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Requirements for Grain Dealers

State of Indiana

Penalties

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Requirements for Grain Dealers

STATE OF INDIANA

Current with legislation from the 2014 Second Regular Sess and Second Regular Technical Sess

IC 26-3-7-17.1

26-3-7-17.1 Possible violations; powers of director; procedures

(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, 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.

IC 26-3-7-32

26-3-7-32 Injunctions; unlawful removal of grain, temporary restraining orders

(a) The director may apply for, and the courts of this state are vested with jurisdiction to issue, a temporary or permanent injunction against the business operation of a licensee, or the issuance of receipts or tickets without a license and against interference by any person with the director, the director's designated representative, or a receiver appointed under [section 31](#) of this chapter, in the performance of their duties and powers under this chapter.

(b) Upon a determination by the director that there is reasonable cause to believe that a licensee is unable to meet the licensee's storage or other grain obligations, and that the licensee is removing, or the director has reasonable cause to believe that the licensee may remove, grain from the licensed premises, the director may, under the conditions provided in, and in accordance with, the Indiana Rules of Trial Procedure, seek from the circuit court of the Indiana county in which the licensee has the licensee's principal place of business a temporary restraining order preventing the further sale or movement of any grain and requiring that proceeds from grain sales received after the issuance of the temporary restraining order should be held in the form in which they are received by the licensee and kept separate from all other funds held by the licensee.

IC 26-3-7-34

26-3-7-34 Violations

(a) A person who knowingly or intentionally violates or fails to comply with this chapter commits a Class A misdemeanor. Each day a person violates this chapter constitutes a separate violation.

(b) A person who knowingly or intentionally issues a receipt or ticket, knowing that the grain for which the receipt or ticket is issued has not been actually received at the licensed warehouse, commits a Class A misdemeanor. A person who issues a duplicate, or additional negotiable receipt for grain, knowing that a former negotiable receipt for the same grain or any part of the grain is outstanding and uncanceled, except in the case of a lost, stolen, or destroyed receipt, as provided in [section 24](#) of this chapter, commits a Class A misdemeanor. A person who fraudulently represents, alters, or counterfeits any license provided for in this chapter commits a Level 6 felony.

(c) Except in case of sale or other disposition of the grain in lawful enforcement of the lien on grain that attaches under this chapter or on a licensee's lawful termination of storage, shipping, or handling agreements, or except as permitted by the rules adopted by the director under IC 4-22-2 to effectuate the purposes of this chapter:

(1) a person who knowingly or intentionally delivers grain out of a licensed facility, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of the grain is outstanding and uncanceled, without obtaining the possession of the receipt at or before the time of delivery, commits a Level 6 felony; and

(2) a person who knowingly or intentionally delivers grain out of a licensed facility, knowing that a non-negotiable receipt or ticket is outstanding and uncanceled, without the prior written approval of the person lawfully entitled to delivery under the non-negotiable receipt or ticket and without delivery being shown on the appropriate records of the licensee, commits a Level 6 felony.

(d) A person who fraudulently issues a receipt, a ticket, or a weight or grade certificate, knowing that it contains a false statement, or who issues a receipt for grain owned solely or jointly by the person and does not state the fact of the person's ownership in the receipt, commits a Class A misdemeanor.

- (e) A person who recklessly changes a receipt or ticket subsequent to issuance, except for notation by the licensee of partial delivery, commits a Class B misdemeanor.
- (f) A person who knowingly or intentionally deposits grain to which the person does not have title or upon which there is a lien or mortgage and who accepts for the grain a receipt or ticket, without disclosing the lack of title or the existence of the lien or mortgage, commits a Level 6 felony.
- (g) A person commits a Class A misdemeanor who knowingly or intentionally:
- (1) engages in the business of being a grain buyer or operates a warehouse without a valid license issued by the director;
 - (2) engages in the business of being a grain buyer or operates a warehouse without a sufficient cash deposit, letter of credit, or surety bond on file with and in a form approved by the director;
 - or
 - (3) engages in the business of being a grain buyer or operates a warehouse while in violation of the rules adopted by the director.
- (h) A person commits a Class A misdemeanor who willfully makes or causes to be made a false entry or statement of fact in an application or report filed with the director.
- (i) A person who is not in compliance with [section 3\(a\)\(11\)](#) of this chapter may be subject to a fine imposed by the agency of not more than twenty thousand dollars (\$20,000), or the suspension of the grain buyer's license for not more than five (5) years, or both.
- (j) The director may suspend or revoke the license of a licensee that uses an unlicensed facility to store or handle grain or commits another violation of this chapter.