

## **IC 26-3-7**

### **Chapter 7. Indiana Grain Buyers and Warehouse Licensing and Bonding Law**

#### **IC 26-3-7-1**

##### **Indiana grain buyers and warehouse licensing agency; employees**

Sec. 1. (a) The Indiana grain buyers and warehouse licensing agency is established within the Indiana state department of agriculture to administer this chapter. The director of the Indiana state department of agriculture may appoint the director of the agency, who shall serve at the pleasure of the director of the Indiana state department of agriculture. The director shall administer this chapter and shall be the ultimate authority in the administration of this chapter.

(b) The agency may employ all necessary employees, counsel, and consultants to carry out the provisions of this chapter and is vested with the power necessary to fully and effectively carry out the provisions and objectives of this chapter.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1975, P.L.277, SEC.1.)  
As amended by Acts 1982, P.L.155, SEC.2; P.L.125-1997, SEC.18;  
P.L.1-2006, SEC.482; P.L.120-2008, SEC.91.*

#### **IC 26-3-7-1.5**

##### **Liberal construction**

Sec. 1.5. This chapter shall be liberally construed to effect its purposes.

*As added by P.L.1-1989, SEC.54.*

#### **IC 26-3-7-2**

##### **Definitions**

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 within the twelve (12) months following delivery 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) less than twenty-one (21) days after delivery.

- (7) "Delayed payment" means a purchase by a buyer in which title to the grain passes to the buyer at a determined price and payment to the seller is not made in less than twenty-one (21) days after delivery.
- (8) "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.
- (9) "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.
- (10) "Director" means the director of the Indiana grain buyers and warehouse licensing agency appointed under section 1 of this chapter.
- (11) "Facility" means a location or one (1) of several locations in Indiana that are operated as a warehouse or by a grain buyer.
- (12) "Failed" or "failure" means any of the following:
- (A) The inability of a licensee to financially satisfy fully all obligations due to 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.
  - (F) Involuntary or voluntary bankruptcy of a licensee.
- (13) "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.
- (14) "Grain assets" means any of the following:
- (A) All grain owned or stored by a licensee, including grain that:
    - (i) is in transit following shipment by a licensee; and
    - (ii) has not been paid for.
  - (B) All proceeds, due or to become due, from the sale of a licensee's grain.
  - (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.

(15) "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.

(16) "Grain buyer" means a person who is engaged in the business of buying grain from producers.

(17) "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).

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

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

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

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

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

(23) "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.

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

(25) "Warehouse" means any building or other protected enclosure in one (1) general location licensed or required to be licensed under this chapter in which grain is or may be:

- (A) stored for hire;
- (B) used for grain bank storage; or
- (C) used to store company owned grain;

and the building or other protected enclosure is operated under one (1) ownership and run from a single office.

(26) "Warehouse operator" 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. (Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.1; Acts 1975, P.L.277, SEC.2.) As amended by Acts 1982, P.L.155, SEC.3; P.L.191-1991, SEC.1; P.L.1-1992, SEC.142; P.L.139-1996, SEC.6; P.L.125-1997, SEC.19; P.L.173-1999, SEC.1; P.L.1-2006, SEC.483; P.L.2-2008, SEC.66; P.L.64-2009, SEC.1; P.L.75-2010, SEC.10.

### **IC 26-3-7-2.2**

#### **Determination of a single warehouse**

Sec. 2.2. For purposes of determining whether a building or other protected enclosure constitutes a single warehouse that requires a single license under 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 separate facilities.
- (4) Any other factor considered 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.

*As added by P.L.64-2009, SEC.2.*

### **IC 26-3-7-3**

#### **Powers and duties of director**

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 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 to show evidence of training or licensing on the risks associated with grain marketing practices only if a grain buyer engages in a risk factor higher than a standard defined by the director. This training or licensing may include requiring the grain buyer or person purchasing grain 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 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.

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

(16) Require all grain buyers offering deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with a grain purchase to document the agreement in writing not more than twenty-one (21) days after delivery.

(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

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.

(e) The director and the director's designees shall become members of the national grain regulatory organization and shall:

- (1) work in partnership with other state grain regulatory officials;
- (2) participate in national grain regulatory meetings; and
- (3) provide expertise and education at national meetings.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.2.)  
As amended by P.L.191-1991, SEC.2; P.L.1-1992, SEC.143;  
P.L.249-1995, SEC.1; P.L.139-1996, SEC.7; P.L.125-1997, SEC.20;  
P.L.173-1999, SEC.2; P.L.75-2010, SEC.11.*

#### **IC 26-3-7-4**

##### **License; application; exemptions; suspension or revocation; prohibited operation**

Sec. 4. (a) A person may not operate a warehouse or conduct business as a grain buyer or buyer-warehouse without first having obtained the appropriate license from the agency, nor may a person continue to operate a warehouse or conduct business as a grain buyer or buyer-warehouse after the person's license has been revoked or suspended, except as provided in section 18 of this chapter.

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

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

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

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

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

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

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

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.3.)  
As amended by Acts 1982, P.L.155, SEC.4; P.L.191-1991, SEC.3;  
P.L.139-1996, SEC.8; P.L.125-1997, SEC.21; P.L.173-1999, SEC.3.*

#### **IC 26-3-7-4.1**

##### **Renewal application**

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 end of the licensee's fiscal year. 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 must forward, 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) A renewal application must contain the information as required under rules adopted by the agency. The licensee shall receive an annual renewal license application form appropriate to the license issued to the licensee. The annual renewal license application forms are for a:

- (1) grain bank;
- (2) warehouse;
- (3) grain buyer; or
- (4) buyer-warehouse.

*As added by P.L.64-2009, SEC.3.*

#### **IC 26-3-7-4.5**

##### **Repealed**

*(Repealed by P.L.125-1997, SEC.57.)*

#### **IC 26-3-7-5**

##### **Inspection and certification of scales**

Sec. 5. All scales used to weigh grain for purchase or storage must be inspected and certified as to accuracy at least once each year.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by P.L.2-1992, SEC.781; P.L.125-1997, SEC.22.*

#### **IC 26-3-7-6**

##### **Types of licenses issued; application for license; fees; payment of fees; current liability ratio; review level financial statement inspection**

Sec. 6. (a) The agency shall 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 person's own livestock or poultry;
  - (B) chooses to obtain a grain buyer's license; or
  - (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 license.

(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. 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) 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.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.4; Acts 1975, P.L.277, SEC.3.) As amended by Acts 1979, P.L.249, SEC.2; Acts 1981, P.L.232, SEC.1; Acts 1982, P.L.155, SEC.6; P.L.191-1991, SEC.4; P.L.125-1997, SEC.23; P.L.173-1999, SEC.4; P.L.207-2007, SEC.28; P.L.64-2009, SEC.4; P.L.75-2010, SEC.12.*

### **IC 26-3-7-6.1**

#### **Financial statement; fines**

Sec. 6.1. (a) 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 previous fiscal year. 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 requires.

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.

(b) If the licensee has failed to timely file the financial statement as required in subsection (a), the agency may assess a fine as follows:

- (1) Twenty percent (20%) of the licensee's renewal fee for a financial statement that is at least one (1) and less than sixteen (16) days late.
- (2) Forty percent (40%) of the licensee's renewal fee for a financial statement that is more than fifteen (15) and less than thirty-one (31) days late.
- (3) Sixty percent (60%) of the licensee's renewal fee for a financial statement that is more than thirty (30) and less than forty-six (46) days late.

(4) Eighty percent (80%) of the licensee's renewal fee for a financial statement that is more than forty-five (45) and less than sixty-one (61) days late.

(5) One hundred percent (100%) of the licensee's renewal fee for a financial statement that is more than sixty (60) days late.

*As added by P.L.64-2009, SEC.5.*

### **IC 26-3-7-6.3**

#### **Grain buyers and warehouse licensing agency license fee fund**

Sec. 6.3. (a) The grain buyers and warehouse licensing agency license fee fund is established to provide funds for the administration of this chapter. The fund shall be administered by the agency. The fund consists of:

(1) the moisture testing device inspection fees collected under IC 15-11-8-3;

(2) the licensing fees collected under section 6 of this chapter;

(3) gifts and bequests; and

(4) appropriations made by the general assembly.

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

*As added by P.L.207-2007, SEC.29. Amended by P.L.2-2008, SEC.67.*

### **IC 26-3-7-6.5**

#### **Disclosure of information**

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.

*(Formerly: Acts 1975, P.L.277, SEC.4.) As amended by Acts 1979, P.L.249, SEC.3; P.L.12-1984, SEC.5; P.L.139-1996, SEC.9; P.L.125-1997, SEC.24; P.L.64-2009, SEC.6.*

### **IC 26-3-7-7**

#### **Issuance of license or permit; false statements; applicant's**

**qualifications**

Sec. 7. (a) The director may issue or amend a license after the director has:

- (1) received and approved the required information and documentation; and
- (2) determined that:
  - (A) the facility or facilities covered by the application are suitable for the proper storage or handling of the grain intended to be stored or handled in the facility or facilities; and
  - (B) the applicant has complied with this chapter and the rules adopted under this chapter.

(b) A person may not represent that the person is licensed under this chapter, and may not use a name or description that conveys the impression that the person is licensed, in a receipt or otherwise, unless the person holds an unsuspended and unrevoked license to conduct the business indicated by the license.

(c) An applicant for a license under this chapter must show that the applicant:

- (1) has a good business reputation;
- (2) has not been involved in improper manipulation of books and records or other improper business practice;
- (3) has the qualifications and background essential for the conduct of the business to be licensed;
- (4) employs management and principal officers that have suitable business reputations, background, and qualifications to perform their duties;
- (5) has not been found guilty of a crime that would affect the licensee's ability to conduct business with integrity; and
- (6) does not employ an officer, director, partner, or manager that has been found guilty of a crime that would affect the licensee's ability to conduct business with integrity.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.5.)  
As amended by Acts 1979, P.L.249, SEC.4; Acts 1982, P.L.155, SEC.7; P.L.17-1985, SEC.21; P.L.191-1991, SEC.5; P.L.249-1995, SEC.2; P.L.125-1997, SEC.25.*

**IC 26-3-7-8****Temporary license**

Sec. 8. Upon receipt of an application for a permanent license, the director may issue a temporary license to the applicant for a reasonable time, not to exceed ninety (90) days, as the director deems necessary or advisable to enable the applicant to comply with the further requirements for obtaining a license under this chapter. A temporary license entitles the temporary licensee to the same rights and subjects the temporary licensee to the same duties as if the temporary licensee had a permanent license.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1975, P.L.277, SEC.5.)  
As amended by P.L.125-1997, SEC.26.*

### **IC 26-3-7-8.5**

#### **Licensing requirements of successor owner**

Sec. 8.5. If the ownership of a facility or business licensed under this chapter passes to a successor owner, the obligations under this chapter of the original licensee do not cease until the successor owner is properly licensed and has executed a successor's agreement with the agency.

*As added by P.L.125-1997, SEC.27.*

### **IC 26-3-7-9**

#### **Bond, cash deposit, or letter of credit**

Sec. 9. (a) Each applicant for a license under this chapter shall, as a condition of licensure, file or have on file with the director:

- (1) a cash deposit;
- (2) an irrevocable letter of credit;
- (3) a bond; or
- (4) any combination of the above;

as provided in section 10 of this chapter.

(b) A bond filed under this chapter shall:

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

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

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.6; Acts 1975, P.L.277, SEC.6.) As amended by Acts 1979, P.L.249, SEC.5; Acts 1982, P.L.155, SEC.8; P.L.191-1991, SEC.6; P.L.125-1997, SEC.28; P.L.173-1999, SEC.5.*

### **IC 26-3-7-10**

#### **Amount of bond, cash deposit, letter of credit, or other surety; deficiencies**

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 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 permitted under the rules of the agency.

(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 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.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.7; Acts 1975, P.L.277, SEC.7.) As amended by Acts 1979, P.L.249, SEC.6; Acts 1982, P.L.155, SEC.9; P.L.191-1991, SEC.7; P.L.125-1997, SEC.29; P.L.173-1999, SEC.6; P.L.64-2009, SEC.7.*

### **IC 26-3-7-11**

#### **Repealed**

*(Repealed by Acts 1979, P.L.249, SEC.18.)*

### **IC 26-3-7-12**

#### **Insurance; filing of certificate; settlement with depositor in case of destruction**

Sec. 12. (a) Each applicant for a license under this chapter shall, as a condition to the granting of the license, file or have on file a certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in Indiana insuring in the name of the applicant all grain that is or may be in the licensee's facilities for its full market value against loss by fire, internal explosion, lightning, and windstorm.

(b) In case fire, internal explosion, lightning, or wind-storm destroys or damages any grain in a licensed facility, the licensee shall, upon demand by the depositor and upon being presented with the receipt or other evidence of ownership, make settlement, after deducting the licensee's charges and advances, at the market value of the grain based on the value at the average price paid for grain of the same grade and quality on the date of the loss at the location of the facility. If a settlement is not made within sixty (60) days from the date of demand, the depositor is entitled to seek recovery from the insurance company.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1975, P.L.277, SEC.8.)  
As amended by P.L.125-1997, SEC.30.*

### **IC 26-3-7-13**

#### **Additional bond, cash deposit, letter of credit, or insurance**

Sec. 13. Whenever the director determines that a previously approved bond, letter of credit, cash deposit, or previously approved insurance is insufficient, the director shall require an additional bond, letter of credit, cash deposit, or insurance to be given by the licensee in the form and upon the terms and conditions required by this chapter and rules adopted under this chapter.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.8; Acts 1975, P.L.277, SEC.9.) As amended by Acts 1979, P.L.249, SEC.7; P.L.125-1997, SEC.31.*

### **IC 26-3-7-14**

#### **Cancellation of bond or insurance; approval; notice; suspension of license**

Sec. 14. (a) A licensee may not cancel an approved bond or approved insurance unless the director has given prior written approval for the cancellation and has received a substitute cash deposit or has approved a substitute bond or insurance. The surety on a bond may cancel a bond required by this chapter only after the expiration of ninety (90) days from the date the surety mailed a notice of intent to cancel, by registered or certified mail, to the director. An insurance company may cancel insurance required by this chapter only after the expiration of a thirty (30) day period from the mailing, by certified mail, of notice of intent to cancel, to the director. The surety and the insurance company shall, at the time of giving notice to the director, send a copy of the notice to the licensee.

(b) Notwithstanding any other provision of this chapter, the license of a licensee shall automatically be suspended for failure to:

- (1) file a new bond, letter of credit, or cash deposit within the ninety (90) day period as provided in this section;
- (2) file new evidence of insurance within the thirty (30) day period as provided in this section; or
- (3) maintain at all times a bond or cash deposit and insurance as provided in this chapter.

The suspension shall continue until the licensee complies with the bonding and insurance requirements of this chapter.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by Acts 1979, P.L.249, SEC.8; P.L.125-1997, SEC.32.*

#### **IC 26-3-7-15**

##### **Grain inventories; sufficiency for outstanding warehouse receipts or other storage obligations**

Sec. 15. (a) A licensee shall maintain inventories of sufficient quantity and grade of grain to meet the licensee's storage obligations.

(b) Inventories representing grain evidenced by outstanding warehouse receipts shall be maintained in the warehouse shown on the warehouse receipt issued by the warehouse in which the grain was originally deposited.

(c) Inventories representing storage obligations other than those evidenced by warehouse receipts may be represented by:

- (1) receipts for grain stored in a facility licensed under this chapter;
- (2) receipts in a warehouse licensed and bonded under the warehouse act; or
- (3) other warehouse receipts or tickets as approved by the director.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.9.) As amended by Acts 1979, P.L.249, SEC.9; P.L.125-1997, SEC.33.*

#### **IC 26-3-7-16**

##### **Maintenance of minimum net worth**

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 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 permitted under the rules of the agency.

(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.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by Acts 1979, P.L.249, SEC.10; P.L.125-1997, SEC.34; P.L.253-1997(ss), SEC.26; P.L.173-1999, SEC.7; P.L.64-2009, SEC.8.*

### **IC 26-3-7-16.1**

#### **Repealed**

*(Repealed by P.L.125-1997, SEC.57.)*

### **IC 26-3-7-16.5**

#### **Determination of shortages; payment of claims; hearings and procedures**

Sec. 16.5. (a) Upon learning of the possibility that a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an on-premise inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.

(b) If it is determined that a shortage may exist, the director or the director's designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee's books and records and the grain on hand. Only the licensee, the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and any grain depositor who has

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

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

(d) Any depositor who does not present a claim at the hearing may bring the claim to the agency within fifteen (15) days after the conclusion of the hearing.

(e) Following the hearing on claims, the director shall make a determination as to the total proven storage obligation of the claimants and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims shall be proven claimants. In arriving at that loss, in accordance with section 19 of this chapter, the director shall apply all grain on hand or its identifiable proceeds to meet the licensee's obligations to grain depositors of grain of that type. Initial determinations of loss shall be made on the amount of grain on hand, or identifiable proceeds, and

shall reduce the amount to which a depositor may have a proven claim. With respect to the remaining unfulfilled obligations, the director shall, for the sole purpose of establishing each depositor's claim under this chapter, establish a date upon which the loss is discovered, shall price the grain as of that date, shall treat all outstanding grain storage obligations not covered by grain on hand or identifiable proceeds as being sold as of that date, and shall determine the extent of each depositor's loss as being the actual loss sustained as of that date. Grain of a specific type on the premises of a licensee must first be applied to meet the licensee's storage obligations with respect to that type of grain. If there is insufficient grain of a specific type on hand to meet all storage obligations with respect to that type of grain, the grain that is present shall be prorated in accordance with the procedures described in this section and section 16.8 of this chapter.

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

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

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

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

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

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

*As added by Acts 1979, P.L.249, SEC.11. Amended by P.L.191-1991, SEC.8; P.L.125-1997, SEC.35; P.L.173-1999, SEC.8; P.L.75-2010, SEC.13.*

### **IC 26-3-7-16.6**

#### **Procedures**

Sec. 16.6. The procedures established by this chapter also apply when the director learns or has reason to believe that a person is doing business as a grain buyer, operating a warehouse, or acting as a buyer-warehouse without the license required by this chapter.

*As added by Acts 1982, P.L.155, SEC.11. Amended by P.L.191-1991,*

*SEC.9; P.L.139-1996, SEC.10; P.L.125-1997, SEC.36; P.L.173-1999, SEC.9.*

### **IC 26-3-7-16.8**

#### **Liens on grain assets**

Sec. 16.8. (a) A lien against all grain assets of a licensee or a person who is required to be licensed under this chapter attaches in favor of the following:

- (1) A lender or other claimant that has a receipt for grain owned or stored by the licensee.
- (2) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.
- (3) A claimant that surrendered a receipt as part of a grain sales transaction if:
  - (A) the claimant was not fully paid for the grain sold; and
  - (B) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

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

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

- (1) the delivery of the grain for sale, storage, or under a bailment;
- (2) the commencement of the storage obligation; or
- (3) the advancement of funds by a lender.

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

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

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

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

- (1) First priority is assigned to the following:
  - (A) A lender or other claimant that has a receipt for grain owned or stored by the licensee.
  - (B) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.
  - (C) A claimant that surrendered a receipt as part of a grain sales transaction if:
    - (i) the claimant was not fully paid for the grain sold; and

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

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

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

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

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

(h) If:

(1) a claimant engaged in farming operations granted to one (1) or more secured parties one (1) or more security interests in the grain related to the claimant's claim under this section; and  
(2) one (1) or more secured parties described in subdivision (1) have given to:

(A) the licensee prior written notice of the security interest under IC 26-1-9.1-320(a)(1) or IC 26-1-9-307(1)(a) before its repeal; and

(B) the director prior written notice of the security interest with respect to the grain described in subdivision (1) sufficient to give the director a reasonable opportunity to cause the issuance of a joint check under this subsection;

the director shall pay the claimant described in subdivision (1) the portion of the proceeds of grain assets under subsection (e) to which the claimant is entitled under this section by issuance of a check payable jointly to the order of the claimant and any secured party described in subdivision (1) who has given the notices described in subdivision (2). If only one (1) secured party described in subdivision (1) is a payee, the rights of the secured party in the check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9.1.

*As added by P.L.125-1997, SEC.37. Amended by P.L.115-1999, SEC.1; P.L.173-1999, SEC.10; P.L.1-2002, SEC.101; P.L.75-2010, SEC.14.*

## **IC 26-3-7-17**

### **Repealed**

*(Repealed by Acts 1979, P.L.249, SEC.18.)*

## **IC 26-3-7-17.1**

### **Possible violations; powers of director; procedures**

Sec. 17.1. (a) Whenever the director, as a result of an inspection or otherwise, has reasonable cause to believe that a person to which this chapter is or may be applicable:

(1) is conducting business contrary to this chapter or in an unauthorized manner; or

(2) has failed, neglected, or refused to observe or comply with any order, rule, or published policy statement of the agency;

then the director may undertake any one (1) of the actions prescribed by this section.

(b) Upon learning of the possibility that a licensee is acting as described in subsection (a), the director or the director's designated representative may seek an informal meeting with the licensee. At that meeting, which shall be held at a time and place agreed to by the licensee and the director, the director or the director's designated representative shall discuss the possible violations and may enter into a consent agreement with the licensee under which the licensee agrees to undertake, or to cease, the activities that were the subject of the meeting. The consent agreement may provide for a time frame within which the licensee must be in compliance.

(c) Upon learning of the possibility that a person is acting as described in subsection (a), the director, except as otherwise provided in this subsection, shall hold a hearing to determine whether a cease and desist order should issue against a licensee or an unlicensed person undertaking activities covered by this chapter. If the director determines that the violation or the prohibited practice is likely to cause immediate insolvency or irreparable harm to depositors, the director, without notice, may issue a temporary cease and desist order requiring the person to cease and desist from that violation or practice. The order shall become effective upon service on the person and shall remain effective and enforceable pending the completion of all administrative proceedings.

(d) Upon a determination, after a hearing held by the director or the director's designated representative, that a person is acting as described in subsection (a), the director may suspend, revoke, or deny a license. If the director suspends, revokes, or denies a license, the director shall publish notice of the suspension, revocation, or denial as provided in section 17.5 of this chapter.

(e) If the director has reasonable cause to believe that a licensee is acting as described in subsection (a) and determines that immediate action without an opportunity for a hearing is necessary

in order to safeguard depositors, the director may suspend a license temporarily without a hearing for a period not to exceed twenty (20) days. When a license is suspended without a hearing, the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible.

*As added by Acts 1979, P.L.249, SEC.12. Amended by P.L.191-1991, SEC.10; P.L.125-1997, SEC.38.*

#### **IC 26-3-7-17.5**

##### **Notice of suspension or revocation of license; notice of denial of application**

Sec. 17.5. (a) Whenever the license of a licensee is suspended or revoked, the director may:

- (1) for each facility operated by the licensee, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and
- (2) cause notice of the suspension or revocation to be posted at the facilities covered by the license.

(b) Whenever an application for licensure under this chapter is denied, the director may:

- (1) for each facility operated by the applicant, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and
- (2) cause notice of the denial to be posted at the applicant's facilities.

(c) A notice posted under this section may not be removed without the written permission of the director.

(d) The director shall adopt rules under IC 4-22-2 to determine the content of the notices required by this section.

*As added by P.L.125-1997, SEC.39.*

#### **IC 26-3-7-18**

##### **Revocation, expiration, or suspension of license; effect upon operation**

Sec. 18. (a) When a license is revoked, the licensee shall terminate in the manner prescribed by the director all arrangements covering the grain in the facility covered by the license, but shall be permitted, under the direction and supervision of the director or the director's designated representative, to deliver grain previously received.

(b) During any suspension of a license, the licensee may, under the direction and supervision of the director or the director's designated representative, operate the facility, but shall not incur any additional obligations to producers.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.11.)  
As amended by Acts 1979, P.L.249, SEC.13; Acts 1982, P.L.155, SEC.12; P.L.191-1991, SEC.11; P.L.125-1997, SEC.40.*

#### **IC 26-3-7-19**

##### **Receipt of grain; ownership of deposited grain**

Sec. 19. (a) A licensee shall issue a receipt or ticket for grain received. Grain received by a licensee shall be credited to the depositor on the books of the licensee within seven (7) days from the date of its delivery. If a ticket is issued on delivery of the grain for storage, a receipt shall be issued on demand, but no receipt shall be issued on grain bank grain.

(b) The licensee is a bailee with respect to all stored grain. The person whose name appears on a receipt or a ticket has title to the stored grain evidenced by the receipt or ticket.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by Acts 1979, P.L.249, SEC.14; Acts 1982, P.L.155, SEC.13; P.L.125-1997, SEC.41.*

#### **IC 26-3-7-20**

##### **Grain owned by licensee; receipts; transfer**

Sec. 20. A licensee may issue a receipt for grain owned by the licensee in whole or in part, located in the licensee's facility. The negotiation, transfer, sale, or pledge of the receipt shall not be defeated by reason of the licensee's ownership.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by P.L.3-1989, SEC.150; P.L.125-1997, SEC.42.*

#### **IC 26-3-7-21**

##### **Uniform Warehouse Receipts Act; application to transactions**

Sec. 21. Except as provided by this chapter, and regardless of whether the grain was received for storage, shipping, or handling, IC 26-3-2 applies to all transactions involving or incidental to the issuance, negotiation, transfer, sale, endorsement, or other dealings with receipts, to transactions involving delivery or other disposition of grain, and to the rights, duties, liabilities, and privileges of licensees or others dealing with licensees.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by Acts 1982, P.L.155, SEC.14; P.L.125-1997, SEC.43.*

#### **IC 26-3-7-22**

##### **Commingling of grain**

Sec. 22. Different lots of the same type of grain delivered to a licensee may be commingled by type of grain unless the receipt or ticket states that the identity of the lot of grain is to be preserved.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by P.L.125-1997, SEC.44.*

#### **IC 26-3-7-23**

##### **Return of grain to depositor**

Sec. 23. Upon demand, after payment of all applicable charges, grain shall be returned to the depositor at the licensed facility where the grain was received unless agreed otherwise in writing.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.12.) As amended by P.L.125-1997, SEC.45.*

#### **IC 26-3-7-24**

##### **Duplicate receipts; restriction; requisites; bond**

Sec. 24. While a receipt or ticket issued under this chapter is outstanding and uncanceled by the issuing licensee, no other receipt or ticket shall be issued for the grain or any part of the grain that is covered by the receipt or ticket. However, if a receipt or ticket is lost, stolen, or destroyed the owner of the receipt or ticket is entitled to a new receipt that is a duplicate of the missing receipt or a new ticket that is a substitute for the missing ticket. The duplicate receipt or substitute ticket entitles the owner to all rights appertaining to the document for which it was issued, and shall state that it is in lieu of the former receipt or ticket and give the number and date of the former receipt or ticket. If the missing document was a negotiable receipt, the issuing licensee shall require an indemnity bond of double the market value of the grain covered by the missing receipt in a form and with the surety that the director may prescribe to fully protect all rights under the missing receipt.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by P.L.125-1997, SEC.46.*

#### **IC 26-3-7-25**

##### **Terms of receipts**

Sec. 25. Every warehouse receipt issued, whether paper or electronic, shall embody within its terms the following:

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

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

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

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

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

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

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

(6) A clause that terminates storage on the date the license held by the licensee when the receipt was issued expires and reserves to the licensee the right to collect outstanding charges against

any lot of grain.

(7) Other provisions prescribed by the director.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.13.)  
As amended by P.L.125-1997, SEC.47; P.L.173-1999, SEC.11.*

### **IC 26-3-7-26**

#### **Terms of tickets**

Sec. 26. Every ticket issued shall embody within its terms:

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

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

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1975, P.L.277, SEC.10.)  
As amended by Acts 1982, P.L.155, SEC.15; P.L.125-1997, SEC.48;  
P.L.173-1999, SEC.12.*

### **IC 26-3-7-27**

#### **Repealed**

*(Repealed by P.L.125-1997, SEC.57.)*

### **IC 26-3-7-28**

#### **Records and accounts; retention**

Sec. 28. A licensee shall keep in a place of safety complete and correct records and accounts pertaining to the licensee's grain business. The licensee shall retain records and accounts for not less than six (6) years from the date of the final settlement of the transaction.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.14.)  
As amended by P.L.125-1997, SEC.49.*

### **IC 26-3-7-29**

#### **Display of license or permit; schedule of charges; sign**

Sec. 29. A licensee shall:

- (1) conspicuously display the licensee's license in the licensee's main office and at each facility included under the license;
- (2) conspicuously display in each operational office the approved schedule of charges for services; and
- (3) conspicuously display at each facility all charts and diagrams provided to the facility by the agency.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.15.)  
As amended by Acts 1982, P.L.155, SEC.17; P.L.125-1997, SEC.50.*

### **IC 26-3-7-30**

**Receipt forms; requests; cost; requisites for accountability**

Sec. 30. All receipt forms shall be supplied by the director except where the director, in writing, approves the form and gives permission to a warehouse operator to have receipts printed. Requests for receipts shall be on forms furnished by the director and shall be accompanied by payment to cover the estimated cost of printing, packaging, and shipping, as determined by the director. Where privately printed, the printer shall furnish the director an affidavit showing the amount of the receipts printed, and the serial numbers thereof. All receipts remaining unused shall be recovered by the director or the director's designated representative if the license required by this chapter is terminated or suspended.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.16.)  
As amended by P.L.173-1999, SEC.13; P.L.64-2009, SEC.9.*

**IC 26-3-7-31****Grain shortages; appointment of receiver**

Sec. 31. (a) Whenever it appears to the satisfaction of the director that a licensee cannot meet the licensee's outstanding grain obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

- (1) Cover the shortage with grain that is fully paid for.
- (2) Give additional bond, letter of credit, or cash deposit as required by the director.
- (3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with IC 32-30-5 that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in IC 32-30-5-2 may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.17.)  
As amended by Acts 1979, P.L.249, SEC.15; P.L.125-1997, SEC.51;  
P.L.1-1998, SEC.139; P.L.173-1999, SEC.14; P.L.2-2002, SEC.80.*

**IC 26-3-7-32****Injunctions; unlawful removal of grain; temporary restraining**

## **orders**

Sec. 32. (a) The director may apply for, and the courts of this state are vested with jurisdiction to issue, a temporary or permanent injunction against the business operation of a licensee, or the issuance of receipts or tickets without a license and against interference by any person with the director, the director's designated representative, or a receiver appointed under section 31 of this chapter, in the performance of their duties and powers under this chapter.

(b) Upon a determination by the director that there is reasonable cause to believe that a licensee is unable to meet the licensee's storage or other grain obligations, and that the licensee is removing, or the director has reasonable cause to believe that the licensee may remove, grain from the licensed premises, the director may, under the conditions provided in, and in accordance with, the Indiana Rules of Trial Procedure, seek from the circuit court of the Indiana county in which the licensee has the licensee's principal place of business a temporary restraining order preventing the further sale or movement of any grain and requiring that proceeds from grain sales received after the issuance of the temporary restraining order should be held in the form in which they are received by the licensee and kept separate from all other funds held by the licensee.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.18.)  
As amended by Acts 1979, P.L.249, SEC.16; Acts 1982, P.L.155, SEC.18; P.L.191-1991, SEC.12; P.L.125-1997, SEC.52.*

## **IC 26-3-7-33**

### **Examination of warehouse; fee; expenses**

Sec. 33. In addition to all other inspections and investigations authorized by this chapter, the director or the director's designated representative may, upon request of any person having an interest in grain in a licensed warehouse, cause the warehouse to be examined. The director or the director's representative may check the outstanding receipts and tickets against the grain on hand and advise each depositor of any shortage with respect to any grain in which the person has an interest. If the cost of the examination is more than twenty-five dollars (\$25.00), the person requesting the examination shall pay the additional cost to the director unless a shortage is found to exist.

*(Formerly: Acts 1973, P.L.268, SEC.1; Acts 1974, P.L.120, SEC.19.)  
As amended by P.L.125-1997, SEC.53.*

## **IC 26-3-7-34**

### **Violations**

Sec. 34. (a) A person who knowingly or intentionally violates or fails to comply with this chapter commits a Class A misdemeanor. Each day a person violates this chapter constitutes a separate violation.

(b) A person who knowingly or intentionally issues a receipt or ticket, knowing that the grain for which the receipt or ticket is issued

has not been actually received at the licensed warehouse, commits a Class A misdemeanor. A person who issues a duplicate, or additional negotiable receipt for grain, knowing that a former negotiable receipt for the same grain or any part of the grain is outstanding and uncanceled, except in the case of a lost, stolen, or destroyed receipt, as provided in section 24 of this chapter, commits a Class A misdemeanor. A person who fraudulently represents, alters, or counterfeits any license provided for in this chapter commits a Class D felony.

(c) Except in case of sale or other disposition of the grain in lawful enforcement of the lien on grain that attaches under this chapter or on a licensee's lawful termination of storage, shipping, or handling agreements, or except as permitted by the rules adopted by the director under IC 4-22-2 to effectuate the purposes of this chapter:

(1) a person who knowingly or intentionally delivers grain out of a licensed facility, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of the grain is outstanding and uncanceled, without obtaining the possession of the receipt at or before the time of delivery, commits a Class D felony; and

(2) a person who knowingly or intentionally delivers grain out of a licensed facility, knowing that a non-negotiable receipt or ticket is outstanding and uncanceled, without the prior written approval of the person lawfully entitled to delivery under the non-negotiable receipt or ticket and without delivery being shown on the appropriate records of the licensee, commits a Class D felony.

(d) A person who fraudulently issues a receipt, a ticket, or a weight or grade certificate, knowing that it contains a false statement, or who issues a receipt for grain owned solely or jointly by the person and does not state the fact of the person's ownership in the receipt, commits a Class A misdemeanor.

(e) A person who recklessly changes a receipt or ticket subsequent to issuance, except for notation by the licensee of partial delivery, commits a Class B misdemeanor.

(f) A person who knowingly or intentionally deposits grain to which the person does not have title or upon which there is a lien or mortgage and who accepts for the grain a receipt or ticket, without disclosing the lack of title or the existence of the lien or mortgage, commits a Class D felony.

(g) A person commits a Class A misdemeanor who knowingly or intentionally:

(1) engages in the business of being a grain buyer or operates a warehouse without a valid license issued by the director;

(2) engages in the business of being a grain buyer or operates a warehouse without a sufficient cash deposit, letter of credit, or surety bond on file with and in a form approved by the director; or

(3) engages in the business of being a grain buyer or operates a

warehouse while in violation of the rules adopted by the director.

(h) A person commits a Class A misdemeanor who willfully makes or causes to be made a false entry or statement of fact in an application or report filed with the director.

(i) A person who is not in compliance with section 3(a)(11) of this chapter may be subject to a fine imposed by the agency of not more than twenty thousand dollars (\$20,000), or the suspension of the grain buyer's license for not more than five (5) years, or both.

(j) The director may suspend or revoke the license of a licensee that uses an unlicensed facility to store or handle grain or commits another violation of this chapter.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2608; Acts 1979, P.L.249, SEC.17; Acts 1981, P.L.232, SEC.2; Acts 1982, P.L.155, SEC.19; P.L.139-1996, SEC.11; P.L.125-1997, SEC.54.*

### **IC 26-3-7-35**

#### **Grain buyer license required**

Sec. 35. A person licensed under the warehouse act must also have a valid grain buyer license to do business in Indiana as a grain buyer.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by P.L.191-1991, SEC.13; P.L.125-1997, SEC.55.*

### **IC 26-3-7-36**

#### **Deposit of fees**

Sec. 36. All fees received by the director under this chapter shall be deposited within thirty (30) days of receipt.

*(Formerly: Acts 1973, P.L.268, SEC.1.) As amended by Acts 1979, P.L.17, SEC.53; P.L.139-1996, SEC.12.*