

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 1999 General Assembly.

HOUSE ENROLLED ACT No. 1247

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

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

SECTION 1. IC 15-6-4 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS** [EFFECTIVE JANUARY 1, 2000 (RETROACTIVE)]:

Chapter 4. Indiana Dairy Industry Development Law

Sec. 1. As used in this chapter, "board" refers to the Indiana dairy industry development board established by section 9 of this chapter.

Sec. 2. As used in this chapter, "commercial use" means sale for:

- (1) retail consumption;
- (2) resale; or
- (3) processing for resale.

Sec. 3. As used in this chapter, "commissioner" refers to the commissioner of agriculture or the commissioner's designee.

Sec. 4. As used in this chapter, "milk" means any class of milk produced by dairy animals in Indiana.

Sec. 5. As used in this chapter, "person" means an individual, a partnership, a limited liability company, a public or private corporation, a political subdivision (as defined in IC 36-1-2-13), a cooperative, a society, an association, or a fiduciary.

Sec. 6. As used in this chapter, "producer" means a person engaged in the production of milk in Indiana for commercial use,



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including a producer-processor.

Sec. 7. As used in this chapter, "producer-processor" means a producer who processes and markets the producer's own milk.

Sec. 8. As used in this chapter, "qualified program" means a state or regional dairy product promotion, research, or nutrition education program that:

- (1) is certified under 7 CFR 1150.153, as amended; and
- (2) meets the following requirements:
 - (A) Conducts activities (as defined in 7 CFR 1150.114, 1150.115, and 1150.116) intended to increase consumption of milk and dairy products.
 - (B) Is financed primarily by producers, either individually or through cooperative associations.
 - (C) Does not use a private brand or trade name in advertising and promotion of dairy products unless the national dairy promotion and research board established under 7 CFR 1150.131 and the United States Secretary of Agriculture concur that the requirement should not apply.
 - (D) Certifies to the United States Secretary of Agriculture that a request from a producer for a refund under the program will be honored by forwarding the part of the refund equal to the amount of credit that otherwise would be applicable to the program under 7 CFR 1150.152(c) to either the national dairy promotion and research board or a qualified program designated by the producer.
 - (E) Does not use program funds to influence governmental policy or action.

Sec. 9. (a) The Indiana dairy industry development board is established.

- (b) The board consists of:
 - (1) at least nine (9); and
 - (2) not more than twenty-five (25);
 voting members appointed under section 12 of this chapter.
- (c) Each voting member of the board must:
 - (1) be a resident of Indiana;
 - (2) be at least twenty-one (21) years of age;
 - (3) have been actually engaged in the production of milk in Indiana for at least one (1) year; and
 - (4) derive a substantial portion of the member's income from the production of milk in Indiana.
- (d) The board may appoint individuals who hold offices of importance to the milk industry or have special expertise



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concerning the industry to participate in the work of the board as nonvoting members. Not more than five (5) individuals may be appointed under this subsection.

(e) The commissioner may participate in the activities of the board as an ex officio member.

(f) An Indiana dairy farmer selected to serve on the national dairy board shall be a nonvoting, advisory member of the board.

(g) Fewer than fifty percent (50%) of the board members, including nonvoting members, may be members of Milk Promotion Services of Indiana, Inc.

Sec. 10. (a) Before January 31, the board shall:

(1) determine:

(A) the percentage of the state's milk marketings produced by each producer registered with the state board of animal health or the United States Department of Agriculture; and

(B) the number of representatives, if any, each producer is entitled to have on the board; and

(2) inform each producer described in subdivision (1)(A) of the determinations made under subdivision (1).

(b) The board shall make the determinations required under this section based upon:

(1) year-end milk marketing figures from the United States Department of Agriculture; and

(2) the formula prescribed under section 12 of this chapter.

Sec. 11. (a) Not later than thirty (30) days after receiving a notice from the board under section 10 of this chapter, a producer or group of producers entitled to representation on the board may submit nominations to the board for board members.

(b) A producer or group of producers may submit two (2) nominations for each board member to which the producer or group of producers is entitled.

Sec. 12. (a) The board shall appoint from among the nominations made under section 11 of this chapter one (1) board member to represent each:

(1) producer who represents at least three percent (3%) of the state's milk marketings; and

(2) group of producers who:

(A) collectively represent at least three percent (3%) of the state's milk marketings; and

(B) notify the board that the producers desire to be considered collectively for purposes of representation on

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the board.

(b) In addition to the members appointed under subsection (a), the board shall appoint one (1) board member to represent a producer or group of producers described in subsection (a)(2) for each additional ten percent (10%) of the state's milk marketings exceeding three percent (3%) that the producer or group of producers represents.

(c) The board shall make the appointments required under this section not later than thirty (30) days after the close of the period for submission of nominations under section 11 of this chapter.

(d) An appointment made by the board under this section may not result in a producer or group of producers having two (2) members on the board at the same time who represent the same share of the state's milk marketings.

(e) If a producer or group of producers entitled to representation on the board fails to submit a nomination, the board may appoint any individual who meets the requirements of section 9(c) of this chapter to represent the producer or group of producers.

Sec. 13. (a) The term of office of a board member is three (3) years.

(b) A member continues in office until a successor who meets the qualifications set forth in section 9(c) of this chapter is elected.

(c) A member may not serve for more than a total of three (3) terms.

(d) If, upon expiration of the term of a board member, the producer or group of producers who nominated the member no longer represents the percentage of the state's milk marketings required under section 12 of this chapter, a person may not be appointed to replace the board member.

Sec. 14. Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency. However, board members are not entitled to a salary or per diem.

Sec. 15. (a) A member's term of office terminates, and the member's office becomes vacant if the member:

- (1) dies;
- (2) becomes disabled;
- (3) resigns; or
- (4) ceases to meet one (1) or more of the qualifications set



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forth in section 9(c) of this chapter.

(b) If a board member's office becomes vacant before expiration of the member's term of office, the board shall:

- (1) certify to the producer or group of producers who nominated the member that the vacancy exists; and
- (2) request nominations in accordance with section 11 of this chapter to fill the vacancy.

(c) The board shall appoint one (1) of the individuals nominated under subsection (b).

(d) An individual appointed under this section shall serve for the remainder of the unexpired term.

Sec. 16. The board shall do the following:

- (1) Elect from among the board's members a chairperson, vice chairperson, secretary, treasurer, and other officers the board considers necessary.
- (2) Employ personnel and contract for services that are necessary for the proper implementation of this chapter.
- (3) Establish accounts in adequately protected financial institutions to receive, hold, and disburse funds accumulated under this chapter.
- (4) Bond the treasurer and other persons as necessary to ensure adequate protection of funds received and administered by the board.
- (5) Authorize the expenditure of funds and the contracting of expenditures to conduct proper activities under this chapter.
- (6) Annually establish priorities and prepare and approve a budget consistent with the estimated resources of the board and the scope of this chapter.
- (7) Provide for an independent audit and make the results of the audit available to all interested persons.
- (8) Procure and evaluate data and information necessary for the proper implementation of this chapter.
- (9) Formulate and execute assessment procedures and methods of collection.
- (10) Establish procedures to annually inform all producers regarding board members, policy, expenditures, and programs for the preceding year.
- (11) Receive and investigate, or cause to be investigated, complaints and violations of this chapter and take necessary action within its authority.
- (12) Take any other action necessary for the proper implementation of this chapter, including the adoption of

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rules under IC 4-22-2.

Sec. 17. (a) The board shall meet at least once every six (6) months.

(b) The board shall meet at a time and place fixed by the board.

(c) The chairperson:

(1) may call a special meeting; and

(2) shall call a special meeting upon the request of at least twenty-five percent (25%) of the members of the board.

(d) Written notice of the time and place of all meetings shall be mailed in advance to each board member.

Sec. 18. (a) A majority of voting members appointed to the board constitutes a quorum for the transaction of business.

(b) The affirmative vote of a majority of all members appointed to the board is necessary for the action of the board.

Sec. 19. At each regular meeting, the board shall review all expenditures made since the board's last regular meeting.

Sec. 20. (a) The board shall keep:

(1) minutes of the board's meetings; and

(2) other books and records that clearly reflect all the acts and transactions of the board.

(b) The records of the board required to be kept under subsection (a) shall be open to examination during normal business hours.

Sec. 21. (a) The board may contract for the necessary office space, furniture, stationery, printing, and personnel services useful or necessary for the administration of this chapter.

(b) The total administrative costs and expenses of the board may not exceed five percent (5%) of the annual assessments collected under this chapter.

Sec. 22. (a) Obligations incurred by the board and other liabilities and claims against the board may be enforced only against the assets of the board in the same manner as if it were a corporation. No liabilities for the debts or actions of the board may arise against:

(1) the state;

(2) a political subdivision (as defined in IC 34-6-2-110); or

(3) a member, officer, employee, or agent of the board in an individual capacity.

(b) The members and employees of the board may not be held responsible individually to any person for errors in judgment, mistakes, or other acts either of commission or omission, as principal, agent, or employee, except for their own individual acts

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that result in the violation of any law.

(c) No employee of the board may be held responsible individually for the act or omission of a member of the board.

(d) Any liability of the members of the board is several and not joint. A member of the board may not be held liable for the default of another member.

Sec. 23. (a) The board shall file a report with the commissioner before October 1.

(b) The report required under subsection (a) must contain the following information:

(1) The income received from the assessments and penalties collected under this chapter for the preceding fiscal year.

(2) The expenditure of funds by the board during the year for the administration of this chapter.

(3) A brief description of all contracts requiring the expenditure of funds by the board and the action taken by the board on all such contracts.

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program.

(5) The name and address of each member of the board.

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

(c) The report required under subsection (a) shall be available to the public upon request.

Sec. 24. An assessment of ten cents (\$0.10) per hundredweight is imposed on all milk produced in Indiana for commercial use.

Sec. 25. A producer shall remit the assessment required under section 24 of this chapter to the board:

(1) not later than the last day of the month following the month in which the milk is commercially used; and

(2) together with a report in a form approved by the board detailing all assessments collected and remitted under this chapter.

Sec. 26. The board shall remit all assessments received under this chapter to the treasurer of state for deposit in the Indiana dairy industry development fund established by section 28 of this chapter.

Sec. 27. The board shall establish procedures for allowing a producer to direct the distribution of the producer's assessment to:

(1) the national dairy board; or



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(2) a qualified program other than the program chosen by the board.

Sec. 28. (a) The Indiana dairy industry development fund is established. The board shall administer the fund.

(b) 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 funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

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

(d) The board shall use the money in the fund to implement this chapter.

(e) The board may not use money in the fund to establish a program of its own but shall fund an active, ongoing, qualified program in Indiana as stated in 7 U.S.C. 4505, as amended, and the regulations adopted under that act. A qualified program that receives funds under this subsection may use the funds to jointly sponsor projects with any private or public organization to meet the objectives of this chapter, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs.

Sec. 29. A person who knowingly or intentionally violates this chapter commits a Class C misdemeanor.

Sec. 30. (a) The board shall add a penalty of one and one-half percent (1.5%) per month on an unpaid assessment, beginning with the day following the date the assessment was due. Any remaining amount due, including an unpaid penalty assessed under this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

(b) For purposes of this section, an assessment that was determined at a date later than prescribed by section 25 of this chapter because of the failure to submit a report to the board when due shall be considered to have been payable on the date it would have been due if the report had been timely filed.

(c) The timeliness of a payment to the board shall be based on:

- (1) the applicable postmarked date; or
- (2) the date actually received by the board;

whichever is earlier.

Sec. 31. The board may maintain a court action to collect assessments and late payment fees due under this chapter.

Sec. 32. The remedies provided in this chapter are in addition to other remedies provided by law or in equity.



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SECTION 2. [EFFECTIVE JANUARY 1, 2000 (RETROACTIVE)]

(a) As used in this SECTION, "board" has the meaning set forth in IC 15-6-4-1, as added by this act.

(b) As used in this SECTION, "commissioner" refers to the commissioner of agriculture or the commissioner's designee.

(c) As used in this SECTION, "producer" has the meaning set forth in IC 15-6-4-6, as added by this act.

(d) Notwithstanding IC 15-6-4-10 through IC 15-6-4-11, as added by this act, the commissioner shall, not later than thirty (30) days after the effective date of this act:

(1) determine:

(A) the percentage of the state's milk marketings produced by each producer registered with the state board of animal health or the United States Department of Agriculture; and

(B) the number of representatives, if any, each producer is entitled to have on the board; and

(2) inform each producer described in subdivision (1)(A) of the determinations made under subdivision (1).

(e) The commissioner shall make the determinations required under this SECTION based upon:

(1) the 1999 year-end milk marketing figures from the United States Department of Agriculture; and

(2) the formula prescribed under IC 15-6-4-12, as added by this act.

(f) Notwithstanding IC 15-6-4-12, as added by this act, the commissioner shall appoint the initial members of the board. Not later than thirty (30) days after receiving a notice from the commissioner under subsection (d), a producer or group of producers entitled to representation on the board may submit nominations to the commissioner for initial board members.

(g) A producer or group of producers may submit two (2) nominations for each initial board member to which the producer or group of producers is entitled.

(h) Not later than thirty (30) days after the close of the period for initial submission of nominations under subsection (g), the commissioner shall appoint initial board members from among the nominations made in accordance with IC 15-6-4-12, as added by this act.

(i) If a producer or group of producers entitled to representation on the initial board fails to submit a nomination, the commissioner may appoint any individual who meets the

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requirements of IC 15-6-4-9(c), as added by this act, to represent the producer or group of producers.

SECTION 3. [EFFECTIVE JANUARY 1, 2000 (RETROACTIVE)]

(a) Notwithstanding IC 15-6-4-13(a), as added by this act, the terms of the initial members of the dairy industry development board must be staggered so that:

(1) one-third (1/3) of the members are appointed for terms of one (1) year;

(2) one-third (1/3) of the members are appointed for terms of two (2) years; and

(3) one-third (1/3) of the members are appointed for terms of three (3) years.

(b) The commissioner of agriculture shall determine which members are to be appointed for a term of one (1) year, two (2) years, or three (3) years under subsection (a).

(c) This SECTION expires January 1, 2004.

SECTION 4. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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