February 17, 2009

SENATE BILL No. 415

DIGEST OF SB 415 (Updated February 16, 2009 12:11 pm - DI 116)

Citations Affected: IC 26-3.

Synopsis: Grain buyers and warehouse licensing. Makes various changes regarding the grain buyers and licensing warehouse agency (agency). Makes changes to the definition of a warehouse. Provides procedures for an annual renewal of an application. Allows the director of the agency to prorate certain annual licensing fees. Provides that the agency may disclose the names of grain buyers or warehouses and the county where they are located. Allows the agency to accept other forms of surety to show the net worth of a grain buyer or warehouse.

Effective: July 1, 2009.

Leising, Stutzman, Deig

January 12, 2009, read first time and referred to Committee on Agriculture and Small Business.
February 16, 2009, amended, reported favorably — Do Pass.

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February 17, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 415

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 26-3-7-2, AS AMENDED BY P.L.2-2008, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. The following definitions apply throughout this chapter:

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

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

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

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

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

(6) "Deferred pricing" or "price later" means a purchase by a buyer in which title to the grain passes to the buyer and the price to be paid to the seller is not determined:

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

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

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

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

(B) A person that:

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

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

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

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

(9) "Director" means the director of the Indiana grain buyers and warehouse licensing agency appointed under section 1 of this chapter.

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

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

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

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

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

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

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

(12) "Grain" means corn for all uses, popcorn, wheat, oats, barley, rye, sorghum, soybeans, oil seeds, other agricultural commodities as approved by the agency, and seed as defined in this section. The term does not include canning crops for processing, sweet corn, or flint corn.

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

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

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

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(ii) has not been paid for.

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

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

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

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

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

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

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

(15) "Grain buyer" means a person who is engaged in the business of buying grain from producers. The term does not include a buyer of grain who:

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

(B) buys grain for the sole purpose of feeding the person's own livestock or poultry and derives a major portion of the person's income from selling that livestock or poultry; or

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

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

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

(18) "Official grain standards of the United States" means the standards of quality or condition for grain, fixed and established

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by the secretary of agriculture under the grain standards act.

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

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

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

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

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

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

(A) located in one (1) general location;

(B) licensed or required to be licensed under this chapter; and

(C) operated under one (1) ownership and run from a single office.

The building or other protected enclosure must be one in which grain is or may be stored for hire, used for grain bank storage, or used to store company owned grain.

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

SECTION 2. IC 26-3-7-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.2. For purposes of determining whether a building or other protected enclosure constitutes a single warehouse under section 2(24) of this chapter, the director may consider the following:**

(1) The presence of a full weighing facility at geographically diverse warehouse facilities.

(2) The traditional method of record keeping with respect to the separate facilities.

(3) The hours, number of personnel, and activities of the

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separate facilities.

(4) Any other factor the director considers relevant.

In the absence of contradictory information, any warehouses owned and operated by the same person that are located within close proximity of each other are presumed to constitute a single warehouse.

SECTION 3. IC 26-3-7-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.1. (a) The agency shall mail by first class mail a renewal application, which must include a listing of all the licensee's facilities, to each licensee before the expiration date of the licensee's license. The renewal application form must be completed and returned to the agency not later than ninety (90) days after the end of the licensee's fiscal year. The licensee shall forward to the agency, with the renewal application, the following:**

(1) Current reviewed level financial statement.

(2) Updated financial profile form supplied by the agency.

(3) Appropriate license fee.

(b) The renewal application must contain the information in section 4 of this chapter. The agency shall send an annual renewal license application form to persons licensed as the following:

(1) A grain bank.

(2) A warehouse.

(3) A grain buyer.

(4) A buyer-warehouse.

SECTION 4. IC 26-3-7-6, AS AMENDED BY P.L.207-2007, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The agency may issue the following licenses:

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

(A) stores only grain bank grain;

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

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

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

(A) stores grain for hire; and

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

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

(A) purchases annually at least fifty thousand (50,000) bushels of grain that are not for the sole purpose of feeding the

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person's own livestock or poultry;

(B) does not store grain for hire; and

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

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

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

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

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

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

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

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

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

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

(d) Before the anniversary date of the license, the licensee shall pay an annual fee in an amount equal to the amount required under subsection (c). **The director may prorate the annual application fee for a license that is modified at least thirty (30) days after the anniversary date of the licensee's business.**

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

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

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

~~(2) comply with generally accepted accounting principles; and~~

~~(3) contain:~~

~~(A) an income statement;~~

~~(B) a balance sheet;~~

~~(C) a statement of cash flow;~~

~~(D) a statement of retained earnings;~~

~~(E) the preparer's notes; and~~

~~(F) other information the agency may require.~~

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

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

(h) A person that:

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

(2) purchases:

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

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

(3) does not purchase grain by:

(A) offering deferred pricing;

(B) offering delayed payment; or

(C) offering other contracts;

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

is not required to be licensed.

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(i) Fees collected under this section shall be deposited in the grain buyers and warehouse licensing agency license fee fund established by section 6.3 of this chapter.

SECTION 5. IC 26-3-7-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. **The names and respective counties of licensees may be disclosed.** Unless in accordance with a judicial order, the director, the agency, its counsel, auditors, or its other employees or agents shall not divulge any **other** information disclosed by the applications or reports filed or inspections performed under the provisions of this chapter, except to agents and employees of the agency or to any other legal representative of the state or federal government otherwise empowered to see or review the information. The director may disclose the information only in the form of an information summary or profile, or statistical study based upon data provided with respect to more than one (1) warehouse, grain buyer, or buyer-warehouse that does not identify the warehouse, grain buyer, or buyer-warehouse to which the information applies.

SECTION 6. IC 26-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) The minimum amount of bond, letter of credit, or cash deposit required from a licensee is as follows:

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

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

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

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

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

(B) five-tenths percent (0.5%) of the total amount the grain buyer paid for grain purchased from producers during the grain buyer's most recent fiscal year;

whichever is greater.

(3) For a buyer-warehouse:

(A) an amount equal to the sum of:

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

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

(B) five-tenths percent (0.5%) of the total amount the buyer-warehouse paid for grain purchased from producers during the buyer-warehouse's most recent fiscal year;

whichever is greater.

(b) Except as provided in subsections (g) and (h), the amount of

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bond, letter of credit, or cash deposit required by this chapter may not exceed one hundred thousand dollars ($100,000) per license and may not exceed a total of five hundred thousand dollars ($500,000) per person.

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

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

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

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

(g) If a licensee has a deficiency in the minimum positive net worth required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or 16(a)(5)(B) of this chapter, the licensee shall add to the amount of bond, letter of credit, or cash deposit determined under subsection (a) an amount equal to the deficiency **or provide another form of surety as approved by the director.**

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

(i) A buyer-warehouse that has a bushel storage capacity of less than one million (1,000,000) bushels or purchases less than one million (1,000,000) bushels of grain per year may correct a deficiency in minimum positive net worth by adding to the amount of bond, letter of credit, or cash deposit determined under subsection (a) if the

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buyer-warehouse has a minimum positive net worth of at least fifteen thousand dollars ($15,000), not including the amount added to the bond, letter of credit, or cash deposit.

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

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

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

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

SECTION 7. IC 26-3-7-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) A licensee shall have and maintain a current asset to current liability ratio of one to one (1:1) and shall maintain, as evidenced by the financial statement required by section 6 of this chapter, the following minimum positive net worth:

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

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

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

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

(3) For a grain buyer, minimum positive net worth is:

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

(B) five cents ($0.05) multiplied by the total number of bushels of grain purchased by the grain buyer during the grain

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buyer's most recent fiscal year;

whichever is greater.

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

(A) the sum of:

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

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

(B) five cents ($0.05) multiplied by the total number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's most recent fiscal year;

whichever is greater.

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

(A) the sum of:

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

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

(B) five cents ($0.05) multiplied by the total number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's most recent fiscal year;

whichever is greater.

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

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

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COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture and Small Business, to which was referred Senate Bill No. 415, 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 5, delete lines 7 through 42.
Delete pages 6 through 7.
Page 8, delete line 1.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 415 as introduced.)

NUGENT, Chairperson

Committee Vote: Yeas 9, Nays 0.

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