

HOUSE BILL No. 1236

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-2-4; IC 6-2.5-8-7; IC 23-15-12.

Synopsis: Doing business or marketing as a cooperative. Provides that it is unlawful for a business entity that is not a cooperative or mutual entity to do the following: (1) Use the terms "cooperative", "co-op", or "mutual" or any derivative of those terms in a business entity name if the use of the term would create a substantial likelihood of misleading the public by implying that the business entity is a cooperative or mutual entity. (2) Advertise or represent the business entity to the public, its customers, or prospective customers as a cooperative or mutual entity or as an entity operating on a cooperative or mutual basis. Defines the term "cooperative or mutual entity". Requires the department of agriculture to regulate the use of the terms "cooperative", "co-op", and "mutual" and any derivative of those terms. Authorizes the revocation of a retail merchant's certificate and the use of civil penalties, administrative dissolution by the secretary of state, and administrative orders to enforce the restrictions on the use of the terms "cooperative", "co-op", and "mutual" and any derivative of those terms. Provides for judicial review of the proceedings of the department of agriculture and the secretary of state. Specifies that certain cooperative or mutual entities are not subject to the enforcement provisions of the bill. Provides that certain enforcement actions of the department of agriculture are not subject to the administrative orders and procedures act.

Effective: July 1, 2017.

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January 10, 2017, read first time and referred to Committee on Commerce, Small Business and Economic Development.



First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1236

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

- 1 SECTION 1. IC 4-21.5-2-4, AS AMENDED BY P.L.219-2007,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 4. (a) This article does not apply to any of the
4 following agencies:
5 (1) The governor.
6 (2) The state board of accounts.
7 (3) The state educational institutions.
8 (4) The department of workforce development.
9 (5) The unemployment insurance review board of the department
10 of workforce development.
11 (6) The worker's compensation board of Indiana.
12 (7) The military officers or boards.
13 (8) The Indiana utility regulatory commission.
14 (9) The department of state revenue (excluding an agency action
15 related to the licensure of private employment agencies).
16 (10) The department of local government finance.
17 (11) The Indiana board of tax review.



1 (b) This article does not apply to action related to railroad rate and
2 tariff regulation by the Indiana department of transportation.

3 (c) **This article does not apply to actions taken by the**
4 **department of agriculture under IC 23-15-12-11 through**
5 **IC 23-15-12-17.**

6 SECTION 2. IC 6-2.5-8-7, AS AMENDED BY P.L.242-2015,
7 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2017]: Sec. 7. (a) The department may, for good cause, revoke
9 a certificate issued under section 1, 3, or 4 of this chapter. However,
10 the department must give the certificate holder at least five (5) days
11 notice before it revokes the certificate under this subsection. Good
12 cause for revocation may include the following:

13 (1) Failure to:

14 (A) file a return required under this chapter or for any tax
15 collected for the state in trust; or

16 (B) remit any tax collected for the state in trust.

17 (2) Being charged with a violation of any provision under IC 35.

18 (3) Being subject to a court order under IC 7.1-2-6-7,
19 IC 32-30-6-8, IC 32-30-7, or IC 32-30-8.

20 The department may revoke a certificate before a criminal adjudication
21 or without a criminal charge being filed. If the department gives notice
22 of an intent to revoke based on an alleged violation of subdivision (2),
23 the department shall hold a public hearing to determine whether good
24 cause exists. If the department finds in a public hearing by a
25 preponderance of the evidence that a person has committed a violation
26 described in subdivision (2), the department shall proceed in
27 accordance with subsection (i) (if the violation resulted in a criminal
28 conviction) or subsection (j) (if the violation resulted in a judgment for
29 an infraction).

30 (b) The department shall revoke a certificate issued under section
31 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate
32 holder fails to:

33 (1) file the returns required by IC 6-2.5-6-1; or

34 (2) report the collection of any state gross retail or use tax on the
35 returns filed under IC 6-2.5-6-1.

36 However, the department must give the certificate holder at least five
37 (5) days notice before it revokes the certificate.

38 (c) The department may, for good cause, revoke a certificate issued
39 under section 1 of this chapter after at least five (5) days notice to the
40 certificate holder if:

41 (1) the certificate holder is subject to an innkeeper's tax under
42 IC 6-9; and



- 1 (2) a board, bureau, or commission established under IC 6-9 files
2 a written statement with the department.
- 3 (d) The statement filed under subsection (c) must state that:
4 (1) information obtained by the board, bureau, or commission
5 under IC 6-8.1-7-1 indicates that the certificate holder has not
6 complied with IC 6-9; and
7 (2) the board, bureau, or commission has determined that
8 significant harm will result to the county from the certificate
9 holder's failure to comply with IC 6-9.
- 10 (e) The department shall revoke or suspend a certificate issued
11 under section 1 of this chapter after at least five (5) days notice to the
12 certificate holder if:
13 (1) the certificate holder owes taxes, penalties, fines, interest, or
14 costs due under IC 6-1.1 that remain unpaid at least sixty (60)
15 days after the due date under IC 6-1.1; and
16 (2) the treasurer of the county to which the taxes are due requests
17 the department to revoke or suspend the certificate.
- 18 (f) The department shall reinstate a certificate suspended under
19 subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid
20 or the county treasurer requests the department to reinstate the
21 certificate because an agreement for the payment of taxes and any
22 penalties due under IC 6-1.1 has been reached to the satisfaction of the
23 county treasurer.
- 24 (g) The department shall revoke a certificate issued under section
25 1 of this chapter after at least five (5) days notice to the certificate
26 holder if the department finds in a public hearing by a preponderance
27 of the evidence that the certificate holder has violated IC 35-45-5-3,
28 IC 35-45-5-3.5, or IC 35-45-5-4.
- 29 (h) If a person makes a payment for the certificate under section 1
30 or 3 of this chapter with a check, credit card, debit card, or electronic
31 funds transfer, and the department is unable to obtain payment of the
32 check, credit card, debit card, or electronic funds transfer for its full
33 face amount when the check, credit card, debit card, or electronic funds
34 transfer is presented for payment through normal banking channels, the
35 department shall notify the person by mail that the check, credit card,
36 debit card, or electronic funds transfer was not honored and that the
37 person has five (5) days after the notice is mailed to pay the fee in cash,
38 by certified check, or other guaranteed payment. If the person fails to
39 make the payment within the five (5) day period, the department shall
40 revoke the certificate.
- 41 (i) If the department finds in a public hearing by a preponderance of
42 the evidence that a person has a conviction for a violation of



1 IC 35-48-4-10.5 and the conviction involved the sale of or the offer to
 2 sell, in the normal course of business, a synthetic drug or a synthetic
 3 drug lookalike substance by a retail merchant in a place of business for
 4 which the retail merchant has been issued a registered retail merchant
 5 certificate under section 1 of this chapter, the department:

6 (1) shall suspend the registered retail merchant certificate for the
 7 place of business for one (1) year; and

8 (2) may not issue another retail merchant certificate under section
 9 1 of this chapter for one (1) year to any person:

10 (A) that:

11 (i) applied for; or

12 (ii) made a retail transaction under;

13 the retail merchant certificate suspended under subdivision
 14 (1); or

15 (B) that:

16 (i) owned or co-owned, directly or indirectly; or

17 (ii) was an officer, a director, a manager, or a partner of;

18 the retail merchant that was issued the retail merchant
 19 certificate suspended under subdivision (1).

20 (j) If the department finds in a public hearing by a preponderance of
 21 the evidence that a person has a judgment for a violation of
 22 IC 35-48-4-10.5 as an infraction and the violation involved the sale of
 23 or the offer to sell, in the normal course of business, a synthetic drug
 24 or a synthetic drug lookalike substance by a retail merchant in a place
 25 of business for which the retail merchant has been issued a registered
 26 retail merchant certificate under section 1 of this chapter, the
 27 department:

28 (1) may suspend the registered retail merchant certificate for the
 29 place of business for six (6) months; and

30 (2) may withhold issuance of another retail merchant certificate
 31 under section 1 of this chapter for six (6) months to any person:

32 (A) that:

33 (i) applied for; or

34 (ii) made a retail transaction under;

35 the retail merchant certificate suspended under subdivision
 36 (1); or

37 (B) that:

38 (i) owned or co-owned, directly or indirectly; or

39 (ii) was an officer, a director, a manager, or a partner of;

40 the retail merchant that was issued the retail merchant
 41 certificate suspended under subdivision (1).

42 **(k) The department shall revoke a certificate issued under**



1 section 1, 3, or 4 of this chapter after at least five (5) days notice to
 2 the certificate holder if the department receives a notice from the
 3 department of agriculture that the certificate holder has violated
 4 IC 23-15-12-4(b).

5 SECTION 3. IC 23-15-12 IS ADDED TO THE INDIANA CODE
 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2017]:

8 **Chapter 12. Use of "Cooperative" in Business Entity Name or**
 9 **Marketing Materials**

10 **Sec. 1. As used in this chapter, "business entity" means:**

- 11 (1) a corporation;
 12 (2) a limited liability company;
 13 (3) an association;
 14 (4) a partnership in any form; or
 15 (5) any other similar form of business organization regardless
 16 of whether the organization is organized for profit or not for
 17 profit.

18 **Sec. 2. As used in this chapter, "cooperative or mutual entity"**
 19 **means:**

- 20 (1) a corporation formed under IC 8-1-13;
 21 (2) a cooperative corporation formed under IC 8-1-17;
 22 (3) an association organized under IC 15-12-1;
 23 (4) a mutual insurance company formed under IC 27-5.1 or
 24 the laws of another state;
 25 (5) a state or federally chartered credit union;
 26 (6) any state or federally organized financial institution that
 27 is mutually owned;
 28 (7) a nonprofit corporation organized as a mutual benefit
 29 corporation formed under IC 23-17;
 30 (8) any cooperative or mutually owned entity organized under
 31 the laws of another state or federal law; or
 32 (9) a business entity:
 33 (A) in which the members are buyers of goods or services
 34 from, or sellers of goods or services to, the entity;
 35 (B) that is characterized as being democratically governed
 36 because each member has one (1) vote;
 37 (C) that distributes profits or surplus on the basis of use
 38 rather than on the basis of capital contributions or
 39 ownership; and
 40 (D) that pays a limited return of less than eight percent
 41 (8%) on preferred equity.

42 **Sec. 3. The department of agriculture has the following powers**



1 and duties under this chapter:

2 (1) The department of agriculture may enforce section 4(b) of
3 this chapter against a business entity that improperly holds
4 itself out as a cooperative or mutual entity.

5 (2) The department of agriculture shall assist the secretary of
6 state in enforcing section 4(b) of this chapter against a
7 business entity that improperly uses the term:

8 (A) "cooperative";

9 (B) "co-op"; or

10 (C) "mutual";

11 or a derivative of a term listed in clauses (A) through (C) in a
12 new filing or an amendment changing the name of the
13 business entity.

14 Sec. 4. (a) This section does not apply to an entity described in
15 section 2(1) through 2(7) of this chapter.

16 (b) It is unlawful for a business entity that is not a cooperative
17 or mutual entity to:

18 (1) use the term:

19 (A) "cooperative";

20 (B) "co-op"; or

21 (C) "mutual";

22 or a derivative of a term listed in clauses (A) through (C) as
23 part of the name or title of the business entity if the use of the
24 term would create a substantial likelihood of misleading the
25 public by implying that the business entity is a cooperative or
26 mutual entity; or

27 (2) advertise or represent the business entity to the public, its
28 customers, or prospective customers:

29 (A) as a cooperative or mutual entity; or

30 (B) as an entity operating on a cooperative or mutual basis.

31 Sec. 5. (a) The department of agriculture may investigate the
32 business affairs of any business entity that uses a term listed or
33 described in section 4(b) of this chapter in its name or title or
34 represents itself as a cooperative or mutual entity for the purpose
35 of determining whether the business entity is violating any of the
36 provisions of this chapter. The department of agriculture may
37 examine any person and the partners, officers, members, or agents
38 of the business entity under oath, subpoena witnesses, and require
39 the production of the books, records, papers, and effects considered
40 necessary. A business entity investigated under this subsection shall
41 grant the department of agriculture and its agents access to any
42 and all of the books, records, papers, and effects of the business



1 entity. On application of the department of agriculture, the circuit
2 or superior court of:

3 (1) the county in which the business entity maintains a place
4 of business;

5 (2) the county containing the office of the business entity's
6 registered agent, if it does not have a place of business in
7 Indiana; or

8 (3) Marion County, if the business entity has neither a place
9 of business nor a registered agent in Indiana;

10 shall, by proper proceedings, enforce the attendance and testimony
11 of witnesses and the production and examination of books, records,
12 papers, and effects.

13 (b) A business entity that violates section 4(b)(1) of this chapter
14 is subject to a penalty of five hundred dollars (\$500) per day for
15 each day during which the violation continues. The penalty
16 imposed must be recovered through a civil action in the name of
17 the state on relation of the department of agriculture. A civil
18 penalty recovered under this subsection must be paid into the state
19 general fund.

20 Sec. 6. (a) If a new filing or an amendment changing the name
21 of a business entity (including any registration as a foreign business
22 entity) from an entity other than an entity described in section 2(1)
23 through 2(7) of this chapter is received by the secretary of state,
24 and the business entity name set forth in the new filing or the
25 amendment contains the term:

26 (1) "cooperative";

27 (2) "co-op"; or

28 (3) "mutual";

29 or a derivative of a term listed in subdivisions (1) through (3), the
30 secretary of state shall forward the filing or amendment to the
31 department of agriculture to review the use of the term.

32 (b) The department of agriculture shall:

33 (1) review each document forwarded to the department under
34 subsection (a) for compliance with section 4(b) of this chapter;
35 and

36 (2) notify the secretary of state of the department's
37 determination.

38 (c) The secretary of state may not file a document forwarded to
39 the department of agriculture under subsection (a) until after the
40 secretary of state receives notification under subsection (b)(2) that
41 the document complies with section 4(b) of this chapter.

42 Sec. 7. If the department of agriculture determines through a



1 review of a:

- 2 (1) filing received under section 6 of this chapter;
 3 (2) consent agreement under section 13 of this chapter; or
 4 (3) final order under section 14 of this chapter;

5 that a business entity has violated section 4(b) of this chapter, the
 6 department of agriculture shall notify the secretary of state and the
 7 department of state revenue of the violation.

8 Sec. 8. (a) This section does not apply to an entity described in
 9 section 2(1) through 2(7) of this chapter.

10 (b) The secretary of state shall commence a proceeding under
 11 this section to administratively dissolve a business entity if:

12 (1) the name of the business entity contains the term:

13 (A) "cooperative";

14 (B) "co-op"; or

15 (C) "mutual";

16 or a derivative of a term listed in clauses (A) through (C); and

17 (2) the secretary of state has been notified by the department
 18 of agriculture of the determination that the business entity is
 19 in violation of section 4(b) of this chapter.

20 (c) If the secretary of state commences an administrative
 21 dissolution under subsection (b), the secretary of state shall serve
 22 the business entity with written notice of the determination made
 23 by the department of agriculture that the business entity is in
 24 violation of section 4(b) of this chapter. The notice must inform the
 25 business entity that it must do either of the following not later than
 26 sixty (60) days after the date service of the notice is perfected:

27 (1) Correct the grounds for dissolution.

28 (2) Demonstrate to the reasonable satisfaction of the
 29 department of agriculture that the grounds for dissolution do
 30 not exist.

31 The secretary of state shall, at the same time notice is sent to the
 32 business entity, provide a copy of the notice to the department of
 33 agriculture.

34 (d) If a business entity that receives a written notice under
 35 subsection (c) does not:

36 (1) correct the grounds for dissolution; or

37 (2) demonstrate to the reasonable satisfaction of the
 38 department of agriculture that the grounds for dissolution do
 39 not exist;

40 at any time during the period prescribed by the notice, the
 41 department of agriculture shall notify the secretary of state in
 42 writing of the continuing violation. After receiving the written



1 notice from the department of agriculture of the continuing
 2 violation, the secretary of state shall administratively dissolve the
 3 business entity by signing a certificate of dissolution that recites the
 4 grounds for dissolution and the effective date of the dissolution.
 5 The secretary of state shall file the original certificate of dissolution
 6 and serve a copy of the certificate of dissolution on the business
 7 entity.

8 (e) A business entity administratively dissolved under this
 9 section may carry on only those activities necessary to appeal the
 10 administrative dissolution or to wind up and liquidate the business
 11 entity's affairs.

12 (f) Administrative dissolution under this section is in addition to
 13 any penalties imposed upon the business entity under this chapter
 14 or IC 6-2.5-8-7.

15 **Sec. 9. (a)** A business entity administratively dissolved under
 16 section 8 of this chapter may appeal the administrative dissolution
 17 to the circuit court or superior court of:

18 (1) the county in which the business entity maintains a place
 19 of business;

20 (2) the county containing the office of the business entity's
 21 registered agent, if it does not have a place of business in
 22 Indiana; or

23 (3) Marion County, if the business entity has neither a place
 24 of business nor a registered agent in Indiana;

25 not later than thirty (30) days after the date service of the notice of
 26 administrative dissolution is perfected.

27 (b) The court may do the following:

28 (1) Order the secretary of state to reinstate the dissolved
 29 business entity.

30 (2) Take other action the court considers appropriate.

31 (c) The court's final decision may be appealed as in other civil
 32 proceedings.

33 **Sec. 10. (a)** Except as provided in subsection (b), IC 4-21.5 does
 34 not apply to a proceeding under sections 11 through 17 of this
 35 chapter.

36 (b) IC 4-21.5-5 applies to judicial review of a final order of the
 37 department of agriculture under sections 11 through 17 of this
 38 chapter.

39 **Sec. 11. (a)** This section does not apply to an entity described in
 40 section 2(1) through 2(7) of this chapter.

41 (b) If the director of the department of agriculture has
 42 reasonable cause to believe that a business entity has violated, is



1 violating, or will violate section 4(b) of this chapter, the director
2 may:

- 3 (1) serve upon the business entity or its registered agent
4 written notice of the charged violation; or
5 (2) enter into a consent agreement with the business entity
6 under section 13 of this chapter.

7 Sec. 12. (a) A written notice served under section 11 of this
8 chapter must:

- 9 (1) contain a statement of the facts constituting the alleged
10 violation;
11 (2) state the director's intention to enter a final order under
12 section 14 of this chapter;
13 (3) specify:
14 (A) that the business entity may request a hearing to
15 contest the facts alleged; and
16 (B) the procedures that must be followed to initiate a
17 hearing under subsection (b); and
18 (4) be delivered to the business entity or its registered agent.

19 (b) If a hearing is requested not later than ten (10) days after
20 service of the written notice, the department of agriculture shall
21 hold a hearing concerning the alleged violation of section 4(b) of
22 this chapter.

23 Sec. 13. If the director of the department of agriculture enters
24 into a consent agreement with a business entity accepting a final
25 order under section 14 of this chapter, the director is not required
26 to serve a written notice of violation upon the business entity under
27 section 11 of this chapter. A consent agreement may be negotiated
28 and entered into before or after written notice of a violation is
29 served upon a business entity.

30 Sec. 14. (a) If, after a hearing held under section 12(b) of this
31 chapter, the department of agriculture finds that the violations
32 specified in section 4(b) of this chapter have been established, the
33 department may issue a final order. If a hearing is not requested
34 within the time specified in section 12(b) of this chapter, the
35 director may issue a final order on the basis of the facts set forth
36 in the written notice served under section 12(a) of this chapter.

37 (b) Unless the director has entered into a consent agreement
38 described in section 13 of this chapter, a final order must include
39 separately stated findings of fact and conclusions of law for all
40 aspects of the order.

41 (c) A final order may do any of the following:

- 42 (1) Require the business entity and its directors, officers,



1 employees, and agents to do either of the following:

2 (A) Cease and desist from the practice or violation.

3 (B) Take affirmative action to correct the conditions
4 resulting from the practice or violation.

5 (2) Impose a civil penalty not to exceed the amount specified
6 in section 5(b) of this chapter.

7 (d) A final order must be issued in writing not later than ninety
8 (90) days after conclusion of a hearing held under section 12(b) of
9 this chapter, unless this period is waived or extended with the
10 written consent of all parties or for good cause shown.

11 (e) If the business entity does not appear by an authorized
12 representative at a hearing held under section 12(b) of this chapter,
13 the business entity is considered to have consented to the issuance
14 of a final order.

15 Sec. 15. (a) A final order issued under this chapter is effective:

16 (1) on the date specified in the order; or

17 (2) ten (10) days after service of the order, if an effective date
18 is not specified in the order.

19 (b) A final order remains effective and enforceable as provided
20 in the order.

21 (c) The department of agriculture or a reviewing court may
22 stay, modify, or vacate a final order.

23 Sec. 16. The department of agriculture shall maintain an official
24 record of a proceeding conducted under this chapter.

25 Sec. 17. The director of the department of agriculture may
26 enforce either of the following by applying for appropriate relief
27 to a court having jurisdiction:

28 (1) An order issued under this chapter.

29 (2) A written agreement entered into by the business entity
30 and the department of agriculture or the director.

