

SENATE BILL No. 308

By Committee on Ways and Means

2-12

AN ACT concerning agriculture; enacting the Kansas producer protection act; prescribing penalties for violations thereof.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The provisions of this act shall be known and may be cited as the Kansas producer protection act.

Sec. 2. As used in this act:

(a) "Active contractor" means a person who owns a commodity that is produced by a contract producer at the contract producer's contract operation according to a production contract;

(b) "agricultural contract" means a production contract;

(c) "animal feeding operation" means a lot, corral, building or other area in which livestock is confined and fed. An animal feeding operation does not include a livestock market;

(d) "capital investment" means an investment in one of the following:

(1) A structure, such as a building or manure storage structure; or

(2) machinery or equipment associated with producing a commodity which has a useful life in excess of one year;

(e) "commodity" means livestock, raw milk or a crop;

(f) "confinement feeding operation" means an animal feeding operation in which livestock is confined to areas which are totally roofed;

(g) "contract crop field" means farmland located in this state where a crop is produced according to a production contract by a contract producer who owns or leases the farmland;

(h) "contract livestock facility" means an animal feeding operation located in this state in which livestock or raw milk is produced according to a production contract by a contract producer who holds a legal interest in the animal feeding operation. Contract livestock facility includes a confinement feeding operation, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed;

(i) "contract operation" means a contract livestock facility or a contract crop field;

(j) "contract producer" means a producer who holds a legal interest in a contract operation and who produces a commodity under a produc-

1 tion contract;

2 (k) “contractor” means a person who is an active contractor or a pas-
3 sive contractor;

4 (l) “crop” means a plant used for food, animal feed, fiber, oil, phar-
5 maceuticals, nutraceuticals or seed, including but not limited to, alfalfa,
6 barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum,
7 soybeans, sunflowers, tobacco, wheat and grasses used for forage or silage;

8 (m) “farmland” means agricultural land that is suitable for use in
9 farming;

10 (n) “investment requirement” means a provision in a contract which
11 requires the contract producer to make capital investments associated
12 with producing a commodity subject to a production contract. The pro-
13 visions may be included as part of one or more oral or written agreements
14 or contracts, and may be included as part of a production contract;

15 (o) “livestock” means beef cattle, dairy cattle, poultry, sheep or swine;

16 (p) “open feedlot” means an unroofed or partially roofed animal feed-
17 ing operation in which no crop, vegetation or forage growth or residue
18 cover is maintained during the period that livestock is confined in the
19 operation;

20 (q) “passive contractor” means a person who furnishes management
21 services to a contract producer and who does not own a commodity that
22 is produced by the contract producer at the contract producer’s contract
23 operation according to a production contract;

24 (r) “processor” means a person engaged in the business of manufac-
25 turing goods from commodities, including slaughtering or processing live-
26 stock, processing raw milk or processing crops;

27 (s) “produce” means to do any of the following:

28 (1) Provide feed or services relating to the care and feeding of live-
29 stock. If the livestock is dairy cattle, then produce includes milking the
30 dairy cattle and storing raw milk;

31 (2) provide for planting, raising, harvesting and storing a crop. Pro-
32 duce includes preparing the soil for planting and nurturing the crop by
33 the application of fertilizers or soil conditioners or pesticides;

34 (t) “producer” means a person who produces a commodity, including
35 but not limited to, a contract producer. Producer does not include a com-
36 mercial fertilizer or pesticide applicator, a feed supplier or a veterinarian,
37 when acting in such capacity;

38 (u) “production contract” means an oral or written agreement that
39 provides for the production of a commodity or the provision of manage-
40 ment services relating to the production of a commodity by a contract
41 producer. A production contract is executed when it is signed or orally
42 agreed to by each party to the contract or by a person authorized to act
43 on the party’s behalf; and

1 (v) “secretary” means the secretary of the Kansas department of
2 agriculture.

3 Sec. 3. (a) This act applies to production contracts that relate to the
4 production of a commodity owned by an active contractor and produced
5 by a contract producer at the contract producer’s contract operation, if
6 one of the following applies:

7 (1) The production contract is executed by an active contractor and
8 a contract producer for the production of the commodity;

9 (2) the production contract is executed by an active contractor and a
10 passive contractor for the provision of management services to the con-
11 tract producer in the production of the commodity; or

12 (3) the production contract is executed by a passive contractor and a
13 contract producer, if all of the following apply:

14 (A) The contract provides for management services furnished by the
15 passive contractor to the contract producer in the production of the com-
16 modity; and

17 (B) the passive contractor has a contractual relationship with the ac-
18 tive contractor involving the production of the commodity.

19 (b) This act shall not apply to:

20 (1) Cooperative marketing contracts as defined in K.S.A. 17-1616,
21 and amendments thereto;

22 (2) collective bargaining units; and

23 (3) forward cash sale contracts in which the producer agrees to de-
24 liver a certain quantity of grain or hay during a certain period of time at
25 a specified price and the producer retains ownership of the crop until it
26 is delivered to the grain purchaser.

27 Sec. 4. An agricultural contract imposes an obligation of good faith,
28 as defined in K.S.A. 84-1-201, and amendments thereto, on all parties
29 with respect to the performance and enforcement of the agricultural
30 contract.

31 Sec. 5. An agricultural contract must be accompanied by a clear writ-
32 ten disclosure statement setting forth the nature of the material risks
33 faced by the producer if the producer enters into the contract. The state-
34 ment may be in the form of a written statement or checklist and may be
35 developed in cooperation with producers or producer organizations.

36 Sec. 6. A contract producer may cancel a production contract by
37 mailing a written cancellation notice to the contractor within three busi-
38 ness days after the contract is executed, or before a later cancellation
39 deadline if a later deadline is specified in the contract. The contract pro-
40 ducer’s right to cancel, the method by which the contract producer may
41 cancel, and the deadline for canceling the production contract shall be
42 clearly disclosed in every production contract.

43 Sec. 7. (a) A contractor or processor shall not on or after the effective

1 date of this act, enforce a provision in an agricultural contract if the pro-
2 vision provides that information contained in the agricultural contract is
3 confidential.

4 (b) A provision which is part of an agricultural contract is void if the
5 provision states that information contained in th agricultural contract is
6 confidential. The confidentiality provision is void whether the confiden-
7 tiality provision is expressed or implied; oral or written; required or con-
8 ditional; or contained in the agricultural contract, another agricultural
9 contract, or in a related document, policy or agreement. This section does
10 not affect other provisions of an agricultural contract or a related docu-
11 ment, policy or agreement which can be given effect without the voided
12 provision. This section does not require a party to an agricultural contract
13 to divulge information in the agricultural contract to another person.

14 Sec. 8. (a) This section only applies to a production contract executed
15 by a contract producer and a contractor, if the contract producer must
16 make capital investments of \$50,000 or more according to investment
17 requirements provided in all production contracts in which the contract
18 producer and the contractor are parties. The value of the capital invest-
19 ments shall be deemed to be the total dollar amount spent by the contract
20 producer in satisfying the investment requirements, if that amount is
21 ascertainable.

22 (b) Except as provided in subsection (d), a contractor shall not ter-
23 minate, cancel or fail to renew a production contract until the contractor
24 has done the following:

25 (1) The contractor has provided the contract producer written notice
26 of the intention to terminate, cancel, or not renew at least 90 days before
27 the effective date of the termination, cancellation or nonrenewal; and

28 (2) the contract producer has been reimbursed for damages incurred
29 due to the termination, cancellation or failure to renew. Damages shall
30 be based on the value of the remaining useful life of the structures, ma-
31 chinery or equipment involved.

32 (c) Except as provided in subsection (d), if a contract producer ma-
33 terially breaches a production contract, including the investment require-
34 ments of a production contract, a contractor may not terminate, cancel
35 or fail to renew the production contract until the following have occurred:

36 (1) The contractor has provided a written notice of termination, can-
37 cellation or nonrenewal at least 45 days before the effective date of such
38 termination, cancellation or nonrenewal. The notice must provide a list
39 of complaints alleging causes for the breach; and

40 (2) the contract producer fails to remedy each cause of the breach as
41 alleged in the list of complaints provided in the notice within 30 days
42 following receipt of the notice. An effort by a contract producer to remedy
43 a cause of an alleged breach shall not be construed as an admission of a

1 breach in a civil cause of action.

2 (d) A contractor may terminate, cancel or fail to renew a production
3 contract without notice or remedy as required in subsections (b) and (c)
4 if the basis for the termination, cancellation or nonrenewal is any of the
5 following:

6 (1) A voluntary abandonment of the contractual relationship by the
7 contract producer. A complete failure of a contract producer's perform-
8 ance under a production contract shall be deemed to be abandonment;
9 and

10 (2) the conviction of a contract producer of an offense of fraud or
11 theft committed against the contractor.

12 (e) If a contractor terminates, cancels or fails to renew a production
13 contract other than provided in this section, the contractor shall pay the
14 contract producer the value of the remaining useful life of the structures,
15 machinery or equipment involved.

16 Sec. 9. (a) As used in this section:

17 (1) "Contract input" means a commodity or an organic or synthetic
18 substance or compound that is used to produce a commodity, including
19 but not limited to, any of the following:

20 (A) Livestock or plants;

21 (B) agricultural seeds;

22 (C) semen or eggs for breeding livestock; and

23 (D) a fertilizer or pesticide.

24 (2) "Producer right" means one of the following legal rights and
25 protections:

26 (A) The right of a producer to join or belong to, or to refrain from
27 joining or belonging to, an association of producers;

28 (B) the right of a producer to enter into a membership agreement
29 with an association of producers, a processor or another producer and the
30 right of the producer to exercise contractual rights under such a mem-
31 bership agreement;

32 (C) the right of a producer to lawfully provide statements or infor-
33 mation regarding alleged improper actions or violations of law by a con-
34 tractor or processor. This right does not include the right to make state-
35 ments or provide information if the statements or information are
36 determined to be libelous or slanderous;

37 (D) the right of a contract producer to utilize protections to review
38 production contracts under section 6, and amendments thereto;

39 (E) the right of a producer to disclose the terms of agricultural con-
40 tracts under section 7, and amendments thereto;

41 (F) the right of a producer to enforce other protections afforded by
42 this act or other laws or regulations;

43 (G) the right of a producer to refuse to accept delivery of unhealthy

1 or otherwise defective livestock; and

2 (H) the right of a producer to require the use of state inspected scales
3 for weights used to determine contract payments.

4 (b) It shall be unlawful for any contractor or processor knowingly to
5 engage or permit any employee or agent to engage in the following prac-
6 tices in connection with agricultural contracts:

7 (1) To take actions to coerce, intimidate, disadvantage, retaliate
8 against or discriminate against any producer because the producer exer-
9 cises or attempts to exercise, any producer right, including actions af-
10 fecting the following:

11 (A) The execution, termination, extension or renewal of an agricul-
12 tural contract;

13 (B) the treatment of a producer, which may include providing dis-
14 criminatory or preferential terms in an agricultural contract or interpret-
15 ing terms of an existing agricultural contract in a discriminatory or pref-
16 erential manner. The terms may relate to the price paid for a commodity;
17 the quality or the quantity of a commodity demanded; or financing, in-
18 cluding investment requirements;

19 (C) the grant of a reward or imposition of a penalty, including the
20 denial of a reward. The reward or penalty may be in any form, including
21 but not limited to, financial rewards or penalties. Financial rewards or
22 penalties may relate to loans, bonuses or inducements; and

23 (D) alter the quality, quantity or delivery times of contract inputs
24 provided to the producer.

25 (2) To provide false information to the producer, which may include
26 false information relating to any of the following:

27 (A) A producer with whom the producer associates or an association
28 of producers or an agricultural organization with which the producer is
29 affiliated, including but not limited to, any of the following:

30 (i) The character of the producer; or

31 (ii) the condition of the finances or the management of the association
32 of producers or agricultural organization; or

33 (B) producer rights provided by this act or other provisions of law.

34 (3) To refuse to provide to a contract producer upon request the
35 statistical information and data used to determine compensation paid to
36 the contract producer under a production contract, including, but not
37 limited to, feed conversion rates, feed analyses, origination and breeder
38 history.

39 (4) To refuse to allow a contract producer or the contract producer's
40 designated representative to observe, by actual observation at the time of
41 weighing, the weights and measures used to determine the contract pro-
42 ducer's compensation under a production contract.

43 (5) To use the performance of any other contract producer to deter-

1 mine the compensation of a contract producer under a production con-
2 tract or as the basis of the termination, cancellation or renewal of a pro-
3 duction contract.

4 (6) To require a contract producer to make new or additional capital
5 investments in connection with, or to retain, continue or renew, a pro-
6 duction contract which are beyond the investment requirements of such
7 production contract. It shall not be a violation of this section if such new
8 or additional capital investments are partially paid for by the contractor
9 or offset by other compensation or modifications to contract terms, in a
10 manner the contract producer agrees to in writing as constituting ac-
11 ceptable and satisfactory consideration for the new capital investment.

12 (7) To execute an agricultural contract which includes a confidenti-
13 ality provision in violation of section 7, and amendments thereto.

14 (8) To execute an agricultural contract which includes a waiver of any
15 producer right or any obligation of a contractor or processor established
16 under this act.

17 (9) To execute an agricultural contract requiring the application of
18 the law of another state in lieu of this act.

19 Sec. 10. Any provision of an agricultural contract which waives a pro-
20 ducer right or an obligation of a contractor or processor established by
21 this act is void and unenforceable. This section does not affect other
22 provisions of an agricultural contract, including an agricultural contract
23 or related document, policy or agreement which can be given effect with-
24 out the voided provision.

25 Sec. 11. Any condition, stipulation or provision requiring the appli-
26 cation of the law of another state in lieu of this act is void and
27 unenforceable.

28 Sec. 12. (a) A contractor or processor committing an unfair practice
29 under section 9, and amendments thereto shall be subject to a civil pen-
30 alty in an amount equal to the amount of actual damages suffered by the
31 producer.

32 (b) A contractor or processor committing an unfair practice under
33 section 9, and amendments thereto, shall be guilty of a misdemeanor.

34 (c) A producer who suffers damages because of a contractor's or pro-
35 cessor's violation of this act may obtain appropriate legal and equitable
36 relief, including damages, as a suit in common law pursuant to code of
37 civil procedure.

38 (1) In such a civil action against the contractor or processor, the court
39 shall award the producer who is the prevailing party, reasonable attorney
40 fees and other litigation expenses.

41 (2) In order to obtain injunctive relief, the producer is not required
42 to post a bond, prove the absence of an adequate remedy at law, or show
43 the existence of special circumstances, unless the court for good cause

1 otherwise orders. The court may order any form of prohibitory or man-
2 datory relief that is appropriate under principles of equity, including but
3 not limited to issuing a temporary or permanent restraining order.

4 (d) The attorney general's office is the agency primarily responsible
5 for enforcing this act. In enforcing the provisions of this act, the attorney
6 general may do all of the following: (1) Apply to the district court for an
7 injunction to do any of the following:

8 (A) Restrain a contractor or processor from engaging in conduct or
9 practices in violation of this act; or

10 (B) require a contractor or processor to comply with provisions of
11 this act;

12 (2) apply to district court for the issuance of a subpoena to obtain an
13 agricultural contract for purposes of enforcing this act; and

14 (3) bring an action in district court to enforce penalties provided in
15 subsections (a) and (b).

16 Sec. 13. The secretary may promulgate rules and regulations to im-
17 plement the provisions of this act.

18 Sec. 14. (a) Except as provided in subsection (b), this act applies to
19 agricultural contracts in force on or after the date of the enactment of
20 this act, regardless of the date the agricultural contract is executed.

21 (b) Section 6 (relating to contract producer's three day right to re-
22 view), section 7 (relating to production contracts involving investment
23 requirements), section 9(b)(5) (relating to the use of "tournament com-
24 pensation") and section 11 (relating to choice of law), and any amend-
25 ments to those sections, shall apply to agricultural contracts executed or
26 substantively amended after the date of the enactment of this act.

27 Sec. 15. This act shall take effect and be in force from and after its
28 publication in the statute book.

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