HOUSE BILL No. 1237

DIGEST OF INTRODUCED BILL

Citations Affected: IC 26-3-7; IC 26-4-1-13.

Synopsis: Grain buyers. Makes various changes to the grain buyers and warehouse licensing statutes.

Effective: July 1, 2017.

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January 10, 2017, read first time and referred to Committee on Agriculture and Rural Development.
First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1237

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

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

SECTION 1. IC 26-3-7-2, as amended by P.L.60-2015, SECTION 4, is amended to read as follows [effective July 1, 2017]: Sec. 2. The following definitions apply throughout this chapter:

(1) "Agency" refers to the Indiana grain buyers and warehouse licensing agency established under section 1 of this chapter.
(2) "Anniversary date" means the date that is ninety (90) calendar days after the fiscal year end of a business licensed under this chapter.
(3) "Bin" means a bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.
(4) "Buyer-warehouse" means a person that operates both as a warehouse licensed under this chapter and as a grain buyer.
(5) "Claimant" means a person that is unable to secure satisfaction within the twelve (12) months following delivery of the financial obligation due from to whom a licensee owes a storage or financial obligation under this chapter for grain that has been

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delivered to the licensee for sale or for storage under a bailment.

(6) "Daily position record" means a written or electronic
document that is maintained on a daily basis for each grain
commodity, contains a record of the total amount of grain in
inventory for that business day, and complies with any
requirements established by the director.

(7) "Deferred pricing" or "price later" means a purchase by a
buyer in which title to the grain passes to the buyer and the price
to be paid to the seller is not determined:

(A) at the time the grain is received by the buyer; or
(B) less than twenty-one (21) days after delivery.

(8) "Delayed payment" means a purchase by a buyer in which title
to the grain passes to the buyer at a determined price and payment
to the seller is not made in less than twenty-one (21) days after
delivery.

(9) "Depositor" means any of the following:

(A) A person that delivers grain to a licensee under this
chapter for storage or sale.

(B) A person that:

(i) owns or is the legal holder of a ticket or receipt issued by
a licensee for grain received by the licensee; and
(ii) is the creditor of the issuing licensee for the value of the
grain received in return for the ticket or receipt.

(C) A licensee that stores grain that the licensee owns solely,
jointly, or in common with others in a warehouse owned or
controlled by the licensee or another licensee.

(10) "Designated representative" means the person or persons
designated by the director to act instead of the director in assisting
in the administration of this chapter.

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

(12) "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.

(13) "Failed" or "failure" means any of the following:

(A) The inability of a licensee to financially satisfy fully all
obligations due to claimants.

(B) Public declaration of a licensee's insolvency.

(C) Revocation or suspension of a licensee's license, if the
licensee has outstanding indebtedness owed to claimants.

(D) Nonpayment of a licensee's debts in the ordinary course of
business, if there is not a good faith dispute.

(E) Voluntary surrender of a licensee's license, if the licensee has outstanding indebtedness to claimants.

(F) Involuntary or voluntary bankruptcy of a licensee.

(14) "Grain" means corn for all uses, popcorn, wheat, oats, barley, rye, sorghum, soybeans, oil seeds, other agricultural commodities as approved by the agency, and seed as defined in this section. The term does not include canning crops for processing, sweet corn, or flint corn.

(15) "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.

(16) "Grain bank grain" means grain owned by a depositor for use in the formulation of feed and stored by the warehouse to be returned to the depositor on demand.

(17) "Grain buyer" means a person who is engaged in the business of buying grain from producers.
(18) "Grain coproducts" means any milled or processed grain, including the grain byproduct of ethanol production.


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

(21) "Licensee" means a person who operates a facility that is licensed under this chapter.

(22) "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.

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

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

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

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

(27) "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.


(29) "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.

(30) "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.60-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) The director may do the following:

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

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(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 a 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 June 30, 1997, for the purchase of grain from producers, except a flat price contract or a contract for the production of seed, to include the following notice immediately above the place on the contract where the seller of the grain must sign:

"NOTICE - SELLER IS CAUTIONED THAT CONTRACTING FOR THE SALE AND DELIVERY OF GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE FUTURE PAYMENTS BY YOU TO MAINTAIN THIS CONTRACT, A LOWER SALES PRICE, AND OTHER RISKS NOT SPECIFIED. COVERAGE UNDER THE INDIANA GRAIN INDEMNITY PROGRAM IS FOR GRAIN THAT HAS BEEN DELIVERED TO A FIRST PURCHASER LICENSEE WITHIN THE TWELVE (12) 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.

(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 adviser, adviser, 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.

The director may determine whether geographically separate facilities constitute a single warehouse or grain buyer and in making the determination may consider the following:

(1) The number of facilities involved.

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

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

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

(5) The personnel employed at the separate facilities.
(6) Other factors the director deems relevant.

(e) (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 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 26-3-7-4.1, AS ADDED BY P.L.64-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4.1. (a) The agency shall mail by first class mail or send electronically a renewal application, which must include a listing of all the licensee's facilities, to each licensee before the end of the licensee's fiscal year. The renewal application form must be completed and returned to the agency not later than ninety (90) days after the end of the licensee's fiscal year. The licensee must forward, with the renewal application, the following:

1. Current reviewed level financial statement.
2. Updated financial profile form supplied by the agency.
3. Appropriate license fee.

(b) A renewal application must contain the information as required under rules adopted by the agency. The licensee shall receive an annual renewal license application form appropriate to the license issued to the licensee. The annual renewal license application forms are for a:

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

SECTION 4. IC 26-3-7-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4.2. (a) If an applicant for a license or a renewal of a license issued under this chapter does not regularly conduct business at an address at which the applicant usually can be contacted in Indiana, the applicant shall include with the applicant's application a written appointment of a statutory agent for service of process, notice, or demand.

(b) The appointment in subsection (a) must be accompanied by a written acceptance of the appointment by the statutory agent.

(c) The statutory agent must be an individual who is a resident of Indiana or a corporation whose principal place of business is located in Indiana.
(d) The appointment must be made in the form and manner prescribed by the director.

(e) If a statutory agent resigns or relocates from Indiana or the applicant revokes the statutory agent’s appointment, the applicant shall:

(1) immediately notify the director in writing not later than thirty (30) days before the resignation, relocation, or revocation; and

(2) file with the director a written appointment of another statutory agent, along with a written acceptance of the appointment signed by the statutory agent.

(f) If a statutory agent dies, the applicant shall:

(1) immediately notify the director in writing of the death;

(2) not later than thirty (30) days after the death, appoint another statutory agent; and

(3) file with the director a written appointment of the other statutory agent, along with a written acceptance of the appointment signed by the statutory agent.

(g) Failure to comply with this section is grounds for denial, suspension, or revocation of a license.

SECTION 5. IC 26-3-7-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 16.7. (a) A licensee, claimant, or person aggrieved by the director’s action may appeal under IC 4-21.5-3 from orders issued by the director under section 16.5 or 17.1 of this chapter.

(b) A party may request an appeal under IC 4-21.5-3 not more than fifteen (15) days after being served with the director’s findings.

(c) If a party requests an appeal under IC 4-21.5-3, the director shall designate:

(1) an administrative law judge to preside over the appeal; and

(2) an ultimate authority for purposes of the appeal in accordance with IC 4-21.5-3.

SECTION 6. IC 26-3-7-16.8, AS AMENDED BY P.L.75-2010, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 16.8. (a) A lien against all grain assets of a licensee or a person who is required to be licensed under this chapter attaches in favor of the following:

(1) A lender or other claimant that has a receipt for grain owned or stored by the licensee.

(2) A claimant that has a ticket or written evidence, other than a
receipt, of a storage obligation of the licensee.

(3) A claimant that surrendered a receipt as part of a grain sales transaction if:
   (A) the claimant was not fully paid for the grain sold; and
   (B) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

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

(b) A lien under this section attaches and is effective at the earliest of the following:
   (1) the delivery of the grain for sale, storage, or under a bailment;
   (2) the commencement of the storage obligation; or
   (3) the advancement of funds by a lender.

(c) A lien under this section terminates:
   (1) when the licensee discharges the claim; or
   (2) twelve (12) months after the delivery of grain to a first purchaser licensee for sale or storage under a bailment;

whichever occurs first.

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

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

(f) The lien established under this section has priority over all competing lien claims asserted against the licensee's grain assets.

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

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

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

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

(h) (i) If:
(1) a claimant engaged in farming operations granted to one (1)
or more secured parties one (1) or more security interests in the
grain related to the claimant's claim under this section; and
(2) one (1) or more secured parties described in subdivision (1)
have given to:
(A) the licensee prior written notice of the security interest
under IC 26-1-9.1-320(a)(1) or IC 26-1-9-307(1)(a) before its
repeal; and
(B) the director prior written notice of the security interest
with respect to the grain described in subdivision (1) sufficient
to give the director a reasonable opportunity to cause the
issuance of a joint check under this subsection;
the director shall pay the claimant described in subdivision (1) the
portion of the proceeds of grain assets under subsection (e) to which
the claimant is entitled under this section by issuance of a check
payable jointly to the order of the claimant and any secured party
described in subdivision (1) who has given the notices described in
subdivision (2). If only one (1) secured party described in subdivision (1) is a payee, the rights of the secured party in the check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9.1.

SECTION 7. IC 26-3-7-17.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 17.1. (a) Whenever the director, as a result of an inspection or otherwise, has reasonable cause to believe that a person to which this chapter is or may be applicable:

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

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

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

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

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

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

(e) If the director has reasonable cause to believe that a licensee is acting as described in subsection (a) and determines that immediate action without an opportunity for a hearing is necessary in order to safeguard depositors, the director may suspend a license temporarily without a hearing for a period not to exceed twenty (20) days. When a license is suspended without a hearing, the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible.

SECTION 8. IC 26-4-1-13, AS AMENDED BY P.L.60-2015, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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(24)): IC 26-3-7-2(25)). The term does not include canning crops for processing, sweet corn, or flint corn.