



Reprinted
February 17, 2021

SENATE BILL No. 364

DIGEST OF SB 364 (Updated February 16, 2021 4:21 pm - DI 138)

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

Synopsis: Grain indemnity program. Provides that the director (director) of the Indiana grain buyers and warehouse licensing agency (agency) may share nonidentifying information with board members of the Indiana grain indemnity corporation (corporation) in executive session 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 to conduct a third party performance review of the agency's auditing practices and procedures at least once every five years. Provides that the corporation may require an actuarial study from a third party of the fund as needed, but not less than every five years. Authorizes the director of the agency to take certain actions if the director finds: (1) a deficiency in minimum net worth or a failure to maintain the required current asset to current liability ratio; or (2) that
(Continued next page)

Effective: Upon passage.

Holdman, Zay, Doriot

January 25, 2021, read first time and referred to Committee on Tax and Fiscal Policy.
February 9, 2021, amended, reported favorably — Do Pass.
February 16, 2021, read second time, amended, ordered engrossed.

SB 364—LS 7269/DI 120



Digest Continued

a licensee failed to maintain required unencumbered assets. Increases the limit on the amount of bond, letter of credit, and cash deposits required under the licensing law. Amends the definition of "failed" or "failure" to exclude a suspension. Adds a definition of "suspension" to mean a temporary halt to the purchase of grain from a claimant. 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 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. Provides that a board member of the corporation with a conflict of interest in a proceeding before the board must recuse himself or herself from those proceedings. Provides that, if a board member is found to have violated the terms of a confidentiality agreement, the board member forfeits his or her appointment to the board and shall be removed as a member of the board. Increases the amount that the board may transfer from the Indiana grain indemnity fund (fund) to the administrative expense account within the fund from \$250,000 to \$350,000 annually. Authorizes the board to transfer the monthly interest generated from the fund over a six month period during a biennium to a professional development, training, and technology account to be used for specified purposes. Makes conforming changes.

SB 364—LS 7269/DI 120



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February 17, 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.

SENATE BILL No. 364

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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.

SB 364—LS 7269/DI 120



- 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 while the board is in executive**
 18 **session and without disclosing the name or any other**
 19 **identifying information of the licensee, including the**
 20 **following:**
- 21 **(A) Whether there is a risk that a licensee may fail.**
 22 **(B) The estimated financial impact to the fund if a licensee**
 23 **discussed under clause (A) were to fail.**
 24 **(C) The estimated number of potential claimants that**
 25 **could result from the failure of a licensee discussed under**
 26 **clause (A).**
 27 **(D) Any other information the director deems necessary to**
 28 **solicit the advice of the board regarding the financial**
 29 **status of a licensee.**
- 30 **However, the director shall not share information under this**
 31 **subdivision with a board member who has not executed a**
 32 **confidentiality agreement.**
- 33 (b) The director shall do the following:
- 34 (1) Establish standards to ensure that a grain buyer has a suitable
 35 financial position to conduct a business as a grain buyer.
- 36 (2) Require a person who conducts business as a grain buyer to
 37 first be licensed by the agency.
- 38 (3) Require any person engaged in the business of advising
 39 producers on grain marketing for hire to:
- 40 (A) register with the agency; and
 41 (B) provide the agency with proof of registry with the
 42 commodity futures trading commission (CFTC) as a



- 1 commodity trading advisor, a futures commission merchant, an
 2 introducing broker, or an associated person.
- 3 (c) The director may designate an employee to act for the director
 4 in the administration of this chapter. An employee designee may not:
 5 (1) act in matters that require a public hearing or the temporary
 6 suspension of a license;
 7 (2) adopt rules; or
 8 (3) act as the ultimate authority in the administration of this
 9 chapter.
- 10 (d) The director may designate an administrative law judge to act for
 11 the director in the administration of this chapter.
- 12 (e) The director may determine whether geographically separate
 13 facilities constitute a single warehouse or grain buyer and in making
 14 the determination may consider the following:
 15 (1) The number of facilities involved.
 16 (2) Whether full weighing equipment is present at the
 17 geographically separate facilities.
 18 (3) The method of bookkeeping employed by the separate
 19 facilities.
 20 (4) The hours of operation of the separate facilities.
 21 (5) The personnel employed at the separate facilities.
 22 (6) Other factors the director deems relevant.
- 23 (f) The director and the director's designees shall become members
 24 of the national grain regulatory organization and shall:
 25 (1) work in partnership with other state grain regulatory officials;
 26 (2) participate in national grain regulatory meetings; and
 27 (3) provide expertise and education at national meetings.
- 28 **(g) The director shall conduct a third party performance review**
 29 **of the agency's auditing practices and procedures at least once**
 30 **every five (5) years. The agency shall make reasonable efforts to**
 31 **implement any corrective measures identified in the performance**
 32 **review to enhance and improve the agency's auditing practices and**
 33 **procedures. The agency shall make the findings of the performance**
 34 **review available to the board of the corporation.**
- 35 ~~(g)~~ (h) The director may subpoena or require that certain records
 36 located outside Indiana, if any, be brought to a specified location in
 37 Indiana for review by the agency.
- 38 SECTION 3. IC 26-3-7-4, AS AMENDED BY P.L.60-2015,
 39 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 UPON PASSAGE]: Sec. 4. (a) A person may not operate a warehouse
 41 or conduct business as a grain buyer or buyer-warehouse without first
 42 having obtained the appropriate license from the agency, nor may a



1 person or entity associated with the person continue to operate a
2 warehouse or conduct business as a grain buyer or buyer-warehouse
3 after the person's license has been revoked or suspended, except as
4 provided in section 18 of this chapter.

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

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

22 (d) A licensee that acquires an additional grain storage or handling
23 facility that is required to be licensed shall not use the facility for the
24 storage or handling of grain until it qualifies for and is issued a license
25 and is licensed as provided in this chapter. If a licensed grain storage
26 or handling facility that a licensee operates in Indiana becomes
27 ineligible for a license at any time for any reason, it shall not be used
28 for the storage or handling of grain until the condition making it
29 ineligible is removed.

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

- 33 (1) Company owned grain.
- 34 (2) Cash on hand.
- 35 (3) Cash held on account in federally or state licensed financial
36 institutions or lending institutions of the Federal Farm Credit
37 Administration.
- 38 (4) Investments held in time accounts with federally or state
39 licensed financial institutions.
- 40 (5) Direct obligations of the United States government.
- 41 (6) Balances in grain margin accounts determined by marking to
42 market.



- 1 (7) Balances due or to become due to the licensee on deferred
- 2 pricing contracts.
- 3 (8) Marketable securities, including mutual funds.
- 4 (9) Irrevocable letters of credit that are:
- 5 (A) in favor of the agency;
- 6 (B) acceptable to the agency; and
- 7 (C) in addition to any letter of credit deposited with the
- 8 director to satisfy the bonding requirement of this chapter.
- 9 (10) Deferred pricing contract service charges due or to become
- 10 due to the licensee.
- 11 (11) Other evidence of proceeds from or of grain that is
- 12 acceptable to the agency.
- 13 (12) Seed inventory.
- 14 (13) Other assets approved by the director.
- 15 **(f) The following apply:**
- 16 **(1) If the director or the director's designated representative**
- 17 **finds that a licensee failed to maintain at least eighty percent**
- 18 **(80%) of the unpaid balance of grain payables in**
- 19 **unencumbered assets during a licensee's next audit by the**
- 20 **agency, the director shall issue a notice of deficiency to the**
- 21 **licensee stating that the licensee has thirty (30) days to correct**
- 22 **the deficiency.**
- 23 **(2) If a licensee fails to correct the failure to maintain at least**
- 24 **eighty percent (80%) of the unpaid balance of grain payables**
- 25 **in unencumbered assets within thirty (30) days of the date of**
- 26 **the notice under subdivision (1), the director may impose a**
- 27 **fine on the licensee of not more than one thousand dollars**
- 28 **(\$1,000). Fines collected under this subdivision shall be**
- 29 **deposited in the grain buyers and warehouse licensing agency**
- 30 **license fee fund under section 6.3 of this chapter.**
- 31 **(3) Notwithstanding the provisions in section 17.1 of this**
- 32 **chapter, if a licensee fails to correct the failure to maintain at**
- 33 **least eighty percent (80%) of the unpaid balance of grain**
- 34 **payables in unencumbered assets within sixty (60) days of the**
- 35 **date of the notice under subdivision (1), the director shall**
- 36 **require monthly financial summaries and bank statements**
- 37 **from the licensee until such time as the failure is corrected.**
- 38 **The director may require a financial audit by an independent**
- 39 **audit or accounting firm. Upon review of the findings of the**
- 40 **audit, the director may issue a temporary suspension.**
- 41 **If the director issues a temporary suspension under subdivision (3)**
- 42 **following a licensee's failure to maintain at least eighty percent**



1 **(80%) of the unpaid balance of grain payables in unencumbered**
2 **assets as required under subsection (e), the director or the**
3 **director's designated representative shall grant an opportunity for**
4 **a hearing as soon as possible following the temporary suspension.**

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

8 SECTION 4. IC 26-3-7-6.3, AS AMENDED BY P.L.2-2008,
9 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: Sec. 6.3. (a) The grain buyers and warehouse
11 licensing agency license fee fund is established to provide funds for the
12 administration of this chapter. The fund shall be administered by the
13 agency. The fund consists of:

- 14 (1) the moisture testing device inspection fees collected under
- 15 IC 15-11-8-3;
- 16 (2) the licensing fees collected under section 6 of this chapter;
- 17 **(3) the fines collected under section 10(l)(2) of this chapter for**
- 18 **failure to correct a deficiency in minimum net worth;**
- 19 ~~(3)~~ **(4)** gifts and bequests; and
- 20 ~~(4)~~ **(5)** appropriations made by the general assembly.

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

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

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

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

33 (b) Unless in accordance with a judicial order, the director, the
34 agency, its counsel, auditors, or its other employees or agents shall not
35 divulge any other information disclosed by the applications or reports
36 filed or inspections performed under the provisions of this chapter.
37 However, information may be divulged to agents and employees of the
38 agency, the board, as required by subsection (d), the state board of
39 accounts or another entity retained under subsection (f), or to any other
40 legal representative of the state or federal government otherwise
41 empowered to see or review the information.

42 (c) Except as provided in subsection (d), the director may disclose



1 the information described in subsection (b) only in the form of an
 2 information summary or profile, or statistical study based upon data
 3 provided with respect to more than one (1) warehouse, grain buyer, or
 4 buyer-warehouse that does not identify the warehouse, grain buyer, or
 5 buyer-warehouse to which the information applies.

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

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

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

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

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

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

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

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

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

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

35 whichever is greater.

36 (3) For a buyer-warehouse:

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

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

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

41 (B) five-tenths percent (0.5%) of the total amount the
 42 buyer-warehouse paid for grain purchased from producers



1 during the buyer-warehouse's most recent fiscal year;
2 whichever is greater.

3 (b) Except as provided in subsections (g) and (h), the amount of
4 bond, letter of credit, or cash deposit required by this chapter may not
5 exceed ~~two three~~ hundred fifty thousand dollars (~~\$250,000~~) (**\$350,000**)
6 per license and may not exceed a total of one million **two hundred**
7 **fifty thousand** dollars (~~\$1,000,000~~) (**\$1,250,000**) per person.

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

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

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

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

30 (g) If a licensee has a deficiency in the minimum positive net worth
31 required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or
32 16(a)(5)(B) of this chapter, the licensee shall add to the amount of
33 bond, letter of credit, or cash deposit determined under subsection (a)
34 an amount equal to the deficiency or provide another form of surety as
35 permitted under the rules of the agency.

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

41 (i) A buyer-warehouse that has a bushel storage capacity of less than
42 one million (1,000,000) bushels or purchases less than one million



1 (1,000,000) bushels of grain per year may correct a deficiency in
 2 minimum positive net worth by adding to the amount of bond, letter of
 3 credit, or cash deposit determined under subsection (a) if the
 4 buyer-warehouse has a minimum positive net worth of at least fifty
 5 thousand dollars (\$50,000), not including the amount added to the
 6 bond, letter of credit, or cash deposit.

7 (j) A buyer-warehouse that has a bushel storage capacity of at least
 8 one million (1,000,000) bushels, or purchases at least one million
 9 (1,000,000) bushels of grain per year, may correct a deficiency in
 10 minimum positive net worth by adding to the amount of bond, letter of
 11 credit, or cash deposit determined under subsection (a) if the
 12 buyer-warehouse has a minimum positive net worth of at least one
 13 hundred thousand dollars (\$100,000), not including the amount added
 14 to the bond, letter of credit, or cash deposit.

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

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

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

29 SECTION 7. IC 26-3-7-16, AS AMENDED BY P.L.60-2015,
 30 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 UPON PASSAGE]: Sec. 16. (a) A licensee shall have and maintain a
 32 current asset to current liability ratio of one to one (1:1) and shall
 33 maintain, as evidenced by the financial statement required by section
 34 6 of this chapter, the following minimum positive net worth:

35 (1) For a grain bank, minimum positive net worth is at least one
 36 hundred thousand dollars (\$100,000).

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

39 (A) one hundred thousand dollars (\$100,000); and

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

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



- 1 (A) one hundred thousand dollars (\$100,000); or
 2 (B) five cents (\$0.05) multiplied by the total number of
 3 bushels of grain purchased by the grain buyer during the grain
 4 buyer's most recent fiscal year;
 5 whichever is greater.
- 6 (4) For a buyer-warehouse that has a bushel storage capacity of
 7 less than one million (1,000,000) bushels or purchases less than
 8 one million (1,000,000) bushels of grain per year, minimum
 9 positive net worth is:
 10 (A) the sum of:
 11 (i) one hundred fifty thousand dollars (\$150,000); and
 12 (ii) ten cents (\$0.10) multiplied by the bushel storage
 13 capacity of the buyer-warehouse; or
 14 (B) five cents (\$0.05) multiplied by the total number of
 15 bushels of grain purchased by the buyer-warehouse during the
 16 buyer-warehouse's most recent fiscal year;
 17 whichever is greater.
- 18 (5) For a buyer-warehouse that has a bushel storage capacity of at
 19 least one million (1,000,000) bushels or purchases at least one
 20 million (1,000,000) bushels of grain per year, minimum positive
 21 net worth is:
 22 (A) the sum of:
 23 (i) two hundred thousand dollars (\$200,000); and
 24 (ii) ten cents (\$0.10) multiplied by the bushel storage
 25 capacity of the buyer-warehouse; or
 26 (B) five cents (\$0.05) multiplied by the total number of
 27 bushels of grain purchased by the buyer-warehouse during the
 28 buyer-warehouse's most recent fiscal year;
 29 whichever is greater.
- 30 (b) Except as provided in section 10 of this chapter, if a licensee is
 31 required to show additional net worth to comply with this section, the
 32 licensee may satisfy the requirement by adding to the amount of the
 33 bond, letter of credit, or cash deposit required under section 10 of this
 34 chapter an amount equal to the additional net worth required or provide
 35 another form of surety as permitted under the rules of the agency.
- 36 **(c) The following apply:**
 37 **(1) If the director or the director's designated representative**
 38 **finds a deficiency in minimum net worth or a failure to**
 39 **maintain a current asset to current liability ratio of one to one**
 40 **(1:1) prior to a licensee's next audit by the agency, the**
 41 **director shall issue a notice of deficiency to the licensee stating**
 42 **that the licensee has thirty (30) days to correct the deficiency**



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or failure.

(2) If a licensee fails to correct a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1), or both, within thirty (30) days of the date of the notice under subdivision (1), the director may impose a fine on the licensee of not more than one thousand dollars (\$1,000). Fines collected under this subdivision shall be deposited in the grain buyers and warehouse licensing agency license fee fund under section 6.3 of this chapter.

(3) Notwithstanding the provisions in section 17.1 of this chapter, if a licensee fails to correct a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1) within sixty (60) days of the date of the notice under subdivision (1), the director shall require monthly financial summaries and bank statements from the licensee until such time as the deficiency or failure is corrected. The director may require a financial audit by an independent audit or accounting firm. Upon review of the findings of the audit, the director may issue a temporary suspension.

If the director issues a temporary suspension under subdivision (3) following a licensee's failure to correct a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1), the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible following the temporary suspension.

(e) (d) 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 8. 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 June 30, 2021, a licensee shall not enter into a deferred pricing agreement or a delayed payment agreement in connection with grain purchases that extends beyond one (1) year from the date of delivery of the grain unless such agreements are settled within one (1) year.**

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

(1) If the agreement was entered into before January 1, 2017,



1 the licensee shall complete the licensee's payment obligations
2 to the seller under the agreement before July 1, 2021. In the
3 case of a deferred pricing agreement, the determined price
4 date shall be:

5 (A) the determined price date as set forth in the agreement,
6 if that date occurs before July 1, 2021;

7 (B) if clause (A) does not apply, a determined price date
8 that is mutually agreed to by the licensee and the seller; or

9 (C) if clauses (A) and (B) do not apply, the date on which
10 the licensee completes the licensee's payment obligations to
11 the seller.

12 (2) If the agreement was entered into after December 31,
13 2016, but before January 1, 2018, the licensee shall complete
14 the licensee's payment obligations to the seller under the
15 agreement before July 1, 2022. In the case of a deferred
16 pricing agreement, the determined price date shall be:

17 (A) the determined price date as set forth in the agreement,
18 if that date occurs before July 1, 2022;

19 (B) if clause (A) does not apply, a determined price date
20 that is mutually agreed to by the licensee and the seller; or

21 (C) if clauses (A) and (B) do not apply, the date on which
22 the licensee completes the licensee's payment obligations to
23 the seller.

24 (3) If the agreement was entered into after December 31,
25 2017, but before January 1, 2019, the licensee shall complete
26 the licensee's payment obligations to the seller under the
27 agreement before July 1, 2023. In the case of a deferred
28 pricing agreement, the determined price date shall be:

29 (A) the determined price date as set forth in the agreement,
30 if that date occurs before July 1, 2023;

31 (B) if clause (A) does not apply, a determined price date
32 that is mutually agreed to by the licensee and the seller; or

33 (C) if clauses (A) and (B) do not apply, the date on which
34 the licensee completes the licensee's payment obligations to
35 the seller.

36 (4) If the agreement was entered into after December 31,
37 2018, but before January 1, 2020, the licensee shall complete
38 the licensee's payment obligations to the seller under the
39 agreement before July 1, 2024. In the case of a deferred
40 pricing agreement, the determined price date shall be:

41 (A) the determined price date as set forth in the agreement,
42 if that date occurs before July 1, 2024;



- 1 **(B) if clause (A) does not apply, a determined price date**
- 2 **that is mutually agreed to by the licensee and the seller; or**
- 3 **(C) if clauses (A) and (B) do not apply, the date on which**
- 4 **the licensee completes the licensee's payment obligations to**
- 5 **the seller.**
- 6 **(5) If the agreement was entered into after December 31,**
- 7 **2019, but before January 1, 2021, the licensee shall complete**
- 8 **the licensee's payment obligations to the seller under the**
- 9 **agreement before July 1, 2025. In the case of a deferred**
- 10 **pricing agreement, the determined price date shall be:**
- 11 **(A) the determined price date as set forth in the agreement,**
- 12 **if that date occurs before July 1, 2025;**
- 13 **(B) if clause (A) does not apply, a determined price date**
- 14 **that is mutually agreed to by the licensee and the seller; or**
- 15 **(C) if clauses (A) and (B) do not apply, the date on which**
- 16 **the licensee completes the licensee's payment obligations to**
- 17 **the seller.**

18 SECTION 9. IC 26-4-1-5.5 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 5.5. "Conflict of interest" means:

- 21 **(1) either:**
- 22 **(A) having a direct or indirect financial interest in a**
- 23 **licensee; or**
- 24 **(B) representing a person who has a direct or indirect**
- 25 **financial interest in a licensee;**
- 26 **that has a case or issue before the board; or**
- 27 **(2) having personal knowledge about the financial status of a**
- 28 **licensee in a failure proceeding before the board.**

29 SECTION 10. IC 26-4-1-10, AS AMENDED BY P.L.42-2011,
 30 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 UPON PASSAGE]: Sec. 10. "Failed" or "failure" means any of the
 32 following:

- 33 (1) An inability of a licensee to financially satisfy fully all
- 34 obligations due a claimant.
- 35 (2) A public declaration of a licensee's insolvency.
- 36 (3) The nonpayment of a licensee's debts in the ordinary course of
- 37 business if there is not a good faith dispute.
- 38 (4) Revocation ~~or suspension~~ of a licensee's license, if the
- 39 licensee has outstanding indebtedness owed to claimants.
- 40 (5) Voluntary surrender of a licensee's license, if the licensee has
- 41 outstanding indebtedness to claimants.
- 42 (6) Involuntary or voluntary bankruptcy of a licensee.



1 SECTION 11. IC 26-4-3-5, AS AMENDED BY P.L.75-2010,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 5. **(a)** The board shall meet at least ~~two (2)~~
4 **four (4)** times each year **as follows:**

- 5 (1) One (1) meeting of the board must be held in ~~July~~: **January.**
- 6 **(2) One (1) meeting of the board must be held in April.**
- 7 **(3) One (1) meeting of the board must be held in July.**
- 8 **(4) One (1) meeting of the board must be held in October.**

9 **(b) The board may meet virtually.**

10 SECTION 12. IC 26-4-3-7 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board shall
12 do the following:

- 13 (1) Adopt rules, create forms, and establish guidelines to
14 implement this article.
- 15 (2) Collect and deposit all producer premiums authorized under
16 IC 26-4-4-4 into the fund for investment by the board.

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

- 22 **(A) Whether there is a risk that a licensee may fail.**
- 23 **(B) The estimated financial impact to the fund if a licensee
24 discussed under clause (A) were to fail.**
- 25 **(C) The estimated number of potential claimants that
26 could result from the failure of a licensee discussed under
27 clause (A).**
- 28 **(D) Any other information the director deems necessary to
29 solicit the advice of the board regarding the financial
30 status of a licensee.**

31 **However, the director shall not share information with a
32 board member under this subdivision who has not executed a
33 confidentiality agreement.**

34 ~~(3)~~ **(4)** Initiate any action it may consider necessary to compel the
35 grain buyer against whom an awarded claim arose to repay to the
36 fund the sums that are disbursed from the fund in relation to each
37 claim.

38 ~~(4)~~ **(5)** Initiate any action it may consider necessary to compel the
39 claimant whose claim arose due to a failure to participate in any
40 legal proceeding in relation to the claim.

41 ~~(5)~~ **(6)** Within five (5) business days of receiving notice of failure
42 of a grain buyer, publish notice of the failure in a manner



1 described in IC 5-3.
 2 SECTION 13. IC 26-4-3-8.5 IS ADDED TO THE INDIANA CODE
 3 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 4 UPON PASSAGE]: **Sec. 8.5. If a board member believes that a**
 5 **conflict of interest exists with respect to the exercise of the board**
 6 **member's official duties in a particular case, or if the board**
 7 **member has knowledge about the financial status of a licensee, the**
 8 **board member shall:**

- 9 (1) **disclose that conflict to the board and the agency; and**
 10 (2) **recuse himself or herself from those board proceedings.**

11 SECTION 14. IC 26-4-3-8.7 IS ADDED TO THE INDIANA CODE
 12 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 13 UPON PASSAGE]: **Sec. 8.7. If a board member is found to have**
 14 **violated the terms of a confidentiality agreement entered into**
 15 **under this chapter, the board member forfeits the member's**
 16 **appointment to the board and shall be removed as a member of the**
 17 **board.**

18 SECTION 15. IC 26-4-3-9 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The
 20 corporation may do or shall have any of the following:

- 21 (1) Perpetual succession by its corporate name as a corporate
 22 body.
 23 (2) Adopt and make use of an official seal and alter the same at
 24 pleasure.
 25 (3) Adopt, amend, and repeal bylaws consistent with the
 26 provisions of this article for the regulation and conduct of the
 27 corporation's affairs and prescribe rules and policies in connection
 28 with the performance of the corporation's functions and duties.
 29 (4) Use the services of the agency and the attorney general when
 30 considered necessary in the execution of the duties of the board.
 31 (5) Accept gifts, devises, bequests, grants, loans, appropriations,
 32 revenue sharing, other financing and assistance, and any other aid
 33 from any source and agree to and comply with any attached
 34 conditions.
 35 (6) Procure insurance against any loss in connection with its
 36 operations in the amounts and from the insurers as it considers
 37 necessary or desirable.
 38 (7) **Require an actuarial study from a third party of the fund**
 39 **as needed, but not less than once every five (5) years.**
 40 (7) (8) Borrow money from a bank, an insurance company, a
 41 investment company, or any other person. The corporation may
 42 negotiate the terms of a loan contract. The contract must provide



1 for repayment of the money in not more than forty (40) years and
 2 that the loan may be prepaid. The loan contract must plainly state
 3 that it is not an indebtedness of the state but constitutes a
 4 corporate obligation solely of the corporation and is payable
 5 solely from revenues of the corporation or any appropriations
 6 from the state that might be made to the corporation for that
 7 purpose.

8 ~~(8)~~ **(9)** Include in any borrowing amounts considered necessary by
 9 the corporation to pay financing charges, interest on the
 10 obligations, consultant, advisory, and legal fees, and other
 11 expenses necessary or incident to such borrowing.

12 ~~(9)~~ **(10)** Employ personnel as may be required in the judgment of
 13 the corporation, and fix and pay compensation from money
 14 available to the corporation from the administrative expenses
 15 account.

16 ~~(10)~~ **(11)** Make, execute, and carry out any and all contracts,
 17 agreements, or other documents with any governmental agency or
 18 any person, corporation, limited liability company, association,
 19 partnership, or other organization or entity necessary or
 20 convenient to accomplish the purposes of this article.

21 ~~(11)~~ **(12)** Upon the request of the director of the agency and the
 22 approval of the board, make payment from the fund when the
 23 payment is necessary for the purpose of compensating claimants
 24 in accordance with the provisions of IC 26-4-6.

25 ~~(12)~~ **(13)** Have powers necessary or appropriate for the exercise
 26 of the powers specifically conferred upon the corporation and all
 27 incidental powers customary in corporations.

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

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

35 (b) The expenses of administering the fund and paying
 36 administrative expenses must be paid from money in the administrative
 37 expense account.

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

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

42 (1) processing refunds;



- 1 (2) enforcement of the fund;
 2 (3) record keeping in relation to the fund;
 3 (4) the ordinary management and investment fees connected with
 4 the operation of the fund;
 5 (5) legal fees and legal expenses in actions brought against the
 6 corporation or board and that have been approved by the board;
 7 and
 8 **(6) an actuarial study of the fund;**
 9 **(7) a performance review of the agency's auditing practices**
 10 **and procedures; and**
 11 ~~(6)~~ **(8)** the use of supplemental consulting services.
- 12 (e) The agency may not use money in the administrative expense
 13 account for expenses other than the expenses described in subsection
 14 (d).
- 15 **(f) In addition to the transfers under subsection (c), the board**
 16 **may transfer from the fund to a professional development,**
 17 **training, and technology account in the biennium beginning July**
 18 **1, 2021, and ending June 30, 2023, and each biennium thereafter,**
 19 **an amount equal to the monthly interest generated from the fund**
 20 **over a six (6) consecutive month period within the biennium as**
 21 **determined by the board. The board may make only one (1)**
 22 **transfer of interest from the fund under this subsection during a**
 23 **biennium. Money in the professional development, training, and**
 24 **technology account must be used for either or both:**
 25 **(1) professional development and training programs; or**
 26 **(2) technology software updates and technology support**
 27 **services;**
 28 **that are closely relevant to the auditing, licensing, and other**
 29 **regulatory functions of the agency.**
 30 SECTION 17. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 364, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE UPON PASSAGE]".

Page 1, delete lines 10 through 15.

Page 2, delete line 1.

Page 2, line 2, reset in roman "(3)".

Page 2, line 2, delete "(4)".

Page 2, line 4, reset in roman "(4)".

Page 2, line 4, delete "(5)".

Page 2, line 6, reset in roman "(5)".

Page 2, line 6, delete "(6)".

Page 2, line 8, reset in roman "(6)".

Page 2, line 8, delete "(7)".

Page 2, line 12, reset in roman "(7)".

Page 2, line 12, delete "(8)".

Page 2, line 17, reset in roman "(8)".

Page 2, line 17, delete "(9)".

Page 2, line 22, reset in roman "(9)".

Page 2, line 22, delete "(10)".

Page 2, line 26, reset in roman "(10)".

Page 2, line 26, delete "(11)".

Page 2, line 37, reset in roman "(11)".

Page 2, line 37, delete "(12)".

Page 2, line 40, reset in roman "(12)".

Page 2, line 40, delete "(13)".

Page 3, line 1, reset in roman "(13)".

Page 3, line 1, delete "(14)".

Page 3, line 4, reset in roman "(14)".

Page 3, line 4, delete "(15)".

Page 3, line 15, reset in roman "(15)".

Page 3, line 15, delete "(16)".

Page 3, line 17, reset in roman "(16)".

Page 3, line 17, delete "(17)".

Page 3, line 22, reset in roman "(17)".

Page 3, line 22, delete "(18)".

Page 4, line 8, reset in roman "(18)".

Page 4, line 8, delete "(19)".



Page 4, line 11, reset in roman "(19)".
 Page 4, line 11, delete "(20)".
 Page 4, line 13, reset in roman "(20)".
 Page 4, line 13, delete "(21)".
 Page 4, line 15, reset in roman "(21)".
 Page 4, line 15, delete "(22)".
 Page 4, line 18, reset in roman "(22)".
 Page 4, line 18, delete "(23)".
 Page 4, line 19, reset in roman "(23)".
 Page 4, line 19, delete "(24)".
 Page 4, line 21, reset in roman "(24)".
 Page 4, line 21, delete "(25)".
 Page 4, line 24, reset in roman "(25)".
 Page 4, line 24, delete "(26)".
 Page 4, line 26, reset in roman "(26)".
 Page 4, line 26, delete "(27)".
 Page 4, line 28, reset in roman "(27)".
 Page 4, line 28, delete "(28)".
 Page 4, line 31, reset in roman "(28)".
 Page 4, line 31, delete "(29)".
 Page 4, line 32, delete "(30)" and insert "(29)".
 Page 4, line 34, delete "(31)" and insert "(30)".
 Page 4, line 37, delete "(32)" and insert "(31)".
 Page 4, line 40, delete "(33)" and insert "(32)".
 Page 5, line 6, delete "(34)" and insert "(33)".
 Page 8, line 39, after "years." 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 of the corporation.**".

Page 8, after line 42, begin a new paragraph and insert:

"SECTION 3. IC 26-3-7-4, AS AMENDED BY P.L.60-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 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.
- (13) Other assets approved by the director.
- (f) The following apply:**
 - (1) If the director or the director's designated representative finds that a licensee failed to maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets during a 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.**
 - (2) If a licensee fails to correct the failure to maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets within thirty (30) days of the date of the notice under subdivision (1), the director may impose a fine on the licensee of not more than one thousand dollars (\$1,000). Fines collected under this subdivision shall be deposited in the grain buyers and warehouse licensing agency license fee fund under section 6.3 of this chapter.**
 - (3) Notwithstanding the provisions in section 17.1 of this chapter, if a licensee fails to correct the failure to maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets within sixty (60) days of the date of the notice under subdivision (1), the director shall require monthly financial summaries and bank statements from the licensee until such time as the failure is corrected. The director may require a financial audit by an independent audit or accounting firm. Upon review of the findings of the audit, the director may issue a temporary suspension.**
- If the director issues a temporary suspension under subdivision (3) following a licensee's failure to maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets as required under subsection (e), the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible following the temporary suspension.**
- (f) (g) A licensee must have the minimum positive net worth**



specified in section 16 of this chapter to hold any license or do business."

Page 10, line 40, strike "two" and insert "**three**".

Page 10, line 40, strike "\$250,000" and insert "**(\$350,000)**".

Page 10, line 41, after "one million" insert "**two hundred fifty thousand**".

Page 10, line 41, strike "\$1,000,000" and insert "**(\$1,250,000)**".

Page 12, delete lines 12 through 34.

Page 12, line 35, reset in roman "(l)".

Page 12, line 35, delete "(m)".

Page 12, line 42, reset in roman "(m)".

Page 12, line 42, delete "(n)".

Page 13, delete lines 2 through 42, begin a new paragraph and insert:

"SECTION 7. IC 26-3-7-16, AS AMENDED BY P.L.60-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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 one hundred thousand dollars (\$100,000).

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

(A) one hundred thousand dollars (\$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) one hundred thousand dollars (\$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) one hundred fifty thousand dollars (\$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:

(i) two hundred thousand dollars (\$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 following apply:

(1) If the director or the director's designated representative finds a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1) prior to a 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 or failure.

(2) If a licensee fails to correct a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1), or both, within thirty (30) days of the date of the notice under subdivision (1), the director may impose a fine on the licensee of not more than one thousand dollars (\$1,000). Fines collected under this subdivision shall be deposited in the grain buyers and warehouse licensing agency license fee fund under section 6.3 of this chapter.

(3) Notwithstanding the provisions in section 17.1 of this chapter, if a licensee fails to correct a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1) within sixty (60) days of the



date of the notice under subdivision (1), the director shall require monthly financial summaries and bank statements from the licensee until such time as the deficiency or failure is corrected. The director may require a financial audit by an independent audit or accounting firm. Upon review of the findings of the audit, the director may issue a temporary suspension.

If the director issues a temporary suspension under subdivision (3) following a licensee's failure to correct a deficiency in minimum net worth or a failure to maintain a current asset to current liability ratio of one to one (1:1), the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible following the temporary suspension.

(c) **(d)** 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."

Delete pages 14 through 15.

Page 16, delete lines 1 through 13.

Page 16, line 20, delete "." and insert "**unless such agreements are settled within one (1) year.**".

Page 18, delete lines 35 through 42, begin a new paragraph and insert:

"SECTION 12. IC 26-4-3-5, AS AMENDED BY P.L.75-2010, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a)** The board shall meet at least ~~two (2)~~ **four (4)** times each year as follows:

(1) One (1) meeting of the board must be held in ~~July~~: **January.**

(2) **One (1) meeting of the board must be held in April.**

(3) **One (1) meeting of the board must be held in July.**

(4) **One (1) meeting of the board must be held in October.**

(b) The board may meet virtually."

Page 19, delete lines 1 through 3.

Page 21, line 32, strike "two" and insert "**three**".

Page 21, line 33, strike "\$250,000" and insert "**(\$350,000)**".

Page 22, delete lines 24 through 42, begin a new paragraph and insert:

"SECTION 18. IC 26-4-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **(a)** The board shall deny the payment of compensation under this chapter to a claimant who has incurred a financial loss or storage loss due to the failure of a warehouse or grain buyer when the board determines the



existence of any of the following:

(1) The claimant as payee has failed to present for payment a negotiable instrument issued as payment for grain within ninety (90) days from the date the negotiable instrument is tendered to the claimant in satisfaction of obligations for grain purchased by the licensed grain establishment.

(2) The claimant has engaged in conduct or practices that differ from generally accepted marketing practices within the grain industry to an extent that the claimant's actions have substantially contributed to the claimant's loss. The Indiana grain indemnity board may consider whether contracts not excluded under IC 26-3-7-4 are to be generally accepted marketing practices within the grain industry.

(b) If a claimant is a shareholder in a licensee that failed, the board may make a determination as to whether the shareholder shall receive a payment from the fund or whether the claimant shall receive a refund of the claimant's producer premium to the fund plus accrued interest since the time the producer premium was paid by the claimant."

Page 23, delete lines 1 through 16.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 364 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 11, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 364 be amended to read as follows:

Page 18, delete lines 18 through 27.

Page 22, delete lines 40 through 42.

Page 23, delete lines 1 through 21.

Re-number all SECTIONS consecutively.

(Reference is to SB 364 as printed February 10, 2021.)

HOLDMAN

SB 364—LS 7269/DI 120

