

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 18, 2002, in Room 423-S of the Capitol.

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

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

Conferees appearing before the committee:

National Turkey Federation (written only)
Mike Jensen, President, Kansas Pork Association (written only)
Ken Goodyear, Kansas Pork Association (no written testimony)
Steve Eichman, Kansas Pork Association
Gary Beachner, Legislative Committee Chairman, Kansas Grain and Feed Association
Max Sudbeck, Vice Chairman, Board of Directors, Kansas Agribusiness Retailers Association
Don Teske, President, Kansas Farmers Union
Charles Foster, livestock producer, Delia, Kansas
Harold Walker, President, Kansas National Farmers Organization
Daniel Howell, farmer/rancher, Frankfort, Kansas
Ray Hallauer, livestock producer, Holton, Kansas
Roger Black, Kansas Livestock Association
Debbie Lyons-Blythe, Kansas Livestock Association
Andrew Murphy, Kansas Livestock Association
Allie Devine, Research and Legal Affairs, Kansas Livestock Association
Chris Wilson, Director of Governmental Relations, Kansas Seed Industry Association and Kansas Crop Improvement Association

Others attending: See attached list

Minutes of the February 11 and 13 meetings were distributed. Chairman Johnson asked members to notify the committee secretary of any corrections or additions prior to 5:00 p.m. February 19, or the minutes will be considered approved as presented.

Copies of the Kansas Dairy Marketing Advisory Board's Annual Report to the Senate and House Agriculture Committees were distributed. The Board recommends that the Legislature continue to monitor the impact of volatile prices on the Kansas dairy industry and congressional action on dairy compacts. (Attachment 1)

Continuation of hearing on HB 2659 - Contract grower protection act.

Chairman Johnson opened the hearing on **HB 2659** for opponents only. Proponents had been heard in committee on February 11. Raney Gilliland reviewed the bill for the committee.

Kansas Farm Bureau distributed copies of their proposed substitute for **HB 2659** which was conceptually described in their testimony on February 11. (Attachment 2)

The National Turkey Federation submitted written testimony in opposition to **HB 2659**. The Chairman read excerpts from their testimony outlining their concerns with this legislation. (Attachment 3)

Mike Jensen, President of the Kansas Pork Association, presented written testimony in opposition to **HB 2659**. He noted that not a single Kansas pork producer has ever brought forth a concern to their association that they have been aggrieved in a contractual agreement. (Attachment 4)

Ken Goodyear testified on behalf of the Kansas Pork Association in opposition to **HB 2659**.

CONTINUATION SHEET

Steve Eichman appeared on behalf of the Kansas Pork Association in opposition to **HB 2659** discussing his family's swine operation and their experiences with hog finishing contracts. He reported that many Kansas producers operate on both sides of these contracts and no one has ever expressed any interest to him in having legislation of this type. ([Attachment 5](#))

Gary Beachner, Legislative Committee Chairman of the Kansas Grain and Feed Association, appeared in opposition to **HB 2659**. He asked that the Legislature use caution when considering any policy that might restrict the options of those involved in production agriculture. ([Attachment 6](#))

Max Sudbeck, Vice Chairman of the Board of Directors of the Kansas Agribusiness Retailers Association, testified in opposition to **HB 2659**. He urged the committee to use caution when considering this issue or any similar proposal that might inadvertently lead to limiting the marketing options currently utilized by Kansas farmers and agribusinesses. ([Attachment 7](#))

Donn Teske, President, Kansas Farmers Union, appeared before the committee again on **HB 2659**. He expressed Kansas Farmers Union's continued support for this legislation, although they would prefer a stronger bill, and their opposition to the Kansas Farm Bureau substitute proposal. ([Attachment 8](#))

Charles Foster, an independent livestock producer from Delia, Kansas, testified in support of **HB 2659**. He would, however, like to see a tougher bill to offer more protection for the agriculture producer. ([Attachment9](#))

Harold Walker, President, Kansas National Farm Organization, appeared in support of **HB 2659**, although he believes the bill needs to be strengthened to address the needs of the agricultural industry. ([Attachment10](#))

Daniel Howell, a farmer/rancher from Frankfort, Kansas, appeared in support of **HB 2659** to provide basic rights to farmers and producers in an era moving toward contract production. ([Attachment 11](#))

Ray Hallauer, a livestock producer from Holton, Kansas, testified in support of **HB 2659** although he does not believe it offers enough protection for an independent producer dealing with large corporations. ([Attachment 12](#))

Roger Black, representing the Kansas Livestock Association, testified in opposition to **HB 2659**. He feels that any legislative fix to the perceived problems associated with production contracts would only complicate and discourage innovation and freedom in the marketplace. He believes these issues can and should be addressed by education, not legislation. ([Attachment 13](#))

Debbie Lyons-Blythe appeared on behalf of the Kansas Livestock Association in opposition to **HB 2659**. She discussed how this bill would impact the livestock industry and in particular their operation. Rather than pass cumbersome restrictive legislation, she joined KLA in encouraging the legislature to support educational efforts to disseminate information that would help individuals enter into win-win agreements. ([Attachment14](#))

Andrew Murphy, on behalf of the Kansas Livestock Association, testified in opposition to **HB 2659**. He expressed two primary problems with the bill, one, that it is completely one-sided, and second, it does not provide for education. He believes education is the more powerful weapon against being taken advantage of, not legislation. ([Attachment 15](#))

Allie Devine, Research and Legal Affairs, Kansas Livestock Association, appeared in opposition to **HB 2659** outlining the association's objections to the bill. KLA believes the costs, confusion, and intrusion into their members' businesses outweighs any perceived benefit. ([Attachment 16](#))

Chris Wilson, Director of Governmental Relations of the Kansas Seed Industry Association and the Kansas Crop Improvement Association, appeared in opposition to **HB 2659** and the Kansas Farm Bureau substitute proposal. She noted that production contracts are a way of life in the seed industry, yet there has been no controversy surrounding these contracts. Samples of seed industry contracts are included with her testimony. ([Attachment 17](#))

Chairman Johnson closed the hearing on **HB 2659**.

The meeting adjourned at 5:24 p.m. The next meeting is scheduled for February 20, 2002.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 18, 2002

NAME	REPRESENTING
Don Rapoe	KCA
Matt Bergman	Pat Hill Assoc
Perry Nowak	Royal Beef Feed Yard
James Holopirek	
JB Colon	KLA
Dan LaTourne	Quality Feeders / KLA
Brian Winter	Winter Livestock
JEFF SIBLEY	FOWLED FEEDERS
Jim Devine	
Scarlett Hagins	KLIF
Dave Harsnape	DeCATIV Co Feed Yard
Larry Sample	KLA
Jerry Mentzer	KLA
David B Hartay	
John J Sample	Farmer Union
Linus Hartman	F.U. KCA
Jim Allen	Seaboard
Mary Beth Steinlage	Farmer Union
Alan Mars	

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 18, 2002

NAME	REPRESENTING
Tom Niehues	
Hare	Gov's office
Harold Walker	Ks NFO
Ray Hallauer	Farmer livestock
Charles Foster	FARMER + Livestock
Emil Mushrush	Ks. Farmers Union
Sarah Schwartz	Ks Farmers Union
Myron Krohn	"
Loring Kufahl	"
Rudell Kufahl	"
Donna Bahr	"
Don H. Howell	Farm Ranch
Beth Jarha	Ks Lusk Assoc.
ANDREW MURPHY	GREAT BENDS FEEDING, INC.
Heather Labruere	Beef Marketing Group
Jennifer Braun	KLA
Jennifer Siles	"
Deborah K. Lyons-Blythe	White City, KLA.
Alli Devine	KLA

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 18, 2002

NAME	REPRESENTING
Roger Black	same
Bob Browelect	KLA
Joe Carpenter	KLA
Mike Jensen	KS Pork Assn
Steve Fickman	St George
Ken Godyear	Pwight,

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3556
FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

Report of the Kansas Dairy Marketing Advisory Board

Presented to the Senate and House Agriculture Committees of the 2002 Kansas Legislature

February 1, 2002

The Kansas Legislature created a Dairy Marketing Advisory Board in 1994. This board reports annually to the Senate and House agriculture committees.

Members of the board are designated as two representatives of dairy producers, one representative of dairy processors, one consumer, and the Secretary of Agriculture or his or her designee. Currently serving are Dennis Metz, a dairy producer from Wellington; Elaine Sauerwein, consumer representative from Newton; and Kansas Secretary of Agriculture Jamie Clover Adams. Two positions, one representing producers and one representing processors, are not filled.

The Kansas Dairy Industry

Trends of the last few years continue.

The face of the dairy industry continues to change. On January 1, 1994, the Kansas Department of Agriculture had 940 Grade A dairies and 153 manufacturing grade dairies permitted. On the same date of 2002, there were 550 permitted Grade A dairies and 32 manufacturing grade dairies in operation.

Although there are fewer dairy farms, total milk production in Kansas continues to increase, with our ranking among the states in total milk produced rising from 27th in 1999 to 24th in 2000. There was an 8.2 percent increase in Kansas milk production between 1999 and 2000.

Fewer, but larger, operations is a national trend. According to the National Agricultural Statistics Service, the number of 1-200 head dairies is declining at an ever-increasing rate. The number of dairies with more than 200 head is increasing and significant increases in the 500 and over head farms are being seen. Four more large dairies began operating in the state in 2001.

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Attachment 1

The state's Grade A fluid milk and Grade A milk product processing capacity basically continues at last year's level, but non-Grade A dairy product processing capacity (such as cheese, butter and powdered milk production) has decreased in recent years. Increasing raw milk production and declining processing capacity cause a large portion of Kansas-produced milk to be transported out of state for processing.

Assistance to Small, Independent Producers

The Kansas Department of Commerce and Industry's agriculture marketing division has received a Rural Business Enterprise Grant from the USDA Rural Development program to examine opportunities for small-scale dairy processing in the state of Kansas.

Regional Dairy Compacts

In 1999 the Kansas Legislature took action which would have allowed the Kansas Secretary of Agriculture to enter into a Southern Interstate Dairy Compact if it was determined this would benefit Kansas producers. The Kansas Dairy Association supported this action and had been supportive of the Northeast Interstate Dairy Compact.

Congress allowed the Northeast Compact to expire Sept. 30, 2001. There currently are no compact provisions in either the House or Senate versions of the Farm Bill, but there still is an active coalition working for the inclusion of compacts. To further complicate the issue, Senator Patrick Leahy of Vermont has drafted an amendment that would essentially create a National Dairy Compact.

Current Prices and Federal Assistance

Milk price volatility continues, with dairy producers experiencing higher highs and lower lows. Economists predict that 2002 will bring one of the lows. USDA predictions show a nine percent drop in the price paid to farmers for their milk from 2001 to 2002.

For November 2001, the Statistical Uniform Price for the Central Milk Marketing Order was \$12.46 per hundredweight compared to \$10.85 a year earlier.

Suggestions to the Legislature

The Kansas Dairy Marketing Advisory Board respectfully recommends to the Kansas Legislature that it continue to monitor these issues.


- The impact of volatile prices on the Kansas Dairy Industry.
- Congressional action on dairy compacts.

The Dairy Marketing Advisory Board stands ready to appear before the Senate and House Agricultural Committees, if appropriate, to discuss these ongoing issues and any recent developments.

Sincerely Submitted,

Dennis Metz
Member, Kansas Dairy Marketing Advisory Board


Elaine Sauerwein
Member, Kansas Dairy Marketing Advisory Board


Secretary of Agriculture Jamie Clover Adams
Member, Kansas Dairy Marketing Advisory Board

Sincerely Submitted,



Dennis Metz
Member, Kansas Dairy Marketing Advisory Board

Elaine Sauerwein
Member, Kansas Dairy Marketing Advisory Board



Secretary of Agriculture Jamie Clover Adams
Member, Kansas Dairy Marketing Advisory Board



Kansas Farm Bureau

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February 18, 2002

TO: Chairman Dan Johnson and
Members of the House Committee on Agriculture

FROM: Leslie Kaufman, Associate Director
Janet McPherson, Assistant Director
KFB Public Policy Division

RE: **KFB's Proposed Substitute to HB 2659**

Attached is Kansas Farm Bureau's proposed substitute to HB 2659, which was conceptually described in our testimony before your committee on February 11, 2002. We will briefly explain in this memo the major differences between our proposal and the original HB 2659. If you have questions regarding the draft, our testimony or our policy positions, please contact us.

Proposed Sub. Section 1(a) – Definitions:

KFB's proposed language seeks to simplify the definitions and make them more readable and understandable. In doing so, this has also reduced the number of definitions needed.

Probably the most significant difference between KFB's proposal and HB 2659 is the KFB proposal is poultry specific.

- *Original HB 2659 is not specific to any one species and, as we read it, applies to livestock (beef and dairy cattle, poultry, sheep or swine) and crops.*

Proposed Sub. Section 1(b)(1) through (7) – Requirements/Prohibitions:

The KFB proposal provides seven protections, based on Farm Bureau policy, to the poultry producer:

1. Poultry production contracts shall be written and include a readable, understandable summary of material risks.
 - *HB 2659, as we read it, does not contain corresponding language.*
2. Poultry production contracts must be negotiated and entered into in an environment free from unfair trade practices.
 - *HB 2659, as we read it, does not contain corresponding language.*
3. Poultry productions contracts shall not require the disclosure of trade secrets.
 - *HB 2659 contains similar language at page 2, lines 41-43 and page 3, line 1.*

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4. Poultry production contracts shall not require revelation of intellectual property rights, personal financial information or production practices.
 - *HB 2659 contains similar language at page 2, lines 41-43 and page 3, line 1.*
5. Poultry production contracts shall not prohibit or discourage producers from associating with other producers to compare contract terms or address concerns/problems.
 - *HB 2659 contains similar language at page 2, lines 39-41.*
6. Poultry production contracts shall not prohibit or discourage poultry producers from seeking professional legal, financial and agricultural production advice on contract terms, obligations and responsibilities.
 - *HB 2659, as we read it, does not contain corresponding language.*
7. A contractor is prohibited from terminating a contract with a producer who has complied with the provisions of the contract.
 - *HB 2659, as we read it, does not contain corresponding language.*
8. ***Protections that original HB 2659 contains that are not a part of the KFB proposed substitute:***
 - *Production contracts shall not require producers to accept sick, defective or substandard contract inputs (page 2, lines 33-34).*
 - *Production contracts shall not deny a producer the ability to address disputes in Kansas courts, but may allow disputes to be submitted to arbitration (page 2, lines 35-38).*

Proposed Sub. Section 1(c) – Void provisions:

Provisions violating the protections enumerated in the bill are void and unenforceable.

- *Original HB 2659 contains similar language at page 3, lines 2-6.*

Proposed Sub. Section 1(d) – Enforcement:

The Farm Bureau proposal, although containing some similar language to original HB 2659, overall varies significantly.

The KFB proposed substitute allows a poultry producer who suffers damages to seek appropriate legal and equitable relief, including damages from the court. A prevailing producer may be awarded court costs.

- *Original HB 2659 contains similar language (page 3, lines 12-15), but mandates the awarding of attorney's fees and litigation expenses to a prevailing party, whereas, KFB's attorney fee language is permissive.*

Enforcement/penalty provisions that original HB 2659 contains that are not a part of the KFB proposed substitute, as we read it:

- *A contractor who violates HB 2659 shall be subject to a civil penalty equal to the amount of actual damages (page 3, lines 7-9).*

- *A contractor who violates HB 2659 is guilty of a misdemeanor [criminal penalty] (page 3, lines 10-11).*
- *A producer may request the court impose injunctive relief, including restraining orders (page 3, lines 19-24).*
- *The Attorney General or county/district attorney may request the court state's Attorney General or a county/district attorney may (page 3, lines 25-35):*
 - *Issue an injunction to restrain a contractor from engaging in any conduct or practices in violation of HB 2659;*
 - *Require a contractor to comply with HB 2659; and*
 - *Issue a subpoena to obtain a production contract for purposes of enforcing HB 2659.*
- *The Attorney General or a county/district attorney may bring an action in district court to enforce penalties in HB 2659. (page 3, lines 34-35):*

Proposed Sub. Section 2 – Implementation:

This provision is identical to HB 2659 and implements the legislation effective upon publication in the statute book (*original HB 2659 page 3, line 36*).

The above descriptions outline the major differences between the KFB proposed substitute to HB 2659 and the original 2659. Obviously, there are some significant differences and two different approaches.

We understand this is a starting point. It is up to you, the committee, to determine if the KFB proposal is an acceptable approach for this committee to endorse should you take action on HB 2659. We also understand, that if this committee does, ultimately end-up working from our draft, some additions/deletions are possible. Although, the initial draft is limited to poultry and our KFB policy points, there may be other issues to include which, if worded appropriately, would not be objectionable to us.

Thank you for allowing us the opportunity to present this proposal conceptually last week and follow up with the actual proposal this week. We understand this was a nontraditional approach, and we certainly appreciate the committee's indulgence. We would inform you, that drafts of our proposed language were provided to several agriculture organizations that are opponents, or possible opponents, to HB 2659. We felt it was incumbent upon us to share this information, out of fairness to them, considering we only had a conceptual proposal at the proponents hearing.

As always, Farm Bureau stands ready to answer questions and work with the committee as you wish. Thank you.

*KFB Public Policy Topeka Office: 234-4535
 Leslie Kaufman, cell phone: 633-2690
 Janet McPherson, cell phone: 633-1536*

*KFB Public Policy Manhattan Office: 785/587-6000
 Patty Clark ext. 6106*

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.

KFB Proposed Substitute for H. 2659

AN ACT concerning agriculture; relating to poultry production contracts; providing certain terms and mandatory provisions.

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

Section 1. (a) As used in this act: (1) "Contractor" means a person who owns poultry that is raised or cared for by a poultry producer;

(2) "poultry" means posthatched to finished live chickens or turkeys that are raised by a poultry producer for slaughter by another;

(3) "poultry producer" means any individual or group of individuals that raise or care for live poultry for slaughter by another under terms of a written production contract;

(4) "production contract" means any written agreement that provides for the raising and care of poultry by a poultry producer for a contractor; and

(5) "producer" or "production" means to raise and care for poultry under the terms of a poultry production contract.

(b) Poultry production contracts shall: (1) Be written in a readable form and shall be accompanied by a clear written disclosure statement setting forth the nature of the material risks faced by the poultry producer if the poultry producer enters into such poultry production contract;

(2) be negotiated and entered into in an environment free from unfair or deceptive trade practices or other violations of law;

(3) not require disclosure of trade secrets and not be contrary to the uniform trade secrets act, K.S.A. 60-3320 et seq., and amendments thereto;

(4) not require poultry producers to reveal intellectual property rights nor disclose personal financial information or production practices;

(5) not prohibit nor discourage poultry producers from associating with other poultry producers to compare contract terms or address concerns or problems;

(6) not prohibit nor discourage poultry producers from seeking professional, legal, financial and agricultural production advice and counsel related to production contract terms, obligations and responsibilities; and

(7) not allow a contractor to terminate any poultry production contract with a poultry producer that has complied with the provisions of the poultry production contract.

(c) Any provision of a poultry production contract which violates the provisions of subsection (b) is void and unenforceable. This subsection shall not affect other provisions of a poultry production contract, including a contract or related document, policy or agreement which can be given effect without the voided provision.

(d) A poultry producer who suffers damages because of a contractor's violation of the provisions of subsection (b) may obtain appropriate legal and equitable relief, including damages. In such a civil action against the contractor, the court may award the poultry producer who is the prevailing party, reasonable attorney fees and other litigation expenses.

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



RON PRESTAGE, *Chairman*
BOB WRIGHT, *Vice Chairman & Secretary-Treasurer*
NICK WEAVER, *Immediate Past Chairman*
STUART E. PROCTOR, JR., *President*

STATEMENT OF
THE NATIONAL TURKEY FEDERATION

Before the

Special Committee on Agriculture
Kansas House of Representatives

HEARING ON HOUSE BILL No. 2659

February 18, 2002

House Agriculture Committee
February 18, 2002
Attachment 3

STATEMENT ON KANSAS HOUSE BILL 2659

Thank you for the opportunity to submit this statement on House Bill 2659. We appreciate the opportunity to provide detailed information about turkey production contracts and the benefits they offer turkey producers and processors.

The National Turkey Federation (NTF) represents every segment of the U.S. turkey industry, including every U.S. processor as well as growers, breeders, hatchery owners and the allied companies that support the turkey industry. NTF is the only national trade association representing the turkey industry exclusively.

The issue of grower contracts and the role of government in enforcing them has been a challenging issue for NTF. Our elected leadership ultimately determined the best way to resolve this issue was to form a special Grower-Processor Relations Subcommittee, comprised of processors and growers, to make a thorough examination of the issue and to make policy recommendations to the Executive Committee.

Members of the committee worked through most of Spring 2001 to examine the various bills relating to this issue that were pending before the U.S. Congress. They exchanged views with the legislative proponents of these bills, met with a representative of a contract grower organization and deliberated at length on the bills. Their unanimous conclusion was to recommend to our Executive Committee that NTF oppose additional government intervention into what is essentially a private business transaction between a processor and a family farmer.

The growers and processors reached this decision for three reasons. The first is that, while there may be occasional isolated incidents that point to the need for better communication between growers and processors, there is no evidence of a widespread grower-processor relations problem in the turkey industry. Second, turkey production contracts are vital to the financial well being of growers and processors. Excessive intervention in the contractual process could have adverse, unintended consequences for all segments of the industry. Finally, creating "special" business rules for agriculture could have a damaging long-term impact on rural America and, by extension, on rural Kansas.

We would like to examine these last two points in more detail before turning to our specific concerns about House Bill 2659.

Overview of the Turkey Industry and Turkey Contracts

The turkey industry operates on extremely tight profit margins that often are measured in fractions of cents per pound. The ability of turkey companies to make a profit depends almost exclusively on their ability to manage costs. Because of fierce competition among meat protein products, turkey companies are not able to pass most production cost increases along to consumers. Consumers, in fact, pay little more for their turkeys today than they did 20 years ago. According to the U.S. Department of Agriculture, consumers in 1981 paid an average of 98

cents per pound for a frozen whole turkey. In 2001, consumers paid an average of \$1.03 per pound for that same turkey. In two decades, turkey companies have been able to increase the cost to consumers of a whole turkey by a total of just five cents per pound.

This tough fight for the consumer dollar has caused the turkey industry to lose money for extended periods. From mid 1995 through mid 1998, USDA reports indicate the turkey industry suffered losses for 30 consecutive months. The industry has enjoyed a moderate level of profitability since, but that profitability has not come from higher prices for our turkey products; it has come because the price of feed – our single biggest production cost – has been at or near record lows for the last four years.

In such an economic environment, turkey production contracts serve a vital purpose for both turkey processors and turkey growers. The contracts help processors ensure a steady supply of turkeys for their processing facilities and minimize variation in the cost of raising those turkeys. At the same time, the contracts help protect growers from market forces. During those 30 consecutive months of losses, turkey growers continued to receive a guaranteed price for the turkeys they raised, even when the price of grain spiraled out of control and the wholesale price processors received for turkeys reached a seven-year low.

The Danger of Setting Special Rules for Agriculture and Agribusiness

The most difficult aspect of governing is trying to foresee all the consequence of a new law or regulation. Accordingly, we would like to offer a cautionary note about setting contracting rules for agriculture and agribusiness that are different from those that apply to the rest of the business world.

Investment in agriculture and in rural enterprises is declining. Wall Street and the banking community already have reservations about investing in agribusiness and rural America in general. The situation is no different in Kansas. The very processors who are the target of House Bill 2659 are among the last entities out there that are making significant investments in rural America and in rural Kansas. Every time a governmental body creates “special” rules that make doing business in agriculture more difficult than in other sectors of the economy, they create a disincentive for further investment in rural enterprises.

This problem is compounded when the special rules are created by a single state. In such an instance, the state not only puts its agribusinesses at a disadvantage when competing against other business sectors for investment dollars, it puts its agribusiness at a disadvantage when competing against similar businesses in neighboring states.

Concerns with House Bill 2659

Section 1(b)(1) of the bill would prohibit a processor from requiring contract growers to accept “sick, defective or substandard” poult for placement in their grow-out houses. First of all, the determination of sick, defective or substandard part is tremendously subjective. Poult condition

at delivery cannot be determined visually and in fact is not a predictor of ultimate flock health and profitability. This subsection also is flawed in that it does not indicate who would determine whether a poult is sick or the basis for making such a determination. If the process is handled poorly, growers inadvertently could be denied turkeys that eventually grow to be healthy and productive and this subsection, in the end, would wind up costing growers money.

In Section 1(b)(2), House Bill 2659 also seeks to guarantee growers the right to use the courts to settle disputes with a processor. It is true that many turkey contracts require growers to waive their right to sue and to use binding arbitration to settle disputes. As mentioned at the outset, one of the purposes of a contract is to minimize the variation in production costs. Arbitration controls costs for both the grower and the processor, generally allowing resolution in a shorter time frame and at less cost. In fact, most turkey contracts, including the ones commonly used in Kansas, limit the amount of money a grower would spend on arbitration, with the processor covering the difference. Creating an opportunity for excessive litigation is one sure way to increase production costs dramatically. Binding arbitration is a contractual option available to other sectors of the economy. Denying that option to agribusiness companies doing business in Kansas may have long-term, unintended consequences to the state's rural economy.

Section 1(c) of the bill appears to be aimed at allowing growers to share information in their contracts and to bargain collectively. We could discuss at length the implications for Kansas agriculture of turning contract grower organizations into de facto labor unions, but we instead will focus on confidentiality clauses in contracts. Turkey production contracts clearly permit growers to show their contracts to their attorney, to their banker and to immediate family members for legal and financial advice. Confidentiality clauses are intended only to prevent the sharing of contracts in a fashion that would disclose proprietary information. Though the subsection says it would not permit such disclosure, the practical effect of widespread sharing of contractual information would be the dissemination of "trade secrets." It is a simple rule of human nature that the more widely proprietary information is shared, the more certain it is to fall into the hands of a competitor.

As for the other provisions of Section 1, including the various administrative penalty and enforcement procedures, we again would observe that you are creating an environment that discourages agribusiness from investing in rural Kansas. Were there a widespread grower-processor relations problem, such extreme action might be justified, but there simply is not. Most turkey companies today have a low turnover rate among growers and lengthy waiting lists of those who would like to become growers. Such a situation would not exist if raising turkeys were an unprofitable business.

Thank you for the opportunity to comment on House Bill 2659.

**Testimony in opposition to
HB 2659
Presented on behalf of the Kansas Pork Association
By Mike Jensen, President-CEO**



Mr. Chairman, members of the committee, I am Mike Jensen. I serve as President of the Kansas Pork Association. Our membership includes the overwhelming majority of the pork production in the state of Kansas. We are here in opposition to HB 2659.

Our membership has a history of opposing government involvement in their business. Virtually every component of each of these bills indicates that the proponents feel:

1. Kansas producers are not intelligent enough to make appropriate business choices without governmental oversight.
2. Kansas's producers would welcome government protection for any bad business or management decisions they make.
3. Kansas's producers are not knowledgeable in current and historical happenings in their industry to apply those lessons to today's business decisions.

With those satirical comments aside, here is the bottom line. Not a single Kansas pork producer has ever brought forth a concern to our Association that they have been aggrieved in a contratural agreement. Not one.

Almost all of our members our involved in some type of contractual arrangement. It may be any type from feeding, marketing, financing etc. They all are involved. They have not asked "our" government to be involved with overseeing contracts involving production. The only concerns that have surfaced have been from the poultry industry and they themselves testified that anything done on a state basis could very well jeopardize their own contracts.

Some may make the excuse: "If it were only poultry, why would you care?". It is a simple philosophy. History has dictated that any single segment of agriculture "cut out" for special treatment inevitably leads to further problems.

We would appreciate your support against any type of legislation like this that empowers government further for any segment of the agricultural industry. This "slippery slope" appears to be heading towards "registering" contractors. This will only result in fees and more FTE's. All for a program that we don't need.

Thank you for your consideration.

Mr. Chairman,

My name is Steve Eichman. I am here in opposition to HB 2659. I've been involved in the pork business for most of my life, with my family's diversified farming operation. My brothers Philip, Brent and I have primary responsibility for the swine operation.

Brent and I expanded our swine operation in 1998 to provide sufficient cash flow to bring our brother Philip back to the farm. The expansion project required a substantial financial investment, in a new breeding, gestation and farrowing facility, as well as the remodeling of existing facilities to accommodate the increased animal numbers. Our expanded herd required additional finishing space. Building another finishing barn on our farm wasn't financially feasible, so we began contracting with two Kansas producers who had recently liquidated their breeding herds and had empty finishing space on their farms.

Each of these producers have a different type of hog finishing contract with us and both have proven to be knowledgeable and proficient at the business of agriculture and of pork production. Both of these producers worked with us, through the contract negotiations, until they were comfortable with the terms and conditions of the contract. Each of these farmers exhibited the same expertise and management skills that any businessman would rely on, to fairly evaluate their contracts and neither would have hesitated to consult an attorney or accountant if they were needed.

Brent and I placed our first animals in these contract barns, just as the hog market was beginning its historic plunge in the fall of 1998. With the financial backing of our senior partners and an understanding banker, we were never late on a contract payment, nor did we fail to keep the finishing barns at full capacity. Needless to say, for the three darkest months of those challenging times, our contract growers were glad that they didn't own the hogs occupying their barns. They understood the risks involved in owning livestock and had decided months before to liquidate their own herds and search for finishing contracts.

We have had a good business relationship with both of our contract growers over the last three years. We have endured winter snows that have collapsed a contract barn and a blizzard that killed hogs in another. Both of our contract growers would like to construct additional barns to house our hogs.

Anyone involved in agriculture is accustomed to financial risks, and most farmers today are risk management specialists. My dad and his brothers knew these risks when they started our family farm and they took pride, as do all farmers, in their abilities and business savvy. Our senior partners consider themselves fortunate to have farmed in a less complicated era, where they could devote less than 20% of their time to office work. Currently on our farm, Brent and I are spending 80% of the working day in the farm office and a great deal of that time is spent on complying with all the government regulations. Agriculture, particularly animal agriculture is a very highly regulated business. We are fast approaching a point in time, when we will need to employ a full

time person to take over some of our office duties so that Brent, Philip and I can spend more of our working day at what we enjoy.

Frankly, we do not need, nor want government to be involved in the requirements we have in our contracts. We already feel we have enough "government red tape" and to have to pay additional fees to our attorney to review our contracts, to ensure we are not offering a contract in conflict with this proposed Kansas law merely takes more money from our family farm. I know of many other Kansas producers who operate on "both sides" of these contracts. None of them have ever expressed interest to me in having legislation of this type.

Thank you for your consideration.

KANSAS GRAIN AND FEED ASSOCIATION

**STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
BEFORE THE
HOUSE AGRICULTURE COMMITTEE
REPRESENTATIVE DAN JOHNSON, CHAIR
REGARDING
HOUSE BILL 2659
FEBRUARY 18, 2002**

**KGFA, promoting a viable business climate through
sound public policy for more than a**



House Agriculture Committee
February 18, 2002
Attachment 6

Chairman Johnson and members of the House Agriculture Committee, my name is Gary Beachner. I am the general manager for Beachner Grain, Inc., a family owned business with country grain elevators in eight southeast Kansas counties. I also partner in our family farming operation, where we primarily raise wheat, soybeans, and corn. We also produce and process, field seeds and grass seeds. Our operations are based in St. Paul, Kansas, a small town in Neosho County.

I appear today on behalf of the Kansas Grain and Feed Association, known as KGFA. KGFA is comprised of more than 1100 member firms, including country grain elevators – both independent and cooperative owned – terminal elevators, grain merchandisers, feed manufacturers, and associated businesses. KGFA's membership represents 99% of the commercially licensed grain storage space in the state of Kansas. I currently serve as the Legislative Committee Chairman for the Kansas Grain and Feed Association. I am also a past member of KGFA's Board of Directors, and served as Board Chairman in 1997 & 1998. Also, I currently serve on the Board of Directors of the National Grain and Feed Association in Washington, DC.

Some of you will recall that I appeared on behalf of the Kansas Grain and Feed Association when the Special Interim Committee on Agriculture met in Pittsburg this past October. I expressed concerns about expanding the role of government with respect to agricultural contracts. Many of the concerns I mentioned last fall apply to H.B. 2659, and for that reason I am appearing on behalf of KGFA in opposition to this bill.

In the interest of time, I would like to mention a few of the concerns, and then I would be happy to stand for questions.

- Requiring venue in production contracts to always fall with local district courts may reduce the willingness to do business here, thus threatening the potential growth in the livestock sector, a major consumer of Kansas grown grains.
- Prohibiting the requirement of a contract dispute resolution process, but allowing a provision to have the option of submitting a dispute to arbitration.
- Once this type of legislation is enacted for agricultural production contracts, a simple word change will make these same requirements applicable to agricultural marketing contracts.

- Prohibiting one party from requiring another party to disclose financial information before entering into a contract is unfeasible.

I do not believe it is in the best interest agricultural to implement legislation that could act as a disincentive for agricultural producers and their business partners to enter into profitable contracts.

Finally, I have also included in my testimony the official policy of the Kansas Grain and Feed Association's Board of Directors, entitled "Free Enterprise":

Free Enterprise

- KGFA supports the free enterprise system and believes state governments should refrain from adopting laws that restrict marketing options for agricultural producers or agribusiness. While the federal and state governments clearly have a role in protecting against fraud and deception, these responsibilities should not be universally or carelessly applied in the hopes of protecting individuals or business from making poor choices in today's marketplace. Attempting to protect agricultural producers and agribusiness interests from themselves will only prove counterproductive by eliminating marketing options or profit margins guaranteed by production contracts. KGFA believes agricultural producers and agribusiness interests have a responsibility to inform themselves and to make choices that best suit their needs. Therefore, KGFA supports a marketplace free of government intervention and regulation.

On a personal note, I want to mention that as a family business involved in production agriculture and agribusiness, we understand the responsibility associated with entering into any contractual agreement. We also understand the need for a balance of power between buyers and sellers, between farmers and the grain elevators or agricultural retailers, and between producers and contractors. I hope this body will use caution when considering any policy that might restrict the options of those involved in production agriculture.

Thank you for the opportunity to appear today. I would be happy to answer any questions for the committee.

KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

Statement of the

Kansas Agribusiness Retailers Association

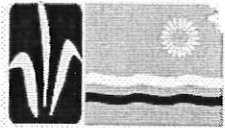
Presented to the

House Agriculture Committee

Representative Dan Johnson, Chair

Regarding House Bill 2659

February 18, 2002



**KARA is
"Committed to
Professional
Development
and Business
Viability for
the Retail Crop
Production
Industry"**

Mr. Chairman and members of the House Agriculture Committee, my name is Max Sudbeck and I am a District Sales Manager and consulting agronomist for Croplan Genetics. Croplan Genetics is a Seed Company based out of Minneapolis, Minnesota. My area includes northeast Kansas from the Missouri border west to highway 81 and south to I-70. Prior to working with Croplan Genetics, I was the agronomy department manager for a local coop in northeast Kansas for 20 years.

I also presently serve as Vice Chairman the Board of Directors of the Kansas Agribusiness Retailers Association (KARA) and chair KARA's Legislative and Environmental Issues Committee. I am appearing on behalf of KARA's nearly 500 member firms in opposition by H.B. 2659.

I would like to begin by stating that while I am very comfortable making recommendations on crop production inputs, delving into proposed legislation that impacts agricultural contracts in Kansas is not in my normal routine. With that in mind, I do want to share with you some questions and concerns I have with H.B. 2659. I must admit that I do not have all the answers to some of the questions and concerns I'd like to raise but do believe that they should be addressed before any action is taken on this initiative.

This bill includes oral agreements in its definition of "production contracts" and further outlines that production contracts include the production of a commodity or provision of management services relating to the production of a commodity.

- My concern lies with oral agreements being included in this definition. Does this mean that any fertilizer, chemical or seed dealer, consulting agronomist or anyone selling crop advising services would be considered "under contract" if this legislation passes?

As I read Section 1, subsection 16, (b), (1), I believe it would be unlawful for a contractor, which would include my seed dealers in northeast Kansas, to require the contract producer to accept substandard contract inputs.

- Substandard. What does substandard mean, and in whose eyes? Does this mean that it would be unlawful for seed dealers to substitute another adapted hybrid or seed size for one that was "orally contracted" earlier? It is a common practice among most seed companies to substitute another hybrid or seed size in the place of one that may have lost germ, quality or other wise lost some quantity in the seed production process.

Also in Section 1, subsection 2, c, as I understand it, the contract producer shall not be prohibited or discouraged from associating with other contract producers to address concerns or problems or to collectively negotiate production contract terms.

- In my view, this will erode the fertilizer, chemical and seed dealers free enterprise system. We know that not all producers in a particular area 'get the same price' for a particular input item. Be it because of the amount of acres they farm, their production efficiencies, proximity to the plant, etc., not everyone is going to receive the same price for the same input. The way I see it, it is about treating producers equitably and not necessarily equally.

Again, to me this reads that several producers, regardless of size, scope, etc., will be able to get together and negotiate contract terms for production inputs at the mercy of the retailer.

The language in H.B. 2659 appears to be very one sided as if the agricultural producer needs special protection if they choose to enter into a production contract. I know from practical experience that in production agriculture today the producer and the ag retailer enter into "contracts" nearly everyday, by agreeing on a certain price for fertilizer, crop protection chemicals, seed, application services, etc. More than 20 years of experience in the retail business has shown me that the producer, not the retailer, is normally the one with the bargaining power. This power lies with the farmers' ability to shop and compare prices from dealer to dealer. As retailers, we are in the business of competing for customers and must be willing to address any concerns raised by our customers when it comes to contract terms.

I have read this bill over several times, and while there are some provisions that may seem reasonable, it is my belief that the adoption of this legislation will open a can of worms that will provide little benefit to Kansas farmers and will force agricultural retailers and grain handlers to re-evaluate the contract and marketing tools they currently afford their customers. While the federal and state governments clearly have a role in protecting against fraud and deception, these responsibilities should not be universally or carelessly applied in the hopes of protecting individuals or businesses from making poor choices in today's marketplace. The only real benefit will belong to those individuals in Kansas that possess a law degree and seek financial gain from the many legal battles that will likely ensue should this bill become law.

In conclusion, we are of the understanding that Kansas Farm Bureau has suggested a list of items they support for agricultural contracts and that a substitute proposal may be in the works based upon their suggestions. Furthermore, we understand the proposal may specifically address poultry production, unlike H.B. 2659, which appears to impact any and all agricultural production contracts. While we have seen nothing in writing on this proposal, I would like to state for the record that we would have to weigh any proposed legislation relating to agriculture contracts and determine what precedent would be set by the adoption of legislation that restricts the right of farmers or agribusinesses to enter into mutually agreed upon terms. For example, if H.B. 2659, as written, were specifically targeted to poultry production contracts, we would still be opposed to the restrictions and requirements contained in this bill. We simply ask this committee to act with caution on this issue or any similar proposal that might inadvertently lead to limiting the marketing options currently utilized by Kansas farmers and agribusiness, be they grain, seed, fertilizer, cattle, swine or even poultry production contracts.

Thank you for the opportunity to share our concerns and objections relating to H.B. 2659 and I would be happy to respond to questions.

Testimony to House Ag Committee in reference to HB 2659
Kansas Farmers Union
Donn Teske
2-18-02

Hello, thank you for allowing me to testify again. Yes, I testified last week as a proponent of HB 2659 and I am still in favor of the bill. After I testified last week Leslie Kaufman spoke on behalf of Kansas Farm Bureau. In her testimony Kansas Farm Bureau is proposing a substitute bill to replace the contents of HB 2659. I wish to speak today on behalf of Kansas Farmers Union in expressing our opposition to the KFB substitute amendment. As I said last week Kansas Farmers Union's complaints about HB 2659 would be that it doesn't go far enough. Parts of Farm Bureau's substitute bill sounds as if it could be amended into HB2659 to make it a stronger bill, that would be good. However it is my understanding that the Farm Bureau substitute is written specifically for poultry producers. Kansas Farmers Union maintains that this legislation should be in place in Kansas for all contract growers, these are basic human rights. Also the right to address disputes in the court by his peers instead of arbitration and the right for producers to associate with each other are both in the Senate bill that passed in Washington last week. So continuity would be good.

Kansas Farmers Union wishes to state again our support for HB 2659 and our opposition to the Farm Bureau substitution of its contents beyond amendments to make it stronger. We urge Representative Johnson to work HB 2659 and to bring it to a vote.

Thank you for your time on this effort.

Donn Teske
President, Kansas Farmers Union

House Agriculture Committee
February 18, 2002
Attachment 8

Charles Foster
2768 158 Rd, Delia, Ks 785-771-2730

I am an independent livestock producer from Delia, Kansas. I have been a livestock association member for several years.

House Bill 2659 is about contract production. My reason for speaking to you today is to discuss the following:

1. The turkey industry in Southeast Kansas is involved in contract production. It is no secret that the turkey packing industry has taken advantage of and caused financial hardship for many of these producers. I am extremely concerned that this type of contract production will soon dominate the pork and beef industry and cause our marketing and financial positions to be even worse than conditions today.

2. House Bill 2659 contains 3 good provisions on page 2, lines 33, through 39. I feel that nobody could find fault with them. My concern with this bill is the protection for the producer that it does not contain. Among my concerns are the following:

A. There is no provision for producer protection in the event of termination of the contract without good reason.

B. There is no requirement for reasonable notice (I suggest a minimum of 90 days) in writing by either party to terminate and/or modify a contract.

C. There is not adequate protection for the producer who has a significant financial investment involved (Example: Specific facilities, breed of livestock, etc.).

I would like to thank the members of this committee for the opportunity to talk about this bill. I think this bill needs to be tougher and to offer more protection for the producer, however, if this is not feasible, I feel that HB 2659 should be passed at this time.

KANSAS NATIONAL FARMERS ORGANIZATION

Harold Walker President, Ks NFO and National Director, NFO
16963 Q Rd, Mayetta, Ks 66509 (785) 966-2160

Operation: Grain Producer

Kansas NFO operates like a marketing cooperative. We have 11 Grain/Livestock marketing groups across Kansas doing several million dollars of business annually. NFO has been involved with marketing contracts for over 35 years. We support marketing contracts for producers.

House Bill 2659 deals with production contracts. My purpose today is to speak to 3 issues:

1. I feel that legislation like this is needed because contract production is a trend that has entered into the turkey industry in Kansas and has resulted in a sad story. My concern is that contract production is entering into the pork, beef and grain industry also.

2. House Bill 2659, in my opinion, may not be rigorous enough to address the problems in these industries. I like page 2, lines 33, 35 and 39. I can not understand anybody opposing this. I feel that Senate Bill 355 better addresses the "real world" needs of contract producers. Here are 2 examples - page 3, line 11 and line 27.

3. As a National Director of NFO I have the opportunity to speak with farmers from other states. I hear stories about contract production problems with the pork industry on the eastern seaboard. We are also seeing a significant increase in contracted grain acres across the country. In order to protect producers entering into these contracts, strong and comprehensive legislation is necessary.

In closing, thank you for the opportunity to speak to this issue. I feel that House Bill 2659 needs to be strengthened to address the real needs of the agricultural industry. Should modifying this legislation to strengthen it not be possible, I strongly urge passage of this legislation as written.

Testimony to House Agriculture committee in support of H B 2659

Daniel L. Howell
1532 Yonder Road
Frankfort, Kansas 66427-8671
785-363-7306 / 785-292-4955
Farmer/Rancher

Today we see the increasing use of contracts in production agriculture.

My concern is the tilt in market power with a shift in bargaining power as the input suppliers and the output processors gain greater economic power at the expense of the producers.

H B 2659 provides Basic Human Rights to the farmers and producers in an era moving to contract production.

A good web site with detailed information :

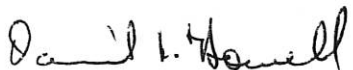
www.econ.iastate.edu/faculty/harl

The article to look for is New Contractual Strategies Coming.html .

If I can be of any help just call or write.

I support H B 2659 !

Thank You ,


Daniel L Howell

Papers of Interest

- <!--[if !supportLists]--> 1. <!--[endif]--> [July 30, 1998, Testimony before U.S. House of Representatives](#)
- <!--[if !supportLists]--> 2. <!--[endif]--> [September 15, 1998, Testimony before U.S. Senate](#)
- <!--[if !supportLists]--> 3. <!--[endif]--> [Proposed Legislative Ban on Packer Ownership of Livestock Mischaracterized by Economists](#) by Roger A. McEowen, Peter C. Carstensen and Neil E. Harl
- <!--[if !supportLists]--> 4. <!--[endif]--> [Contract agriculture: Will it tip the balance?](#)
- <!--[if !supportLists]--> 5. <!--[endif]--> [Agriculture in the 21st Century](#)
- <!--[if !supportLists]--> 6. <!--[endif]--> [Acceptability in Commercial Channels of GMO Hybrids](#)
- <!--[if !supportLists]--> 7. <!--[endif]--> [The Era of Contract Agriculture](#)
- <!--[if !supportLists]--> 8. <!--[endif]--> [Are New Contractual Strategies Coming?](#)
- <!--[if !supportLists]--> 9. <!--[endif]--> [Book Review \(*The End of Agriculture in the American Portfolio*\)](#)
- <!--[if !supportLists]--> 10. <!--[endif]--> [Obtaining Approval to Market GMOs in the European Union](#) by Michael Maurer and Neil E. Harl
- <!--[if !supportLists]--> 11. <!--[endif]--> [Report of Governor's Task Force on the Agricultural Situation - March 6, 2000](#)
- <!--[if !supportLists]--> 12. <!--[endif]--> [Organization for Competitive Markets report, "A Food and Agriculture Policy for the 21st Century"](#)
- <!--[if !supportLists]--> 13. <!--[endif]--> [StarLink Situation](#)
- <!--[if !supportLists]--> 14. <!--[endif]--> [A Framework for Short-term and Long-term Improvements in U.S. Agricultural Policies](#) by John Schnittker and Neil Harl
- <!--[if !supportLists]--> 15. <!--[endif]--> [Opportunities and Problems in Agricultural Biotechnology](#)
- <!--[if !supportLists]--> 16. <!--[endif]--> [Moving Toward A Food Systems-Based Agricultural Policy](#)
- <!--[if !supportLists]--> 17. <!--[endif]--> [Stabilizing the U.S. Agricultural Sector With Diminished Resources](#)
- <!--[if !supportLists]--> 18. <!--[endif]--> [Elevator Failure and Provisions for Recoveries Under the Iowa Indemnity Fund](#) by Roger G. Ginder and Neil E. Harl
- <!--[if !supportLists]--> 19. <!--[endif]--> [Rights of Farmers in Failed Grain Elevators](#) by Roger McEowen and Neil E. Harl
- <!--[if !supportLists]--> 20. <!--[endif]--> [The Structural Transformation of Agriculture](#) by Neil E. Harl

Ray Hallauer
19425 P Rd, Holton, Kansas 66436 (785) 364-3043
Operation: Cow/calf

I am a livestock producer from Holton, Kansas.

I am concerned about House Bill 2659 dealing with contract production. I feel that we need to consider this legislation some more for the following reasons:

1. Kansas producers have experienced and participated in contract production with the turkey industry. I attended a meeting when some of these producers talked about some of their contract problems. Many of these stories revealed some of the injustices experienced by these producers as well as the sad state of this industry.

2. House Bill 2659 contains some provisions that would help to protect the producer but there is not nearly enough protection.

3. I would submit that the following should be considered in this legislation:

A. Investment protection for the producer who has to provide specific facilities and or a specific breed or genetic requirements for the animals produced.

B. Contract termination, and a time frame for written notification, are not adequately addressed.

C. No requirement for disclosure of specific reasons why a contractor might be allowed to reject a product when contract provision for production, etc., have been met by the producer.

In conclusion, I wish to thank you for allowing me to present my views concerning this legislation. House Bill 2659 does not offer enough protection for an independent producer who might be forced to deal with large corporations in order to contract his production. If modification of this legislation is not possible during this legislative session, I support passage as written as additional provisions might be possible at some future time.

Testimony

Presented by

Roger Black

before the

House Committee on Agriculture

February 18, 2002

Good afternoon, my name is Roger Black. I own and operate a stocker growing operation near Arkansas City, Kansas. For those of you not familiar with the various types of cattle operations, I would like to describe mine to you.

I contract with cow-calf operators throughout the region to grow baby calves. Many times cow-calf producers do not have the facilities or time to raise their calves to a point where they are most marketable at the best possible price. Baby calves, newly weaned from their mothers, sometimes need a little more time to develop and build a strong bone structure that accommodates efficient fattening that leads to a premium meat product. I have developed contractual relations with a number of producers to provide this "growth time" for their cattle. I summer graze investor owned cattle on pasture that I rent. I also straighten out mismanaged calves and produce and market hay across the country.

During the 2000 Kansas Livestock Association convention, the issue of contract producer protection acts arose. We discussed various aspects of the model producer protection act developed by Attorneys General. Numerous questions were posed regarding the coverage of such acts and impacts on the industry. Then KLA President Don Hineman created a subcommittee to review the model act and make recommendations to the KLA Executive Committee and Board.

I served on the KLA committee to review contract producer protection bills. There were seven members of the committee with interests in a variety of agricultural pursuits including grain, hay, commercial cattle feeding, swine production, and cow-calf production. We conducted a line-by-line review of the model act prepared by the Attorneys General and had hours of discussion regarding the pros and cons of such legislation. I entered the discussions with an open mind. I understand the concerns of proponents of these bills, but have concluded that any "fix" to this perceived problem only complicates and discourages innovation and freedom in the marketplace. These issues can and should be addressed by education, not by legislation.

House Agriculture Committee
February 18, 2002
Attachment 13

As an organization, KLA has a long history of resisting government regulation of the livestock industry. Our members believe an open and free market offers the best opportunity for advancement and survival. Our philosophy is best stated in our "Statement of Operating Principles" attached. In short, our statement emphasizes an individual's right to innovate in the management and marketing of our products without needless government regulations. Philosophically, we cannot support this legislation.

This bill is considerably different than the earlier bills we reviewed, but the bill still poses problems for the industry. The first problem I have with this bill is self-identification. Under this bill I think I would be considered a "contract producer." I do not believe the parties with whom I contract know that they may be "contractors." By meeting these definitions, it appears that these proposals may affect my operation.

Once I am regulated I now need to consider certain provisions in drafting my contracts. This bill prohibits the contractor from requiring me to take sick animals. As I mentioned, I make a living straightening mismanaged calves. Who will determine what is a sick animal and when the provisions of the law apply? This is a provision that is best left to the parties involved and not the government.

The bill also prohibits contract provision that limit access to Kansas' courts or from discouraging contract producers from associating. While these provisions are well meaning they provide no redress for the producers who already have contracts and who I heard testify in Pittsburg. Again, these provisions are best left to educated contract participants and not the government to address.

In the interest of creating a "level playing field," I am part of a grand scheme of regulation. A level playing field is the last thing I want. A level playing field infers no inherent competitive advantage. We strive daily to tilt the playing field because if there is not something we can bring value to, we have nothing to sell. If we have nothing to market, we are out of business.

Years ago, I read John Naismith's book *Megatrends*. This book convinced me that I must reform my business to meet the coming service trends. I created my economic advantage through negotiations. I want the opportunity to receive rewards for good performance. I want to be able to negotiate the terms of my contracts. Once we turn our attention away from finding economic advantages and to jumping regulatory hoops, we sacrifice the efficiencies and creativeness of negotiations. Most negotiations involve identifying each party's needs and wants, then finding ways to meet each sides needs. "Wants" frequently don't happen. If a body of law adds another dimension to the process, I believe it would inhibit progress and inject inefficiencies into the system.

There is little to be gained by this legislation and the unintended consequences are real. I join with KLA in opposing this bill and request that you not pass it. Thank you.

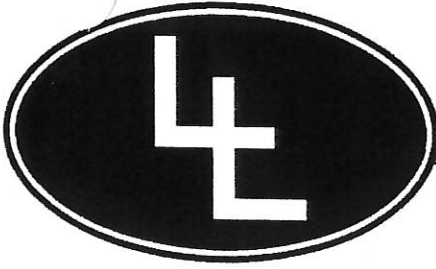
KLA STATEMENT OF OPERATING PRINCIPLES (2002)

WHEREAS, the Kansas Livestock Association believes the livestock industry is best served by the process of free enterprise and free trade, and

WHEREAS, even with its imperfections, free trade is relatively more equitable than regulated and subsidized markets which retard innovation and distort production and market signals, and

WHEREAS, regulated and subsidized markets disadvantage some producers in favor of others.

THEREFORE, BE IT RESOLVED, the Kansas Livestock Association reaffirms its opposition to the imposition of political solutions to the livestock industry's economic problems or attempts to narrow the business options or limit the individual freedom of livestock producers to innovate in the management and marketing of their production unfettered by additional government regulations.



Lyons Ranch

2481 McDowell Creek Spur • Manhattan, Kan. 66502
785-537-7226 • fax 785-776-4005 • email LyonsRanch@aol.com

Testimony

Presented by

Debbie Lyons-Blythe

before the

House Committee on Agriculture

February 18, 2002

Good afternoon, my name is Debbie Lyons-Blythe. Our family owns and operates a purebred Angus cow-calf operation in the Manhattan area. Ours is a family business involving: my husband and I, my parents, and my sister and her husband. We each own and/or operate portions of our operation. In addition, we are raising our five children in the family cattle business. In the operation, there are seven grandchildren total who we hope will have an opportunity to participate in the ranch if they so choose.

As the Morris county director, I am here representing the Kansas Livestock Association (KLA) and to give you a perspective of how this bill, if passed, will impact the livestock industry and in particular our operation.

In our operation my family and I raise registered Angus bulls. In the past, we have entered into a contractual relationship with a large processor in California that specializes in high quality meat products. Our contract specifies that we will provide a target number of bulls each year. This assures them the genetics they need to raise premium animals that supply the tender, uniform product to satisfy their customers. This type of contract is quickly becoming commonplace in the registered bull industry.

Another type of contract we frequently use is for Embryo Transfer. This contract allows us to work with producers to place embryos in their cows—thereby increasing the number of high quality bulls we can produce in a year. We supply the embryos and when those cows give birth our contracting partners tag and weigh the calves. They care for the calves until weaning at about seven months of age—giving vaccinations that we specify for the region of the country they are from. At weaning time, we take physical possession of the calves and pay our predetermined contract price, plus a premium, to our contracting party. Let me stress, we are not unique. Many seedstock producers in our state, and outside the borders, are entering into such arrangements because of the enhanced profits and efficiencies in such a program.

House Agriculture Committee

February 18, 2002

Your Source for Superior Attachment 14

Specific provisions of HB 2659 appear to directly impact our contracts. These contracts were negotiated very carefully to develop win-win scenarios. Good faith is inherent in all of our transactions. If it is not, we lose contracts, business, and friends. The proposed bill would prohibit confidentiality clauses in our contracts. We must be free to negotiate contracts with different producers in different situations and to reward them for past experience with us as well as superior management practices. Through confidentiality we are able to protect the sanctity of our relationship with other producers.

It appears that our operation would be considered a "contractor" under HB 2659 because we own a commodity that is produced by a contract producer at their facility according to a production contract. HB 2659 section 1 (b)(1) prohibits terms in the contract we negotiate with our contract producers from including requirements that the contract producer accept sick, defective or substandard contract inputs. HB 2659 section (a) (5)(C) defines a "contract input" to include "semen or eggs for breeding livestock". While we are always hopeful none of our embryos are defective, we cannot assure they are not. This provision opens us to litigation. In our situation, the contract producer is not financially responsible for defective embryos. I believe these are the types of situations that are best left to the contracting parties to address and not the government.

HB 2659 section 1 (b) (2) prohibits the production contract from containing provisions that deny the producer the ability to address a dispute in the Kansas courts. I am not certain what effect this bill would have on contracts I have with persons in other states. I suspect that they would prefer to have access to their own state courts. While this bill doesn't mandate the use of state courts as some of the earlier contract bills did, it is government creeping into our business. Again, I don't believe that we need the government to dictate the terms of our agreements.

HB 2659 section 1 (c) provides that a contractor shall not discourage or prohibit contract producers from associating with other contract producers to address concerns or problems or to collectively negotiate production contract terms. This is very broad language. What constitutes "discourage or prohibit contract producers from associating with other producers?" In contract negotiations, the parties work together to derive a win-win scenario. What actions must we avoid in our discussions so as to not violate "discouraging" the contract producer from associating with others to address "concerns or problems." "Discouraging" and "concerns or problems" are very subjective terms that I believe may open the doors of litigation for small personal differences. As a representative of small business, I cannot support additional avenues for litigation.

After walking through the bill, I think you can understand my family's concern that this is an overly burdensome process. The terms would likely discourage the use of contracts and lead to additional confusion in the marketplace. The bill would discourage the protection of the very innovation we need in the livestock industry to maintain our portion of the consumer dinner plate. For these reasons, KLA, my family and I cannot support these bills.

Contracts are valuable tools for our operation. I believe the parties who have a vested interest in the success of the agreement are those who should negotiate the agreements. I want to assure you that we are committed to seeing that all parties understand the terms, conditions, and

expectations of all agreements we sign. It has been a learning process that has rewarded us. It is in our best interest to have a mutually beneficial contract. Rather than pass cumbersome, restrictive legislation, KLA and I encourage the legislature to support educational efforts to disseminate information that helps individuals enter into win-win agreements.

GREAT BEND FEEDING, INC.

(316) 792-2508 • R.R. 5, Box 150, Great Bend, KS 67530 • Fax: (316) 792-5047

Testimony

Presented by

Andrew Murphy

before the

House Committee on Agriculture

February 18, 2002

Chairman Johnson and Members of the House Agriculture Committee, I appreciate the opportunity to appear today to comment on HB 2659. My name is Andrew Murphy and I am manager and owner of a commercial cattle-feeding operation in central Kansas.

I would like to state plainly that I am opposed to HB 2659. I had the opportunity to review this type of legislation previously. My opinion has not changed. The creators of this legislation feel that it is for the betterment of producers and the detriment of larger firms, but typically it is the smaller producer that will be damaged the worst. This seems to be the case with this legislation as well.

There are two primary problems that I find with this bill.

The first problem that I discovered is that there are technically no provisions governing what the "contract producer" can be held accountable for. This is written completely one sided. The intent is to stop the large corporations from creating unfair terms, however, not all "contractors" are multi-million dollar operations. I enter into contract situations everyday as "contract producer" and as a "contractor". Every time that I accept a pen of cattle from a customer I am a "contract producer" with an oral arrangement. Each time that I send some cattle to a backgrounding or grazing facility I become that "contractor". If there were to be legislation governing this practice in the livestock industry I would expect it to protect from both sides.

The second problem that I have with HB 2659 is that it does not provide for the one thing that I feel is the single most important in all facets life, education. I have seen the list of groups that will lobby or come to Topeka for a cause. Just on this bill alone we have seen Kansas State University, Kansas Farm Bureau, and the list will grow. If the groups would commit to their membership with the same passion that they rush to Topeka or write legislation to combat the wrongs in the world, maybe their members would not have gotten into the situation.

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Attachment 15

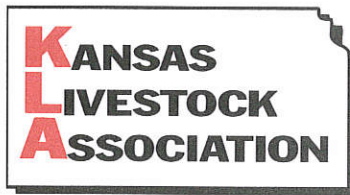
Serving the Cattle Industry Since

To educate a producer on a topic is paramount in this situation. One simple premise, do not sign anything if you cannot live with the consequences both good and bad. If you do not understand what you are signing, find help. If this committee were to recommend any outcome I would hope that it would be for better education on this subject and make it available for everyone. I would like to think that if I spoke with someone from the Kansas Farm Bureau, Kansas State University, Kansas Livestock Association, or one of my representatives here in Topeka that they would all be more than happy to assist me in making the best decision possible for my business.

In summary, I believe that HB 2659 was written with good intentions. However, education is the most powerful weapon against being taken advantage of, not legislation.

Thank you and good day.

Andrew Murphy



Since 1894

TESTIMONY

To: House Committee on Agriculture
From: Allie Devine, KLA Research and Legal Affairs
Subject: **HB 2659**
Date: February 18, 2002

Good Afternoon. My name is Allie Devine, Director of Research and Legal Affairs for the Kansas Livestock Association (KLA). The Kansas Livestock Association is a nonprofit trade association that represents several aspects of the livestock industry including cow-calf producers, seedstock producers, stocker operators, and commercial cattle feeders.

Over the past three years, KLA members have spent many hours reviewing and considering contract producer protection legislation. As Roger Black mentioned, KLA formed a special committee in 2001 to review model legislation that contained similar provisions as those included in HB 2659. KLA members have participated in the hearings of this committee last session and the Special Committee on Agriculture last fall. Throughout this process, our members have been open-minded and deliberate in their consideration of each bill.

Our philosophy, or guiding principles, is contained in our statement of operating principles. We examine each legislative proposal in light of this policy. KLA members inherently understand the importance of "freedom to contract" to the economy and their businesses. They know that contracts are the means to securing a market and ultimately a profit. They use contracts daily to protect and advance their businesses. In short, KLA members want to keep the broad contract flexibility they enjoy today!

While this bill is considerably less onerous than prior versions, KLA cannot philosophically support it for the following reasons.

1. **Not one KLA member has sought advice or counsel on this type of production contract.** KLA offers legal advice to any of our members. When asked by our members, KLA staff works closely with the member and their private attorney to educate and inform them of special agricultural issues. This service has been available for nearly nine years and yet we have not received one request for assistance in this area. Our members simply do not have a problem that needs this legislative fix.

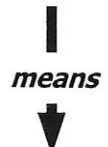
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2. **This bill will not solve the problems of the producers who support it. HB 2659 is not retroactive.** The Contracts Clause of the United States Constitution prohibits a state from enacting legislation that impairs existing contracts. Therefore, the contracts that exist today cannot be affected. The bill, if enacted, may assist them in future negotiations, but it will not impact existing contracts.
3. **The scope of the legislation brings many transactions into the regulatory scheme.** The bill affects virtually every type of contract used in agriculture. The attached chart illustrates the analysis that must be done to define the scope of bill. Our members do not support legislative restrictions on their business transactions.
4. **Application of the proposed legislation to written and oral contracts does not fix the alleged abuses occurring in production contracts.** KLA members have serious concerns regarding provisions that require the application of the prohibitions to written and oral agreements. If clarity and misunderstanding are problems, they will not be resolved by applying this regulation to oral agreements. The purpose of reducing agreements to writing is to assure complete understanding of the parties' intentions.
5. **Prohibitions on what clauses may or may not be in a contract violate an individual's right to freely negotiate and market livestock.** KLA strongly supports an individual's right to negotiate the contract he/she wants. HB 2659 has two provisions that prohibit what producers and processors may or may not include in contracts.
 - a. **Prohibition on contract clauses that require producers to accept sick, defective or substandard contract inputs.** As a practical matter, who would determine what is a sick, defective, or substandard contract input? When would the decision be made? Do the parties have an obligation to reduce potential damages as in ordinary contract law? KLA members believe this is a decision that needs to be addressed by the parties in a timely manner at the time of receipt of animals or inputs. Today, Debbie Lyons-Blythe and Roger Black have given two examples wherein this bill would affect their operation. As producers, they have negotiated relationships with other producers or processors and have worked through issues such as these. KLA members want the freedom to negotiate these terms.
 - b. **Prohibition on contract clauses that deny producer of the ability to address a dispute in the Kansas courts.** Contracting parties typically select the state of registration of their business as the forum for resolving conflicts. KLA supports the rights of contracting parties to negotiate this term. We would also ask that the meaning of the second clause of HB 2659 section 1(b)(2), page 2, lines 36-38 be clarified. Previous bills prohibited arbitrations clauses. This appears to be an indirect prohibition on contract clauses that require arbitration. Again, KLA members want the flexibility to make their own decisions as to what will or will not be included in a contract.

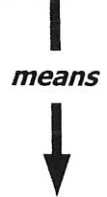
6. **HB 2569 section 1 (c) provides that a contractor shall not discourage or prohibit contract producers from associating to address concerns or problems or collectively negotiate contract terms.** This language is very broad. What constitutes “discourage” or “concerns” or “problems”? These broad terms may have the affect of allowing a minor issue to evolve into a complex legal dispute. Further, the right to associate is protected by the United States Constitution. We do not believe additional state legislation is needed.
7. **HB 2569 section 1 (f) raises contractual disputes to criminal actions.** Contract disputes historically are civil actions. This bill would give the attorney general and/or districts attorneys the authority to regulate contracts. Contractors who violate the law would be subject to misdemeanor charges.
8. **Costs:** Finally KLA members are concerned with the costs this law will impose on the industry. We respectfully request that the legislature conduct an analysis of the cost of the imposition of this bill on the contractor, the producer, and the government.

In conclusion, HB 2569 is considerably less invasive than prior proposals, but it is still an intrusion into our members’ rights and freedoms to contract and conduct business. We believe the costs, confusion, and intrusion into our members businesses outweigh any perceived benefit.

Contract Producer



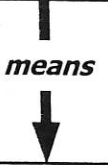
a **producer** who holds a legal interest in a **contract operation** and who **produces** a **commodity** under a **producer contract**.



person who produces a commodity, including but not limited to, a contract producer.



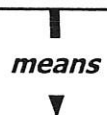
a contract livestock facility or a contract crop field.



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



to do any of the following:
1. provide feed or services relating to the care and feeding of livestock.
2. provide for planting, raising, harvesting and storing a crop.



livestock



an oral or written agreement that provides for the production of a commodity or the provision of management services relating to the production of a commodity by a contract producer.

Am I a Contractor?

16-5

a person who owns a **commodity** that is **produced** by a **contract producer** at the contract producer's **contract operation** according to a **production contract**.

means

livestock, raw milk or a crop

means

beef cattle, dairy cattle, poultry, sheep or swine.

means

means

means

a **contract livestock facility** or **contract crop field**.

means

an oral or written agreement that provides for the production of a commodity or the provision of management services relating to the production of a **commodity** by a **contract producer**.

Produce means any of the following:
 1. Provide feed or services relating to the care and feeding of livestock.
 2. Provide for planting, raising, harvesting and storing a crop.

producer who holds a legal interest in a contract operation **and** who produces a commodity under a production contract.

farmland located in this state where a crop is produced according to a production contract by a contract producer who owns or leases the farmland.

an animal feeding operation located in this state in which livestock or raw milk is produced according to a **production contract** by a **contract producer** who owns a legal interest in the animal feeding operation.

Other Key Definition

"Contract input" means a commodity or an organic or synthetic substance or compound that is used to produce a commodity, including but not limited to, any of the following:
 A. Livestock or plants;
 B. agricultural seeds;
 C. semen or eggs for breeding livestock; and
 D. a fertilizer or pesticide.

**STATEMENT OF KANSAS SEED INDUSTRY ASSOCIATION
TO THE HOUSE AGRICULTURE COMMITTEE
REPRESENTATIVE DAN JOHNSON, CHAIR
REGARDING H.B. 2659
FEBRUARY 18, 2002**

Mr. Chairman and Members of the House Agriculture Committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Seed Industry Association (KSIA) and the Kansas Crop Improvement Association (KCIA). Our associations represent 450 member firms in the production, processing, distribution and marketing of seed in Kansas.

We appreciate the opportunity to comment today in opposition to H.B. 2659, regarding production contracts. Production contracts are a way of life in the seed industry. Kansas Crop Improvement Association recently celebrated its 100th anniversary, and we believe there have been contracts for the production of seed as long as there has been KCIA. These production contracts are a way of doing business for our industry, yet there has been no controversy surrounding these contracts. Infrequent disputes between contracting parties to seed production contracts have been handled well under existing contract law. Disputes arise over specific instances of breach of contract, not due to terms of the contract. We believe the interim committee on agriculture came to this conclusion, and we believe that the Legislature does not want to take steps that would impair the contracts of the seed industry in Kansas. Yet it is difficult to change existing contract law without adversely affecting these contracts if seed is covered, and that's what H.B. 2659 would do.

In studying the provisions of H.B. 2659, Kansas seedsmen had the following concerns:

In section 1 (b)(1), page 2, line 33: sub-standard contract inputs: How and when would this be determined? Current contracts already address the quality of the seed provided. (See sample seed contracts attached.)

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In section 1(b)(2), page 2, line 35: Kansas courts. We believe contracting parties should be free to determine a choice of law and venue. Also, arbitration of disputes arising under seed contracts is a standard in our industry. We believe parties should be able to contract to require non-binding arbitration. This is a less expensive alternative to seeking relief in overburdened courts, while still providing parties the option of going to court should arbitration fail.

In section 1(c), page 2, line 39: Producers frequently are provided different terms in their contracts, depending on the seed being grown, types of practices used, location of land and so on. We believe this is appropriate and that contracts should be permitted to be specific to the producer as opposed to one size fits all.

We believe that production contracts in the seed industry are working well for both growers and contractors. Current contract law is certainly adequate to handle any disputes which may arise. Provisions of H.B. 2659 would serve to impair the effective operation of seed contracts and to drive more contract production to other states. Punitive provisions in Section 1(e) and (f) are unnecessary to insure the proper protection of contracting parties.

With regard to the proposed substitute legislation on production contracts, KSIA/KCIA members had the following concerns regarding outlined principles:

Discussing and comparing contracts: Not all contracts will be the same, for valid reasons. Confidentiality should not be prohibited.

Disclosure of production practices: This is vital to a seed production contract. Contracts provide the contractor the ability to come on to the land and inspect and make suggestions. Practices such as irrigation, isolation, previous crop are frequently specified in the contract and must be known for certification by the Kansas Crop Improvement Association, which certifies seed acres.

Inclusion of a statement of material risk: We weren't sure what would constitute a statement of material risk and whether our existing contracts would comply.

Termination of the contract: We believe this should be addressed through existing contract law, which provides damages for breach of contract. Seed contracts are often renewable, and we were concerned whether they could continue to be annually renewable, but not renewed under this provision prohibiting termination.

KSIA/KCIA members wanted to address the proposed substitute since they felt it could be easily amended to include all agricultural commodities, and that it was not good policy to single out one commodity for different contract law provisions. We appreciate the opportunity to provide input to your deliberations on production contract legislation and respectfully request that you not recommend H.B. 2659 or proposed substitute provisions favorable for passage. We believe the proposals to fix a perceived problem may be much more damaging to Kansas agriculture than the problem. If there is a problem, we question whether changing well-developed statutory and common contract law will fix it.

####

Date: _____

Contract No: _____

Gentlemen: We are pleased to confirm this date the following contract:

- (1) Company: _____ (2) Grower: _____
- By: _____ By: _____
Phone: _____ Phone: _____
Fax: _____
- (3) Quantity: Production from _____ acres (4) Kind: Soybeans: SH-2 Brand
(5) Grade: U.S. #1 Yellow Soybeans** (6) Variety: Variety Not Stated
- (7) Price & Price Basis: As compensation for his services, the grower will be paid: January, 2001 Chicago Board of Trade (CBOT) Futures price plus \$2.50 per bushel FOB _____ after soybeans have been priced and shipped.
- (8) Time of Shipment: Harvest thru February, 2001 (10 day Company's call)
- (9) Inspections to govern: cleaning facility (10) Weights to Govern: cleaning facility
- (11) Rules subject to:
*Unless otherwise noted above, this contract shall be governed by the rules of the Grain and Feed Dealers National Association and to the extent not in conflict with the aforesaid rules, by the Uniform Commercial Code.
- (12) Other:**
- (1) It is understood and agreed that the company is the owner of the soybeans grown and crop harvested and the grower shall in no manner sell, encumber, or dispose of the soybeans covered by this contract unless authorized by the company. Rejected soybeans to be disposed in ordinary commercial market and not used for replanting or for the food market.
 - (2) Soybeans to be free of dirt covering or stains and must be suitable for the Japanese food market.
 - (3) Quality factors to apply: Moist: 10-14%; Max splits: 10%; Max FM: 1% (overage to be deducted by weight); Max Dam: 0.5%; Max HT: 0.1%; Max cracked seed coat: 5.0%; Max other colors: 0.1%.
 - (4) No balloon vine, Nightshade, Polkberry, or other noxious weeds.
 - (5) Pricing to be done basis bushels and can be initiated after signing of contract. Pricing to be completed by close of market December 28, 2000.
 - (6) Seed will be deducted from bushels produced on a 1 for 1.5 ratio.
 - (7) Buyer relinquishes all rights to the beneficial interest in the commodity grown under this contract to the producer for the purpose of participating in government programs (e.g. loans, deficiency payments, etc.) until such time as Buyer has either

- (a) purchased the commodity from the grower and paid for it in full (100%), or
- (b) relinquished all rights to the commodity via an act of rejections.

- (13) It is understood by both Company and Grower that specific variety trading is unique in the quality grain oil seed trade and that in order to perform to the intent of this type of contract both parties are to keep each other informed immediately as to any conditions, rumors, or facts that may or may not hinder the full intended performance of this contract.
- (14) This contract is subject to Force Majeure. Performance under this contract by either the Company or Grower is contingent upon conditions beyond control of either Company or Grower, such as, but not limited to, labor disputes and disturbances, accidents, fire, delay of carriers, acts of God, or war, government regulations, or governmental restrictions, and inability to obtain fuel and power. If performance of the whole or any part of this contract is prevented by any cause of Force Majeure, then this contract shall be void without penalty to either party for any such portion not performed, however, if any Force Majeure cause occurs which would merely cause a delay in performance, then the non-performing party shall be responsible for performing hereunder within a reasonable time after the Force Majeure cause has ended.
- (15) Grower warrants that no truck load or other shipping unit of the commodity covered by this contract shall be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or is an article or commodity which may not under the provisions of Section 404 or 506 of the Act, be introduced into interstate commerce. **SHOULD THIS CONTRACT BE FOR SEED FOR SEEDING PURPOSES AND CHEMICAL TREATMENT IS SO STATED IN CONTRACT THEN THIS PARAGRAPH WILL NOT APPLY.**
- (16) None of the terms and conditions contained in this contract may be added to, modified, superseded, or otherwise altered except with the written consent of an authorized representative(s) of the Company or Grower.
- (17) The statements above are understood to be an accurate statement of the terms and conditions of the agreement between the parties hereto. Failure of either party to advise the other immediately of any discrepancies, objections to or disagreement with such terms and conditions shall be construed as an acceptance of this contract, subject only to cancellation by mutual agreement between parties hereto. This contract may not be assigned by either party.
- (18) Company: _____ (19) Grower: _____

By: _____

By: _____

Date: _____

Date: _____

(Where signature is by agent or officer, agent or officer must be duly authorized to sign and his or her capacity or position should be shown).

PLEASE SIGN ORIGINAL AND RETURN IN THE ENCLOSED ENVELOPE-KEEP SECOND ORIGINAL FOR YOUR FILES.

Roundup Ready™ Soybean Grower Contract

This contract, executed in duplicate, is entered into as of this _____ day of _____, 1999,
by _____, referred to herein as Company and
_____ referred to herein as Grower.

Whereas, Company is engaged in the business of raising and marketing soybean seed and is desirous of engaging the land and services of Grower to raise soybeans suitable for use as seed (defined in paragraph 1(a)); and

Whereas, Grower is desirous of raising soybeans for Company which is suitable for use as seed and is the owner or tenant of land suitable for this purpose (defined in paragraph 1(b)).

NOW, THEREFORE, the parties agree:

1. **DEFINITIONS:** As used herein the following terms shall mean:

(a) "Suitable for use as seed" means live soybean seed of at least 90 % germination, moisture not in excess of 14% or less than 10%, free of insect or rodent damage, less than 1% foreign material, and good physical appearance.

(b) "Land suitable for this purpose" means _____ acres of clean land situated on Grower's farm in _____ County, State of _____, which is free of prohibited noxious weeds and was not planted to a different variety of soybean during the preceding growing season.

(c) "Parent seed" means seed stock supplied to Grower for the purpose of a seed increase of a particular soybean variety.

(d) "Pricing date" means any date selected by Grower from the completion of the evaluation of bin samples until the last day of April 2000, provided that the date selected is a present or future date, not a past date, and provided the date selected is a day in which the Chicago Board of Trade Futures is trading.

(e) "Roundup Ready™" means commercial varieties of soybeans which contain the gene developed by Monsanto which results in tolerance to Glyphosate herbicide.

(f) "Technology Fee" means a \$6.50/50 lb. unit fee payable by Grower to Company (Company acts as an agent for Monsanto), for each bag of parent seed planted by Grower. This \$6.50/unit fee is due at planting.

2. **TERM.** The term of this Agreement shall be from May 1, 1999 through April 30, 2000.

3. **PARENT SEED:** Company shall supply parent seed to be planted by Grower on land suitable for this purpose. Grower shall pay the Technology Fee required by Monsanto at the time of planting. Additionally, Grower will compensate Company for the parent seed provided herein by exchanging two 50# clean units from the seed increase for each bag (50 lb. unit) of parent seed utilized by Grower. Parent seed so provided to Grower and the seed increase produced from this parent seed shall remain the property of Company. In the event the seed increase is not suitable for sale, Grower will pay Company \$15.00 per bag (50# unit) of parent seed provided herein.

4. **PRODUCTION OF SEED INCREASE:** Grower shall, at his expense, plant the parent seed provided herein, provide cultivations, fertilizers, herbicides, and other such management practices to provide a satisfactory yield of soybean seed. Seed increase shall be produced by Grower on his land or on land leased to Grower. Any and all contracts between Grower and Landlords or other suppliers shall be the sole responsibility of Grower, and Company shall have no liability therefore or obligations thereunder; Grower shall indemnify Company for and hold Company harmless from any such actual or alleged liability or obligation, and any costs or expenses associated therewith. As soon as possible after this agreement is signed, Grower shall supply Company with a list of legal descriptions or other description sufficient to identify the land on which such seed is to be produced. Grower shall, at his expense, treat all production acres with a minimum of 32 ounces of Roundup[®] herbicide per acre (0.56 lb. Acid equivalent of glyphosate per acre). Grower shall notify Company prior to this treatment so that Company may arrange for an inspection of the field(s) after treatment is accomplished.

5. **CERTIFICATION AND QUALITY:** Company shall, at its expense, arrange for the growing seed increase to be inspected twice during the growing season by the Crop Improvement Association of the State in which the seed is produced. Company shall have no obligation to accept seed which fails to meet the field standards of the Crop Improvement Association. Additionally, in order for the seed increase to be acceptable hereunder, all seed produced shall, in addition to meeting field standards, be dry, sound, mature, and of good appearance; shall be at least 98% pure seed; shall be at least 90% germination; and shall not contain more than 14% moisture or less than 10% moisture. If germination of soybean seed is less than 90%, soybean seed increase may be rejected or accepted entirely at the discretion of Company. Further, it shall be free from insect damage and infestation. Within fourteen days after harvest, Grower shall

deliver to Company a five pound representative sample from each bin of seed produced hereunder for purposes of quality determination. Determination of quality shall be made by an official seed testing laboratory, and Grower agrees to accept such determination.

6. **HARVEST:** Grower shall, at his expense, harvest the seed increase in accordance with instruction of Company and, prior to harvesting, shall clean the combine, trucks, grain carts, grain bins, augers or other means of conveyance used to Company's satisfaction.

7. **STORAGE AND DELIVERY:** Grower shall, at his expense, provide storage for seed to adequately protect the quality and purity of the seed until delivery of such seed to Company. Grower shall provide clean vehicles and equipment and labor necessary to load the seed on trucks and deliver to Company's designated facility.

8. **ACCEPTANCE:** Company agrees to accept all of the seed increase produced and delivered hereunder which meets the quality standards and has good physical appearance as set forth herein.

9. **REJECTION OF SUB-STANDARD SEED:** It is understood and agreed that Company is obligated to accept hereunder only seed which conforms with the requirements of paragraph 5 hereof. Any seed which fails to meet the requirements of paragraph 5 hereof, either because of failure to meet field standards or for any other reason, may be rejected by Company, and in such event Grower shall not be entitled to any compensation, reimbursement, or payment for the production, or any other handling thereof. In no event shall Grower sell or save any such rejected seed for planting purposes. Company shall notify Grower no later than 10 working days after testing of any lots that are rejected as sub-standard under the requirements of paragraph 5.

10. **PAYMENT:** Company agrees to pay and Grower agrees to accept as payment for each bushel of seed accepted hereunder:

(a) The base price shall be established by the cash price bid quoted by _____ on the day the Grower chooses to price his production. Grower may notify Company of a pricing date in person or by telephone of such selection prior to the date selected or by 3:00 p.m. on the date selected. If Grower fails to select a date as so provided, Company will use April 30, 2000 for such determination. If no market exists on April 30, 2000, the next previous market day in which a market exists will be used.

(b) In addition to the base price specified in 10(a), Company shall pay Grower a premium for each bushel of clean seed. Premium will only be paid on the clean seed. Screenings, i.e. cleanout, does not qualify for a premium and will be priced and paid for using the base price established in paragraph 10(a), less the accumulated dockage based upon receiving samples of seed as it arrives at Company's facility, using Official Federal Grain standards for number 1 yellow soybeans. Premium paid will be based upon percent cleanout as detailed in the schedule below:

<u>Cleanout</u>	<u>\$ Premium</u>	<u>Cleanout</u>	<u>\$Premium</u>
5.0% or less	1.00	10.1% - 12.5%	0.70
5.1% - 7.5%	0.90	12.6% - 15.0%	0.60
7.6% - 10.0%	0.80	15.1% and over	0.50

(c) Company shall pay Grower under 10(a) and 10(b) above for each bushel (60 pounds) of seed which has been priced and which is conditioned (cleaned) by Company hereunder, which meets the quality standards herein, no later than 21 days after conditioning of seed is completed.

11. **TITLE:** Title to all parent seed, growing seed crops, and seed produced hereunder shall be and remain in Company, and neither Grower or Grower's Landlord shall have any title therein or lien thereon, except as provided herein. Grower agrees not to sell, assign, transfer, or allow to pass from his possession any portion of the parent seed or seed crop except as provided herein.

Company relinquishes all rights to the beneficial interest in the commodity grown under this contract to the producer for the purpose of participating in government programs (e.g. loans, deficiency payments, etc) until such time as Company has either:

- a) purchased the commodity from grower and paid for it in full (100%) or
- b) relinquished all rights to the commodity via an act of rejections.

12. **RISK OF LOSS; NON-PERFORMANCE:** Until delivery of seed to Company as provided herein, Grower assumes all risk of damage to, or loss of, seed produced hereunder from any cause. Grower shall not be liable for non-performance hereunder if performance is made impossible by occurrence of flood, earthquake, tornado, blizzard, or other act of God; fire not willfully, recklessly, or negligently caused by Grower; strikes, riot, war, or embargo; unforeseen and unavoidable loss of major sources of supply; compliance in good faith with governmental

regulations or order; or by the occurrence of any other unforeseen and unavoidable contingency, the non-occurrence of which is a basic assumption hereof.

13. **WARRANTY AND DISCLAIMER:** Company warrants that parent seed furnished to Grower hereunder shall be labeled as required under state and federal seed laws and shall conform to the label description. No liability hereunder shall be asserted unless Grower or the user of such parent seed reports to Company within a reasonable period after discovery (not to exceed 30 days), any conditions that might lead to a complaint. Company's liability on this warranty is limited in amount to the amount paid for such seed pursuant to paragraph 3 hereof.

This warranty is in lieu of all other warranties, expressed or implied, including warranties of merchantability and fitness for a particular purpose. There are no warranties which extend beyond the face hereof.

14. **RIGHT TO ENTER:** Company shall have the right at all reasonable times to enter upon Grower's property, including leased acreage on which seed is produced hereunder, to observe the production and handling of seed hereunder, and to make suggestions for the betterment of the crop for seed purposes. Company shall not be liable for damage, if any, to the crop resulting therefrom. If at any time Grower shall, in the opinion of Company, neglect, refuse, or for any reason fail to carry out his obligations under this agreement, Company shall have the right, but shall not have the obligation, to take such measures as in its opinion are necessary to properly care for, harvest, and deliver the crop, and to otherwise complete the terms of this agreement, at Grower's expense.

15. **ENCUMBRANCES:** All seed delivered to Company under the terms of this agreement shall be free of all claims, liens, and encumbrances.

16. **INDEBTEDNESS TO COMPANY:** Any indebtedness of Grower to Company shall be due and payable on demand with legal interest unless otherwise agreed in writing, or, at the option of Company, such indebtedness may be deducted from the amount herein provided to be paid by Company to Grower. In the event of crop failure, or destruction thereof, or in the event of indebtedness of Grower to Company exceeds the amount due Grower hereunder, such indebtedness shall immediately become due and payable with legal interest.

17. **INDEPENDENT CONTRACTOR; INDEMNIFICATION:** It is agreed that Grower is an independent contractor and not an employee of Company. Grower shall indemnify Company against any expense, loss, or liability incurred as a result of carelessness or negligence on the part of Grower or its agents, servants, or employees. Grower further agrees to save and hold harmless Company from any and all liability arising out of workers' compensation laws or any other state or federal laws relating to employer-employee relationships.

18. **SEVERABILITY** If any provision of this contract shall be declared invalid or unenforceable, the remainder of the contract shall continue in full force and effect.

19. **NON-ASSIGNABILITY; BINDING EFFECT:** This agreement shall not be assignable by Grower without the expressed, written consent of Company. This agreement shall be binding on heirs, administrators, executors, successors, and assigns of the respective parties.

20. **SEED TO BE PRODUCED:** Grower agrees to produce and deliver to Company according to the terms hereof, the following varieties and quantities of soybean seed produced during the 19____ growing season.

<u>Variety</u>	<u>Quantities (Acres)</u>
1. _____	_____
2. _____	_____
3. _____	_____
_____	_____
Grower	Date
_____	_____
	Date