advancement of funds by a lender.

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

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

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

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

(1) First priority is assigned to the following:

(A) A lender or other claimant that has a receipt for grain owned or stored by the licensee.

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

(C) A claimant that surrendered a receipt as part of a grain sales transaction if:

(i) the claimant was not fully paid for the grain sold; and

(ii) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

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

(2) Second priority is assigned to all claimants who have written evidence of the sale of grain, such as a ticket, a deferred pricing agreement, or similar grain delivery contract, and who completed delivery less than thirty (30) days before the licensee's failure.

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Claimants under this subdivision share pro rata in the remaining assets if all claimants under subdivision (1) have been paid but insufficient assets remain to fully satisfy all claimants under this subdivision.

(3) Third priority is assigned to all other claimants that have written evidence of the sale of grain to the failed licensee. Claimants under this subdivision share pro rata in the distribution of the remaining grain assets.

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

SECTION 10. IC 26-3-7-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 25. Every warehouse receipt issued, **whether paper or electronic,** shall embody within its terms the following:

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

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

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

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

(3) A clause that reserves to the licensee the right to terminate storage and collect outstanding charges against any lot of grain that remains in storage after June 30 following the date of the receipt.

(4) A clause that reserves to the licensee the right to terminate storage, shipping, and handling arrangements and collect outstanding charges upon the revocation of the licensee's license.

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

(6) A clause that terminates storage on the date the license held by the licensee when the receipt was issued expires and reserves

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to the licensee the right to collect outstanding charges against any lot of grain.

(7) Other provisions prescribed by the director.

SECTION 11. IC 26-3-7-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 26. Every ticket issued shall embody within its terms:

(1) the name of the licensee to whom the grain was delivered;

(2) the date the grain was delivered;

(3) exact information concerning the type, net weight, and grade factors of the grain received;

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

(5) the name of the owner of the grain;

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

~~(7)~~ **(6)** other provisions prescribed by the director.

SECTION 12. IC 26-3-7-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 30. All receipt forms shall be supplied by the director except where the director, in writing, approves the form and gives permission to a warehouseman to have receipts printed. Requests for receipts shall be on forms furnished by the director and shall be accompanied by payment to cover the estimated cost of printing, packaging, and shipping, as determined by the director. Where privately printed, the printer shall furnish the director an affidavit showing the amount of the receipts printed, and the serial numbers thereof. All receipts remaining unused shall be recovered by the director or ~~his~~ **the director's** designated representative if the license required by this chapter is terminated or suspended.

SECTION 13. IC 26-3-7-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee ~~does not have in the licensee's possession sufficient grain to cover the outstanding receipts and tickets issued or assumed by the licensee,~~ **cannot meet the licensee's outstanding grain obligations owed to depositors,** or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

(1) Cover the shortage with grain that is fully paid for.

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

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

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with IC 34-48-1 that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in IC 34-48-1-2 may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

SECTION 14. IC 26-4-1-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. ~~(a)~~ "Grain" means corn **for all uses, including popcorn,** wheat, oats, rye, soybeans, barley, sorghum, oil seeds, ~~and~~ other agricultural commodities as approved by the agency, **and grain grown for seed use.**

~~(b)~~ The term does not include canning crops for processing, **sweet corn, or flint corn.**

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