



Reprinted
March 3, 1999

SENATE BILL No. 582

DIGEST OF SB 582 (Updated March 2, 1999 4:35 pm - DI 100)

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

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. (5) Requires that all contracts executed after January 1, 2000, for production of seed include a specified notice regarding eligibility in the grain indemnity program.

Effective: July 1, 1999.

Weatherwax

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

February 25, 1999, amended, reported favorably — Do Pass.
March 2, 1999, read second time, amended, ordered engrossed.

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SB 582—LS 8056/DI 98+



Reprinted
March 3, 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.

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:

- 1 SECTION 1. IC 26-3-7-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 2. The following definitions apply
3 throughout this chapter:
4 (1) "Agency" refers to the Indiana grain buyers and warehouse
5 licensing agency established under section 1 of this chapter.
6 (2) "Anniversary date" means the date that is ninety (90) calendar
7 days after the fiscal year end of a business licensed under this
8 chapter.
9 (3) "Bin" means a bin, tank, interstice, or other container in a
10 warehouse in which bulk grain may be stored.
11 (4) "Buyer-warehouse" means a person that operates both as a
12 warehouse licensed under this chapter and as a grain buyer.
13 (5) "Claimant" means a person that is unable to secure satisfaction
14 of the financial obligations due from a licensee under this chapter
15 for grain that has been delivered to the licensee for sale or for
16 storage under a bailment.
17 (6) "Deferred pricing" or "**price later**" means a purchase by a

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1 buyer in which title to the grain passes to the buyer and the price
2 to be paid to the seller is not determined:

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

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

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

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

8 (B) A person that:

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

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

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

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

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

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

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

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

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

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

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

30 (11) "Grain" means corn **for all uses, popcorn**, wheat, oats,
31 barley, rye, sorghum, soybeans, oil seeds, ~~but not including~~
32 ~~canning crops for processing; other agricultural commodities as~~
33 **approved by the agency, and seed as defined in this chapter.**
34 **The term does not include canning crops for processing, sweet**
35 **corn, or flint corn.**

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

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

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

40 (ii) has not been paid for.

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

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- 1 (C) Equity, less any secured financing directly associated with
 2 the equity, in hedging or speculative margin accounts of a
 3 licensee held by a commodity or security exchange, or a dealer
 4 representing a commodity or security exchange, and any
 5 money due the licensee from transactions on the exchange,
 6 less any secured financing directly associated with the money
 7 due the licensee from the transactions on the exchange.
- 8 (D) Any other unencumbered funds, property, or equity in
 9 funds or property, wherever located, that can be directly traced
 10 to the sale of grain by a licensee. However, funds, property, or
 11 equity in funds or property may not be considered encumbered
 12 unless:
- 13 (i) the encumbrance results from valuable consideration paid
 14 to the licensee in good faith by a secured party; and
 15 (ii) the encumbrance did not result from the licensee posting
 16 the funds, property, or equity in funds or property as
 17 additional collateral for an antecedent debt.
- 18 (E) Any other unencumbered funds, property, or equity in
 19 assets of the licensee.
- 20 (13) "Grain bank grain" means grain owned by a depositor for use
 21 in the formulation of feed and stored by the warehouse to be
 22 returned to the depositor on demand.
- 23 (14) "Grain buyer" means a person who is engaged in the business
 24 of buying grain from producers. The term does not include a
 25 buyer of grain who:
- 26 (A) buys less than fifty thousand (50,000) bushels of grain
 27 annually; ~~or~~
- 28 (B) buys grain for the sole purpose of feeding the person's own
 29 livestock or poultry ~~if:~~ **and**
- 30 ~~(i) the person~~ derives a major portion of the person's income
 31 from selling that livestock or poultry; ~~and or~~
- 32 ~~(ii) (C) the person~~ does not offer storage, deferred pricing,
 33 delayed payment, or contracts or other instruments that are
 34 linked to the commodity futures or commodity options market.
- 35 (15) "Grain standards act" means the United States Grain
 36 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
 37 71-87 as amended).
- 38 (16) "License" means a license issued under this chapter.
- 39 (17) "Official grain standards of the United States" means the
 40 standards of quality or condition for grain, fixed and established
 41 by the secretary of agriculture under the grain standards act.
- 42 (18) "Person" means an individual, partnership, corporation,

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1 association, or other form of business enterprise.

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

4 **(20) "Seed", notwithstanding IC 15-4-1, means grain set apart
5 to be used primarily for the purpose of producing new plants.**

6 ~~(20)~~ (21) "Ticket" means a scale weight ticket, a load slip, or
7 other evidence, other than a receipt, given to a depositor upon
8 initial delivery of grain to a facility.

9 ~~(21)~~ (22) "Warehouse act" means the United States Warehouse
10 Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273
11 as amended).

12 ~~(22)~~ (23) "Warehouse" means a person that operates a facility or
13 group of facilities in which grain is or may be stored for hire or
14 which is used for grain bank storage and which is operated under
15 one (1) ownership and run from a single office.

16 SECTION 2. IC 26-3-7-3 IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The director may do the
18 following:

19 (1) Require any reports that are necessary to administer this
20 chapter.

21 (2) Administer oaths, issue subpoenas, compel the attendance and
22 testimony of witnesses, and compel the production of records in
23 connection with any investigation or hearing under this chapter.

24 (3) Prescribe all forms within the provisions of this chapter.

25 (4) Establish grain standards in accordance with the grain
26 standards act and federal regulations promulgated under that act
27 that must be used by warehouses.

28 (5) Investigate the activities required by this chapter including the
29 storage, shipping, marketing, and handling of grain and
30 complaints with respect to the storage, shipping, marketing, and
31 handling of grain.

32 (6) Inspect a facility, the grain stored in a facility, and all property
33 and records pertaining to a facility. **All inspections of an
34 applicant or licensee under this chapter must take into
35 consideration the proprietary nature of an applicant's or
36 licensee's commercial information. The director may adopt
37 rules under IC 4-22-2 regarding inspections permitted under
38 this chapter, and the rules must take into consideration the
39 proprietary nature of an applicant's or a licensee's
40 commercial information. This chapter does not authorize the
41 inspection of an applicant's or licensee's trade secret or
42 intellectual property information.**



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- 1 (7) Determine whether a facility for which a license has been
- 2 applied for or has been issued is suitable for the proper storage,
- 3 shipping, and handling of the grain that is stored, shipped, or
- 4 handled, or is expected to be stored, shipped, or handled.
- 5 (8) Require a licensee to terminate storage, shipping, marketing,
- 6 and handling agreements upon revocation of the person's license.
- 7 (9) Attend and preside over any investigation or hearing allowed
- 8 or required under this chapter.
- 9 (10) Impose sanctions for violations of this article.
- 10 (11) Require a grain buyer and all persons purchasing grain for a
- 11 grain buyer to do any of the following:
- 12 (A) Provide the agency with proof of registry with the
- 13 commodity futures trading commission (CFTC) as a
- 14 commodity trading adviser, a futures commission merchant, an
- 15 introducing broker, or an associated person.
- 16 (B) Demonstrate passage of the series 3 examination
- 17 administered by the National Association of Security Dealers.
- 18 (C) Annually attend six (6) hours of continuing education,
- 19 approved by the director, focusing on the risks to a grain buyer
- 20 and seller that are associated with grain marketing practices
- 21 and the communication of risks to the producer. Additionally,
- 22 as part of continuing education, require a grain buyer, and all
- 23 persons purchasing grain for a grain buyer, to pass a test,
- 24 approved and administered by the director, that reasonably
- 25 measures the grain buyer's understanding of the risks to grain
- 26 buyers and sellers associated with producer marketing
- 27 strategies.
- 28 (12) Require all contracts executed after June 30, 1997, for the
- 29 purchase of grain from producers, except a flat price contract **or**
- 30 **a contract for the production of seed**, to include the following
- 31 notice immediately above the place on the contract where the
- 32 seller of the grain must sign:
- 33 "NOTICE - SELLER IS CAUTIONED THAT
- 34 CONTRACTING FOR THE SALE AND DELIVERY OF
- 35 GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE
- 36 FUTURE PAYMENTS BY YOU TO MAINTAIN THIS
- 37 CONTRACT, A LOWER SALES PRICE, AND OTHER
- 38 RISKS NOT SPECIFIED.
- 39 COVERAGE UNDER THE INDIANA GRAIN INDEMNITY
- 40 PROGRAM IS LIMITED TO 100% OF A LOSS FOR
- 41 STORED GRAIN AND 80% OF A LOSS FOR OTHER
- 42 COVERED CONTRACTS.

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1 BE SURE YOU UNDERSTAND THE NATURE OF THIS
2 CONTRACT AND THE ASSOCIATED RISKS."

3 (13) **Require all contracts executed after January 1, 2000, for**
4 **the production of seed to include the following notice, in**
5 **conspicuous letters, immediately above the place on the**
6 **contract or an addendum where the seller of the seed must**
7 **sign:**

8 "NOTICE - IF THE TERMS OF THIS CONTRACT
9 STATE THAT THE CONTRACTOR RETAINS
10 OWNERSHIP OF THE SEED AND ITS PRODUCTS,
11 YOU MAY NOT BE ELIGIBLE FOR PARTICIPATION
12 IN THE INDIANA GRAIN INDEMNITY PROGRAM. TO
13 BE ELIGIBLE TO PARTICIPATE IN THE INDIANA
14 GRAIN INDEMNITY PROGRAM, FARMERS MUST
15 OWN AND SELL GRAIN OR SEED. BE SURE YOU
16 UNDERSTAND THE NATURE OF THIS CONTRACT
17 AND THE ASSOCIATED RISKS."

18 (14) At any time, order an unannounced audit for compliance with
19 this article.

20 ~~(14)~~ (15) Adopt rules under IC 4-22-2 to carry out the purposes
21 and intent of this chapter.

22 (b) The director shall do the following:

23 (1) Establish standards to ensure that a grain buyer has a suitable
24 financial position to conduct a business as a grain buyer.

25 (2) Require a person who conducts business as a grain buyer to
26 first be licensed by the agency.

27 (3) Require any person engaged in the business of advising
28 producers on grain marketing for hire to:

29 (A) register with the agency; and

30 (B) provide the agency with proof of registry with the
31 commodity futures trading commission (CFTC) as a
32 commodity trading advisor, a futures commission merchant, an
33 introducing broker, or an associated person.

34 (c) The director may designate an employee to act for the director
35 in the administration of this chapter. A designee may not:

36 (1) act in matters that require a public hearing or the temporary
37 suspension of a license;

38 (2) adopt rules; or

39 (3) act as the ultimate authority in the administration of this
40 chapter.

41 (d) The director may determine whether geographically separate
42 facilities constitute a single warehouse or grain buyer and in making



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1 the determination may consider the following:

- 2 (1) The number of facilities involved.
 3 (2) Whether full weighing equipment is present at the
 4 geographically separate facilities.
 5 (3) The method of bookkeeping employed by the separate
 6 facilities.
 7 (4) The hours of operation of the separate facilities.
 8 (5) The personnel employed at the separate facilities.
 9 (6) Other factors the director deems relevant.

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

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

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

34 (d) A licensee that acquires an additional grain storage or handling
 35 facility that is required to be licensed shall not use the facility for the
 36 storage or handling of grain until it qualifies for **and is issued** a license
 37 and is licensed as provided in this chapter. If a licensed grain storage
 38 or handling facility that a licensee operates in Indiana becomes
 39 ineligible for a license at any time for any reason, it shall not be used
 40 for the storage or handling of grain until the condition making it
 41 ineligible is removed.

42 (e) A licensee shall maintain at least eighty percent (80%) of the

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1 unpaid balance of grain payables in unencumbered assets represented
2 by the aggregate of the following:

- 3 (1) Company owned grain.
4 (2) Cash on hand.
5 (3) Cash held on account in federally or state licensed financial
6 institutions or lending institutions of the Federal Farm Credit
7 Administration.
8 (4) Investments held in time accounts with federally or state
9 licensed financial institutions.
10 (5) Direct obligations of the United States government.
11 (6) Balances in grain margin accounts determined by marking to
12 market.
13 (7) Balances due or to become due to the licensee on deferred
14 pricing contracts.
15 (8) Marketable securities, including mutual funds.
16 (9) Irrevocable letters of credit that are:
17 (A) in favor of the agency;
18 (B) acceptable to the agency; and
19 (C) in addition to any letter of credit deposited with the
20 director to satisfy the bonding requirement of this chapter.
21 (10) Deferred pricing contract service charges due or to become
22 due to the licensee.
23 (11) Other evidence of proceeds from or of grain that is
24 acceptable to the agency.
25 (12) Other assets approved by the director.

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

28 SECTION 4. IC 26-3-7-6 IS AMENDED TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The agency may issue the
30 following licenses:

- 31 (1) A grain bank license may be issued to a person that:
32 (A) stores only grain bank grain;
33 (B) has a storage capacity of not more than fifty thousand
34 (50,000) bushels of grain; and
35 (C) purchases less than fifty thousand (50,000) bushels of
36 grain per year.
37 (2) A warehouse license may be issued to a person that:
38 (A) stores grain **for hire**; and
39 (B) purchases less than fifty thousand (50,000) bushels of
40 grain per year.
41 (3) A grain buyer license may be issued to a person that:
42 (A) purchases annually at least fifty thousand (50,000) bushels



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1 of grain that are not for the sole purpose of feeding the
2 person's own livestock or poultry;

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

4 (C) offers deferred pricing, delayed payments, or contracts
5 linked to the commodity futures or commodity options market
6 in connection with grain purchase.

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

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

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

14 (1) For a grain bank or for a warehouse or buyer-warehouse with
15 a storage capacity of less than two hundred fifty thousand
16 (250,000) bushels, two hundred fifty dollars (\$250) for the first
17 facility and fifty dollars (\$50) for each additional facility.

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

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

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

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

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

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

42 (e) A licensee or an applicant for an initial license must have a

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1 minimum current asset to current liability ratio of one (1) to one (1)
 2 **(1:1) or better.**

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

- 12 (1) be prepared by an independent accountant certified under
 13 IC 25-2.1;
 14 (2) comply with generally accepted accounting principles; and
 15 (3) contain:
 16 (A) an income statement;
 17 (B) a balance sheet;
 18 (C) a statement of cash flow;
 19 (D) a statement of retained earnings;
 20 (E) the preparer's notes; and
 21 (F) other information the agency may require.

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

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

28 (h) A person that:

- 29 (1) does not operate a facility used to store grain **for hire**;
 30 (2) purchases:
 31 (A) less than fifty thousand (50,000) bushels of grain per year;
 32 or
 33 (B) only grain used for the production of the person's own
 34 livestock **or poultry**; and
 35 (3) does not
 36 ~~(A)~~ purchase grain **by**:
 37 ~~(B)~~ offer **(A) offering** deferred pricing;
 38 ~~(C)~~ offer **(B) offering** delayed payment; or
 39 ~~(D)~~ offer **(C) offering** other contracts;

40 that are linked to the commodity futures or commodity options
 41 market;
 42 is not required to be licensed.



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1 SECTION 5. IC 26-3-7-9 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Each applicant for a license
 3 under this chapter shall, as a condition of licensure, file or have on file
 4 with the director:

- 5 (1) a cash deposit;
- 6 (2) an irrevocable letter of credit; ~~or~~
- 7 (3) a bond; **or**
- 8 **(4) any combination of the above;**

9 as provided in section 10 of this chapter.

10 (b) A bond filed under this chapter shall:

- 11 (1) be conditioned upon the faithful performance of all obligations
- 12 of the licensee under this chapter and the rules adopted under this
- 13 chapter from the effective date of the bond until the earlier of the
- 14 date the license is revoked or the bond is canceled as provided in
- 15 this chapter; and
- 16 (2) be further conditioned upon the faithful performance of all
- 17 obligations from the effective date of the bond and thereafter,
- 18 regardless of whether the licensee's facility or facilities exist on
- 19 the effective date of the bond or are thereafter assumed prior to
- 20 the date the licensee's license is revoked or the bond is canceled
- 21 as provided in this chapter.

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

25 SECTION 6. IC 26-3-7-10 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) The minimum
 27 amount of bond, letter of credit, or cash deposit required from a
 28 licensee is as follows:

- 29 (1) For a grain bank license or a warehouse license:
- 30 (A) ten thousand dollars (\$10,000); ~~or and~~
- 31 (B) ten cents (\$0.10) multiplied by the licensed bushel storage
- 32 capacity of the grain bank or warehouse.
- 33 ~~whichever is greater.~~
- 34 (2) For a grain buyer, including a grain buyer that is also a
- 35 licensee under the warehouse act:
- 36 (A) ten thousand dollars (\$10,000); or
- 37 (B) five-tenths percent (0.5%) of the total amount the grain
- 38 buyer paid for grain purchased from producers during the
- 39 grain buyer's **most recent** fiscal year; ~~immediately preceding~~
- 40 ~~the date the bond, letter of credit, or cash deposit is due;~~
- 41 whichever is greater.
- 42 (3) For a buyer-warehouse:



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

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

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

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

10 whichever is greater.

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

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

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

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

33 (f) If a person is licensed or is applying for licenses to operate two
34 (2) or more facilities in Indiana, the person may give a single bond,
35 letter of credit, or cash deposit to satisfy the requirements of this
36 chapter and the rules adopted under this chapter to cover all the
37 person's facilities in Indiana.

38 (g) If a licensee has a deficiency in the minimum **positive** net worth
39 required under section 16(a)(2)(B), 16(a)(3)(B), ~~16(a)(4)(A)(ii);~~
40 **16(a)(4)(B)**, or ~~16(a)(5)(A)(ii)~~ **16(a)(5)(B)** of this chapter, the licensee
41 shall add to the amount of bond, letter of credit, or cash deposit
42 determined under subsection (a) an amount equal to the deficiency.



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

6 (i) A buyer-warehouse that has a bushel storage capacity of less than
 7 one million (1,000,000) bushels or purchases less than one million
 8 (1,000,000) bushels of grain per year may correct a deficiency in
 9 minimum **positive** net worth by adding to the amount of bond, letter of
 10 credit, or cash deposit determined under subsection (a) if the
 11 buyer-warehouse has a minimum **positive** net worth of at least fifteen
 12 thousand dollars (\$15,000), not including the amount added to the
 13 bond, letter of credit, or cash deposit.

14 (j) A buyer-warehouse that has a bushel storage capacity of at least
 15 one million (1,000,000) bushels, or purchases at least one million
 16 (1,000,000) bushels of grain per year, may correct a deficiency in
 17 minimum **positive** net worth by adding to the amount of bond, letter of
 18 credit, or cash deposit determined under subsection (a) if the
 19 buyer-warehouse has a minimum **positive** net worth of at least fifty
 20 thousand dollars (\$50,000), not including the amount added to the
 21 bond, letter of credit, or cash deposit.

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

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

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

36 SECTION 7. IC 26-3-7-16 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) A licensee shall
 38 have and maintain a current asset to current liability ratio of one to one
 39 (1:1) and shall maintain, as evidenced by the financial statement
 40 required by section 6 of this chapter, the following minimum **positive**
 41 net worth:

42 (1) For a grain bank, minimum **positive** net worth is at least ten

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- 1 thousand dollars (\$10,000).
- 2 (2) For a warehouse, minimum **positive** net worth is at least equal
- 3 to the sum of:
- 4 (A) fifteen thousand dollars (\$15,000); and
- 5 (B) ten cents (\$0.10) multiplied by the bushel storage capacity
- 6 of the warehouse.
- 7 (3) For a grain buyer, minimum **positive** net worth is: ~~at least:~~
- 8 (A) ten thousand dollars (\$10,000); or
- 9 (B) five cents (\$0.05) multiplied by the total number of
- 10 bushels of grain purchased by the grain buyer during the grain
- 11 buyer's **most recent** fiscal year; ~~immediately preceding the~~
- 12 ~~date net worth is calculated;~~
- 13 whichever is greater.
- 14 (4) For a buyer-warehouse that has a bushel storage capacity of
- 15 less than one million (1,000,000) bushels or purchases less than
- 16 one million (1,000,000) bushels of grain per year, minimum
- 17 **positive** net worth is: ~~at least equal to:~~
- 18 (A) the sum of:
- 19 (i) fifteen thousand dollars (\$15,000); and
- 20 (ii) ten cents (\$0.10) multiplied by the bushel storage
- 21 capacity of the buyer-warehouse; or
- 22 (B) five cents (\$0.05) multiplied by the total number of
- 23 bushels of grain purchased by the buyer-warehouse during the
- 24 buyer-warehouse's **most recent** fiscal year; ~~immediately~~
- 25 ~~preceding the date net worth is calculated;~~
- 26 whichever is greater.
- 27 (5) For a buyer-warehouse that has a bushel storage capacity of at
- 28 least one million (1,000,000) bushels or purchases at least one
- 29 million (1,000,000) bushels of grain per year, minimum **positive**
- 30 net worth is: ~~at least equal to:~~
- 31 (A) the sum of:
- 32 (i) fifty thousand dollars (\$50,000); and
- 33 (ii) ten cents (\$0.10) multiplied by the bushel storage
- 34 capacity of the buyer-warehouse; or
- 35 (B) five cents (\$0.05) multiplied by the **total** number of
- 36 bushels of grain purchased by the buyer-warehouse during the
- 37 buyer-warehouse's **most recent** fiscal year; ~~immediately~~
- 38 ~~preceding the date net worth is calculated;~~
- 39 whichever is greater.
- 40 (b) Except as provided in section 10 of this chapter, if a licensee is
- 41 required to show additional net worth to comply with this section, the
- 42 licensee may satisfy the requirement by adding to the amount of the

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1 bond, letter of credit, or cash deposit required under section 10 of this
2 chapter an amount equal to the additional net worth required.

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

7 SECTION 8. IC 26-3-7-16.5 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.5. (a) Upon learning
9 of the possibility that a shortage exists, either as a result of an
10 inspection or a report or complaint from a depositor, the agency, based
11 on an on-premise inspection, shall make a preliminary determination
12 as to whether a shortage exists. If a shortage is not discovered, the
13 agency shall treat the audit as it would any other audit.

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

37 (c) In the event that the director determines that the bond or letter
38 of credit proceeds or cash deposit is to be distributed, the agency shall
39 hold a hearing on claims. Notice shall be given to the surety company
40 named on the licensee's bond, the issuer of the irrevocable letter of
41 credit, and to all persons shown by the licensee's books and records to
42 have interests in grain deposited with the licensee. If the agency has

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1 actual knowledge of any other depositor or person claiming rights in
 2 the grain deposited with the licensee, the bond, the irrevocable letter of
 3 credit, or the cash deposit, notice shall also be provided to that person.
 4 In addition, public notice shall be provided in newspapers of general
 5 circulation that serve the counties in which licensed facilities are
 6 located, and notices shall be posted on the licensed premises. At the
 7 hearing on claims, the director may accept as evidence of claims the
 8 report of agency representatives who in informal conferences with
 9 depositors have concluded that a claim is directly and precisely
 10 supported by the licensee's books and records. When there is
 11 disagreement between the claims of a depositor and the licensee's
 12 books and records, the director or the director's designated
 13 representative shall hear oral claims and receive written evidence of
 14 claims in order to determine the validity of the claim.

15 (d) Following the hearing on claims, the director shall make a
 16 determination as to the total proven storage obligation of the claimants
 17 and the loss sustained by each depositor who has proven a claim.
 18 Depositors found to have proven their claims shall be proven
 19 claimants. In arriving at that loss, in accordance with section 19 of this
 20 chapter, the director shall apply all grain on hand or its identifiable
 21 proceeds to meet the licensee's obligations to grain depositors of grain
 22 of that type. Initial determinations of loss shall be made on a ~~bushel the~~
 23 ~~amount of loss basis.~~ **Grain grain** on hand, or identifiable proceeds,
 24 **and** shall reduce the ~~number of bushels~~ **amount** to which a depositor
 25 may have a proven claim. With respect to the remaining unfulfilled
 26 obligations, the director shall, for the sole purpose of establishing each
 27 depositor's claim under this chapter, establish a date upon which the
 28 loss is discovered, shall price the grain as of that date, shall treat all
 29 outstanding grain storage obligations not covered by grain on hand or
 30 identifiable proceeds as being sold as of that date, and shall determine
 31 the extent of each depositor's loss as being the actual loss sustained as
 32 of that date. Grain of a specific type on the premises of a licensee must
 33 first be applied to meet the licensee's storage obligations with respect
 34 to that type of grain. If there is insufficient grain of a specific type on
 35 hand to meet all storage obligations with respect to that type of grain,
 36 the grain that is present shall be prorated in accordance with the
 37 procedures described in this section and section 16.8 of this chapter.

38 (e) Upon the failure of the agency to begin an audit, which would
 39 serve as the basis for a preliminary administrative determination,
 40 within forty-five (45) days of the agency's receipt of a written claim by
 41 a depositor, a depositor shall have a right of action upon the bond,
 42 letter of credit, or cash deposit. A depositor bringing a civil action need



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1 not join other depositors. If the agency has undertaken an audit within
 2 the forty-five (45) day period, the exclusive remedy for recovery
 3 against the bond, letter of credit, or cash deposit shall be through the
 4 recovery procedure prescribed by this section.

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

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

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

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

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

20 SECTION 9. IC 26-3-7-16.6 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.6. The procedures
 22 established by ~~section 16.5~~ of this chapter also apply when the director
 23 learns or has reason to believe that a person is doing business as a grain
 24 buyer, operating a warehouse, or acting as a buyer-warehouse without
 25 the license required by this chapter.

26 SECTION 10. IC 26-3-7-16.8 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16.8. (a) A lien against
 28 all grain assets of a licensee **or a person who is required to be**
 29 **licensed under this chapter** attaches in favor of the following:

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

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

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

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

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

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

41 (b) A lien under this section attaches and is effective at the earliest
 42 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 (f).
- 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 SECTION 11. IC 26-3-7-25 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 25. Every warehouse
12 receipt issued, **whether paper or electronic**, shall embody within its
13 terms the following:

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

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

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

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

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

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

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

35 (6) A clause that terminates storage on the date the license held
36 by the licensee when the receipt was issued expires and reserves
37 to the licensee the right to collect outstanding charges against any
38 lot of grain.

39 (7) Other provisions prescribed by the director.

40 SECTION 12. IC 26-3-7-26 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 26. Every ticket issued
42 shall embody within its terms:

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- 1 (1) the name of the licensee to whom the grain was delivered;
- 2 (2) the date the grain was delivered;
- 3 (3) exact information concerning the type, net weight, and grade
- 4 factors of the grain received;
- 5 (4) a statement that the grain described in the ticket is to be taken
- 6 into storage, is being delivered on contract, or is to be sold under
- 7 other arrangements;
- 8 (5) the name of the owner of the grain;
- 9 ~~(6) a statement that tickets marked for storage are non-negotiable~~
- 10 ~~receipts; and~~
- 11 ~~(7) (6) other provisions prescribed by the director.~~

12 **The director may adopt rules under IC 4-22-2 to exempt certain**
 13 **types of grain from these requirements.**

14 SECTION 13. IC 26-3-7-30 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 30. All receipt forms
 16 shall be supplied by the director except where the director, in writing,
 17 approves the form and gives permission to a warehouseman to have
 18 receipts printed. Requests for receipts shall be on forms furnished by
 19 the director and shall be accompanied by payment to cover the
 20 estimated cost of printing, packaging, and shipping, as determined by
 21 the director. Where privately printed, the printer shall furnish the
 22 director an affidavit showing the amount of the receipts printed, and the
 23 serial numbers thereof. All receipts remaining unused shall be
 24 recovered by the director or ~~his~~ **the director's** designated
 25 representative if the license required by this chapter is terminated or
 26 suspended.

27 SECTION 14. IC 26-3-7-31 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) Whenever it
 29 appears to the satisfaction of the director that a licensee ~~does not have~~
 30 ~~in the licensee's possession sufficient grain to cover the outstanding~~
 31 ~~receipts and tickets issued or assumed by the licensee; cannot meet the~~
 32 **licensee's outstanding grain obligations owed to depositors,** or when
 33 a licensee refuses to submit the licensee's records or property to lawful
 34 inspection, the director may give notice to the licensee to do any of the
 35 following:

- 36 (1) Cover the shortage with grain that is fully paid for.
- 37 (2) Give additional bond, letter of credit, or cash deposit as
- 38 required by the director.
- 39 (3) Submit to inspection as the director may deem necessary.
- 40 (b) If the licensee fails to comply with the terms of the notice within
- 41 five (5) business days from the date of its issuance, or within an
- 42 extension of time that the director may allow, the director may petition



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1 the circuit court of the Indiana county where the licensee's principal
 2 place of business is located seeking the appointment of a receiver. If
 3 the court determines in accordance with IC 34-48-1 that a receiver
 4 should be appointed, upon the request of the licensee the court may
 5 appoint the agency or its representative to act as receiver. The agency
 6 or its representative shall not be appointed as receiver except upon the
 7 request of the licensee. If the agency or its representative is appointed,
 8 any person interested in an action as described in IC 34-48-1-2 may
 9 after twenty (20) days request that the agency or its representative be
 10 removed as receiver. If the agency or its representative is not serving
 11 as receiver, the receiver appointed shall meet and confer with
 12 representatives of the agency regarding the licensee's grain related
 13 obligations and, before taking any actions regarding those obligations,
 14 the receiver and the court shall consider the agency's views and
 15 comments.

16 SECTION 15. IC 26-4-1-13 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. ~~(a)~~ "Grain" means
 18 corn **for all uses, popcorn**, wheat, oats, rye, soybeans, barley,
 19 sorghum, oil seeds, ~~and~~ other agricultural commodities as approved by
 20 the agency, **and seed (as defined in IC 26-3-7-2(20))**.

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

23 SECTION 16. IC 26-4-1-19.5 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 1999]: Sec. 19.5. "Seed", **notwithstanding**
 26 **IC 15-4-1, means grain set apart to be used primarily for the**
 27 **purpose of producing new plants**.

28 SECTION 17. IC 26-4-1-22 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22. "Valid claim"
 30 means a claim arising from a failure of a **registered** grain buyer or
 31 warehouseman, **licensed under IC 26-3-7**, that occurs after July 1,
 32 1996, and adjudicated valid by the agency and approved by the board,
 33 less all credits and offsets.

34 SECTION 18. IC 26-4-4-1 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The Indiana grain
 36 indemnity fund is established for the purpose of providing money to
 37 pay producers for losses incurred due to the failure of a grain buyer **or**
 38 **warehouseman**. The fund shall be administered by the board of the
 39 corporation.

40 (b) The fund shall operate on a fiscal year of July 1 to June 30.

41 SECTION 19. IC 26-4-5-3 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. A producer is not



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1 protected by the grain indemnity program if the producer:

- 2 (1) failed to pay the producer premiums before a failure that
 3 causes the producer to lose money; ~~or~~
 4 (2) asked for a refund under section 1 of this chapter; **or**
 5 **(3) sold grain to an unregistered grain buyer or stored grain**
 6 **with a warehouse not licensed under IC 26-3-7 or the United**
 7 **States Warehouse Act.**

8 SECTION 20. IC 26-4-6-6 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. A claimant
 10 compensated under this chapter may be required to subrogate to the
 11 board or corporation all the claimant's rights to collect on a bond issued
 12 under IC 26-3-7 or the United States Warehouse Act and all the
 13 claimant's rights to any other compensation arising from the failure of
 14 the grain buyer **or warehouseman**. If so required, the claimant shall
 15 assign all the claimant's rights, title, and interest in any judgment
 16 concerning the failure to the board or corporation.

17 SECTION 21. IC 26-4-6-8 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. After the agency has
 19 determined that a grain buyer or warehouse has defaulted payment or
 20 failed, the board shall have the following duties:

- 21 (1) Determine the valid claims and the amount of such claims to
 22 be paid to claimants for financial losses that were incurred due to
 23 the failure of a grain ~~dealer~~ **buyer** or warehouseman.
 24 (2) Authorize payment of money from the fund when necessary
 25 for the purpose of compensating claimants in accordance with the
 26 provisions of this chapter.
 27 (3) Collect money through subrogated claims against bonds filed
 28 under IC 26-3-7 in the place of claimants who collected for a loss
 29 incurred due to a warehouse **or grain buyer** failure.
 30 (4) Borrow money as authorized under IC 26-4-3-9 if the fund has
 31 insufficient money to cover valid claims.
 32 (5) Deposit into the fund any remaining grain assets of a failed
 33 grain buyer or warehouseman for the purpose of repayment to the
 34 fund the money used to pay claimants, subject to any priority lien
 35 right a holder of a mortgage, security interest, or other
 36 encumbrance may possess under any other applicable law. Any
 37 repayment into the fund may not exceed the principal amount
 38 paid to claimants plus interest at the rate paid on ninety (90) day
 39 United States Treasury bills.
 40 (6) If the amount in the fund is insufficient to pay all valid claims
 41 in accordance with this chapter and the board is unable to borrow
 42 funds for whatever reason, grant priority of payment of all the



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1 claims in the order the claims were approved as valid by the
2 board.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Agriculture and Small Business, to which was referred Senate Bill No. 582, 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 1, line 17, before "means" insert "**or "price later"**".

Page 2, line 30, delete "including".

Page 2, line 33, delete "grain grown for".

Page 2, line 33, delete "use" and insert "**as defined in this chapter**".

Page 3, line 24, delete "or a person who is engaged in".

Page 3, delete line 25.

Page 3, line 26, delete "use".

Page 4, line 5, before "means" insert ", **notwithstanding IC 15-4-1,**".

Page 4, between lines 16 and 17, begin a new paragraph and insert: "SECTION 2. IC 26-3-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The director may do the following:

- (1) Require any reports that are necessary to administer this chapter.
- (2) Administer oaths, issue subpoenas, compel the attendance and testimony of witnesses, and compel the production of records in connection with any investigation or hearing under this chapter.
- (3) Prescribe all forms within the provisions of this chapter.
- (4) Establish grain standards in accordance with the grain standards act and federal regulations promulgated under that act that must be used by warehouses.
- (5) Investigate the activities required by this chapter including the storage, shipping, marketing, and handling of grain and complaints with respect to the storage, shipping, marketing, and handling of grain.
- (6) Inspect a facility, the grain stored in a facility, and all property and records pertaining to a facility. **All inspections of an applicant or licensee under this chapter must take into consideration the proprietary nature of an applicant's or licensee's commercial information. The director may adopt rules under IC 4-22-2 regarding inspections permitted under this chapter, and the rules must take into consideration the proprietary nature of an applicant's or a licensee's commercial information. This chapter does not authorize the inspection of an applicant's or licensee's trade secret or**

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intellectual property information.

(7) Determine whether a facility for which a license has been applied for or has been issued is suitable for the proper storage, shipping, and handling of the grain that is stored, shipped, or handled, or is expected to be stored, shipped, or handled.

(8) Require a licensee to terminate storage, shipping, marketing, and handling agreements upon revocation of the person's license.

(9) Attend and preside over any investigation or hearing allowed or required under this chapter.

(10) Impose sanctions for violations of this article.

(11) Require a grain buyer and all persons purchasing grain for a grain buyer to do any of the following:

(A) Provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading adviser, a futures commission merchant, an introducing broker, or an associated person.

(B) Demonstrate passage of the series 3 examination administered by the National Association of Security Dealers.

(C) Annually attend six (6) hours of continuing education, approved by the director, focusing on the risks to a grain buyer and seller that are associated with grain marketing practices and the communication of risks to the producer. Additionally, as part of continuing education, require a grain buyer, and all persons purchasing grain for a grain buyer, to pass a test, approved and administered by the director, that reasonably measures the grain buyer's understanding of the risks to grain buyers and sellers associated with producer marketing strategies.

(12) Require all contracts executed after June 30, 1997, for the purchase of grain from producers, except a flat price contract **or a contract for the production of seed**, to include the following notice immediately above the place on the contract where the seller of the grain must sign:

"NOTICE) SELLER IS CAUTIONED THAT CONTRACTING FOR THE SALE AND DELIVERY OF GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE FUTURE PAYMENTS BY YOU TO MAINTAIN THIS CONTRACT, A LOWER SALES PRICE, AND OTHER RISKS NOT SPECIFIED.

COVERAGE UNDER THE INDIANA GRAIN INDEMNITY PROGRAM IS LIMITED TO 100% OF A LOSS FOR STORED GRAIN AND 80% OF A LOSS FOR OTHER

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COVERED CONTRACTS.

BE SURE YOU UNDERSTAND THE NATURE OF THIS CONTRACT AND THE ASSOCIATED RISKS."

(13) **Require all contracts executed after January 1, 2000, for the production of seed to include the following notice, in conspicuous letters, immediately above the place on the contract or an addendum where the seller of the seed must sign:**

"NOTICE - IF THE TERMS OF THIS CONTRACT STATE THAT THE CONTRACTOR RETAINS OWNERSHIP OF THE SEED AND ITS PRODUCTS, YOU MAY NOT BE ELIGIBLE FOR PARTICIPATION IN THE INDIANA GRAIN INDEMNITY PROGRAM. TO BE ELIGIBLE TO PARTICIPATE IN THE INDIANA GRAIN INDEMNITY PROGRAM, FARMERS MUST OWN AND SELL GRAIN OR SEED. BE SURE YOU UNDERSTAND THE NATURE OF THIS CONTRACT AND THE ASSOCIATED RISKS."

(14) At any time, order an unannounced audit for compliance with this article.

~~(14)~~ (15) Adopt rules under IC 4-22-2 to carry out the purposes and intent of this chapter.

(b) The director shall do the following:

(1) Establish standards to ensure that a grain buyer has a suitable financial position to conduct a business as a grain buyer.

(2) Require a person who conducts business as a grain buyer to first be licensed by the agency.

(3) Require any person engaged in the business of advising producers on grain marketing for hire to:

(A) register with the agency; and

(B) provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading advisor, a futures commission merchant, an introducing broker, or an associated person.

(c) The director may designate an employee to act for the director in the administration of this chapter. A designee may not:

(1) act in matters that require a public hearing or the temporary suspension of a license;

(2) adopt rules; or

(3) act as the ultimate authority in the administration of this chapter.

(d) The director may determine whether geographically separate

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facilities constitute a single warehouse or grain buyer and in making the determination may consider the following:

- (1) The number of facilities involved.
- (2) Whether full weighing equipment is present at the geographically separate facilities.
- (3) The method of bookkeeping employed by the separate facilities.
- (4) The hours of operation of the separate facilities.
- (5) The personnel employed at the separate facilities.
- (6) Other factors the director deems relevant."

Page 6, line 13, after "purchases" delete "; or" and insert ".".

Page 6, delete line 14.

Page 7, line 31, after "listed" insert "**to determine the financial solvency of the applicant**".

Page 12, line 12, after "minimum" insert "**positive**".

Page 13, line 28, strike "a bushel" and insert "**the amount of**".

Page 13, line 29, strike "loss basis. Grain" and insert "**grain**".

Page 13, line 29, after "proceeds," insert "**and**".

Page 13, line 30, strike "number of bushels" and insert "**amount**".

Page 17, between lines 17 and 18, begin a new line blocked left and insert:

"The director may adopt rules under IC 4-22-2 to exempt certain types of grain from these requirements."

Page 18, line 22, delete "including".

Page 18, line 24, delete "grain grown for".

Page 18, line 24, delete "use" and insert "**(as defined in IC 26-3-7-2(20))**".

Page 18, after line 26, begin a new paragraph and insert:

"SECTION 16. IC 26-4-1-19.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19.5. "Seed", notwithstanding IC 15-4-1, means grain set apart to be used primarily for the purpose of producing new plants.

SECTION 17. IC 26-4-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22. "Valid claim" means a claim arising from a failure of a **registered grain buyer or warehouseman, **licensed under IC 26-3-7**, that occurs after July 1, 1996, and adjudicated valid by the agency and approved by the board, less all credits and offsets.**

SECTION 18. 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



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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 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 19. IC 26-4-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The Indiana grain indemnity fund is established for the purpose of providing money to pay producers for losses incurred due to the failure of a grain buyer or **warehouseman**. The fund shall be administered by the board of the corporation.

(b) The fund shall operate on a fiscal year of July 1 to June 30.

SECTION 20. IC 26-4-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. A producer is not protected by the grain indemnity program if the producer:



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- (1) failed to pay the producer premiums before a failure that causes the producer to lose money; ~~or~~
- (2) asked for a refund under section 1 of this chapter; **or**
- (3) sold grain to an unregistered grain buyer or stored grain with a warehouse not licensed under IC 26-3-7 or the United States Warehouse Act.**

SECTION 21. IC 26-4-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. A claimant compensated under this chapter may be required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act and all the claimant's rights to any other compensation arising from the failure of the grain buyer **or warehouseman**. If so required, the claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

SECTION 22. IC 26-4-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. After the agency has determined that a grain buyer or warehouse has defaulted payment or failed, the board shall have the following duties:

- (1) Determine the valid claims and the amount of such claims to be paid to claimants for financial losses that were incurred due to the failure of a grain ~~dealer~~ **buyer** or warehouseman.
- (2) Authorize payment of money from the fund when necessary for the purpose of compensating claimants in accordance with the provisions of this chapter.
- (3) Collect money through subrogated claims against bonds filed under IC 26-3-7 in the place of claimants who collected for a loss incurred due to a warehouse **or grain buyer** failure.
- (4) Borrow money as authorized under IC 26-4-3-9 if the fund has insufficient money to cover valid claims.
- (5) Deposit into the fund any remaining grain assets of a failed grain buyer or warehouseman for the purpose of repayment to the fund the money used to pay claimants, subject to any priority lien right a holder of a mortgage, security interest, or other encumbrance may possess under any other applicable law. Any repayment into the fund may not exceed the principal amount paid to claimants plus interest at the rate paid on ninety (90) day United States Treasury bills.
- (6) If the amount in the fund is insufficient to pay all valid claims in accordance with this chapter and the board is unable to borrow funds for whatever reason, grant priority of payment of all the claims in the order the claims were approved as valid by the

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board."

Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 582 as introduced.)

NUGENT, Chairperson

Committee Vote: Yeas 6, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 582 be amended to read as follows:

Page 21, delete lines 34 through 42.

Page 22, delete lines 1 through 26.

Renumber all SECTIONS consecutively.

(Reference is to SB 582 as printed February 26, 1999.)

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