

HOUSE BILL No. 1782

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-3-7-16.8; IC 26-4-6-3.

Synopsis: Liens against grain assets. Provides that prior written notice of a security interest in grain owned or stored by a person who operates a grain warehouse or conducts business as a grain buyer (licensee) constitutes a lien that attaches in favor of a lender or other claimant who provides the prior written notice. Requires a licensee who has prior written notice of a security interest in the grain to issue a receipt for grain stored by the licensee to both the person who delivered the grain stored by the licensee and the secured parties from whom the licensee received prior written notice of a security interest. Specifies how the director of the Indiana grain buyers and warehouse licensing agency shall pay the proceeds of grain assets. Specifies the manner of
(Continued next page)

Effective: July 1, 1999.

Whetstone, Kuzman

January 26, 1999, read first time and referred to Committee on Financial Institutions.

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Digest Continued

compensation for a claimant who has incurred a financial loss or storage loss due to a failure of a grain buyer or warehouseman.

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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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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:
5 (A) **provided to the licensee prior written notice of a**
6 **security interest in grain owned or stored by the licensee,**
7 **as provided by IC 26-1-9-307(1)(a); or**
8 (B) a receipt, **as provided by subsection (h) or (i) or**
9 **otherwise,** for grain owned or stored by the licensee.
10 (2) A claimant that has a ticket or written evidence, other than a
11 receipt, of a storage obligation of the licensee.
12 (3) A claimant that surrendered a receipt as part of a grain sales
13 transaction if:
14 (A) the claimant was not fully paid for the grain sold; and
15 (B) the licensee failed less than twenty-one (21) days after the



- 1 surrender of the receipt.
- 2 (4) A claimant that has other written evidence of a sale to the
- 3 licensee of grain for which the claimant has not been fully paid.
- 4 (b) A lien under this section attaches and is effective at the earliest
- 5 of the following:
- 6 (1) the delivery of the grain for sale, storage, or under a bailment;
- 7 (2) the commencement of the storage obligation; or
- 8 (3) the advancement of funds by a lender.
- 9 (c) A lien under this section terminates when the licensee discharges
- 10 the claim.
- 11 (d) If a licensee fails, the lien that attaches under this section is
- 12 assigned to the agency by operation of this section. If a failed licensee
- 13 is liquidated, a lien under this section continues to attach as a claim
- 14 against the assets or proceeds of the assets of the licensee that are
- 15 received or liquidated by the agency.
- 16 (e) Except as provided in subsection (g), if a licensee fails, the
- 17 power to enforce the lien on the licensee's grain assets transfers by
- 18 operation of this section to the director and rests exclusively with the
- 19 director who shall allocate and prorate the proceeds of the grain assets
- 20 as provided in ~~subsection~~ **subsections (f) and (j)**.
- 21 (f) The priority of a lien that attaches under this section is not
- 22 determined by the date on which the claim arose. If a licensee fails, the
- 23 director shall enforce lien claims and allocate grain assets and the
- 24 proceeds of grain assets of the licensee in the following order of
- 25 priority:
- 26 (1) First priority is assigned to the following:
- 27 (A) A lender or other claimant that has:
- 28 (i) **provided to the licensee prior written notice of a**
- 29 **security interest in grain owned or stored by the licensee,**
- 30 **as provided by IC 26-1-9-307(1)(a); or**
- 31 (ii) a receipt, **as provided by subsection (h) or (i) or**
- 32 **otherwise,** for grain owned or stored by the licensee.
- 33 **The priority of liens among lenders or other claimants with**
- 34 **respect to the same debtor is determined under IC 26-1-9.**
- 35 (B) A claimant that has a ticket or written evidence, other than
- 36 a receipt, of a storage obligation of the licensee.
- 37 (C) A claimant that surrendered a receipt as part of a grain
- 38 sales transaction if:
- 39 (i) the claimant was not fully paid for the grain sold; and
- 40 (ii) the licensee failed less than twenty-one (21) days after
- 41 the surrender of the receipt.
- 42 If there are insufficient grain assets to satisfy all first priority

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1 claims, first priority claimants shall share pro rata in the assets.

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

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

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

21 **(h) When a licensee issues a receipt for grain stored by the**
22 **licensee, the licensee shall issue a receipt jointly to:**

23 **(1) the person who delivered the grain stored by the licensee;**
24 **and**

25 **(2) the secured parties from whom the licensee received prior**
26 **written notice of a security interest in the grain as provided in**
27 **IC 26-1-9-307(1)(a).**

28 **(i) A licensee who fails to issue a joint receipt as required under**
29 **subsection (h) is considered to have done so for purposes of**
30 **determining the existence and priority of a lien under this section.**

31 **(j) The director shall pay the proceeds of grain assets, as**
32 **provided in subsection (e) by issuance of a check payable jointly to**
33 **the order of:**

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

37 **(2) the secured parties from whom the licensee has received**
38 **prior written notice of a security interest in the grain**
39 **described in subdivision (1) as provided in**
40 **IC 26-1-9-307(1)(a);**

41 **if there are any secured parties described in subdivision (2). If only**
42 **one (1) secured party described in subdivision (2) is a payee, the**

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1 rights of the secured party in the check shall be to the extent of the
 2 indebtedness of the claimant to the secured party. If two (2) or
 3 more secured parties described in subdivision (2) are payees, the
 4 extent and priority of their respective rights in the check are
 5 determined by the extent and priority of their respective liens
 6 under IC 26-1-9.

7 (k) The director may decline to issue a joint check as provided
 8 in subsection (j) to a secured party described in subsection (j)(2)
 9 that:

10 (1) knows or reasonably should know of the failure of the
 11 licensee; and

12 (2) has not provided the agency with a written list of the
 13 secured party's debtors who may be entitled to proceeds
 14 described in subsection (e) within a reasonable time for the
 15 agency to issue a joint check.

16 SECTION 2. IC 26-4-6-3 IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) Except as provided in
 18 subsection (b), within ninety (90) days of the board's approval of a
 19 valid claim, the board shall compensate from the fund, in an amount
 20 described in section 4 of this chapter **and in the manner described in**
 21 **subsection (c)**, a claimant who has incurred a financial loss or storage
 22 loss due to a failure of a grain buyer or warehouseman.

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

25 (c) **The manner of compensation for a claimant who has**
 26 **incurred a financial loss or storage loss due to a failure of a grain**
 27 **buyer or warehouseman shall be by issuance of a check paid jointly**
 28 **to the order of:**

29 (1) the claimant who has created one (1) or more security
 30 interests in the grain to which the claimant has incurred a loss
 31 described in subsection (a); and

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

36 if there are any secured parties described in subdivision (2). If only
 37 one (1) secured party described in subdivision (2) is a payee, the
 38 rights of the secured party in the check shall be to the extent of the
 39 indebtedness of the claimant to the secured party. If two (2) or
 40 more secured parties described in subdivision (2) are payees, the
 41 extent and priority of their respective rights in the check are
 42 determined as would the extent and priority of their respective



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1 **liens under IC 26-1-9.**
2 **(d) The board may decline to issue a joint check, as provided in**
3 **subsection (c), to any secured party described in subsection (c)(2)**
4 **that:**
5 **(1) knows or reasonably should know of the failure of the**
6 **grain buyer or warehouseman; and**
7 **(2) has not provided the board with a written list of the**
8 **secured party's debtors who may have incurred a loss**
9 **described in subsection (a) within a reasonable time for the**
10 **board to issue a joint check.**

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