

# HOUSE BILL No. 1265

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 15-7-10.

**Synopsis:** Agricultural marketing and production contracts. Defines agricultural marketing and production contracts. Requires agricultural marketing and production contracts to be in writing, be executed in good faith with full disclosure of all relevant information, and provide for resolution of complaints through arbitration or mediation. Specifies certain issues that must be addressed in agricultural marketing and production contracts.

**Effective:** July 1, 2000.

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**Friend, Lytle**

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January 11, 2000, read first time and referred to Committee on Judiciary.

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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 a statute 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 in writing.
- 24 (2) Be executed in good faith, with full disclosure of all
- 25 relevant information by each party.
- 26 (3) Provide for resolution of disputes regarding the contract
- 27 through arbitration or mediation.
- 28 (4) Include terms addressing the following issues:
- 29 (A) Transportation and delivery, including:
  - 30 (i) payment of transportation costs;
  - 31 (ii) delivery schedule;
  - 32 (iii) method of transportation;
  - 33 (iv) timing of delivery;
  - 34 (v) late delivery;
  - 35 (vi) delivery of quantity other than quantity agreed
  - 36 upon;
  - 37 (vii) delivery of quality other than quality agreed upon;
  - 38 (viii) risk of loss during transportation; and
  - 39 (ix) transportation to a location other than the location
  - 40 agreed upon.
- 41 (B) Payment, including:
  - 42 (i) basis of payment;



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- 1 (ii) payment method;  
 2 (iii) payment schedule;  
 3 (iv) effect of change in market price on contract price, if  
 4 any;  
 5 (v) penalty for late payment;  
 6 (vi) assignability of payments;  
 7 (vii) whether payment may be made copayable to  
 8 producer's lender; and  
 9 (viii) if the paying party is a subsidiary company, the  
 10 responsibility for payment of the paying party's parent  
 11 company.
- 12 (C) Termination of the contract, including:  
 13 (i) conditions under which each party may terminate the  
 14 contract, including determination of whether those  
 15 conditions are met;  
 16 (ii) notice required for termination;  
 17 (iii) opportunity to cure breach before termination; and  
 18 (iv) the rights of each party after termination of the  
 19 contract, including payment for work done before  
 20 termination and the producer's ability to buy the  
 21 commodity.
- 22 (D) Effect of acts of God on contract.
- 23 (E) Renewal of contract, including:  
 24 (i) conditions under which each party may renew the  
 25 contract, including determination of whether those  
 26 conditions are met; and  
 27 (ii) notice required for renewal.
- 28 (F) Legal relationship of parties under the contract.
- 29 (G) Other persons whose approval of the contract is  
 30 required, if any.
- 31 (H) Assignability of contract rights and responsibilities.
- 32 (I) Effect on contract of bankruptcy of either party.
- 33 (J) Effect on contract of change in ownership of either  
 34 party.
- 35 (K) Choice of law, if a party is not domiciled in Indiana.
- 36 (L) Venue.
- 37 (M) Duration of offer.
- 38 **Sec. 12. In addition to the terms required to be addressed under**  
 39 **section 11(4) of this chapter, a marketing contract must include**  
 40 **terms addressing the following issues:**  
 41 (1) Whether the processor has the right of first refusal on any  
 42 additional commodities of the producer available for delivery

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beyond those provided for in the contract.

(2) If the contract is for livestock:

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

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

(i) notice required; and

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

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

(A) ownership of account funds;

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

(C) determination of the value of the ledger;

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

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

(F) whether ledger account is callable;

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

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

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

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

**Sec. 13.** In addition to the terms required to be addressed under section 11(4) of this chapter, a production contract must include terms addressing the following issues:

(1) If the contract includes production incentive payments:

(A) conditions required to receive incentive payments;

(B) calculation of incentive payments; and

(C) timing of incentive payments.

(2) Whether the party that owns the agricultural commodity has already granted a lien against the commodity to a lender or a person other than the producer who is producing the commodity.

(3) If the contract requires the producer that is producing the commodity to construct a building, make improvements to an existing building, or purchase new equipment:

(A) exclusivity of use;

(B) timing of construction, improvement, or purchase,

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- 1 including any penalty for noncompliance;  
 2 (C) payment for construction, improvement, or purchase;  
 3 (D) depreciation;  
 4 (E) ownership;  
 5 (F) specifications for construction or improvement,  
 6 including responsibility for defects;  
 7 (G) payment for future modernization or upgrade; and  
 8 (H) obtaining necessary permits and approval for  
 9 construction or improvement, including payment of fees  
 10 and effect of nonapproval.
- 11 (4) Miscellaneous facility issues, including:  
 12 (A) payment of maintenance and repairs;  
 13 (B) insurance on structures used under contract;  
 14 (C) water source, including payment; and  
 15 (D) security measures, including payment.
- 16 (5) Access to facility.
- 17 (6) Minimum guaranteed occupancy, if any.
- 18 (7) Feed, including:  
 19 (A) provision of feed;  
 20 (B) assurance of feed quality;  
 21 (C) determination of feed rations and changes in rations;  
 22 (D) compensation for reduced feed efficiency due to  
 23 delayed marketing, if any;  
 24 (E) pricing of feed grown or raised by the producer who is  
 25 producing the commodity; and  
 26 (F) feed storage, drying, processing, and transportation or  
 27 other handling.
- 28 (8) Health of livestock, including:  
 29 (A) inspection of livestock upon delivery to the producer  
 30 that is producing the commodity, including whether either  
 31 party may choose a veterinarian to conduct the inspection;  
 32 (B) producer's right to reject livestock;  
 33 (C) responsibility for compliance with governmental  
 34 animal health regulations;  
 35 (D) risk of loss due to sickness or environmental factors,  
 36 including extreme weather conditions, while livestock are  
 37 at the producer's facility;  
 38 (E) responsibility of the owner of the livestock if unhealthy  
 39 livestock are brought to the producer and infect other  
 40 livestock on the producer's property;  
 41 (F) cost of poor performance of unhealthy or low quality  
 42 livestock;

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

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