



Reprinted
February 2, 2000

HOUSE BILL No. 1265

DIGEST OF HB 1265 (Updated February 1, 2000 4:15 PM - DI 92)

Citations Affected: IC 15-7.

Synopsis: Agricultural marketing and production contracts. Defines agricultural marketing and production contracts. Requires agricultural marketing and production contracts to: (1) be in writing or be an electronic transaction; (2) be executed in good faith with full disclosure of all relevant information; (3) provide for resolution of complaints through alternative dispute resolution; and (4) provide that Indiana law governs and controls the contract and that venue for any actions concerning the contract must lie in a county in Indiana where at least one party resides. Specifies certain issues that must be addressed in agricultural marketing and production contracts.

Effective: July 1, 2000.

Friend, Lytle, Steele, Grubb

January 11, 2000, read first time and referred to Committee on Judiciary.
January 27, 2000, amended, reported — Do Pass.
February 1, 2000, read second time, amended, ordered engrossed.

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HB 1265—LS 7237/DI 98+



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Second Regular Session 111th General Assembly (2000)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

HOUSE BILL No. 1265

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

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

- 1 SECTION 1. IC 15-7-10 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2000]:
4 **Chapter 10. Agricultural Marketing and Production Contracts**
5 **Sec. 1. As used in this chapter, "agricultural commodity" means**
6 **livestock or grain produced primarily for sale, consumption,**
7 **propagation, or other use by man or animals.**
8 **Sec. 2. As used in this chapter, "good faith" means honesty in**
9 **fact and the observance of reasonable commercial standards of fair**
10 **dealing.**
11 **Sec. 3. As used in this chapter, "grain" has the meaning set**
12 **forth in IC 26-3-7-2(11).**
13 **Sec. 4. As used in this chapter, "ledger account" means a**
14 **maintained record of contract values versus market values.**
15 **Sec. 5. As used in this chapter, "livestock" has the meaning set**
16 **forth in IC 4-4-3.2-1(b).**
17 **Sec. 6. As used in this chapter, "marketing contract" means a**

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1 contract between a producer and a processor regarding the
2 purchase by the processor of the producer's agricultural
3 commodity.

4 Sec. 7. As used in this chapter, "person" means an individual,
5 firm, a limited liability company, a corporation, a partnership, or
6 an unincorporated association.

7 Sec. 8. As used in this chapter, "processor" means a person
8 engaged in the receiving, grading, packing, canning, freezing,
9 drying, or other methods of preparation for market of an
10 agricultural commodity produced in Indiana.

11 Sec. 9. As used in this chapter, "producer" means a person
12 engaged in Indiana in the business of producing for market or
13 receiving income from any agricultural commodity in commercial
14 quantities.

15 Sec. 10. As used in this chapter, "production contract" means
16 a contract between:

- 17 (1) a producer and a processor regarding the producer's
18 production of the processor's agricultural commodity; or
19 (2) two (2) producers regarding the production by one (1)
20 producer of the other producer's agricultural commodity.

21 Sec. 11. A marketing or production contract must meet the
22 following conditions:

23 (1) Be:

24 (A) in writing; or

25 (B) an electronic transaction, if the parties have agreed to
26 conduct transactions electronically, and the information is:

- 27 (i) provided, sent, or delivered, as the case may be, in an
28 electronic record; and
29 (ii) capable of retention by the recipient at the time the
30 information is received.

31 (2) Be executed in good faith, with full disclosure of all
32 relevant information by each party.

33 (3) Provide for resolution of disputes regarding the contract
34 through alternative dispute resolution with the costs of the
35 alternative dispute resolution paid equally by each party.

36 (4) Provide that:

37 (A) Indiana law governs and controls the contract; and

38 (B) venue for any actions concerning the contract must lie
39 in a county in Indiana where at least one (1) party resides.

40 (5) Include terms addressing the following issues:

41 (A) Transportation and delivery, including:

- 42 (i) payment of transportation costs;



- 1 (ii) delivery; and
- 2 (iii) method of transportation.
- 3 (vi) risk of loss during transportation; and
- 4 (v) transportation to a location other than the location
- 5 agreed upon.
- 6 (B) Resolution of:
- 7 (i) delivery of quantity other than quantity agreed upon;
- 8 and
- 9 (ii) delivery of quality other than quality agreed upon;
- 10 if quantity and quality of the end product are specified in
- 11 the contract.
- 12 (C) Payment, including:
- 13 (i) basis of payment;
- 14 (ii) payment method;
- 15 (iii) payment schedule;
- 16 (iv) effect of change in market price on contract price, if
- 17 any;
- 18 (v) penalty for late payment;
- 19 (vi) assignability of payments;
- 20 (vii) whether payment may be made copayable to
- 21 producer's lender; and
- 22 (viii) if the paying party is a subsidiary company, the
- 23 responsibility for payment of the paying party's parent
- 24 company.
- 25 (D) Termination of the contract, including:
- 26 (i) conditions under which each party may terminate the
- 27 contract, including determination of whether those
- 28 conditions are met;
- 29 (ii) notice required for termination;
- 30 (iii) opportunity to cure breach before termination; and
- 31 (iv) the rights of each party after termination of the
- 32 contract, including payment for work done before
- 33 termination and the producer's ability to buy the
- 34 commodity.
- 35 (E) Effect of acts of God on contract.
- 36 (F) Renewal of contract, including:
- 37 (i) conditions under which each party may renew the
- 38 contract, including determination of whether those
- 39 conditions are met; and
- 40 (ii) notice required for renewal.
- 41 (G) Legal relationship of parties under the contract.
- 42 (H) Other persons whose approval of the contract is

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1 required, if any.

2 (I) Assignability of contract rights and responsibilities.

3 (J) Effect on contract of bankruptcy of either party.

4 (K) Effect on contract of change in ownership of either
5 party.

6 (L) Duration of offer.

7 **Sec. 12. In addition to the terms required to be addressed under**
8 **section 11(5) of this chapter, a marketing contract must include**
9 **terms addressing the following issues:**

10 (1) Whether the processor has the right of first refusal on any
11 additional commodities of the producer available for delivery
12 beyond those provided for in the contract.

13 (2) If the contract is for livestock:

14 (A) how the livestock will be handled before slaughter,
15 weighing, and grading; and

16 (B) delivery of livestock to plants other than a plant
17 provided for in the contract, including:

18 (i) notice required; and

19 (ii) payment of additional costs, including shrinkage and
20 transportation.

21 (3) If the contract includes a ledger account system:

22 (A) ownership of account funds;

23 (B) treatment of ledger account as a current liability, long
24 term liability, or contingent liability;

25 (C) determination of the value of the ledger;

26 (D) maximum level of ledger account, if any, and effect on
27 price level after maximum is reached;

28 (E) interest charged or accrued on ledger balance,
29 including rate;

30 (F) whether ledger account is callable;

31 (G) disposition of ledger account balance at expiration of
32 contract;

33 (H) disposition of the ledger account if production ceases;

34 (I) disposition of the ledger account if processing ceases;
35 and

36 (J) whether the ledger account is secured by assets of the
37 party holding the balance of the account or unsecured.

38 **Sec. 13. In addition to the terms required to be addressed under**
39 **section 11(5) of this chapter, a production contract must include**
40 **terms addressing the following issues:**

41 (1) If the contract includes production incentive payments:

42 (A) conditions required to receive incentive payments;

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- 1 **(B) calculation of incentive payments; and**
 2 **(C) timing of incentive payments.**
 3 **(2) Whether the party that owns the agricultural commodity**
 4 **has already granted a lien against the commodity to a lender**
 5 **or a person other than the producer who is producing the**
 6 **commodity.**
 7 **(3) If the contract requires the producer that is producing the**
 8 **commodity to construct a building, make improvements to an**
 9 **existing building, or purchase new equipment:**
 10 **(A) exclusivity of use;**
 11 **(B) timing of construction, improvement, or purchase,**
 12 **including any penalty for noncompliance;**
 13 **(C) payment for construction, improvement, or purchase;**
 14 **(D) depreciation;**
 15 **(E) ownership;**
 16 **(F) specifications for construction or improvement,**
 17 **including responsibility for defects;**
 18 **(G) payment for future modernization or upgrade; and**
 19 **(H) obtaining necessary permits and approval for**
 20 **construction or improvement, including payment of fees**
 21 **and effect of nonapproval.**
 22 **(4) Miscellaneous facility issues, including:**
 23 **(A) payment of maintenance and repairs;**
 24 **(B) insurance on structures used under contract;**
 25 **(C) water source, including payment; and**
 26 **(D) security measures, including payment.**
 27 **(5) Access to facility.**
 28 **(6) Minimum guaranteed occupancy, if any.**
 29 **(7) Feed, including:**
 30 **(A) provision of feed;**
 31 **(B) assurance of feed quality;**
 32 **(C) determination of feed rations and changes in rations;**
 33 **(D) compensation for reduced feed efficiency due to**
 34 **delayed marketing, if any;**
 35 **(E) pricing of feed grown or raised by the producer who is**
 36 **producing the commodity; and**
 37 **(F) feed storage, drying, processing, and transportation or**
 38 **other handling.**
 39 **(8) Health of livestock with age in excess of ten (10) days,**
 40 **including:**
 41 **(A) inspection of livestock upon delivery to the producer**
 42 **that is producing the commodity, including whether either**

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- 1 party may choose a veterinarian to conduct the inspection;
 2 (B) producer's right to reject livestock;
 3 (C) responsibility for compliance with governmental
 4 animal health regulations;
 5 (D) risk of loss due to sickness or environmental factors,
 6 including extreme weather conditions, while livestock are
 7 at the producer's facility;
 8 (E) health care of animals;
 9 (F) cleaning and disinfecting facilities between turns of
 10 livestock.
- 11 (9) Manure, including:
 12 (A) responsibility for manure management, including
 13 compliance with governmental regulations;
 14 (B) responsibility to respond to complaints, lawsuits, or
 15 other alleged violations of law regarding manure;
 16 (C) liability for damages, penalties, or legal expenses
 17 resulting from complaints, lawsuits, other alleged
 18 violations of law, or enforcement actions;
 19 (D) responsibility for compliance with regulations that take
 20 effect after the contract begins;
 21 (E) ownership; and
 22 (F) application or other disposal.
- 23 (10) Labor and record keeping, including:
 24 (A) provision of labor and management;
 25 (B) establishment and enforcement of husbandry practices;
 26 (C) any special skills or training required, including
 27 payment of costs for training; and
 28 (D) records required to be kept.
- 29 (11) Insurance and other costs, including:
 30 (A) payment of liability and casualty insurance on
 31 livestock;
 32 (B) coverage amounts required;
 33 (C) payment of insurance for employees, including
 34 worker's compensation;
 35 (D) payment of general liability insurance;
 36 (E) payment of utilities;
 37 (F) responsibility for removal and disposal of dead
 38 animals;
 39 (G) responsibility for dust control;
 40 (H) responsibility for weed control; and
 41 (I) responsibility for roadway construction and
 42 maintenance.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1265, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 23, delete "in writing." and insert ":".

Page 2, between lines 23 and 24, begin a new line double block indented and insert:

"(A) in writing; or

(B) an electronic transaction, if the parties have agreed to conduct transactions electronically, and the information is:

(i) provided, sent, or delivered, as the case may be, in an electronic record; and

(ii) capable of retention by the recipient at the time the information is received."

Page 2, line 27, delete "arbitration and mediation." and insert **"alternative dispute resolution with the costs of the alternative dispute resolution paid equally by each party."**

Page 2, between lines 27 and 28, begin a new line block indented and insert:

"(4) Provide that:

(A) Indiana law governs and controls the contract; and

(B) venue for any actions concerning the contract must lie in a county in Indiana where at least one (1) party resides."

Page 2, line 28, delete "(4)" and insert **"(5)"**.

Page 3, delete lines 35 through 36.

Page 3, line 37, delete "(M)" and insert **"(K)"**.

Page 3, line 39, delete "11(4)" and insert **"11(5)"**.

Page 4, line 28, delete "11(4)" and insert **"11(5)"**.

and when so amended that said bill do pass.

(Reference is to HB 1265 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 13, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1265 be amended to read as follows:

Page 3, line 1, delete "delivery schedule;" and insert "**delivery; and**".

Page 3, line 2, delete "transportation;" and insert "**transportation.**".

Page 3, delete lines 3 through 7.

Page 3, line 8, delete "(viii)" and insert "**(vi)**".

Page 3, line 9, delete "(ix)" and insert "**(v)**".

Page 3, between lines 10 and 11, begin a new paragraph line block indented and insert:

"(B) Resolution of:

(i) delivery of quantity other than quantity agreed upon; and

(ii) delivery of quality other than quality agreed upon; if quantity and quality of the end product are specified in the contract."

Page 3, line 11, delete "(B)" and insert "**(C)**".

Page 3, line 24, delete "(C)" and insert "**(D)**".

Page 3, line 34, delete "(D)" and insert "**(E)**".

Page 3, line 35, delete "(E)" and insert "**(F)**".

Page 3, line 40, delete "(F)" and insert "**(G)**".

Page 3, line 41, delete "(G)" and insert "**(H)**".

Page 4, line 1, delete "(H)" and insert "**(I)**".

Page 4, line 2, delete "(I)" and insert "**(J)**".

Page 4, line 3, delete "(J)" and insert "**(K)**".

Page 4, line 5, delete "(K)" and insert "**(L)**".

Page 5, line 38, after "livestock" insert "**with age in excess of ten (10) days**".

Page 6, delete lines 6 through 10.

Page 6, line 11, delete "(G)" and insert "**(E)**".

Page 6, line 11, delete "animals, including scheduling and" and insert "**animals;**".

Page 6, delete line 12.

Page 6, line 13, delete "(H)" and insert "**(F)**".

(Reference is to HB 1265 as printed January 28, 2000.)

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