

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 ENROLLED ACT No. 1483

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 26-3-7-2, AS AMENDED BY P.L.145-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]; 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) "Board" means the governing body of the Indiana grain indemnity corporation created by IC 26-4-3-2.
- (5) "Buyer-warehouse" means a person that operates both as a warehouse licensed under this chapter and as a grain buyer.
- (6) "Claimant" means a person to whom a licensee owes a storage or financial obligation under this chapter for grain that has been delivered to the licensee for sale or for storage under a bailment.
- (7) "Crop year" means the period from one (1) year's harvest to the next year for a specified field crop as follows:**
 - (A) Barley and barley seed from June 1 to May 31.**
 - (B) Canola and canola seed from July 1 to June 30.**

HEA 1483 — Concur



- (C) Corn and corn seed from September 1 to August 31.**
- (D) Lentils and lentil seed from July 1 to June 30.**
- (E) Oats and oat seed from June 1 to May 31.**
- (F) Popcorn and popcorn seed from September 1 to August 31.**
- (G) Rye and rye seed from June 1 to May 31.**
- (H) Sorghum and sorghum seed from September 1 to August 31.**
- (I) Soybeans and soybean seed from September 1 to August 31.**
- (J) Sunflower and sunflower seed from September 1 to August 31.**
- (K) Wheat and wheat seed from June 1 to May 31.**
- (L) All other field crops and other field crop seed from September 1 to August 31.**

~~(7)~~ **(8)** "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.

~~(8)~~ **(9)** "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.

~~(9)~~ **(10)** "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.

~~(10)~~ **(11)** "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.

~~(11)~~ **(12)** "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.

~~(12)~~ **(13)** "Director" means the director of the Indiana grain buyers and warehouse licensing agency appointed under section 1 of this chapter.

~~(13)~~ **(14)** "Facility" means a permanent business location or one (1) of several permanent business locations in Indiana that are operated as a warehouse or by a grain buyer.

~~(14)~~ **(15)** "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.

~~(15)~~ **(16)** "Fund" means the Indiana grain indemnity fund established under IC 26-4-4-1.

~~(16)~~ **(17)** "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 or sweet corn.

~~(17)~~ **(18)** "Grain assets" means any of the following:

- (A) All grain and grain coproducts owned or stored by a licensee, including the following:
 - (i) Grain that is in transit following shipment by a licensee.
 - (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.

~~(18)~~ **(19)** "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.

~~(19)~~ **(20)** "Grain buyer" means a person who is engaged in the business of buying grain from producers.

~~(20)~~ **(21)** "Grain coproducts" means any milled or processed grain, including the grain byproduct of ethanol production.

~~(21)~~ **(22)** "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).

~~(22)~~ **(23)** "License" means a license issued under this chapter.

~~(23)~~ **(24)** "Licensee" means a person who operates a facility that is licensed under this chapter.

~~(24)~~ **(25)** "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.

~~(25)~~ **(26)** "Person" means an individual, partnership, corporation, association, or other form of business enterprise.

~~(26)~~ **(27)** "Receipt" means a warehouse receipt issued by a warehouse licensed under this chapter.

~~(27)~~ **(28)** "Seed", notwithstanding IC 15-15-1, means grain set apart to be used primarily for the purpose of producing new plants.

~~(28)~~ **(29)** "Seed inventory" means seed for commercial sale.

(30) "Suspension" means a temporary halt to the purchase of grain under section 18(b) of this chapter.

~~(29)~~ **(31)** "Ticket" means a scale weight ticket, a load slip, or other evidence, other than a receipt, given to a depositor upon initial delivery of grain to a facility.

~~(30)~~ **(32)** "Warehouse act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273



as amended).

~~(31)~~ **(33)** "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.

~~(32)~~ **(34)** "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 2. IC 26-3-7-3, AS AMENDED BY P.L.145-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The director may do the following:

- (1) Require any reports that are necessary to administer this chapter.
- (2) Administer oaths, issue subpoenas, compel the attendance and testimony of witnesses, and compel the production of records in connection with any investigation or hearing under this chapter.
- (3) Prescribe all forms within the provisions of this chapter.
- (4) Establish grain standards in accordance with the grain standards act and federal regulations promulgated under that act that must be used by warehouses.
- (5) Investigate the activities required by this chapter including the storage, shipping, marketing, and handling of grain and complaints with respect to the storage, shipping, marketing, and handling of grain.
- (6) Inspect a facility, the grain stored in a facility, and all property and records pertaining to a facility. All inspections of an applicant or licensee under this chapter must take into consideration the proprietary nature of an applicant's or licensee's commercial information. The director may adopt rules under IC 4-22-2 regarding inspections permitted under this chapter, and the rules must take into consideration the proprietary nature of an applicant's or a licensee's commercial information. This chapter does not authorize the inspection of an applicant's or licensee's trade secret or intellectual property information.
- (7) Determine whether a facility for which a license has been applied for or has been issued is suitable for the proper storage, shipping, and handling of the grain that is stored, shipped, or



handled, or is expected to be stored, shipped, or handled.

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

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

(10) Impose sanctions for violations of this article.

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

(A) Provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading adviser, a futures commission merchant, an introducing broker, or an associated person.

(B) Demonstrate passage of the series 3 examination administered by the National Futures Association.

(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 August 31, 2017, for the purchase of grain from producers, except a flat price contract or a contract for the production of seed, to include the following notice immediately above the place on the contract where the seller of the grain must sign:

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

INDIANA STATE LAW REQUIRES THAT AFTER JULY 1, 2022, ALL DEFERRED PRICED GRAIN MUST BE PRICED WITHIN THE CROP YEAR AS DEFINED



BY IC 26-3-7-2(7). THIS CONTRACT MUST BE PRICED BY (Insert Date).

COVERAGE UNDER THE INDIANA GRAIN INDEMNITY PROGRAM IS FOR GRAIN THAT HAS BEEN DELIVERED TO A FIRST PURCHASER LICENSEE WITHIN THE 15 MONTHS BEFORE THE DATE OF FAILURE AND 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.

(17) Receive and consider financial audits of a licensee conducted by an independent audit or accounting firm.

(18) Share information with board members regarding the financial status of a licensee, while the board is in executive session and without disclosing the name or any other identifying information of the licensee, including the following:

(A) Whether there is a risk that a licensee may fail.

(B) The financial impact to the fund if a licensee identified



in clause (A) were to fail.

(C) The estimated number of potential claimants that could result from the failure of a licensee identified in clause (A).

(D) Any other information the director determines is necessary to solicit the advice of the board regarding the financial status of a licensee.

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

(19) Adopt rules under IC 4-22-2 regarding fines for violations of this chapter.

(b) The director shall do the following:

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

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

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

(A) register with the agency; and

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

(c) The director may designate an employee to act for the director in the administration of this chapter. An employee 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 designate an administrative law judge to act for the director in the administration of this chapter.

(e) 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.

(f) 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

(g) The director shall engage an independent third party firm to conduct a performance review of the agency's auditing practices and procedures at least once every five (5) years. 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.

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

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;

~~(3)~~ (4) gifts and bequests; and

~~(4)~~ (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.

SECTION 4. IC 26-3-7-6.5, AS AMENDED BY P.L.145-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.5. (a) The names, locations, respective counties, and license status of licensees may be disclosed.

(b) 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. However, information may be divulged to agents and employees of the agency, the board, as required by subsection (d), the state board of accounts or another entity retained under subsection (f), or to any other legal representative of the state or federal government otherwise empowered to see or review the information.

(c) Except as provided in subsection (d), the director may disclose the information described in subsection (b) 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.

(d) The director shall disclose to the board, while the board is in executive session, the status and inspection results of any licensee who poses a significant risk of failure or who has failed to meet the minimum requirements in section 4(e) or 16 of this chapter. ~~on two (2) consecutive audits~~. The director may not include any identifying information regarding the licensee. The director may not disclose the information to a board member who has not executed a confidentiality agreement presented by the agency.

(e) The director shall provide the board with records of previous failures to analyze the factors that have led to previous failures.

(f) The director may use the services of the state board of accounts or retain another entity to assist the agency in investigating any audit results or other factors which indicate the potential for a licensee failure. The director may seek the advice and guidance of the board on selecting an entity or on any other matter.

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

- (1) For a grain bank license or a warehouse license:
 - (A) fifty thousand dollars (\$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) fifty thousand dollars (\$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) fifty thousand dollars (\$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 ~~two hundred fifty thousand dollars (\$250,000)~~ **three hundred twenty-five thousand dollars (\$325,000)** per license and may not exceed a total of one million ~~dollars (\$1,000,000)~~ **two hundred fifty thousand dollars (\$1,250,000)** per person.

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

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

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

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

(g) If a licensee has a deficiency in the minimum positive net worth required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or 16(a)(5)(B) of this chapter, the licensee shall add to the amount of



bond, letter of credit, or cash deposit determined under subsection (a) an amount equal to the deficiency or provide another form of surety as permitted under the rules of the agency.

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

(i) A buyer-warehouse that has a bushel storage capacity of less than one million (1,000,000) bushels or purchases less than one million (1,000,000) bushels of grain per year may correct a deficiency in minimum positive net worth by adding to the amount of bond, letter of credit, or cash deposit determined under subsection (a) if the buyer-warehouse has a minimum positive net worth of at least fifty thousand dollars (\$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 one hundred thousand dollars (\$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) If the director or the director's designated representative 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 thirty (30) days to correct the deficiency. If a licensee fails to correct a deficiency in minimum net worth within the thirty (30) day period, the director may issue a fine of not more than one thousand dollars (\$1,000).

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



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

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

SECTION 6. IC 26-3-7-26.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 26.5. (a) Beginning after July 1, 2022, a licensee may not:**

- (1) enter into a deferred pricing agreement in connection with grain purchases that extends beyond the crop year for the delivered grain; or
- (2) transfer the deferred pricing agreement to a new contract beyond the crop year for the delivered grain.

(b) If the deferred pricing agreement in connection with a grain purchase was entered into before July 1, 2021, the licensee shall complete the licensee's payment obligations to the seller under the agreement before January 1, 2024. The determined price date of a deferred pricing agreement shall be:

- (1) the determined price date set forth in the deferred pricing agreement, if that date occurs before January 1, 2024;
- (2) if subdivision (1) does not apply, a determined price date that is mutually agreed to by the licensee and the seller; or
- (3) if subdivisions (1) and (2) do not apply, the date on which the licensee completes the licensee's payment obligations to the seller.

(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 price grain for the initial deferred pricing agreement.

(d) If a licensee fails to price grain 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 price grain within sixty (60) days of the date of the notice in



subsection (c), the director may impose a fine on the licensee of not more than two thousand five hundred dollars (\$2,500) per month until the licensee is in compliance with this section.

SECTION 7. IC 26-4-1-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. "Conflict of interest" means having or representing a person who has a direct or indirect financial interest in a licensee.**

SECTION 8. IC 26-4-1-13, AS AMENDED BY P.L.145-2017, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **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 ~~IC 26-3-7-2(27)~~: IC 26-3-7-2(28)).** The term does not include canning crops for processing or sweet corn.

SECTION 9. IC 26-4-1-15.5, AS ADDED BY P.L.145-2017, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.5. "Licensee" has the meaning set forth in ~~IC 26-3-7-2(23)~~: IC 26-3-7-2(24).**

SECTION 10. IC 26-4-3-2, AS AMENDED BY P.L.5-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2. (a) The corporation's board is created. The governing powers of the corporation are vested in the board, which is composed of thirteen (13) members as described in subsections (b) and (c).**

- (b) The board consists of the following ten (10) voting members:
- (1) Two (2) members appointed by the largest Indiana organization representing the interests of grain and feed dealers in Indiana.
 - (2) Two (2) members appointed by the largest Indiana organization representing general farm interests in Indiana.
 - (3) One (1) member appointed by the second largest Indiana organization representing general farm interests in Indiana.
 - (4) One (1) member appointed by the largest Indiana organization exclusively representing the interests of corn producers.
 - (5) One (1) member appointed by the largest Indiana organization exclusively representing the interests of soybean producers in Indiana.
 - (6) Two (2) members appointed by the largest Indiana organization representing the interests of bankers in Indiana.
 - (7) One (1) member appointed by the largest Indiana organization representing the interests of the seed trade in Indiana.



The members appointed under subdivisions (2) through (5) must be producers.

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

- (1) The attorney general.
- (2) The treasurer of state.
- (3) The director of the agency, who shall serve as the chairperson.

(d) The:

(1) attorney general may designate a licensed attorney representative; and

(2) treasurer of state may ~~each~~ designate a representative;

to serve on the board.

SECTION 11. IC 26-4-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board shall do the following:

(1) Adopt rules, create forms, and establish guidelines to implement this article.

(2) Collect and deposit all producer premiums authorized under IC 26-4-4-4 into the fund for investment by the board.

(3) Require reports from the agency regarding the financial status of a licensee, while the board is in executive session and without disclosing the name or any other identifying information of the licensee, including the following:

(A) Whether there is a risk that a licensee may fail.

(B) The financial impact to the fund if a licensee identified in clause (A) were to fail.

(C) The estimated number of potential claimants that could result from the failure of a licensee identified in clause (A).

(D) Any other information the director determines is necessary to solicit the advice of the board regarding the financial status of a licensee.

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

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

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



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

SECTION 12. IC 26-4-3-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. If a board member reasonably believes that a conflict of interest exists with respect to the exercise of the board member's official duties in a particular case, the board member:**

- (1) shall disclose that a conflict of interest exists to the board and the agency; and**
- (2) is recused from the proceeding.**

SECTION 13. IC 26-4-3-8.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.7. (a) If a board member is found to have violated the terms of a confidentiality agreement entered into under this chapter, the board member forfeits the member's appointment to the board and shall be removed as a member of the board.**

(b) If a board member is suspected of violating the terms of the confidentiality agreement, the matter must be referred to the office of the attorney general for an evaluation and determination.

SECTION 14. IC 26-4-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The corporation may do or shall have any of the following:

- (1) Perpetual succession by its corporate name as a corporate body.
- (2) Adopt and make use of an official seal and alter the same at pleasure.
- (3) Adopt, amend, and repeal bylaws consistent with the provisions of this article for the regulation and conduct of the corporation's affairs and prescribe rules and policies in connection with the performance of the corporation's functions and duties.
- (4) Use the services of the agency and the attorney general when considered necessary in the execution of the duties of the board.
- (5) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with any attached conditions.
- (6) Procure insurance against any loss in connection with its operations in the amounts and from the insurers as it considers necessary or desirable.



(7) Borrow money from a bank, an insurance company, an investment company, or any other person. The corporation may negotiate the terms of a loan contract. The contract must provide for repayment of the money in not more than forty (40) years and that the loan may be prepaid. The loan contract must plainly state that it is not an indebtedness of the state but constitutes a corporate obligation solely of the corporation and is payable solely from revenues of the corporation or any appropriations from the state that might be made to the corporation for that purpose.

(8) Include in any borrowing amounts considered necessary by the corporation to pay financing charges, interest on the obligations, consultant, advisory, and legal fees, and other expenses necessary or incident to such borrowing.

(9) Employ personnel as may be required in the judgment of the corporation, and fix and pay compensation from money available to the corporation from the administrative expenses account.

(10) Make, execute, and carry out any and all contracts, agreements, or other documents with any governmental agency or any person, corporation, limited liability company, association, partnership, or other organization or entity necessary or convenient to accomplish the purposes of this article.

(11) Upon the request of the director of the agency and the approval of the board, make payment from the fund when the payment is necessary for the purpose of compensating claimants in accordance with the provisions of IC 26-4-6.

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

(13) May require a study of fund solvency, practices, and procedures from a third party of the fund as needed.

(14) Pay legal fees and legal expenses in actions brought against the corporation or board.

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

SECTION 15. IC 26-4-4-2, AS AMENDED BY P.L.145-2017, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The 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 administrative



expense account.

(c) The board may transfer annually not more than ~~two~~ **three** hundred fifty thousand dollars (~~\$250,000~~) (**\$350,000**) 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;
- (4) the ordinary management and investment fees connected with the operation of the fund;
- ~~(5) legal fees and legal expenses in actions brought against the corporation or board and that have been approved by the board; and~~
- (5) a study of fund solvency, practices, and procedures;**
- (6) a performance review of the agency's auditing practices and procedures;**
- (7) professional development and training programs for agency staff that are closely relevant to the auditing, licensing, and other regulatory functions of the agency;**
- (8) technology software updates and technology support services that are closely relevant to the auditing, licensing, and other regulatory functions of the agency;**
- (9) professional training for board members on the board members' duties and responsibilities; and**
- ~~(6)~~ **(10) the use of supplemental consulting services.**

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

SECTION 16. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1483 — Concur

