

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1549

AN ACT to amend the Indiana Code concerning commercial law.

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

SECTION 1. IC 15-11-8-3, AS ADDED BY P.L.2-2008, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) The director or the director's designee shall charge each inspection site a ~~ten two hundred~~ **dollar (\$10) (\$200)** fee for each moisture testing device inspected at the inspection site under this chapter.

(b) All fees collected under this section must be deposited in the grain buyers and warehouse licensing agency license fee fund established by IC 26-3-7-6.3.

SECTION 2. IC 15-15-1-37 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 37. (a) ~~A person who is engaged in the business of selling agricultural or vegetable seed who enters into a contract with the purchaser under which the seller agrees to repurchase the seed crop produced by the purchaser at a price greater than the current market price of the seed at the time of delivery shall secure an annual license from the state seed commissioner to engage in that business.~~

(b) ~~To secure a license required by this section, a person must apply for the license to the state seed commissioner. The application must be accompanied by the following:~~

~~(1) A bond with corporate surety, approved by the seed commissioner, in the penal sum of ten thousand dollars (\$10,000);~~

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payable to the state; for the use and benefit of any purchaser of seed who may have a cause of action against a seller who fails to comply with the terms of the purchase contract.

(2) A fee of one dollar (\$1) for each place of business from which agricultural or vegetable seed is distributed by the licensee.

An applicant for a license may request the state seed commissioner to accept a verified financial statement of the applicant's assets instead of the submission of a bond. If the state seed commissioner, after an examination of the applicant's financial statement, determines that the applicant is financially responsible for any damage that may arise out of a breach of a purchase contract, the state seed commissioner may accept the statement instead of a bond.

(c) A license issued under this section expires at the end of the calendar year in which it is issued.

(d) The state seed commissioner may suspend, revoke, or refuse to issue a license under this section to any person who fails to comply with this chapter. If a hearing is waived by nonappearance of the person at the date, time, and place designated for the hearing, the state seed commissioner may proceed to act under this section and suspend, revoke, or refuse to issue a license. The failure to fulfill a contract to deliver seed sold, or the failure to repurchase the seed crop produced from any agricultural or vegetable seed sold, is prima facie evidence of intent to defraud the purchaser if the crop produced by the purchaser meets the requirements prescribed in the contract of sale. Whenever the state seed commissioner has evidence that a licensee has committed fraud on any purchaser, the state seed commissioner shall immediately start proceedings to suspend or revoke the license issued to the licensee.

(e) A person who recklessly, knowingly, or intentionally:

- (1) enters into a contract with a producer of agricultural or vegetable seed, under which the person sells seed and agrees to repurchase the seed crop produced from that seed at a price greater than the current market price at the time of delivery; and
- (2) has not obtained a license required by this section;

commits a Class B misdemeanor.

SECTION 3. IC 26-3-7-1, AS AMENDED BY P.L.120-2008, SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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

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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~~ **shall** 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.

SECTION 4. IC 26-3-7-2, AS AMENDED BY P.L.75-2010, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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) "Daily position record" means a written or electronic document that is maintained on a daily basis for each grain commodity, contains a record of the total amount of grain in inventory for that business day, and complies with any requirements established by the director.

~~(6)~~ (7) "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)~~ (8) "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)~~ (9) "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)~~ **(10)** "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)~~ **(11)** "Director" means the director of the Indiana grain buyers and warehouse licensing agency appointed under section 1 of this chapter.

~~(11)~~ **(12)** "Facility" means a location or one (1) of several locations in Indiana that are operated as a warehouse or by a grain buyer.

~~(12)~~ **(13)** "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)~~ **(14)** "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)~~ **(15)** "Grain assets" means any of the following:

(A) All grain **and grain coproducts** owned or stored by a licensee, including ~~grain that:~~ **the following:**

(i) **Grain that** is in transit following shipment by a licensee.

and

(ii) **Grain that** has not been paid for.

(iii) Grain that is stored in unlicensed facilities that are leased, owned, or occupied by the licensee.

(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)~~ **(16)** "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)~~ **(17)** "Grain buyer" means a person who is engaged in the business of buying grain from producers.

(18) "Grain coproducts" means any milled or processed grain, including the grain byproduct of ethanol production.

~~(17)~~ **(19)** "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)~~ **(20)** "License" means a license issued under this chapter.

~~(19)~~ **(21)** "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)~~ **(22)** "Person" means an individual, partnership, corporation, association, or other form of business enterprise.

~~(21)~~ **(23)** "Receipt" means a warehouse receipt issued by a warehouse licensed under this chapter.

~~(22)~~ **(24)** "Seed", notwithstanding IC 15-15-1, means grain set apart to be used primarily for the purpose of producing new plants.

(25) "Seed inventory" means seed for commercial sale.

~~(23)~~ **(26)** "Ticket" means a scale weight ticket, a load slip, or

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other evidence, other than a receipt, given to a depositor upon initial delivery of grain to a facility.

~~(24)~~ **(27)** "Warehouse act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273 as amended).

~~(25)~~ **(28)** "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)~~ **(29)** "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.

SECTION 5. IC 26-3-7-3, AS AMENDED BY P.L.75-2010, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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

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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 **Futures** 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

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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.

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(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.

SECTION 6. IC 26-3-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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 **or entity associated with the 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

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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) Seed inventory.**
 - ~~(12)~~ **(13)** 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.

SECTION 7. IC 26-3-7-6, AS AMENDED BY P.L.75-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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~~ **one thousand** dollars (~~\$250~~) **(\$1,000)** for the first facility and **two hundred** fifty dollars (~~\$50~~) **(\$250)** 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, **one thousand** five hundred dollars (~~\$500~~) **(\$1,500)** for the first facility and **two hundred** fifty dollars (~~\$50~~) **(\$250)** 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

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million (10,000,000) bushels, ~~seven hundred fifty two thousand~~ **two thousand** dollars (~~\$750~~) (**\$2,000**) for the first facility and **two hundred** fifty dollars (~~\$50~~) (**\$250**) for each additional facility.

(4) For a warehouse or buyer-warehouse with a storage capacity greater than ten million (10,000,000) bushels, ~~one two thousand~~ **five hundred** dollars (~~\$1,000~~) (**\$2,500**) for the first facility and **two hundred** fifty dollars (~~\$50~~) (**\$250**) for each additional facility.

(5) For a grain buyer, including a grain buyer that is also licensed as a warehouse under the warehouse act, **one thousand** five hundred dollars (~~\$500~~) (**\$1,500**) for the first facility and **two hundred** fifty dollars (~~\$50~~) (**\$250**) 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) an aged accounts receivable listing detailing accounts that are ninety (90) days due, one hundred twenty (120) days due, and more than one hundred twenty (120) days due;**
 - (F) a copy of the daily position record for the end of the licensee's fiscal year;**

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

~~(F)~~ (H) 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) If a licensee's storage capacity changes between license renewals, the agency shall charge the licensee a fee of two hundred fifty dollars (\$250).

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

~~(h)~~ (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 8. IC 26-3-7-6.1, AS ADDED BY P.L.64-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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. **The financial statement must be submitted with the licensee's renewal forms and fees.**

(b) 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) an aged accounts receivable listing detailing accounts that are ninety (90) days due, one hundred twenty (120) days due, and more than one hundred twenty (120) days due;

(F) a copy of the daily position record for the end of the licensee's fiscal year;

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

~~(F)~~ (H) 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

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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)~~ **(c)** 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~~ **Fifty** percent ~~(20%)~~ **(50%)** of the licensee's renewal fee for a financial statement, **renewal form, or renewal fee** that is at least ~~one (1) and less than sixteen (16)~~ **sixty (60)** 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)~~ **(2)** One hundred percent (100%) of the licensee's renewal fee for a financial statement, **renewal form, or renewal fee** that is more than sixty (60) days late.

(d) The agency may file a notice of hearing for any fines assessed under subsection (c).

SECTION 9. IC 26-3-7-6.5, AS AMENDED BY P.L.64-2009, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6.5. The names, **locations**, ~~and~~ respective counties, **and license status** 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 10. IC 26-3-7-10, AS AMENDED BY P.L.64-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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:

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- (A) ~~ten fifty~~ thousand dollars (~~\$10,000~~); **(\$50,000)**; 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 fifty~~ thousand dollars (~~\$10,000~~); **(\$50,000)**; 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 fifty~~ thousand dollars (~~\$10,000~~); **(\$50,000)**; 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 two hundred fifty~~ thousand dollars (~~\$100,000~~) **(\$250,000)** per license and may not exceed a total of ~~five hundred thousand one million~~ dollars (~~\$500,000~~) **(\$1,000,000)** 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

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(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~~ **fifty** thousand dollars (~~\$15,000~~); (**\$50,000**), 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 one~~ **hundred** thousand dollars (~~\$50,000~~); (**\$100,000**), 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

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licensee defaults.

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

SECTION 11. IC 26-3-7-16, AS AMENDED BY P.L.64-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: 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~~ **one hundred** thousand dollars (~~\$10,000~~): **(\$100,000)**.

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

(A) ~~fifteen one hundred~~ thousand dollars (~~\$15,000~~): **(\$100,000)**; 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 one hundred~~ thousand dollars (~~\$10,000~~): **(\$100,000)**;

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 one hundred fifty~~ thousand dollars (~~\$15,000~~): **(\$150,000)**; 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:

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- (i) ~~fifty two hundred thousand dollars (\$50,000);~~
(\$200,000); 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.

SECTION 12. IC 26-3-7-17.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 17.5. (a) Whenever the license of a licensee is suspended or revoked, the director ~~may:~~ **shall:**

- (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.

SECTION 13. IC 26-4-1-13, AS AMENDED BY P.L.75-2010, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. "Grain" means corn for all uses, popcorn, wheat, oats, rye, soybeans, barley, sorghum, oil seeds, other agricultural commodities as approved by the agency, and seed (as defined in

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~~IC 26-3-7-2(22)~~; **IC 26-3-7-2(24)**). The term does not include canning crops for processing, sweet corn, or flint corn.

SECTION 14. IC 26-4-4-1, AS AMENDED BY P.L.75-2010, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) The Indiana grain indemnity fund is established for the purpose of providing money to pay producers for losses incurred due to the failure of a grain buyer or warehouse operator licensed under IC 26-3-7. The fund shall be administered by the board of the corporation.

(b) The fund consists of money collected under this chapter.

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

SECTION 15. IC 26-4-4-2, AS AMENDED BY P.L.5-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) ~~The fund consists of money paid into the fund from the producers of grain under section 4 of this chapter.~~ **administrative expense account is created within the fund.**

(b) The expenses of administering the fund **and paying administrative expenses** must be paid from money in the fund. ~~After the fund reaches an amount in excess of ten million dollars (\$10,000,000), the board may annually take not more than two hundred fifty thousand dollars (\$250,000) and allocate it to a separate administrative expenses account to pay administrative expenses.~~ **administrative expense account.**

(c) The board may transfer annually not more than two hundred fifty thousand dollars (\$250,000) from the fund to the **administrative expense account.**

(d) Administrative expenses under this section may include:

- (1) processing refunds;
- (2) enforcement of the fund;
- (3) record keeping in relation to the fund; **and**
- (4) the ordinary management and investment fees connected with the operation of the fund; **and**
- (5) legal fees and legal expenses in actions brought against the corporation or board and that have been approved by the board.**

~~(c) Board approved legal fees and legal expenses in actions brought against the corporation, board, or fund must be paid from money in the fund. These fees and expenses are not administrative costs and may not be paid from the administrative expense account.~~

SECTION 16. IC 26-4-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) Except as provided in section 8 of this chapter, beginning on July 1, ~~1996~~; **2015**,

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the producers of grain shall be charged a producer premium equal to two-tenths percent (0.2%) of the price on all marketed grain that is sold in Indiana.

(b) The producer premiums required under this section are in addition to any other fees or assessments required by law.

SECTION 17. IC 26-4-4-8, AS AMENDED BY P.L.5-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) The producer premiums required under section 4 of this chapter must be collected until the fund contains more than ~~fifteen~~ **twenty-five** million dollars (~~\$15,000,000~~); **(\$25,000,000)**, as of June 30 of any given year.

(b) Except as provided in subsection (c), after the fund reaches ~~fifteen~~ **twenty-five** million dollars (~~\$15,000,000~~); **(\$25,000,000)**, the board may not require the collection of additional producer premiums until the amount in the fund drops below ~~ten~~ **twenty** million dollars (~~\$10,000,000~~); **(\$20,000,000)**, as determined under section 9 of this chapter. In a year when the board determines that the fund is at or below ~~ten~~ **twenty** million dollars (~~\$10,000,000~~); **(\$20,000,000)**, the board shall reinstate the collection described in this chapter.

(c) The board shall reinstate the collection described in this chapter if as of May 1:

- (1) the fund contains at least ~~ten~~ **twenty** million dollars (~~\$10,000,000~~); **(\$20,000,000)**;
- (2) the board is aware of a failure of a grain buyer; and
- (3) the amount of compensation from the fund to cover producers' claims, as determined by the board, is equal to or greater than the amount of money in the fund.

SECTION 18. IC 26-4-4-9, AS AMENDED BY P.L.75-2010, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) At the July meeting required under IC 26-4-3-5, the board shall certify the amount of money in the fund on June 30.

(b) Except as provided in section 8(c) of this chapter, the board may not require the collection of a producer premium during a fiscal year when the board certifies under subsection (a) that the fund has money in excess of ~~ten~~ **twenty** million dollars (~~\$10,000,000~~); **(\$20,000,000)**. If the fund is at or below ~~ten~~ **twenty** million dollars (~~\$10,000,000~~); **(\$20,000,000)**, the board shall reinstate the collection.

SECTION 19. IC 26-4-6-1, AS AMENDED BY P.L.75-2010, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) ~~Except as provided in section 2 of this chapter~~; The money in the fund:

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(1) is not available for any purpose other than the payment of claims approved by the board or refunds to producers who do not want to participate in the fund; and

(2) may not be transferred to any other fund.

(b) The limiting and nontransferability provision of subsection (a) is declared to be nonseverable from the whole of this article. If subsection (a) is held to be invalid, repealed, or substantially amended, this article shall immediately become invalid and the money remaining in the fund shall be distributed to participants in the fund in a manner that is proportional to the amount of producer premiums each producer paid to the fund.

SECTION 20. IC 26-4-6-2 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 2: The board is authorized to pay the administrative expenses of the fund from the administrative expenses account established by IC 26-4-4-2(b) and to pay the fund's legal fees and legal expenses from the fund.~~

SECTION 21. IC 35-52-15-3 IS REPEALED [EFFECTIVE JULY 1, 2015]. ~~Sec. 3: IC 15-15-1-37 defines a crime concerning horticulture products.~~



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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