



February 4, 2021

HOUSE BILL No. 1483

DIGEST OF HB 1483 (Updated February 3, 2021 11:31 am - DI 77)

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

Synopsis: Grain indemnity fund. Amends the definition of "failed" or "failure" and adds definition of "suspension" under the Indiana grain buyers and warehouse licensing law (licensing law). Provides that the director of the Indiana grain buyers and warehouse licensing agency (agency) may share information with board members of the Indiana grain indemnity corporation (corporation) regarding the risk that a person licensed under the licensing law (licensee) may fail and the potential financial impact to the Indiana grain indemnity fund (fund) if the licensee does fail. Requires the director of the agency to engage a third party firm to conduct a performance review of the agency's auditing practices and procedures at least once every five years. Requires the agency to make reasonable efforts to implement any corrective measures identified in the performance review. Requires that if the director of the agency finds a deficiency in minimum net worth before the licensee's next audit by the agency, the director shall issue a notice of deficiency to the licensee stating that the licensee has 30 days to correct the deficiency and if the licensee fails to correct a deficiency in minimum net worth within the 30 day period, the director may issue a fine. Provides that if a licensee fails to correct a deficiency in minimum net worth within 60 days of receiving a fine the director may issue a temporary suspension. Prohibits a licensee, beginning after June 30, 2021, from entering into a deferred pricing agreement or a delayed payment agreement in connection with grain purchases that
(Continued next page)

Effective: Upon passage.

Snow, Leonard

January 14, 2021, read first time and referred to Committee on Agriculture and Rural Development.
February 4, 2021, amended, reported — Do Pass.

HB 1483—LS 7231/DI 77



Digest Continued

extends beyond one year from the date of delivery of the grain. Provides specified phase out periods for deferred pricing agreements or delayed payment agreements that were entered into by a licensee before July 1, 2021. Prohibits the transfer of a deferred pricing agreement or delayed payment agreement to a new contract beyond one year from the date of delivery of grain. Provides that, if the director or director's designated representative determines that the licensee has not complied with the deferred pricing or delayed payment requirements, the director shall issue a notice stating that the licensee has 30 days to issue payment for the initial deferred pricing agreement or delayed payment agreement. Establishes penalties for noncompliance. Adds a definition of "conflict of interest". Provides that a board member of the corporation with a conflict of interest in a proceeding before the board is recused from the proceedings. Provides that, if a board member is found to have violated the terms of a confidentiality agreement, the board member forfeits the member's appointment to the board and shall be removed as a member of the board. Increases the amount from \$250,000 to \$350,000 that may be transferred to the administrative expense account (account). Allows money in the account to be used for an actuarial study and a performance review. Allows interest transfers from the Indiana grain indemnity fund to a professional development account.

HB 1483—LS 7231/DI 77



February 4, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1483

A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

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

- 1 SECTION 1. IC 26-3-7-2, AS AMENDED BY P.L.145-2017,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 2. The following definitions apply throughout
4 this chapter:
5 (1) "Agency" refers to the Indiana grain buyers and warehouse
6 licensing agency established under section 1 of this chapter.
7 (2) "Anniversary date" means the date that is ninety (90) calendar
8 days after the fiscal year end of a business licensed under this
9 chapter.
10 (3) "Bin" means a bin, tank, interstice, or other container in a
11 warehouse in which bulk grain may be stored.
12 (4) "Board" means the governing body of the Indiana grain
13 indemnity corporation created by IC 26-4-3-2.
14 (5) "Buyer-warehouse" means a person that operates both as a
15 warehouse licensed under this chapter and as a grain buyer.

HB 1483—LS 7231/DI 77



- 1 (6) "Claimant" means a person to whom a licensee owes a storage
 2 or financial obligation under this chapter for grain that has been
 3 delivered to the licensee for sale or for storage under a bailment.
 4 (7) "Daily position record" means a written or electronic
 5 document that is maintained on a daily basis for each grain
 6 commodity, contains a record of the total amount of grain in
 7 inventory for that business day, and complies with any
 8 requirements established by the director.
 9 (8) "Deferred pricing" or "price later" means a purchase by a
 10 buyer in which title to the grain passes to the buyer and the price
 11 to be paid to the seller is not determined:
 12 (A) at the time the grain is received by the buyer; or
 13 (B) less than twenty-one (21) days after delivery.
 14 (9) "Delayed payment" means a purchase by a buyer in which title
 15 to the grain passes to the buyer at a determined price and payment
 16 to the seller is not made in less than twenty-one (21) days after
 17 delivery.
 18 (10) "Depositor" means any of the following:
 19 (A) A person that delivers grain to a licensee under this
 20 chapter for storage or sale.
 21 (B) A person that:
 22 (i) owns or is the legal holder of a ticket or receipt issued by
 23 a licensee for grain received by the licensee; and
 24 (ii) is the creditor of the issuing licensee for the value of the
 25 grain received in return for the ticket or receipt.
 26 (C) A licensee that stores grain that the licensee owns solely,
 27 jointly, or in common with others in a warehouse owned or
 28 controlled by the licensee or another licensee.
 29 (11) "Designated representative" means the person or persons
 30 designated by the director to act instead of the director in assisting
 31 in the administration of this chapter.
 32 (12) "Director" means the director of the Indiana grain buyers and
 33 warehouse licensing agency appointed under section 1 of this
 34 chapter.
 35 (13) "Facility" means a permanent business location or one (1) of
 36 several permanent business locations in Indiana that are operated
 37 as a warehouse or by a grain buyer.
 38 (14) "Failed" or "failure" means any of the following:
 39 (A) The inability of a licensee to financially satisfy fully all
 40 obligations due to claimants.
 41 (B) Public declaration of a licensee's insolvency.
 42 (C) Revocation ~~or suspension~~ of a licensee's license, if the



- 1 licensee has outstanding indebtedness owed to claimants.
 2 (D) Nonpayment of a licensee's debts in the ordinary course of
 3 business, if there is not a good faith dispute.
 4 (E) Voluntary surrender of a licensee's license, if the licensee
 5 has outstanding indebtedness to claimants.
 6 (F) Involuntary or voluntary bankruptcy of a licensee.
 7 (15) "Fund" means the Indiana grain indemnity fund established
 8 under IC 26-4-4-1.
 9 (16) "Grain" means corn for all uses, popcorn, wheat, oats, barley,
 10 rye, sorghum, soybeans, oil seeds, other agricultural commodities
 11 as approved by the agency, and seed as defined in this section.
 12 The term does not include canning crops for processing or sweet
 13 corn.
 14 (17) "Grain assets" means any of the following:
 15 (A) All grain and grain coproducts owned or stored by a
 16 licensee, including the following:
 17 (i) Grain that is in transit following shipment by a licensee.
 18 (ii) Grain that has not been paid for.
 19 (iii) Grain that is stored in unlicensed facilities that are
 20 leased, owned, or occupied by the licensee.
 21 (B) All proceeds, due or to become due, from the sale of a
 22 licensee's grain.
 23 (C) Equity, less any secured financing directly associated with
 24 the equity, in hedging or speculative margin accounts of a
 25 licensee held by a commodity or security exchange, or a dealer
 26 representing a commodity or security exchange, and any
 27 money due the licensee from transactions on the exchange,
 28 less any secured financing directly associated with the money
 29 due the licensee from the transactions on the exchange.
 30 (D) Any other unencumbered funds, property, or equity in
 31 funds or property, wherever located, that can be directly traced
 32 to the sale of grain by a licensee. However, funds, property, or
 33 equity in funds or property may not be considered encumbered
 34 unless:
 35 (i) the encumbrance results from valuable consideration paid
 36 to the licensee in good faith by a secured party; and
 37 (ii) the encumbrance did not result from the licensee posting
 38 the funds, property, or equity in funds or property as
 39 additional collateral for an antecedent debt.
 40 (E) Any other unencumbered funds, property, or equity in
 41 assets of the licensee.
 42 (18) "Grain bank grain" means grain owned by a depositor for use



- 1 in the formulation of feed and stored by the warehouse to be
 2 returned to the depositor on demand.
- 3 (19) "Grain buyer" means a person who is engaged in the business
 4 of buying grain from producers.
- 5 (20) "Grain coproducts" means any milled or processed grain,
 6 including the grain byproduct of ethanol production.
- 7 (21) "Grain standards act" means the United States Grain
 8 Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C.
 9 71-87 as amended).
- 10 (22) "License" means a license issued under this chapter.
- 11 (23) "Licensee" means a person who operates a facility that is
 12 licensed under this chapter.
- 13 (24) "Official grain standards of the United States" means the
 14 standards of quality or condition for grain, fixed and established
 15 by the secretary of agriculture under the grain standards act.
- 16 (25) "Person" means an individual, partnership, corporation,
 17 association, or other form of business enterprise.
- 18 (26) "Receipt" means a warehouse receipt issued by a warehouse
 19 licensed under this chapter.
- 20 (27) "Seed", notwithstanding IC 15-15-1, means grain set apart to
 21 be used primarily for the purpose of producing new plants.
- 22 (28) "Seed inventory" means seed for commercial sale.
- 23 **(29) "Suspension" means a temporary halt to the purchase of**
 24 **grain from a claimant.**
- 25 ~~(29)~~ **(30)** "Ticket" means a scale weight ticket, a load slip, or
 26 other evidence, other than a receipt, given to a depositor upon
 27 initial delivery of grain to a facility.
- 28 ~~(30)~~ **(31)** "Warehouse act" means the United States Warehouse
 29 Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273
 30 as amended).
- 31 ~~(31)~~ **(32)** "Warehouse" means any building or other protected
 32 enclosure in one (1) general location licensed or required to be
 33 licensed under this chapter in which grain is or may be:
 34 (A) stored for hire;
 35 (B) used for grain bank storage; or
 36 (C) used to store company owned grain;
 37 and the building or other protected enclosure is operated under
 38 one (1) ownership and run from a single office.
- 39 ~~(32)~~ **(33)** "Warehouse operator" means a person that operates a
 40 facility or group of facilities in which grain is or may be stored for
 41 hire or which is used for grain bank storage and which is operated
 42 under one (1) ownership and run from a single office.



1 SECTION 2. IC 26-3-7-3, AS AMENDED BY P.L.145-2017,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 3. (a) The director may do the following:

4 (1) Require any reports that are necessary to administer this
5 chapter.

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

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

10 (4) Establish grain standards in accordance with the grain
11 standards act and federal regulations promulgated under that act
12 that must be used by warehouses.

13 (5) Investigate the activities required by this chapter including the
14 storage, shipping, marketing, and handling of grain and
15 complaints with respect to the storage, shipping, marketing, and
16 handling of grain.

17 (6) Inspect a facility, the grain stored in a facility, and all property
18 and records pertaining to a facility. All inspections of an applicant
19 or licensee under this chapter must take into consideration the
20 proprietary nature of an applicant's or licensee's commercial
21 information. The director may adopt rules under IC 4-22-2
22 regarding inspections permitted under this chapter, and the rules
23 must take into consideration the proprietary nature of an
24 applicant's or a licensee's commercial information. This chapter
25 does not authorize the inspection of an applicant's or licensee's
26 trade secret or intellectual property information.

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

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

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

35 (10) Impose sanctions for violations of this article.

36 (11) Require a grain buyer and all persons purchasing grain to
37 show evidence of training or licensing on the risks associated with
38 grain marketing practices only if a grain buyer engages in a risk
39 factor higher than a standard defined by the director. This training
40 or licensing may include requiring the grain buyer or person
41 purchasing grain to do any of the following:

42 (A) Provide the agency with proof of registry with the



- 1 commodity futures trading commission (CFTC) as a
 2 commodity trading adviser, a futures commission merchant, an
 3 introducing broker, or an associated person.
- 4 (B) Demonstrate passage of the series 3 examination
 5 administered by the National Futures Association.
- 6 (C) Annually attend six (6) hours of continuing education,
 7 approved by the director, focusing on the risks to a grain buyer
 8 and seller that are associated with grain marketing practices
 9 and the communication of risks to the producer. Additionally,
 10 as part of continuing education, require a grain buyer, and all
 11 persons purchasing grain for a grain buyer, to pass a test,
 12 approved and administered by the director, that reasonably
 13 measures the grain buyer's understanding of the risks to grain
 14 buyers and sellers associated with producer marketing
 15 strategies.
- 16 (12) Require all contracts executed after August 31, 2017, for the
 17 purchase of grain from producers, except a flat price contract or
 18 a contract for the production of seed, to include the following
 19 notice immediately above the place on the contract where the
 20 seller of the grain must sign:
- 21 "NOTICE - SELLER IS CAUTIONED THAT
 22 CONTRACTING FOR THE SALE AND DELIVERY OF
 23 GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE
 24 FUTURE PAYMENTS BY YOU TO MAINTAIN THIS
 25 CONTRACT, A LOWER SALES PRICE, AND OTHER
 26 RISKS NOT SPECIFIED.
 27 COVERAGE UNDER THE INDIANA GRAIN INDEMNITY
 28 PROGRAM IS FOR GRAIN THAT HAS BEEN DELIVERED
 29 TO A FIRST PURCHASER LICENSEE WITHIN THE 15
 30 MONTHS BEFORE THE DATE OF FAILURE AND IS
 31 LIMITED TO 100% OF A LOSS FOR STORED GRAIN
 32 AND 80% OF A LOSS FOR OTHER COVERED
 33 CONTRACTS.
 34 BE SURE YOU UNDERSTAND THE NATURE OF THIS
 35 CONTRACT AND THE ASSOCIATED RISKS."
- 36 (13) Require all contracts executed after January 1, 2000, for the
 37 production of seed to include the following notice, in conspicuous
 38 letters, immediately above the place on the contract or an
 39 addendum where the seller of the seed must sign:
- 40 "NOTICE - IF THE TERMS OF THIS CONTRACT STATE
 41 THAT THE CONTRACTOR RETAINS OWNERSHIP OF
 42 THE SEED AND ITS PRODUCTS, YOU MAY NOT BE



- 1 ELIGIBLE FOR PARTICIPATION IN THE INDIANA
 2 GRAIN INDEMNITY PROGRAM. TO BE ELIGIBLE TO
 3 PARTICIPATE IN THE INDIANA GRAIN INDEMNITY
 4 PROGRAM, FARMERS MUST OWN AND SELL GRAIN
 5 OR SEED. BE SURE YOU UNDERSTAND THE NATURE
 6 OF THIS CONTRACT AND THE ASSOCIATED RISKS.".
- 7 (14) At any time, order an unannounced audit for compliance with
 8 this article.
- 9 (15) Adopt rules under IC 4-22-2 to carry out the purposes and
 10 intent of this chapter.
- 11 (16) Require all grain buyers offering deferred pricing, delayed
 12 payments, or contracts linked to the commodity futures or
 13 commodity options market in connection with a grain purchase to
 14 document the agreement in writing not more than twenty-one (21)
 15 days after delivery.
- 16 **(17) Share information with board members regarding the**
 17 **financial status of a licensee, including the following:**
- 18 **(A) Whether there is a risk that a licensee may fail.**
 19 **(B) The financial impact to the fund if a licensee identified**
 20 **in clause (A) were to fail.**
 21 **(C) The estimated number of potential claimants that**
 22 **could result from the failure of a licensee identified in**
 23 **clause (A).**
 24 **(D) Any other information the director determines is**
 25 **necessary to solicit the advice of the board regarding the**
 26 **financial status of a licensee.**
- 27 **However, the director may not share information under this**
 28 **subdivision with a board member who has not executed a**
 29 **confidentiality agreement.**
- 30 (b) The director shall do the following:
- 31 (1) Establish standards to ensure that a grain buyer has a suitable
 32 financial position to conduct a business as a grain buyer.
- 33 (2) Require a person who conducts business as a grain buyer to
 34 first be licensed by the agency.
- 35 (3) Require any person engaged in the business of advising
 36 producers on grain marketing for hire to:
- 37 (A) register with the agency; and
 38 (B) provide the agency with proof of registry with the
 39 commodity futures trading commission (CFTC) as a
 40 commodity trading advisor, a futures commission merchant, an
 41 introducing broker, or an associated person.
- 42 (c) The director may designate an employee to act for the director



1 in the administration of this chapter. An employee designee may not:

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

4 (2) adopt rules; or

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

7 (d) The director may designate an administrative law judge to act for
8 the director in the administration of this chapter.

9 (e) The director may determine whether geographically separate
10 facilities constitute a single warehouse or grain buyer and in making
11 the determination may consider the following:

12 (1) The number of facilities involved.

13 (2) Whether full weighing equipment is present at the
14 geographically separate facilities.

15 (3) The method of bookkeeping employed by the separate
16 facilities.

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

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

19 (6) Other factors the director deems relevant.

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

22 (1) work in partnership with other state grain regulatory officials;

23 (2) participate in national grain regulatory meetings; and

24 (3) provide expertise and education at national meetings

25 **(g) The director shall engage an independent third party firm to**
26 **conduct a performance review of the agency's auditing practices**
27 **and procedures at least once every five (5) years. The agency shall**
28 **make reasonable efforts to implement any corrective measures**
29 **identified in the performance review to enhance and improve the**
30 **agency's auditing practices and procedures. The agency shall make**
31 **the findings of the performance review available to the board.**

32 ~~(g)~~ **(h)** The director may subpoena or require that certain records
33 located outside Indiana, if any, be brought to a specified location in
34 Indiana for review by the agency.

35 SECTION 3. IC 26-3-7-6.3, AS AMENDED BY P.L.2-2008,
36 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 UPON PASSAGE]: Sec. 6.3. (a) The grain buyers and warehouse
38 licensing agency license fee fund is established to provide funds for the
39 administration of this chapter. The fund shall be administered by the
40 agency. The fund consists of:

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



- 1 (2) the licensing fees collected under section 6 of this chapter;
 2 **(3) the fines collected under this chapter;**
 3 ~~(3)~~ (4) gifts and bequests; and
 4 ~~(4)~~ (5) appropriations made by the general assembly.
 5 (b) Expenses of administering the fund shall be paid from money in
 6 the fund.
 7 (c) The treasurer of state shall invest the money in the fund not
 8 currently needed to meet the obligations of the fund in the same
 9 manner as other public money may be invested. Interest that accrues
 10 from these investments shall be deposited in the fund.
 11 (d) Money in the fund at the end of a state fiscal year does not revert
 12 to the state general fund.
 13 SECTION 4. IC 26-3-7-6.5, AS AMENDED BY P.L.145-2017,
 14 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective
 16 counties, and license status of licensees may be disclosed.
 17 (b) Unless in accordance with a judicial order, the director, the
 18 agency, its counsel, auditors, or its other employees or agents shall not
 19 divulge any other information disclosed by the applications or reports
 20 filed or inspections performed under the provisions of this chapter.
 21 However, information may be divulged to agents and employees of the
 22 agency, the board, as required by subsection (d), the state board of
 23 accounts or another entity retained under subsection (f), or to any other
 24 legal representative of the state or federal government otherwise
 25 empowered to see or review the information.
 26 (c) Except as provided in subsection (d), the director may disclose
 27 the information described in subsection (b) only in the form of an
 28 information summary or profile, or statistical study based upon data
 29 provided with respect to more than one (1) warehouse, grain buyer, or
 30 buyer-warehouse that does not identify the warehouse, grain buyer, or
 31 buyer-warehouse to which the information applies.
 32 (d) The director shall disclose to the board, while the board is in
 33 executive session, the status and inspection results of any licensee who
 34 poses a significant risk of failure or who has failed to meet the
 35 minimum requirements in section 4(e) or 16 of this chapter. ~~on two (2)~~
 36 ~~consecutive audits~~. The director may not include any identifying
 37 information regarding the licensee. The director may not disclose the
 38 information to a board member who has not executed a confidentiality
 39 agreement presented by the agency.
 40 (e) The director shall provide the board with records of previous
 41 failures to analyze the factors that have led to previous failures.
 42 (f) The director may use the services of the state board of accounts



1 or retain another entity to assist the agency in investigating any audit
 2 results or other factors which indicate the potential for a licensee
 3 failure. The director may seek the advice and guidance of the board on
 4 selecting an entity or on any other matter.

5 SECTION 5. IC 26-3-7-10, AS AMENDED BY P.L.60-2015,
 6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: Sec. 10. (a) The minimum amount of bond, letter
 8 of credit, or cash deposit required from a licensee is as follows:

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

10 (A) fifty thousand dollars (\$50,000); and

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

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

15 (A) fifty thousand dollars (\$50,000); or

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

19 whichever is greater.

20 (3) For a buyer-warehouse:

21 (A) an amount equal to the sum of:

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

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

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

28 whichever is greater.

29 (b) Except as provided in subsections (g) and (h), the amount of
 30 bond, letter of credit, or cash deposit required by this chapter may not
 31 exceed two hundred fifty thousand dollars (\$250,000) per license and
 32 may not exceed a total of one million dollars (\$1,000,000) per person.

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

38 (d) Instead of a bond or cash deposit, an irrevocable letter of credit
 39 in the prescribed amount may be provided with the director as the
 40 beneficiary. The director shall adopt rules under IC 4-22-2 to establish
 41 acceptable form, substance, terms, and conditions for letters of credit.
 42 The director may not release a party from the obligations of the letter



1 of credit within eighteen (18) months of the termination of the
2 licensee's license.

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

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

13 (g) If a licensee has a deficiency in the minimum positive net worth
14 required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or
15 16(a)(5)(B) of this chapter, the licensee shall add to the amount of
16 bond, letter of credit, or cash deposit determined under subsection (a)
17 an amount equal to the deficiency or provide another form of surety as
18 permitted under the rules of the agency.

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

24 (i) A buyer-warehouse that has a bushel storage capacity of less than
25 one million (1,000,000) bushels or purchases less than one million
26 (1,000,000) bushels of grain per year may correct a deficiency in
27 minimum positive net worth by adding to the amount of bond, letter of
28 credit, or cash deposit determined under subsection (a) if the
29 buyer-warehouse has a minimum positive net worth of at least fifty
30 thousand dollars (\$50,000), not including the amount added to the
31 bond, letter of credit, or cash deposit.

32 (j) A buyer-warehouse that has a bushel storage capacity of at least
33 one million (1,000,000) bushels, or purchases at least one million
34 (1,000,000) bushels of grain per year, may correct a deficiency in
35 minimum positive net worth by adding to the amount of bond, letter of
36 credit, or cash deposit determined under subsection (a) if the
37 buyer-warehouse has a minimum positive net worth of at least one
38 hundred thousand dollars (\$100,000), not including the amount added
39 to the bond, letter of credit, or cash deposit.

40 (k) If the director or the director's designated representative finds
41 that conditions exist that warrant requiring additional bond or cash
42 deposit, there shall be added to the amount of bond or cash deposit as



1 determined under the other provisions of this section, a further amount
2 to meet the conditions.

3 **(l) If the director or the director's designated representative**
4 **finds a deficiency in minimum net worth before the licensee's next**
5 **audit by the agency, the director shall issue a notice of deficiency**
6 **to the licensee stating that the licensee has thirty (30) days to**
7 **correct the deficiency. If a licensee fails to correct a deficiency in**
8 **minimum net worth within the thirty (30) day period, the director**
9 **may issue a fine of not more than one thousand dollars (\$1,000).**

10 **(m) If a licensee fails to correct a deficiency in minimum net**
11 **worth within sixty (60) days of receiving a fine under subsection (l),**
12 **the director may issue a temporary suspension of not more than**
13 **thirty (30) days. The director or the director's designated**
14 **representative shall grant an opportunity for a hearing as soon as**
15 **possible following a temporary suspension under this subsection.**

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

23 ~~(m)~~ **(o)** The director may require additional bonding that the director
24 considers necessary.

25 SECTION 6. IC 26-3-7-26.5 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
27 UPON PASSAGE]: **Sec. 26.5. (a) Beginning after June 30, 2021, a**
28 **licensee may not:**

29 **(1) enter into a deferred pricing agreement or a delayed**
30 **payment agreement in connection with grain purchases that**
31 **extends beyond one (1) year from the date of delivery of the**
32 **grain; or**

33 **(2) transfer the deferred pricing agreement or delayed**
34 **payment agreement to a new contract beyond one (1) year**
35 **from the date of delivery of grain.**

36 **(b) The following apply to deferred pricing agreements or**
37 **delayed payment agreements in connection with grain purchases**
38 **that were entered into by a licensee before July 1, 2021:**

39 **(1) If the agreement was entered into before January 1, 2017,**
40 **the licensee shall complete the licensee's payment obligations**
41 **to the seller under the agreement before July 1, 2021. In the**
42 **case of a deferred pricing agreement, the determined price**



- 1 **date shall be:**
2 **(A) the determined price date as set forth in the agreement,**
3 **if that date occurs before July 1, 2021;**
4 **(B) if clause (A) does not apply, a determined price date**
5 **that is mutually agreed to by the licensee and the seller; or**
6 **(C) if clauses (A) and (B) do not apply, the date on which**
7 **the licensee completes the licensee's payment obligations to**
8 **the seller.**
- 9 **(2) If the agreement was entered into after December 31,**
10 **2016, but before January 1, 2018, the licensee shall complete**
11 **the licensee's payment obligations to the seller under the**
12 **agreement before July 1, 2022. In the case of a deferred**
13 **pricing agreement, the determined price date shall be:**
14 **(A) the determined price date as set forth in the agreement,**
15 **if that date occurs before July 1, 2022;**
16 **(B) if clause (A) does not apply, a determined price date**
17 **that is mutually agreed to by the licensee and the seller; or**
18 **(C) if clauses (A) and (B) do not apply, the date on which**
19 **the licensee completes the licensee's payment obligations to**
20 **the seller.**
- 21 **(3) If the agreement was entered into after December 31,**
22 **2017, but before January 1, 2019, the licensee shall complete**
23 **the licensee's payment obligations to the seller under the**
24 **agreement before July 1, 2023. In the case of a deferred**
25 **pricing agreement, the determined price date shall be:**
26 **(A) the determined price date as set forth in the agreement,**
27 **if that date occurs before July 1, 2023;**
28 **(B) if clause (A) does not apply, a determined price date**
29 **that is mutually agreed to by the licensee and the seller; or**
30 **(C) if clauses (A) and (B) do not apply, the date on which**
31 **the licensee completes the licensee's payment obligations to**
32 **the seller.**
- 33 **(4) If the agreement was entered into after December 31,**
34 **2018, but before January 1, 2020, the licensee shall complete**
35 **the licensee's payment obligations to the seller under the**
36 **agreement before July 1, 2024. In the case of a deferred**
37 **pricing agreement, the determined price date shall be:**
38 **(A) the determined price date as set forth in the agreement,**
39 **if that date occurs before July 1, 2024;**
40 **(B) if clause (A) does not apply, a determined price date**
41 **that is mutually agreed to by the licensee and the seller; or**
42 **(C) if clauses (A) and (B) do not apply, the date on which**



- 1 the licensee completes the licensee's payment obligations to
- 2 the seller.
- 3 **(5) If the agreement was entered into after December 31,**
- 4 **2019, but before January 1, 2021, the licensee shall complete**
- 5 **the licensee's payment obligations to the seller under the**
- 6 **agreement before July 1, 2025. In the case of a deferred**
- 7 **pricing agreement, the determined price date shall be:**
- 8 **(A) the determined price date as set forth in the agreement,**
- 9 **if that date occurs before July 1, 2025;**
- 10 **(B) if clause (A) does not apply, a determined price date**
- 11 **that is mutually agreed to by the licensee and the seller; or**
- 12 **(C) if clauses (A) and (B) do not apply, the date on which**
- 13 **the licensee completes the licensee's payment obligations to**
- 14 **the seller.**
- 15 **(c) If the director or director's designated representative**
- 16 **determines that the licensee has not complied with this section, the**
- 17 **director shall issue a notice stating that the licensee has thirty (30)**
- 18 **days to issue payment for the initial deferred pricing agreement or**
- 19 **delayed payment agreement.**
- 20 **(d) If a licensee fails to issue payment within thirty (30) days of**
- 21 **the notice in subsection (c), the director may impose a fine on the**
- 22 **licensee of not more than one thousand dollars (\$1,000). Fines**
- 23 **collected under this section must be deposited in the grain buyers**
- 24 **and warehouse licensing agency license fee fund established by**
- 25 **section 6.3 of this chapter.**
- 26 **(e) Notwithstanding section 17.1 of this chapter, if a licensee**
- 27 **fails to issue payment within sixty (60) days of the date of the notice**
- 28 **in subsection (c), the director may issue a temporary suspension of**
- 29 **the licensee for not more than thirty (30) days.**
- 30 SECTION 7. IC 26-4-1-5.5 IS ADDED TO THE INDIANA CODE
- 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 32 UPON PASSAGE]: **Sec. 5.5. "Conflict of interest" means having or**
- 33 **representing a person who has a direct or indirect financial interest**
- 34 **in a licensee.**
- 35 SECTION 8. IC 26-4-3-7 IS AMENDED TO READ AS FOLLOWS
- 36 [EFFECTIVE UPON PASSAGE]: **Sec. 7. The board shall do the**
- 37 **following:**
- 38 **(1) Adopt rules, create forms, and establish guidelines to**
- 39 **implement this article.**
- 40 **(2) Collect and deposit all producer premiums authorized under**
- 41 **IC 26-4-4-4 into the fund for investment by the board.**
- 42 **(3) Require written reports from the agency regarding the**



- 1 **financial status of a licensee, including the following:**
- 2 **(A) Whether there is a risk that a licensee may fail.**
- 3 **(B) The financial impact to the fund if a licensee identified**
- 4 **in clause (A) were to fail.**
- 5 **(C) The estimated number of potential claimants that**
- 6 **could result from the failure of a licensee identified in**
- 7 **clause (A).**
- 8 **(D) Any other information the director determines is**
- 9 **necessary to solicit the advice of the board regarding the**
- 10 **financial status of a licensee.**

11 **However, the director may not share information under this**
 12 **subdivision with a board member who has not executed a**
 13 **confidentiality agreement.**

14 ~~(3)~~ **(4) Initiate any action it may consider necessary to compel the**
 15 **grain buyer against whom an awarded claim arose to repay to the**
 16 **fund the sums that are disbursed from the fund in relation to each**
 17 **claim.**

18 ~~(4)~~ **(5) Initiate any action it may consider necessary to compel the**
 19 **claimant whose claim arose due to a failure to participate in any**
 20 **legal proceeding in relation to the claim.**

21 ~~(5)~~ **(6) Within five (5) business days of receiving notice of failure**
 22 **of a grain buyer, publish notice of the failure in a manner**
 23 **described in IC 5-3.**

24 SECTION 9. IC 26-4-3-8.5 IS ADDED TO THE INDIANA CODE
 25 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 26 **UPON PASSAGE]: Sec. 8.5. If a board member believes that a**
 27 **conflict of interest exists with respect to the exercise of the board**
 28 **member's official duties in a particular case, or if the board**
 29 **member has knowledge about the financial status of a licensee, the**
 30 **board member:**

31 **(1) shall disclose that a conflict of interest exists to the board**
 32 **and the agency; and**

33 **(2) is recused from the proceeding.**

34 SECTION 10. IC 26-4-3-8.7 IS ADDED TO THE INDIANA CODE
 35 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 36 **UPON PASSAGE]: Sec. 8.7. If a board member is found to have**
 37 **violated the terms of a confidentiality agreement entered into**
 38 **under this chapter, the board member forfeits the member's**
 39 **appointment to the board and shall be removed as a member of the**
 40 **board.**

41 SECTION 11. IC 26-4-3-9 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The



- 1 corporation may do or shall have any of the following:
- 2 (1) Perpetual succession by its corporate name as a corporate
3 body.
- 4 (2) Adopt and make use of an official seal and alter the same at
5 pleasure.
- 6 (3) Adopt, amend, and repeal bylaws consistent with the
7 provisions of this article for the regulation and conduct of the
8 corporation's affairs and prescribe rules and policies in connection
9 with the performance of the corporation's functions and duties.
- 10 (4) Use the services of the agency and the attorney general when
11 considered necessary in the execution of the duties of the board.
- 12 (5) Accept gifts, devises, bequests, grants, loans, appropriations,
13 revenue sharing, other financing and assistance, and any other aid
14 from any source and agree to and comply with any attached
15 conditions.
- 16 (6) Procure insurance against any loss in connection with its
17 operations in the amounts and from the insurers as it considers
18 necessary or desirable.
- 19 (7) Borrow money from a bank, an insurance company, an
20 investment company, or any other person. The corporation may
21 negotiate the terms of a loan contract. The contract must provide
22 for repayment of the money in not more than forty (40) years and
23 that the loan may be prepaid. The loan contract must plainly state
24 that it is not an indebtedness of the state but constitutes a
25 corporate obligation solely of the corporation and is payable
26 solely from revenues of the corporation or any appropriations
27 from the state that might be made to the corporation for that
28 purpose.
- 29 (8) Include in any borrowing amounts considered necessary by the
30 corporation to pay financing charges, interest on the obligations,
31 consultant, advisory, and legal fees, and other expenses necessary
32 or incident to such borrowing.
- 33 (9) Employ personnel as may be required in the judgment of the
34 corporation, and fix and pay compensation from money available
35 to the corporation from the administrative expenses account.
- 36 (10) Make, execute, and carry out any and all contracts,
37 agreements, or other documents with any governmental agency or
38 any person, corporation, limited liability company, association,
39 partnership, or other organization or entity necessary or
40 convenient to accomplish the purposes of this article.
- 41 (11) Upon the request of the director of the agency and the
42 approval of the board, make payment from the fund when the



1 payment is necessary for the purpose of compensating claimants
2 in accordance with the provisions of IC 26-4-6.

3 (12) Have powers necessary or appropriate for the exercise of the
4 powers specifically conferred upon the corporation and all
5 incidental powers customary in corporations.

6 **(13) Require an actuarial study from a third party of the fund**
7 **as needed. However, the corporation must have an actuarial**
8 **study of the fund conducted not less than every five (5) years.**

9 (b) The corporation or the board may use the services of a person
10 other than the attorney general to collect money owed to the fund or to
11 litigate claims concerning money owed to the fund.

12 SECTION 12. IC 26-4-4-2, AS AMENDED BY P.L.145-2017,
13 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 UPON PASSAGE]: Sec. 2. (a) The administrative expense account is
15 created within the fund.

16 (b) The expenses of administering the fund and paying
17 administrative expenses must be paid from money in the administrative
18 expense account.

19 (c) The board may transfer annually not more than ~~two~~ **three**
20 **hundred fifty thousand dollars (\$250,000) (\$350,000)** from the fund to
21 the administrative expense account.

22 (d) Administrative expenses under this section may include:

- 23 (1) processing refunds;
24 (2) enforcement of the fund;
25 (3) record keeping in relation to the fund;
26 (4) the ordinary management and investment fees connected with
27 the operation of the fund;
28 (5) legal fees and legal expenses in actions brought against the
29 corporation or board and that have been approved by the board;
30 ~~and~~

31 **(6) an actuarial study of the fund;**

32 **(7) a performance review of the agency's auditing practices**
33 **and procedures; and**

34 ~~(6)~~ **(8) the use of supplemental consulting services.**

35 (e) The agency may not use money in the administrative expense
36 account for expenses other than the expenses described in subsection
37 (d).

38 **(f) In addition to the transfers under subsection (c), the board**
39 **may transfer from the fund to a professional development and**
40 **training account in the biennium beginning July 1, 2021, and**
41 **ending June 30, 2023, and each biennium thereafter, an amount**
42 **equal to the monthly interest generated from the fund over a six (6)**



1 consecutive month period within the biennium as determined by
2 the board. The board may make only one (1) transfer of interest
3 from the fund under this subsection during a biennium. Money in
4 the professional development and training account must be used
5 for:
6 (1) professional development and training programs; and
7 (2) technology software updates and technology support
8 services;
9 that are closely relevant to the auditing, licensing, and other
10 regulatory functions of the agency.
11 SECTION 13. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1483, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 22 and 23, begin a new line block indented and insert:

"(29) "Suspension" means a temporary halt to the purchase of grain from a claimant."

Page 4, line 23, strike "(29)" and insert "**(30)**".

Page 4, line 26, strike "(30)" and insert "**(31)**".

Page 4, line 29, strike "(31)" and insert "**(32)**".

Page 4, line 37, strike "(32)" and insert "**(33)**".

Page 8, line 25, delete "before October 1, 2021, and".

Page 8, line 26, delete "thereafter." and insert ". **The agency shall make reasonable efforts to implement any corrective measures identified in the performance review to enhance and improve the agency's auditing practices and procedures. The agency shall make the findings of the performance review available to the board.**".

Page 8, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 3. IC 26-3-7-6.3, AS AMENDED BY P.L.2-2008, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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) the fines collected under this chapter;

~~(4)~~ **(4)** gifts and bequests; and

~~(5)~~ **(5)** 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."

Page 12, line 3, delete "shall not" and insert "**may not**:"



(1)".

Page 12, line 6, delete "grain." and insert "**grain; or**

(2) transfer the deferred pricing agreement or delayed payment agreement to a new contract beyond one (1) year from the date of delivery of grain."

Page 13, between lines 27 and 28, begin a new paragraph and insert:

"(c) If the director or director's designated representative determines that the licensee has not complied with this section, the director shall issue a notice stating that the licensee has thirty (30) days to issue payment for the initial deferred pricing agreement or delayed payment agreement.

(d) If a licensee fails to issue payment within thirty (30) days of the notice in subsection (c), the director may impose a fine on the licensee of not more than one thousand dollars (\$1,000). Fines collected under this section must be deposited in the grain buyers and warehouse licensing agency license fee fund established by section 6.3 of this chapter.

(e) Notwithstanding section 17.1 of this chapter, if a licensee fails to issue payment within sixty (60) days of the date of the notice in subsection (c), the director may issue a temporary suspension of the licensee for not more than thirty (30) days."

Page 16, line 17, strike "two" and insert "**three**".

Page 16, line 18, strike "\$250,000" and insert "**(\$350,000)**".

Page 16, line 29, delete "and".

Page 16, between lines 29 and 30, begin a new line block indented and insert:

"(7) a performance review of the agency's auditing practices and procedures; and"

Page 16, line 30, delete "(7)" and insert "**(8)**".

Page 17, line 1, after "for" insert ":

(1)".

Page 17, line 1, after "programs" insert "**; and**

(2) technology software updates and technology support services;"

Page 17, line 1, beginning with "that" begin a new line blocked left.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1483 as introduced.)

LEHE



Committee Vote: yeas 11, nays 0.

