
ENGROSSED SENATE BILL No. 369

DIGEST OF SB 369 (Updated February 18, 1998 4:15 pm - DI 75)

Citations Affected: IC 15-2.1; IC 26-3; IC 26-4.

Synopsis: Agricultural products. Makes technical changes in statutory definitions applicable to the Indiana state board of animal health. Authorizes the board to adopt administrative rules to define "milk" and "milk products". Authorizes the board to adopt administrative rules to establish and impose civil penalties for violations of laws that prohibit drug residues in milk and milk products. Establishes a procedure for screening milk for drug residue violations. Requires that milk testing positive for drug residues must be removed from the human or animal
(Continued next page)

Effective: July 1, 1998.

Jackman

(HOUSE SPONSORS — BISCHOFF, LEUCK, LINDER)

January 8, 1998, read first time and referred to Committee on Agriculture and Small Business.

January 22, 1998, reported favorably — Do Pass.

January 27, 1998, read second time, ordered engrossed.

January 28, 1998, engrossed.

January 29, 1998, read third time, call withdrawn.

January 30, 1998, returned to second reading.

February 2, 1998, reread second time, amended, ordered engrossed.

February 3, 1998, engrossed. Reread third time, passed. Yeas 42, nays 7.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Agriculture and Rural Development.

February 16, 1998, amended, reported — Do Pass.

February 18, 1998, read second time, amended, ordered engrossed.

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food chain or be acceptably reconditioned under federal standards. Provides that when milk tests positive for drug residues, the producer may not resume shipping milk until the shipper's milk tests negative for drug residues. Requires a producer whose milk tests positive for drug residues to pay a civil penalty and participate in drug residue education activities. Establishes standards for imposition of civil penalties. Establishes the dairy drug residue abatement fund. Requires civil penalties collected for milk drug residue violations to be deposited in the fund. Provides that money in the fund may be used to implement education and other programs designed to prevent drug residue violations. Appropriates money in the fund for these purposes. Makes the following changes to the agricultural commodities warehouse licensing law: (1) Adds popcorn and grain purchased for sale as seed to the definition of "grain". (2) Adds definitions of "seed" and "seed buyer" to the statute. (3) Changes references in the law from "minimum net worth" to "minimum positive net worth". (4) Establishes requirements for a seed buyer's certificate issued by the Indiana grain buyers and warehouse licensing agency.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

SENATE ENROLLED ACT No. 369

AN ACT to amend the Indiana Code concerning agriculture and animals and to make an appropriation.

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

SECTION 1. IC 15-2.1-2-9.2, AS ADDED BY P.L.137-1996, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9.2. (a) "Bulk milk hauler" for purposes of ~~IC 15-2.1-22~~; means a person who does the following:

- (1) ~~that~~ collects raw fluid milk in bulk form ~~on a bulk milk route~~;
- (2) ~~Transports the milk for transportation to a milk plant,~~ receiving station, or transfer station.

(b) "Bulk milk hauler" for the purposes of ~~IC 15-2.1-23~~; means a person who collects raw fluid milk in bulk form from at least one (1) dairy farm for delivery to a receiving station or transfer station.

SECTION 2. IC 15-2.1-2-28.4, AS ADDED BY P.L.137-1996, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 28.4. "Milk" means the lacteal secretion practically free from colostrum that ~~meets the following conditions~~:

- (1) is obtained by the complete milking of healthy cows or goats;
- (2) ~~Contains the following~~:
 - (A) Not less than eight and one-fourth percent (8 1/4%) milk solids that are not fat.

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(B) Not less than three and one-fourth percent (3 1/4%) milkfat: dairy animals and that meets a definition and standard of identity for milk adopted by the board under IC 4-22-2.

SECTION 3. IC 15-2.1-2-28.9, AS ADDED BY P.L.137-1996, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 28.9. (a) "Milk products"; for purposes of IC 15-2.1-22; means all products other than milk that are derived or produced from milk; either whole or in part. The term includes the following:

- (1) Homogenized milk:
- (2) Lowfat milk:
- (3) Skim or skimmed milk:
- (4) Vitamin D milk and vitamin D milk products:
- (5) Fortified milk and fortified milk products:
- (6) Flavored milk and flavored milk products:
- (7) Reconstituted or recombined milk and milk products:
- (8) Concentrated milk and concentrated milk products:
- (9) Half-and-half:
- (10) Sour half-and-half or cultured half-and-half:
- (11) Buttermilk:
- (12) Cultured buttermilk:
- (13) Cultured milk and cultured milk products:
- (14) Acidified milk and acidified milk products:
- (15) Cream class of food:
- (16) Light cream; coffee cream; and table cream:
- (17) Whipping cream class of food:
- (18) Light whipping cream; heavy cream; and heavy whipping cream:
- (19) Whipped cream:
- (20) Whipped light cream; coffee cream; or table cream:
- (21) Sour cream or cultured sour cream:
- (22) Eggnog:
- (23) Evaporated or condensed milk or milk products:
- (24) Dried or powdered milk and milk products:
- (25) Cheese:
- (26) Cottage cheese:
- (27) Creamed cottage cheese:
- (28) Lowfat creamed cottage cheese:
- (29) Ice cream:
- (30) Ice milk:
- (31) Sherbets:



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(32) Fruit ices.

(33) Any other product of milk defined in rules adopted by the board:

(b) "Milk products" for purposes of IC 15-2.1-23, means the application of those products designated by the rules of the board as:

(1) being within IC 15-2.1-22 and IC 15-2.1-23; and

(2) conforming to the definitions and standards of identity specified in those rules. The term does not include products such as the following:

(1) Sterilized milk and milk products hermetically sealed in a container and processed either before or after sealing to prevent microbial spoilage:

(2) Evaporated milk, condensed milk, ice cream and other frozen desserts, butter, dry milk products (except as defined in section 20.5 of this chapter), or cheese, except when combined with other substances to produce pasteurized milk or a milk product:

SECTION 4. IC 15-2.1-2-44.7, AS ADDED BY P.L.137-1996, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 44.7. "Recognized establishment" and "establishment" for purposes of IC 15-2.1-24, means mean a building, part of a building, or other location used for slaughtering livestock or poultry or preparing meat or poultry, meat food products, and meat byproducts capable of use as human food.

SECTION 5. IC 15-2.1-23-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6.5. (a) The following definitions apply throughout this section:

(1) "DP" or "daily production" means the amount of milk, measured by hundred weight, produced by the positive producer in one (1) day, measured on the day in which the drug residue violation occurred.

(2) "PR" or "producer reimbursement" means an amount assessed against the positive producer to reimburse others for milk contaminated by the positive producer's contaminated milk, not including the value of the positive producer's contaminated milk for which he or she was not paid.

(3) "Revocation period" means the period after a Grade A producer's permit is revoked under this section that the producer may not apply for a Grade A permit.

(b) A penalty established under this section may not be more severe than the penalty standard for drug residue violations adopted by the National Conference on Interstate Milk Shipments



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in its Pasteurized Milk Ordinance adopted in accordance with the National Conference's Memorandum of Understanding with the United States Department of Health and Human Services, Food and Drug Administration. The penalty imposed may not exceed one thousand dollars (\$1,000) for a first offense or two thousand dollars (\$2,000) for a subsequent offense.

(c) The board may impose a civil penalty for violations of laws that prohibit drug residues in milk and milk products as described in this section.

(d) Milk shall be screened for drug residue violations as follows:

(1) Except as provided in subdivision (2), milk shall be screened for drug residues under Appendix N of the Pasteurized Milk Ordinance (345 IAC 8-3-1).

(2) Milk from manufacturing grade dairy farms shall be tested for drug residues under 345 IAC 8-2-3.

(3) All milk that tests positive for drug residues must be disposed of in a manner that removes it from the human and animal food chain or that acceptably reconditions the milk under United States Health and Human Services - Food and Drug Administration compliance policy guidelines. In all cases of drug residue violations, a producer may not resume shipping milk until a drug test conducted by a certified laboratory shows the producer's milk is negative for drug residues and the test results are reported to the office of the state veterinarian.

(4) All positive drug residue test results must be called into the office of the state veterinarian immediately, and a written report of the test results must be faxed or delivered to the office of the state veterinarian within twenty-four (24) hours of the test. The producer whose milk tested positive must be notified of the positive drug residue test immediately. The company that conducted the test is responsible for the reporting requirements in this subdivision.

(5) A producer whose milk tests positive for drug residues shall pay a civil penalty and participate in drug residue education activities as follows:

(A) The following is imposed on a producer for the first positive test for drug residues within a twelve (12) month period:

(i) The positive producer must pay a civil penalty to the board equal to the result of the following equation:

(DP times two (2) days times three dollars (\$3)) minus

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However, if the result is less than five dollars (\$5) then the civil penalty is five dollars (\$5).

(ii) The positive producer must, in conjunction with the producer's veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the board of animal health - office of the state veterinarian within thirty (30) days of the drug residue violation. Failure to complete the Protocol and submit proof of completion within thirty (30) days will result in action to suspend the producer's permit.

(B) The following is imposed for a second positive test for drug residues within a twelve (12) month period:

(i) The positive producer must pay a civil penalty to the board equal to the result of the following equation:

DP times four (4) days times three dollars (\$3).

However, if the result is less than five dollars (\$5) then the civil penalty is five dollars (\$5).

(ii) The positive producer must, in conjunction with the producer's veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the board of animal health - office of the state veterinarian within thirty (30) days of the drug residue violation. Failure to complete the Protocol and provide proof of completion will result in action to suspend the producer's permit.

(iii) The producer must attend a producer education program or meeting designated by the state veterinarian. The producer is responsible for paying registration and material fees and other costs associated with attending the education program or meeting. The producer must provide proof of attendance to the state veterinarian within ten (10) days of completion of the program or meeting.

(C) The third positive test result for drug residues within a twelve (12) month period shall result in the following:

(i) The board revoking a producer's Grade A permit if the producer has a permit.

(ii) The sanctions for a second offense set forth in clause (B) are imposed.

(iii) The producer must submit to the state veterinarian

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a set of written procedures that the producer will follow to prevent future drug residue violations. The procedures must be submitted with the proof of completion required in clause (B) and must be specific, practical, and reasonably likely to lessen the possibility of a drug residue violation when followed by the producer.

(iv) After a producer's Grade A permit is revoked for a third offense violation under this statute, the producer may not receive a new Grade A permit for a revocation period of thirty (30) days from the date of the revocation. After the revocation period, the state veterinarian must issue a conditional Grade A permit to a producer that has applied for a permit if the producer has met all of the requirements of this section at the time of application and the producer meets all other requirements of the board for obtaining a Grade A permit. The permit must be issued on the condition that all of the requirements of this section must be completed within the time set forth in this section. A permit issued under this item automatically becomes unconditional after the producer fully complies with all of the provisions of this section.

(D) For each drug residue violation in a twelve (12) month period in excess of three (3) the producer is subject to the penalties for a third offense in clause (C) are imposed, but for Grade A producers the revocation period will begin on the date the producer's permit is revoked and run for a period equal to two (2) times the length of the revocation period imposed after the producer's last drug residue violation.

(e) The state veterinarian may, by special permit, allow a producer that objects to the imposition of a civil penalty to dump two (2) days of milk production on a first offense and four (4) days of milk production on the second or third offense instead of paying a civil penalty if payment of a civil penalty would impose undue hardship on a producer. The state veterinarian may set the conditions under which the milk is to be dumped and may require documentation from the producer showing the circumstances under which the milk was dumped.

(f) Civil penalties collected under this section shall be deposited in the dairy drug residue abatement fund established under section 17 of this chapter.

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SECTION 6. IC 15-2.1-23-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 17. (a) The dairy drug residue abatement fund is established to implement education and other programs designed to prevent drug residue violations. Money in the fund is appropriated for these purposes.**

(b) The fund consists of civil penalties collected under section 6.5 of this chapter.

(c) The fund shall be administered by the board.

(d) The expenses of administering the fund shall be paid from money in the fund.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

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

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