

# COMMITTEE REPORT

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## 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:

- 1 Page 1, line 17, before "means" insert "or "price later"".
- 2 Page 2, line 30, delete "including".
- 3 Page 2, line 33, delete "grain grown for".
- 4 Page 2, line 33, delete "use" and insert "**as defined in this chapter**".
- 5 Page 3, line 24, delete "or a person who is engaged in".
- 6 Page 3, delete line 25.
- 7 Page 3, line 26, delete "use".
- 8 Page 4, line 5, before "means" insert ", **notwithstanding**
- 9 **IC 15-4-1,**".
- 10 Page 4, between lines 16 and 17, begin a new paragraph and insert:
- 11 "SECTION 2. IC 26-3-7-3 IS AMENDED TO READ AS
- 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The director may
- 13 do the following:
- 14 (1) Require any reports that are necessary to administer this
- 15 chapter.
- 16 (2) Administer oaths, issue subpoenas, compel the attendance and
- 17 testimony of witnesses, and compel the production of records in
- 18 connection with any investigation or hearing under this chapter.

- 1 (3) Prescribe all forms within the provisions of this chapter.
- 2 (4) Establish grain standards in accordance with the grain  
3 standards act and federal regulations promulgated under that act  
4 that must be used by warehouses.
- 5 (5) Investigate the activities required by this chapter including the  
6 storage, shipping, marketing, and handling of grain and  
7 complaints with respect to the storage, shipping, marketing, and  
8 handling of grain.
- 9 (6) Inspect a facility, the grain stored in a facility, and all property  
10 and records pertaining to a facility. **All inspections of an  
11 applicant or licensee under this chapter must take into  
12 consideration the proprietary nature of an applicant's or  
13 licensee's commercial information. The director may adopt  
14 rules under IC 4-22-2 regarding inspections permitted under  
15 this chapter, and the rules must take into consideration the  
16 proprietary nature of an applicant's or a licensee's  
17 commercial information. This chapter does not authorize the  
18 inspection of an applicant's or licensee's trade secret or  
19 intellectual property information.**
- 20 (7) Determine whether a facility for which a license has been  
21 applied for or has been issued is suitable for the proper storage,  
22 shipping, and handling of the grain that is stored, shipped, or  
23 handled, or is expected to be stored, shipped, or handled.
- 24 (8) Require a licensee to terminate storage, shipping, marketing,  
25 and handling agreements upon revocation of the person's license.
- 26 (9) Attend and preside over any investigation or hearing allowed  
27 or required under this chapter.
- 28 (10) Impose sanctions for violations of this article.
- 29 (11) Require a grain buyer and all persons purchasing grain for a  
30 grain buyer to do any of the following:
- 31 (A) Provide the agency with proof of registry with the  
32 commodity futures trading commission (CFTC) as a  
33 commodity trading adviser, a futures commission merchant, an  
34 introducing broker, or an associated person.
- 35 (B) Demonstrate passage of the series 3 examination  
36 administered by the National Association of Security Dealers.
- 37 (C) Annually attend six (6) hours of continuing education,  
38 approved by the director, focusing on the risks to a grain buyer

1 and seller that are associated with grain marketing practices  
 2 and the communication of risks to the producer. Additionally,  
 3 as part of continuing education, require a grain buyer, and all  
 4 persons purchasing grain for a grain buyer, to pass a test,  
 5 approved and administered by the director, that reasonably  
 6 measures the grain buyer's understanding of the risks to grain  
 7 buyers and sellers associated with producer marketing  
 8 strategies.

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

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

20 COVERAGE UNDER THE INDIANA GRAIN INDEMNITY  
 21 PROGRAM IS LIMITED TO 100% OF A LOSS FOR  
 22 STORED GRAIN AND 80% OF A LOSS FOR OTHER  
 23 COVERED CONTRACTS.

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

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

31 "NOTICE - IF THE TERMS OF THIS CONTRACT  
 32 STATE THAT THE CONTRACTOR RETAINS  
 33 OWNERSHIP OF THE SEED AND ITS PRODUCTS,  
 34 YOU MAY NOT BE ELIGIBLE FOR PARTICIPATION  
 35 IN THE INDIANA GRAIN INDEMNITY PROGRAM. TO  
 36 BE ELIGIBLE TO PARTICIPATE IN THE INDIANA  
 37 GRAIN INDEMNITY PROGRAM, FARMERS MUST  
 38 OWN AND SELL GRAIN OR SEED. BE SURE YOU

1                   **UNDERSTAND THE NATURE OF THIS CONTRACT**  
2                   **AND THE ASSOCIATED RISKS."**

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

5                   ~~(14)~~ **(15)** Adopt rules under IC 4-22-2 to carry out the purposes  
6                   and intent of this chapter.

7                   (b) The director shall do the following:

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

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

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

14                         (A) register with the agency; and

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

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

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

23                         (2) adopt rules; or

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

26                  (d) The director may determine whether geographically separate  
27                  facilities constitute a single warehouse or grain buyer and in making  
28                  the determination may consider the following:

29                         (1) The number of facilities involved.

30                         (2) Whether full weighing equipment is present at the  
31                         geographically separate facilities.

32                         (3) The method of bookkeeping employed by the separate  
33                         facilities.

34                         (4) The hours of operation of the separate facilities.

35                         (5) The personnel employed at the separate facilities.

36                         (6) Other factors the director deems relevant."

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

38                  Page 6, delete line 14.

- 1 Page 7, line 31, after "listed" insert "**to determine the financial**  
2 **solvency of the applicant**".
- 3 Page 12, line 12, after "minimum" insert "**positive**".
- 4 Page 13, line 28, strike "a bushel" and insert "**the amount of**".
- 5 Page 13, line 29, strike "loss basis. Grain" and insert "**grain**".
- 6 Page 13, line 29, after "proceeds," insert "**and**".
- 7 Page 13, line 30, strike "number of bushels" and insert "**amount**".
- 8 Page 17, between lines 17 and 18, begin a new line blocked left and  
9 insert:  
10 "**The director may adopt rules under IC 4-22-2 to exempt certain**  
11 **types of grain from these requirements.**".
- 12 Page 18, line 22, delete "including".
- 13 Page 18, line 24, delete "grain grown for".
- 14 Page 18, line 24, delete "use" and insert "**(as defined in**  
15 **IC 26-3-7-2(20))**".
- 16 Page 18, after line 26, begin a new paragraph and insert:  
17 "SECTION 16. IC 26-4-1-19.5 IS ADDED TO THE INDIANA  
18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 1999]: **Sec. 19.5. "Seed", notwithstanding**  
20 **IC 15-4-1, means grain set apart to be used primarily for the**  
21 **purpose of producing new plants.**
- 22 SECTION 17. IC 26-4-1-22 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22. "Valid claim"  
24 means a claim arising from a failure of a **registered** grain buyer or  
25 warehouseman, **licensed under IC 26-3-7**, that occurs after July 1,  
26 1996, and adjudicated valid by the agency and approved by the board,  
27 less all credits and offsets.
- 28 SECTION 18. IC 26-4-3-2 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The corporation's  
30 board is created. The governing powers of the corporation are vested  
31 in the board, which is composed of ~~twelve (12)~~ **thirteen (13)** members  
32 as described in subsections (b) and (c).
- 33 (b) The board consists of the following ~~nine (9)~~ **ten (10)** voting  
34 members:
- 35 (1) Two (2) members appointed by the largest Indiana  
36 organization representing the interests of grain and feed dealers  
37 in Indiana.

- 1 (2) Two (2) members appointed by the largest Indiana  
 2 organization representing general farm interests in Indiana.  
 3 (3) One (1) member appointed by the second largest Indiana  
 4 organization representing general farm interests in Indiana.  
 5 (4) One (1) member appointed by the largest Indiana organization  
 6 exclusively representing the interests of corn producers.  
 7 (5) One (1) member appointed by the largest Indiana organization  
 8 exclusively representing the interests of soybean producers in  
 9 Indiana.  
 10 (6) One (1) member appointed by the largest Indiana organization  
 11 representing the interests of bankers in Indiana.  
 12 (7) One (1) member appointed by the second largest Indiana  
 13 organization representing the interests of bankers in Indiana.  
 14 **(8) One (1) member appointed by the largest Indiana**  
 15 **organization representing the interests of the seed trade in**  
 16 **Indiana.**

17 The members appointed under subdivisions 2 through 5 must be  
 18 producers.

19 (c) The board consists of the following three (3) nonvoting  
 20 members:

- 21 (1) The attorney general.  
 22 (2) The treasurer of state.  
 23 (3) The director of the agency, who shall serve as the chairperson.  
 24 (d) The attorney general and treasurer of state may each designate  
 25 a representative to serve on the board.

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

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

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

- 36 (1) failed to pay the producer premiums before a failure that  
 37 causes the producer to lose money; **or**  
 38 (2) asked for a refund under section 1 of this chapter; **or**

1           **(3) sold grain to an unregistered grain buyer or stored grain**  
 2           **with a warehouse not licensed under IC 26-3-7 or the United**  
 3           **States Warehouse Act.**

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

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

17           (1) Determine the valid claims and the amount of such claims to  
 18 be paid to claimants for financial losses that were incurred due to  
 19 the failure of a grain ~~dealer~~ **buyer** or warehouseman.

20           (2) Authorize payment of money from the fund when necessary  
 21 for the purpose of compensating claimants in accordance with the  
 22 provisions of this chapter.

23           (3) Collect money through subrogated claims against bonds filed  
 24 under IC 26-3-7 in the place of claimants who collected for a loss  
 25 incurred due to a warehouse **or grain buyer** failure.

26           (4) Borrow money as authorized under IC 26-4-3-9 if the fund has  
 27 insufficient money to cover valid claims.

28           (5) Deposit into the fund any remaining grain assets of a failed  
 29 grain buyer or warehouseman for the purpose of repayment to the  
 30 fund the money used to pay claimants, subject to any priority lien  
 31 right a holder of a mortgage, security interest, or other  
 32 encumbrance may possess under any other applicable law. Any  
 33 repayment into the fund may not exceed the principal amount  
 34 paid to claimants plus interest at the rate paid on ninety (90) day  
 35 United States Treasury bills.

36           (6) If the amount in the fund is insufficient to pay all valid claims  
 37 in accordance with this chapter and the board is unable to borrow  
 38 funds for whatever reason, grant priority of payment of all the

- 1 claims in the order the claims were approved as valid by the
- 2 board.".
- 3 Renumber all SECTIONS consecutively.  
(Reference is to SB 582 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 6, Nays 0.

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**Senator Nugent, Chairperson**