

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 11, 2002, in Room 423-S of the Capitol.

All members were present except: Representative O'Brien - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

George Teagarden, Livestock Commissioner, Kansas Animal Health Department
Mike Beam, Governmental Affairs Staff, Kansas Livestock Association
Representative Dennis McKinney
Paul Johnson, Kansas Catholic Conference
Donn Teske, President, Kansas Farmers Union
Dort Goodman, Kansas Cattlemen's Association
Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau

Others attending: See attached list

Minutes of the February 4 and 5 meetings were distributed. Chairman Johnson asked members to notify the committee secretary of any corrections or additions prior to 5:00 p.m. February 12, or the minutes will be considered approved as presented.

Hearing, discussion and action on HB 2750 - Indemnity to owners for killing of livestock pursuant to decision by livestock commissioner.

Chairman Johnson opened the hearing on **HB 2750**. Raney Gilliland briefed the committee on the bill requested by the Livestock Commissioner.

George Teagarden, Livestock Commissioner, Kansas Animal Health Department, appeared in support of **HB 2750** to amend KSA 47-612, 47-615 and KSA 2001 Supp. 47-617 relating to contagious and infectious domestic animal diseases as they concern payment by county commissions. This bill would relieve counties of the responsibility for payment and specify payment by the State of Kansas unless payment or indemnity for such animals may be obtained from the federal government. (Attachment 1)

There being no other conferees, the Chairman closed the hearing and opened discussion on **HB 2750**. Representative Feuerborn moved to recommend HB 2750 be passed, and because the bill is of a noncontroversial nature, be placed on the consent calendar. Seconded by Representative Schwartz, the motion carried.

Hearing on HB 2768 - Termination of pastureland tenancies.

The Chairman opened the hearing on **HB 2768**. Raney Gilliland briefed the committee on the bill.

Mike Beam, Governmental Affairs Staff, Kansas Livestock Association, testified in support of **HB 2768** introduced at KLA's request. He explained that this legislation would amend the farm tenant termination law to clarify that pastureland is subject to the act. The bill defines "pastureland"; establishes a "30 days prior to January 1" termination notice for pastureland; fixes the termination effective date as January 1; and assures tenants an opportunity to be reimbursed for costs associated with fertilizer, herbicides, or pest control substances. Mr. Beam noted that this legislation is only relevant in the absence of a written contract. (Attachment 2)

CONTINUATION SHEET

Chairman Johnson closed the hearing on **HB 2768**.

Hearing on HB 2659 - Contract grower protection act.

Chairman Johnson opened the hearing on **HB 2659** for proponents only. Raney Gilliland outlined the provisions of the bill and reported that this legislation was introduced at the request of the 2001 Special Committee on Agriculture to address concerns expressed by turkey producers in southeast Kansas during interim hearings. This bill, however, includes all production agriculture contracts.

Representative Dennis McKinney testified in support of **HB 2659** to address the imbalance of power between the contract producer and the corporation which owns the commodity. He explained that this bill would provide three key legal protections for the contract grower: (1) Contracts cannot require the producer to accept sick livestock or defective feed; (2) Contracts cannot deny the producer the ability to address a dispute in Kansas courts; and (3) Contractors cannot discourage or prohibit farmers from talking to each other to address concerns or to collectively negotiate contract terms.

Representative McKinney provided written statements in support of **HB 2659** from Roger McEowen, associate professor of agricultural economics and extension specialist in agricultural law and policy at Kansas State University, and Mike Schultz, Chairman, Kansas Cattlemen's Association, as well as copies of actual production contracts with his testimony. (Attachment 3)

Paul Johnson, Kansas Catholic Conference, appeared in support of **HB 2659** to offer some assistance to agriculture contract growers. (Attachment 4)

Donn Teske, President, Kansas Farmers Union, testified in support of **HB 2659** to address problems with contract agriculture. Kansas Farmers Union would prefer a stricter bill with more accountability to the contractor in the area of monopolization of industries. They would also like more support for Coop development to give farmers the numbers needed to negotiate with purchasers and suppliers. (Attachment 5)

Dort Goodman read testimony prepared by Mike Schultz, Chairman of the Kansas Cattlemen's Association, in support of **HB 2659** to give producers an avenue of legal recourse for unfair and unlawful actions when entering into agriculture production contracts. (Attachment 6)

Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau, appeared in partial support of **HB 2659**. She reported that some provisions in the bill are compatible with KFB policy including a prohibition on denying producers the ability to negotiate collectively and the language that seeks to protect trade secrets and producer's personal financial information, but the definition language concerns their organization.

On behalf of Kansas Farm Bureau, Ms. Kaufman outlined a proposed substitute bill targeted to production contracts in the poultry industry enumerating more protections for producers than **HB 2659**. KFB's proposal would revise the definition section with simpler language that is more readable and understandable; provide a penalty section similar to Section 1(g) and (h); but would not contain a civil penalty provision. She reported that although their proposed substitute bill targets the poultry industry, Kansas Farm Bureau policy is not species specific. (Attachment 7)

Chairman Johnson closed the hearing on **HB 2659** for proponents. Opponents will be heard in committee on Monday, February 18.

The meeting adjourned at 4:52 p.m. The next meeting is scheduled for February 13, 2002.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 11, 2002

NAME	REPRESENTING
Jim Allen	Sea band
Mike Beam	Ks. LIVSTK. ASSN.
Rebecca Lee	KDA
Mike Jensen	Ks Pork Assoc.
Jerry G. Cox	K.C.A.
Don Goodman	KCA
Keith Bradshaw	Div of the Budget
Ellie Duvine	Ks Livestock Assoc.
Judd Johnson	Ks Kansas Livestock Assn.
Matt Began	Pat Hebbell Assoc.
Joe Lieber	KS Co-op Council
Matt Berthoff	KS Co-op Council
Paul Johnson	PACK
Donna Stude	Ks Dummer Union
Don Rye	KCA
Steve Paige	KDHE
Janna Dunbar	KDOC + A - Ag Mktg Division
Casey McGraw	Rep. McKinney's Intern
Dennis McKinney	District 108

STATE of KANSAS

KANSAS ANIMAL HEALTH DEPARTMENT

George Teagarden, Livestock Commissioner
708 S. Jackson, Topeka, Kansas 66603-3714
Phone 785/296/2326 Fax 785/296/1765
e-mail – gteagard@ink.org
web site – www.ink.org/public/kahd

February 11, 2002

Mr. Chairman and Members of the House Agriculture Committee,

I am George Teagarden, Livestock Commissioner, Kansas Animal Health Department.

HB 2750 was introduced at my request. This bill amends KSA 47-612, 47-615 and KSA 2001 Supp. 47-617. For many years, the board of county commissioners have been included in these statutes regarding the appraisal and disposition of animals held and/or taken because of disease quarantine. It is my belief that the county commissioners were involved in the appraisal and indemnity in years past because of their knowledge of livestock values and their ability to cover indemnity costs. I do not believe that to be necessarily the case today. To my knowledge, no county budgets for livestock indemnity.

Current practice is, for our department and the owner of the livestock involved in a taking, to negotiate a fair appraisal of said livestock. If a consciences cannot be reached, an agreed upon appraiser is hired to set value. The amendments also require the state to pay if federal funds are not available.

Section 1 of the bill speaks of costs incurred when the owner fails to quarantine as prescribed and the animals are taken into custody. This section deals with those costs that might be incurred during this holding.

Section 2 indicates that when the commissioner directs the killing of any domestic animal, an appraisal shall be made and the owner reimbursed for the value of those taken.

Section 3 takes the counties out of the responsibility for indemnity of for animals affected by foot and mouth disease.

Are there any questions?

House Agriculture Committee
February 11, 2002
Attachment 1



Since 1894

TESTIMONY

To: House Committee on Agriculture
Rep. Dan Johnson, Chairman

From: Mike Beam, KLA Governmental Affairs Staff

Subject: **HB 2768** – Amendments to Farm Tenant Termination Statutes

Date: February 11, 2002

The Kansas Livestock Association (KLA) appreciates the House Agriculture Committee's willingness to introduce HB 2768 at our members' request. This legislation amends the farm tenant termination law to (1) clarify that pastureland is subject to the act, and (2) set forth an earlier termination date for this type of property.

I must first stress that this law, and the proposed amendments provided by HB 2768, are only relevant in the absence of a written contract between a landowner and tenant. In addition, despite this law and our proposed changes, KLA strongly urges landowners and tenants to formalize all lease agreements with basic written contracts that include a provision for the renewal or termination of such agreement.

Despite this recommendation, we recognize there are many verbal farm lease arrangements across Kansas. In these situations landowners wishing to terminate a lease frequently look to KSA 58-2506 and 58-2506a for determining the appropriate procedure for a termination notice and the legal termination effective date.

As our office frequently fields calls from landowners and tenants it has become apparent there is uncertainty how the law affects the termination of verbal pasture leases. Some argue the current statute establishing the "30 days prior to March 1" termination notice date applies to all agriculture land. It's our conclusion, however, that KSA 58-2506 and 58-2506a does not technically cover pastureland.

House Agriculture Committee
February 11, 2002
Attachment 2

A 1987 *Trotter v. Wells Petroleum Corp.* case concluded that native pastureland does not qualify as a "growing crop". This case has raised the bar of uncertainty of how KSA 58-2506 and 58-2506a applies to the appropriate and legal termination notice for verbal pasture lease arrangements.

After several discussions by one of our policy groups, we have concluded the law should be clarified. We are proposing and supporting HB 2768 as it makes the following amendments to current law:

- Provides a distinct and new definition for "pastureland".
- Establishes a "30 days prior to January 1" termination notice for pastureland.
- Fixes the termination effective date as January 1 for pastureland.
- Amends KSA 58-2506a to assure tenants of pastureland an opportunity to be reimbursed for costs associated with fertilizer, herbicides, or pest control substances.

It should be noted that HB 2768 makes no changes in the law regarding cultivated land. It is our intention to suggest these changes for pastureland, which we believe are unclear and necessary.

Thank you for considering this legislation. I'd be happy to respond to any questions or comments.



TOPEKA

 HOUSE OF
 REPRESENTATIVES

DENNIS MCKINNEY
 REPRESENTATIVE 108TH DISTRICT
 612 S. SPRUCE
 GREENSBURG, KS 67054
 (316) 723-2129

STATE CAPITOL, ROOM 327-S
 TOPEKA, KS 66612-1504
 (785) 296-7658

ASSISTANT MINORITY LEADER
 COMMITTEE ASSIGNMENTS
 MEMBER TRANSPORTATION
 ENVIRONMENT
 INTERSTATE COOPERATION
 CALENDAR AND PRINTING

Testimony on House Bill 2659

February 11, 2002

Thank you for the opportunity to testify on HB2659.

During the hearings held at Pittsburg State University by the Special Committee on Agriculture (October 9, 2001) several key points were made by conferees:

First, the former dean of the University of Arkansas Law School pointed out that provisions of the Uniform Commercial Code do not always protect farmers who work under production contracts. The UCC applies to trades where there is a change of ownership or a change of title to a product or commodity. Under production contracts the ownership of the commodity does not change hands. The farmer receives, raises, and then delivers commodities such as turkeys which remain the property of the integrator the entire time the commodity is on the farm. Therefore UCC protections are not always clear.

Second, there is often a tremendous imbalance of power between the producer and the corporation which owns the commodity. Southeast Kansas turkey growers pointed out that some of them had tried to find another integrator to offer them a contract. But only one integrator would offer a contract in their area. That left them in a noncompetitive situation with little or no negotiating leverage.

Third, turkey contracts from Kansas and hog production contracts from North Carolina revealed that some of the terms of the contracts put farmers at a significant disadvantage. Commonly, farmers are required to accept all of the livestock shipped to them, healthy or not. Farmers are required to accept the feed delivered to them, whether the feed mill provided high or low quality feed. Farmers were denied access to county courthouses in case a grievance arose. Instead, they are compelled to accept an expensive arbitration process. Finally, contracts usually prevent farmers from talking to anyone about the terms and conditions of the contract, even neighbors who are negotiating contracts. Collective negotiations (which would help balance the power relationship) are preempted.

House Bill 2659 provides three key legal protections to which, I believe, Kansas farmers are entitled as a matter of fairness:

House Agriculture Committee
 February 11, 2002
 Attachment 3

1. Contracts can not require the producer to accept sick livestock or defective feed (p.2, lines 33-4). My experience as a cattle producer tells me that this is a common sense protection.

2. Contracts can not deny the producer the ability to address a dispute in Kansas Courts (p.2, lines 35-6). Producers can choose arbitration if they wish.

3. Contractors can not discourage or prohibit farmers from talking to each other to address concerns or to collectively negotiate contract terms.

Finally, producers can seek to have problems addressed by private action or by the county attorney. These are basic rights and proper business conditions. We already afford this level of protection to others through laws such as the consumer protection act. Surely if Kansas farmers and ranchers have been paying taxes this long to support courts and county attorneys, they should now have access to them to gain basic legal protection in a changing economic environment.

If definitions or other technical parts of the bill need to be clarified please do so.

But please remember that prior bills to protect contract growers have been lengthy and contained several controversial provisions. HB2659 is boiled down to three fundamental protections to which every Kansas farmer and rancher certainly should be entitled.

The right to talk to each other, access to our courts, and the right to refuse sick livestock are fundamental protections the State of Kansas should afford to our farmers and ranchers working on production contracts.

WITNESSETH

WHEREAS, ConAgra is the owner of certain turkey poults and/or turkeys which it desires to have grown to suitable market weights; and

WHEREAS, Grower has facilities for growing turkeys to suitable market weights for processing.

NOW, THEREFORE, in consideration of these premises, the parties hereto contract and agree as follows:

1. Grower agrees to accept from ConAgra and to place for grow-out in its facilities the number, sex and variety of turkey poults, as determined by ConAgra during the term of this Agreement. Grower acknowledges that the number, sex or variety of turkey poults and the delivery date of grown turkeys may change from flock to flock under this Agreement based on changes in ConAgra's Projected Sales Demand due to changing market conditions.

All turkey poults delivered, or caused to be delivered by ConAgra on or about the same date to the same growing location shall be considered a "flock" of turkeys.
2. Grower agrees to provide turkey houses suitable for raising confinement-raised turkeys according to ConAgra Turkey Management Program, as updated periodically.
3. Grower agrees to grow turkeys to the age and/or weight as required by ConAgra. The exact age and weight will be determined by ConAgra based upon the size of the turkeys and upon market conditions.
4. For biosecurity reasons Grower agrees that no other turkeys or other poultry will be raised on Grower's facility unless prior written approval is received by Grower from ConAgra.

5. Grower shall immediately notify ConAgra's representative at telephone number (417) 359-2020 of any abnormal conditions that may affect the number or health of turkeys to be delivered under this agreement.

6. Grower agrees at all times to observe and abide by the high standards of agricultural management and farm operation as they apply to the raising to maturity of turkey poult flocks, including but not limited to, those provisions set forth in the ConAgra Turkey Management Program.

Grower further agrees to obtain and maintain a State approved waste management plan as required.

7. Grower will provide insulated turkey housing, feed storage tank, feeder system, drinker system, medicator, fans, foggers, lights, including the energy for same, supplemental heating, including energy for same, potable water, and sanitation supplies as requested and approved by ConAgra. To promote the productivity and management of the grower's facilities, ConAgra will provide technical and construction recommendations to Grower including, without limitation, wiring diagrams, construction specification, ventilation systematization and husbandry procedures. However, Grower remains fully and wholly responsible for any actions, selections or materials or method of construction in adopting such recommendations. ConAgra does not warrant or otherwise guarantee such criteria or recommendations as a term of this Agreement and the Grower, by execution of this Agreement, agrees to hold ConAgra harmless from any loss to Grower resulting from Grower's adoption of those recommendations and guidelines.

8. Grower will establish and maintain roads to the Grower's facility suitable for semi-tractor/trailer units to be used for feed delivery and live-haul. If roads are not maintained and a wrecker shall become necessary to allow for feed delivery or the loading of live turkeys, Grower agrees to reimburse ConAgra said wrecker cost.

9. Grower shall be responsible for payment pursuant to any and all Federal, State and County Tax assessments.

10. ConAgra shall furnish day-old poults and turkey feeds in the amount it deems sufficient to produce the turkeys covered by this Agreement. All feeds will be supplied in bulk on semi-tractor/trailer units. Any feed remaining when turkeys are delivered is to be verified promptly by Grower and ConAgra's field representative for credit and transferred by Grower as instructed by ConAgra. Title to the above referenced turkeys, feed and other supplies delivered to Grower by ConAgra shall

remain with ConAgra and shall not pass to Grower. Grower shall fully protect and care for said turkeys, feed and supplies furnished hereunder, and shall not encumber, remove from said premises, sell, mortgage, or permit any lien or charge to attach against such property.

11. When ConAgra has determined that the turkeys are ready for processing, a processing date shall be set by ConAgra and ConAgra shall provide for the loading and hauling of said turkeys to the processing location.
12. This Agreement shall remain in effect for all turkeys processed by or for ConAgra from poults referenced in Paragraph 1 until either party provides the other with notice 30 days in advance of the next scheduled flock placement that no additional flocks will be placed or accepted. ConAgra's willingness to place one or more flocks under this Agreement should not be construed as an indication that future flocks will be placed by ConAgra.

On or about February 1 of each year this Agreement is in effect, both ConAgra and Grower agree to meet to discuss the state of the turkey industry, including consumer demand for turkey and turkey products, Grower's cost to produce compared to other Growers and ConAgra's cost to produce compared to other turkey processors, for the purpose of deciding whether any modifications to this Agreement are necessary or warranted. Only if any such changes are mutually agreed to in writing by an addendum to this Agreement signed by both parties, will it be binding on either party.
13. Grower agrees to follow the feeding program outlined by ConAgra and to use only feed supplied by ConAgra.
14. ConAgra shall supply medication, vaccines, sanitation supplies and pesticides as ConAgra deems is necessary for the treatment and prevention of disease. Grower is responsible for the administration of the medication, vaccines, sanitation supplies and pesticides as specified by ConAgra. Grower agrees not to use any medication or vaccination treatment, sanitation supplies, or pesticides except as specified and approved by ConAgra.
15. ConAgra shall supply bedding material as ConAgra deems is necessary for the raising of flocks to maturity. ConAgra further agrees to wash and disinfect Growers Facilities as ConAgra deems is necessary at no cost to Grower.
16. Grower shall at all times comply strictly with all laws, rules, regulations, permits and ordinances, whether state, federal or local, applicable to Grower while performing operations and services hereunder including, without limitation, all applicable

federal, state and local laws, rules, ordinances, permits and regulations with respect to employer's liability, workmen's compensation, minimum wage and site selection as well as any and all new or supplemental future requirements. When requested by ConAgra Grower shall furnish proof of such compliance. Grower shall hold harmless and indemnify ConAgra from and against any and all damages, claims or expenses incurred, directly or indirectly arising out of the operation of Grower's facility including but not limited to, dead bird disposal, claims of nuisance and claims of pollution of waterways, ground water, air, adjoining property or other natural resources, due to negligence of Grower, or Grower's failure to take proper precautions.

17. In the event ConAgra should suffer any loss, damage, claim, cost or expense, whether to property, persons, or the business, and such loss or damage arose or was caused, directly or indirectly, by failure of Grower to fully perform his/her duties and obligations in compliance with provisions and standards of this Agreement, then Grower shall reimburse and pay unto ConAgra the full amount of any such loss, claim or damage and any expenses and costs, including attorney's fees, arising by reason thereof.
18. Each flock of turkeys shall be inspected under the supervision of U.S.D.A. inspectors at the processing plant. Turkeys dead upon arrival at the processing plant and those condemned under U.S.D.A. inspection at the processing plant and chargeable to the Grower and all condemned parts shall not be considered as marketable and Grower shall not receive compensation for such turkeys or parts.
19. ConAgra shall pay Grower an amount for growout services for finished live, healthy, marketable turkeys, as set forth in the Grower Payment Schedule, attached hereto and made a part hereof. Payment shall be based on the net pay weight of said turkeys computed by deducting from the total weight obtained by weighing immediately upon arrival, the actual weight of turkeys which are dead upon arrival at the processing plant, plus the equivalent live weight of all Grower condemned eviscerated carcasses and all parts which have been condemned by the U.S.D.A. The equivalent live weight of eviscerated carcasses and parts shall be determined by dividing the eviscerated weight of same by 80% for Hens which have an average weight of 10.50 pounds or less, 81% for Hens which have an average weight between 10.51 pounds and 17.0 pounds, 81.5% for Hens which have an average weight of 17.01 pounds or more, 82% for Toms which have an average weight of 26.0 pounds or less, 82.5% for Toms which have an average weight of 26.01 pounds or more. If turkeys and/or trucks arrive at the processing location wet from rain, snow, mud, etc., it will be necessary to reasonably approximate the live weights by dividing the eviscerated weight by the normal eviscerated yields, as referenced in the preceding sentence.

- If a flock is processed over more than one processing day, the average live weight of the birds processed on that day shall determine the percentage, as referenced above, which is used to determine the equivalent live weight of the birds on that day.

Grower condemned birds will include:

Tuberculosis	Synovitis	Tumors
Septicemia	Leukosis	Bruises
Airsacculitis	Infectious Process	
Toxemia	Dead on Arrival	

ConAgra condemned birds will include:

Cadavers	Overscald	Picker Tears
Contamination	No Viscera	

Average weight is calculated by dividing the weight obtained immediately upon arrival at the processing plant by the number of the head of turkeys picked up.

20. Payment for a given flock of turkeys subject to adjustment as set forth in the Grower Payment Schedule shall be made within fourteen (14) days after the date on which the entire flock is processed.
21. To secure compliance with all provisions, terms and conditions of this Agreement, the Company shall have a security interest in the turkey poults to the extent Grower has rights in the same. The use or sale of any turkey feed or supplies furnished hereunder for any purpose other than for maintaining the turkeys covered under this Agreement and/or gross and open neglect of the turkeys covered hereby shall cancel all payment and premium obligations of ConAgra in regard to furnishing additional poults. Furthermore, if the Grower shall fail or refuse to perform any of the terms, conditions or requirements provided herein, or should a loss of part or all of the flock appear imminent, then in any such event ConAgra may, without notice or process of law, enter upon the premises on which the turkeys are then located and undertake to complete the growing cycles of the turkeys on the premises, or ConAgra may repossess said turkeys and feed.

he will at all times during this Agreement be entitled to the exclusive possession of said farm or farms. Such "Farm" is known as the [REDACTED]

23. Grower makes the following guarantees:
- a. Grower guarantees that medication used for growth promotion or the prevention or control of disease has been withdrawn as prescribed by the FDA approved label directions or by ConAgra's prescribed withdrawal period, instructions attached as Appendix C-1.
 - b. Grower guarantees that it will provide a certificate signed by the Grower describing the chemicals and/or drugs used. Such certificate is to be received by the Quality Assurance Manager for each flock prior to the flock being slaughter. A copy of this certificate is attached as Appendix A-1.
 - c. Grower guarantees that the turkeys do not contain residues of pesticides, herbicides, drugs or unavoidable contaminants greater than the tolerances and/or action levels developed by the Environmental Protection Agency (EPA) for pesticide chemicals and by the Food and Drug Administration (FDA) for animal drugs and unavoidable contaminants. Residue limits for these chemicals and drugs are published in the Code of Federal Regulations and are referenced in the USDA-FSIS publication "Compound Evaluation and Analytical Capability, National Residue Program Plan". Where there is no published residue limit, any detectable level of a pesticide, chemical or drug is cause to reject the flock.
 - d. Grower shall not be reimbursed for the six turkeys normally required to determine the residue status of the flock prior to processing.
24. It is understood and agreed that Grower, its employees, its contract growers and employees of such contract growers are independent contractors and not employees of ConAgra and, as such, shall not be entitled to any of the benefits to which an employee of ConAgra is entitled such as, but not limited to, Workmen's Compensation, Group Insurance, Vacation, Pension and Unemployment Insurance. Grower agrees to indemnify and save ConAgra harmless from and to assume full responsibility for payment of all State and Federal taxes for unemployment insurance, old age pensions, or other social security legislation as to all employees engaged on Grower's behalf in the performance of the Agreement and further agrees to meet all requirements that may be specified in regulations now and hereafter promulgated from time to time by administrative officials, including but not limited to the Fair Labor Standards Act of 1938, as amended.

25. Grower hereby certifies that the turkeys delivered pursuant to this Agreement will have been produced in strict compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of the regulations and orders of the United States Department of Labor issued under Section 14 thereof.
26. Neither party hereto shall be liable in any respect for failure or delay in the fulfillment or performance of this Agreement if hindered or prevented, directly or indirectly, by war, conditions of war, acts of enemies, national emergency, sabotage, revolution or other disorders, orders or acts of any government or government agency or authority, interference by civil or military authority, inadequate transportation facilities, inability to secure raw materials or supplies, fuel or power, fire, flood, windstorms or other acts of God, strikes, lockouts or other labor disturbances, or any cause of like or different kind beyond any party's reasonable control, or the closing of ConAgra's Carthage, Missouri processing plant.
27. In addition to the manner of termination provided for in paragraph 12 above, this Agreement may be terminated at any time by ConAgra upon the occurrence of any of the following events:
 - a. If Grower shall make an assignment for the benefit of its creditors, commence a voluntary case under any bankruptcy law or similar law for relief of debtors, consent to the appointment of a receiver, or custodian or trustee for itself or the major part of its property, or otherwise fail to pay its material debts as they become due; or
 - b. If Grower shall breach or violate any of the warranties, representations, agreements, covenants or conditions required by the terms of the Agreement or if Grower fails to follow reasonable written instructions given by ConAgra directed toward correction of lack of performance with respect to weight, grade, and delivery problems, and Grower fails to remedy such breach, violation or failure within thirty (30) days after receipt of written notice from ConAgra.
28. During the term of this Agreement, Grower agrees to the extent applicable by law as follows:
 - a. Grower will not discriminate against any employee or applicant for employment based on race, color, religion, sex or national origin. Grower shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited

to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and, selection for training, including apprenticeship. Grower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Grower setting forth the provisions for this nondiscrimination clause.

- b. Grower will, in all solicitations or advertisements for employees, placed by or on behalf of Grower, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- c. Grower will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Grower's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. Grower will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. Grower will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of Grower's non-compliance with the non-discrimination clauses of the Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Grower may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- g. Grower will include the provisions of Subparagraphs a) through g) in every

subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Grower will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event Grower becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, Grower may request the United States to enter in to such litigation to protect the interests of the United States.

29. ConAgra hereby states that it does contract with the Federal Government and, as such, is governed by Public Law 95507, relating to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. In this connection, ConAgra maintains a Small Business/Small Disadvantaged Vendor/Supplier Plan. To the extent required by law, Grower hereby agrees to adopt and comply with a subcontracting plan similar to that of ConAgra.
30. It is the intent of the Grower and ConAgra to address and resolve claims in a timely manner. Grower agrees to give written notice to ConAgra of any and all claims relating to each flock of turkeys within one (1) year after receipt of a flock settlement statement on that flock or, if the basis for the claim is not disclosed on the flock settlement statement, then within one (1) year after first discovering the basis for the claim. Grower acknowledges that if written notice is not received by ConAgra within the applicable one (1) year period, the claim is waived. The notice of claim must specify the facts constituting the claims and must be sent by registered or certified mail to ConAgra's Live Operation Manager at ConAgra Poultry Company, 411 North Main Street, Carthage, Missouri 64836.
31. All claims between Grower and ConAgra arising out of this Agreement shall be submitted to arbitration. For the purpose of this Agreement, the words "claim" or "claims" shall mean and refer to all demands, disputes, controversies or differences that may arise between the parties to this Agreement or, respectively, their or its heirs, personal representatives, assigns or successors in interest, concerning, arising out of or in connection with this Agreement or any part or provision hereof, or with respect or relating to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance or termination of the Agreement or any part or provision thereof and shall also include any demand, dispute, controversy or difference between the parties, made or asserted by either party against the other (including agents, servants or employees of either) in contract, tort, under any statute or otherwise, for damages or loss of any and every

kind, compensatory or punitive, arising from any actual, alleged or claimed breach or non-performance of this Agreement or any part or provision hereof, or any actual or claimed fraud by representation, misrepresentation, suppression, deceit or by any other act or omission, whether oral or in writing by either party practiced or perpetrated upon the other (including agents, servants or employees of either) either with respect to the performance or non-performance of the Agreement or by way of inducement of either party to enter into the Agreement or otherwise, upon which it may be contended that the complaining party relied and thereby sustained damage. The following procedure shall apply:

- (a) any claim by either party against the other must:
 - (1) be made in writing;
 - (2) set forth the basis on which the claim is made and specifically describe all claimed damages or losses; and
 - (3) be actually presented to the party against whom the claim is made, either in person or by United States mail, certified, return receipt requested, postage prepaid and addressed to such party at the address of such party first hereinabove appearing.

A claim will be considered as having been "made" when either presented in person to Grower (or to any member of Grower's family) or to the Office Manager of ConAgra; or when deposited in the United States mail, certified, return receipt requested, postage prepaid and directed to the respective party at the address of such party first hereinabove appearing.

- (b) No suit, action or other proceeding shall be filed in any Federal, State or local court or administrative agency with respect to or presenting any claim by either party, except to enforce any arbitration decision rendered pursuant to the provisions hereof; provided, however, that if either party, in violation of this Agreement, files such a suit, action or proceeding, except to enforce an arbitration decision:
 - (1) Service thereof upon the other party shall, for purposes of this Agreement, constitute the presentation of a written claim; and,
 - (2) Any such suit, action or proceeding shall, upon demand of the party against which the claim is made either be (i) dismissed or (ii) abated until such time as the arbitration proceeding is concluded and an arbitration decision rendered.

(c) Any and every claim by either party against the other, whenever made, must, at the election of either party, be submitted to binding arbitration pursuant to the following procedure:

- (1) Either party may demand such arbitration within ninety (90) days after a claim is made; such demand shall include the name and address of the arbitrator appointed by the party demanding arbitration.
- (2) Within thirty (30) days after a demand for such arbitration has been made, the other party shall name an arbitrator and shall notify the other party of the name and address of the arbitrator appointed.
- (3) The two arbitrators so selected shall name a third arbitrator within thirty (30) days of the appointment of the second arbitrator; however, in the event the two arbitrators so appointed by the parties fail or are unable to select a third arbitrator within (30) days after the appointment of the second arbitrator, then, at any time thereafter, either party, or both, may request the American Arbitration Association to appoint a panel of seven (7), one (1) of whom shall be selected as the third arbitrator. The third arbitrator shall be selected from the panel of seven (7) by each party, alternately, striking a member of the panel until one (1) remains, with the party requesting arbitration making the first strike. The third arbitrator shall serve as chair of the proceedings.
- (4) All arbitrators, however appointed, shall be persons having knowledge of and experience in the poultry production industry.
- (5) Each party shall bear the cost and expenses of the arbitrator appointed by the party, and the costs and expenses of the third arbitrator shall be shared jointly and equally between the parties; however, it is expressly agreed that in order to encourage arbitration as a method of claim resolution, ConAgra agrees to pay all costs and expenses of the third arbitrator in excess of ONE THOUSAND DOLLARS (\$1,000.00). The cost of the third arbitrator to the Grower shall not exceed FIVE HUNDRED DOLLARS (\$500.00)
- (6) The arbitration hearing (to the extent practicable) shall be held and conducted in Cherokee County, KS, at a location to be selected by the chair of the arbitration panel and shall commence not less than thirty (30) days nor more than sixty (60) days after the panel chair has been

selected. The panel chair shall give each party hereto no less than twenty (20) days' notice of the hearing date and the location at which the hearing shall be conducted.

(7) The arbitrators selected shall hear the evidence and testimony offered by both parties, and the arbitration hearing shall be concluded within seven (7) days following the commencement thereof unless otherwise ordered by the arbitrators, and the arbitrators, will make a majority decision within a reasonable period of time following the close of the hearing. Both parties shall be allowed a period of time to submit post-hearing briefs within a period of time designated by the chair of the arbitration panel. An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties; and such judgment or award rendered by a majority of the arbitrators may be enforced by either party in any court as the final and binding determination of the claim to which the arbitration relates.

(8) The parties stipulate and agree that the provisions hereof shall be a complete and absolute defense against any claim by either party against the other (including agents, servants, or employees of either) in any suit, action or proceeding instituted in any Federal, State or local court or before any administrative agency unless such suit, action or other proceeding is brought solely for the purpose of enforcing an arbitration decision rendered pursuant to the provisions hereof. The binding arbitration provisions hereof shall, with respect to any claim or claims, survive the termination or expiration of this Agreement or any determination that the Agreement or any determination that the Agreement or any part thereof is void, voidable or unenforceable, and the provisions for binding arbitration shall, notwithstanding any such determination, remain fully applicable to any claim of fraud, by whatever means, in the inducement of the Agreement.

(9) Nothing herein contained shall be deemed to give arbitrators any authority, power or right to alter, change, amend, modify, add to or subtract from any of the provisions of this Agreement.

32. This Agreement represents the entire agreement between the parties relative hereto and neither party shall be bound by any statement or representation not incorporated herein. This Agreement shall be binding upon the heirs, executors, administrators and permitted assigns of the parties. This Agreement shall supersede any and all previous

agreements between the parties. The undersigned agree that any and all rights, obligations or claims incident to any previous agreement are extinguished by the execution of this Agreement.

33. Grower agrees to maintain in strict confidence the details of this Agreement and not to share with other growers or industry personnel.
34. Any changes or modifications to this Agreement or to the pricing structure will be mutually agreed to in writing an addendum to this Agreement to be signed by both parties.

Clouse



AGREEMENT
FOR THE FINISHING OF FEEDER PIGS
BETWEEN
BROWN'S OF CAROLINA, INC.
AND

[REDACTED]

THIS AGREEMENT FOR THE FINISHING OF FEEDER PIGS (the "Agreement") is entered into effective as of the 6th day of December, 1999, by and between BROWN'S OF CAROLINA, INC., a North Carolina corporation having an address of Post Office Box 487, 785 NC 24 East, Warsaw, North Carolina, 28398 ("Brown's"), and, [REDACTED] an individual, having an address of [REDACTED] and a Social Security number of [REDACTED] ("Grower").

RECITALS:

- A. Brown's engages in the business of supplying feeder pigs to independent contractors for such contractors to raise such pigs to market weight for Brown's.
- B. Grower is an independent contractor who desires to raise feeder pigs owned by Brown's in return for the compensation specified in this Agreement.
- C. Brown's desires to supply Grower with feeder pigs for the purposes set forth in and under the terms and conditions of this Agreement.

THEREFORE, in consideration of the foregoing premises and the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged, Brown's and Grower agree as follows:

- 1. Definitions. The following initially capitalized terms shall have the following meanings for purposes of this Agreement:
 - a. "Average Weight Gain Per Finished Pig" shall mean, with respect to any one Group, the difference between (i) the

BROWN'S OF CAROLINA, INC.
785 HWY 24 EAST • P O BOX 487 • WARSAW NC 28398 • PHONE (910) 296-1800

average weight of all Feeder Pigs in that Group when delivered by Brown's to Grower, and (ii) the average weight of all Finished Pigs in that Group when sold by Brown's, expressed in pounds.

b. "Complex" shall mean a grouping of Houses that are close enough together, as reasonably determined by Brown's, to allow the transfer of pigs from House to House for equalizing the Group's weight and size characteristics during the growing cycle; for purposes of this Agreement, Grower's "Complex" consists of the Houses indicated on Schedule A attached hereto. If Grower adds Houses after the date of this Agreement, such Houses shall not be considered part of the "Complex" unless agreed by Brown's in writing.

c. "Days on Feed" shall mean the time elapsed in days from the first placement of Feeder Pigs of a Group into a House through the last shipment date of Finished Pigs out of that Group for that House; however, any culls or designated Rollover Pigs remaining after final scheduled market loads will not qualify for additional Days on Feed.

d. "Feed Differential" shall mean, with respect to any Group, the difference between (i) 4.0 and (ii) the figure derived by taking the total number of pounds of feed used in raising that Group to Finished Pigs and dividing it by the Weight Gain for that Group.

e. "Feeder Pigs" shall mean pigs produced from breeding swine of known origin and supplied to Grower by Brown's for raising to market weight pursuant to this Agreement.

f. "Finished Pigs" shall mean Feeder Pigs that Grower has raised to market weight intended for commercial sale by Brown's.

g. "Group" shall mean any group of pigs that is delivered to Grower by Brown's at approximately the same time and is designated as one group by Brown's.

h. "House(s)" shall mean the individual building(s) in which the Group of pigs are raised from Feeder Pigs to Finished Pigs.

i. "Laws" shall mean laws, rules, regulations, orders, directives, notices and ordinances of any governmental

entity or agency, including health, sanitation, public welfare, and environmental Laws.

j. "Premises" shall mean Grower's property located at the address of Grower specified above, including the Houses and the Complex, and any additional property of Grower at which any Feeder Pigs or Finished Pigs may be located with Brown's prior written consent.

k. "Rollover Pig(s)" shall mean pig(s) within a Group which require(s) growing time in addition to that of the majority of pigs in that Group.

l. "Turn" shall mean a complete cycle of filling each of the grower's individual production Houses in the Complex with Groups of Feeder Pigs and growing those Houses of pigs into Finished Pigs.

m. "Weight Gain" shall mean, with respect to any one Group, the difference between (i) the weight of all Feeder Pigs in that Group when delivered by Brown's to Grower, and (ii) the weight of all Finished Pigs in that Group when sold by Brown's, expressed in pounds.

2. Term.

a. This Agreement shall commence on the date first above written and shall continue for an initial term of five (5) years, unless earlier terminated as provided herein. Thereafter, this Agreement shall renew for consecutive periods of one (1) year each, unless earlier terminated as provided herein or unless Grower or Brown's shall give the other at least twelve (12) months' prior written notice of non-renewal. The initial term and all renewal terms (until terminated or not renewed) are referred to herein as the "Term."

b. If notice of non-renewal is given, in its discretion, Brown's may cease delivering additional Feeder Pigs to Grower, or Brown's may continue to deliver additional Feeder Pigs to Grower until the end of the twelve (12) months' notice period. In any event, notwithstanding notice of non-renewal, expiration of the notice period, or termination, Grower shall continue to maintain and finish all Brown's pigs then-located on the Premises (in the manner described in this Agreement) until

Brown's removes such pigs (whether before or at acceptable market weight).

3. Brown's Duties. During the Term, Brown's shall perform the following duties:

a. Initial and Subsequent Groups. Brown's shall deliver to the Premises, at a mutually agreeable delivery date, Feeder Pigs for six (6) Houses, with a targeted average number of 800 per House; the weight, grade and type of these Feeder Pigs shall be within Brown's discretion. Thereafter, in connection with each Turn, Brown's shall deliver to the Premises additional Feeder Pigs; the number, weight, grade, type and exact date of delivery of these Feeder Pigs shall be within Brown's discretion.

b. Management Procedures. From time to time, Brown's shall establish and provide to Grower management and production standards and procedures governing Grower's raising, care, and maintenance of Feeder Pigs and Finished Pigs. Additionally, from time to time, Brown's may send trained personnel to the Premises to advise Grower about such management and production standards and procedures, and Grower shall cooperate with Brown's in this regard.

c. Feed and Supplies. Brown's shall provide to Grower all feed, medicines, disinfectants and veterinary care that Brown's deems necessary for the raising, care and maintenance of the Feeder Pigs and the Finished Pigs; however, Brown's shall not be responsible for additional medicines, disinfectants, veterinary care or other items made necessary by any inadequate condition of the Premises, although Brown's may provide such additional items in its discretion and charge the cost of same against Grower. The type and quantity of all such items shall be in Brown's discretion.

d. Transportation. Brown's shall deliver all Feeder Pigs to the Premises and shall pick up all Finished Pigs from the Premises generally in accordance with Brown's schedule as provided to Grower. Grower shall cooperate fully with Brown's in safely loading and unloading such animals, including providing

on-Premises assistance, relocating loading equipment, and maintaining loading pens and chutes in good order.

4. Grower's Duties. During the Term, Grower shall perform the following duties:

a. Best Efforts. Grower shall accept Feeder Pigs X delivered by Brown's and shall use its best efforts to raise, finish and top-out Feeder Pigs to acceptable market weight.

b. Management Procedures. Grower shall maintain the Premises, and shall maintain, care for (including feeding, watering, inspecting, vaccinating, treating and medicating), X size, sort and raise the Feeder Pigs and the Finished Pigs, all strictly in accordance with this Agreement and the management and production standards and procedures from time to time established by Brown's and provided to Grower.

c. Facilities. Except as otherwise expressly provided in this Agreement, Grower shall provide and maintain all equipment, buildings, spaces, labor and other facilities necessary to properly maintain, care for and raise the Feeder Pigs and the Finished Pigs in accordance with this Agreement and otherwise to comply with this Agreement. All such facilities shall meet Brown's specifications issued from time to time for a top quality feeder pig finishing operation and shall be upgraded as reasonably requested by Brown's. In the event Brown's supplies any equipment to Grower, Grower shall use all reasonable care with such equipment and shall use such equipment only for its intended purpose and in accordance with manufacturer's instructions. X

d. Use of Premises. All Feeder Pigs and Finished Pigs shall be maintained at the Premises, and no Feeder Pigs or Finished Pigs shall be removed from the Premises except as allowed in this Agreement or as consented to in writing by Brown's.

e. Group Integrity. Without the prior written consent of Brown's, at any time, Grower shall not allow any swine (other than Feeder Pigs and Finished Pigs) on the Premises or within five hundred feet (500') of any House, and shall not allow any other animals in the Houses or within one hundred feet (100') of

any House. Further, neither Grower nor any employee, agent, representative or contractor of Grower shall enter the Premises after associating with any other swine unless strict decontamination and biosecurity procedures have been followed.

f. Expenses. Except as otherwise expressly provided in this Agreement, Grower shall bear all costs and expenses (including capital costs and labor) of maintaining, caring for and raising the Feeder Pigs and the Finished Pigs and otherwise of performing its duties and obligations under this Agreement.

g. Access to Premises. Grower shall construct and maintain an "all weather road" connecting (i) the public road from which Brown's vehicles will approach the Premises with (ii) the area or portion of the Premises to which feed, supplies, and Feeder Pigs are to be delivered and from which Finished Pigs are to be picked up. Grower shall provide Brown's with direct access to the Premises at all reasonable times in order for Brown's to conduct its business as described in this Agreement. If for any reason this access is blocked or denied, or Brown's vehicles suffer damage or other problems due to the condition of Grower's roads, or for similar reasons, Brown's may deduct from any payments to Grower and/or bill Grower for the cost of clearing such access and wrecker, towing and repair fees.

h. Record Keeping. Grower shall maintain records of its operations, including its Feeder Pig and Finished Pig inventory, death losses, and environmental conditions, all in accordance with the standards and requirements from time to time specified by Brown's. All such records shall be the property of Brown's and may be inspected by Brown's at any reasonable time. Grower shall provide Brown's with mortality information on a weekly basis.

i. Review of Operations. Grower shall permit Brown's to enter upon and to inspect the Premises, including all equipment, facilities, and areas utilized by Grower in connection with this Agreement and all Feeder Pigs and Finished Pigs maintained, cared for, and raised pursuant to this Agreement. From time to time, by hand delivery, mail, facsimile or courier, Brown's may issue to Grower written notice regarding deficiencies

in Grower's application of the management or production standards or procedures; Grower shall implement or obtain correction of the noticed deficiency within the time stated in the notice, provided that Grower shall have at least ten (10) days following receipt of the first notice regarding a particular deficiency. Also see Paragraph 8.a regarding termination for failure to comply.

j. Security. Grower shall maintain strict security on the Premises, including lockable security gates and Houses. Grower shall keep all doors to its facilities locked (except when Grower or Brown's is accessing the facilities), and Grower shall not allow any person other than Grower or Brown's to enter such facilities. If Grower shall fail to comply with these security requirements, Brown's may deduct from Grower's compensation the value of any missing or vandalized pigs.

k. Health of Pigs. Grower shall notify Brown's immediately upon the first signs of sickness or other unusual conditions in the pigs maintained at the Premises and shall follow Brown's directions as to medication or other treatment. Grower solely shall be responsible for obtaining and paying for removal and disposal of waste and dead animals (regardless of whether Brown's provides this service with or without charge from time to time), and Grower shall remove and dispose of all waste and dead animals in accordance with recognized animal husbandry practices and applicable Laws. Grower shall institute appropriate rodent and insect control measures utilizing only rodenticides and insecticides approved by Brown's.

l. Environmental Management. Grower has sole responsibility for the storage, management, handling, treatment, disposal, location, and legal compliance of all waste (including animal excretions) located or generated on Grower's property, regardless of the ownership of the related animals. All waste present on the Premises solely is owned by Grower. Grower shall comply at all times with all Laws applicable in any way to any waste on the Premises. Grower shall use and maintain only waste storage, treatment and disposal facilities approved by applicable federal, state and local authorities. Grower expressly acknowledges and agrees that its failure to comply with any

applicable Laws (including Laws governing Grower's management of waste) shall constitute a material breach of this Agreement.

m. Confidentiality. Grower acknowledges and agrees that the management and production standards and procedures and other information furnished by Brown's to Grower under this Agreement are confidential and proprietary information of Brown's. Grower shall maintain all such information as strictly confidential, shall not disclose it in any manner (directly or indirectly) except to employees, agents, and representatives who have a need-to-know for Grower to perform in accordance with this Agreement, and shall not use the information (directly or indirectly) except to the extent necessary for Grower to comply with this Agreement. Grower shall be responsible for any non-compliance with this confidentiality obligation by its agents, representatives, employees, or contractors.

Notwithstanding the foregoing, this confidentiality obligation shall not apply to information in the public domain through no fault of Grower or its employees, agents, representatives or contractors. Further, Grower shall not be in violation for disclosure to the extent required by a court or governmental agency order, provided that Grower gives Brown's prior written notice of such anticipated disclosure in time for Brown's to obtain protective orders and provided further that Grower shall take reasonable efforts to safeguard the confidentiality of the disclosed information.

Grower agrees that any violation of this confidentiality obligation shall result in irreparable damage to Brown's, and, accordingly, Brown's shall be entitled to injunctive and other relief to prevent a violation or threatened violation of this provision, in addition to any other remedy (at law or in equity) including damages.

n. Indemnification. Grower shall indemnify and hold harmless Brown's, its employees, agents, representatives, subsidiaries, affiliates, successors and assigns, from and against any and all loss, cost, expense (including reasonable attorneys' fees) and damage of any kind (whether or not relating

to a third person's claim, now known or unknown, or contingent) arising from or relating to any or all of the following:

(i) Grower's failure to comply in any way with this Agreement;

(ii) the condition of the Premises and related ingress or egress (including the condition of the "all weather road");

(iii) acts and omissions of Grower and/or its employees, agents, representatives and contractors (including with respect to maintaining, caring for and raising Feeder Pigs and Finished Pigs and environmental compliance); or,

(iv) non-compliance with or violation of any Laws by or in connection with Grower, Grower's employees, agents, representatives or contractors, the Premises, waste on the Premises, or the condition of pigs while in Grower's custody.

5. Compensation of Grower.

a. Within ten (10) business days after the final market sale of all Finished Pigs in any Group, Brown's shall pay to Grower an amount with respect to such Group equal to the greater of (i) and (ii) below:

(i) Base and Bonus Method. The sum of

(1) Base Payment. A base payment equal to (i) the Weight Gain for such Group, multiplied by (ii) \$.0315 for the number of partially or non-slatted Houses out of the total number of Houses in the Complex, and \$.0365 for the number of fully slatted Houses out of the total number of Houses in the Complex; plus,

(2) Feed Conversion Bonus. A feed conversion bonus equal to (i) the number of Finished Pigs in such Group, multiplied by (ii) the Feed Differential, multiplied by (iii) \$3.00; plus,

(3) Weight Bonus. A weight bonus equal to (1) the Average Weight Gain Per Finished Pig sold for such Group minus 230 pounds, multiplied by (ii) the number of Finished Pigs in such Group, multiplied by (iii) \$0.04.

(ii) Minimum Floor Payment Method. A minimum floor payment for the Complex for each Turn, calculated by (1)

3

multiplying (i) the contracted average House size from Paragraph 3.a by (ii) the Days on Feed for the House by (iii) \$.0775 per day for a totally slatted House, or \$.0675 per day for a House that is not totally slatted, and then (2) adding together the foregoing results for each House in the Complex.

The total Complex minimum floor payment for a Turn (Paragraph 5.a.ii above) is compared to the total payment described in Paragraph 5.a.i above (Base and Bonus Method), with the greater of the two amounts (but not the combination) being the total payment to Grower for that Turn.

b. Record Keeping. Brown's shall maintain all records and perform all computations contemplated by this Paragraph 5, including the calculation of the Average Weight Gain Per Finished Pig, the number of Finished Pigs, the livability percentage, and the Feed Differential. Brown's records and computations shall govern and shall be binding on the parties.

c. Disabled and other unmarketable pigs shall not be included as Finished Pigs in the above calculations.

d. Brown's may offset any amount due from Grower to Brown's (including indemnification) against any amount due or to become due from Brown's to Grower.

6. Ownership of Property. Brown's shall be the sole owner of all Feeder Pigs and Finished Pigs raised and maintained in connection with this Agreement, as well as all medicines, feeds, supplies, and other items furnished by or through Brown's in connection with this Agreement.

7. No Warranty. BROWN'S MAKES NO WARRANTIES REGARDING THE CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF FEEDER PIGS, FINISHED PIGS, OR FEED, MEDICINE, OR OTHER SUPPLIES PROVIDED BY BROWN'S, AND GROWER ACCEPTS ALL SUCH GOODS "AS IS." Furthermore, Grower acknowledges and agrees that the figures contained in any chart of "Production Assumptions" and "Payments" shown by Brown's to Grower are only estimates based on a number of assumptions regarding production, and that such figures do not constitute a representation or warranty regarding the likelihood of Grower achieving the production or cash flow

levels shown in that chart. Brown's makes no representations or warranties except as set forth in this Agreement.

8. Events of Default; Termination.

a. At its election, Brown's may terminate this Agreement, immediately upon written notice to Grower, without prejudice to any other remedies Brown's may have, and without liability to Grower, upon the occurrence of any of the following:

(1) The existence of swine on the Premises other than Feeder Pigs and Finished Pigs.

(2) The use by Grower of any Feeder Pigs or Finished Pigs, or any feed, medicine, materials, supplies, equipment or services provided by Brown's, for any purpose other than as required or permitted by this Agreement.

(3) The intentional falsification by Grower of any records maintained in connection with this Agreement.

(4) Any emergency situation (including any animal waste management or other pollution emergency) which Brown's determines requires immediate action for the protection of the environment, Feeder Pigs, Finished Pigs, or either of the parties.

(5) The closure of part or all of the Premises due to contamination, government order, compliance with Laws, or natural disaster, if Brown's believes in good faith that such closure will continue for more than ten (10) days or if such closure requires removal of pigs from the Premises.

(6) Any failure to comply with any Laws, including any Laws related to animal waste management or environmental compliance.

(7) The failure of Grower to conform with any other term or condition hereof (including any failure to conform to the management and production standards and procedures from time to time supplied by Brown's), after Brown's has notified Grower of such nonconformity and Grower has failed to remedy the same after at least ten (10) days following Grower's receipt of the notice.

a. In addition, Brown's immediately may remove its pigs and, to the extent allowed by law, also may

terminate this Agreement by written notice, in the event of Grower's insolvency, the filing of a petition in bankruptcy by or against Grower, or the appointment of a receiver for any of Grower's property.

b. Upon any termination or non-renewal of this Agreement, Brown's shall have the right to enter upon the Premises and to remove all property of Brown's, including all pigs, feed, medicines, supplies, and records. Grower shall cooperate with Brown's in this regard and shall supply personnel to assist Brown's in safely loading and transporting such property.

c. If Brown's determines in its reasonable discretion that Grower is not providing proper care or treatment, correct feed or environment, or adequate facilities (including loading and unloading equipment, chutes, docks, lighting and all-weather roads), or otherwise is not complying with its obligations under this Agreement (including environmental compliance), Brown's shall have the right (but not the obligation) to provide proper care, feeding, treatment, environment and maintenance of Brown's pigs on the Premises and to address other deficiencies on the Premises (including environmental compliance), and Brown's may charge the cost of same to Grower (and may deduct this cost from any payments due to Grower). However, Brown's exercise of its rights under this paragraph shall not reduce Grower's responsibilities under Paragraph 4.


9. Miscellaneous Provisions.

a. Governing Law. Notwithstanding conflicts of laws, North Carolina law shall govern and control the validity, interpretation, performance and enforcement of this Agreement.

b. Notice. Except as provided otherwise herein, any notice required or permitted under this Agreement shall be given by registered or certified United States mail, postage prepaid and return receipt requested, to the address(es) specified above, or to such other address(es) as may be supplied by a party in accordance with this paragraph. Any notice so given shall be deemed effective and received upon the earlier of (i) actual

receipt; (ii) receipt and refusal; and (iii) non-delivery at the indicated address after fifteen (15) days.

c. Entire Agreement; Amendments; Waiver. This Agreement is the entire agreement between the parties with respect to the subject matter herein and supersedes all prior oral or written understandings or agreements. This Agreement may be amended or modified only by a written instrument signed by both parties. Any term of this Agreement or breach thereof may be waived only in a writing signed by the party to be charged with the waiver, and any waiver shall not be continuing unless expressly specified in such writing.

d. Independent Contractor. Grower is an independent contractor. Grower is not an agent, servant, franchisee, employee, or partner of Brown's, and Grower shall not hold itself out as such to any person or entity. 

e. Severability. Any invalid, illegal or unenforceable terms in this Agreement shall be severed from the remaining terms and shall not affect the validity or enforceability of the remaining terms.

f. Survival. The confidentiality, indemnification, ownership and miscellaneous provisions of this Agreement shall survive the termination or non-renewal of this Agreement.

g. Assignment. Grower shall not assign or delegate any of its rights or responsibilities hereunder, in whole or in part, without Brown's prior written consent. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, administrators, personal representatives, successors and assigns, as applicable.

h. General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Agreement have the meanings assigned to them in this Agreement, words denoting the singular number include the plural and vice versa, and words importing one gender include the other genders;

(ii) the index to and headings in this Agreement are for convenience only and are not to be considered in interpretation;

(iii) a reference to any agreement or other instrument shall, subject to any contrary provision herein, be deemed to include a reference to that agreement or other instrument as amended, novated or replaced from time to time;

(iv) where the day of which or by which any act, matter or thing is to be done is not a business day, such act, matter or thing shall be done on the immediately following business day;

(v) a reference to a paragraph without further reference to a specific paragraph number is a reference to the paragraph in which the reference appears, and this rule also shall apply to sentences;

(vi) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular provision; and,

(v) the term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS OF THIS AGREEMENT, the parties have executed this Agreement effective as of the date first above written.

BROWN'S OF CAROLINA, INC.

By: _____

Ronald G. Brown

Ronald G. Brown
President

GROWER



Kansas State University

Cooperative Extension Service
K-State Research and Extension
Department of Agricultural Economics
344 Waters Hall
Manhattan, KS 66506-4026
785-532-5823
Fax: 785-532-6925

February 8, 2002

Dear Committee Members:

Thank you for the opportunity to address you today. My name is Roger A. McEowen. I am an associate professor of agricultural economics and extension specialist in agricultural law and policy at Kansas State University. I am a member of the Kansas and Nebraska Bar Associations, have practiced law in Nebraska, and have taught law at the Drake University School of Law Summer Institute in Agricultural Law and the University of Arkansas School of Law Graduate L.L.M. program in agricultural law. I am also presently a member of the board of directors of the American Agricultural Law Association.

I am pleased to comment today on House Bill 2659 - proposed legislation that attempts to provide very basic statutory contractual safeguards for Kansas agricultural producers that enter into production contracts.

At its very essence, H.B. 2659 prohibits three types of conduct: (1) any contract provision that requires a producer to accept sick, defective or substandard contract inputs; (2) any contract provision that prevents a producer from having access to state court concerning a contract dispute; and (3) contract language that either discourages or prohibits producers from associating with other producers to address common problems or collectively negotiate contract terms

The Problem of Sub-Standard Inputs

Producers that enter into production contracts are generally compensated based on either the weight of the poultry or other livestock when full-grown or on the quality and yield of the grain produced. Weight and yield are largely determined, though, by factors that are exclusively controlled by the contractor rather than the producer. In the typical contract production setting, the contractor supplies all of the inputs and detailed management direction. If the inputs are defective, the producer will likely recognize lower than expected income under the contract due to the failure to satisfy contract terms that serve as a prerequisite to obtaining price premiums under the contract. In such situations, it is the contractor's negligent or intentional manipulation of the inputs that has caused the loss of income for the producer. The bill's prohibition of contract language requiring a producer to accept substandard inputs ensures that the responsible party bears the cost of providing such faulty inputs. The provision is particularly necessary in those situations where a producer has few or no meaningful alternatives to the proffered contract.

Kansas State University
Agricultural Experiment
Station and Cooperative
Extension Service

K-State, County Extension
Councils, Extension Districts,
and U.S. Department of
Agriculture Cooperating.

All educational programs
and materials available
without discrimination on
the basis of race, color,
religion, national origin,
sex, age, or disability.

*"Knowledge
for Life"*

Access to Judicial Process

The bill's language preventing production contracts from containing provisions that bar a producer access to Kansas courts requires little explanation. To date, such patently unfair contract language has been evidenced in the production contract setting, primarily with respect to poultry contracts. H.B. 2659 is a safety device designed to protect Kansas producers from such problems.

Retaliation for Organizing

The bill's provision prohibiting retaliation against producers who associate with others to address contract concerns or collectively negotiate production contract terms is critical. When producers complain to the contractor about problems and unfair practices, they are sometimes treated worse as a result. For example, in a recent federal case from Mississippi, a tournament ranking system was used to terminate a production contract where the real reason the contractor terminated the contract was because the producers participated in a producer organization and petitioned the state legislature for producer-friendly legislation. The trial court jury rendered a verdict for the producers.

Retaliation is ostensibly illegal under the Packers and Stockyards Act as an unfair practice, and under the Federal Agricultural Fair Practices Act (AFFA). Indeed, citing the AFFA, a federal court ordered a poultry company to reinstate a terminated grower who alleged that he was terminated because he lead a poultry growers' organization.

Placing a provision in state law similar to the federal provisions and vesting enforcement authority in the state attorney general or local prosecutor can ease in the enforcement and administration of the law. In recent years, agricultural producers have faced tremendous difficulty in sparking the interest of federal officials in enforcing existing applicable federal laws.

Summary

H.B. 2659 represents a modest "first-step" at correcting some of the abuses that have arisen in the agricultural sector involving production contracts. The bill leaves unresolved many other legal issues that producers face. These include early contract termination, contracts requiring producers to make improvements at the producers' expense, unprofitable contracts, false weighing and ranking, and grading problems, just to name a few.

The basic concern with contracting is an eventual tilt in market power coupled with a possible shift in bargaining power as input suppliers (and output processors) gain greater economic power at the expense of producers. H.B. 2659 attempts, to a degree, to level the playing field.

Thank you for your time and attention.

Sincerely,



Roger A. McEowen

House Agriculture Committee

Testimony on House Bill 2659 from the

Kansas Cattlemen's Association
Chairman Mike Schultz

Mr. Chairman and members of the committee,

Today I am asking for your support for the legislative HB2659 which would give producers a avenue of legal recourse for unfair and unlawful actions when entering into agriculture contracts with contractors. I am presenting testimony today as a farmer, rancher and Chairman for the KCA.

I have as of last week received a copy of Archer Daniels Midland "CODE OF CONDUCT" it was sent out to let producers who do business with ADM what to expect. The one area that stuck out and would be of interest today is the Section entitled "Conflicts of Interest" and I quote:

Individuals or companies with which we do business must be chosen solely on the basis of the best interest of ADM. As an ADM employee, agent or other representative, avoid any action, investment, interest or association that might interfere, or be perceived to interfere, with your independent exercise of judgment in the best interest of the Company.

Where a conflict may exist, management will make the decision whether to use such a company or work with such an individual, after appropriate disclosure of any conflicts and review of the relevant facts with the ADM Compliance Officer.

Who signed this document? G. Allen Andreas Chairman and Chief Executive signed it. For someone whoÆs company is filled with losing legal battles and jail time, I see market power coming into play if you are to be contracting with a company that states in public a policy like this.

For more support on this bill I have included the following recent article passing by a landslide margin:

2/7/2002 An amendment to the Senate farm bill offered by U.S. Senator Tom Harkin (D-IA), chairman of the Senate Agriculture, Nutrition and Forestry Committee, which will improve fairness in livestock production contracting was approved Wednesday by a 82-14 vote.

The Harkin amendment will allow farmers involved in beef and pork production contracts to be covered by the Packers and Stockyards Act, which currently protects poultry producers involved in similar contracts.

"Across America one of the biggest concerns among farmers is the lack of competition in agriculture. This amendment is one step toward addressing these concerns - it will provide protections for contract producers who aren't currently covered by existing laws," said Harkin. "In 1999 a Rural Life poll conducted by Iowa State University Extension indicated that 89 percent of Iowa farmers thought agribusiness was too powerful. This amendment will help us swing the pendulum back toward the small producer."

The Harkin amendment accomplishes two goals:

a.. Closes a significant loophole in the Packers and Stockyards Act by including livestock production contracts under its jurisdiction. Currently the Packers and Stockyards Act protects poultry farmers who are engaged in production contracting and livestock farmers who own and market their own animals; however, it does not cover livestock farmers who are engaged in production contracts with meatpackers.

b.. Provides livestock producers the ability to discuss terms of their contract with certain close advisors. Under the current law farmers involved in production contracts are not allowed to discuss the terms of their contracts with people such as their attorney, banker, landlord, or government agencies charged with protecting a party to the contract.

"Across America these type of laws protect gas station owners, fast food franchisees and even other livestock owners. There is no reason why livestock producers should be denied these same protections simply because they engage in production contracting," said Harkin. "This amendment will allow farmers to be covered by existing laws and allowing them to share basic information with their closest advisors. It will provide farmers with a basic fairness that they have been denied for too long."

My testimony is one of concern and YES these contracting violations do occur and that the rules for engagement in business with ranchers or farmers has changed to one that producers interest are fully taken care of by new and effective laws. When the federal amendment passes we should be in proactive and not reactive to this legislation.

Some members may not like our association direction but I represent what is right and what a majority of independent producers have given support for. I ask that producers are given legal means to make contracting fair and if contracting is the option taken, all because of a lack of competition created by the to few companies competing producers can rest assured that the legislature is supportive.

I ask for your full support on HB 2659.

Respectfully submitted,

Mike Schultz

HOUSE AGRICULTURE COMMITTEE
FEBRUARY 11, 2002
HOUSE BILL No. 2659 – CONTRACT GROWERS PROTECTION ACT
KANSAS CATHOLIC CONFERENCE – PAUL JOHNSON

Included with my testimony is an invitation to the House Agriculture Committee to attend the second Kansas Rural Life Assembly on February 12. The Kansas Catholic Bishops will release their second Agriculture White Paper. For those of you interested in the latest on the Farm Bill debate, Brother David Andrews – National Catholic Rural Life Conference Director – will hold a Question & Answer session from 1:30 to 2:30 pm in room 234-N. Brother Dave will discuss specific amendments such as the Producer Protection Act amendments, the ban on packer ownership of livestock and the cap on federal farm payments.

The Kansas Catholic Conference (KCC) supports an open, free and competitive marketplace. Markets must have clear and understandable rules. HB 2659 is one effort to establish such clear and understandable rules. The provisions of this bill are very common sense:

- No provision of the contract may deny the producer access to Kansas' courts to resolve a contract. Arbitration could be one volunteer option.
- The producer would not be required to accept sick or defective livestock or poultry or substandard feed
- The contractor may not in any way discourage or prohibit producers from associating to address production problems or to collectively negotiate contract terms.

This bill would only apply to production contracts and not to marketing contracts. Violations of the bill would be addressed by private action, by the Attorney General, or by the county or district attorney.

Establishing the market rules for all to understand is the easiest way to prevent future problems. Prevention is far preferable to extended litigation and turmoil. While Kansas has thousands of producers, the number of contractors or processors continues to decline. This legislation recognizes this economic imbalance and offers some assistance in leveling the marketplace. The first contracts offered are usually the fairest but as contracts are renegotiated the bargaining power of the producer diminishes. This legislation would give the farmer a fair court of law venue, the right to refuse substandard feed/livestock and the opportunity to collectively negotiate contract terms.

The Kansas Catholic Conference requests this committee to favorably consider House Bill 2659. Thank You.

Testimony to House Ag Committee in Support of HB 2659
Kansas Farmers Union
Donn Teske
2-11-02

Hello, I wish to speak to you today in support of HB 2659. I serve as president of the Kansas Farmers Union and our policy calls for full support of a Producers Protection Act. As your committee heard in testimony here last year and also in Pittsburgh during the interim hearings, there are problems with contract agriculture. The virtual dominance by individual processors in geographic areas limits the producer's ability to take his services or talents elsewhere in the case of a breakdown in relationships between producer and processor. The dominance of the processors makes it difficult to get producers to publicly complain, but during my time as a farm analyst I worked several contract hog producers that were being forced out of business because they fell out of favor with their contractors. In these situations the producers were left with building payments and no hogs coming in to fill them. The ones I worked with were leveraged too high to buy pigs to fill the buildings themselves or to supply the feed for them.

Yes, producers should fully research the contracts before signing them, however they still should have basic rights that any citizen of the United States is promised in our constitution.

- HB 2659 calls for the producer to have the right to refuse delivery on "sick, defective, or sub-standard inputs". This is pretty simple, the producer is paid for the number of live animals supplied as well as weight gain performance. How can he manage when he has no choice in what is brought to him? This should be a basic right.
- HB 2659 calls for the producer to have the right to address disputes in the Kansas courts by his peers instead of arbitration. Isn't this another of our basic rights?
- The third provision called for in HB 2659 is the right for producers to associate with each other "in order to address concerns or problems or to collectively negotiate production contract terms." Another basic right.

You as a committee aren't really in very deep water here. All this bill calls for is enforcement of basic human rights to farmers in a system of contract production that has been evolving in the states around us and is now spreading across Kansas. Why do we have to learn the problems ourselves, can't we learn from our neighbors who have the problems and are trying to deal with the fall out now?

If anything, we in Kansas Farmers Union would like to see the bill stricter with more accountability to the contractor. There still needs to be more accountability by the contractors in the area of monopolization of industries as addressed by the Packers and Stockyard act. Also more support for Coop development to give farmers the numbers needed to negotiate with the purchasers of their products and also the suppliers of their inputs. Coops work, their reputation is tarnished right now in agriculture but everything is failing in ag at this time. Look at the Coops in telecommunication, talk about success stories.

Kansas Farmers Union supports HB 2659.

Thank You

House Agriculture Committee

HB 2659

Testimony from the Kansas Cattlemen's Association Chairman Mike Schultz

Mr. Chairman and members of the committee,

Today I am asking for your support for the legislative HB2659 which would give producers a avenue of legal recourse for unfair and unlawful actions when entering into agriculture contracts with contractors. I am presenting testimony today as a farmer, rancher and Chairman for the KCA.

I have as of last week received a copy of Archer Daniels Midland "**CODE OF CONDUCT**" it was sent out to let producers who do business with ADM what to expect. The one area that stuck out and would be of interest today is the Section entitled "**Conflicts of Interest**" and I quote:

02/11/2002

Individuals or companies with which we do business must be chosen solely on the basis of the best interest of ADM. As an ADM employee, agent or other representative, avoid any action, investment, interest or association that might interfere, or be perceived to interfere, with your independent exercise of judgment in the best interest of the Company.

Where a conflict may exist, management will make the decision whether to use such a company or work with such an individual, after appropriate disclosure of any conflicts and review of the relevant facts with the ADM Compliance Officer.

Who signed this document? G. Allen Andreas Chairman and Chief Executive signed it. For someone who's company is filled with losing legal battles and jail time, I see market power coming into play if you are to be contracting with a company that states in public a policy like this.

For more support on this bill I have included the following recent article passing by a landslide margin:

2/7/2002 An amendment to the Senate farm bill offered by U.S. Senator Tom Harkin (D-IA), chairman of the Senate Agriculture, Nutrition and Forestry Committee, which will improve fairness in livestock production contracting was approved Wednesday by a 82-14 vote.

The Harkin amendment will allow farmers involved in beef and pork production contracts to be covered by the Packers and Stockyards Act, which currently protects poultry producers involved in similar contracts.

"Across America one of the biggest concerns among farmers is the lack of competition in agriculture. This amendment is one step toward addressing these concerns - it will provide protections for contract producers who aren't currently covered by existing laws," said Harkin. "In 1999 a Rural Life poll conducted by Iowa State University Extension indicated that 89 percent of Iowa farmers thought agribusiness was too powerful. This amendment will help us swing the pendulum back toward the small producer."

The Harkin amendment accomplishes two goals:

- Closes a significant loophole in the Packers and Stockyards Act by including livestock production contracts under its jurisdiction. Currently the Packers and Stockyards Act protects poultry farmers who are engaged in production contracting and livestock farmers who own and market their own animals; however, it does not cover livestock farmers who are engaged in production contracts with meatpackers.
- Provides livestock producers the ability to discuss terms of their contract with certain close advisors. Under the current law farmers involved in production contracts are not allowed to discuss the terms of their contracts with people such as their attorney, banker, landlord, or government agencies charged with protecting a party to the contract.

"Across America these type of laws protect gas station owners, fast food franchisees and even other livestock owners. There is no reason why livestock producers should be denied these same protections simply because they engage in production contracting," said Harkin. "This amendment will allow farmers to be covered by existing laws and allowing them to share basic information with their closest advisors. It will provide farmers with a basic fairness that they have been denied for too long."

My testimony is one of concern and YES these contracting violations do occur and that the rules

for engagement in business with ranchers or farmers has changed to one that producers interest are fully taken care of by new and effective laws. When the federal amendment passes we should be in proactive and not reactive to this legislation.

Some members may not like our association direction but I represent what is right and what a majority of independent producers have given support for. I ask that producers are given legal means to make contracting fair and if contracting is the option taken, all because of a lack of competition created by the too few companies competing producers can rest assured that the legislature is supportive.

I ask for your full support on HB 2659.

Respectfully submitted,

Mike Schultz



Kansas Farm Bureau

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org
800 S.W. Jackson, Suite 817, Topeka, Kansas 66612 • 785.234.4535 • Fax 785.234.0278

PUBLIC POLICY STATEMENT

HOUSE AGRICULTURE COMMITTEE

RE: HB 2659 – Regarding unfair and unlawful actions in agricultural production contracts.

**February 11, 2002
Topeka, Kansas**

**Presented by:
Leslie Kaufman, Associate Director
Public Policy Division**

Chairman Johnson and members of the House Agriculture Committee, thank you for the opportunity to appear today and comment on HB 2659 regarding unfair and unlawful actions in agricultural production contracts. I am Leslie Kaufman, Associate Director of Public Policy for Kansas Farm Bureau.

We appear today in partial support HB 2659. Some of the provisions in the bill are compatible with our member adopted policy including a prohibition on denying producers the ability to negotiate collectively and the language that seeks to protect trade secrets and producer's personal financial information. But, as in years past, the definitional language raise concerns for our organization. It is difficult, at times, to understand just who and what the bill will apply to. As such, we cannot whole-heartedly endorse the proposal.

As an alternative to HB 2659, we would like to offer a substitute bill that KFB can support, without any reservation. We have been working with the Revisor's staff to craft the statutory language to carry-forward the concepts our members support regarding agricultural contracting. We had hoped to have the final language ready by this afternoon to attach with this testimony. Unfortunately, the bill draft is not complete at this time. With the Chair and Committee's indulgence, we will explain, today, our policy and what we

House Agriculture Committee
February 11, 2002
Attachment 7

intend for the substitute to include. Then, we will provide the actual language as soon as it is ready, but no later than the opponents hearing next week.

The farmer and rancher members of Kansas Farm Bureau reaffirmed and approved specific policy dealing with Agricultural Contracting at our annual meeting this past November:

1. *Producers must be able, both as individuals and collectively, to enter into production and/or marketing enterprises, including contractual and cooperative enterprises.*
2. *Producers must have the ability to seek professional legal, financial and agricultural production advice on contract terms, obligations and responsibilities.*
3. *Producers should be allowed to discuss and compare contracts with other producers.*
4. *Disclosure of contract terms must not require revelation of trade secrets or require a producer to divulge personal financial information or production practices.*
5. *Contracts should include a readable, understandable summary of material risks.*
6. *Production contracts must be negotiated and entered into in an environment free from unfair trade practices.*
7. *Contractors should be prohibited from being able to terminate a contract with a producer who has complied with the provisions of the contract.*
8. *A priority lien should be available for a producer for amounts due under a production or marketing contract.*
9. *We encourage private organizations, governmental agencies and educational institutions to develop and promote educational programs and materials that provide technical and practical information about contract production, marketing contracts and cooperative businesses.*

Our proposed substitute will seek to implement points 1-7. Point number 8 addresses lien provisions and thus, we believe it should be dealt with separately from the more general contracting principles in points 1-7. As such, it will not be included in our substitute bill proposal. Additional, point number 9 is an admonition that does not lend itself to statutory language.

As you can see from the numbered points above, our policy (and our substitute) will enumerate more protections for producers than the bill before you currently, HB 2659. Other differences in our proposed substitute will, based on our explanation above, include revision of the definition section and individual definitions. We believe the current

definitional section is cumbersome, at best, and not as clear as it could be. We will propose simpler language that we believe will lend itself better to language that is, in our policy terms above, "readable and understandable".

Our penalty section will be somewhat different than what is contained in HB 2659. Our bill will have a similar provision to Section 1(g) [pg. 3, Ln. 12]. Additionally, we plan to incorporate language similar to Section 1(h), although our provision will be permissive and not dictate to the court how it administers relief. Farm Bureau members believe the judicial functions should be performed by the judicial branch and not by executive agencies. Therefore, our bill will not contain a civil penalty provision.

Finally, our proposal will be targeted. It will be specific to production contracts and specific to the poultry industry. As you read earlier, our policy language is not species specific. Our aim in submitting a proposal that is species specific is a tactical one. We do not believe we can attain all of our policy points in a general, all-species bill, at this time. As such, we are choosing to take aim at what we think is a reachable goal. This is a "first step" in securing policy our members believe in.

It was evident to us that the poultry industry, by and large, is calling for legislative assistance. We believe that was a clear message coming from Kansas' poultry producers during the interim Special Agriculture Committee hearings. From what we have heard, Kansas' poultry producers are generally consistent in their appeals for assistance through contracting legislation. Additionally, it is obvious that other species segments of the agricultural industry are in disagreement amongst themselves whether legislating certain parameters for agricultural production contracts is appropriate. As such, our bill is specific to the poultry industry. Accomplishing our members' policy a step at a time is far preferable than embarking down a trail that ends without any additional protections for any segment of the agricultural industry.

I have outlined for you what KFB seeks to propose as an alternative to HB 2659. Obviously, we recognize that dealing with our language conceptually, rather than in a substitute bill draft, is not the ideal way to present the information. Under the circumstances, this was the approach we were left with and apologize to the Committee for the inconvenience.

Again, we will deliver our final proposal to you as soon as possible. We understand that you may want to reserve comments or questions on today's testimony until you have

our substitute language. We will be available at the Committee's request to answer questions or you may contact us individually, as well.

We understand that there are those that may think our proposal goes too far in legislating contract provisions. Others may think our option lacks detail they think important. We have put before you what our members consider important, in a package we think is attainable. Obviously, you the committee will decide whether or not to advance our proposal, add to it, delete portions of it or chose another path. We will continue to advance our members policy, when and where we can, and we thank you for the opportunity to appear before you today.

Leslie Kaufman

Kansas Farm Bureau
Topeka office 234-4535
Manhattan office 785-587-600

Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.