April 4, 2003

ENGROSSED
HOUSE BILL No. 1571

DIGEST OF HB 1571 (Updated April 2, 2003 1:10 PM - DI 106)

Citations Affected: IC 15-4; noncode.

Synopsis: Seed contracts. Provides that a contract for the delivery of seed in Indiana or seed intended to be grown in Indiana is considered to contain certain provisions relating to: (1) the law under which the contract is interpreted; and (2) litigation concerning the contract or property rights in the seed. Provides a farmer a cause of action against a seed supplier that attempts to enforce certain rights purportedly arising under a seed contract that violates the statute. Amends the statute covering inspections under seed contracts to change certain definitions and inspection and notice provisions. Repeals a section of the statute relating to choice of law contract provisions.

Effective: July 1, 2003.

Grubb, Friend

(SENATE SPONSORS — HERSHMAN, LEWIS, JACKMAN)

January 16, 2003, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.
February 20, 2003, amended, reported — Do Pass.
February 26, 2003, read second time, amended, ordered engrossed.
February 27, 2003, engrossed. Read third time, passed. Yeas 69, nays 24.

SENATE ACTION

March 4, 2003, read first time and referred to Committee on Judiciary.
April 3, 2003, amended, reported favorably — Do Pass.

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April 4, 2003

First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1571

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:

SECTION 1. IC 15-4-13-3, AS ADDED BY P.L.175-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this chapter, "farmer" refers to a person who is engaged in commercial farming and who plants seed in Indiana under a seed contract for purposes of growing a commercial ~~grain~~ crop.

SECTION 2. IC 15-4-13-11, AS ADDED BY P.L.175-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) As used in this section, "commissioner" refers to the state seed commissioner designated under IC 15-4-1-2.

(b) A seed contract may not give or be interpreted to give a seed supplier or an agent of a seed supplier the right to enter real property owned or occupied by the farmer to acquire samples of the crop grown from the seed or any other plant growing on the real property unless all of the following apply:

(1) The seed supplier gives written notice to the farmer and the commissioner of the seed supplier's intent to enter the real

property. The notice must be given not later than five (5) business days before the day the seed supplier or the seed supplier's agent enters the real property. The notice must include the following information:

(A) The date and time of the entry upon the land.

(B) The purpose for the entry upon the land.

(2) The seed supplier must permit the farmer, the commissioner, or the agents of the farmer or the commissioner to accompany the seed supplier or the seed supplier's agent while samples are taken.

(3) The seed supplier must permit the farmer, the commissioner, or the agents of the farmer or the commissioner to take matching samples or receive split samples of any samples taken by the seed supplier.

(c) The seed supplier must provide reasonable cooperation to the farmer, the commissioner, or the agents of the farmer or the commissioner during the course of activities described in subsection ~~(a)(2)~~ **(b)(2)** and ~~(a)(3).~~ **(b)(3).**

(d) If the commissioner or an agent of the commissioner accompanies the seed supplier on the real property to take samples under this section, the seed supplier and the farmer shall each pay fifty percent (50%) of the reasonable costs incurred by the commissioner or the commissioner's agent, as determined by the commissioner, in connection with such activities.

(e) In an action on the seed contract between the seed supplier and the farmer, the prevailing party may recover the costs that the prevailing party paid under subsection (d) in addition to any other damages to which the prevailing party is entitled.

(f) A seed supplier may obtain an order from a court with jurisdiction authorizing the seed supplier or the seed supplier's agent to enter real estate owned or occupied by a farmer where seed that is the subject of a seed contract is growing. If the court issues such an order, the order ~~may~~ **must** require that if any samples are taken, matching or split samples must be taken by a person who is independent from the seed supplier.

(g) The commissioner may adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 15-4-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 14. Seed Contracts

Sec. 1. (a) Except as provided in section 2 of this chapter, this chapter applies to a seed contract for seed that is planted in

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Indiana.

(b) Other applicable Indiana law not in conflict with this chapter applies to a seed contract.

Sec. 2. This chapter does not apply to either of the following:

(1) A seed contract entered into before January 1, 2004.

(2) A production contract.

Sec. 3. The definitions set forth in IC 15-4-13 apply throughout this chapter.

Sec. 4. (a) The provisions of this chapter are considered to be a part of every seed contract.

(b) A seed contract is not required to contain or restate any provision of this chapter.

(c) A bag or other container used by the seed supplier to deliver the seed to the farmer is not required to bear a label or any other writing containing or restating any provision of this chapter. A provision found on a label or any other writing on a seed bag or container inconsistent with this chapter is not enforceable against a farmer.

(d) The failure of a seed supplier to state any provision of this chapter in a seed contract, on a label, or in any other writing on a seed bag or container is not considered a violation of this chapter.

Sec. 5. A provision of a seed contract in conflict with this chapter is void.

Sec. 6. A provision of a seed contract that purports to waive a provision of this chapter is void.

Sec. 7. A seed contract is governed by the laws of Indiana.

Sec. 8. If a seed contract purports to choose the laws of a jurisdiction other than Indiana to govern the contract, the choice is not enforceable.

Sec. 9. (a) This section applies only if a seed contract purports to choose a forum that would not otherwise have jurisdiction over the farmer.

(b) The forum selection provision must be printed conspicuously in immediate proximity to the space reserved for the signature of the farmer. For purposes of this subsection, a forum selection provision is printed conspicuously if any of the following apply:

(1) The provision is printed all in capitals, when other text is printed in capitals and lower case.

(2) The provision is printed in a larger, boldface, or other typeface different from other text.

(3) The provision is printed in a color that contrasts with other text.

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(4) The provision is underlined.

(5) The provision is printed in any other way that highlights the provision in relation to the other text of the contract.

(c) A forum selection provision that violates this section is not enforceable.

Sec. 10. Communications:

(1) between a farmer and:

(A) a member of the farmer's immediate family;

(B) an attorney;

(C) an accountant;

(D) a professional advisor; or

(E) a partner, an associate, or another individual engaged with the farmer in the farming enterprise for which the seed was purchased;

(2) regarding the terms of a seed contract; and

(3) made for the purpose of giving advice to the farmer;

are not a breach of a confidentiality provision in a seed contract.

Sec. 11. If:

(1) a product in which the seed supplier has rights is possessed by the farmer or found on real property owned or occupied by the farmer; and

(2) the presence of the product is de minimus or not intended by the farmer;

the farmer is not liable for breach of the seed contract.

SECTION 4. IC 15-4-13-10 IS REPEALED [EFFECTIVE JULY 1, 2003].

SECTION 5. [EFFECTIVE JULY 1, 2003] **(a) As used in this SECTION, "seed contract" has the meaning set forth in IC 15-4-13-6.**

(b) IC 15-4-13, as amended by this act, and IC 15-4-14, as added by this act, apply only to seed contracts entered into after June 30, 2003.

(c) This SECTION expires July 1, 2004.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1571, 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 3, delete lines 3 through 42, begin a new paragraph and insert:

"SECTION 4. IC 15-4-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 14. Seed Contracts

Sec. 1. (a) Except as provided in section 2 of this chapter, this chapter applies to a seed contract for seed that is planted in Indiana.

(b) Other applicable Indiana law not in conflict with this chapter applies to a seed contract.

Sec. 2. This chapter does not apply to either of the following:

(1) A seed contract entered into before January 1, 2004.

(2) A production contract.

Sec. 3. The definitions set forth in IC 15-4-13 apply throughout this chapter.

Sec. 4. (a) A seed contract is not enforceable against a farmer unless:

(1) the farmer; or

(2) an individual explicitly authorized by the farmer to sign the contract on the farmer's behalf;

has signed the contract.

(b) If a farmer or a person authorized by the farmer accepts delivery of seed before the farmer or an individual explicitly authorized by the farmer signs the seed contract, the following apply:

(1) There is an agreement between the farmer and the seed supplier consisting of the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing, usage of trade, or course of performance.

(2) The farmer is not bound by any written provision in the seed contract until the farmer or an individual explicitly authorized by the farmer signs the seed contract.

Sec. 5. (a) The provisions of this chapter are considered to be a part of every seed contract.

(b) A seed contract is not required to contain or restate any

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provision of this chapter.

(c) A bag or other container used by the seed supplier to deliver the seed to the farmer is not required to bear a label or any other writing containing or restating any provision of this chapter. A provision found on a label or any other writing on a seed bag or container inconsistent with this chapter is not enforceable against a farmer.

(d) The failure of a seed supplier to state any provision of this chapter in a seed contract, on a label, or in any other writing on a seed bag or container is not considered a violation of this chapter.

Sec. 6. A provision of a seed contract in conflict with this chapter is void.

Sec. 7. A provision of a seed contract that purports to waive a provision of this chapter is void.

Sec. 8. A seed contract is governed by the laws of Indiana.

Sec. 9. (a) If a seed contract purports to choose the laws of a jurisdiction other than Indiana to govern the contract, the choice is not enforceable.

(b) If a seed contract purports to choose a forum that would not otherwise have jurisdiction over the farmer, the choice is not enforceable.

Sec. 10. Communications:

(1) between a farmer and:

(A) a member of the farmer's immediate family;

(B) an attorney;

(C) an accountant;

(D) a professional advisor; or

(E) a partner, an associate, or another individual engaged with the farmer in the farming enterprise for which the seed was purchased;

(2) regarding the terms of a seed contract; and

(3) made for the purpose of giving advice to the farmer;

are not a breach of a confidentiality provision in a seed contract.

Sec. 11. If:

(1) a product in which the seed supplier has rights is possessed by the farmer or found on real property owned or occupied by the farmer; and

(2) the presence of the product is de minimus or not intended by the farmer;

the farmer is not liable for breach of the seed contract or violation of any of the seed supplier's property rights.

Sec. 12. (a) This section does not apply to a dispute between seed

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suppliers.

(b) A farmer has a right of action against a seed supplier if the seed supplier attempts to enforce against the farmer:

(1) contract rights arising under a seed contract that violates this chapter; or

(2) any property rights in seed provided under a seed contract that violates this chapter.

(c) If a farmer successfully prosecutes a claim or asserts a defense in an action filed under this section, the court shall, in addition to actual damages proven by the farmer, award to the farmer reasonable attorney's fees, reasonable litigation costs, and court costs if the court finds any of the following:

(1) The seed supplier brought the action on a claim or maintained a defense that is frivolous, unreasonable, or groundless.

(2) The seed supplier continued to litigate the action or defense after the seed supplier's claim or defense clearly became frivolous, unreasonable, or groundless.

(3) The seed supplier litigated the action in bad faith.".

Page 4, delete lines 1 through 28.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1571 as introduced.)

BISCHOFF, Chair

Committee Vote: yeas 9, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1571 be amended to read as follows:

Page 4, line 35, delete "contract" and insert "**contract.**".

Page 4, line 35, delete "**or violation**".

Page 4, delete line 36.

(Reference is to HB 1571 as printed February 12, 2003.)

FRIEND

HOUSE MOTION

Mr. Speaker: I move that House Bill 1571 be amended to read as follows:

Page 1, delete lines 7 through 14.

Page 3, delete lines 17 through 34.

Page 3, line 35, delete "5" and insert "**4**".

Page 4, line 6, delete "6" and insert "**5**".

Page 4, line 8, delete "7" and insert "**6**".

Page 4, line 10, delete "8" and insert "**7**".

Page 4, line 11, delete "9" and insert "**8**".

Page 4, line 17, delete "10" and insert "**9**".

Page 4, line 29, delete "11" and insert "**10**".

Page 4, line 37, delete "12" and insert "**11**".

Page 5, between lines 14 and 15, begin a new line blocked left and insert:

"**The court may also award punitive damages to the farmer in the court's discretion.**".

Page 5, line 19, delete ", as amended by this act." and insert "**.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1571 as printed February 21, 2003.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1571, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 27, delete "(a)".

Page 3, delete lines 30 through 32, begin a new paragraph and insert:

"**Sec. 9. (a) This section applies only if a seed contract purports to choose a forum that would not otherwise have jurisdiction over the farmer.**

(b) The forum selection provision must be printed conspicuously in immediate proximity to the space reserved for the signature of the farmer. For purposes of this subsection, a forum selection provision is printed conspicuously if any of the following apply:

(1) The provision is printed all in capitals, when other text is printed in capitals and lower case.

(2) The provision is printed in a larger, boldface, or other typeface different from other text.

(3) The provision is printed in a color that contrasts with other text.

(4) The provision is underlined.

(5) The provision is printed in any other way that highlights the provision in relation to the other text of the contract.

(c) A forum selection provision that violates this section is not enforceable.".

Page 3, line 33, delete "9." and insert "**10.**".

Page 4, line 3, delete "10." and insert "**11.**".

Page 4, delete lines 10 through 31.

and when so amended that said bill do pass.

(Reference is to HB 1571 as reprinted February 27, 2003.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 1.

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