

## SENATE BILL No. 355

By Committee on Ways and Means

3-13

---

AN ACT concerning agriculture; enacting the Kansas poultry 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 poultry producer protection act.

Sec. 2. As used in this act:

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

(b) "feeding operation" means a lot, corral, building or other area in which poultry is confined and fed. A feeding operation does not include a poultry market;

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

(1) A structure; or

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

(d) "confinement feeding operation" means a feeding operation in which poultry is confined to areas which are totally roofed;

(e) "contract facility" means a feeding operation located in this state in which poultry is produced according to a production contract by a contract producer who holds a legal interest in the feeding operation. Contract facility includes a confinement feeding operation, an open feedlot, or an area upon which poultry is fed for slaughter or is allowed to feed;

(f) "contract operation" means a contract facility;

(g) "contract producer" means a producer who holds a legal interest in a contract operation and who produces poultry under a production contract;

(h) "contractor" means a person who is an active contractor or a passive contractor;

(i) "investment requirement" means a provision in a contract which requires the contract producer to make capital investments associated with producing poultry subject to a production contract. The provisions may be included as part of one or more written agreements or contracts,

1 and may be included as part of a production contract;

2 (j) "open feedlot" means an unroofed or partially roofed feeding op-  
3 eration in which no crop, vegetation or forage growth or residue cover is  
4 maintained during the period that poultry is confined in the operation;

5 (k) "passive contractor" means a person who furnishes management  
6 services to a contract producer and who does not own poultry that is  
7 produced by the contract producer at the contract producer's contract  
8 operation according to a production contract;

9 (l) "processor" means a person engaged in the business of manufac-  
10 turing goods from poultry, including slaughtering or processing poultry;

11 (m) "produce" means to provide feed or services relating to the care  
12 and feeding of poultry;

13 (n) "producer" means a person who produces poultry, including but  
14 not limited to, a contract producer. Producer does not include a com-  
15 mercial fertilizer or pesticide applicator, a feed supplier or a veterinarian,  
16 when acting in such capacity;

17 (o) "production contract" means a written agreement that provides  
18 for the production of poultry or the provision of management services  
19 relating to the production of poultry by a contract producer. A production  
20 contract is executed when it is signed by each party to the contract or by  
21 a person authorized to act on the party's behalf; and

22 (p) "secretary" means the secretary of the Kansas department of  
23 agriculture.

24 Sec. 3. (a) This act applies to production contracts that relate to the  
25 production of poultry owned by an active contractor and produced by a  
26 contract producer at the contract producer's contract operation, if one of  
27 the following applies:

28 (1) The production contract is executed by an active contractor and  
29 a contract producer for the production of poultry;

30 (2) the production contract is executed by an active contractor and a  
31 passive contractor for the provision of management services to the con-  
32 tract producer in the production of poultry; or

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

35 (A) The contract provides for management services furnished by the  
36 passive contractor to the contract producer in the production of poultry;  
37 and

38 (B) the passive contractor has a contractual relationship with the ac-  
39 tive contractor involving the production of poultry.

40 (b) This act shall not apply to:

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

43 (2) collective bargaining units.

1 Sec. 4. A production contract imposes an obligation of good faith, as  
2 defined in K.S.A. 84-1-201, and amendments thereto, on all parties with  
3 respect to the performance and enforcement of the production contract.

4 Sec. 5. A production contract shall contain a clear written disclosure  
5 statement setting forth the nature of the material risks faced by the pro-  
6 ducer if the producer enters into the contract. The statement may be  
7 developed in cooperation with producers or producer organizations. The  
8 contract producer's right to cancel, the method by which the contract  
9 producer may cancel, and the deadline for canceling the production con-  
10 tract shall be clearly disclosed in every production contract.

11 Sec. 6. On and after the effective date of this act, a producer shall  
12 not enforce a provision in a production contract that prohibits a party  
13 from discussing the contract terms with professional, legal, financial and  
14 agricultural advisors or other producers. Nothing in this act shall require  
15 the revelation of an intellectual property right or require a producer to  
16 reveal personal information or production practices. This section does not  
17 require a party to a production contract to divulge information in the  
18 production contract to another person.

19 Sec. 7. (a) This section only applies to a production contract executed  
20 by a contract producer and a contractor, if the contract producer must  
21 make capital investments of \$50,000 or more according to investment  
22 requirements provided in all production contracts in which the contract  
23 producer and the contractor are parties. The value of the capital invest-  
24 ments shall be deemed to be the total dollar amount spent by the contract  
25 producer in satisfying the investment requirements, if that amount is  
26 ascertainable.

27 (b) A contractor shall not terminate or cancel a production contract  
28 where the producer has substantially complied with the contract. A con-  
29 tractor shall provide the contract producer written notice of the intention  
30 to not renew at least 90 days before the effective date of the nonrenewal.  
31 A contract producer shall be reimbursed for damages incurred due to the  
32 termination, cancellation or failure to renew. Damages shall be based on  
33 the value of the remaining useful life of the structures, machinery or  
34 equipment involved.

35 Sec. 8. (a) As used in this section:

36 (1) "Contract input" means a commodity or an organic or synthetic  
37 substance or compound that is used to produce poultry.

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

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

42 (B) the right of a producer to enter into a membership agreement  
43 with an association of producers, a processor or another producer and the

1 right of the producer to exercise contractual rights under such a mem-  
2 bership agreement;

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

8 (D) the right of a producer to disclose the terms of agricultural con-  
9 tracts under section 6, and amendments thereto;

10 (E) the right of a producer to enforce other protections afforded by  
11 this act or other laws or regulations;

12 (F) the right of a producer to refuse to accept delivery of unhealthy  
13 or otherwise defective poultry; and

14 (G) the right of a producer to require the use of state inspected scales  
15 for weights used to determine contract payments.

16 (b) It shall be unlawful for any contractor or processor knowingly to  
17 engage or permit any employee or agent to engage in the following prac-  
18 tices in connection with production contracts:

19 (1) To take actions to coerce, intimidate, disadvantage, retaliate  
20 against or discriminate against any producer because the producer exer-  
21 cises or attempts to exercise, any producer right, including actions af-  
22 fecting the following:

23 (A) The execution, termination, extension or renewal of a production  
24 contract;

25 (B) to make or give any undue or unreasonable preference or advan-  
26 tage to any particular person or locality in any respect whatsoever, or  
27 subject any particular person or locality to any unreasonable prejudice or  
28 disadvantage in any respect whatsoever;

29 (C) the grant of a reward or imposition of a penalty, including the  
30 denial of a reward. The reward or penalty may be in any form, including  
31 but not limited to, financial rewards or penalties. Financial rewards or  
32 penalties may relate to loans, bonuses or inducements. Nothing in this  
33 section shall prohibit the grant of a reward or imposition of a penalty  
34 based on quality or performance pursuant to a production contract; and

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

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

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

42 (i) The character of the producer; or

43 (ii) the condition of the finances or the management of the association

1 of producers or agricultural organization; or

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

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

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

12 (5) To use the performance of any other contract producer to deter-  
13 mine the compensation of a contract producer under a production con-  
14 tract or as the basis of the termination, cancellation or renewal of a pro-  
15 duction contract.

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

24 (7) To execute a production contract which includes a confidentiality  
25 provision in violation of section 6, and amendments thereto.

26 (8) To execute a production contract which includes a waiver of any  
27 producer right or any obligation of a contractor or processor established  
28 under this act.

29 (9) To execute a production contract requiring the application of the  
30 law of another state in lieu of this act.

31 Sec. 9. Any provision of a production contract which waives a pro-  
32 ducer right or an obligation of a contractor or processor established by  
33 this act is void and unenforceable. This section does not affect other  
34 provisions of a production contract, including a contract or related doc-  
35 ument, policy or agreement which can be given effect without the voided  
36 provision.

37 Sec. 10. Any condition, stipulation or provision requiring the appli-  
38 cation of the law of another state in lieu of this act is void and  
39 unenforceable.

40 Sec. 11. (a) A contractor or processor committing an unfair practice  
41 under section 8, and amendments thereto, shall be subject to a civil pen-  
42 alty in an amount equal to the amount of actual damages suffered by the  
43 producer.

1 (b) A contractor or processor committing an unfair practice under  
2 section 8, and amendments thereto, shall be guilty of a misdemeanor.

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

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

10 (2) In order to obtain injunctive relief, the producer is not required  
11 to post a bond, prove the absence of an adequate remedy at law, or show  
12 the existence of special circumstances, unless the court for good cause  
13 otherwise orders. The court may order any form of prohibitory or man-  
14 datory relief that is appropriate under principles of equity, including but  
15 not limited to issuing a temporary or permanent restraining order.

16 (d) The attorney general's office is the agency primarily responsible  
17 for enforcing this act. A county or district attorney may enforce the pro-  
18 visions of this act as well. In enforcing the provisions of this act, the  
19 attorney general or a county or district attorney may do all of the follow-  
20 ing: (1) Apply to the district court for an injunction to do any of the  
21 following:

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

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

26 (2) apply to district court for the issuance of a subpoena for purposes  
27 of enforcing this act; and

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

30 Sec. 12. The attorney general may promulgate rules and regulations  
31 to implement the provisions of this act.

32 Sec. 13. (a) Except as provided in subsection (b), this act applies to  
33 production contracts in force on or after the date of the enactment of  
34 this act, regardless of the date the production contract is executed.

35 (b) Section 6 (relating to production contracts involving investment  
36 requirements), subsection (b)(5) of section 8 (relating to the use of "tour-  
37 nament compensation") and section 10 (relating to choice of law), and  
38 amendments thereto, shall apply to production contracts executed or sub-  
39 stantively amended after the date of the enactment of this act.

40 Sec. 14. If any provision of this act or the application thereof to any  
41 person or circumstances is held invalid, the invalidity shall not affect other  
42 provisions or applications of the act which can be given effect without  
43 the invalid provisions or applications and, to this end, the provisions of

1 this act are severable.

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

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43