February 6, 2009

HOUSE BILL No. 1524

DIGEST OF HB 1524 (Updated February 3, 2009 10:59 am - DI 77)

Citations Affected: IC 16-18; IC 16-42.

Synopsis: State egg board. Makes various changes to the law relating to the sale of eggs and the state egg board (board). Makes changes to definitions used with regard to the sale of eggs. Makes changes to the appointment process for members of the board. Allows the board to establish requirements and procedures to obtain a permit or registration. Allows the board to adopt rules to set fees. Requires certain egg producers who sell eggs at a farmers market to have a permit. Requires an out-of-state permit holder to reimburse the board for certain expenses relating to an audit. Requires a wholesaler to remit a permit fee penalty of the greater of ten percent of the fee or $20 if the wholesaler does not remit a report fee within ten days. (Current law provides that the wholesaler must remit a fee of 10% of the report fee if the wholesaler does not remit a report fee within ten days.) Makes related changes. Repeals certain provisions containing definitions.

Effective: July 1, 2009.

Goodin, Friend, Knollman

January 14, 2009, read first time and referred to Committee on Agriculture and Rural Development.
February 5, 2009, amended, reported — Do Pass.

C o p y

February 6, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1524

A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

SECTION 1. IC 16-18-2-105.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 105.5. "Eggs", for purposes of IC 16-42-11, has the meaning set forth in IC 16-42-11-1.1.**

SECTION 2. IC 16-18-2-319 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 319. "Retailer", for purposes of IC 16-42-11, has the meaning set forth in ~~IC 16-42-11-2.~~ **IC 16-42-11-1.1.**

SECTION 3. IC 16-18-2-374 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 374. (a) "Wholesaler", for purposes of IC 16-42-11, has the meaning set forth in ~~IC 16-42-11-3.~~ **IC 16-42-11-1.1.**

(b) "Wholesaler", for purposes of IC 16-42-19 and IC 16-42-21, has the meaning set forth in IC 16-42-19-10.

(c) "Wholesaler", for purposes of IC 16-41-32, has the meaning set forth in IC 16-41-32-13.

SECTION 4. IC 16-42-11-1.1 IS ADDED TO THE INDIANA

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.1. The following definitions apply throughout this chapter:**

(1) "Case" means thirty (30) dozen.

(2) "Eggs" means shell eggs represented as fresh or treated.

(3) "Farmers market" means a common facility where two (2) or more farmers or growers gather on a regular basis to sell farm products, which they produce, directly to the consumer.

(4) "Fresh eggs" means consumer grades of eggs as defined by the standards of quality and weights as set forth by the state egg board.

(5) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, regardless of whether the group is incorporated.

(6) "Retailer" means any person who sells eggs for human consumption and not for resale.

(7) "Treated eggs" means eggs that have been treated by a process such as pasteurization, irradiation, or other method of treatment that changes the interior quality of an egg in such a manner that United States Department of Agriculture quality standards do not apply.

(8) "Wholesaler" means any person engaged in buying eggs for human consumption for resale to retailers, hotels, restaurants, hospitals, nursing homes, schools, state or federal institutions, operators of multiple unit retail outlets engaged in the distribution of eggs to their own retail units, or producers who sell or deliver eggs to retailers, hotels, restaurants, hospitals, nursing homes, schools, or state or federal institutions.

SECTION 5. IC 16-42-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The state egg board is established. The board consists of nine (9) members appointed by the governor as follows:

(1) One (1) member from ~~a list of not less than three (3) persons submitted and recommended~~ **recommendations submitted** by the Indiana State Poultry Association, Inc.

(2) One (1) member from ~~a list of not less than three (3) persons submitted and recommended~~ **recommendations submitted** by the Indiana Farm Bureau, Inc.

(3) One (1) member from ~~a list of not less than three (3) persons submitted and recommended~~ **recommendations submitted** by the Indiana Retail ~~Grocers'~~ **Grocery and Convenience Store**

Copy

Association, Inc.

(4) One (1) member from ~~a list of not less than three (3) persons submitted and recommended~~ **recommendations submitted** by the Indiana Retail Council, Inc.

(5) One (1) member from ~~a list of not less than three (3) persons submitted and recommended~~ **recommendations submitted** by the Egg Council of the Indiana State Poultry Association, Inc.

(6) One (1) member from ~~a list of not less than three (3) persons submitted and recommended~~ **recommendations submitted** by the ~~trustees~~ **dean of the college of agriculture** of Purdue University. ~~as a representative of the office of agricultural research programs.~~

(7) One (1) member at large to represent the interests of the consumer.

(8) One (1) member to represent those engaged in the wholesaling of eggs through the Federal-State Egg Grading Program in Indiana.

(9) One (1) member to represent the interests of the food service industry.

(b) All appointments are for terms of three (3) years. However, an appointment to fill an unexpired term shall be made by the governor for the remainder of that term only.

(c) The recommendations provided for in this section shall be submitted to the governor within ten (10) days before an appointment is to be made to the state egg board. All appointments by the governor under this chapter shall be made within twenty (20) days after submission to the governor of the recommendations for appointments. If the recommendations are not submitted to the governor within the specified time, the governor shall make the appointment without the recommendations. **If the governor does not make an appointment to fill an expired term for a member described in subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) within twenty (20) days after receiving the recommendation, the current members of the state egg board may select an individual from the names submitted by an organization under subsection (a) to fill the position represented by that organization on the state egg board. The individual shall serve a three (3) year term beginning with the next official board meeting following the twenty (20) day deadline.**

(d) The members of the state egg board shall, before entering upon their duties, take and subscribe to the oath of office provided for other state officers. The oath of office shall be filed in the office of the secretary of state. The secretary of state shall administer the oath as a

C o p y

part of the duties of the office of secretary of state.

(e) The state egg board shall elect from its own membership the following officers:

(1) President.

(2) A vice president who serves in the president's absence or disability.

(3) Recording secretary.

The officers serve for one (1) year or until their successors are elected and qualified.

(f) Each member of the state egg board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(g) The state egg board shall provide a suitable office, equipment, supplies, and facilities for the conduct of the board's business.

SECTION 6. IC 16-42-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The state egg board shall administer, enforce, and carry out this chapter.

(b) The state egg board shall do the following:

(1) Formulate and determine standards of quality and weights of eggs sold or offered for sale. ~~as fresh eggs.~~

(2) Regulate the sale of and commerce in eggs sold or offered for sale at retail or wholesale ~~as fresh eggs~~ and regulate the sale of eggs by wholesalers and retailers.

(3) Formulate and publish definitions, names, and grades of ~~fresh~~ eggs and specifications for the care and handling of eggs that may be offered for sale at retail and wholesale ~~as fresh eggs~~ under the terms of this chapter and for the care and handling of eggs that may be offered for sale by wholesalers and retailers as eggs fit for human consumption.

(4) Provide for and issue permits to wholesalers or retailers of ~~fresh~~ eggs and provide for the registration of wholesalers and retailers of eggs.

(5) Adopt rules necessary for or incident to carrying out this chapter.

(6) Investigate and report violations of this chapter and violations of the rules of the state egg board to the proper authorities for prosecution.

(7) Revoke any registration or permit for a violation of this

C o p y

chapter or of the rules adopted by the state egg board.

(8) Hold four (4) regular meetings at quarterly intervals at the time and place the state egg board designates. The president of the state egg board may call special meetings of the state egg board whenever in the president's judgment it becomes necessary. The president shall call a special meeting of the state egg board upon written request of a majority of the members of the state egg board.

(9) The state egg board shall publish or cause to be published an annual report of the board's work. In addition, the state egg board may periodically publish or cause to be published and distributed other information concerning eggs.

SECTION 7. IC 16-42-11-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. A person may not sell, offer for sale, or advertise for sale at retail or wholesale ~~shell~~ eggs that do not meet the standards of quality and weight set forth by the state egg board.

SECTION 8. IC 16-42-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) Every person selling eggs to a retailer shall furnish ~~written~~ proof of delivery at the time of delivery showing:

(1) the date;

(2) the grades; and

(3) the quantity of the eggs;

according to the standards prescribed by the state egg board.

(b) A copy of the proof of delivery shall be kept on file by retailers at their respective places of business for thirty (30) days and at all reasonable times shall be available and open for inspection by accredited inspectors or representatives of the state egg board.

SECTION 9. IC 16-42-11-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.5. A farmer or bona fide egg producer who markets directly to the consumer at a location that is not the farmer's or producer's own premises and is recognized as a farmers market may be required to have a farmers market retail permit issued by the state egg board. The state egg board shall establish requirements and procedures for obtaining a farmers market retail permit by rule under IC 4-22-2.**

SECTION 10. IC 16-42-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) ~~As used in this section, "case" means thirty (30) dozen.~~ **Except as provided in section 10.2(d) of this chapter, this section applies to:**

C o p y

(1) registrations and permits issued by; and

(2) fees due and payable to;

the state egg board before July 1, 2010.

(b) Every wholesaler or retailer selling ~~shell~~ eggs shall, before July 1 of each year, file with the state egg board a statement setting forth the fact that the wholesaler or retailer desires to sell ~~fresh shell~~ eggs. The statement shall designate the name of the wholesaler or retailer desiring to register ~~and~~ the location of the wholesaler's or retailer's principal office **and any location where eggs are stored or distributed if that location is different from the principal office**. The state egg board shall furnish blank forms for registration. The state egg board shall register the facts set forth in the statement in a permanent record. The state egg board shall furnish to each registered wholesaler a registration number upon payment of the registration fee and deposit.

(c) The state egg board shall require and collect from each wholesaler at the time of registration a fee based upon the average number of cases of eggs sold to retailers, hotels, restaurants, hospitals, nursing homes, schools, or to state or federal institutions each week during the preceding calendar year, as follows:

Average Number of Cases Sold	Registration Fee
0 - 100	$ 30
101 - 250	$ 60
251 - 500	$ 90
501 - 1,000	$ 120
1,001 and over	$ 150

(d) The state egg board shall require and collect from each wholesaler at the time of registration a deposit equal to the product obtained by using a multiplier of six cents ($0.06) and a multiplicand that is the number of cases of eggs sold in that quarter of the immediately preceding five (5) calendar quarters in which the highest number of cases of eggs were sold by the wholesaler to retailers, hotels, restaurants, hospitals, nursing homes, schools, or to state or federal institutions. However, if the wholesaler does not have a five (5) quarter history, the state egg board shall fix the deposit at a reasonable amount.

(e) The state egg board shall require and collect from each retail store or unit of retailing a fee based upon the average number of cases of eggs sold each week during the preceding calendar year, as follows:

Average Number of Cases Sold	Registration Fee
1-5	$20
more than 5	$25

C o p y

(f) All registered wholesalers must make application to the state egg board for a permit to report the case volume of ~~shell~~ eggs sold in Indiana and submit a fee of six cents ($0.06) for each thirty (30) dozen eggs or a fraction of that number of the volume reported. In applying for a permit, the ~~wholesaler~~ **applicant** must agree to do the following:

(1) Keep records the state egg board considers necessary to indicate accurately the case volume of ~~shell~~ eggs sold in Indiana.

(2) Grant the state egg board permission to examine those records and verify the statement of the number and grade of eggs reported.

(3) Report under oath to the state egg board, on forms furnished by the state egg board, the number of eggs reported during the period covered.

~~(g) The state egg board may grant the permit if the board determines that the action will lead to efficient enforcement of this chapter. The state egg board may revoke the permit at any time if it appears to the state egg board that the wholesaler is not complying with the terms of the agreement entered into at the time of the issuance. The report of eggs is due and the fees are payable quarterly on the last day of the month following the end of the quarter. If:~~

~~(1) the report is not filed and the fee paid by the tenth day following the due date;~~

~~(2) the report is false; or~~

~~(3) the requirements of this chapter have not been complied with;~~

~~the state egg board may revoke the permit. If the fee is unpaid after the ten (10) day grace period, a penalty of ten percent (10%) in addition to the amount due shall be assessed.~~

SECTION 11. IC 16-42-11-10.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.2. (a) Except as provided in subsection (d), this section applies to:**

(1) registrations and permits issued by; and

(2) fees due and payable to;

the state egg board after June 30, 2010.

(b) The state egg board may establish requirements for issuing a permit or registration under this chapter by rule under IC 4-22-2.

(c) The state egg board may establish fees necessary to carry out this chapter by rule under IC 4-22-2.

(d) If a rule is not in effect by July 1, 2010, the fees and requirements for obtaining a registration or permit under section 10 of this chapter apply until the date the rule takes effect.

C o p y

SECTION 12. IC 16-42-11-10.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.4. The state egg board may grant a permit if the board determines that the action will lead to efficient enforcement of this chapter. The state egg board may revoke a permit at any time if it appears to the state egg board that a wholesaler is not complying with the terms of the agreement entered into at the time of the issuance. The report of eggs is due and the fees are payable quarterly on the last day of the month following the end of the quarter. If:**

(1) the report is not filed and the fee paid by the tenth day following the due date;

(2) the report is false; or

(3) the requirements of this chapter have not been complied with;

the state egg board may revoke the permit. If the fee is unpaid after the ten (10) day grace period, a penalty of the greater of twenty dollars ($20) or ten percent (10%) of the amount due in addition to the amount due shall be assessed. If the state egg board determines that an account review is necessary, out-of-state permit holders shall reimburse the state egg board for expenses incurred to conduct the account review.

SECTION 13. IC 16-42-11-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) A person may not sell as a wholesaler to a retailer, hotel, restaurant, hospital, nursing home, school, or state or federal institution ~~shell~~ eggs for human consumption that are not subject to being reported as provided in this chapter.

(b) A person operating multiple retail outlets may not distribute or deliver to retail units ~~shell~~ eggs for human consumption that are not subject to being reported as provided for in this chapter. A retail store or retail unit may not receive from a wholesaler ~~shell~~ eggs for human consumption that are not subject to being reported as provided for in this chapter.

SECTION 14. IC 16-42-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. The dean of **the college of** agriculture of Purdue University may, subject to the approval of the state egg board, employ an executive administrator, inspectors, clerks, and other assistants necessary to carry out this chapter under the direction and supervision of the state egg board. The inspectors shall inspect and examine eggs sold, offered for sale, or exposed for sale ~~as fresh eggs~~ and shall also inspect and examine eggs sold by wholesalers

C o p y

and retailers as fit for human consumption under this chapter at times and places and in the manner the state egg board directs.

SECTION 15. IC 16-42-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. The:

(1) members of the state egg board;

(2) dean of **the college of** agriculture of Purdue University; and

(3) employees of the state egg board;

are not liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this chapter.

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 16-18-2-50; IC 16-18-2-141; IC 16-42-11-1; IC 16-42-11-2; IC 16-42-11-3.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1524, 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 5, line 35, delete "is" and insert "**may be**".

Page 5, line 36, after "board." insert "**The state egg board shall establish requirements and procedures for obtaining a farmers market retail permit by rule under IC 4-22-2.**".

Page 5, line 38, reset in roman "(a)".

Page 5, line 39, after "dozen." insert "**Except as provided in section 10.2(d) of this chapter, this section applies to:**

(1) registrations and permits issued by; and

(2) fees due and payable to;

the state egg board before July 1, 2010.".

Page 5, line 40, reset in roman "(b)".

Page 5, line 40, delete "(a)".

Page 6, line 10, reset in roman "(c)".

Page 6, line 10, delete "(b)".

Page 6, reset in roman lines 17 through 21.

Page 6, delete lines 22 through 26.

Page 6, line 27, reset in roman "(d)".

Page 6, line 27, delete "(c)".

Page 6, line 29, reset in roman "six".

Page 6, line 29, delete "eleven".

Page 6, line 29, reset in roman "($0.06)".

Page 6, line 29, delete "($0.11)".

Page 6, line 36, delete "All registered wholesalers distributing less than".

Page 6, delete line 37.

Page 6, line 38, reset in roman "(e)".

Page 6, line 38, delete "(d) Except as provided in subsection (e), the" and insert "The".

Page 7, reset in roman lines 2 through 3.

Page 7, delete lines 4 through 10.

Page 7, line 13, reset in roman "six".

Page 7, line 13, delete "eleven".

Page 7, line 13, reset in roman "($0.06)".

Page 7, line 13, delete "($0.11)".

Page 7, delete lines 25 through 27.

Page 7, strike lines 28 through 39.

Page 7, line 40, strike "ten (10) day grace period, a penalty of".

C o p y

Page 7, line 40 delete "the greater of twenty dollars".

Page 7, line 41, delete "($20) or".

Page 7, line 41, strike "ten percent (10%) in addition to the amount due shall be".

Page 7, line 42, strike "assessed."

Page 7, line 42, delete "If the state egg board determines that an account review".

Page 8, delete lines 1 through 2, begin a new paragraph and insert:

"SECTION 11. IC 16-42-11-10.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.2. (a) Except as provided in subsection (d), this section applies to:**

(1) registrations and permits issued by; and

(2) fees due and payable to;

the state egg board after June 30, 2010.

(b) The state egg board may establish requirements for issuing a permit or registration under this chapter by rule under IC 4-22-2.

(c) The state egg board may establish fees necessary to carry out this chapter by rule under IC 4-22-2.

(d) If a rule is not in effect by July 1, 2010, the fees and requirements for obtaining a registration or permit under section 10 of this chapter apply until the date the rule takes effect.

SECTION 12. IC 16-42-11-10.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.4. The state egg board may grant a permit if the board determines that the action will lead to efficient enforcement of this chapter. The state egg board may revoke a permit at any time if it appears to the state egg board that a wholesaler is not complying with the terms of the agreement entered into at the time of the issuance. The report of eggs is due and the fees are payable quarterly on the last day of the month following the end of the quarter. If:**

(1) the report is not filed and the fee paid by the tenth day following the due date;

(2) the report is false; or

(3) the requirements of this chapter have not been complied with;

the state egg board may revoke the permit. If the fee is unpaid after the ten (10) day grace period, a penalty of the greater of twenty dollars ($20) or ten percent (10%) of the amount due in addition to the amount due shall be assessed. If the state egg board

C o p y

determines that an account review is necessary, out-of-state permit holders shall reimburse the state egg board for expenses incurred to conduct the account review.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1524 as introduced.)

PFLUM, Chair

Committee Vote: yeas 12, nays 0.

C o p y